

Country Report: Italy



2019
Update



Acknowledgements & Methodology

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

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

The information in this report is up-to-date as of 31 December 2019, unless otherwise stated.

The Asylum Information Database (AIDA)

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



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



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Glossary & List of Abbreviations

Decree Law	Regulatory act which provisionally enters into force but requires the enactment of a legislative act in order to have definitive force. This process is described as “implementation by law” (<i>conversione in legge</i>), and it is possible for the Decree Law to undergo amendments in the process of enactment of the law.
Fotosegnalamento	Taking of photographs and fingerprinting upon identification and registration of the asylum application
Nulla osta	Certification of the absence of impediments to contracting a marriage
Questore	Chief of the Immigration Office of the Police
Questura	Police Office
Verbalizzazione	Lodging of the asylum application through an official form entitled “C3”
AMIF	Asylum, Migration and Integration Fund
ANCI	National Association of Italian Municipalities Associazione Nazionale Comuni Italiani
ASGI	Association for Legal Studies on Immigration Associazione per gli Studi Giuridici sull’Immigrazione
ASL	Local Health Board Azienda Sanitaria Locale
CAF	Fiscal Assistance Centre Centro assistenza fiscale
CARA	Centre for the Reception of Asylum Seekers Centro di accoglienza per richiedenti asilo
CAS	Emergency Accommodation Centre Centro di accoglienza straordinaria
CDA	Accommodation Centre for Migrants Centro di accoglienza
CIE	Identification and Expulsion Centre Centro di identificazione ed espulsione
CIR	Italian Council for Refugees Consiglio Italiano per i Rifugiati
CNDA	National Commission for the Right of Asylum Commissione nazionale per il diritto di asilo
CPSA	First Aid and Reception Centre Centro di primo soccorso e accoglienza
CSM	High Judicial Council Consiglio Superiore della Magistratura
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Committee against Racism and Intolerance
EDAL	European Database of Asylum Law
INAIL	National Institute for Insurance against Accidents at Work Istituto Nazionale Assicurazione Infortuni sul Lavoro
INPS	National Institute of Social Security Istituto Nazionale di Previdenza Sociale
IOM	International Organisation for Migration
ISEE	Equivalent Economic Situation Indicator Indicatore della situazione economica equivalente
L	Law Legge
LD	Legislative Decree Decreto Legislativo
MEDU	Doctors for Human Rights Medici per I diritti umani
Mol	Ministry of Interior

MRCC	Maritime Rescue Coordination Centre
MSF	Médecins Sans Frontières
PD	Presidential Decree Decreto del Presidente della Repubblica
Rel	Income support Reddito di inclusione
SIMM	Society of Migration Medicine Società Italiana di Medicina delle Migrazioni
SOPs	Standard Operating Procedures
SPRAR	System of protection for asylum seekers and refugees Sistema di protezione per richiedenti asilo e rifugiati
SIPROIMI	System of protection for beneficiaries of international protection and unaccompanied minors Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati
TEAM	European Health Insurance Card Tessera europea di assicurazione malattia
TUI	Consolidated Act on Immigration Testo unico sull'immigrazione
VESTANET	Registration database for asylum applications

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Special protection	Rejection	Refugee rate	Subs. Prot. rate	Spec. Prot. rate	Rejection rate
Total	43,783	42,803	10,711	6.935	616	76,798	11%	7%	1%	81%

Breakdown by countries of origin of the total numbers

Nigeria	1,253	-	2,471	207	76	13,840	15%	1%	0%	83%
Pakistan	7,305	-	710	919	53	10,272	6%	8%	0%	85%
Bangladesh	1,340	-	279	140	73	7,663	3%	2%	1%	93%
Senegal	867	-	214	72	19	5,360	4%	1%	0%	94%
Gambia	-	-	280	59	24	4,041	6%	1%	1%	91%
Ukraine	1,775	-	105	338	39	3,586	3%	8%	1%	88%
Ivory Coast	407	-	342	82	21	3,319	9%	2%	1%	88%
El Salvador	2,520	-	700	897	5	1,581	22%	28%	0%	49%
Guinea	-	-	208	39	15	2,808	7%	1%	0%	91%
Morocco	1,510	-	153	22	13	2,336	6%	1%	1%	92%
Albania	1,547	-	95	13	5	1,491	6%	1%	0%	92%
Perù	2,445	-	119	24	1	1,172	9%	2%	0%	89%
Venezuela	1,544	-	447	981	6	111	29%	63%	0%	7%

Source: CNDA, available in Italian at: <https://bit.ly/2LczQZ3>: data include inadmissibility decisions, suspended decisions and non-reachability decisions.²

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

² The Procedure Decree states that when the applicant, before having been interviewed, leaves the reception centre without any justification or absconds from CPR or from hotspots, the Territorial Commission suspends the examination of the application on the basis that the applicant is not reachable (irreperibile).

Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
Total number of applicants	43,783	100%
Men	32,085	73%
Women	11,698	26%
Children	6,623	-
Unaccompanied children	659	1.5%

Source: Ministry of Interior, available in Italian at: <https://bit.ly/35LOIXH>

Comparison between first instance and appeal decision rates: 2019

Statistics on appeals are not available.

Overview of the legal framework

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

Title (EN)	Original Title (IT)	Abbreviation	Web Link
<p>Legislative Decree no. 286/1998 “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms”</p> <p><i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017</p> <p><i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018</p>	<p>Decreto legislativo 25 luglio 1998, n. 286 “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”</p> <p><i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46</p> <p><i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132</p>	<p>TUI</p> <p>Decree Law 13/2017</p> <p>Decree Law 113/2018</p>	<p>http://bit.ly/1PYQbyL (IT)</p> <p>https://bit.ly/2ltXe3Y (IT)</p> <p>https://bit.ly/2G8Bh7W (IT)</p>
<p>Legislative Decree no. 251/2007 “Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”</p> <p><i>Amended by:</i> Legislative Decree no. 18/2014</p>	<p>Decreto legislativo 19 novembre 2007, n. 251 “Attuazione della direttiva 2004/83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta”</p> <p><i>Modificato:</i> Decreto Legislativo 21 febbraio 2014, n. 18</p>	<p>Qualification Decree</p> <p>LD 18/2014</p>	<p>http://bit.ly/1FOscKM (IT)</p> <p>http://bit.ly/110ioRw (IT)</p>
<p>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”</p> <p><i>Amended by:</i> Legislative Decree no. 142/2015</p> <p><i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017</p> <p><i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018</p>	<p>Decreto legislativo 28 gennaio 2008, n.25 “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato”</p> <p><i>Modificato:</i> Decreto legislativo n. 142/2015</p> <p><i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46</p> <p><i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132</p>	<p>Procedure Decree</p> <p>Reception Decree</p> <p>Decree Law 13/2017</p> <p>Decree Law 113/2018</p>	<p>http://bit.ly/1PYQjOW (IT)</p> <p>https://bit.ly/2XbAeem (IT)</p> <p>http://bit.ly/1Mn6i1M (IT)</p> <p>https://bit.ly/2ltXe3Y (IT)</p> <p>https://bit.ly/2G8Bh7W (IT)</p>
<p>Legislative Decree no. 142/2015 “Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection.”</p>	<p>Decreto legislativo 18 agosto 2015, n 142 “Attuazione della direttiva 2013/33/UE recante norme relative all’accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale.”</p>	<p>Reception Decree</p>	<p>http://bit.ly/1Mn6i1M (IT)</p>

<i>Amended by:</i> Legislative Decree 220/2017 <i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018	<i>Modificato:</i> Decreto legislativo 22 dicembre 2017, n. 220 <i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132	LD 220/2017 Decree Law 113/2018	http://bit.ly/2CJXJ3s (IT) https://bit.ly/2G8Bh7W (IT)
Legislative Decree no. 150/2011 “Additional provisions to the Code of Civil Procedure concerning the reduction and simplification of cognition civil proceedings, under Article 54 of the law 18 June 2009, n. 69”	Decreto legislativo 1 Settembre 2011, n. 150 “Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell'articolo 54 della legge 18 Giugno 2009, n. 69”	LD 150/2011	http://bit.ly/2jXfdog (IT)
Legislative Decree no. 24/2014 “Prevention and repression of trafficking in persons and protection of the victims”, implementing Directive 2011/36/EU”	Decreto legislativo 4 marzo 2014, n. 24 “Prevenzione e repressione della tratta di esseri umani e protezione delle vittime”, in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime”	LD 24/2014	http://bit.ly/1FI2OsN (IT)
Law no. 47/2017 “Provisions on the protection of foreign unaccompanied minors”	Legge di 7 aprile 2017, n. 47 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati”	L 47/2017	http://bit.ly/2sYgFd8 (IT)

