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Legal & Policy Framework of Migration Governance

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Contents

List of tables 5

Glossary and List of Abbreviations 5

Executive summary 6

1. Statistics and Data Overview 8

2. The Socio-economic, political and cultural context 15

2.1. Italian migration history 15

2.2. The socio-economic context 16

2.3. The political and cultural context 17

3. The Constitutional Organization of the State and Constitutional Principles on Immigration and Asylum 20

4. The Relevant Legislative and Institutional Framework in the Fields of Migration and Asylum 26

4.1. The national policy on immigration and asylum 26

4.2. The national legislation on immigration and asylum and its main trends 29

4.3. The sub-national legislation 33

5. The Legal Status of Foreigners 36

5.1. Asylum applicants 36

5.2. Beneficiaries of International Protection 41

5.3. Beneficiaries of Humanitarian Protection 45

5.4. Regular migrants 46

5.4.1. Requirements 46

5.4.2. Work Reasons 47

5.4.3. Family Reasons 48

5.4.4. Study Reasons 49

5.4.5. Other Reasons 50

5.4.6. The EU Long-Term Residence Permit 50

5.4.7. Rights 51

5.5. Undocumented migrants 52

5.6. Unaccompanied foreign children 55

6. Refugee Crisis Driven Reforms 61

7. Conclusion 64

Appendices 69

References and sources 88
List of cases 102

List of tables

Table 1. Arrivals of Non-EU Citizens by the sea 9

Table 2. Number of Non-EU Citizens refused entry at the external border 9

Table 3. Migratory Balance across Europe 10

Table 4. Stock of Non-EU Migrant Population residing in Italy 11

Table 5. Resident Permit of Non-EU Citizens in Italy per reason of stay 12

Table 6. Number of Applications for International Protection per gender 12

Table 7. Final Decision on Applications for International Protection 13

Table 8. Non-EU Citizens Repatriation in Italy 14

Table 9. Programmed Quotas for Extra-Communitarian Workers 27

Glossary and List of Abbreviations

AIDA: Asylum Information Database

ANCI: National Association of local mucipalities (Associazione nazionale Comuni Italiani)

ARCI: Italian cultural and recreational association (Associazione Ricreativa e Culturale Italiana)

ASGI: Association on Immigration Juridical Studies (Associazione di Studi Giuridici sull'Immigrazione)

CARA: Centre of reception for asylum seekers (Centri di Accoglienza per Richiedenti Asilo)

CAS: Emergency accommodation centre (Centri di Accoglienza Straordinaria)

CDA: Centre of reception (Centri Di Accoglienza)

CPSA: First aid and reception centre (Centri di Primo Soccorso e Accoglienza)

ECHR: European Convention on Human Rights

EU: European Union

ISMU: Iniziative e Studi sulla Multietnicità (Initiatives and studies on multiethnicity)

RSD: Refugee Status Determination

SPRAR: National system of protection for asylum seekers and refugees (Sistema di Protezione per Richiedenti Asilo e Rifugiati)

UNHCR: United Nations High Commissioner for Refugees

Executive summary

The report aims at presenting the legal and policy framework of migration governance in Italy, with a specific emphasis on the period between 2011 and 2017, so as to shed light on the series of implemented changes and responses given to the recent migration crisis.

In the last few decades, Italy — traditionally an emigration country — has gradually turned *also* into an immigration country. Since 2014, Italy is receiving the highest number of non-EU citizens looking for economic opportunities and for international protection in its history. In 2016, migrants with their permit recognised for international and humanitarian protection were 77.927, approximately seven times what they were in 2010. Nonetheless, the main channel to obtain the permit of residence seems to be constantly represented by family reunification, which consistently represents between 40% and 45% of permits granted between 2011 and 2016.

The Italian Constitution provides only few rules directly addressing asylum, migration and the legal status of foreigners (namely art. 10). However, other pivotal constitutional provisions contribute enhancing the national standards of foreigners' rights, such as the "personalist principle" of art. 2, the equality clause of art. 3, and art. 117, through which the EU legislation and international treaties signed by Italy acquire "constitutional relevance".

The Constitutional Court has represented a fundamental anchor in promoting the legal entitlements of foreigners and in preventing standards downgrading. Besides the Court, a crucial role in shaping the national legislation on immigration and asylum and in extending foreigners' rights has also been played by judges.

At domestic level, the national policy on migration has been featured with a structural lack of organic, coherent and effective instruments of planning and management. With reference to the legal framework, the Italian Consolidated Law on Immigration dates back 1998 and results in multiple, fragmentary normative stratifications. The asylum regulation relies on a number of legislative decrees, transposing the EU Directives into the Italian legal system, while an organic and complete law is still lacking.

Concerning the asylum and migration management structure, the responsibility to enact the various procedures does not belong to a single governmental body. Rather, it is scattered among different institutional entities emanating from different tiers of government (from national to local), and it also involves the third sector. Each entity (with its own mandate and mission) is competent and responsible for single apparatus of the complex migration machine.

In the section "Legal status of foreigners", the report explores the main typologies of residence permits provided by the Italian legal system, requirements to be fulfilled in order to gain that status and the aggregate of rights attached to it. After having presented the legal process of granting the international protection in Italy, and the status of asylum applicants and beneficiaries of international protection, the report illustrates the legal status related to the permit to stay for "humanitarian reasons", a specific feature of the Italian legal system. In addition, the report examines legal status related to the following permits to stay: work, family, study, EU long-term residence permit and unaccompanied minors. Finally, the report illustrates the legal status connected to the condition of the so-called 'undocumented migrants', which in Italy are excluded from a number of rights. Nonetheless, the report accounts for the relevant role of the Constitutional Court, which enlarged the number of rights

to which undocumented migrants are entitled, by allowing Regions to enhance the protection of migrants' fundamental rights in areas of social assistance and public services.

Section 6 focuses on the time-span 2011–2017, when a number of legislative reforms have been issued with the aim to manage the growing arrival of migrants to Italian shores. These reforms were inspired by an increasingly security-oriented approach.

The conclusion highlights that Italy has proven to be a very complex case of migration management that has developed in the grip of structural national limits, as well as a case of slow and inadequately controlled process of integration of the foreign population residing in the country for the last three decades. In the last few years, Italy has proven itself incapable of dealing with mass migratory flows. Moreover, besides a lack of cohesiveness of national policies and poor and inconsistent implementation, the country has put into question the very same principles of respect and protection of human rights enshrined in the Constitution and international standards.

1. Statistics and Data Overview

This report expects to analyse the Italian framework of reception of migration. First, it reconstructs the socio-political context between 2011 and 2017 by presenting the most updated data concerning the impact of the phenomenon of migration on the Italian society. Second, a more in-depth overview of the socio-political specificities will be presented that will set the basis for a juridical analysis of the legal governance of migration in Italy. The aim of this report is indeed to shed light on the national features characterizing the response to the migratory crisis. More specifically, it intends to highlight common patterns and inconsistencies of the Italian approach so as to eventually evaluate potential implications of such contradictory dynamics of migration management. In many instances, Italy is a revealing case when considering its historical experience as a country of emigration and its current centrality in the European geo-political context of mass migration. Indeed, as it will be shown further in the report, Italy is currently engaged in the management of a twofold dynamics: on the one hand, a process of stabilisation of the foreign presence as demonstrated by the increase of citizenship recognitions; on the other hand, Italy is also facing a quite considerable percentage of new presences which reveal a less stable and coherent management on the ground.

According to the National Institute of Statistics (ISTAT) the resident population in Italy in 2017 totalled 60.589.445, while the foreign resident population counted 5.047.028 individuals, representing the 8,32% of the total population. Data collected by Eurostat allow to insert the Italian experience within the European context. In 1998 the foreign population resident in Italy totalled less than one million. In 2015 it was five times more, representing a rise of the +405%. This arguably represents the most conspicuous relative increase among European states, considering that the rest of notable increases in 2015 reached the +357% in Ireland, the +171% in Finland and the +143% in the United Kingdom. However, taking into account the relationship with the total population, the picture seems to change. Indeed, the Italian percentage (8,32%) is similar to the United Kingdom (8,4%), higher than France (6,6%) but less than Germany (9,3%), Belgium (11,6%), Ireland (11,9%) and Austria (13,2%).

The real watershed in terms of migration flow for Italy has been 2014. Indeed, since then, Italy is receiving the highest number of non-EU citizens looking for economic opportunities and for international protection in its history. Therefore, new practices and policies have been developed in the past few years to respond to this challenge. Following a first peak in 2011 (when 62.692 people arrived in Italy pushed by the turmoils in North-Africa), migration flows have temporarily decreased in 2012[1], but increased again[2] to reach the second most important peak in 2016, when 181.436 non-EU citizens landed Italian coasts[3] (Table 1).

[1] The decrease in arrivals in 2012 is mostly due to two factors: on the one hand, the bilateral agreement signed between Italy and the Tunisian government that concerned Tunisian but also Sub-Saharan citizens from Libya. On the other hand, both the elections in Tunisia and the formation of the National Transitional Council government represented two moments of temporal stability and control of the fluxes.

[2] According to the Bank of Italy, in the two-years period 2014-2015, the cost of management of arrivals and sea-rescues totalled 1.7 billion euros to which reception in infrastructures for Italy totalled 1.5 billion euros (Ballatore et al. 2017).

[3] Among these numbers, unaccompanied children do account for a significant extent. According to the available data (Italian Ministry of the Interior and ISMU), more than ten-thousands non-accompanied

***Table 1*. Arrivals of Non-EU Citizens by the sea**

	Total
2011	62.692
2012	13.267
2013	42.925
2014	170.100
2015	153.842
2016	181.436
2017	119.310

Source: Department of Public Security, Ministry of the Interior, Italy and ISMU[4]

However, with the rise in arrivals, rejections rose as well. According to the Report released by the 2017 Italian Special Parliamentary Commission on Reception of Migrations, border push-backs constitute the primary type of rejection. As Table 2 shows, in 2015 border rejections totalled almost threefold the deferred push-backs, and in 2017 the 61% of the refusals of entry were in fact rejections at the border reaching a total of 10.496 (Chamber Inquiry Committee, 2017:74).

***Table 2*. Number of Non-EU Citizens refused entry at the external border**

	Border Push-Back	Deferred Push-Back
2014	7.573	2.573
2015	8.736	1.345
2016	-	-
2017	10.496[5]	-

Source: Chamber Inquiry Committee (2016 and 2017, http://www.camera.it/leg17/465?tema=centri_di_identificazione_ed_espulsione)

It is also to be considered that in the last few decades, Italy — traditionally an emigration country — has gradually turned *also* into an immigration country. As mentioned, Italy is indeed in the process of stabilising the foreign presence, the majority of which appears interested in staying. Among the migrants arrived in 2012, for instance, the 53,4% was still present in Italy in 2017. A slightly less percentage concerns those migrants with political asylum permits (51,5%), while the 65,8% of the migrants recognised for family reunification remained. With respect to the migratory balance of the country, there is an interesting dynamics deserving closer attention. As confirmed by Table 3, Italy shows a positive migratory balance during the period under investigation, meaning that the number of immigrants between 2010 and 2017 has been constantly larger than the number of Italian leaving the country. Yet, the Italian

children arrive to Italy each year (13.026 in 2014 and 15.371 in 2017). Proportionally, the peak of arrivals in 2016 of non-accompanied children was actually higher than the rest of arrivals.

[4] Iniziative e Studi sulla Multietnicità (ISMU).

[5] At 31 October 2017.

migratory balance remains lower than the overall EU average, as well as other European countries (713.631 in 2011, 1.760.854 in 2013 and 1.222.979 in 2016).

Table 3. **Migratory Balance across Europe**

	2011	2012	2013	2014	2015	2016
EU average	713.631	894.789	1.760.854	1.101.159	1.854.445	1.222.979
Germany	295.478	391.884	455.473	583.503	1.165.772	464.734
Greece	-32.315	-66.494	-59.148	-47.198	-44.934	10.332
Spain	66.509	-142.555	-251.531	-94.976	-7.490	87.422
France	19.220	71.509	98.939	23.804	68.310	68.310
Italy	76.359	369.717	1.183.877	108.712	31.730	65.717
Finland	16.615	17.621	17.934	15.437	12.575	17.098
Sweden	45.453	51.799	65.780	76.560	79.699	117.693
UK	217.227	166.048	242.445	316.942	331.917	247.286
Norway	46.738	47.142	38.948	39.916	29.353	26.168

Source: Eurostat (2018)

In addition to that, it is worth noticing that after the peak in 2013 (1.183.877), Italy is experiencing an overall decreasing trend[6], despite mixed results per year (108.712 in 2014, 31.730 in 2015 and 65.717 in 2016[7]). Arguably, migration flows in Italy are indeed crucial to contribute to a positive demographic balance. As a matter of fact, Eurostat confirms that, while Italian population is on average elderly, the foreign population in Italy is quite young (average age under 34). Overall, the percentage of young people among 0 and 14 years old is five points higher than Italians of the same age range. The range of foreigners between 15 and 39 years old does represent almost the 45% percent of the total foreign population in Italy, while the Italian counterpart represents the 26,2%. On the contrary, foreigners older than 65 years old represent the 3%, against the 23,7% among Italian citizens.

Among the foreign population resident in Italy, non-EU migrants represent the majority (Table 4). According to the National Institute of Statistics (ISTAT), the first ten non-EU

[6] Other than a reduced percentage of arrivals in 2013, there are other two factors to be taken into consideration when discussing such an increase. Indeed, according to the data released by ISTAT, in 2013 there has been a decrease in natality with an average of 1,39 children born per woman against the 1,42 average in 2012. In addition, emigrations abroad increased significantly, with a total of 126.000 in 2013, meaning 200.000 more than 2012.

[7] In this regard, it is worth considering that a good proportion of Italian emigrants living in EU countries does not acquire the residency of the host country.

nationalities resident in Italy, namely Morocco, Albania, China, Ukraine, Philippines, India, Egypt, Bangladesh, Moldova and Pakistan, account for 61.6% of presence (ISTAT 2017b).

Table 4. **Stock of Non-EU Migrant Population residing in Italy**

Year	Non-EU migrants	Total Migrants	% of Non-EU migrants
2010	3.448.562	4.570.317	75.4
2011	2.811.924	4.052.081	69.3
2012	2.964.014	4.387.721	67.5
2013	3.711.835	4.922.085	75.4
2014	3.515.466	5.014.437	70.1
2015	3.508.429	5.026.153	69.8

Source: Authors' adaptation from Caponio and Cappiali (2017: 120)

In addition, the number of non-EU citizens acquiring the Italian nationality is also increasing. While between 1998 and 2002 a total of 53.889 new Italian citizens were recognised, between 2012 and 2016 a total of 541.000 non-EU citizens became Italian, with 184.638 new citizens only in 2016. Among them, the majority were Albanians (36.920) and Moroccans (35.212)[8].

As displayed by Table 5, since 2011 the general trend of the legal reason for acquiring the permit to stay has been changing as well. For instance, residence permits for working reasons represented almost the 50 per cent of the total permits released, while they have been decreasing consistently every year, reaching the lowest level in 2016 with 12.873 working permits released, meaning a total of 346.267 less than 2010.

[8] According to the D.P.R 18 April 1994 n. 362, the waiting time is not supposed to exceed 730 days after the submission. Yet, it is worth considering that the timescale to be granted the Italian citizenship is quite extensive. In fact, not only applications can be submitted after ten years of residence and six years holding a long-stay resident permit, but due to the complicated and slow burocratic proceeding process, institutions usually employ between three and four years to give an answer to the applicant, exceeding the total waiting time by thirteen/fourteen years on average (Cappiali 2018).

***Table 5*. Resident Permit of Non-EU Citizens in Italy per reason of stay**

	Work	%	Family	%	Study	%	Asylum and Humanitarian reasons	%	Other Reasons	%	Total
2011	124.544	34.4	140.846	38.9	31.295	8.65	42.672	11.8	22.333	6.17	361.690
2012	70.892	26.8	116.891	44.2	31.005	11.74	22.916	8.68	22.264	8.43	263.968
2013	84.540	33	105.266	41	27.321	10.6	19.146	7.4	19.373	7.5	255.646
2014	57.040	22.9	101.422	40.8	24.477	9.8	47.873	19.2	17.511	7	248.323
2015	21.728	9	107.096	44.8	23.030	9.6	67.271	28	19.811	8.2	238.936
2016	12.873	5.6	102.351	45	17.130	7.5	77.927	34.3	16.653	7.3	226.934

Source: ISTAT (2018)

On the contrary, resident permits for asylum or humanitarian reasons have significantly increased. In 2016, migrants with their permit recognised for this type of reason were 77.927, approximately seven times what they were in 2010. Nonetheless, the main channel to obtain the permit of residence seems to be constantly represented by family reunification which consistently represents between 40% and 45% of permits granted between 2011 and 2016. In fact, despite some annual differences, since 2008 the total never decreased below the 100.000 units, exceeding more than a half the permits granted for asylum and humanitarian reasons (Ambrosini 2017). These data seem to confirm an overall shift in the nature of the permits granted, which confirms the impact of the economic crisis and humanitarian emergencies on migration flows (Caponio and Cappiali 2017).

***Table 6.* Number of Applications for International Protection per gender**

	Male	Female	Total
2011	-	-	37.350
2012	-	-	17.352
2013	24.005	3.925	27.930
2014	58.703	4.753	63.456
2015	74.280	9.690	83.970
2016	105.006	18.594	123.600

Source: Ministry of the Interior, 2018a

However, while it has been mentioned that the number of permits related to humanitarian reasons has been constantly raising in the last years, it seems fair to argue that such an increase mirrors the increasing trend registered with respect to the number of applications for international protection. As Table 6 displays, in 2014 the number of applications (63.456) were more than twofold the applications presented in 2013 (27.930), while in 2015 the total reached 83.970. The net increase overlaps with the overall increase of arrivals, especially in 2016 when

123.600 applications were filled corresponding to more than 47% increase with respect to 2015[9]. In addition, the female component represents around the 40% of the new flows. Female immigrants with successful applications for humanitarian reasons or political asylum do represent a relative small percentage, accounting for the 11,6% in 2016. Interestingly, however, female incidence increases when considering resident permits for family reunification (around the 59%) and for study (57,3%) or work reasons (36,3%).

The number of applications for International Protection, however, does not suffice to illustrate the complex picture of the Italian status quo. First, because not all applications are successful. Second, as we will discuss later in the report, because there are three different legal status: refugee status, subsidiary protection and humanitarian protection[10].

***Table 7*. Final Decision on Applications for International Protection**

	Refugee Status	%	Subsidiary Protection	%	Humanitarian Protection	%	Other Decision	%	Non-Recognised	%	Total
2011	2.057	8	2.569	10	5.662	22	1.868	16	11.131	44	25.626
2012	2.048	7	4497	15	15486	52	1.483	9	5.259	17	29.969
2013	3.078	13	5.564	24	5.750	24	67	0	6.765	39	23.634
2014	3.641	10	8.338	23	10.034	28	40	0	13.122	39	36.270
2015	3.555	5	10.225	14	15.768	22	66	0	37.400	58	71.117
2016	4.808	5	12.873	14	18.979	21	188	0	51.170	60	91.102
2017	6.827	8	6.880	8	20.166	25	662	1	46.992	58	81.527

Source: Ministry of the Interior, 2018a

As illustrated in Table 7, within an overall increasing trend among the different forms of protection ('refugee status', 'subsidiary protection' and 'humanitarian protection'), humanitarian protection displays the highest growth. In 2011, a total of 5.662 status permits for 'humanitarian protection' were granted, whereas in 2017 they reached 20.166. However, the rejection of applications increased significantly as well, from 11.131 in 2011 to 46.992 refusals in 2017. Quite interestingly, according to the 2017 UNHCR report on International Protection in Italy, on average 6 over 10 applicants from the African continent are rejected,

[9] However, in this respect, it is worth noting that the processing time between the submission of the application and the permit acceptance and release is usually quite extensive. On this see paragraph 5.2.

[10] For a detailed explanation of these three different status in Italy, see paragraph 5.1.

while the 22.2% of cases gains 'humanitarian protection'. Among European and American applicants, 'humanitarian protection' prevails (40.5% and 38.1%) over the 'non-recognition' (37.1% and 33.2%). Finally, applications from Asian migrants are mostly rejected (47.3%) or recognised as 'subsidiary protection' status.

Overall, according to the data offered by the Bank of Italy, Italy displays an acceptance rate of asylum applications of the 43.5% over the three years period 2014-2016. With respect to the general EU average (54%), it is the country that more likely grants the status of humanitarian protection (50% of the total of positive outcomes). On the contrary, it is among the countries that are less likely to recognise the refugee status (14% against an EU average of 60,2%) (Ballatore et al. 2017).

Differently from a general picture of increasing numbers linked to migration flows to Italy, data on non-EU citizens repatriation (Table 8), instead, are not that explicit. In fact, despite a rise in 2012 with 7.360 non-EU citizens repatriated, the final amount of repatriations per year appears to remain stable.

Table 8. **Non-EU Citizens Repatriation in Italy**

Year	Total
2010	4.890
2011	6.180
2012	7.365
2013	5.860
2014	5.310
2015	4.670
2016	5.715

Source: Eurostat (2018)

Overall, the displayed data seem to suggest that the challenge of mass migration that Italy is currently facing is not necessarily an alone-standing emergency. The growing presence of foreign population on the Italian territory is not exclusively related to current international conflicts or crises, but also to a slow process of stabilisation of the migratory phenomena of the last two decades. Certainly, a comprehensive account of the contemporary Italian approach to mass migration does require a deeper analysis of the social and political context, in order to understand the characterizing trends and highlight the implications related to the data. Hence, in the following, an overview of the history of the migration phenomena in Italy is displayed. Consequently, the report offers insights on the Italian socio-political and cultural framework so as to gain a stronger sense of the national setting and an exhaustive picture of the surrounding conditions to the politics of migration.

2. The Socio-economic, political and cultural context

Migrations do not happen *in a vacuum* or *in a terrae*. Migrants inevitably enter into communities and societies characterised by a set of cultural, religious or traditional features (Geertz 1987; Aime 2004; Benhabib 2005) and into countries characterised by different legal, political and economic systems. In order to understand the complex network of bilateral relations that migrants (both as group and as individuals) establish with receiving communities, it is crucial to provide a brief insight on the most important traits of Italian society. Nonetheless, stereotypization of the relative immobility of receiving countries and societies and of the capacity of immigrants to adapt should be avoided. Migration dynamics, indeed, always entail a constant process of multidirectional interactions which should never be neglected.

Similarly to other European countries, migration trends and developments have been influenced by the geographical, economic, political and sociocultural peculiarities of the Italian context in many regards. It goes without saying that the geographical position of the Italian peninsula and its close proximity to North African coasts plays a big role, making of Italy a country of transit and subsequently of destination. As we are witnessing today, the crossing of the Mediterranean Sea became the main route to Europe, especially since other routes gradually faded and the political turmoil in Libya weakened the country capabilities to control its borders. However, a more comprehensive understanding of the implications of this contemporary unfolding of events for Italy does require a brief overview of the main historical dynamics of migration in the country.

2.1. Italian migration history

For a long time Italy has been considered an emigration country. Since its unification in 1861 until the post-World War II millions of Italians migrated to North and South America, and to a number of European Country (mainly Belgium, Switzerland and Germany), accounting for the largest voluntary migration in recorded history (Ben-Ghiat and Hom 2016). Nonetheless, according to data on residence permits provided by the Ministry of the Interior, from the mid-1970s the trend started to reverse. In order to explain this shift, scholars usually consider the reduced capacity to attract migrant workers by Northern European countries' labour markets — due to the 1973 oil crisis — as a key explanatory factor (Sciortino 2000; Bonifazi 1998). However, Colombo and Sciortino (2004), who purged the official data from the number of expired residence permits raise some interesting additional points. The authors underline that, despite the fact that Italy has mostly been a transitory country, it became more attractive for migrants already during the 1960s as a result of the post-war economic boom. Indeed, the first immigration wave was concerned with seasonal workers and female domestic workers especially from Eastern Africa (such as Somalia, Eritrea and Ethiopia, which were former Italian colonies), the Philippines and former Portuguese territories (Andall 2000; Calchi-Novati and Vanzetti 2016). This means that Italy was not chosen as a backup option, but rather as an independent destination. Moreover, Colombo and Sciortino (2004) underlined that official data did not account for undocumented migrants, which – as it will be highlighted later in the report – represented the bulk of migration to Italy in 1970s and 1980s, "in a context of large-scale closure of legal entry points". Indeed, at least until 1998, when the Consolidated Law on migration was published, "phases of growth in the number of residency permits coincides with amnesties for the legalization of status" of foreigners who have previously entered Italy illegally

in response to labour demand (Colombo and Sciortino 2004: 54). Interestingly, the first immigration flows concern also students and self-employee migrants. However, since the very beginning the Italian migratory influx has been characterised by high diversification with regard to nationality, gender, type of work, and length of stay.

Alongside migrant workers and students, the trend of refugees and asylum seekers has somehow followed the same pattern. After 150 years of emigration, Italy was considered as a small, poor and overpopulated country, and therefore as a country of transit or temporary sojourn (Hein 2010). Besides, until 1990 the right of asylum was limited to European citizens, since Italy had ratified the Geneva Convention with this "geographical limitation". Nonetheless, asylum claims began to grow with the flow of Albanians approaching the Italians shores by sea in 1991 consequently to the collapse of the Hoxha regime, and again in 1999, reaching the number of more than 37.000 asylum applications (compared to the 4.573 requests of 1990) (Ministry of the Interior 2018a). Finally, following the 2011 "Arab Spring", Italy started to play a paramount role in the so-called "refugee crisis". In 2011, over 50.000 foreigners approached the Italian shores, with around 37.000 requests for asylum. Number of arrivals diminished on 2012, but kept increasing again in the following years, until reaching another pick in 2016. As mentioned, amongst these new arrivals to Italy, a significant component is covered by the unaccompanied foreign children.

The 2008 economic crisis has, once again, induced high numbers of Italians to emigrate. However, the new emigration wave is socially and demographically different: the new Italian migrants are mainly young and, for the most part, highly educated (around one-third). This is why the new emigration wave has been labelled "brain-drain", which entails an enormous and worrying human, social and economic cost for the Italian state[11].

2.2. The socio-economic context

The relevance of the Italian geographical element juxtaposes with some peculiar economic and demographic traits. In particular, research has often emphasized the link between immigration and the extended informal sector of the country and of other Southern European states (Testaì 2015; Ambrosini 2013). However, also the formal sector, with its unmet labour demand. has contributed to attract foreign workers. Thus, it is not a coincidence that the majority of foreign workers are concentrated in the highly-industrialized and developed Northern regions, while only a small quota, mainly seasonal workers, resides in the less-developed and more agriculture-depended Southern ones. Quite interestingly, foreigners' participation to the Italian economic life remained high even after the economic crisis of 2008. Indeed, it has been shown (Ambrosini and Panichella 2016; Sciarra and Chiaromonte 2014) that the crisis had a lower impact on the foreigners' employment rate, except for the sector of manufacturing and construction. Nonetheless, the crisis did enhance the above-mentioned structural criticalities and problems of Italian labour market such as segmentation, disparities and pay gaps. It has to be highlighted, however, that "in the Italian labour market, foreigners easily face discriminatory behaviours, widespread risk of informal employment and high

[11] "From 2010 to 2020 it is estimated that Italy stands to lose about 30,000 researchers, which will have cost the country €5 billion, considering just the public spending necessary for their training" (Bergami 2017).

mobility. But foreign workers are strongly labour-oriented, so that the phenomenon of the so-called “disheartenment”, that is the renounce to search employment, is very uncommon. In fact, unemployed foreigners can be constrained to accept the first job they find, under the pressure to maintain themselves and their families and/or renovate the residence permit” (Italian Ministry of Labour, 2017: 41). Furthermore, studies report that foreigners are often over-educated with respect to job qualification. In addition, the Italian labour market is characterised by a strong professional segmentation, with foreigners mainly employed in low-skilled sectors, namely agriculture, tourism, constructions and domestic work.

Domestic work, which is one of the most important sectors for immigrant participation in the Italian labour market, reflects some of the prominent features of the Italian society. In fact, it has been shown (Ambrosini 2008) that the high number of foreigners employed in the domestic service can be explained by looking at a twofold dynamics. On the one hand, by the relative population ageing due to a low birth rate, as well as the growth of elderly in need of assistance. On the other hand, by cultural changes such as the higher rate of Italian female workers, coupled with a general unwillingness of Italians to work in the social care sectors and the inadequacy of the national welfare system which is more and more under strain.

2.3. The political and cultural context

The Italian political discourse started to focus on immigration only in the early 1990s[12]. However, the public debate in those years was dominated by the unfolding of a series of severe corruption scandals, commonly known as *Mani Pulite* (literally, ‘clean hands’). Since the scandals involved a significant share of Italian MPs, they led to major political transformations symbolised by the collapse of the ‘First Republic’ and the birth of the ‘Second Republic’ (Guzzini 1995). For instance, the legitimation crisis of traditional parties, together with the electoral reform of 1993 establishing a mix of “proportional representation” and “plurality system” (Cetin 2015), paved the way for the emergence of a new political parties, such as *Forza Italia* – FI (Go Italy), and also pro-secession and increasingly hostile to migrants as the *Lega Nord* - LN (Norther League[13]) which remain, however, largely locally-affiliated and marginal in the political competition.

Yet, in the aftermath of the 2008 financial crisis, the essentially bipolar party system started facing new political challengers. Indeed, new anti-establishment parties, such as the *Movimento Cinque Stelle* - M5S (Five Star Movement), a ‘web-populist’ party created by the former comedian Beppe Grillo, gradually reshaped the system into a multipolar one moving beyond the traditional left-wing and right-wing competition, also concerning migration issues (Tronconi 2016; Conti 2014).

Similarly to the overall European political trend, the political discourse in Italy has been polluted by anti-immigrant narratives, particularly during the pre-electoral periods (Kurkut et, al. 2013). Under the slogan “Italian first” and the creation of the dangerous equation immigrants=criminals, echoed by mainstream media, requests of closure of borders and the progressive reduction of migrants’ rights permeated the political arena. Consequently, the

[12] For a synthetic overview of the Italian normative intervention on the field see chapter 4.

[13] The party renamed ‘Lega’ in 2017, loosing the regionalistic territorial affiliation.

politicization of migration featured both the 2009 and 2014 European elections, as well as the 2008 and 2013 national elections, during which the troops of anti-immigrant parties could also rely on the far-right and Euro-sceptical party *Fratelli D'Italia* (Italian Brothers) and the already mentioned M5S.

Ironically, as a wide literature points out, this tough approach of closure in principle usually deflates when moving to the practice (Caponio and Cappiali 2017; Ambrosini 2012). To put it in another way, the anti-immigrant discourses, essentially used to gain electoral support, were often dismissed after the elections, also due to the social and economic costs of the entire system of stopping, detection, deportation and expulsion. Meanwhile, the limited stability of Italian governments (with 13 different executives from 1992 to 2017) did not help to establish and unfold a clear and solid immigration policy. On the contrary, the Italian response to mass migration has been mostly characterized by an emergency approach, as with the first relevant migratory influxes of Balkans during the 1990s[14].

Overall, an increasingly harsh political discourse, together with the negative media representation of migration, has contributed to deteriorate the Italian attitude toward migrants (Diamanti 2016). Furthermore, scapegoating the "other" of threatening the Italian cultural identity as well as its social welfare, its security and economic stability, has found a fertile terrain in the limited sense of nationhood and belonging traditionally featuring Italian citizens (Tryandafilldou and Ambrosini 2011).

Despite such an opposing trend to migration, the practical management of migration displays examples of openness and solidarity. Indeed, the migration crisis has shed new light on the long-standing tradition of volunteerism, fed by a curious interplay between the Catholic Church, trade unions and others secular associations of left matrix, such as the ARCI[15] (Ambrosini 2018). Indeed, Italy may count on the activism and strong response by many social groups and no-profit organizations of the third sector. From the last national census organised by ISTAT (2017a), up to 31 December 2015 the total of non-profit organisation working in Italy are 336.275, 11,6% more than 2011, concerning a total of 5.290.000 volunteers and 788.000 employees.

Amongst them, the catholic Caritas currently plays a prominent role in the assistance and reception of migrants and asylum seekers in conjunction with a number of local social cooperatives. Nonetheless, it should be mentioned that the whole issue of solidarity towards migrants is currently in the spotlight of Italian public opinion. In fact, a delicate controversy is capsizing NGOs active in migrants' assistance and rescue at sea, accused of being colluding with people smuggling operations. Although the Italian Parliament investigated these claims and has found them to be unsubstantiated (Senate 2017), right-wing newspapers and politicians have continued campaigning against Italian and foreign NGOs.

Meanwhile, despite numerous positive examples of solidarity and reception by almost the totality of NGOs, associations and cooperatives of the third sector that are running the majority of reception centres in Italy, their role has been recently overshadowed by a number of other scandals. Indeed, a system of corruption and mafia infiltration has been recently disclosed by journalistic and criminal investigations (Nadeau B.L. 2018). For instance, in large-scale

[14] As an example of this approach, see the Law n. 563/1995 (the so-called "Legge Puglia").

[15] Associazione Ricreativa e Culturale Italiana.

buildings, such as CARA of Mineo and the Sant'Anna reception centre in the Isola di Capo Rizzuto in Calabria, asylum seekers not only face inhuman conditions but they are also subject to constant threats of sexual and labour exploitation, or even of human trafficking.

On a conclusive note, this brief overview of the cultural and political background of Italy has revealed a complex picture involving intertwined systems of power, many of which directly compete with political authorities or exercise typical public sector functions due to the ineffectiveness of public administration. Currently, the migration crisis has unfolded competing interests within and outside the political competition. Moreover, the lack of cohesive policies or concrete instruments to implement them have contributed to an incoherent approach to the management of migration which has soon turned into an 'emergency'.

3. The Constitutional Organization of the State and Constitutional Principles on Immigration and Asylum

Until the 1970s, Italy was primarily a country of emigration. This is reflected in the Italian Constitution of 1948[16], which proclaims that "every citizen is free to leave the territory of the Republic and return to it except for obligations defined by law" (art. 16(2)) and " it recognizes the freedom to emigrate, except for legal limitations for the common good, and protects Italian labour abroad" (art. 35(4). Only few and generic provisions, however, are devoted to the right of asylum and the legal status of foreigners.

The Constitutional Organisation of the State in Italy

The Italian Constitution establishes a typical parliamentary system of government, with the Government appointed by the President of the Republic, requiring the confidence of the Parliament (art. 94), and the President of the Republic being entrusted with the power of dissolving the Parliament (art. 88).

According to the Constitution, the legislative authority, which is concerned with the power to make legislation, is vested in the Parliament at the national level and in the Regional Councils at regional level (arts. 70 and 117); the executive authority, which is primarily concerned with the implementation of the law, is attributed to the Government, "made up of the President of the Council and the Ministers, who together form the Council of Ministers" (art. 92), and at the regional level in the Regional Executive and its President (art. 121). The judicial authority, which is concerned with granting a remedy if a rule is infringed, is conferred to the Judiciary.

The President of the Republic is the "Head of the State and represents the unity of the nation" (art. 87). While being neither vested with legislative or executive authority, the President of the Republic is entrusted with crucial functions, and is considered an independent, *super partes*, institution.

In particular, art. 10 states that "(2) legal regulation of the status of foreigners conforms to international rules and treaties; [and] (3) foreigners who are, in their own country, denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law."

With the Constitutional reform of 2001, asylum, the legal status of foreigner and immigration appeared among the subjects listed by art. 117, which distributes legislative powers in Italy between the State and the Regions. According to art. 117, the legislation on immigration, right of asylum and legal status of non-EU citizens, is subjected to the exclusive legislative competence of the State. Meanwhile, other policy area affecting the management of migration and the legal status of foreigners, such as housing, healthcare, education, are

[16] For the official English version of the Italian Constitution, see https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf .

assigned to the concurrent (i.e. education and health care) or exclusive regional legislative competence[17].

Decentralisation

There are two Constitutional pillars of the Italian regionalism: article 5 that, while stating the indissolubility of the State and its unity, grants a constitutional value to the principle of regional/local autonomy, and article 114. The latter provision, as amended by the Constitutional Reform of 2001, declares that "the Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State": a bottom-up description (in line with the renewed principle of subsidiarity) of entities that, on an equal basis, compose the Republic, with no hierarchy among them.

Art. 117 of the Italian Constitution distributes the legislative power between the State and the Regions. In particular, after the amendments of the Constitutional Law No. 3/2001, art. 117 identifies a number of policy areas divided in two lists. A first list of matters (art. 117(2)) falls under the exclusive legislative competence of the national Parliament. A second list of matters (art. 117(3)), instead, constitutes the so-called "concurrent competence" between the State and Regions, in which the State is in charge to give the guidelines regulating the subject matter, while regional authorities have to provide detailed legislation in observance of the general principles laid down in State legislation. Finally, legislative powers are vested in the Regions in all the subject matters that are not covered by State legislation (art. 117(4)).

Although the Constitution provides only few rules directly addressing asylum, migration and the legal status of foreigners, other pivotal constitutional provisions contribute enhancing the national standards of foreigners' rights. In particular, art. 117[18], through which the EU legislation and international treaties signed by Italy acquire "constitutional relevance"; the "personalist principle" of art. 2, according to which "the Republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity", and the equality clause of art. 3 that forbids unfair discrimination and entrenches substantial equality ("(1) All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions. (2) It is the duty of the Republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country").

[17] Art. 117(3) of the Italian Constitution. For more info on the concurrent regional legislative competence, see the box on decentralisation.

[18] Art. 117(1) of the Italian Constitution proclaims that "Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations".

In fact, international conventions and jurisprudence (especially the European Convention on Human Rights (ECHR) and the principle of non-discrimination proclaimed by art. 14 ECHR), equality and the personalist principle have been frequently invoked by the Italian Constitutional Court to secure and extend the fundamental rights of foreigners[19] (Corsi 2018 and 2014; Carrozza 2016; Biondi Dal Monte 2013; Chiaromonte 2008)

The Constitutional Court has ruled that, despite art. 3 makes reference to citizens only, when the respect of fundamental rights is at stake, the principle of equality applies also to foreigners.[20] The Court's reasoning is more complex than a simple equalization between citizens and foreigner. It ascertained the difference between citizens and foreigners: whiles citizens have an "original" relation with the State, foreigners have a non-original and often temporary relation with the State. Hence, the different legal status of foreigners may justify a different legal treatment (decision No. 104/1969) with regard to security, public health, public order, international treaties and national policy on migration (decision No. 62/1994), but not with regard to the protection of inviolable rights (decision No. 249/2010), since they belong "to individuals not as members of a political community but as human beings as such" [21].

Following the same reasoning, a Constitutional Court's consolidated case-law maintained foreigners' entitlement to social rights, such as the right to health and healthcare services (decision No. 269/2010) and to "essential social benefits", such as invalidity benefits for mobility, blindness and deafness, regardless of the length of their residence. In particular, the Court clarified that specific social benefits that constitute "a remedy to satisfy the primary needs for the protection of the human person", have to be considered "fundamental rights because they represent a guarantee for the person's survival"[22]. The same reasoning, coupled with the anti-discrimination principle, permitted the Italian Constitutional Court to extend some guarantees and (social) rights to undocumented migrants.

The recognition of a "hard core" of fundamental and inviolable rights, regardless of citizenship and legal status, led the Constitutional Court to rule that expulsions cannot be enforced if the undocumented migrant is under an essential therapeutic treatment (decision No. 252/2001). Moreover, a similar reasoning underpins the foreigner's rights to legal defence, even in case of undocumented foreigners.[23]

[19] In particular, in several decisions the Constitutional Court affirmed that limiting the access to social benefits aimed to satisfy human basic needs only to foreigners with an EC residence permit for long-residents entails an "unreasonable discrimination" between Italian citizens and foreigners regularly residing in Italy. See, amongst the others, the decision of the Constitutional Court No. 187/2010, in which the Court also makes explicit reference to the decisions of the European Court of Human Rights Gaygusuz v. Austria 16.9.96 and Niedzwieck v. Germania 25.10.05.

[20] See the following decisions of the Constitutional Court: No. 120/67; No. 104/1969; No. 46/1997.

[21] Among the others see Constitutional Court, decision No. 105/2001, No. 249/2010.

[22] Constitutional Court, decision No. 187/2010. See also Constitutional Court No. 329/2011; No. 40/2013, No. 22/2015 and No. 230/2015.

[23] Constitutional Court, decision No. 198/2000, where the Constitutional Court clarified that the effective exercise of the right of defence "implies that the recipient of a provision of restriction of the self-determination freedom, be enabled to understand its content and meaning". As a consequence, "under the hypothesis of ignorance without fault of the expulsion order - in particular for non-compliance with the obligation of translation of the legal act - the deadline for proposing an appeal should not be considered" (No. 198/2000)

Clearly, the Constitutional Court has represented a fundamental anchor in promoting the legal entitlements of foreigners and in preventing standards downgrading. However, besides the Court, a crucial role in shaping the national legislation on immigration and asylum and in extending foreigners 'rights has also been played by ordinary judges (Cartabia 2016; Benvenuti 2014). In Italy, cases involving migrants and refugees are dealt with by the ordinary jurisdiction, whereas there are no special courts on migrant issues[24]. However, recently, the Law Decree No. 13/2017 (the Minniti Decree, converted into Law, after amendments, by Law No. 46/2017)[25] introduced specialised court sections within the ordinary jurisdiction, competent for examining specific area pertaining to asylum law and immigration law.[26] However, amongst this area of competence, the Minniti Decree does not mention important subjects , such as the revision of expulsion orders (which remains under the competence of the Justices of Peace) and the revision of decisions to refuse entry (Savio 2017).

[24] In this regard, it is noteworthy to specify that art. 102 of the Constitution prohibits the establishment of new "extraordinary or special" judges in the ordinary jurisdiction, and it only allows the creation of specialised sections in certain area. There are special judges provided for, such as the Administrative Courts, the Court of Auditors and the military judge, already existing when the Constitution entered into force (Article 103 of the Constitution).

[25] The Law Decree is an act having force of law and an act of primary legislation. According to art. 77 of the Constitution "1. The government may not issue decrees with the force of law unless empowered by a proper delegation of the chambers. 2. As an exception by necessity and urgency, government may issue provisional measures with the force of law and submits them on the same day to the chambers for confirmation; if the chambers are not in session, they have to be summoned for that purpose within five days.
(3) Legal decrees lose effect at the date of issue if they are not confirmed within sixty days of their publication. However, chambers may sanction rights and obligations arising out of decrees are not confirmed". For further details see G. F. Ferrari 2008.

[26] Art. 1 Law Decree No. 13/2017 as converted by Law No. 46/2017; according to art. 2(1) of the same Decree, judges are appointed on the basis of specific skills to be acquired through professional experience and training.

The Italian Judicial System

According to art. 101 of the Italian Constitution "judges are subject only to the law", meaning that, in principle, judges should be free of interference by any other power. Moreover, art. 108 states that "the provisions concerning the organisation of the Judiciary and the judges are laid out by law". The law is the only regulating principle and limit of the Judiciary. Art. 104 of the Constitution states that the "The Judiciary is a branch that is autonomous and independent of all other powers".

Ordinary jurisdiction is divided into two sectors: criminal law and civil law. Ordinary jurisdiction is administered by "professional" judges and by "honorary" judges, whose function is of temporary nature and in no case implies the existence of a public employment relationship. (L.D. No. 116, art. 1(3).). Amongst the latter one, there are the Justices of Peace, which are competent to review decisions of expulsion, compulsory escorting to the border (*accompagnamento forzato alla frontiera*) and detention.

With specific reference to asylum law, the Tribunals and the Supreme Courts (civil, administrative, and criminal), have been crucial in the process of aligning the asylum national legislation to the supranational and constitutional principles. A selection of the most relevant rulings illustrates how Italian courts have been and continue being very relevant actors in this field[27]:

- *Requirements to obtain international protection*: The Supreme Court of Cassation has repeatedly ruled that: "in terms of international protection of the foreigner, the recognition of the right to obtain political refugee status, or the most graded measure of subsidiary protection, cannot be excluded, in our system, by virtue of the reasonable possibility for the applicant to move to another area of his/her country of origin, where he/she has no reasonable grounds to fear being persecuted or does not take effective risks of suffering serious damage, because this condition, contained in Article 8 of Directive 2004/83 / EC, was not laid down in Legislative Decree 251/2007, being a power left to the Member States to include it in the act implementing the Directive"[28].

- *Requirements to obtain humanitarian protection*: Italian judges addressed the indefinite content of art. 5, para. 6 of the Consolidated Immigration Law, which provides the requirements to obtain the permit to stay for humanitarian reasons, identifying the "serious humanitarian reasons" mentioned by the above normative provision. Based on a judgment of the Constitutional Court (decision No. 381/1999), the Court of Cassation ruled that the condition to obtain a humanitarian permit to stay is the recognition of a situation of vulnerability, to protect on the lights of international and

[27] For an ampler lists of judgments on international protection delivered by the Italian ordinary jurisdiction see the following website: https://www.asgi.it/banca-dati/?fwp_tematica=asiloprotezione-internazionale&fwp_aree=giurisprudenza&fwp_sotto_aree=giurisprudenza-italiana&fwp_tipologia_del_documento=sentenza&fwp_sort=date_desc

[28] See, among the others, Court of Cassation, decision No. 13172/2013

constitutional obligations assumed by Italy[29]. More specifically, even beyond the constitutional and international obligations, the judiciary stressed on the particular vulnerability of the person strongly undermining his/her fundamental rights[30].