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

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

Title (EN)	Original Title (IT)	Abbreviation	Web Link
Presidential Decree no. 394/1999 “Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms”	Decreto del Presidente della Repubblica del 31 agosto 1999, n. 394 “Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero”	PD 394/1999	http://bit.ly/1M33qlX (IT)
<i>Amended by:</i> Presidential Decree no. 334/2004 “on immigration”	<i>Aggiornato con le modifiche apportate dal:</i> Decreto del Presidente della Repubblica 18 ottobre 2004, n. 334 “in materia di immigrazione”	PD 334/2004	http://bit.ly/1KxDnsk (IT)

Presidential Decree no. 21/2015 on "Regulation on the procedures for the recognition and revocation of international protection"	Decreto del Presidente della Repubblica del 12 gennaio 2015 "Regolamento relativo alle procedure per il riconoscimento e la revoca della protezione internazionale a norma dell'articolo 38, comma 1, del decreto legislativo 28 gennaio 2008, n. 25."	PD 21/2015	http://bit.ly/1QjHx8R (IT)
CNDA Circular no. 6300 of 10 August 2017 on "Notifications of the acts and measures of the Territorial Commissions and of the National Commission for the right to asylum"	Circolare della Commissione Nazionale per il diritto d'asilo n. 6300 del 10 agosto 2017 "Notificazioni degli atti e dei provvedimenti delle commissioni territoriali e della Commissione Nazionale per il diritto d'asilo"	CNDA Circular 6300/2017	http://bit.ly/2FwCDZj (IT)
CNDA Circular no. 6425 of 21 August 2017, Request clarifications art. 26, (5) Legislative Decree no. 25/2008, as amended by law n. 47/2017	Circolare della Commissione nazionale per il diritto d'asilo n. 6425 del 21 agosto 2017, Richiesta chiarimenti art. 26, comma 5, d.lgs. n. 25/2008, come modificato dalla legge n. 47/2017.	CNDA Circular 6425/2017	http://bit.ly/2Fn38Um (IT)
Ministry of Interior Circular no. 83774 of 18 December 2018 "Decree Law 113/2018 implemented by Law 132/2018"	Circolare del Ministero dell'Interno del 18 dicembre 2018, n. 83774 "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018"	Circular 83774/2018	http://bit.ly/2XTY3Ze (IT)
Ministry of Interior Circular no. 22146 of 27 December 2018 "Decree Law 113/2018 implemented by Law 132/2018"	Circolare del Ministero dell'Interno del 27 dicembre 2018, n. 22146 "Decreto Legge 2018 convertito in L. 132/2018"	Circular 22146/2018	http://bit.ly/2T0Ws04 (IT)
Ministry of Interior Circular no. 1 of 2 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 2 gennaio 2019, n. 1 "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"	Circular 1/2019	https://bit.ly/2Ghrloj (IT)
Ministry of Interior Circular of 14 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 14 gennaio 2019, "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"		https://bit.ly/2P7G5OZ (IT)
Ministry of Interior Circular no. 10380 of 18 January 2019 "Decree Law 113/2018 implemented by Law 132/2018, applicable profiles"	Circolare del Ministero dell'Interno del 18 gennaio 2019, n. 10380 "Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi"	Circular 10380/2019	https://bit.ly/2VGH7UE (IT)
"Tender specifications scheme approved by Ministerial Decree of 20 November 2018 to be used for the supply of goods and services for the management and operation of the first reception centres, as per Decree Law no. 451 of 30 October 1995, implemented by Law no. 563 of 29 December 1995 for the reception centres referred to in Articles 9 and 11 of Legislative Decree 142/2015 of 18 August 2015, and for the centres referred to in Article 10-ter and 14 of Legislative Decree 286/1998 of 25 July 1998, and subsequent modifications"	"Schema di capitolato di gara di appalto, approvato con Decreto Ministeriale di 20 novembre 2018, riguardante la fornitura di beni e servizi per la gestione e il funzionamento dei centri di prima accoglienza, di cui al decreto legge 30 ottobre 1995, n.451, convertito dalla legge 29 dicembre 1995 n. 563, dei centri di accoglienza di cui agli articoli 9 e 11 del d.lgs. 18 agosto 2015, n. 142 e dei centri di cui all'articolo 10 – ter e 14 del d.lgs. 25 luglio 1998, n. 286 e successive modificazioni, con relativi allegati"	Capitolato	http://bit.ly/2F8vXIC (IT)

Ministry of Interior Decree, 5 August 2019, published on 7 September 2019, Identification of border or transit areas for the implementation of the accelerated procedure for the exam of international protection applications	Decreto del Ministero dell'Interno del 5 Agosto 2019, pubblicato sulla Gazzetta Ufficiale il 7 Settembre 2019, Individuazione delle zone di frontiera o di transito ai fini dell'attuazione della procedura accelerata di esame della richiesta di protezione internazionale.	MOI Decree 5 August 2019	https://bit.ly/3fzKFIY
Ministry of Foreign Affairs Decree, 4 October 2019, Identification of Safe Countries of origin, according to Article 2-bis of the Procedure Decree published on 7 ottobre 2019 n. 235.	Ministero Degli Affari Esteri e della Cooperazione Internazionale, 4 Ottobre 2019, Individuazione dei Paesi di origine sicuri, ai sensi dell'articolo 2-bis del decreto legislativo 28 gennaio 2008, n. 25, G.U. 7 ottobre 2019 n. 235.	Ministry of Foreign Affairs Decree 4 October 2019	https://bit.ly/2yv5PB3
CNDA Circular no. 8864 of 28 October 2019- Safe countries of origin list Article 2 bis LD 25/2008: accelerate procedure Articles 28, 28 bis, 28 ter	Circolare della Commissione Nazionale per il diritto di asilo, Prot. 886 del 28 Ottobre 2019, Lista dei paesi di origine sicuri ex art. 2 bis d.lgs 25/2008; applicazione delle procedure accelerate ex art. 28, 28 bis 28 ter	CNDA Circular, no 8864 of 28 October 2019	https://bit.ly/3dweqlt
CNDA Circular no. 9004 of 31 October 2019, Safe countries of origin - transmission of country information files - accelerated procedure	Circolare della Commissione Nazionale per il diritto di asilo, Prot. 9004 del 31 ottobre 2019 – Lista dei paesi di origine sicuri- trasmissione “Schede Paesi” – procedura accelerata	CNDA Circular, no. 9004 of 31 October 2019	https://bit.ly/3cgmQ0b
Ministry Of Interior Department of Civil Liberties and Immigration, Circular n. 8560 16 October 2019, implementation of the accelerated procedure ruled by Article 28 bis Procedure Decree	Circolare del Ministero dell'Interno, Dipartimento delle Dipartimento Libertà Civili e Immigrazione n. 8560 del 16 ottobre 2019, attuazione delle procedure accelerate ex art. 28 bis d.lgs 28 gennaio 2008, n. 25	MOI Circular 16 October 2019	https://bit.ly/2WbOvtI
Mol Department of Public Security, Central Directorate of Immigration and Border Police, Circular n. 400/C/II Div. 18 October 2019, implementation of the accelerated procedure ruled by Article 28 bis Procedure Decree	Circolare del Ministero dell'Interno, Dipartimento di Pubblica Sicurezza, Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere n. 400/C/II Div. del 18 ottobre 2019, “attuazione delle procedure accelerate ex art. 28 bis d.lgs 28 gennaio 2008, n. 25	MOI Circular 18 October 2019	https://bit.ly/2YK3LQ1
Decree of the Ministry of Interior, 18 November 2019, Modalities for local authorities to access funding from the National Fund for Asylum Policies and Services and guidelines for the functioning of the Protection System for International Protection Holders and for Unaccompanied Foreign Minors (Siproimi)	Decreto del Ministero dell'Interno del 18 Novembre 2019, Modalita' di accesso degli enti locali ai finanziamenti del Fondo nazionale per le politiche ed i servizi dell'asilo e di funzionamento del Sistema di protezione per titolari di protezione internazionale e per i minori stranieri non accompagnati (Siproimi)	Mol Decree 18 November 2019	https://bit.ly/35FVtud

Overview of the main changes since the previous report update

The previous report update was published in **April 2019**.

Covid 19 related measures

Due to the outbreak of Covid-19 in Italy, the Government adopted temporary measures, also affecting directly or indirectly asylum procedures. As of 27 April 2020, following measures were applied:

- ❖ **Arrival in Italy:** On 7 April 2020, Italy issued a Ministerial Decree in which it declared its ports unsafe.³ However this does not negate Italy's international and internal obligations on potential asylum seekers' protection and search and rescue at sea.⁴

People arriving in Italy are subject to fiduciary isolation for a period of 14 days, following which they are entitled people to access reception facilities for asylum seekers (Ministry of Interior's Circular of 1 April 2020).

- ❖ **Access to the asylum procedure:** Registration activities have not been suspended. Nevertheless, the closure of the Questure ordered by the Ministry of Interior's (MoI) Circulars have caused difficulties, delays and in many cases the impossibility of accessing the asylum procedure at all.⁵

Nevertheless, some Civil Courts, such as the one of Rome, ordered the Questura to register the asylum application.⁶

- ❖ **Examination of applications for international protection:** Territorial Commissions have suspended interviews until 13 April 2020. The suspension was then extended without exact indications as regards the restart date. Notifications on the outcome of the asylum applications are not suspended.

Terms for appeals, included those to lodge against the Territorial Commissions decisions, are suspended until 11 May 2020.⁷

- ❖ **Dublin procedure:** Through a Circular Letter of 25 February 2020, the Italian Dublin Unit informed the Dublin Units that due to the ongoing health emergency all incoming and outgoing Dublin transfers are suspended.

- ❖ **Reception conditions:** Reception material conditions have been extended until "the end of the measures in place for the health emergency",⁸ even for those who would no longer be entitled to them. Due to the lack of places and only until 31 January 2021, asylum seekers could be accommodated in Siproimi facilities but they can only benefit from the services as provided in governmental centres and Emergency Accommodation Centres (CAS).⁹

³ Ministerial Decree 7 April 2020, available in Italian at: <https://bit.ly/3dqzDxg>.

⁴ See ASGI, ASGI chiede l'immediata revoca del decreto interministeriale del 7 aprile 2020. L'Italia è sempre vincolata all'obbligo di fornire un porto sicuro alle persone salvate in mare, 15 April 2020, available in Italian at: <https://bit.ly/2zu3EgQ>.

⁵ Ministry of Interior, Circular N.0020359 of 9 March 2020, expressly provides that the activities related to the expulsion of irregular migrants and those related to access to the international protection procedure must be insured (at the time of writing the MoI circular has been extended until 3 of May 2020) available in Italian at: <https://bit.ly/2WHzuOX>.

⁶ Civil Court of Rome, Order of 7 April 2020, available in Italian at: <https://bit.ly/2WM7hqu>.

⁷ Article 36, (1) DL 23/2020 of 8 April 2020, available in Italian at: <https://bit.ly/3gczuQt>.

⁸ MoI Circular, 1 April 2020.

⁹ Article 16 Decree Law 34/2020 of 19 May 2020, available in Gazzetta Ufficiale at (in Italian): <https://bit.ly/2X1fcS6>.

Health cards with expiry date prior to 30 June 2020 have been extended to 30 June 2020.¹⁰

Residence permits, including those for asylum seekers and beneficiaries of international protection, with expiry date between 31 January and 15 April 2020, have been extended until 15 June 2020.¹¹ The amendments to the decree law provided for a further extension of the validity of the permits to 31 August.¹²

- ❖ **Detention:** Despite appeals from many organisations, detention in pre-removal detention centres (CPR) has not been suspended. Through a circular of 2 April 2020, the Ministry of Interior ordered Covid-19 tampon tests for new admitted persons and, in any case, their isolation for the first 14 days. The hearings for validation and extension of detention continued within the CPR.

In the CPR of Gradisca d'Isonzo, 5 Covid-19 cases were detected among detained people end of April 2020. The detainees were isolated but not released.¹³

Asylum procedure

- ❖ **Access to the territory:** Closed ports policy, indirect refoulement to Libya and privatised pushbacks policy were reported in 2019. Nevertheless, the Civil Court of Rome allowed access to the asylum procedure from abroad to some Eritreans who were unlawfully returned to Libya in 2009. In two other cases, it ordered to issue Humanitarian Visas to allow the entry of minors, one of whom was in Libya.
- ❖ **Border procedure:** The Ministerial decree of 5 August 2019 and published on 7 September 2019 identified the border and transit areas where the accelerated procedure for the examination of asylum applications applies in case of an attempt to or a border controls' circumvention. It appears that some of these areas do not correspond to the external borders of the European Union (EU). The first applications of the decree have already indicated a controversial application of the concept of "border controls' evasion".
- ❖ **List of safe countries of origin:** The list of safe countries of origin adopted through a decree of the Minister of Foreign Affairs was published on 4 October 2019. The list includes 13 countries without exceptions regarding areas or categories of persons. The decree does not indicate the reasons for the inclusion of such countries in the list.
- ❖ **Manifestly unfounded decisions:** A disproportionate and incorrect use of the manifestly unfounded decision in asylum applications examined with accelerated procedures compromised the rights of defence and protection of asylum seekers.

Reception conditions

- ❖ **Reception system:** As expected, the tender specification schemes adopted by the Ministry of Interior (Moi) led to a progressive closure of small accommodation centres and the gross involvement of large profit organisations in the reception system. The Circular of 4 February 2020 issued by the new Moi only allowed Prefectures to adjust auction bases for the location and surveillance costs but without an improvement of the poor quality of the services offered in the asylum seekers' reception centres. Despite the decrease in arrivals, most of the reception facilities are still emergency centres.

¹⁰ Article 12 of Legislative Decree 9/2020.

¹¹ Decree Law 18/2020, Article 103 (3).

¹² Article 103 (2 quater) Decree Law 18/2020 as amended by L 27/2020.

¹³ Il Piccolo, Rivolta al Cpr di Gradisca dopo i 4 nuovi casi di coronavirus in un giorno. Protesta subito sedata, 20 April 2020, available in Italian at: <https://bit.ly/2ZvwoRF>.

- ❖ **Reception capacity:** At the end of 2019, the number of asylum seekers and beneficiaries of international protection in the reception system was 67,036 distributed among 10 governmental reception centres and hotspots, and 6,004 CAS. Compared to 2018, the number of CAS decreased by 33% but the changes imposed by the tender specifications led to the closure of many small CAS centres and the distribution of migrants in large CAS with limited or no services.
- ❖ **Guidelines on reception:** Through a Decree of 18 November 2019, the MoI issued new Guidelines on the System of protection for asylum seekers and refugees (SPRAR) and the System of protection for beneficiaries of international protection and unaccompanied minors (SIPROIMI), including new services for unaccompanied minors.
- ❖ **Civil registration:** The changes introduced by the legislative Decree 113/2018, in particular the denial of the civil registration, made it extremely difficult to access territorial services for asylum seekers. However, many courts found the exclusion of asylum seekers from residence registration unlawful.

Detention of asylum seekers

- ❖ **De facto detention:** Prefectures did not establish dedicated detention facilities for identification purpose. De facto detention of asylum seekers continued to be reported in hotspots.