- *Definition of third safe country*: with the decision No. 4004/2016, the Council of State, the highest Italian administrative court, quashed the decision to transfer international protection applicants to Hungary, within the framework of the Dublin Regulation. This because the Court considered that it is highly likely that asylum seekers are subjected to inhuman and degrading treatments in Hungary, in contrast with humanitarian principles and with art. 4 of the Charter of fundamental rights of the EU. The same conclusion has been reached by the Council of State in a case involving the transfer to Bulgaria of an international protection applicant[31].

- *Effective respect of the Dublin Regulation procedures*: Italian judges ruled that the participatory guarantees related to the procedures for the recognition of international protection cannot be waived and must include all the information foreseen by the EU regulation No. 604/2013. Therefore, the person applying for international protection must receive in writing and in a language understandable to him/her all the information concerning the consequences of his/her application, the criteria for determining the State responsible for the examination, the possibility of presenting information concerning family members already present, the methods of appeal and legal protection, the processing of personal data. For this reason, the simple fact that the applicant carried out an interview in which she/he had the opportunity to request information with the help of an intermediary does not comply with the information guarantees[32].

[29] See among the others the following judgments: Court of Cassation No. 4139/2011; No. 6879/2011; No. 24544/2011.

[30] See Morandi 2008 for a punctual reference to the jurisprudence on the humanitarian permit to stay.

[31] Council of State, decisions No. 3998/2016, No. 3999/2016, No. 5085/2017.

[32] Council of State, decision No. 4199/2015.

4. The Relevant Legislative and Institutional Framework in the Fields of Migration and Asylum

4.1. The national policy on immigration and asylum

The traditional separation between domestic policies and foreign ones fades when speaking of migration, given the transnationality of the concept. Indeed, when analysing the Italian policy on migration, policy measures enacted at an external level cannot be neglected (even if this report will only summarily mention this aspect). In particular, Italy signed a number of acts of international cooperation with numerous countries, such as Tunisia, Sudan and particularly Libya, which agreed to prevent migrants from reaching the Italian territory. As will be discussed in section 7, these agreements had severe consequences in terms of infringements of fundamental rights. However, beyond this approach of progressive "externalization of the borders control", the national migration policy also comprehends the humanitarian and military operations of Mare Nostrum, subsequently replaced by Triton and Operation Sophia[33].

At domestic level, the national policy on migration has been featured with a structural lack of organic, coherent and effective instruments of planning and management.

Art. 3 of the Italian Consolidated Law on Immigration (D. Lgs. 286/1998), that is the framework law in the field, as we will discuss in the next sections, establishes that every three years the government must release a "programmatic document" presenting the national policy on migration. This document shall identify: (a) the State's main interventions (including social and economic measures for non-national residents); (b) the public actions for migrants' integration; and (c) the criteria to determine the annual entry foreigners' quota.

The most recent "programmatic document" dates back to the triennium 2007 – 2010, which means that in the last seven years the government has failed to fulfil its duty (Bacci 2011)[34]. The absence of a coherent vision and a clear policy planning, with a cascade-effect, had a number of negative impacts. The most severe consequence is that the annual measure establishing the quota of working permits (the so-called *Decreto Flussi*), coupled with the 2002 reform which reframed the system of the permit to stay for work reasons, has not been

[33] The Mission 'Mare Nostrum', lead by Italy alone, was launched in October 2013 with the twofold aim of saving lives in the Mediterranean and prosecuting human traffickers (http://www.marina.difesa.it/cosa-facciamo/operazioni-concluse/Pagine/mare-nostrum.aspx). On November 2014, this operation was partially replaced by the Triton operation, an Italian-led Frontex mission, whose scope was limited to few miles beyond Italian territorial waters (https://www.senato.it/japp/bgt/showdoc/17/DOSSIER/912705/index.html?part=dossier_dossier1-sezione_sezione11-table_table7). On April 2015, Triton was replaced by Operation Sophia, an Italian-led EU mission, aimed at neutralising migrants' smuggling routes in the Mediterranean (https://www.difesa.it/InformazioniDellaDifesa/Pagine/Operazione_Sophia.aspx). For a critical perspective see Cuttitta (2014) and Del Valle (2016).

[34] Sonia Viale, State Secretary at the Ministry of the interior for Immigration, justified the lack of the programmatic document as such: "over time the provision of Article 3 of the Consolidated Law on Immigration has lost most of its original value, due to the occurrence of new phenomena and situations. In fact, the programming of foreign workers' flows must be modulated according to the needs of the economy and presupposes a macroeconomic stability framework, without which it is not possible to proportion the entry of workers non-EU citizens to the demand for internal work". See http://old.asgi.it/home_asgi.php%3Fn=print&id=1655&type=news&mode=print&l=it.html 1/

responding to any meaningful analysis of Italian needs. Thus, the *Decreto Flussi* proved to be an unrealistic, inefficient and inadequate system (Corte dei Conti 2008; Ferraris 2009).

Until the economic crisis, the number of migrants admitted to the Italian territory for reasons of work has progressively decreased, following a political wave of securitization and migration control. Annual entry quota were far below labour demand, especially in the industrial and agriculture sectors. Furthermore, complex procedures and delays in the examination of applications rendered the system inefficient to match labour supply and demand (Ministero Interno 2007). As a result, the *Decreto Flussi* has been used "de facto" to regularize undocumented migrants already working in Italy, having the same effect of mass regularization processes (Zanfrini 2007).

***Table 9*. Programmed Quotas for Extra-Communitarian Workers**

Publication of the Decree	Seasonal Work	Autonomous Work	Dependent Work			
			General Dependent Work	Skilled Profession	Descendants of Italian Emigrants (non-citizens)	Conversions (tot)
2011	-	-	52080	4000	500	11500
2012	35000	2000	16150	-	100	11750
2013	30000	2300	-	3000	100	12250
2014	15000	2400	-	1000	100	12350
2015	13000	2400	-	1000	100	12340
2016	13000	2400	100 (Expo Workers)	1000	100	14250
2017	17000	2400	-	500	100	10850

Source: www.integrazionemigranti.gov.it and http://www.prefettura.it/latina/contenuti/Flussi_lavoratori_stagionali

Note: The 'flows decree' indicates the quotas of the maximum number of applications for non-EU workers to be admitted in the following year.

Table 10 shows that in 2011, due to the economic crisis, the government decided to radically change its approach and to limit the entry quota only to few foreigners: mainly high-qualified workers, rich entrepreneurs and "seasonal workers" in the field of agriculture and tourism. As a consequence, opportunities to regularly enter the Italian territory has been dramatically reduced.

A second severe weakness of the Italian migration policy lies in the lack of a strong governance. In Italy, the management of asylum and migration does not fall under the responsibility of a single governmental body. Rather, it is scattered among different institutional entities emanating from different tiers of government (from national to local), and it also involves the third sector. Each entity (with its own mandate and mission) is competent and responsible for single apparatus of the complex migration machine.

The necessity for some mechanisms of coordination was already detected by the Constitution itself, which stated that "State legislation shall provide for co-ordinated action between the State and the Regions" in the field of migration (art. 118(2)).

However, the constitutional provision has been very partially complied with, as the sole coordination activity is provided at the local level by the "Territorial Councils of Migration" (*Consigli Territoriali per l'Immigrazione*), whose impact, nonetheless, has been very limited[35].

In the field of asylum, under the EU impetus a number of relevant policy actions have been undertaken. In 2015, following the Council Decision (EU) 2015/1523 of 22 September 2015 "establishing provisional measures in the area of international protection for the benefit of Italy and Greece", the "Italian Roadmap 2015" has been conceived.[36] The Roadmap defines the measures for "improving the capacity, quality and efficiency of the Italian system in the fields of asylum, early reception and repatriation; and ensuring the correct measures for enacting the decision" (p. 2).

Furthermore, in 2015 the Legislative Decree (hereinafter also D. Lgs.)[37] No. 142/2015 provided a "National Coordination Board" (*Tavolo di Coordinamento Nazionale*) at the Ministry of the Interior (art. 16), competent to define the guidelines and the program for the improvement of the national reception system, including the distribution of migrants quotas among the Regions. To this end, every year the national Coordination Board elaborates the "National Reception Plan" to be enacted by the "Regional Coordination Boards" (*Tavoli di Coordinamento Regionali*). Furthermore, the National Asylum Board plays an important coordination role, putting together the voices of the main associations promoting the right of asylum in Italy (reunited in the 'National Coordination Board').

In 2017, the National Coordination Board released the "National Plan for Integration", as envisaged by the law[38]. This document dictates the guidelines to enhance the effective

[35] According to the Presidential Decree No. 394/99, art. 57, the Territorial Councils of Migration are competent to: a) monitor the migration phenomenon; b) analyse the needs; c) promote adequate interventions. These Councils are composed of representatives from: the Prefecture, the Region, the local municipality, migrants' associations, employers and employee organizations. For more information see: http://www.interno.gov.it/it/temi/immigrazione-e-asilo/politiche-migratorie/consigli-territoriali-limmigrazione . The limited impact of the "Territorial Councils of migration" is confirmed also by the "national report on Territorial Councils of migration" released in 2015 by the Department of civil liberties and migration of the Ministry of the Interior (available at http://www.prefettura.it/FILES/AllegatiPag/1179/reportXSTAMPA.pdf). Amongst the reasons which concurred to hamper the functioning of this body, the report mentions: a) the difficulty to identify clear and shared objectives (particularly with the local municipalities and migrants' associations); b) the lack of recognition of its coordinating function; c) the excessive turn-over; d) the absenteeism of the appointed components. (pp. 15 – 20).

[36] The Italian roadmap is a policy document approved on September 28, 2015. It is available here: http://www.immigrazione.biz/upload/Roadmap_2015.pdf. For an annotated commentary of the roadmap in English, see Maccanico Y., Statewatch Briefing, *The Italian Roadmap 2015*, http://www.statewatch.org/news/2015/dec/no-279-Italian-Road-Map-2015.pdf . A more detailed analysis of this policy document will be developed in the following chapters.

[37] The Legislative Decree is an act having force of law and an act of primary legislation. It is a complex statute passed by the Government after a Parliament law has delegated it to do so, specifying how the statute should be written, and its deadline (see art. 76 of the Italian Constitution).

[38] Art. 29 (3), D. Lgs. 251/2007 as amended by D. Lgs. 18/2014, art. 1 (1), the National Integration Plan is available at http://www.interno.gov.it/sites/default/files/piano-nazionale-integrazione.pdf

integration of the beneficiaries of international protection currently residing in the national territory, through a multilevel approach. In particular, the aspects addressed are: job placement, social inclusion, access to health and social assistance, housing, linguistic training and education, and the contrast to discrimination.

4.2. The national legislation on immigration and asylum and its main trends

The first attempt to regulate the migration phenomenon dates back to 1998, when the Legislative Decree No. 286/1998, that is the Italian "Consolidated Act of Provisions concerning immigration and the conditions of third country nationals" (the Consolidated Law on Immigration) has been issued. It provided a fundamental set of principles on foreigners' legal status (such as the right to non-discrimination and to the recognition of fundamental rights) and a framework of regulations (such as the normative provisions concerning entry and stay) which is still binding. However, the Consolidated Law on Immigration fails to provide a solid and thorough basis for the regulation of asylum and migration in Italy. In particular, on the one hand, with specific reference to migration, the national legislation results in multiple, fragmentary normative stratifications, with important sectors[39] regulated by circulars edited by the Ministry of the Interior[40] or other legislative acts of minor importance (Nascimbene 2004:140; Gjergji 2016b). On the other hand, the asylum field is characterised by the very same structural weaknesses. Indeed, the asylum regulation relies on a number of legislative decrees, transposing the EU Directives into the Italian legal system, while an organic and complete law is still lacking since 1948[41].

The main stages of the evolution of the Italian legislation on immigration and asylum can be identified as follows:

- ITALY AS COUNTRY OF EMIGRATION (1861 – 1980): From the national unification (1861) until the 1970s Italy was a country of emigration (Colombo, Sciortino 2004). At that time, the law regulating migration was the "Public Security Consolidated Law No. 773/1931, which looked at foreigners' entry and stay essentially in terms of public order protection (Nascimbene 2004:4).

- THE FIRST ATTEMPTS TO REGULATE MIGRATION (1980 – 1997): Although the migration balance became positive already in the 70's, a new law on migration intervened only in 1986 (the so-called "Foschi Law"), approved by a large, multiparty centrist coalition. This law, strongly linked to the ratification of the OIM International Convention of 1975, only addressed specific aspects of the migration phenomenon, which were essentially related to the labour market and the conditions of migrant

[39] See, *ex multis*, the Circular No. 400 of 29.06.2004 concerning the "Authorization to foreigners, holding the receipt of the application to renew the permit to stay, to exit and re-enter the national territory". For further details, see Bucci (2004).

[40] Circulars are acts of secondary law.

[41] To this end, amongst the main normative provisions, which have been issued to face emergency situations, see in particular the Decree 09.09.1992 after the Somali conflict, the Law No. 390/1992 after the ex-Yugoslavia crisis and the Law No. 563/1995 to face the arrivals of refugees from Albania.

workers. In the same year, the status of around 118.000 irregular migrants was regularized (Abbondanza 2017). A second attempt to regulate migration was the Law No. 39/1990 (the so-called "Martelli Law"), approved by the same political coalition. As for the Foschi Law, even this law was influenced by an "international driving force", which in this case was the European Union, and the same will apply with all the subsequent migration laws. The Martelli law introduced important normative provisions on the refugee status, extending the international protection recognition also to non-EU nationals. It also provided new tools, such as the introduction of entry quota of migrant workers and the regulation of visa, with new entry visa. It also regulated the expulsions for undocumented migrants and set the procedures for refusal of entry. Finally, it opened a new regularization process for undocumented migrants (Castellazzi 2010). In 1992, the Parliament approved a new citizenship law (Law No. 91/92), mainly based on the *jus sanguinis* criterion, according to which the Italian citizenship is automatically attributed only to Italian citizens' descendants. In order to apply for citizenship non-EU migrants shall demonstrate continuous and uninterrupted residency of ten years (reduced to five for beneficiaries of international protection), while second generations migrants had to demonstrate an uninterrupted residency from birth to the age of 18 years to apply for naturalization when turning eighteen. Finally, spouses of Italian citizens could apply for naturalization after two years of cohabitation and residency in Italy (reduced to one year in case children are born or adopted by the spouses). Remarkably, even when these requirements are fulfilled, citizenship is not automatically granted, as it lies on a discretionary decision of the Ministry of the Interior.
In 1995, around 250.000 irregular migrants benefitted from another regularization process.

- THE TIME FOR MORE RELEVANT NORMATIVE CHANGES (1998 – 2007): the progressive relevance of the phenomenon of migration paved the way for significant normative changes. The beginning of this phase is marked by the Law No. 40/1998 (the so-called "Turco-Napolitano Law") approved by a centre-left coalition. This Law has been soon incorporated into the Legislative Decree No. 286/1998 (the so-called "Consolidated Law"), which introduced a comprehensive regulatory framework on immigration and the legal status of foreigners. The law was characterized by a two-tracks strategy: an "integration approach" toward legally resident migrants coexisted with a tough fight against irregular immigration. In fact, on the one hand, the Consolidated Law established migrants' rights and duties, equalizing them to Italian citizens for what it concerns civil rights and judicial protection (arts. 1 – 4). The Law also recognized foreigner children's rights and migrant's right to family unity (arts. 28 - 33). For the first time, even social rights (such as the right to health, education and social integration) received a coherent regulation (arts. 34 – 46). Rules on migrants' employment and migrant workers' rights were also provided. In particular, a new measure was introduced: a system of "sponsorship", guaranteed by an Italian citizen or by a legally resident foreigner, which allowed migrants to enter the country 'to search for a job', without being previously hired (art. 23). On the other hand, the Consolidated Law provided an organic regulation of conditions of entry (through the "programmatic

document" and the establishment of yearly entry quotas)[42] and stay. The Law entrenched the principle of *non-refoulement* (art. 19), but it also provided more stringent controls at the borders (art. 9), and a broader recurs to pushback and deportation (arts. 8 – 13). Temporary detention centres were established for migrants waiting to be deported (the so called *Centri di permanenza e assistenza*) (art. 14). In 1999, around 250.000 undocumented migrants were regularised by a new regularization programme. After a few years, the Consolidated Law was partially amended by the new centre-right government through the Law No. 189/2002, the (so-called "Bossi-Fini Law"). The Bossi-Fini Law lowered entry quota and strongly linked third nationals' regular entry and residence to employment, but it hampered the possibility to obtain a regular visa for work reasons. The previous system of sponsorship was substituted by a complicated mechanism where migrants willing to enter the country for work reasons had to demonstrate there was an employer in Italy already committed to hire them. The Law also introduced more restrictive provisions on expulsion and detention. Nonetheless, the paradox was that it also provided for the largest regularization process ever approved in Italy, involving the regularization of 646.000 foreign workers (McMahon 2015:48). The centre right coalition further stressed the security approach to migration using the criminal law to fight against illegal entry and residence (the so-called "clandestinity"). Laws No. 125/2008 and No. 94/2009, named "Security Packages" *(Pacchetto Sicurezza*) introduced the "aggravating circumstance of clandestinity" (under which the punishment for a crime committed by an undocumented foreigner could be increased up to one third compared with the same crime committed by an Italian citizen or a regularly resident foreigner), and the crimes of "clandestinity" and of refusal to comply with a removal order issued for illegal entry, together with a broad harshening of detention and expulsion measures. These provisions triggered the intervention of the Constitutional Court, which declared the aggravating circumstance of clandestinity unconstitutional (decision No. 249/2010) while dismissing the question of constitutionality of the crime of clandestinity (decision No. 250/2010). At the same time, the Decree law No. 78/2009 established the regularization of foreign workers in the domestic labour and in the care sector. Meanwhile, as far as asylum is concerned, a number of normative provisions were approved in order to comply with the EU obligations and the construction of a "Common European Asylum System"[43], in particular, the Legislative Decrees No. 85/2003; No. 140/2005; No. 251/2007; No. 25/2008, which respectively transposed the EU Directives on "temporary protection", "reception conditions", "qualification", "asylum procedures".

- THE EMERGENCY WAVE (2011 – 2013): the North Africa extraordinary migration flow of 2011 was faced by the Italian government through the declaration of the "state of emergency"[44] in the country (named the "North Africa Emergency"). The "state of

[42] For further details, see chapter 3.

[43] For further details on the Common European Asylum system see the following webpage: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

[44] Decree of the President of the Council of Ministers, 7.04.2011, Declaration of the state of humanitarian emergency in the territory of North Africa to allow an effective contrast to the exceptional

emergency" was protracted until February 2013. It allowed the Civil Protection to manage the reception of mixed migratory flow[45] coming from North Africa, through an extraordinary reception Plan, in cooperation with Regions and local municipalities, entrusted to take charge of a certain quota of "new arrivals", notwithstanding the existing National System for the asylum seekers and refugees' protection. This resulted in the creation of a parallel system of reception, uncontrolled, with highly inconsistent standards of accommodation, often lacking the minimum standard of care provided by law and insufficient integration plans (UNHCR 2013). Meanwhile, in 2012, under the Monti government that succeeded the centre-right coalition, the L.D. No. 109 enforcing the EU directive 2009/52/CE concerning the employment of irregular workers provided a new regularization process.

- THE REFORMIST PHASE[46] (2014 – 2017): Italy was committed to cope with the unprecedented mixed migration flow with a number of radical reforms. The national system of reception has been entirely reframed by the new provisions of the D. Lgs. No. 142/2015. The EU migration policy pushed Italy to entrench new tools to manage the migratory flow: the creation of "hotspots" and the relocation programme. A new law regulating the situation of foreign unaccompanied children was approved (the so-called "Zampa Law"). Finally, the Law Decree No. 46/2017 introduced significant changes to the international recognition procedure and to the procedures of identification and expulsion/contrast to illegal migration of non-EU nationals. These normative reforms were approved by a centre-left coalition.

To sum up, we can outline the most important traits of the national legislation on migration and asylum:

- The Italian asylum and migration legal framework results from the fragmentary combination of different provisions, of primary and secondary laws, conceived with different objectives and scopes, whereas a complete, coherent and organic law is still missing.
- In the absence of a clear and structured policy plan, the national legislation dealing with migration and asylum has been often informed by an emergency logic. As a result, authors have highlighted how the emergency management of immigration, amongst other things, "subtracted important resources from the accounting control […] from the ordinary planning of resources and interventions by the State" (Vrenna, Biondi dal Monte 2011: 3).

influx of non-EU citizens in the national territory. http://www.protezionecivile.gov.it/jcms/it/view_prov.wp?contentId=LEG24032 . The competence to manage the migrants' reception is given to "the national civil protection service", which typically comes into play in cases of "natural disasters, catastrophes or other events that, due to their intensity and extent, must be faced with extraordinary means and powers" (Law No. 225/1992, art. 5). It is noteworthy that during the state of emergency the regulation process becomes faster but also more discretionary and less subjected to the ordinary democratic control.

[45] For a definition of "mixed migratory flow" see http://www.mixedmigrationhub.org/member-agencies/

[46] This last phase will be here just synthetically presented. For a more detailed analysis, please see Chapter 6: "The refugee crisis-driven reforms".

- The national legislation has been more and more affected by a political "securitization" wave, where the need to contrast the irregular migration and to guarantee the public security has been translated into restrictive measures on expulsion and detention.
- The "schizophrenic" attitude toward undocumented migrants; political narratives of harsh repression against illegal migrants cohabit with the recognition of basic welfare rights to undocumented migrants and with a series of "regularization acts" approved both by left and right coalitions[47]. Curiously, this frequent resort to *ex post* regularization schemes has been twined with a progressive reduction of the channels for regular entry into the country (Olivito 2016; Ferraris 2009). In this regard, scholars have talked about "institutionalized irregularity", i.e. an illegality of the stay, generated or at least favoured by the same legal system (Calavita 2007:33, Ferraris 2009).
- In the absence of coherent and consistent legislative interventions aimed at aligning the national normative framework on migration to the international and constitutional standards, the judiciary assumed a leading role in the recognition of foreigners' fundamental rights.

Finally, as will be illustrated below, the national framework of migration in Italy involves a plurality of actors dealing with the management of migration, including regions, local municipalities and the third sector.

4.3. The sub-national legislation

According to the Legislative Decree No. 286/1998, Regions and local municipalities are entrusted to play an essential role in the governance of migration, in close collaboration with the central government. In particular, local governments have to play a crucial role in a number of domains, such as education (art. 38) and social integration (art. 42). Local authorities, in fact, should remove any obstacles to the full recognition of foreigners' legal entitlements provided at national level, with specific reference to housing, Italian language and social integration, guaranteeing the respect of fundamental rights.[48]

The concrete enforcement of the constitutional reform of 2011[49], transforming Italy into a truly decentralised state, which allocated migration management to the exclusive competence of the central government, did not result in the exclusion of the regional legislations from the field of migration. Thus, Regions kept playing a decisive role in the migration governance, according to an effective 'multilevel model', as outlined by the Constitutional Court (Panzeri 2018)[50]. Scholars have elaborated a distinction between the "immigration politics" and

[47] The largest regularization ever applied in Europe was approved by Berlusconi in 2002. For a thorough analysis of this paradox of the Italian migration policies, see Zincone (2002)

[48] Art. 3 (4). Other relevant normative provisions are art. 35 and 36 (with regard to health services); art. 44 (12) with regard to legal assistance; art. 45 (2) concerning the promotion of integration and equal opportunities.

[49] For more details, see Chapter 3.

[50] Italian Constitutional Court, decisions No. 300/2005; No. 269/2006; No. 156/2008; No. 50/2008; No. 134/2010; No. 269/2010; No. 299/2010; No. 61/2011.

"immigrants politics" (Hammar 1990; Covino 2011: 392; Benvenuti 2015:82; Caponio 2004:805). The former ones, which belong to the exclusive competence of the State, comprehends all the measures establishing the condition for the regular entry and stay of foreigners in the Italian territory, whereas the latter refer to issues such as social assistance, education, health, housing and public interventions for migrants' integration, where Regions have a concurrent, or even exclusive, legislative competence.

To this end, the Court eloquently stated that public intervention in the migration field cannot be limited to the controls of entry and stay of foreigners, but it also involves other fields, such as public assistance, education, health care or housing, where "national and regional competences are intertwined, as established by the Constitution" (decision No. 300/2005). In other words, asylum and migration necessarily intersect both central and regional interventions, even beyond the strict distribution of powers provided by art. 117 of the Constitution[51]. Through this reasoning, the Constitutional Court dismissed the government requests to censor some regional laws, such as the ones which extended undocumented migrants' entitlements to health,[52] and social services[53] (Salazar 2010; Biondi dal Monte 2011; Corsi 2012; Gentilini 2012).

However, regions have not always demonstrated more inclusiveness than the State and the Constitutional Court also intervened to declare the illegitimacy of regional laws, which subjected migrants' access to rights (such as housing or social security) to a prolonged residence in the region territory[54].

In Italy, local municipalities do not hold any legislative powers, but can have important administrative and regulation-making competences. In particularly in the area of asylum, immigration and legal status of foreigners, local municipalities are responsible for organizing important sectors of Services delivery[55].

Subsidiarity

A fundamental cornerstone of the Italian Constitution is the principle of subsidiarity, which has a vertical and a horizontal dimension. Concerning the first one, article 118 of the Constitution, following the principle of subsidiarity, differentiation and proportionality, attributes administrative functions to the municipalities "unless they are attributed to the provinces, metropolitan cities and regions or to the State". Instead, in

[51] Art. 117 of the Italian Constitution distributes legislative powers between the State and the Regions (for further insights, see para. 3 and the box on decentralisation).

[52] Constitutional Court, decision No. 299/2010 concerning the law No. 32/2009 of the Region of Puglia

[53] Constitutional Court, decision No. 269/2010 concerning the law No. 29/2009 of the Region of Tuscany and decision No. 61/2011 concerning the law No. 6/2010 of the Region of Campania.

[54] See amongst the others, the decision No. 168/2014 of the Constitutional Court, which declared the constitutional illegitimacy of art. 19 (1), lett. b), Valle d'Aosta Regional Law No. 3/2013.

[55] Art. 118 of the Constitution and Law No. 328/2000 (Consolidated Law for the realization of an integrated system of social services and interventions).

its horizontal sense, the subsidiarity qualifies the interconnection between the public sector and the private one in the delivery of services.

Finally, together with Regions and local municipalities, in Italy also the third sector is highly involved in the management of immigration. In particular, the third sector intervention, as acknowledged by the national as well as the regional legislation (Biondi dal Monte, Vrenna 2013), is expressly foreseen by the Consolidated Law on Immigration with reference to the intercultural education (art. 38), the foreigners' access to housing (art. 40), education and professional trainings (art. 23), and social integration (art. 42).

5. The Legal Status of Foreigners

5.1. Asylum applicants

D. Lgs. No. 142/2015, enforcing the EU Directive on reception (recast) and on asylum procedures[56], defines as international protection applicant (hereinafter also "asylum applicant or asylum seeker") any third country national who "formally applied for international protection, pending a final decision", or "expressed the will to apply for protection" (art. 2 (1a)).

Recently, the Law Decree No. 13/2017 amended the Consolidation Law on migration, introducing new identification procedures: undocumented foreigners intercepted within the Italian territory succoured during rescue operations in the sea are conducted to specialised structures, the so-called "hotspots", where they are fingerprinted and receive information on the international protection, the relocation and the assisted voluntary return[57].

The Hotspot Approach

The "*hotspots approach*" is defined by a set of measures drawn up under the "*Italian Roadmap 2015*", adopted by the Ministry of the Interior to fulfil the requirements of the European Council's Decisions of September 2015[58].

By the end of February 2018, five facilities (out of the six structures foreseen by the Roadmap) were fully operational under the "*hotspot approach*" in Pozzallo, Lampedusa, Trapani, Taranto and Messina[59] (European Commission 2017c:8) enacting procedures which include medical screening, pre-identification, registration, photo-identification, fingerprinting. However, the term "hotspot" identifies not only a geographical space, but also a methodology, according to which Italian institutions work with the support of Frontex, EASO, Europol European agencies and international organizations and NGOs, to inject greater order into migration management (The Italian roadmap 2015).

Based on the report released by the EU Court of auditors, the "hotspot approach" has significantly improved the migrants' identification and, more broadly, the management of migration, with the fingerprinting rate reaching the 97% for the whole

[56] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32013L0033 and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0032

[57] Art. 10 ter of the Consolidated Law on migration, as introduced by the Law Decree. No. 13/2017, art. 17.

[58] Provisional measures in the area of international protection for the benefit of Italy and Greece, Council decision 2015/1523 of 14 September 2015 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2015_239_R_0011) and Council decision 2015/1601 of 22 September 2015 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015D1601).

[59] In March 2018 the hotspot of Lampedusa was temporarily closed due to the deplorable living conditions highlighted by several organizations. Also the hotspot of Taranto was temporarily closed due to some procurement irregularities detected by the National Anti-Corruption Authority (Bagnoli L., 2018).

2016 (European Court of auditors 2017:39). However, the same report, together with the below-mentioned documents elaborated by NGOs as well as institutional actors, highlights severe shortcomings.

In particular, although standard operating procedures (SOPs) have been elaborated[60], a detailed regulation of the operations conducted in the "hospots" facilities still lacks at legislative level (Neville, Sy and Rigon 2016:39) . Only recently, the Law No. 47/2017 introduced an explicit reference to the hotspots, without providing, however, a clear and standardised procedure. Hence, as pointed out by the Council for the Judiciary (CSM 2017), and ASGI and Magistratura Democratica (2017), the problem of a legal basis remains open. This normative gap brings two series of problems. Firstly, the operations conducted in the hotspots should be concluded within 24 – 48 hours. However, as documented also by parliamentary reports, migrants remain within these structures much more, sometimes subjected to a "de facto" detention" for several weeks (Chamber Inquiry Committee 2016 a and b). This limitation of the liberty, in the lack of a law regulating it, raises severe problems of constitutional legitimacy, under art. 13 of the Constitution[61].

Second, activities performed within hotspots facilities are far from being harmonized (OHCHR 2016). In some of these facilities migrants are often subjected to scarce healthcare, poor sanitary and hygienic conditions, while often foreign unaccompanied children are deprived of dedicated spaces, suffering from inadequate care and assistance. Concerns have been voiced by institutions, specialized literature and civil society organizations against some of the practices enacted within the hotspots, such as detention, the use of force in obtaining fingerprints and the issuing of orders to leave the country without any proper hearing or access to the asylum procedure, which undermine migrants' fundamental rights and their right to international protection (Tavolo Nazionale Asilo 2016; Senate extraordinary Committee on human rights 2017a; Mangiaracina 2017; Oxfam 2016; Amnesty International 2016; MSF 2015; Cild, Asgi, Indiewatch 2018)[62].

[60] STANDARD OPERATING PROCEDURES (SOPs) applicable to ITALIAN HOTSPOTS, 2015, p. 15, available at http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf

[61] The SOPs clearly states that "the person can leave the Hotspot only after having been photoprinted as envisaged by current regulations and if all the security checks in national and international police databases have been completed" (p. 8). However, according to the art. 13 of the Constitution, "No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void".

[62] See also the Circular of the Ministry of the Interior of 8.01.2016 mentioning the lack of appropriate information given by Italian authorities.

The Relocation Programme

The relocation programme was a two year scheme provided by the "*Provisional measures in the area of international protection for the benefit of Italy and Greece*" adopted by the European Council in 2015, aimed at reducing the migratory pressure on frontline States (Italy and Greece).[63] The relocation is defined as "*the transfer of an applicant from the territory of the Member State which the criteria laid down in Chapter III of Regulation (EU) No 604/2013 indicate as responsible for examining his or her application for international protection to the territory of the Member State of relocation*". Only asylum-seekers of nationalities with an average recognition rate of 75 per cent or higher at the EU level are considered eligible for relocation.

The relocation programme, however, which officially ended up in September 2017, fell short of expectations. Despite the high number of potential applicants for relocation arriving in Italy, since the beginning of the implementation of the relocation scheme as of December 2017, just 11.464 persons have been effectively relocated (of which just 99 unaccompanied foreign children) (Ministry of the Interior 2018b), out of the 34.953 persons the Council Decision envisaged (European Commission 2017b).

The failure of the relocation programme can be explained because of domestic shortcomings, such as the lengthy appointment of a guardian for unaccompanied foreign children in Italy and the slow identification and registration procedure (UNHCR 2016a:6), in association with the reluctance of a number of EU member states towards burden-sharing. An infringement procedure was launched by the EU Commission against Hungary, Poland and Czech republic for non-compliance with their legal obligations on relocation (EU Commission 2017a).

According to Legislative Decree No. 25/2008, police headquarters and border police are in charge of the operations of registration of the asylum application (art. 6), which has to be timely transmitted to the Territorial Commission that is the competent institution to decide (art. 3 and 26). Police Headquarters are also entrusted to provide the asylum applicants with all the necessary information concerning the international protection procedure and the applicants' rights and obligations, in a language s/he can understand (art. 10 and 10 bis).

Shortcomings have been reported with regard to a timely access to the international protection procedure, due to the delays and structural problems of some Police Headquarters, such as the insufficient personnel and their inadequate training (ASGI, 2017b). Moreover, there have been allegations about some Police Headquarters, which illegitimately refused to receive international protection applications (ASGI, 2017d). However, the most problematic point remains the lack of information provided to asylum applicants, and the Italian Supreme Court ruled that an order of pushback at the border is illegitimate when issued in violation of the duty of information on the right to asylum (decision No. 5926/2015).

[63] See note 61.

After having filled the asylum application (through the so-called C3 form), the asylum applicant is entitled to receive a temporary (6-months), renewable, "asylum seeker permit to stay". This permit to stay envisages a number of rights, including the right not to be expelled until the end of the procedure of international protection[64]. Legislative Decree No. 142/2015 prohibits that asylum seekers are detained on the sole ground of the examination of their application. However, some form of detention are envisaged when the asylum applicant a) falls under the conditions of art. 1F of the Geneva Convention[65]; b) receives an expulsion order for mafia or terrorism related crimes; c) becomes a danger for public order and security; d) presents a risk of absconding (art. 6). In these cases, the asylum seeker is transferred in detention centres for repatriation (the so-called *Centri di Permanenza per il Rimpatrio* – CPR), where she/he can be detained up to 12 months. In 2016, official statistics reveal that 161 asylum seekers have been detained in CPR out of 2.984 detainees (Senate extraordinary Committee on human rights 2017b:9). According to D. Lgs. 142/2015, the necessary assistance and full respect of human rights shall be guaranteed to the detainees (art. 7). However, severe violations to the fundamental rights of foreigners in CPR have been reported by institutions as well as NGOs and international organizations.[66]

After a preliminary phase of first aid and assistance taking place close to the disembarkation area (art. 8), D. Lgs. 142/2015 establishes that asylum seekers are channelled in the Italian system of reception, which is organized in two different tiers. Operations of identification, registration of the asylum application and assessment of the health conditions are conducted in governmental first-line reception facilities, the so-called "regional hubs", meant to progressively substitute the already existent centres of reception (the so-called CDA and CARA) (art. 9). When these operations are concluded, asylum seekers who do not have sufficient financial resources (art. 14(3))[67] should be transferred to second line reception centres which are managed by local municipalities within the national system of protection for refugees and asylum seekers (the so-called SPRAR network), with the financial support of the National fund for asylum (art. 14(1)).

If in both first line governmental facilities and second line SPRAR facilities there are no places available, the asylum seeker should be temporarily accommodated in Centres of extraordinary reception (CAS) activated by the Prefectures.

Despite this detailed legislation, what happens in reality is that asylum applicants' right to housing is hampered by a number of criticalities. The system of "regional hubs", aimed at replacing the existent centres, has not been fully implemented, yet. Consequently, asylum seekers remain for long time in first aid and reception centres (CPSA), which are not equipped to provide a long-term assistance. Otherwise, asylum seekers are currently accommodated in

[64] Art. 7 c. 1 D. Lgs. 25/08. For further details on the rights related to this status, see Chapter 6.

[65] Article 1F of the Geneva Convention reads: "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.".

[66] See for further details Chapter 5.5 and 7.

[67] Prefectures are competent to assess the insufficiency of migrants' financial resources on the basis of the annual social allowance (€ 5.889,00).

emergency facilities (mainly CAS or also CDA), or in large-scale buildings (CARA), where asylum applicants often suffer from critical situation, due to chronic overcrowding and low standard of services (AIDA 2018:70).

Within the second-line SPRAR facilities, instead, asylum seekers are accommodated in small and decentralised facilities where they are entitled to receive long-term assistance and integration services. However, available places in the SPRAR network do not suffice to respond to the current presence of asylum applicants in Italy. As consequence, the main channel of reception remains the CAS facilities, which, conceived in principle as temporary measure of last resort, in December 2017 accounted for 80.9% asylum seekers accommodated (Chamber Inquiry Committee 2017:98).

Furthermore, despite the D. Lgs. 142/2015 subjects the whole system of reception to the monitoring of the Ministry of the Interior (art. 20), a thorough monitor and control system, particularly with reference to CAS, is not yet in place. The transparency and accountability of the selection procedures of CAS, which in some cases present a limited and inadequate organization and incompetent staff, is under question. As result, the Italian system of reception is fragmented in a plurality of centres, featured with high-diversified standards, not always complaining with foreigners' fundamental rights (Banca d'Italia 2017; Oxfam 2017; Inmigrazione 2017). Meanwhile, the creation and implementation of CAS subtract important financial resources to what should be the ordinary reception system, but that in reality remains marginal.

In case the asylum application is rejected, the applicant has the right to lodge an appeal before the competent ordinary Tribunal asking for the suspension of the decision. Hence, if the suspension is granted by the judge, the reception measures can be prolonged until the final decision[68]. It is noteworthy that, according to D. Lgs. 142/2015 the right to reception can be withdrawn if the asylum applicant: a) left the centre without any justification and without notifying the competent Prefecture; b) did not attend the territorial commission interview; c) lodged reiterative asylum applications. Furthermore, the reception conditions can be also revoked when the authorities ascertain that the asylum seeker has sufficient financial resources or that s/he committed serious or continuous violations of the accommodation centre's internal rules (arts. 13 and 23).

As mentioned, asylum applicants are entitled to a number of rights, first the right to healthcare and free and compulsory enrolment in the National Health Service[69]; they have the right to work after 60 days from the registration of their asylum application. Furthermore, D. Lgs. 142/2015, as recently amended by L. 46/2017, promoted the asylum seekers' voluntary involvement in activities of social value for the local community, (art. 22 bis). In addition, in SPRAR reception centre asylum seekers may attend professional trainings, while this is highly limited in the other type of reception centres, and particularly in CAS, due to their structural weaknesses.

[68] Art. 36, D. Lgs. 25/2008, and Circular of the Ministry of the Interior 20.02.2015.

[69] Art. 34 Consolidated Law on immigration, arts. 21 D. Lgs. 142/2015; art. 21 PD 21/2015.

Asylum seekers are not entitled to apply for family reunification. The right to family unity only finds a little guarantee: within the reception centre, asylum seekers have the right to be accommodated together with their spouse and first-related relatives (art. 10).

Finally, it is noteworthy that Legislative Decree No. 142/2015 dedicates specific provisions for asylum seekers with special needs. According to the normative provision, people with special needs are: children, unaccompanied children, people with disability, the elderly, pregnant women, single parent with children, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, victims of trafficking and genital mutilation and persons affected by serious illness or mental disorders (art. 17). In particular, in first-line reception centres asylum seekers are subjected to a health-assessment aimed at detecting the presence of specific vulnerabilities (arts. 9 (4) and 11(1)). In addition, special services of reception shall be provided to meet the specific needs of these vulnerable persons within first-line and SPRAR facilities (art. 17).

5.2. Beneficiaries of International Protection

D. Lgs. 251/2007 defines the "beneficiaries of international protection" as the foreigners who obtained the status of refugee or subsidiary protection (art. 2 lett.a) bis). In the Italian asylum system, both these status are granted through the same procedure, which fall under the responsibility of the Territorial Commissions.

Territorial Commissions are administrative bodies in charge to examine asylum applications and to determine the international protection status. In particular, art. 12 of D. Lgs. 25/2008 establishes that the Territorial Commission interviews the asylum applicant within 30 days after having received the application from the Police Headquarter. The personal interview is generally conducted by a member of the Commission, possibly of the same gender of the asylum applicant, with the assistance of an interpreter. The interview contents are transcribed in a report, a copy of which is also given to the asylum applicant. Within 3 days from the personal interview, the Territorial Commission has to take a decision. The law also envisages exceptional situations, which may require an extension of time, up to a maximum of 18 months.

However, it takes about one year from the application of international protection to the notification of the first decision, which is much longer than what established by the law and it exposes asylum seekers to frustration and further vulnerability. In July 2017, the backlog of pending international protection applications amounted at 140.000 (Anci et al. 2017:23)[70] and the excessive length of international protection procedure remains one of the most critical shortcomings of the national asylum system (Anci et al. 2017; Banca d'Italia 2017).

In order to boost and speed-up the international protection procedure, a number of legal reforms have been undertaken since 2014. The number of Territorial Commissions has been

[70] The yearly report released by the SPRAR network announced the results of the first survey realised in Italy on the duration of the international protection procedure in Italy. According to the study, conducted on 5.416 asylum seekers, the average time from the registration of the application to the notification of the decision of the Territorial Commission amounts to about 1 year, while, in case of appeal the asylum seekers has to wait about 10 months (from the lodging of the appeal) for the final decision.

progressively increased, with the institutions of additional Commissions (currently 20) and sub-commissions (now 30), equally distributed across the country[71]. Moreover, the Law Decree No. 13/2017 devoted to "expedite the international protection procedure and to curtail illegal immigration", has modified the composition of the Territorial Commission (previously composed by a representative of: UNHCR, the Ministry of the Interior, the competent Police Headquarter and the local municipality) with newly hired highly qualified and specialised officers replacing the representatives of both Police Headquarters and local municipalities.

In addition, the Law Decree No. 13/2017 intervened to streamline also the judicial procedure occurring in case of appeal against first rejection of asylum application. The law provided for 26 specialised court sections within the ordinary jurisdiction, competent to deal exclusively with immigration, EU citizens' freedom of movement and international protection issues (art. 8). Besides this, further procedural changes were introduced, raising concern about the respect of asylum applicants' legal guarantees (OHCHR 2017; CSM 2017; Asgi, Magistratura democratica 2017). Under the previous legislation, the asylum seekers could lodge an appeal before the Civil Tribunal within 30 days, in case of rejection of the application. If the judge dismissed the appeal, the asylum seekers could appeal this decision before the Court of Appeal and, in the event of a further rejection, a final appeal could be lodged before the Supreme Court of Cassation (the court of last resort)[72].

The Law Decree No. 13/2017 removed one appeal stage from the procedure for international protection (art. 6(13)). Hence, against the first rejection of asylum application, the asylum seeker can only appeal before the Court of Cassation, which, however, can not enquire into the essence of the case, but ensures the correct application of the law. Moreover, the appeal does not automatically suspend the effects of the decision, and a formal suspension has to be specifically required. Finally, the appeal judge mainly founds his/her decision upon the video recording of the asylum applicant interview at the Territorial Commission[73], without cross-examination, and she/he may hear the asylum applicant only in exceptional cases, such as when the videotaping is not available or if the personal interview is considered essential to clarify some aspects (art. 6).

Against this "regular" procedure, art. 28-bis of the D. Lgs.25/2008, as inserted by LD 142/2015 provides also for an "accelerated procedure" applying when: a) the foreigner applies for asylum while placed in a CPR; b) the application is considered manifestly unfounded; c) the asylum seeker has lodged a subsequent application for international protection; d) the foreigner applies for asylum after being stopped for avoiding or attempting to avoid border controls or after being stopped for irregular stay, with the sole intention to delay or prevent expulsion or pushback. In these cases, the procedure has to end within a shortest time frame (i.e. the time to lodge an appeal is halved) and there is no automatic suspensive effect.

[71] Law Decree No. 119/2014, converted into a Law, after amendments by Law No. 146/2014, Decree of the Ministry of the Interior 10.11.2014.

[72] The Italian judicial system foresees three judicial levels, regardless of the type of controversy (either civil or penal law). The same applies to the migration matter up until the Law Decree No. 13/2017 was approved eliminating a judicial level for refugee status determination controversies.

[73] According to art. 14 of the Legislative Decree No. 25/2008, as amended by art. 6 of the Law Decree No. 13/2017, the interview of the asylum applicant must be taped by audio-visual means and transcribed in Italian through automatic voice recognition system.

In addition, asylum applications may be also proceeded under the Dublin III Regulation rules.