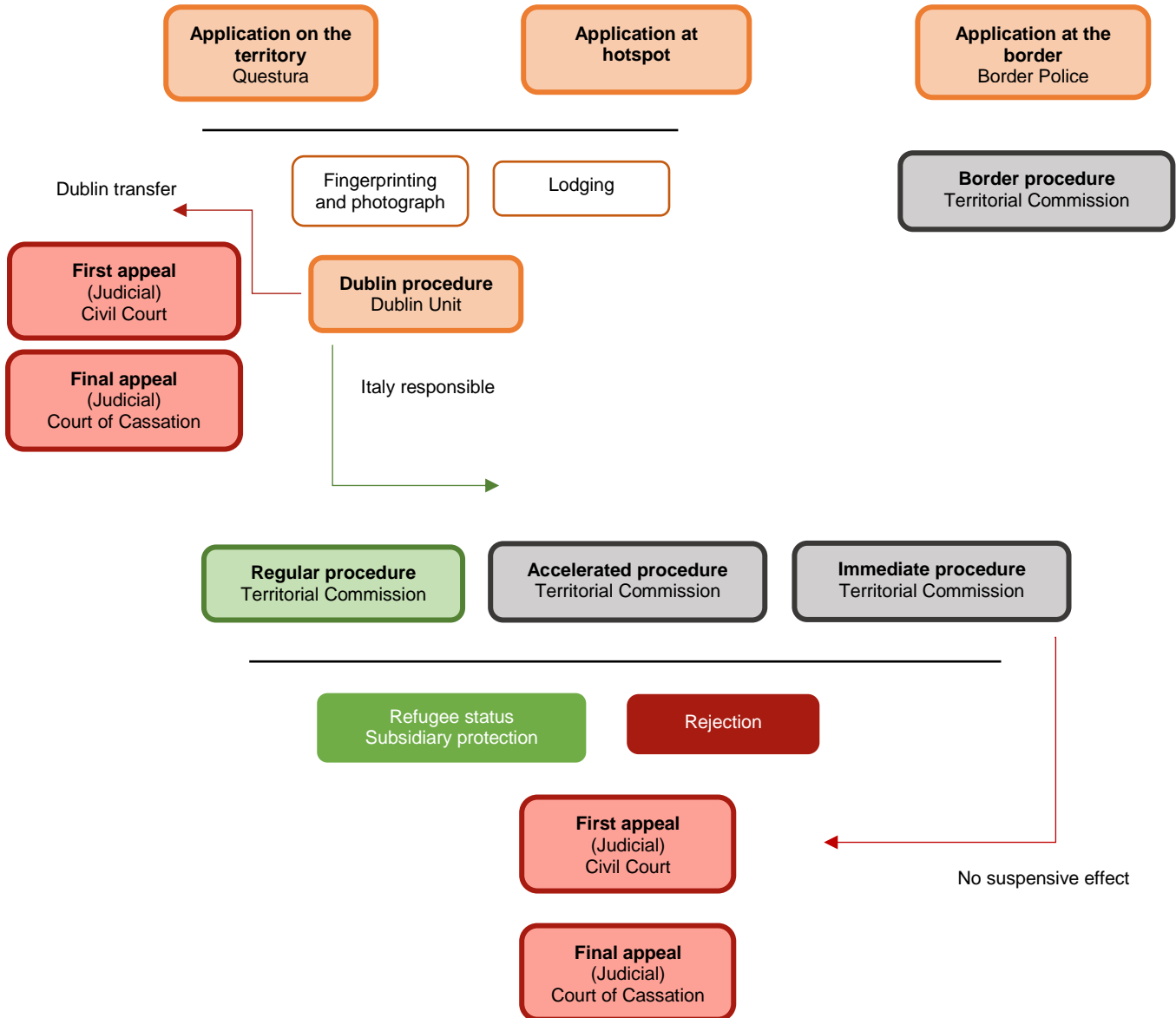
Content of international protection

- ❖ **Guidelines on reception of beneficiaries of international protection (BIPs):** New guidelines for the accommodation of BIPs were issued through the MoI's Decree of 18 November 2019. The Decree provides very stringent hypotheses in which BIPs may be accommodated longer than six months after having been granted international protection. From January to the end of 2019, the capacity in SIPROIMI decreased from 35,650 to 31,284 places.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Prioritised examination: ¹⁴	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Fast-track processing: ¹⁵	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Dublin procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Admissibility procedure:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Border procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Accelerated procedure: ¹⁶	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Other:		

With the 2018 reform, the border procedure was established for applicants making an asylum application directly at the border or in transit areas after having been apprehended for evaded or attempting to evade border controls. The border procedure also applies to asylum seekers who come from a designated [Safe Country of Origin](#). In these cases the entire procedure can be carried out directly at the border or in the transit area.¹⁷ The border procedure has been applied since the issuance of the Ministry of Foreign Affairs Decree of 5 August 2019, published on 7 September 2019, which identifies the border and transit areas covered by the accelerated procedure.

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

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

4. Determining authority

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

¹⁴ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

¹⁵ Accelerating the processing of specific caseloads as part of the regular procedure.

¹⁶ Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

¹⁷ Article 28-bis(1-ter) Procedure Decree, as amended by Article 9(1) Decree Law 113/2018.

The competent authorities to examine asylum applications and to take first instance decisions are the Territorial Commissions for the Recognition of International Protection (*Commissioni Territoriali per il Riconoscimento della Protezione Internazionale*), which are administrative bodies specialised in the field of asylum, under the Ministry of Interior. The Territorial Commissions are established under the responsibility of Prefectures.¹⁸ LD 220/2017, entering into force on 31 January 2018, reformed the functioning and composition of the Territorial Commissions.

4.1. Composition of Territorial Commissions

The law foresees the creation of 20 Territorial Commissions¹⁹ and up to 30 sub-Commissions across the national territory, in order to boost and improve the management of the increasing number of applications for international protection.²⁰ As of December 2019, there were 20 Territorial Commissions and 21 sub-Commissions across Italy.²¹

The breakdown of asylum applications by Territorial Commission for 2019 was not available. However data on pending decisions per territorial commission have been available.

Pending decisions by Territorial Commission: 2019			
Territorial Commission	Number	Territorial Commission	Number
Ancona	800	Palermo	345
Bari	938	Palermo -Trapani	308
Bologna	1,352	Palermo-Agrigento	233
Bologna-Forli	771	Padova	665
Brescia	1,119	Rome	4,142
Brescia-Bergamo	-	Salerno	995
Cagliari	1,328	Salerno-Napoli	1,471
Caserta	783	Siracusa	208
Catania	277	Turin	3,625
Crotone	540	Turin-Genova	2,331
Crotone-Reggio Calabria	323	Turin-Novara	1,483
Florence	1,326	Trieste	1,363
Florence-Livorno	313	Trieste-Udine	727
Florence-Perugia	426	Verona	527
Foggia	267	Verona-Treviso	768
Lecce	132	Verona-Vicenza	823
Milan	2,504		
Milan-Monza	1,348		
Total			34,728²²

Source: CNDA.

As amended by LD 220/2017, each Territorial Commission is composed at least by 6 members, in compliance with gender balance. These include:²³

- 1 President, with prefectural experience, appointed by the Ministry of Interior;
- 1 expert in international protection and human rights, designated by UNHCR;

¹⁸ Article 4(1) Procedure Decree, as amended by LD 220/2017.

¹⁹ Article 4(2) Procedure Decree.

²⁰ Article 4(2-bis) Procedure Decree.

²¹ Ministry of Interior, *Quaderno statistico per gli anni 1990-2018*, available in Italian at: <http://bit.ly/2u3FIR5>.

²² In addition 8,075 cases are suspended because of the Dublin procedure.

²³ Article 4(3) Procedure Decree, as amended by LD 220/2017.

- 4 or more highly qualified administrative officials of the Ministry of Interior, appointed by public tender.²⁴

In 2018, 250 specialized members were appointed by public tender and another 162 were added during 2019.²⁵

The Territorial Commissions may be supplemented, upon request of the President of the National Commission for the Right to Asylum (CNDA), by an official of the Ministry of Foreign Affairs when, in relation to particular asylum seekers, it is necessary to acquire specific assessments of competence regarding the situation in the country of origin.²⁶

Before the appointment of the members of the Territorial Commissions, the absence of conflict of interests must be evaluated.²⁷ For the President and the UNHCR representative, one or more substitutes are appointed. The assignment is valid for 3 years, renewable.²⁸

Following the 2017 reform, interviews are conducted by officials of the Ministry of Interior and no longer by UNHCR. The decision-making sessions of the Commission consist of panel discussions composed by the President, the UNHCR-appointed expert and two of the administrative officers, including the one conducting the interview.²⁹ Under the Procedure Decree, the decision on the merits of the asylum claim must be taken at least by a simple majority of the Territorial Commission, namely 3 members; in the case of a tie, the President's vote prevails.³⁰

The CNDA has adopted a Code of Conduct for the members of the Territorial Commissions, the interpreters and the personnel supporting them.³¹ The CNDA not only coordinates and gives guidance to the Territorial Commissions in carrying out their tasks, but is also responsible for the revocation and cessation of international protection.³²

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

In 2019, in total, the European Asylum Support Office (EASO) deployed 296 different experts in Italy.³³ By the end of 2019 EASO experts have concluded their collaboration with the Territorial Commissions.

4.2. Training and quality assurance

The law requires the CNDA to ensure training and refresher courses to its members and Territorial Commissions' staff. Training is supposed to ensure that those who will consider and decide on asylum claims will take into account asylum seeker's personal and general circumstances, including the applicant's culture of origin or vulnerability. Since 2014, the CNDA has organised training courses based on the EASO modules, in particular on "Inclusion", "Country of Origin Information" and "Interview

²⁴ Article 4(1-bis) Procedure Decree, inserted by LD 220/2017, citing Article 13 Decree Law 13/2017, followed by the appointment of 250 persons through public tender.

²⁵ Ministry of Interior, audition at Parliament, 7 November 2019

²⁶ Article 4(3) Procedure Decree, as amended by LD 220/2017.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Article 4(4) Procedure Decree.

³¹ Article 5(1-ter) Procedure Decree.

³² Articles 13 and 14 PD 21/2015.

³³ See: ECRE, *The role of EASO operations in national asylum systems*, 2019, available at: <https://bit.ly/2WHE0NN>.

Techniques". These training courses provide both an online study session and a two-day advanced analysis conducted at central level in Rome. In addition to these permanent trainings, courses on specific topics are also organised at the local level. EASO continues to support the CNDA and Questure with design of trainings.³⁴

By law, the National Commission should also provide training to interpreters to ensure appropriate communication between the applicant and the official who conducts the substantive interview.³⁵ However, in practice interpreters do not receive any specialised training. Some training courses on asylum issues are organised on *ad hoc* basis, but not regularly.

Since 2015, the CNDA, in collaboration with UNHCR, runs a quality monitoring project to assess the quality of decisions of the Territorial Commissions through case sampling and on-site visits to specific Commissions. The project developed also a Code of Conduct for Presidents of Territorial Commissions, interpreters and other service providers involved in the procedure.³⁶

5. Short overview of the asylum procedure

Application

According to Italian law, there is no formal timeframe for making an asylum application. The intention to make an asylum application may be expressed orally by the applicant in his or her language with the assistance of a linguistic-cultural mediator.³⁷ However, asylum seekers should make their application as soon as possible. Immigration legislation prescribes, as a general rule, a deadline of 8 days from arrival in Italy for migrants to present themselves to the authorities.³⁸

The asylum application can be made either at the border police office or within the territory at the provincial Immigration Office (*Ufficio immigrazione*) of the Police (*Questura*), where fingerprinting and photographing (*fotosegnalamento*) are carried out. In case the asylum application is made at the border, the Border Police invites asylum seekers to present themselves at the Questura for formal registration. Police authorities cannot examine the merits of the asylum application. However, following the 2018 reform, the Questure declare under certain circumstances the **Subsequent Application** automatically inadmissible.