The Dublin Procedure

The Dublin Regulation (EU) 604/2013 (hereinafter Dublin III Regulation) is an agreement among EU Member States, Iceland, Liechtenstein, Norway and Switzerland establishing criteria to determine the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

In Italy, the national authority responsible for the Dublin III procedure is the "Dublin Unit", with the Department for Civil Liberties and Immigration at the Ministry of the Interior (Legislative Decree No. 25/2008 art. 3(3)). The Police Headquarter competent to receive the application for international protection, once verified the preconditions to access the Dublin procedure, shall send the whole documentation to the Dublin Unity. The Dublin Unity, entrusted to identify the responsible Member State, has to promptly inform the competent Territorial Commission and the Police Headquarter that is competent to organize the transfer (Presidential Decree No. 21/2015 art. 3(4)). According to statistical data, the time for processing cases falling under the Dublin III Regulation in Italy is excessively long (with the largest backlog of pending Dublin requests of any other Dublin Member State in 2014), also due to the relevant load of request received by Italian authorities (EU Commission, 2016:27)[74] and to the insufficient number of personnel of the Dublin Unit (Parliamentary Committee of Control 2015:7)[75]. Moreover, as reported by the head of the Dublin Unit (Chamber Inquiry Committee 2016c), the obstacles set by other Member States contributes to further slow down the procedure. Usually, when the procedure exceeds 11 months, far beyond the term provided by the Dublin III Regulation[76], Italy takes the exam of the application upon itself (AIDA 2018).

The refugee and the subsidiary protection status can be withdrawn when: a) the events that grounded the recognition of international protection were incorrectly presented or were omitted or were based on false evidences; b) the foreigner falls within the exclusion clauses

[74] On this, the European Commission reports that according to Eurostat data, "Italian authorities faced 3.126 pending incoming Dublin requests as of the end of 2014".

[75] The length of the procedure has severe consequences particularly for unaccompanied children, who, in order to rapidly reach their parents or relatives residing in other European countries, abscond from Italian authorities, so heightening risks of abuse, violence and exploitation (Unhcr 2012)

[76] Dublin III Regulation, art. 22, para. 1 stipulates that once received a request to take charge of an applicant, the member state shall take a decision within two months; when the examination of the request is particularly complex, this term may be extended by one additional month (para. 6)

set by art. 10 of D. Lgs. 251/2007[77]; c) the foreigner represents a danger for public order and security[78].

D. Lgs. No. 251/2007 also rules over the cessation and review of international protection status, which have to be determined after a case-by-case assessment by the National Commission for the right of asylum[79]. Generally speaking, the status can be reviewed when the beneficiaries of international protection decides to re-avail of the protection of his/her country of origin or when a change of the circumstances which grounded the recognition of international protection occurs (art. 9 and 15). However, the beneficiary of international protection can always invoke compelling reasons for not availing of his/her country of origin protection, based on previous persecutions (art. 9(2 bis)).

According to art 23 of D. Lgs. No. 251/2007, an international protection permit of five years, renewable, is granted to beneficiaries of international protection. This permit to stay entails a number of civil and social rights, which however, as we will discuss, are not always uniformly enforced.

According to the SPRAR Guidelines[80], the beneficiaries of international protection have the right to be accommodated in the national system of reception for 6 months. This period can be further prolonged for 6 months, after a case-by-case assessment. Remarkably, no normative provision regulates how long refugees can be accommodated in CAS and in other emergency facilities. Moreover, although art. 40(6) of the Consolidation Law and art. 29 of D. Lgs. No. 251/2007 guarantees the right to access public housing, in practice, a widespread recourse to informal settlements has been reported amongst refugees, also due to the absence of systematic and efficacy integration policies (MSF 2017b).

Beneficiaries of international protections have access to professional training and to work, even public employment, at the same conditions of Italian citizens. They also are equalized to Italian citizens as regards social rights and social assistance measures. In this field, the judiciary has played a crucial role, enforcing the anti-discrimination principle against some practices of local municipalities undermining the effective enjoyment of social rights (Guarisio 2017). Furthermore, research highlights the limitation of the right to healthcare, especially for refugees (and asylum seekers) living in informal settlements, who are denied the enrolment in the civil registry, which is *conditio-sine-qua non* for the enrolment in the National Healthcare system (MSF 2017b; Giannoni 2010; Geraci and El Hamad 2011).

[77] Art. 13 makes reference to art. 12, which mentions the exclusion clauses of art. 10, that is, amongst the others, the commitment of crimes against the peace, war crime or crimes against the humanity; the commitment of severe crimes and the exclusion clause of art. 1D of the Geneva Convention stating that ""This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance".

[78] Art. 13 (for refugee status) and art. 18 (for subsidiary protection) of Legislative Decree No. 251/2007.

[79] For further details, see ANNEX 2.

[80] Guidelines for the functioning of the SPRAR, approved with Ministerial Decree 10/08/2016, available at http://www.sprar.it/wp-content/uploads/2016/11/Vademecum-Decreto-Funzionamento-Sprar-2017-01.pdf

For refugees and subsidiary protection beneficiaries, the sole requirement to obtain the EU long-term residence permit consists in demonstrating an income equal or higher than the minimum income guaranteed by the State, while the further requirements provided by law for other third-country nationals do not have to be fulfilled. A favourable legislation also applies to family reunification rights. In fact, beneficiaries of international protection who want to apply for family reunification are not required to prove minimum income and adequate accommodation (art. 29 of the Consolidated Law).

5.3. Beneficiaries of Humanitarian Protection

Beyond international protection, the Italian normative framework foresees a further form of protection (the so-called humanitarian protection) which grants a permit of stay for humanitarian reasons with a duration ranging from 6 months to 2 years (renewable). In particular, the main reference is art. 5 of the immigration Consolidated Law, which recognizes the right to humanitarian protection in presence of international obligations (such as the right to non-refoulement, in the absence of the requirements to obtain the international protection), constitutional obligations (such as the right to health), or other humanitarian reasons. According to the jurisprudence, the definition of "humanitarian reasons" mainly refer to the vulnerability of the person. This requires a case-by-case assessment, which mainly relies upon the core human rights envisaged by the international conventions signed by Italy[81].

The humanitarian permit of stay is always released by the competent Police Headquarter. However, the competence to conduct the assessment on the application may belong to the Police Headquarter itself, when it directly receives the application, or to the Territorial Commission. In fact, the D. Lgs. 25/2008 provides that, having ascertained the absence of grounds for the recognition of international protection, the Territorial Commission can determine the presence of "humanitarian grounds" and transmit the documents to the competent Police Headquarter (art. 32(3)).

Furthermore, there are also other situations which, according to the national legislation, may trigger the humanitarian protection (or, to be more precise, the so called "social protection"). In particular, the foreigner may obtain a humanitarian permit of stay when the following requirements occur: a) s/he is subjected to violence or serious exploitation; and b) a concrete danger jeopardize her/his safety. More specifically, this danger might derive from an attempt to escape the exploitation itself or from the statements made during the criminal proceedings. This protection, in fact, applies in relation to a close set of crimes identified by the normative provision: trafficking, domestic violence and labor exploitation. In order to obtain the permit of stay, the foreigner has also to adhere to a programme of assistance or social integration activated by either the territorial social services or the third sector. Art. 18 of the Italian Consolidated Law represents an important measure of prevention and protection, allowing foreigners to obtain assistance, protection and a regular status, regardless if they have reported the crime or have otherwise collaborated with the judicial authorities. Furthermore, a national anti-trafficking system has been created under the Ministry of equal opportunity. Nevertheless, the efficacy of this system is undermined by a fragmentary and uneven implementation of the law, and by the weakness of measures addressing the

[81] Constitutional Court Decision No. 381/1999. See for further references Ch. 3

identification of victims of human-trafficking. On this regard, recently, important initiatives have been launched to facilitate the identification of potential victims of human trafficking within the asylum procedure and trigger mechanisms of referral to the Anti-trafficking Units (UNHCR, 2016b). Meanwhile, the anti-trafficking National Plan has been released (Ministry of the Interior, 2016).

Even in this case, the permit of stay is issued by the Police Headquarters, but on the impetus of the territorial social services or the public prosecutor's office.

Concerning the rights of foreigners with a permit of stay for humanitarian reasons, the Consolidated Law on Immigration clearly recognizes the right to work, to have access to professional trainings (art. 22(15)) and to schooling and academy (arts. 38 and 39(5)) in a condition of parity with Italian citizens. The right to health is guaranteed along with the free enrolment in the National Health Service (art. 34(1)).

Foreigners who have the permit of stay for humanitarian reasons have the right to be accommodated within the national reception system. Moreover, when the humanitarian permit of stay has a duration of at least one year, foreigners are entitled to social assistance measures. In fact, the Consolidate Law on Immigration stipulates that foreigners holding a year-long permit of stay can enjoy measures of social assistance and social benefit at the same conditions of Italian citizens (art. 41). This normative provision, which public administrations often did not comply with, has been recently reinforced by a decision of the Constitutional Court[82]. The Court recalled that the Legislative Decree No. 251/2007 expressly recognises that foreigners with an humanitarian permit have the same rights of beneficiaries of subsidiary protection (art. 34 (5)), including the right to access measures of sanitary and social assistance (art. 27(1)).

The humanitarian permit of stay does not allow to obtain the so-called "EC permit for long-term residents"(art. 9(3)) of the Consolidated Law on Immigration). However, it can be converted into a permit of stay for work, unemployment, study or family reasons.

Concerning the right to family unity, according to the Consolidated Law, foreigners holding a humanitarian permit of stay are excluded from the right to family reunification. However, some jurisprudence, considering this blanket ban as discriminatory, has recognized the right to family reunification also to beneficiaries of humanitarian permit of stay[83].

5.4. Regular migrants

5.4.1. Requirements

Except for asylum claimants, non-EU foreigners do not have an actual right to enter the Italian State, but just a legitimate expectation against the discretionary decision of Italian authorities[84]. In order to enter Italian borders, foreigners are required to have a valid passport, a visa and adequate economic resources (allowing the stay and return to the country of origin). Furthermore, foreigners must also fulfil another requirement: s/he should not represent a

[82] Constitutional Court, decision No. 95/2017

[83] See amongst the others, Tribunale di Firenze, decision 02.07.2005.

[84] See among the others Corte Cass., S.U., decision No. 1417/2004.

danger for public order and security, neither for Italy nor for any other Schengen State (art. 4 of the Consolidated Law on Immigration). In principle – more details will be provided with reference to each specific permit to stay – foreigners must apply for visa at the Italian Consulate or Embassy of their country of residence. In case the visa is refused, a motivated decision must be communicated to the foreigner who can appeal against it before the Italian courts.

Visa may be temporary, i.e. lasting up to 90 days (for visits, business and tourism), which follows the common EU Visa Code[85], or "long-stay". These visa, subjected to the specific national legislation, are the prerequisite to obtain a permit to stay related to the same reasons mentioned in the visa (i.e work, study, family, religious reasons, etc.). The permit to stay, which should be asked to the Police Headquarter or the Prefecture within 8 days from the entry, grants to third-country nationals the right to stay in the Italian territory (art. 5 of the Consolidated Law on Immigration). However, the Consolidated Law on Immigration foresees some exceptions to this general rule. In particularly critical situations, the foreigner cannot be expelled or rejected even if s/he does not hold a visa or a regular permit to stay. This is the case for unaccompanied children, for pregnant women, up to 6 months from the childbirth,[86] and for foreigners cohabiting with an Italian first-degree relative or spouse (art. 19).

In case of permit to stay of minimum one year, the foreigner has to sign an "integration agreement" with the State, that commits, on the one hand, the foreigner to reach an adequate knowledge of Italian language, of Italian civic life and of the fundamental principles of the Constitution, and, on the other hand, the State to support social integration.

The permit to stay is revoked or its renewal is denied if the conditions required for its issuance do not recur anymore (art. 5 of the Consolidated Law on Immigration). The permits to stay are released for the following purposes: a) work; b) family; c) study. Beyond these, the Consolidated Law on Immigration also provides further types of permit to stay (such as the permits to stay for "elective residence", for "justice reasons" and for "child assistance") and also the so-called EU long-term residence permit.

5.4.2. Work Reasons

Since 2002, every year the *Decreto Flussi* determines the quota of foreigners who may enter Italy to work. Priority is given to workers specifically trained abroad in preparation for emigration to Italy (art. 23 Consolidated Law on Immigration) and sub-quotas may be reserved to descendants of Italian emigrants. Some years ago the *Decreto Flussi* even specified the nationality of employees that will be granted working visa, in accordance with bilateral agreements signed by Italy with third countries.

To obtain a visa for work reasons, the foreigner must receive an offer of employment before entering the national borders. More precisely, according to the quota established by law, the employer, after having verified that no employee already residing in Italy is available,

[85] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:en:PDF

[86] According to the Constitutional Court, Decision No. 76/2000, neither the husband cohabiting with the pregnant woman can be expelled.

submits the request together with the documents proving the employees' accommodation and the commitment to pay the foreigner's travel costs to return to his/her country of origin (art. 22 Consolidated Law on Immigration).

The length of the work permit depends on the typology of contract: two years for permanent employment, one year for temporary employment.

The same system of entry quota also applies to seasonal workers (art. 24), who are granted permits between 20 days and 9 months and will get priority in case of re-entering in Italy, and to non EU self-employed workers, who must demonstrate to have an adequate accommodation and financial means. They receive a permit to stay up to two years (art. 26 Consolidated Law on Immigration).

The Consolidated Law on Immigration provides also the possibility to obtain a work permit "out of the entry quota" for specific typologies of work, such as managers and high-qualified workers of foreign companies; mother tongue language teachers, professors, university researchers and teachers in foreign institutions; skilled workers for specific duties; maritime workers; interpreters; domestic workers[87]; professional trainees; workers of foreign companies temporarily transferred to Italy; sport and show-business workers; professional healthcare assistants; journalists; persons involved in mobility programmes or 'au pairs'; foreign workers of diplomatic mission or governmental organization with headquarters in Italy (art. 27). These typologies of workers can submit an application at any time, beyond the temporal and numerical limitations.

Finally, 2017 budget law amended the Consolidated Law on Immigration to grant foreign investors the entry (and stay) out of quota.[88]

Beyond these cases, specific provisions regulate the voluntary work (with a permit to stay up to 18 months, not renewable nor convertible into a proper work permit) and the academic work ("out of quota").

The permit to stay for work reasons can be renewed at the same conditions. Foreigner workers who get unemployed and are registered as job seekers, may apply for a residence permit for "pending employment". This permit lasts no more than one year. However, this term is suspended if the foreigner is hired again (art. 22(11)).

5.4.3. Family Reasons

Foreigners who want to enter Italy to join a family member must have previously obtained a family visa. However, the Italian Consolidated Law on Immigration also permits to a family member eligible for family reunification, already in Italy with a regular status (i.e. a touristic visa), to apply for a permit to stay for family reasons, without having previously obtained a family visa: it is the so-called "special family reunification" (*ricongiungimento familiare in deroga*) (art. 30 (1c)).

[87] These are domestic workers employed by an Italian or EU employer who subsequently moved to Italy.

[88] Art. 26 bis of the Consolidated Law on Immigration, introduced by the Law No. 232/2016 (Budget Law 2017).

According art. 29 of the Consolidated Law on Immigration, family members eligible for family reunification are: a) the spouse (not legally separated and unless the existence of another marriage is ascertained); b) children under 18 or children over 18 if totally disabled; c) parents who are not economically independent and do not have any other child in their country of origin, or parents aged more than 65 years when other children cannot provide for them; d) the foreigner parent of an Italian child under 18 years. Recently, a circular of the Ministry of the Interior has clarified that non-married partners with a registered partnership (also same-sex partner) are eligible for family reunification[89].

The foreigner applying for family reunification must demonstrate to have a regular permit to stay of at least one year; sufficient financial resources (also incomes of other cohabitants family members is taken into account)[90] and a suitable accommodation[91]. When all requirements are fulfilled, a declaration of "no impediment" is transmitted to the diplomatic representation of the family member's country of origin. Once obtained the family visa, the family member can enter the Italian borders and apply for a permit to stay for family reasons within 8 days.

The residence permit for family reasons is strongly linked to the permit to stay of the foreigner who requested the family reunification, with the same duration and rights granted (art. 30 of the Consolidated Law on Immigration).

The revocation or the denial of renewal of the permit to stay for family reasons may occur when the conditions for its issuance do not recur anymore or for reasons of public order when the foreigner has committed a serious crime and represents a threat to the public order. Conviction for such an offence does not entail an automatic denial of the permit renewal, but must be evaluated together with the conduct of the foreigner, his/her level of social integration and his/her family ties in Italy (art. 5 and 5(5bis) Consolidated Law on Immigration).

5.4.4. Study Reasons

A permit of stay for study reasons is issued to foreigners who want to attend the University or another education or training course in Italy, after having obtained a study visa from the Italian Embassy or Consulate in their country of origin, within the limit of the entry quota envisaged by the Ministry of Labour. To this end, the foreigner must demonstrate to have adequate accommodation in Italy; sufficient financial means (also to return to the country of origin) and a health insurance.[92] However, the study visa is not required if the course lasts less than 90

[89] Circular of the Ministry of the Interior, 05.08.2016, available at http://www.meltingpot.org/IMG/pdf/circ.-prot.-nr.-3511-del-05.08.2016-ricongiungimento-familiare-unioni-civili.pdf

[90] In particular, the foreigner must have a yearly gross income, current or presumed, from legal sources, that is not lower than the yearly social allowance. As provided for by the law, this amount is increased by half for each family member to be reunited.

[91] To this end, a special certificate should be issued by the local authority where the foreigner is resident (the so-called *certificato di idoneità alloggiativa*).

[92] Art. 39 D. Lgs. No. 286/98; arts. 44 bis, 45 and 46 DPR 394/99

days and the foreigner comes from a country which is exempted from the visa for short term stays[93].

The length of the permit to stay for study reasons is related to the length of the education or professional course that will be attended.

This permit to stay allows the foreigner to study and also to work, but only with part-time contracts up to 1.040 hours per year.

5.4.5. Other Reasons

Additional typologies of residence permits are envisaged by the Consolidated Law on Immigration and art. 11 of its Implementation Regulation (DPR 94/99). Among them: the visa and permit to stay for "elective residence", where foreigners have to demonstrate high self-sustaining incomes and financial assets to support themselves autonomously without an employment contract[94]; the visa and permit to stay for religious reasons[95]; the visa and permit to stay for medical treatments (art. 36 Consolidated Law); the visa and permit to stay for justice reasons, when the foreigner' stay is indispensable to criminal proceedings (art. 17 Consolidated Law); and finally the permit to stay which authorises the entry and stay of the foreigner to assist and support a child in Italy (the so called "permit of stay for child assistance") (art. 31 Consolidated Law).

5.4.6. The EU Long-Term Residence Permit

The EU long-term residence permit is a permanent residence card granted to third-state nationals who fulfil the following requirements: holding a regular permit to stay (only certain typologies of permits)[96], having continuously stayed in Italy for a minimum of five years; owing sufficient financial resources; having passed an Italian language test. This residence permit cannot be released to foreigners holding a permit to stay for study or professional training, for diplomatic reasons, for asylum application, for humanitarian reasons or short-term residence permits (art. 9 of the Consolidated Law on Immigration).

The EU long-term residence permit can be issued also to family members of the entitled foreigner. However, in this case, also the availability of a suitable accommodation should be demonstrated.

This particular residence permit can be revoked when it has been fraudulently obtained or if the foreigner represents a danger for the public order and security or has been expelled, or if s/he have resided out of Italy for six years (or out of the EU for twelve consecutive months).

[93] Circular of the Ministry of Foreign Affairs, 23.08.2010.

[94] Decree of the Ministry of Foreign Affairs, 12.07.2000

[95] Ministry of Foreign Affairs, Decree 12.07.2000

[96] According to art. 9 (3) of the Consolidated Law on Immigration, the EU long-term residence permit cannot be requested by foreigners holding a permit to stay: a) for study reasons or professional training; b) for humanitarian reason; c) for asylum seekers; d) for temporary stay; or by foreigners with the specific legal status foreseen by: a) the 1961 Vienna Convention on diplomatic relations; b) the 1963 Vienna Convention on consular relations; c) by the 1975 Vienna Convention on the representation of States in their relations with international organizations.

5.4.7. Rights

D. Lgs. 286/1998 recognises to foreigners full civil rights, but also the right to: a) be enrolled in the civil registry of residents (art. 6 (7)); b) be enrolled in professional registers; c) have access to alphabetization courses and other education courses (art. 38 (5)); d) be entitled to measures of social integration (art. 42 (1 a) and c)); e) obtain legal protection against discriminatory practices (art. 43 (2 c) and d)); f) be entitled to all measures that support the right to study, including scholarship, student loans and housing (art. 39). In addition, the Consolidated Law on Immigration stipulates that measures of social assistance are granted to foreigners holding an EU long-term residence permit or a permit to stay of no less than one year[97]. Hence, the Consolidated Law on immigration is informed by a strong equalitarian approach when enlisting the rights which foreigners are entitled to.

However, this equalitarian approach has been subsequently subjected to severe limitations, with specific regard to social benefits. Law No. 388/2000 (Budgetary Law for 2001) reserved the access to social welfare allowances to EU long-term residence permit holders[98]. The Constitutional Court has several times declared that the limitation is unreasonable[99], but the Court declared the constitutional illegitimacy only of specific provisions, not of the entire law, so that, in terms of certain rights, the Italian legislation still maintains a distinction between long-term residents (with EU long-term residence permit) and migrants who have a short-term permit (one or two years). Indeed, EU long-term residence permit holders are entitled to all measures of social assistance at the same conditions of Italian citizens, whereas other foreigners regularly residing in Italy with a different status are denied a number of social welfare allowances, such as the maternity allowances.[100]

This legal framework raises severe concerns about the compliance of the national legislative framework with the Italian Constitution, the ECHR jurisprudence and the EU Directive 2011/98/EU on third-country workers[101] (Corsi 2016; Sciarra 2017; Ferrara 2017).

Beyond the social welfare allowances, also the access to housing is subjected to limitations. In fact, the Consolidated Law on Immigration stipulates that only foreigners holding

[97] Art. 41 CL, which is also mentioned by the L. No. 328/2000, the Consolidated Law for the realization of an integrated system of social services and interventions (art. 2, para. 1).

[98] Originally, the law reproduced the same equalitarian approach as art. 41 of the Consolidated Law on Immigration (art. 2 (1)). However, it has been subsequently amended by art. 80 (19), L. 23.12.2000 n. 388, which introduced the above-mentioned restrictions.

[99] See Constitutional Court decisions No. 306/2008; No. 11/2009; No. 187/2010; No. 329/2011; No. 40/2013; No. 22/2015; No. 230/2015.

[100] Concerning maternity allowances, the legislation has not already been declared constitutionally illegitimate by the Constitutional Court. However, some circulars of INPS (The national institute for public welfare) recognized these social rights to non-EU relatives of EU citizens and to beneficiaries of international protection. Meanwhile, a consistent case law has extended this right also to women holding a permit to stay for work, family or humanitarian reasons. For a complete list of the social welfare allowances to which foreign workers are entitled see Guarisio 2018.