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

After the lodging (*verbalizzazione*) of the application, the Questura sends the formal registration form and the documents concerning the asylum application to the Territorial Commissions or sub-Commissions for International Protection located throughout the national territory, the only authorities competent for the substantive asylum interview.³⁹ The asylum seeker is then notified of the interview date in front of the Territorial Commission by the Questura.

³⁴ EASO, *Operating Plan to Italy 2019*, December 2018, available at: <https://bit.ly/2GmqdW3>.

³⁵ Article 15 Procedure Decree.

³⁶ CNDA, *Codice di condotta per i presidenti e i componenti delle Commissioni Territoriali per il riconoscimento della Protezione Internazionale e della Commissione Nazionale per il Diritto d'Asilo, nonché per gli interpreti, per il personale di supporto e per tutti gli altri soggetti che prestano le proprie attività, anche a titolo gratuito o occasionale, presso le medesime Commissioni*, 15 November 2016, available in Italian at: <https://bit.ly/2KyLuDD>.

³⁷ Article 3(1) PD 21/2015.

³⁸ Article 3(2) PD 21/2015.

³⁹ Article 4 Procedure Decree, as amended by LD 220/2017.

Regular procedure

According to the Procedure Decree,⁴⁰ a member of the Territorial Commission interviews the applicant within 30 days after having received the application and the Commission decides in the 3 following working days. The decision is taken following a panel discussion between all members of the Commission. When the Territorial Commission is unable to take a decision in the time limit and needs to acquire new elements, the examination procedure is concluded within six months of the lodging of the application.

However, the Territorial Commission may extend the time limit for a period not exceeding a further nine months, where: (a) complex issues of fact and/or law are involved; (b) a large number of asylum applications are made simultaneously; (c) the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations of cooperation. By way of exception, in duly justified circumstances, the Territorial Commission may further exceed this time limit by three months where necessary in order to ensure an adequate and complete examination of the application for international protection.⁴¹ In the light of the different possibilities of extension, the asylum procedure may last for a maximum period of 18 months.

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

Prioritised and accelerated procedures

The Procedure Decree provides for an accelerated procedure and a prioritised procedure. The President of the Territorial Commission identifies the cases under the prioritised procedure.⁴²

Border procedure

With the 2018 reform, the border procedure was established for applicants making an asylum application directly at the border or in transit areas after having been apprehended for evaded or attempting to evade border controls. The border procedure also applies to asylum seekers who come from a designated [Safe Country of Origin](#). In this case the entire procedure can be carried out directly at the border or in the transit area.⁴³

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

Since its entry into force, the border procedure has also been applied to the internal border of Friuli Venezia Giulia for arrivals by land and to the Coastal borders to people disembarked from small boats, considering them as people who avoided or tried to avoid the border controls.

Appeal

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

⁴⁰ Article 27 Procedure Decree.

⁴¹ Article 27 Procedure Decree.

⁴² Article 28(1)(c) and (1-bis) Procedure Decree.

⁴³ Article 28-bis(1-ter) Procedure Decree, as amended by Article 9(1) Decree Law 113/2018.

Applicants placed in detention facilities and applicants whose application is examined under the accelerated procedure, on the basis of Article 28-bis(2) of the Procedure Decree, have only 15 days to lodge an appeal.⁴⁴

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

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No
2. Is there a border monitoring system in place? Yes No

As of 31 October 2019, the border authorities refouled 8,279 foreign citizens considered not to be entitled to enter EU territory.⁴⁵

The faster border procedure was also applied to people disembarked, considering them as people who avoided or tried to avoid the border controls.

Many Moroccans and Tunisians who disembarked in Italy were quickly repatriated. In October 2019 the 60% of Tunisians landed were returned.⁴⁶

On 28 November 2019, the Court of Rome accepted the appeal lodged with the support of ASGI and Amnesty by 14 Eritrean citizens based in Israel, who were victims of a collective refoulement by Italian authorities to Libya in 2009. The Court recognized their right to access the asylum procedure in Italy and sentenced Italy to compensate the damage they suffered due to the illegal behaviour of the Italian authorities.⁴⁷

The Court recognized the need to expand the scope of international protection to preserve the position of those who were prevented from submitting an application for international protection due to the fact that they could not access the territory of the State as a consequence of an unlawful act committed by the authority of the referring State, inhibiting the entry to the territory in the form of a collective refoulement, in violation of the Constitution and the Charter of Fundamental Rights of the European Union.⁴⁸

⁴⁴ Article 19(3) LD 150/2011.

⁴⁵ Ministry of Interior, hearing at Parliament, 7 November 2019, available in Italian at: <https://bit.ly/2zrG3xk>.

⁴⁶ Ministry of Interior, hearing at Parliament, 7 November 2019, available in Italian at: <https://bit.ly/2zrG3xk>; see also: Guarantor for the rights of detained persons, *Report on visits to places used by police at some border crossings (January - February 2019)*, published on 27 June 2019: in the visit conducted on 15 January 2019 at the port of Civitavecchia, the Guarantor for the rights of detained persons found that, in 2018, 18 people, mostly Tunisian, had been refouled because they had no documents or false documents. These people were entrusted to the shipping company with which they travelled and, while waiting for the ship to sail again, they remained on board the boat, available in Italian at: <https://bit.ly/35LQ1WB>, p. 13

⁴⁷ ASGI, *Riconosciuto il diritto di entrare in Italia a chi è stata respinto illegittimamente in Libia*, 3 December 2019, available in Italian at: <https://bit.ly/2yJEKtF>; Amnesty, *Importantissima sentenza del Tribunale civile di Roma*, 2 December 2019, available in Italian at: <https://bit.ly/2yHXdXH>.

⁴⁸ Civil Court of Rome, decision 22917 of 28 November 2019, available in Italian at: <https://bit.ly/2LgCMnj>; For information in English see also: EDAL, Italy: Recognition of the right to enter as compensation for illegitimate collective expulsions to Libya by the Italian Coast Guard in 2009, 28 November 2019, available at: <https://bit.ly/2SR3S8O>.

Moreover, on 10 October 2019, the Civil Court of Rome ordered the Ministry of Foreign Affairs to instruct the Italian Embassy in Addis Abbeba to immediately issue a entry visa to Italy in favour of a minor, daughter of a woman refugee in Italy, for urgent humanitarian reasons under Article 25 of the Visa Code (Article 25, Regulation CE n. 810/09).⁴⁹

Some months before, on 21 February 2019, the Civil Court of Rome ordered the Ministry of Foreign Affairs, Italian Embassy at Tripoli, to issue a visa for humanitarian reasons for an unaccompanied Nigerian minor in Libya.⁵⁰

1.1. Arrivals by sea

The total number of persons disembarked in Italy dropped from 119,369 in 2017 and 23,370 in 2018 to 11,471 in 2019, representing a 50% decrease compared to 2018 and an over 90% decrease compared to 2017.

Since 2019 Italian coastguard has ambiguously started to classify most of the search and rescue operations as law enforcement operations.⁵¹ Italian coastguard Data indicate that 4,289 people have reached Italy aboard the authorities' ships (coast guard, navy, finance guard) as a result of such operations while 999 persons appear to have been rescued at sea.

Under persistent media attention and certain political condemnation, 2,000 persons were rescued by NGOs while another 3,885 reached Italy autonomously.

European naval units (Eunavfor Med, Frontex) did not intervene in any operation.⁵²

As in previous years, in 2019, the ports most affected by disembarkation were the ones in Sicily, as follows:

Sea arrivals 2019	
Port- Region	Sea arrivals in 2019
Lampedusa - Sicily	4,802
Western Sicily	904
East Sicily	1,449
Apulia	1,476
Calabria	1,332
Sardinia	701

Source: Italian coastguard, quarterly reports

In 2019 the main nationality of people disembarked remained Tunisian (2,654), although Tunisia does not appear among the main countries of origin of asylum seekers.

The number of Ivorians disembarked is almost double the number of Ivorian asylum seekers in 2019. In 2019, as well as at the end of 2018, the Ivorians appeared among the main nationalities of people disembarked.

⁴⁹ Civil Court of Rome, decision of 10 October 2019, confirmed by decision of 4 November 2019.

⁵⁰ Civil Court of Rome, decision of 21 February 2019, available in English at: <https://bit.ly/2YLB0HP>; see also ASGI note, 16 May 2019, available in English at: <https://bit.ly/2SScNqr>. See also: EDAL, Italy: Humanitarian visa issued for vulnerable unaccompanied child in Libya, 21 February 2019, available at: <https://bit.ly/2SOIGRN>.

⁵¹ See: *Altrecconomia*, Se i naufraghi nel Mediterraneo diventano "persone intercettate in operazioni di polizia". Le ricadute sui soccorsi, 8 October 2019, available in Italian at: <https://bit.ly/3dwtQ9p>.

⁵² Italian coastguard, data available at: <https://www.guardiacostiera.gov.it>.

Moreover, although Algerians were among the main foreign citizens disembarked both in 2019 and 2018, this situation does not match with the list of the most common nationalities of asylum seekers in 2019, where Algerians are not present at all. This data probably reflect the actual obstacles that persons from these country face in accessing the asylum procedure (see [Registration of the asylum application](#)).

On the other hand, as regards nationals of Pakistan, the number of persons disembarked (1,180) was significantly lower than the number of those who applied for asylum (8,733). This is probably because many arrived via land from other European countries.

The “closure of ports”

Since June 2018, on many occasions the Italian Government has seriously delayed the disembarkation of potential asylum seekers rescued at sea in the context of the operations coordinated by the Italian Maritime Rescue Coordination Centre (MRCC) or by ships deployed as part of EU NAFVOR MED Operation Sophia or by naval units of the Italian State, without indicating a port of disembarkation or prohibiting the disembarkation of people following the berth in port.⁵³

The Decree Law n. 53, issued on 14 June 2019 and later converted by Law 77/2019, tried to give a legal basis to the Minister of the Interior bans on entry, transit or stop to ships engaged in rescue at sea, further discouraging the saving of lives at sea.⁵⁴

Article 1 of Legislative Decree 53/2019 empowers the Ministry of Interior, in agreement with the Minister of Defence and the Minister of Transport, to order such prohibitions for reasons of security and public order or in the cases referred to in Article 19 (2 g) of the Montego Bay Convention (UNCLOS), according to which, a passage of a ship is not considered innocent in case of – in particular- loading or unloading of persons contrary to the immigration or sanitary laws of the coastal state.⁵⁵ In case of violation, the law provides for an administrative penalty to be imposed by Prefects to the ship's captain consisting in the payment of a sum between € 150,000 to € 1,000,000. The law also states that it is always ordered the confiscation of the ship used to commit the violation.⁵⁶

As highlighted by ASGI,⁵⁷ the provision gives the Ministry of Interior a new power of intervention that goes beyond the control of borders, for which it was already responsible, affecting directly the search and rescue activity at sea. As the entry or stop of a ship operating to rescue shipwrecked people at sea in fulfilment of a specific duty of its captain (i.e. according to UNCLOS, SOLAS, SAR Conventions) is undoubtedly not an offensive conduct and therefore, it cannot be inhibited, the new law provisions appear purely aimed at discouraging rescue at sea.

However, immediately after the entry into force of the decree, the Minister of Interior made extensive use of these powers.

On 29 June 2019, the **Sea-Watch 3** ship led by the captain Carola Rackete, after two weeks in international waters with 50 rescued migrants on board, decided to enter the port of Lampedusa despite

⁵³ See AIDA 2018 for the Diciotti, Sea Watch, Aquarius, Sarost 5 and Mre Jonio cases.

⁵⁴ DL 53/2019 converted by L 77/2019.

⁵⁵ Article 1 DL 53/2019, amending Article 11 TUI by the introduction of the paragraph 1 ter. According to the Article 19(2) lett.g) Montego Bay Convention “a passage of a foreign ship shall be considered to be prejudicial to the peace, order or security of the coastal State if in the territorial sea it engages in any of the following activities: (...) g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State).

⁵⁶ Article 2 Decree Law 53/2019 amending Article 12 TUI introducing paragraphs 6 bis, 6 ter, 6 quater

⁵⁷ ASGI, Decreto sicurezza bis: l'analisi dell'ASGI, 13 September 2019, available in Italian at: <https://bit.ly/3dqC56W>.

the absence of authorization from the Italian authorities.⁵⁸ The ECtHR had refused, on 25 June 2019, the request for interim measures made by the Captain and other forty individuals on board pursuant to Rule 39 of Rules of the Court. The Court decided not to indicate an interim measure requiring authorisation for the applicants to be disembarked in Italy.⁵⁹ Once the migrants landed, Sea Watch captain (Carola Rackete) was arrested on charges of violence and warship resistance as the ship trapped a patrol vessel of the Italian financial guard against the quay, while entering Lampedusa. The Criminal judge of Agrigento decided to release her, considering her behaviour justified by her duty to save the people on board the ship and excluding that the boat of the finance guard could be considered a warship.⁶⁰ The judge responsible for the decision later became the target of insults and threats. The Minister of Interior defined the sentence via social media as a "political judgment" and invited the judge, who he called "leftist", to take off her robe and stand for election to the Democratic Party.⁶¹ In January 2020 the Court of Cassation confirmed the legitimacy of the decision not to validate the arrest.⁶² Through this decision the Court of Cassation also affirmed that the refusal to authorize the landing of the migrants rescued by Sea Watch 3 was illegitimate, as it is contrary to the provisions of international law on rescues at sea.⁶³

By the end of July 2019 the then Minister of the Interior forbade the landing of the people rescued by the **Gregoretti** Italian Coast Guard ship. Only after six days, on 31 July 2019, the 116 people were disembarked and transferred to the Pozzallo hotspot before being redistributed between France, Germany, Portugal, Luxembourg and Ireland. 50 people remained in Italy in charge of the Italian Episcopal Conference (CEI). For this matter, in February 2020, after the authorization by the Senate, Matteo Salvini, then Minister of the Interior, is being investigated for kidnapping.

On 14 August 2019 the Administrative Court of Lazio accepted the request for interim measure submitted by the **Open Arms** ship and suspended the measure taken by the Ministry of Interior pursuant to DL 53/2019 not to allow the ship to enter into Italian territorial waters. The Court considered it urgent to provide immediate assistance to the rescued people.⁶⁴ Only a week after the decision, and 19 days spent on the ship, the rescued people were able to disembark.⁶⁵ In this case as well, the Court of Ministers asked in February 2020, for authorization to proceed against the former Minister of Interior, Matteo Salvini, for kidnapping.⁶⁶

After the fall of the Government in late August 2019, the policy of closed ports has changed but it has not been definitively abandoned. The informal redistribution policy of the migrants has often caused long waits in the open sea before a place of safety was indicated, being subject to case-by-case agreements between EU member states. Following the outbreak of COVID-19 in Italy, on 7 April 2020 Italy issued a ministerial decree Italy in which it declared its ports unsafe⁶⁷. However it is necessary to reiterate that this

⁵⁸ BBC, Carola Rackete: How a ship captain took on Italy's Salvini, 6 July 2019, available at : <https://bbc.in/2Ad32N7>.

⁵⁹ ECtHR, Rackete and Others v. Italy - request for interim measure refused in the case of Sea Watch 3, 25 June 2019, available at: <https://bit.ly/2yIrhZC>.

⁶⁰ See Caso Sea Watch 3, la "scandalosa" ordinanza di rigetto del gip di Agrigento, available in Italian at <https://bit.ly/3dwubZJ>; see also: EDAL, Italy: Preliminary Judge of the Court of Agrigento clears Sea Watch 3 Captain of Charges, 30 June 2019, available at: <https://bit.ly/2YWftNU>.

⁶¹ Il Messaggero, Carola lascia Agrigento, Salvini attacca il giudice: «Una vergogna, tolga la toga». Bonafede la difende, 3 July 2019, available in Italian at: <https://bit.ly/2Lhj3E0>.

⁶² Court of Cassation, Decision 6626 of 20 February 2020, available in Italian at: <https://bit.ly/2LeRjX3>.

⁶³ For a comment to the decision see ASGI, "La Cassazione sul caso Rackete: la strategia dei porti chiusi è contraria alla disciplina dei soccorsi in mareLuca Maserà", 26 February 2020, available in Italian at: <https://bit.ly/3dvj0jX>.

⁶⁴ See ASGI, Open Arms, Tar Lazio sospende divieto d'ingresso, 15 August 2019, available in Italian at: <https://bit.ly/2ylcgR9>.

⁶⁵ See also: Altreconomia, Il dovere di soccorso e i migranti non-persone. Che cosa resta della stagione dei "porti chiusi", 21 August 2019, available in Italian at: <https://bit.ly/2Lhhfes>.

⁶⁶ Repubblica, Caso Open Arms, nuova richiesta di autorizzazione a procedere contro Salvini per sequestro di persona. "Il soccorso in mare è obbligatorio" 1 February 2020, available in Italian at: <https://bit.ly/3cjVs1B>.

⁶⁷ Decree 7 April 2020, available in Italian at: <https://bit.ly/2SS4mLV>.

does not negate Italy's international and internal obligations on potential asylum seekers' protection and search and rescue at sea.⁶⁸

In October 2019, Italy long refused to indicate itself as a place of safety for the SOS Mediterranee ship, Ocean Viking, denying its competence to intervene as the rescue had taken place in the Libyan SAR area.⁶⁹ After 11 days, Member States finally agreed on the relocation of the migrants on board and Italy authorised to disembark the rescued people in Pozzallo.⁷⁰

However, on 29 December 2019, 32 migrants rescued three days before at sea by the Sea Eye ship, Alan Kurdi, were authorised to disembark in Pozzallo.