[101] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

a EU long-term residence permit or foreigner workers with a permit to stay of no less than two years can have access to public housing accommodations and to housing support measures.

Finally, no political rights are granted to foreigners legally residing in Italy. Indeed, according to art. 48 of the Constitution, only Italian citizens have the right to vote. However, scholars have contested the legitimacy of the exclusion of foreigners also from political rights at the administrative local level (Santoro 2013).

5.5. Undocumented migrants

No definition of "undocumented migrant", (the term 'migrant' is here limited to non-EU citizens) is provided by any law. However, according to the national acquis on migration, this status applies to a) migrants who irregularly entered the country; b) migrants who have entered legally and then overstayed their visas; c) migrants who failed to renew their valid residence documents at a certain stage of their permanence in the country.

The status of "undocumented migrant" only refer to undocumented aliens over 18 years. In the Italian legal system, as we will discuss in the next section, foreign children can never been considered irregular: they have the right not to be expelled and to obtain a residence permit for "minor age" until they turn 18.

Despite the alarms raised by media and the political discourses about the "mass inflow of clandestine migrants", official statistics and research point out that 'overstayers' represent the large majority of undocumented migrants in Italy (e.g. Einaudi 2007; Finotelli and Sciortino 2013. Against the limited effectiveness of the repressive apparatus, the high-sounding actions against illegal immigration often proclaimed by politics reveal their inconsistency. Moreover, the concrete implementation throughout the country of the system of interception, detention and deportation have proved to be discretionary and random, also because of the high (economic and social) costs involved (Ambrosini 2012). Hence, out of the total number of foreigners traced under an irregular position on the Italian territory, the percentage of foreigners effectively removed and repatriated, has been respectively 46% and 16% in 2015, 45% and 14% in 2016 and 43,9% and 13,5% at 31 October 2017 (Chamber Inquiry Committee, 2017).

Rejection and Expulsion

The Italian legislation envisages two different instruments for third-country nationals' removal: rejections and expulsions. Concerning the first, according to Law Decree No. 13/2017, undocumented foreigners who have been intercepted in Italy or have been succoured during rescue operations in the sea are conducted to the "hotspots". After having provided the required information, authorities shall proceed to identification: when foreigners neither have a valid visa and passport nor documents proving the aim of their stay and adequate financial resources and do not ask to apply for asylum, an order refusing entry (*ordine di respingimento*) is issued right away. A deferred rejection (*respingimento differito*) order can be also adopted by the Police Headquarter against foreigners who have entered Italy avoiding border controls and have been intercepted

afterwards or against foreigners who entered irregularly and were temporarily admitted for emergency aid (art. 10 of the Consolidated Law on Immigration).

Expulsions can be issued by administrative authorities (Ministry of the Interior and Prefects) against foreigners who represent a danger for public order and security or illegally resident in the country[102] or judicial authorities, as consequence of a criminal proceedings[103]. In some cases (mainly related to public security issues or flight risks), the effective enforcement of the expulsion is enacted through the compulsory escorting to the border (*accompagnamento forzato alla frontiera*) of the foreigner by the police.[104] When it is not possible to immediately enforce rejections or expulsions through the escorting to the border, the foreigner is detained in the closest centre for repatriation (CPR, the formerly CIE - centre for identification and expulsion -). According to art. 10 ter (3), of the Consolidated Law on Immigration, as recently introduced by the Law Decree No. 13/2017, also foreigners who repeatedly refuse to be fingerprinted may be detained in CPR. The detention in CPR centres cannot lasts over 90 days.[105] Alternatively, the foreigner who received a measure of expulsion may adhere to programmes of voluntary assisted return to the country of origin or provenience (art. 14 ter of the Consolidated Law on Immigration). However, this option finds a very limited application in practice, entailing severe economic and bureaucratic constraints, such as difficulties to obtain documents (Genoviva 2017).

As reported by the Chamber Inquiry Committee 2017:75, "given the limited availability of places in CPR and difficulties to effectively repatriate non-citizens, in the absence of ad hoc readmission agreements, often the Police resort to a mere formal measure (which, in theory, should be residual): the order to leave the Italian territory within 7 days" (art. 14 (5bis) of the Consolidated Law on Immigration). However, this order is rarely complied with: during the time-span 1 January – 31 October 2017, only 385 foreigners actually respected the order out of 1.408 (Chamber Inquiry Committee, 2017).

Recently, in the attempt to find a solution, the Law No. 46/2017 foresaw the allocation of financial resources to guarantee the effective enforcement of expulsions and pushbacks and to create (and manage) new centres for repatriation (CPR) preferably in rural areas, fairly distributed throughout the country. Nonetheless,

[102] Expulsion orders must always be issued after a case-by-case assessment, taking into account immigrant's family ties and the length of the stay in Italy (art. 13 CL)

[103] In this case the expulsion is issued as a security measure (art. 15 of the Consolidated Law on Immigration). It can be also issued as an alternative measure to detention (art. 16 of the Consolidated Law on Immigration).

[104] Art. 13 (4) of the Consolidated Law on Immigration does not require the validation of the judicial authority in case of compulsory escorting to the border of the foreign. Recently, with the decision No. 275/2017, the Constitutional Court has addressed an admonishment to the Parliament asking to modify the law. In fact, the measure in object entails a restriction of the personal liberty. Consequently, according to art. 13 (3) of the Constitution, it must be validated by the judge within the following 48 hours. See the Court's warning to the Parliament at https://www.cortecostituzionale.it/documenti/comunicatistampa/CC_CS_20171220123128.pdf

[105] However, as already illustrated, it is noteworthy that the detention in CPR may be prolonged until 12 months in cases of immigrants who applied for asylum once in the CPR.

concerns have been raised about the effectiveness of these measures aimed at increasing the percentage of repatriation, which currently concern 49-50% of immigrants detained in CPR. According to the report released by the Senate Special Committee on human rights, difficulties to enforce expulsions shall be related to the identification operation (and the complicated relations with the various diplomatic authorities) rather than to the number and location of CPR (Senate extraordinary Committee on human rights 2017b).

Immigrants who received an expulsion order are barred from re-enter Italy for a period between three and five years, depending on the specific circumstances. In case of re-entry, they are prosecuted for a crime punished with the imprisonment from one to four years. Furthermore, irregular entry in Italy is punished with a penalty from 5.000 to 10.000 euro (the so-called crime of "clandestine immigration").

Finally, it is noteworthy that, with the Law No. 271/2004, the responsibility to supervise expulsion and detention of undocumented migrants has been transferred from professional judges to the justice of peace. In this way, the protection of the rights of migrants subject to expulsion and detention, and of their access to justice is deferred to a differentiated system of justice, raising several flaws with Italy's obligations under international human rights and EU law. In particular, a number of NGOs and juridical associations, such as the International Commission of Jurists, contested that "the precariousness of the status of the justices of the peace, the irregularities, inconsistencies and informalities in practice, and lack of uniformity and adequately articulated reasoning inherent in the system, somehow seem to reflect the most precarious condition faced by the undocumented migrant him or herself" (International Commission of Jurists 2014:62). Curiously, it has to be remarked that the specialized judges recently instituted by the Law Decree No. 46/2017 would not deal with procedures related to the reverse of expulsion orders, which will remain under the competence of justice of peace.

Undocumented third country nationals are excluded from a number of rights: according to art. 6 of the Italian Consolidated Law, the residence permit is a necessary requirement to benefit from public services, with the sole exception of the compulsory education for children and some urgent and essential health-care services. Nonetheless, the Constitutional Court has progressively enlarged the number of rights to which undocumented migrants are entitled, by allowing Regions to intervene in areas of social assistance and public services with the aim to enhance the protection of migrants' fundamental rights. However, as result, as will be discussed, different standards of protection currently apply to undocumented third-country nationals across the country (Salazar 2010; Spencer Delvino 2014).

A synthetic analysis of some of the most important cases will be here provided.

- Access to healthcare: against the national Consolidated Law on Immigration which guarantee only to urgent and essential health-care services, the Apulia Regional Law No. 4/2009, for example, endows undocumented migrants with a number of medical treatments, including mental health services, pharmaceutical assistance, gynaecology, abortion, etc... (art. 10 (5)).

- Housing: the Italian Consolidated Law provides accommodation centres and access to social housing to regularly resident migrants who are temporarily unable to provide on their own for their living and subsistence needs (art. 40). However, the Region of Campania, for example, extended this right to all foreigners, regardless of their status (art. 16, Law No. 6/2010 of the Region of Campania).
- Welfare benefits: against provision of welfare benefits exclusively for long-term residents (art. 41 of the Consolidated Law on Immigration), Law No. 29/2009 of the Region of Tuscany entitled all migrants in Tuscany to enjoy the "urgent and non-delayable social welfare measures, which are necessary to ensure the respect of fundamental rights" (art. 6(35)). The Italian government claimed that these measures were all exceeding the regional legislative power and that were irrespective of the national legislation and the State exclusive competence on migration. However, the Constitutional Court, as already mentioned, ruled these regional provisions are legitimate, highlighting that migrants, irrespective of their status, are entitled to a hard-core set of inviolable and fundamental rights.
- Finally, the Constitutional Court proved to be essential also for the enforcement of the right to obtain certificates of civil status. In fact, the "Security Packages" of 2009 (Law n. 94/2009) amended art. 116 of the Italian civil code regulating the marriage of a foreigner in Italy, establishing that migrants who wanted to get married in Italy were required to present documents proving the regularity of their stay. The Constitutional Court declared this provision in breach of the fundamental right to get married of both undocumented migrants and Italian spouses (decision No. 245/2011).

5.6. Unaccompanied foreign children

The "unaccompanied foreign child" is defined by D. Lgs. 142/2015 as person under 18, neither Italian nor EU citizen, who is in Italy without assistance or legal representation (art. 2, e)).

According to the Consolidated Immigration Law, foreign children may never be rejected at the border, and expulsion is prohibited, unless they represent a danger for public order and security[106].

The public security authorities shall be responsible for the identification of unaccompanied foreign children (hereinafter also unaccompanied children) who reach the Italian coasts or are subsequently intercepted in the national territory.[107] While being identified, their presence shall be reported to the General Directorate of Immigration at the Ministry of Labour, responsible for the unaccompanied children census. Public authorities are also required to place unaccompanied children in a safe location[108] and, precisely, in dedicated facilities

[106] Legislative Decree No. 286/98, art. 19, para. 2, while a decree of the Juvenile Court can order the expulsion of the minor on the grounds of public order and security of the State (Legislative Decree No. 286/98, art. 31, para. 4; art. 13, para. 3).

[107] Legislative Decree No. 286/98, art. 2, par. 7; Presidential Decree No. 535/1999, art. 5, para. 3.

[108] Civil Code, art. 403, Legislative Decree No. 251/2007, art. 28.

ensuring first assistance and protection. As already mentioned, children cannot be retained in centres for repatriation (CPR) and their accommodation with unrelated adults is firmly prohibited by the law, even if this provision is not always fulfilled in practice, as will be illustrated below.

The responsibility to care for unaccompanied children belongs to the local municipality in which the child has been traced[109]. In order to face the increasing arrival of unaccompanied children, reliving municipalities and local welfare of the enormous costs related to this specific reception (Anci et al. 2017) , the entire national system of reception has been subjected to a profound process of review, firstly planned by the Unified Conference[110] in 2014[111], and then institutionalized by Legislative Decree No. 142/2015.

A stronger governance of the phenomenon has been envisaged, with the entire system of reception moving under the responsibility of the Ministry of the Interior, and a dedicated National Fund to support municipalities' assistance and reception measures has been established [112]. The new system, composed of two different tiers of reception, is meant to provide harmonized assistance to all foreign unaccompanied children in Italy, irrespective of their status of asylum applicants. Thus, after being detected, unaccompanied children should be immediately accommodated in dedicated, high-specialized first-line reception facilities, fairly distributed through the country, activated by the Ministry of the Interior with funds of the Asylum Migration and Integration Fund (AMIF)[113]. In these governmental facilities, operations of identification, age assessment along with a thorough information about their rights are carried out by a multidisciplinary team[114]. As soon as the phase of first aid and assistance is

[109] Art. 403 c.c.; Law 328/2000 "Framework legislation for the realization of an integrated system of social interventions and services" art. 6 (2c); art. 11(1) and art. 8(3g).

[110] The Unified Conference is composed by the State-Regions Conference and the State-municipalities and local autonomies Conference. The Unified Conference is required to "coordinate all relations between the State and local autonomies, as well as to research, inform and debate on matters connected to the main political guidelines affecting the specific or devolved functions of municipalities and provinces. It is also the place of discussion and examination of issues concerning the structure and performance of local bodies, as well as of all pertinent legislative initiatives and general Government measures" (art. 9 D. Lgs. 281/1997). For further details see: http://www.statoregioni.it/home_UNI.asp?CONF=UNI

[111] The document is available here http://www.interno.gov.it/sites/default/files/sub-allegato_n._25_-_intesa_conferenza_stato_regioni_del_10_luglio_2014.pdf .

[112] The national fund for unaccompanied and separated children has been foreseen by art. 23 L. 135/2012. The competence, originally belonged to the Ministry of Labour, has been transferred to the Ministry of the Interior by the art. 1, para. 183 L. 190/2014 (the so called *Legge di Stabilità* 2015). Contributions from the UASC National Fund go to the local municipalities through the Prefecture according to the procedures provided by the Circular of the Ministry of the Interior of 20.01.2016, (http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/prot._861.pdf and http:// www.camera.it/leg17/465?tema=minori_stranieri_non_accompagnati). Concerning the triennium 2018 – 2020, the financial allocation to the National Fund for unaccompanied foreign children corresponds to 170 million of euros (Law No. 205/2017, the so-called *Legge di Stabilità* 2018).

[113] For further details on the Asylum Migration and Integration Fund see the following webpage: http://www.interno.gov.it/sites/default/files/avviso_mu_msna_23.12.14_sito.pdf and https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en

[114] Legislative Decree No. 142/2015, Art. 19, para. 1. See the Decree of the Ministry of the Interior, 1.9.2016, identifying requirements and services to be provided by the governmental first line reception

concluded, and in any case within the maximum term of 30 days, unaccompanied children are transferred to second line reception centres within the SPRAR network, where long-term services are granted.

If first line governmental facilities and second line SPRAR facilities are not available, municipalities should step in and take full responsibility, relying on the National Fund for unaccompanied foreign children. Moreover, in 2016, the creation of extraordinary reception centres managed by Prefectures for unaccompanied children over 14 years has been established, should municipalities fail to provide reception services.

A number of safeguards and fundamental rights are entrenched in the national legislation, which provides high standards of protection and care to foreign unaccompanied children. However, the problem lies in the laws and policies implementation, and the chronic insufficiency of places threatens the entire reception system.

In particular, places within the ordinary system of reception (that is governmental first level facilities and second level SPRAR centres) are still not enough to respond to the current presence of unaccompanied children. In this context, unaccompanied children are mainly channelled in reception facilities run by local municipalities (Ministry of Labour 2017),[115] or in emergency reception facilities run by Prefectures or by local municipalities[116]. Even unaccompanied children's prompt referral to dedicated centres is strongly jeopardised, with allegations of children being accommodated for prolonged period of time in reception centres with unrelated adults or in detention-like condition in hotspots, while waiting for transfer (ANCI 2016; Garante Nazionale per i diritti delle persone detenute 2017; Terres des Hommes 2016; Human Rights Watch 2016).

The national system of reception for unaccompanied children is consequently undermined by a high fragmentation of procedures for taking charge of unaccompanied children and uneven standards of care, which vary a lot between different type of reception centres, undermining the national system of reception and compromising the right to adequate protection (CRC 2017; OHCHR 2016). Meanwhile, the prolonged stay, even beyond the legal term of 30 days, in governmental first level facilities often prevents unaccompanied children to access fundamental services, such as school enrolment, vocational training or employment support, only granted in SPRAR reception centres.

The respect of children's rights is even more critical in reception facilities close to disembarkation areas. What lacks for children is a compulsory system of quota across regions that would allow for an equal distribution of accommodation centres across the country, As a result, Sicily hosts the large majority of unaccompanied foreign children in Italy (Ministry of Labour 2017:19)[117].

facilities, http://www.interno.gov.it/it/notizie/minori-stranieri-non-accompagnati-pubblicati-standard-laccoglienza-e-i-servizi.

[115] Data for December 2017 reveals that the SPRAR system can accommodate up to 3.110 unaccompanied children. However, affordable and up-to-date data concerning children accommodated in reception facilities run by local municipalities are not available.

[116] For more details on emergency facilities, see the previous chapter.

[117] According to data provided by the Ministry of Labour 43.6% of unaccompanied children in Italy are accommodated in Sicily.

Nonetheless, unaccompanied foreign children should be preferably accommodated in either foster families/homes[118] or under the responsibility of an adult relative regularly residing in Italy[119].However, this option is unfortunately seldom enacted, as it relies exclusively on the political and financial responsibility of local municipalities, while *ad hoc* economic resources are not provided for at the national level.

The national system of guardianship, which mainly consisted in obsolete and very general rules for all children deprived of parental care[120], has been recently innovated to address the specific needs of unaccompanied foreign children. According to Legislative Decree n.141 of 2015, public authorities who come into contact with unaccompanied children must report their presence to the Guardianship Judge who has to timely appoint a guardian (art. 19(5))[121]. The guardian has to be a qualified and independent person, who cannot be substituted unless in case of necessity (19(6)).

The law prohibits any conflicts of interests, even only potential, stressing that all the guardian's tasks have to be informed by the principle of the child's best interests (art. 19(6)). The guardian is entrusted to provide care, education and support, and exercise legal representation in all the procedures affecting the child's life[122], including enrolment in school and in the national health system, involvement in sport and recreational activities and submission of the application for the residence permit. Until mid-2017, the appointment of the guardian was also necessary to lodge an application for asylum.

However, the excessive length of time required to appoint a guardian (up to 11 months), as contested by the EU Commission with the infringement decision No. 2014/2171, has prevented unaccompanied children to swiftly access the asylum procedure and, hence, receive the necessary protection. To overcome this criticality, Law No. 47/2017 has recently introduced the possibility for the legal representative of reception centres where unaccompanied children are accommodated to temporarily exercise the guardianship's powers, in order to smooth the access to asylum procedure for unaccompanied children. In order to further improve the quality of the national guardianship system, the new law also provides that guardians selection should be based on a register established by Juvenile Courts with a list of voluntary persons, selected and adequately trained by the Ombudsperson for Children.

The aforementioned law introduced fundamental guarantees also with reference to another crucial issue: the age assessment. In particular, under the new provisions, in case of

[118] Law No. 183/1984, art. 2 (1 and 2) and art. 4. Legislative Decree No. 251/2007, art. 28; Law No. 47/2017, art. 7

[119] Legislative Decree No. 251/2007, art. 28.

[120] Art. 346 and ss. of the civil Code which dates back to 1942, and Law No. 184/1983

[121] See also Directive of the Ministries of the Interior and Justice, 7.12.2006; Legislative Decree No.25/2008, art. 26, para. 5, (the guardian for UASC asylum seekers has to be appointed within 48 hours from the notification to the guardianship Judge of the child's intention to apply for international protection); Law No. 184/1983, art. 3, para. 2 (the guardian has to be nominated by the first week and in any case no longer than 30 days since the child's accommodation in a residential care facility).

[122] Art. 343, 357 cc. according to art. 374 and 375 of the civil code, the guardian may undertake important decision and perform valid acts only once s/he has obtained the authorization of the Juvenile Judge or of the Tribunal if required (art. 374, 375).

doubts concerning the minor's age in absence of documentary evidences, the Juvenile Court may order a multidisciplinary age assessment procedure. According to the new provision, the child has to be adequately informed in a language s/he can understand. In addition, while the procedure is pending, s/he must be treated as a minor. The new integrated procedure intervened to eliminate the fragmented practices enacted throughout the Italian territory, with age assessment merely based on the child's declaration and/or systematic recourse to X-ray (UNHCR 2014; Feltz 2015). These procedures, in breach of international standards, reportedly resulted in unaccompanied children channelled in procedures highly abusing of their rights, such as expulsion or referral to adults' reception centres or administrative detention facilities[123].

Important safeguards specifically addressing unaccompanied foreign children asylum seekers are provided by Legislative Decree No. 251/2007, first of all the prioritized examination of their application, which should take place in a non-public hearing, according to the principle of confidentiality, with the assistance of the guardian and the interpreter, and of any support personnel when needed. In addition, the personal interview should be conducted by a member of the Territorial Commission specifically trained in child related matter, in a child-sensitive manner (art. 3(3c)), taking into account the level of maturity and personal development of the child, when evaluating his/her credibility (art. 3(5)).[124]

Different types of residence permits can be issued depending on specific needs and status: unaccompanied foreign children non-asylum seekers are entitled to receive a temporary residence permit for "*minor age*" (Presidential Decree No. 394/1999, art. 28(1)), which may be converted under a different title (for reasons of study, pending employment or work, out of the entry quota yearly established) when they turn 18[125]. Other types of residence permits are instead provided to unaccompanied children victims of human trafficking,[126] to unaccompanied children asylum seekers[127] and to unaccompanied children in custody or under foster care.[128]

The right of the child to the family unity is expressly established by the Italian legislation, providing for the prompt activation of family tracing procedures.[129] The Immigration General

[123] See on this purpose the report released by the campaign *Lasciatecientrare*, available here: http://www.lasciatecientrare.it/j25/italia/news-italia/163-report-della-campagna-lasciatecientrare-dal-cara-e-cie-di-pian-del-lago-caltanissetta.

[124] See also the Legislative Decree No. 251/2007, art. 32; Presidential Decree No. 21/2015, art. 2, para. 1 and Legislative Decree No. 25/2008, art. 15.

[125] It is the so-called residence permit for "integration reasons", which is issued under the procedure provided by Legislative Decree No. 286/1998, art. 32 and Presidential Decree No. 394/99, art. 11, para. 1 let. c).

[126] Legislative Decree No. 286/98, art. 18; Presidential Decree No. 394/99, art. 27.

[127] Legislative Decree No. 140/2005, art. 4, para. 1; see also the Directive of the Ministry of the Interior 7 December 2006, art. 3.

[128] In particular, a residence permit for family reasons is issued to unaccompanied children in custody or under foster care, as stipulated by art. 10, Law No. 47/2017.

[129] Legislative Decree No. 142/2015, art. 19, para. 7. More precisely, family tracing activities have manifold aims, such as increasing the understanding of the child's background and consequently determine the best integration path, or assessing the opportunity to recur to the assisted voluntary repatriation of the child. See also the Presidential Decree (D.P.C.M.) No. 535/99, art. 2, para. 2, let. f).