In parallel, in September 2019, two officers of the Italian coastguard and of the navy were indicted before the Court of Rome for the delay and failure of the rescue in the shipwreck occurred on the 11 October 2013, when over 250 died at sea.⁷¹

Refoulement to Libya

In February 2020, despite the opposition of numerous associations including ASGI⁷², and the call of the Council of Europe Commissioner for Human Rights,⁷³ the Memorandum of Understanding between Italy and Libya, also judged by a Criminal Court to be not conform to the Italian Constitution and to international laws⁷⁴, has been renewed.⁷⁵

According to the new agreement,⁷⁶ Italy undertakes to continue to financially support, with training courses and equipment, the Libyan coast guard of the Ministry of Defence, for search and rescue activities at sea and in the desert, and for the prevention and fight against irregular immigration.

For the two-year period 2020-2021, the Ministry of Interior has foreseen an additional 1.2 million euros in supplies.⁷⁷

Based on the previous agreement, since 2017 Italy has in these years equipped Libya with naval units, supplied and financed the rehabilitation of several patrol boats and ensured the presence in Tripoli of an

⁶⁸ See ASGI, ASGI chiede l'immediata revoca del decreto interministeriale del 7 aprile 2020. L'Italia è sempre vincolata all'obbligo di fornire un porto sicuro alle persone salvate in mare, 15 April 2020, available in Italian at: <https://bit.ly/2YVGrzb>.

⁶⁹ Repubblica, Migranti, Ocean Viking in mare da 10 giorni. L'appello della Ong: "Ue ci assegni un porto sicuro", 28 October 2019, available in Italian at: <https://bit.ly/2SSewfp>.

⁷⁰ Repubblica, 29 October 2019, Migranti Migranti, il Viminale: "Ocean Viking sbarca a Pozzallo", available in Italian at: <https://bit.ly/2WlhXOp>.

⁷¹ Ansa, Naufragio bambini, due ufficiali a giudizio, 16 September 2019, available in Italian at: <https://bit.ly/3fBEFsM>; see also: Alarmphone, Left-to-Die Trial in Rome, 2 December 2019, available at: <https://bit.ly/2LeRHyn>; ECRE, Italy: Officials of the Italian Coast Guard Prosecuted for Shipwreck in 2013, 20 September 2019, available at: <https://bit.ly/3ckBunh>.

⁷² ASGI, Memorandum Italia-Libia, lettera aperta del Tavolo Asilo alle istituzioni italiane: non rinnovatelo, 30 October 2019, available in Italian at: <https://bit.ly/2Wik9Wi>.

⁷³ On 31 January 2020, the Council of Europe Commissioner for Human Rights, called on the Italian government to urgently suspend the ongoing cooperation activities with the Libyan Coast Guard which affect the repatriation of people intercepted at sea in Libya where they have suffered serious human rights violations, see: ASGI, Il governo italiano deve sospendere ogni cooperazione con la Guardia Costiera libica, 31 January 2020, available in Italian at: <https://bit.ly/2zmpaEy>.

⁷⁴ Criminal Court of Trapani, sentence of 23 May 2019, available in Italian at: <https://bit.ly/3dutmHI>; According to article 80 of the Italian Constitution, political agreements can be signed only with Parliament's authorization. Furthermore, it is an agreement concluded with a party, the Libyan coastguard, repeatedly referred to as responsible for crimes against humanity. Therefore, the court found that the agreement violates the principle of non-refoulement.

⁷⁵ Avvenire, 12 February 2020, Esclusiva. Memorandum Italia-Libia, la bozza integrale: la partita dei fondi a Tripoli, available in Italian at: <https://bit.ly/3bnLOJQ>.

⁷⁶ A copy of the agreement is published in Italian at: <https://bit.ly/3ciy1FS>.

⁷⁷ Altreconomia, L'Italia continua ad equipaggiare la Libia per respingere i migranti, il caso delle motovedette ricondotte a Tripoli, 2 March 2020, available in Italian at: <https://bit.ly/2SSmsNU>.

Italian naval unit (Nave Tremiti, Nave Capri, and then Nave Caprera⁷⁸) to provide to Libya technical assistance and training.⁷⁹ Nave Capri and Caprera also coordinated Libyan naval units in the tracking of boats at sea.⁸⁰

The resulting effects of Italy's indirect pushbacks to Libya and the consequences on people suffering inhuman and cruel treatments are now being examined by the European Court of Human Rights in the case *S.S. and others v. Italy* concerning a rescue operation of the Sea Watch ship hindered in November 2017 by the Libyan coastguard through a patrol boat donated by Italy and with the coordination of the Italian MRCC.⁸¹

In 2019, at least 8,406 people were tracked down by the Libyan coastguard and brought back to Libya.⁸²

Moreover, as highlighted by the Global Legal Action Network (GLAN) on 18 December 2019, through a complaint filed against Italy with the UN Human Rights Committee, Italy appears to play a key role in the privatised pushbacks policy which would consist in engaging commercial ships to return refugees and other persons in need of protection to unsafe locations.⁸³ The complaint concerns the case of an individual refouled to Libya together with 92 migrants after being intercepted in the high seas by a Panamanian merchant vessel, the *Nivin*, in November 2018. The legal submission is based on the Forensic Oceanography report, which shows how the operation was fully coordinated by the MRCC of Rome.⁸⁴

Between June 2018 and June 2019, the Forensic Oceanography recorded a total of 13 privatized pushback attempts in the so-called EU and Italy's system of *refoulement by proxy*. Except for two that failed as a result of migrants' resistance, at least 11 of these 13 privatized pushbacks were successful—with three of these diverted to Tunisia. According to the report the outcome of these operations has been exacerbated by the closed-ports policy in Italy, which prevents ships that carried out rescue operations entering Italy's waters to disembark rescues.⁸⁵

Meanwhile, criminal courts have ascertained and condemned the dire conditions faced by migrants in Libya. In May 2019, the Criminal Court of Trapani acquitted two migrants rescued at sea by *Vos Thalassa* ship in 2018 who had rebelled aboard the ship, once they realized that the ship was bringing them back to Libya, threatening the captain and the crew. Relevantly the judge recognized they acted in self-defence as the act of bringing them back to Libya would have been a crime.⁸⁶

Furthermore, the **Court of Assizes of Agrigento** ascertained the atrocious conditions of the Libyan detention camps, condemning a human trafficker for enslavement in the Sabratha camp⁸⁷ and, in another

⁷⁸ Analisi difesa, nave Caprera ha sostituito la Capri nel porto di Tripoli, 4 April 2018, available in Italian at: <https://bit.ly/2SP6Hag>.

⁷⁹ ASGI, ASGI chiede l'immediato annullamento del Memorandum con la Libia, 2 February 2020, available in Italian at: <https://bit.ly/2zlh1QB>.

⁸⁰ Altreconomia, Il grande inganno della Libia sicura e le tappe della regia italiana dei respingimenti delegati, 18 April 2019, available in Italian at: <https://bit.ly/35MIMgW>.

⁸¹ ECtHR, Application No. 21660/18, *S.S. and others v. Italy*, available at: <https://bit.ly/3dvhkBGt>; the Third party intervention by the Council of Europe Commissioner for Human Rights is available at: <https://bit.ly/35OFYjn>.

⁸² Altreconomia, citing data from Italian coast guard, 2 March 2020, available in Italian at: <https://bit.ly/2yAUjnl>.

⁸³ Communication to the United Nations Human Rights Committee In the case of SDG against Italy, available at: <https://cutt.ly/cyv9xIT>.

⁸⁴ See also: Repubblica, Migranti, un report accusa l'Italia: "Respingimento illegale dei 93 salvati dal mercantile *Nivin* e riportati in Libia con la forza", 18 December 2019, available in Italian at: <https://cutt.ly/yv9cb0>.

⁸⁵ Forensic Oceanography *Nivin* report, affiliated to the Forensic Architecture agency, Goldsmiths, University of London, December 2019, available at: <https://cutt.ly/Hyv9voA>.

⁸⁶ Criminal Court of Trapani, cited above. See: Diritto penale contemporaneo, La legittima difesa dei migranti e l'illegittimità dei respingimenti verso la Libia (caso *Vos-Thalassa*), Luca Masera, 24 June 2019, available in Italian at: <https://cutt.ly/7yv9bfe>; see also: EDAL, Italy - Tribunal of Trapani - Office of the Judge for Preliminary Investigations (Piero Grillo), available at: <https://cutt.ly/Fyv9nHb>.