Directorate at the Ministry of Labour is responsible for promoting the family tracing in the country of origin or in a third country, with the collaboration of public authorities and other national and international organizations, such as IOM. Thus far, however, only in few cases family tracing activities have been undertaken (Ministry of Labour 2017). Alternatively, also the Dublin III Regulation represents a relevant instrument to fulfil unaccompanied children's right to family unity. Nonetheless, due to its limited scope (it only applies to unaccompanied children asylum seekers, which intend to reunify with their family in another European Member States) and its difficult implementation, in practice, the Dublin III procedure rarely applies.

Unaccompanied foreign children have access to healthcare and medical assistance, regardless of their status of irregular migrants, along with *ad hoc* sanitary measures, including psychological support. [130] In practice, however, sometimes the effective exercise of the right to health is hampered by scarce economic resources and limited availability of cultural mediators (CRC 2017).

The right to education is granted on the same basis as Italian children, irrespective of their regular status. In particular, they have access to primary education, which is compulsory and free[131] and the enrolment shall be accepted by schools at any moment of the school year (Presidential Decree No. 394/99, art. 45). However, in practice some shortcomings are reported, such as enrolment in lower-level classes (CRC 2016), and relayed enrolment, particularly for unaccompanied children accommodated in first-line reception facilities.

Under adequate safeguards, only after the conclusion of the compulsory education and not earlier than the age of 16 years, unaccompanied migrant children can access the labour market (Law No. 296/2006 art. 1(622)), while apprenticeship contracts are open also to children aged 15.[132] In addition, *ad hoc* measures for socio-cultural integration are foreseen, including the activation of extra-courses for t Italian language and intercultural programs.[133]

[130] Italian Constitution, art. 32; Legislative Decree No. 286/1998, arts. 34 and 35, para. 3, let. b; see also Legislative Decree No. 251/2007, art. 27 and Legislative Decree No. 142/2015, art. 17 (3 and 4) and art. 21, para. 1.

[131] Italian Constitution, art. 34; Legislative Decree No. 286/1998, art. 38; see also Legislative Decree No. 251/2007, art. 26 and Legislative Decree No. 142/2015, art. 21, para. 2.

[132] Legislative Decree No. 167/2011. For further details, see the following page: http://www.integrazionemigranti.gov.it/normativa/Documents/Minori/minori%20normativa/disciplina%20lavorativa%20minori.pdf.

[133] Legislative Decree No. 286/1998, art. 38, paras. 2 and 3. On this see also the Guidelines for the reception and integration of foreigner students, released by the Ministry of the Education on 19 February 2014; See also the specific area dedicated to the integration issue on the website of the Ministry of the Education: http://hubmiur.pubblica.istruzione.it/web/istruzione/intercultura .

6. Refugee Crisis Driven Reforms

During the time-span 2011–2017, triggered by the pressure to manage an unprecedented number of migrants landing on Italian shores, a number of legislative reforms have been issued. These reforms were inspired by an increasingly security-oriented approach, on which the EU influence cannot be overlooked (Caponio, Cappiali 2018; UN Human Rights Council, Special Rapporteur human rights of migrants 2014). Indeed, "the border management" has been presented by the EU Agenda on Migration as one of the "four pillars to manage migration better" (EU Commission 2015a:10). Needless to say, hotspots have been created to fulfil the requirements of the European Council's Decisions of September 2015. In addition, the stipulation of bilateral agreements of readmission has been explicitly encouraged by the EU Commission. The same applies to repatriation policies (EU Commission 2017d)[134]. Furthermore, the enlargement of detention facilities has been welcomed by the EU, also with the aim to prevent secondary movements of undocumented migrants to Northern EU member States (European Commission 2015b).

As already highlighted, under the pressure of the "migration emergency", in 2014 the Unified Conference reconfigured the national migration system of reception, both for adults and children. A two tiers system was created, divided into a first-line accommodation for first aid and assistance and a second-line reception for long-term services, aimed at the foreigners' integration. The Legislative Decree No. 142/2015 has provided the legal basis for this large reform, while transposing the EU reception and procedure Directive (recast). Concisely, the decree subjected the national reception system under the political and economic responsibility of the Ministry of the Interior, giving local municipalities – at least in theory – only a subsidiary role (they intervene only in case of shortage of accommodation in the ordinary reception system)[135]. Furthermore, a more incisive and structured assistance was provided to unaccompanied foreign children, creating a common system of reception, dedicated for both unaccompanied children asylum seekers and unaccompanied children non-asylum seekers.

However, already in 2016, new legal reforms were announced by the Ministry of Justice, which expressed his concern on the possible overload of the Italian court system, due to the increasing number of appeal against the rejection of asylum applications by the Territorial Commissions[136].

Indeed, the Law Decree No. 13/2017 was subsequently approved with the twofold aim to "expedite the international protection procedure and curtail illegal immigration". Therefore, the creation of new specialized sections of trained judges was established, along with the suppression of the second appeal for refugee status determination (RSD). In addition, a new

[134] See also the letter of the EU Commission Jean-Claude Juncker to Italy Prime Minister Paolo Gentiloni on the EU support to Italy about the management of migration flows https://ec.europa.eu/italy/news/20170727_migrazione_juncker_gentiloni_it

[135] Meanwhile, it cannot be neglected that local municipalities play a big role within the SPRAR system, which, according to Legislative Decree No. 142/2015, should be the main actor in the second-layer of reception.

[136] Chamber Inquiry Committee on the system of reception, of identification and expulsion and on the conditions of detention of migrants and on public resources committed, 21.06.2016, available at http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/pdf/69/audiz2/audizione/2016/06/21/leg.17.stencomm.data20160621.U1.com69.audiz2.audizione.0051.pdf

trial procedure was introduced. As mentioned, in this case the judge is not required to audit the asylum applicants but, except from few cases, can rely on the video-recording of the applicant's interview made by the Territorial Commission, the administrative body competent to examine the asylum application at the first stage of the RSD.

On the other hand, the decree has reinforced the securitization approach and increased the number of CPR - Centres for Residence and Repatriation (the former CIE - Centres for Identification Expulsion (CIE) from four to twenty throughout Italy, with a total capacity of 1,600 places (compared to the current 400 (Masera 2017; Campesi e Fabini 2017). The same approach upheld a 2016 circular of the Italian Chief of the Police, who called the Police officers to intensify the operations of tracing undocumented migrants within the Italian territory so as to increase the repatriation rate[137].

No reform intervened in the field of migrants' integration, aggravating the shortage of thorough and efficacy policies and services addressing integration.

"The contrast between an economy, including families that has absorbed around 2.5 – 3 million immigrants and a political stance that resists their acceptance as legitimated members of Italian society has culminated with the law on citizenship" (Ambrosini 2014:207). The Citizenship Law has been vividly debated in the past years[138]. At the heart of discussion are the long and complex bureaucratic process of naturalization (finalized after an average of 11 months or more), the extremely restrictive requirements and the wide margin of administrative discretion, often resulting in negative decisions. Against this background, the campaign "I am Italy too" (*l'Italia sono anche io*) has been promoted by pro-immigrant associations[139]. Nonetheless, despite the efforts, the bill reviewing citizenship legislation is still pending in Parliament[140].

However, in this context, two important reforms addressing the protection of migrants with specific needs, and particularly of foreign unaccompanied children, have to be mentioned.

Hence, in 2014, the EU Anti-trafficking Directive was transposed by the Legislative Decree No. 24/2014. This legislation addressed, among others, issues of identification and referral of asylum seekers victims of trafficking. Furthermore, specific safeguards were provided for unaccompanied children victims of trafficking.

As result of the long advocacy actions of Italian NGOs and international organizations, in 2017 the Italian Parliament finally approved the "Zampa Law" on unaccompanied foreign children. New regulations were established with reference to unaccompanied children's age

[137] The Circular of the Chief of the Police, 30.12.2016, is available here: https://www.asgi.it/allontamento-espulsione/attivita-rintraccio-stranieri-rimpatrio-circolare-2016/

[138] The Bill No. 2092 is available here http://www.senato.it/japp/bgt/showdoc/17/DDLPRES/940816/index.html . In particular, the bill aims at recognizing Italian citizenship to children born in Italy to foreign parents, one of whom has to have held a EU long-term residency permit and to children who arrived in Italy before the age of 12 and who have completed at least one scholastic cycle.

[139] For further details see the website of the campaign *L'italia sono anch' io*: http://www.litaliasonoanchio.it/

[140] The bill's passage through Parliament can be checked here: http://www.senato.it/leg/17/BGT/Schede/Ddliter/46079.htm

assessment and the national guardianship system. Despite this law failed to address the loopholes and dis-homogeneities of the national reception system for unaccompanied foreign children, it is an important step forward for the protection and promotion of children rights.

7. Conclusion

The aim of this report has been to analyse and problematize the Italian approach to the management of mass migration with a specific emphasis on the period between 2011 and 2017, so as to shed light on the series of implemented changes and responses given to the recent migration crisis. Italy has proven to be a very complex case of migration management that has developed in the grip of structural national limits, as well as a case of slow and inadequately controlled process of integration of the foreign population residing in the country for the last three decades. In the last few years, Italy has proven itself incapable of dealing with mass migratory flows. Moreover, besides a lack of cohesiveness of national policies and poor and inconsistent implementation, the country has put into question the very same principles of respect and protection of human rights enshrined in the Constitution and international standards.

In the well-known decision *Hirsi Jamaa and Others v. Italy*, the European Convention on Human Rights (ECHR) acknowledged that "the States which form the external borders of the European Union are currently experiencing considerable difficulties in coping with the increasing influx of migrants and asylum-seekers. [The ECHR] does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis (see M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 223, ECHR 2011)"[141]. However, the Court found that "problems with managing migratory flows cannot justify having recourse to practices which are not compatible with the State's obligations under the Convention."[142]. Therefore, the Court condemned Italy for having forcibly returned a group of Somali and Eritrean nationals to Libya, where they were at risk of human rights' violations and of repatriation[143].

In spite of the ECHR judgment, an increasing recourse to security-oriented measures, professedly motivated by the pressure of controlling borders, seem to prevail upon any other humanitarian concern and respect of human rights obligations, deriving from both national and supranational normative provisions[144].

New allegations of illegitimate repatriation have been recently moved against Italy[145] (and a complaint has been lodged at the ECHR for the case of the repatriation of a group of

[141] *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, available at: http://www.refworld.org/cases,ECHR,4f4507942.html , para. 122.

[142] Ibidem, para. 179

[143] Ibidem, para. 136

[144] Besides the the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, Italy abides a number of international treaties addressing the protection of human rights, such as the European Convention on the Legal Status of Migrant Workers (1995) and the Convention on Action against Trafficking in Human Beings (2010). Furthermore, the entire EU acquis on migration and asylum is applicable to Italy, which transposed the relevant EU Directives into national legislation. Finally, as already mentioned, human rights protection is enshrined in Italian Constitution and other relevant national legislations.

[145] See the letter that the Special Commissioner on human rights of the Council of Europe addressed to the Italian Ministry of the Interior in 2017, available here:https://rm.coe.int/letter-to-the-minister-of-interior-of-italy-regarding-government-s-res/168075baea

Sudanese in August 2016 (ASGI, 2017c)[146]. Moreover, Italy is called to respond to further human rights violations against migrants, especially those violations occurring in the hotspots. Indeed, hotspots, originally conceived as operational support to the relocation process, have soon turned into hubs where policies of migration control are enforced (ECRE et al. 2016; Guild, Costello, Moreno-Lax 2017). In the hotspots, the standard operating procedures (i.e. the only measures regulating the hotspots operations in the absence of a specific legal basis) allow authorities competent to conduct operations of identification through fingerprints to overcome possible resistances by using the force "with full respect for the physical integrity and dignity of the person"[147]. However, as reports unanimously document, abuses and arbitrary detentions often occur (Oxfam 2016: 28; Amnesty International 2016: 29). Furthermore, the hectic activities of pre-registration carried out after the disembarkation to identify migrants as "undocumented" or "asylum seekers", have often turned into a "super-summary hyper accelerated form of processing" to determine the refugee status (Guild, Costello, Moreno-Lax 2017:46). Eminent voices have reported practices such as "profiling on grounds of nationality, treating arrivals from non-relocation countries directly as 'non-refugees', selectively (mis-)informing them about their options and swiftly expelling them" (Guild, Costello and Moreno-Lax 2017: 47). No legal assistance and no appeal options are provided in these cases, and this exposes Italy to manifold violations of human rights conventions, such as art. 4 Protocol 4 ECHR.

In the absence of individual and accurate assessment, these operations of identification have been regarded as "tantamount to collective expulsion" (Guild, Costello and Moreno-Lax 2017: 47), breaching the principle on *non-refoulement*.

Severe human rights violations take place within Repatriation centres (CPR, former CIE), as documented by reports released by institutional and non-institutional actors, mostly adherent to the *LasciateCIEntrare* campaign[148]. As the last report of the Senate points out, repatriations centres still fail to fulfil the "necessary assistance and full respect of dignity" of the foreigners detained, as required by art. 14 of the Consolidated Law on Immigration. Despite actions undertaken by the Italian government, following the Senate recommendations, high diversification of standards still features the 5 CPR currently operating in Italy. Beyond the poor hygienic standards, limited access to information (*Garante nazionale diritti delle persone detenute* 2016), poor food quality and low material and structural conditions have been observed, with an overall lowering of the quality of the services provided (Senato, Commmissione straordinaria diritti umani 2017). Meanwhile, the creation of new CPR has been recently provided by the L. No. 46/2017.

Against this backdrop, national and supranational Courts intervened several times to address and restrain the weaknesses of the Italian migration system and its failures to protect and promote migrants' fundamental rights. Domestic courts (both lower courts and the

[146] Indeed, following the signature of the readmission agreements with Sudan, after an accelerated identification procedure, a group of Sudanese nationals, allegedly belonging to a minority persecuted, has been forcibly repatriated in the country by Italian authorities. The recourse has been supported by ASGI.

[147] See note 60

[148] For more details and a collection of available reports see the webpage of the *LasciateCIEntrare* campaign (the national campaign against the detention of migrants): http://www.lasciatecientrare.it/j25/

Constitutional Court) have played a pivotal role to align Italian legislations and practices to the respect of human rights obligations. And also the ECHR contributed in this process: in the case of Tarackhel vs. Switzerland (2014) the guarantees of the Italian reception system have been questioned by the ECHR, which suspended the transfer of an Afghan family of asylum seekers back to Italy[149]. More recently, in 2016, in the case of Khlaifia and Others v. Italy, the ECHR found that Italy violated art. 5 of the Convention for having arbitrarily detained some irregular migrants who arrived in Italy in 2011 following the "Arab Spring", without informing them of the reasons for deprivation of their liberty and without providing any remedy to reverse the decision[150].

However, this "salvific role" of the judiciary is increasingly threatened by an overall tendency to enforce migration policies by recurring to informal acts, such as communications, standard operational procedures and circulars, which are subtracted to both judicial and parliament control (Algostino 2018; Gjergji 2016a). As authors points out, the recourse to these informal acts *de facto* neutralize the judicial intervention and contributes to shape and reinforce a "special legal status" of migrants, where basic human rights and procedural guarantees are increasingly replaced by a system of contingent measures and exceptions (Ferrajoli 2010; Caputo 2007; Favilli 2017).

In particular, the numerous readmission agreements signed by Italy represent a good example of this approach (which is mirrored at the EU level by the EU-Turkey agreement). In breach of national and international standards (Favilli 2005)[151], more than 30 agreements have been signed by Italy between 1990 and 2014 (Algostino 2018; Raffaelli 2017), with the aim of favouring repatriations and externalizing borders. These agreements jeopardize the principle of *non-refoulement* and the right not to be exposed to the real risk of "torture or to inhuman or degrading treatment or punishment" as states by art. 3 of the European Conventions on Human rights.

The "code of conduct for the NGOs operating in the rescue of migrants at sea", recently issued by the Italian Ministry of the Interior in consultation with the European Commission, goes in the same direction. It aims at regulating the search and rescue operations in the Mediterranean conducted by non-governmental actors, but it has restricted and delegitimized the role of NGOs, which proved to be crucial in saving many lives in the past few years (ASGI 2017a; MSF 2017a).

Parliamentary control has been *de facto* progressively eliminated following the same strategy of bypassing the use of ordinary legislation for ruling over migration. Also the recent Law-Decree No. 47/2017 has been approved *de facto* out of the Parliamentary control, as the cabinet asked a vote of confidence on the bill, thus preventing any possibility for amending it.

[149] *Tarakhel v. Switzerland*, Application no. 29217/12, Council of Europe: European Court of Human Rights, 4 November 2014, available at: http://www.refworld.org/cases,ECHR,5458abfd4.html

[150] *Khlaifia and Others v. Italy*, Application no. 16483/12, Council of Europe: European Court of Human Rights, 15 December 2016, available at: http://www.refworld.org/cases,ECHR,58529aa04.html

[151] International agreements in the immigration field raise several concerns about their constitutional legitimacy (with specific reference to arts. 80 and 87(8) of the Constitution. Whereas art. 80 is mentioned below, art. 87(8) on the Presidential Duties stipulates that the President of the Republic "accredits and receives diplomatic representatives, ratifies international treaties once they are authorized by parliament, provided parliamentary approval is necessary". Furthermore, these international agreements also breache art. 10(2) of the Constitution (for further details see Ch. 3).

In the case of the bilateral agreements, the recent memorandum Italy – Libya has once again excluded Parliament, and a number of MPs lodged a recourse at the Constitutional Court with the allegation of breach of art. 80 of the Italian Constitution, which states that "Parliament shall authorise by law the ratification of such international treaties as have a political nature, require arbitration or a legal settlement, entail change of borders, spending or new legislation"[152].

On another front, as already mentioned[153], a smaller level of formality also features the judicial procedure for undocumented migrants (International Commission of Jurists 2014).

To conclude, distilling the main themes of this research, what emerges is that after decades of emigration, Italy became the gateway to the European Union and an important focal point for migratory movements. However, statistics provide a more complex framework, which demystifies common myths and traditional perceptions on immigration in Italy.

Indeed, contrarily to the narrative of the "invasion of foreigners", as already illustrated, the number of foreign resident population in Italy results in line with the European context, representing the 8,32% of the total population, similar to the United Kingdom (8,4%), higher than France (6,6%) but less than Germany (9,3%), Belgium (11,6%), Ireland (11,9%) and Austria (13,2%).

Furthermore, data reveal that the growing presence of foreign population on the Italian territory is not exclusively related to current international conflicts or crisis but also to a slow process of stabilisation of the migratory phenomenon of the last two decades. The increasing number of non-EU citizens acquiring the Italian nationality, with 184.638 new citizens only in 2016, represents a clear evidence of this process. Another important data to understand the Italian migratory experience is the number of permits to stay issued for family reasons, which exceed more than a half the overall amount of permits granted for asylum and humanitarian reasons. This circumstance contributes to qualify migration in Italy as a structural phenomenon. However, at the same time, it marks the closure of other important channels to obtain a permit to stay (in 2016, entry quota for non-seasonal workers was solely 3.600).

Against this backdrop, the analysis of the Italian legal and policy framework has revealed that important safeguards are provided for foreigners, at constitutional and legislative level, in line with international standards on human rights. Concerning the constitutional provision, the personalist principle enshrined in art. 2 of the Italian Constitution recognises the inviolable rights to foreigners. Equally, the principle of anti-discrimination proclaimed by art. 3 of the Constitution is systematically recalled throughout the Consolidated law on Immigration.

However, this high threshold of safeguards is not efficiently implemented. The right of asylum, laid down in art. 10 of the Constitution, still lacks of a comprehensive and organic regulation. Meanwhile, the legal framework on migration remains disharmonised and the Consolidated Law on Immigration is affected by fragmented normative stratifications and lack of effective instruments of migration's planning and management.

[152] The recourse has been submitted on the 19 February 2018. Further details can be found on the following page of ASGI: https://www.asgi.it/wp-content/uploads/2018/02/2018_2_27_ASGI_Libia_Italia_scheda-tecnica.pdf

[153] See for further details Ch. 5.4

Furthermore, these important safeguards have been increasingly threatened by recent refugee-crisis driven reforms, culminated in the 2017 Minniti Decree. Under the pressure of unprecedented arrivals on the one hand, and the growing "security-demands" on the other, a regressive approach has dominated the recent normative interventions. This reflected a broader European trend, where the emphasis on "the border management" and "security approach" is twined with persistent gaps in term of harmonization and fair burden sharing.

Overall, the absence of solid, structured pathways to systematically manage the migration phenomenon is a constant theme of migration governance in Italy. This can be partially explained with the multiplicity of institutional actors involved in the Italian migration system. As already highlighted, in Italy, the management of asylum and migration does not fall under the responsibility of a single governmental body. Rather, it is scattered among different institutional entities. Each entity (with its own mandate and mission) is competent and responsible for single apparatus of the complex migration machine. The compresence between the Ministry of the Interior and the Ministry of Labour, which share key aspects of the migratory policies, clearly exemplifies this.

The gap of governance at the central level has been filled from time to time by different actors, such as local municipalities (especially in the context of reception), the third sector and the judiciary. On the positive side, this has encouraged progressive legislations at local level and the wide mobilization of civil society in support of foreigners' integration. Meanwhile, as already mentioned, courts have often questioned regressive national legislation and the Constitutional Court has been crucial in the process of aligning the asylum national legislation to the supranational and constitutional principles.

These interventions nevertheless, the lack of coordination and monitoring at central level, have led to a sheer fragmentation and uncertainty dominates the legal status of foreigners throughout the country. Fundamental social rights are not always granted at the same conditions of Italian citizens and some social welfare allowances can be obtained only through the interventions of the courts. Standards of care and assistance for asylum seekers and refugees vary a lot between the different centres of accommodation and the enjoyment of basic rights becomes "a matter of luck" (Oxfam 2017). As a result, harsh living conditions in overcrowded self-organized settlement, illegal labour and exploitation represent a frequent outcome of the absence of efficient services supporting access to housing, employment, and more broadly integration (Council of Europe, Commissioner for Human Rights 2011; UN Human Rights Council 2014).

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Appendices

ANNEX I: OVERVIEW OF THE LEGAL FRAMEWORK ON MIGRATION, ASYLUM AND RECEPTION CONDITIONS

Legislation title (original and English) and number	Date	Type of law	Object	Link/PDF
Law No. 47/2017 "Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati" "Provisions on protection measures for unaccompanied foreign minors"	21/04/2017	Law	Unaccompanied foreign minors	http://www.gazzettaufficiale.it/eli/id/2017/04/21/17G00062/sg
Ministry of the Interior Decree 07.03.2017 "Nuovo schema di capitolato per la fornitura di beni e servizi relativi alla gestione e al finanziamento delle strutture di accoglienza dei migranti" "New Contract specifications: Supply of good and services for the management and functioning of the reception centres"	07/03/2017	Ministerial Decree	No the only one manager Batch separation (i.e. cleanliness and hygiene, food, good supply) – however this rule does not apply to centres which can host less than 300 persons More monitoring and inspection powers	http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/bandi-gara/fornitura-beni-e-servizi-relativi-alle-strutture-dei-centri-accoglienza
Decree Law No. 13/2017 (converted into Law, after amendments, by Law No. 46/2017)	17/02/2017	Law Decree	Measures for simplifying and speeding-up the	http://www.gazzettaufficiale.it/eli/id/2017/02/17/17G00026/sg

"Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonche' per il contrasto dell'immigrazione illegale" "Urgent measures for accelerating the proceedings related to the international protection, as well as for fighting against illegal immigration"			procedure of international protection Measures for accelerating the identification and the status determination of non-EU citizens and for fighting against illegal immigration	
Circolare del Ministero dell'Interno 11.10.2016 "Regole per l'avvio di un sistema di ripartizione graduale e sostenibile dei richiedenti asilo e dei rifugiati su territorio nazionale attraverso lo SPRAR" Ministry of Interior Circular of 11.10.2016 on Rules for starting of a gradual and sustainable distribution system for asylum seekers and refugees on the national territory through the SPRAR "	11/10/2016	Circular of the Ministry of the Interior	Operational plan aimed at realizing a sustainable reception system equally distributed between the regions and local municipalities, with the exemption of local municipalities already involved in the SPRAR metwork	http://www.immigrazione.biz/upload/circolare%20_ministero_interno_11_ottobre_2016_sprar.pdf
Ministry of the Interior Decree No. 10.08.2016 "Modalita' di accesso da parte degli enti locali ai finanziamenti del Fondo nazionale per le politiche ed i servizi dell'asilo per la predisposizione dei servizi di accoglienza per i richiedenti e i	10/08/2016	Ministerial Decree	Guidelines for the applications to the National Fund for the asylum policies and services	http://www.gazzettaufficiale.it/eli/id/2016/08/27/16A06366/sg

beneficiari di protezione internazionale e per i titolari del permesso umanitario, nonche' approvazione delle linee guida per il funzionamento dello SPRAR" "Access of municipalities to the National Fund for Asylum (FNSA) for the accommodation of asylum seekers, international and beneficiaries of humanitarian protection; guidelines for SPRAR"			Guidelines concerning the reception services provided by the SPRAR	
Circolare del Servizio Centrale Sprar: Tempi di accoglienza all'interno dello SPRAR Circular of the Central Service for Sprar: time limits of accommodation in Sprar	07/07/2016	Circular of the SPRAR	Asylum seekers have the right to stay in the SPRAR accommodation until the Territorial Commission releases the decision. In case of positive decision, the refugee can prolongs the stay until 6 months. In case of negative decision, if the asylum seeker lodges an appeal, the staying is extended by the end of the judicial procedure.	https://www.asgi.it/wp-content/uploads/2016/07/Servizio-centrale-srar-accoglienza-termini-luglio-2016.pdf
Circolare del Ministero dell'Interno 06.10. 2015 "Decisioni del Consiglio europeo n. 1523 del 14 settembre 2015 e n. 1601 del 22 settembre 2015 per istituire misure	06/10/2015	Circular of the Ministry of the Interior	Launch of the relocation procedure	https://www.asgi.it/wp-content/uploads/2015/11/2015_Ministero_Interno_14106_6-_10_accoglienza.pdf

temporanee nel settore della protezione internazionale a beneficio dell'Italia e della Grecia – Avvio della procedura di relocation Decision of the European Council No. 1523 of 14 September 2015 and Decision No. 1601 of 22 September 2015 on relocation procedure				
Decreto Legislativo n. 142/2015 "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." Legislative Decree 142/2015 "Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection."	18/08/2015	Legislative Decree	It is the so called "reception-decree", establishing rules, criteria and standards for the new reception system. After a first phase of first aid and assistance, reception is organised in a two-tier system, with facilities of first line reception, activated by the Ministry of the Interior, and second line reception facilities within the SPRAR network, providing for a longer-term assistance.	http://www.gazzettaufficiale.it/eli/id/2015/09/15/15G00158/sg
Decreto Legislativo n. 24/2014 "Prevenzione e repressione della tratta di esseri umani e protezione delle vittime", in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla	04/03/2014	Legislative Decree	It addresses the specific situation of vulnerable persons: minors, unaccompanied	http://www.gazzettaufficiale.it/eli/id/2014/03/13/14G00035/sg

repressione della tratta di esseri umani e alla protezione delle vittime" Legislative Decree no. 24/2014 "Prevention and repression of trafficking in persons and protection of the victims", implementing Directive 2011/36/EU"			minors, people with psychic diseases, disabled, the elderly, women (particularly pregnant women), single parent with children, survivors of torture or other severe forms of violence)	
Decreto-Legge n. 89/2011 "Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari" convertito nella Legge n. 129/2011 Decree-Law No. 89/2011 "Urgent provisions for the full application of the Directive 2004/38/EC on the free movement of EU citizens and for the transposition of the Directive 2008/115/EC on returning illegally staying third-country nationals" implemented by Law No. 129/2011	23/06/2011	Decree-Law	The foreign who receives an expulsion measure, can ask a term for the voluntary return. When the foreign has to be expelled with a forced accompaniment, s/he can ask for access to alternative measures to detention, instead to be detained in an identification and expulsion centre (CIE)	http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2011;89
Law 94/2009 Legge 15 luglio 2009, n. 94 "Disposizioni in materia di sicurezza pubblica" (Pacchetto Sicurezza)	08/08/2009	Law	It introduces the "aggravating circumstance of clandestinity" and the crimes of "clandestinity"	http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2009-07-24&atto.codiceRedazionale=009G0096&queryString=%3FmesePrOvvedimento%3D%26formType%

"Norms on public security" (Security Package)				3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D94%26testo%3D%26annoProvvedimento%3D2009%26giornoProvvedimento%3D&currentPage=1
Decreto Legislativo n. 25/2008 "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" così come modificato dal Decreto legislativo n. 159/2008 e 142/2015 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" as amended by Legislative Decree No. 159/2008 and 142/2015	28/01/2008	Legislative Decree	It is the so-called "Procedure Decree" Basic principles and guarantees (access to the procedure, the examination of applications, decisions, the personal interview, composition and training of Territorial Commission, legal assistance, guarantees for unaccompanied minors) Procedures at first instance Procedures for the withdrawal of international protection Appeals procedures	http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2008-02-16&atto.codiceRedazionale=008G0044&queryString=%3FmesePrOvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D25%26testo%3D%26annoProvvedimento%3D2008%26giornoProvvedimento%3D&currentPage=1

Decreto Legislativo n. 251/2007 "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", così come modificato dal Decreto Legislativo n. 18/2014 "Attuazione della direttiva 2011/95/UE" "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" as amended by Legislative Decree No. 18/2014 "Implementation of Directive 2011/95/EU"	19/11/2007	Legislative Decree	It is the so-called "Qualification Decree" Assessment of applications for international protection Refugee status Subsidiary protection Content of international protection <u>Main amendments of the Legislative Decree No. 18/2014:</u> Beneficiaries of subsidiary protection are equalized to refugees with reference to: family reunification, access to the public sector and housing services The duration of the residence permit for beneficiaries of subsidiary protection	http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2008-01-04&atto.codiceRedazionale=007G0259&queryString=%3FmesePrOvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroProvvedimento%3D251%26testo%3D%26giornoProvvedimento%3D%26annoProvvedimento%3D2007&currentPage=1

			increases from three at five years. A national plan shall be adopted every two years to achieve the effective integration of beneficiaries of international protection	
Decreto del Presidente della Repubblica n. 394/1999 "Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero", così come modificato dal Decreto del presidente della Repubblica n. 334/2004 “in materia di immigrazione” 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 the Presidential Decree No. 334/2004 “on immigration”	31/08/1999	Presidential Decree	Measures for the Consolidated Act implementation General provisions Entry and stay Expulsion and detention Humanitarian provisions Labour regulation Provisions on health-care, education and social integration	http://www.gazzettaufficiale.it/eli/id/1999/11/03/099G0265/sg
Decreto Legislativo No. 286/1998 “Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero” così come	25/07/1998	Consolidated act	General principles Provisions on entry, stay and exit from Italy Labour regulation	http://www.altalex.com/documents/codici-altalex/2014/04/09/testo-unico-sull-immigrazione

modificato dalla Legge 30 luglio 2002, n. 189 “Modifica alla normativa in materia di immigrazione e di asilo” o “Legge Bossi-Fini” Legislative Decree No. 286/1998 “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms” as amended by the Law No. 189/2002 “concerning amendments on immigration and asylum laws”			Right to family unity and children protection Provisions on health-care, education, accommodation, participation to the public life and social integration	
Legge n. 722/1954 “Ratifica ed esecuzione della Convenzione relativa allo status dei rifugiati firmata a Ginevra il 28 luglio 1951” Law 722/1954 “ratifying and giving execution to the 1951 Geneva Convention”	24/07/1954	Law	Ratification of the Geneva Convention	

ANNEX II: LIST OF AUTHORITIES INVOLVED IN THE MIGRATION GOVERNANCE

Authority (English and original name)	**Tier of government** (national, regional, local)	**Type of organization**	**Area of competence in the fields of migration and asylum**	**Link**
Ministry of the Interior – Department of Civil liberties and immigration (Ministero dell'Interno)	Central government	The department has to guarantee the civil rights' protection, including civil rights concerning asylum and immigration, citizenship and religious confessions. The organizational chart is available here: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/organigramma.pdf	It participate to identify the national policy on immigration and asylum It collect data on disembarked migrants (adults and unaccompanied minors) and on migrants accommodated in reception accommodations It manage integration projects through the European Asylum Migration and Integration Fund (AMIF) It is responsible for the first reception and assistance of asylum seekers It provides first aid when migrants disembark or are intercepted by the authorities in the national territory	http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/dipartimento
Prefectures (Prefetture)	Local offices, at the provincial level, of the central	The Prefecture has the following responsibilities: guaranteeing the	Identification of reception centres for asylum seekers	http://www.interno.gov.it/it/ministero/uffici-territorio

	government (the Ministry of the Interior)	administrative activity of the national pheriperical offices; Providing for relevant functions in the fields of public order and security, immigration, civil protection, relationship with the local municipalities, social mediation and the system of administrative sanctions	It presides over the activity of the Territorial Commission In each Prefecture, there is an Immigration Office (Sportello Unico per l'Immigrazione), competent to release the entry clearance (nulla-osta) for family reunification, for the recruitment of foreign workers within the 'immigration quotas'. The Sportello Immigrazione is also competent to convert the residence permit for study, training or seasonal work purposes in a residence permit for work purposes. Coordination of the Territorial Council for Immigration	(each Prefecture has its own web page available here http://www.prefettura.it/portale/generali/37109.htm)
Police Headquarters (Questure)	Local offices, at the provincial level, of the central government (the Ministry of the Interior – Department of Public security)	The Questura has the responsibility to guarantee the public order and security	Identification and fingerprinting of foreign citizens Registration of the asylum application Issuance and renewal of residence permits	http://www.interno.gov.it/it/ministero/uffici-territorio (each Police headquarter has its own web page available here http://questure.poliziadistato.it/)

Board police (polizia di frontiera)	This body is under the responsibility of the Ministry of the Interior – Department of public security	It comprehends offices at seaports, at ground border crossing and at airports.	Check of the travel documents Registration of the asylum application	https://www.poliziadistato.it/articolo/23463
Territorial Commissions (Commissioni Territoriali)	This authority is under the responsibility of the Ministry of the Interior – Department of civil liberties and immigration	Currently, there are 20 Territorial Commission operating in Italy. Each Territorial Commission is composed of 4 members (a representative of the Prefecture; a representative of the State Police; a representative of the local municipality; a representative of UNHCR). This authority is competent to make a decision on the asylum application at first instance.	Refugee status determination (first instance)	http://www.interno.gov.it/sites/default/files/allegati/commissioni_e_sezioni_decreto_costitutivo_situazione_aggiornata_al_11_09_2017.pdf
National Commission (Commissione Nazionale)	This authority is under the responsibility of the Ministry of the Interior – Department of civil liberties and immigration	It is composed of representatives of the Ministry of the Interior, the Ministry of Foreign Affairs, the presidency of the Council of ministers and UNHCR.	Coordination and orientation of the Territorial Commissions' activity Training and updating of the Territorial Commissions' members	http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/commissione-nazionale-diritto-asilo

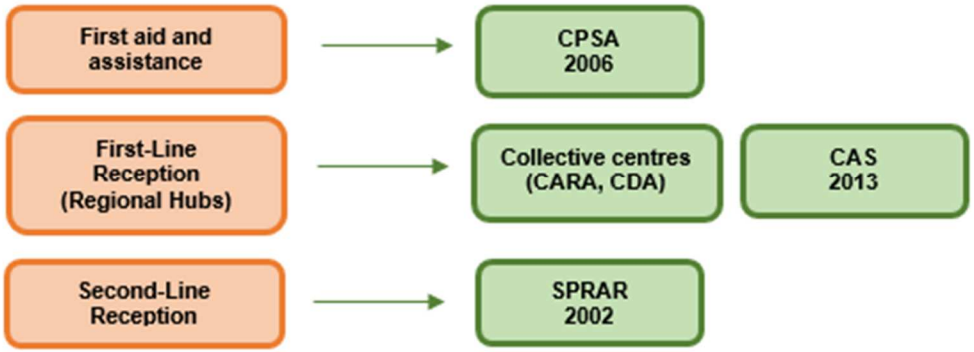
			Collection of statistics on the Territorial Commissions' activity Collection of data on asylum applications and decisions of the Territorial Commissions Refugee status withdrawal and cessation National focal point for the information exchange with the EU Commission and the competent authorities of other EU member states	
Dublin Unit (Unità Dublino)	This authority is under the responsibility of the Ministry of the Interior – Department of civil liberties and immigration	Since 2014 the Dublin Unit have been collaborated with EASO	It is competent to determine the EU member state responsible for examining an asylum application lodged in one of the EU member states by a non-EU citizen It is responsible to implement the relocation Programme	http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/unita-dublino
General Directorate of Immigration and Integration Policies at the Ministry of Labour and Social Policies (Direzione Generale dell'Immigrazione presso il	This authority is under the responsibility of the Ministry of Labour	It is composed of 3 divisions: 1) general affairs and management of the financial resources; 2) integration policies and foreign minors protection; 3) migration policies	Planning, management and monitoring of migration quotas Coordination of the social integration policies	http://www.lavoro.gov.it/ministro-e-ministero/Il-ministero/Organizzazione/Pagine/DG-immigrazione-e-delle-politiche-

Ministero del Lavoro e delle Politiche sociali)			Management of the financial resources for migration policies Coordination of the protection policies for unaccompanied foreign minors: It is responsible for the census of unaccompanied intercepted at the border or inland It is competent to promote the family tracing of unaccompanied foreign minors in the country of origin or in a third country, with the collaboration It releases an opinion about the social integration of unaccompanied foreign minors which is necessary to convert the residence permit It is competent for the assisted-return of unaccompanied foreign minors	di-integrazione.aspx
Local municipalities	Local government		Together with non-profit organizations, on a voluntary basis, local municipalities participate to the SPRAR network which cater for high-qualified reception services	See ANCI (Association of Italian local municipalities) which involves around 7,300 Italian local

			Local municipalities are responsible for taking unaccompanied foreign minors in charge and providing them with accommodation in a safe place	municipalities representing about the 90% of the entire Italian population: http://www.anci.it/
Juvenile Court (Tribunale dei minorenni)	Judicial authority	It is a specialized court responsible to deal with civil, criminal and administrative cases relating to children. It is composed of 2 professional judges and 2 lay judges	It is responsible to give authorizations when particularly relevant actions should be put in place by guardians It is the authority responsible for the assisted return to the country of origin of unaccompanied foreign minors	https://giustizia.it/giustizia/it/mg_14_3_1.page;jsessionid=bRU5Kf2LD8nKnNVCZUwJRjGw?contentId=GLO52985&previsiousPage=mg_14_3
Guardianship Judge (Giudice tutelare)	Judicial authority	He is a magistrate present in any Tribunal with the competence to supervise guardianship and curatorship	He appoints the guardian and is the authority responsible for the guardianship of unaccompanied foreign minors. He has monitoring powers on the guardian's	
Public Prosecutor of the Juvenile Court (Procura della Repubblica presso il Tribunale dei Minorenni)	Judicial authority	He performs the public prosecutor's functions in any Juvenile Court	It has inspective powers on the reception conditions of unaccompanied foreign minors and it is responsible to ratify the reception measures provided to them It is the authority responsible to activate the age	https://giustizia.it/giustizia/it/mg_14_3_1.page?contentId=GLO112225&previsiousPage=mg_14_3

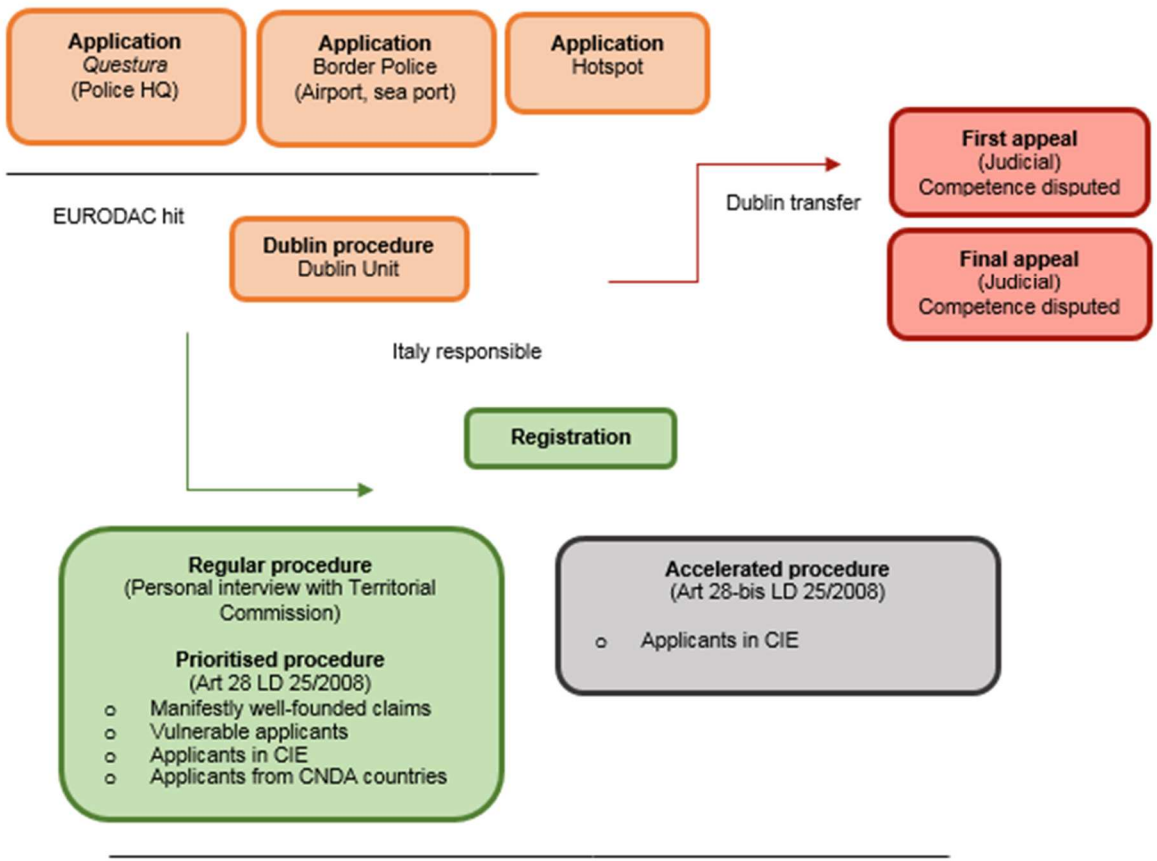
			assessment procedure when there is a founded doubt about the child's age	

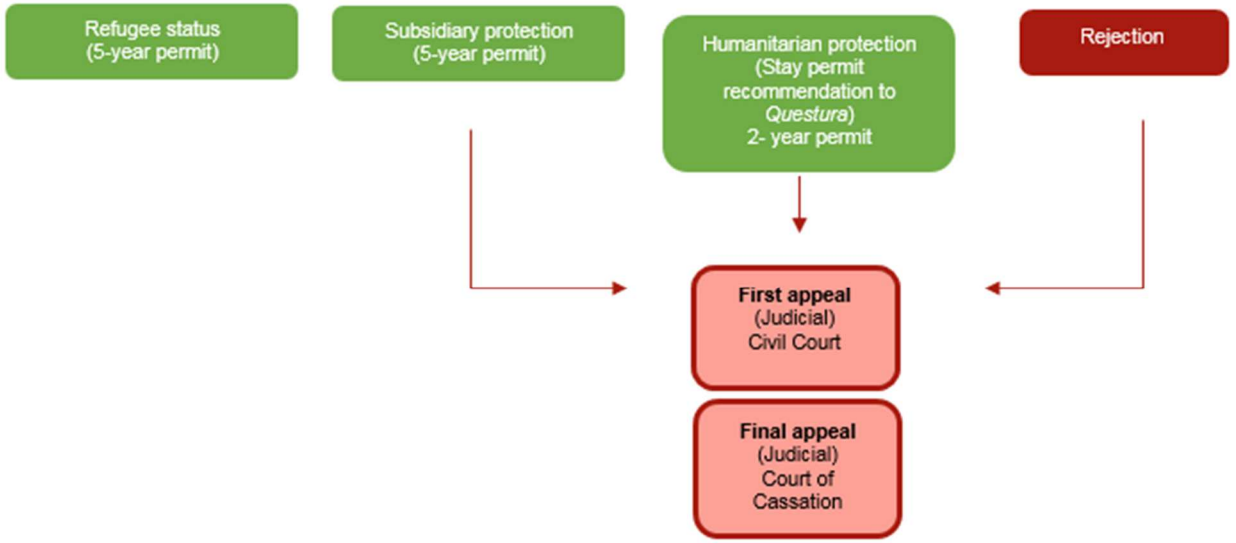
ANNEX III: FLOW CHART OF THE NATIONAL RECEPTION SYSTEM



Source: AIDA, Asylum Information Database, Italy: Country Report, 2017, p. 59, available at http://www.asylumineurope.org/reports/country/italy/reception-conditions/short-overview-italian-reception-system

ANNEX IV: FLOW CHART OF THE INTERNATIONAL PROTECTION PROCEDURE





Source: AIDA, Asylum Information Database, Italy: Country Report, 2017, p. 15, available at http://www.asylumineurope.org/reports/country/italy/asylum-procedure/general/flow-chart

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