⁸⁷ Court of Assizes of Agrigento, ruling 1 of 2018 published on 22 June 2019, see: ASGI, Riduzione di schiavitù in Libia confermata dalla Corte d'Assise di Agrigento, available in Italian at: <https://cutt.ly/byv9mOF>.

case, three other persons for torture in the Sabratha “White House” for sexual violence, kidnapping and human trafficking.⁸⁸

Pushbacks at Adriatic ports

As monitored by ASGI, No Name Kitchen, Ambasciata dei Diritti di Ancona and Associazione SOS Diritti, refoulements continue to be carried out from Italy to Greece at Adriatic maritime borders. Access to the asylum procedure and to asylum information is very poor and transfers or re-admissions are being immediately executed to send foreign nationals back to Greece.

Through numerous F.O.I.A. requests sent to public administrations, the cited NGOs came to know about:

- ❖ 10 refoulements at Venice water border crossing points (January 2018 – February 2019);
- ❖ 56 refoulements at Ancona maritime border (from January 2018 to the end of July 2019);
- ❖ 654 refoulements at the port of Bari in 2018, and other 181 from January 2019 to the end of February 2019;
- ❖ 340 refoulements at Brindisi port, during 2018.

Through another F.O.I.A request sent to public administration by Altreconomia for the period 1 January 2019 – 30 September 2019, it is known that authorities operated 195 readmissions to Greece. Of these:

- ❖ 51 from Venice
- ❖ 75 from Ancona
- ❖ 34 from Bari
- ❖ 35 from Brindisi

Early 2020, the Committee of Ministers of the Council of Europe rejected the request made by the Italian Government to close the supervision processes initiated following the Sharifi ruling.⁸⁹

1.2. Arrivals by air

In the visits carried out in January and February 2019 at the border crossings of the Rome Fiumicino Airport and Milan Malpensa, the Guarantor for the rights of detained persons found that in 2018, 2,415 people had been refouled from Rome Fiumicino airport,⁹⁰ and 2,111 from Malpensa Airport.⁹¹

Some of these persons had been de facto detained at border crossings for more than three days and up to eight days (see Detention, transit zones).⁹²

As reported by ASGI within the In Limine Project in May 2019, access to information within the Malpensa transit zone, including in relation to the asylum procedure, is very poor. According to a testimony collected

⁸⁸ Repubblica, Agrigento, Condannati a 26 anni due torturatori di migranti sono i carcerieri della prigione libica di Sabratha, 15 November 2019, available in Italian at: <https://cutt.ly/Xyv9Q8s>.

⁸⁹ See: Committee of Ministers of the Council of Europe, Communication from a NGO (Associazione per gli Studi Giuridici sull'Immigrazione) (21 January 2020) in the case of SHARIFI AND OTHERS v. Italy and Greece (Application No. 16643/09), available at: <https://cutt.ly/Syv9W2y>; ASGI, Respingimenti: l'Italia ancora sotto indagine per il caso Sharifi, 8 April 2020, available in Italian at: <https://cutt.ly/Tyv9ESC>.

⁹⁰ The main nationalities were, in descending order: Albania, Moldova, Brazil, Georgia Ukraine, Egypt, Morocco, China, Algeria, India; Guarantor for the rights of detained persons, Rapporto sulle visite ai locali in uso alle forze di polizia presso alcuni valichi di frontiera (gennaio – febbraio 2019), 27 juni 2019, available in Italian at: <https://cutt.ly/Fyv9Y7Y>.

⁹¹ In descending order the declared nationalities were: Albania, Georgia, China, Brazil, Egypt Moldova, Senegal, Guarantor for the rights of detained persons, Rapporto sulle visite ai locali in uso alle forze di polizia presso alcuni valichi di frontiera (gennaio – febbraio 2019), 27 juni 2019, available in Italian at: <https://cutt.ly/Fyv9Y7Y>.

⁹² Guarantor for the rights of detained persons, Rapporto sulle visite ai locali in uso alle forze di polizia presso alcuni valichi di frontiera (gennaio – febbraio 2019), 27 juni 2019, available in Italian at: <https://cutt.ly/Fyv9Y7Y>.

by ASGI, the border police of Malpensa did not allow access to the asylum procedure to a foreign woman who had expressed her will to seek asylum also through her lawyer.⁹³

The project also monitored other cases of obstacles to access the asylum procedure at Malpensa airport: an Iranian woman and three Kurdish Turks were allowed to access the asylum procedure only following the intervention of the lawyer who by means of certified e-mail, represented their will to seek asylum. In this way it was possible to avoid the execution of the refoulement.

Between January and May 2019 the total number of asylum applications lodged at the Milan airport and Rome Fiumicino was somewhat contained, respectively 56 in Rome and 85 in Milan. Similarly, from 1 June 2019 to 21 January 2020, 79 persons sought asylum at the Rome Fiumicino airport and 166 at the transit area of Malpensa airport.⁹⁴

According to the data obtained by Altreconomia with a civic access request, from January 1 to September 30, 2019, 1,752 people were returned by Malpensa airport. Among them, 49 Nigerians, 56 Ukrainians, 16 Iranians. From Rome Fiumicino airport, in the same period, 1,435 people were returned, including 24 Iranians, 17 Turks, 17 Libyans, 168 Ukrainians. 651 people were returned from Orio al Serio airport, including 170 Ukrainians, 3 Turks, 3 Pakistanis, 2 Afghans and 2 Syrians.⁹⁵

1.3. Arrivals at the Slovenian land border

There were about 7,000 arrivals in Italy in Friuli Venezia Giulia at the Slovenian land border.

In 2019, just as in 2018,⁹⁶ there have been cases of re-admissions to Slovenia from Trieste and Gorizia, **Friuli-Venezia Giulia**, without any formal procedure or decision.

Heard in Parliament on 7 November 2019, the Ministry of Interior mentioned agreements among the Italian authorities and the Croatian and Slovenian authorities for an intensification of the controls, aimed at tracing irregular migrants, also through joint patrol services. According to the Minister, from the beginning of 2019 to 7 November 2019, this agreement made it possible to trace 3,537 migrants entering Italy from Slovenia.⁹⁷

In June 2019, the Department of Public Security of the Italian Ministry of Interior and the General Directorate of Police of the Slovenian Ministry of Interior signed a protocol on the implementation of mixed patrol at the Italian Slovenian border. According to the protocol, mixed groups composed of two Italian agents and two Slovenian agents operated in Trieste and Gorizia, on the Italian side, and in Koper and Nova Goriza on the Slovenian side.⁹⁸ The main purpose, as stated in the agreement, was to monitor the phenomenon of illegal immigration. Patrols were scheduled 4 times a week, three of which in Slovenia and one in Italy. The agreement involved the period between June and September 2019 with possible further renewal.

⁹³ See ASGI, Il valico di frontiera aeroportuale di Malpensa. La privazione della libertà dei cittadini stranieri in attesa di respingimento immediato, May 2019, available in Italian at: <https://cutt.ly/vyv9OPW>.

⁹⁴ Data obtained by ASGI from the Ministry of Interior through a F.O.I.A. request. See ASGI, In Limine report, Ombre in frontiera, March 2020, available in Italian at: <https://bit.ly/2Zu3aCt>.

⁹⁵ Data access request sent from Altreconomia to the Ministry of Interior for the period 1 January 2019 – 30 September 2019.

For 2018 see: La Stampa, 'Il caso dei migranti riportati in Slovenia. La polizia: "Agiamo seguendo le regole"', 3 November 2018, available in Italian at: <https://bit.ly/2IbYiub>.

⁹⁷ Hearing at Parliament of Luciana Lamorgese, Ministry of Interior, 7 November 2019, available in Italian at: <https://cutt.ly/Lyv9P2m>.

⁹⁸ Ansa, Migranti via a pattugliamenti misti Italia Slovenia, 1 July 2019, available in Italian at: <https://cutt.ly/xyv9AYT>.

As reported by media, on 5 July 2019 about 16 persons traced to the Gorizia border were immediately readmitted to Slovenia according to the bilateral agreement between Italy and Slovenia.⁹⁹

Replying to a data access request from ASGI, the Border Police Office informed that, from 31 July 2018 to 31 July 2019, 361 persons, most of which coming from Pakistan and Afghanistan, were re-admitted to Slovenia from Gorizia and Trieste land border, in Friuli Venezia Giulia.

On 14 January 2020, the Friuli Venezia Giulia Region announced its intention to purchase camera traps to be placed on the paths near the eastern borders to identify the transit of irregular migrants in real time.¹⁰⁰ According to what the regional councillor for security declared, these optical detection systems would transmit the data collected to the regional administration and law enforcement, thus allowing to increase the number of readmissions, in particular to Slovenia.¹⁰¹

In mid-May 2020, the Minister of Interior announced an increase in readmissions to be made to the eastern border, as agreed with Slovenia, and the sending of 40 agents to the same border.¹⁰²

On 23 May 2020 a Slovenian newspaper „Primorski Dnevnik“ reported the testimony of an Italian couple blocked on the border with Trieste by paramilitary Slovenian agents who forced them to kneel with rifles pointed at their heads declaring that they were looking for migrants.¹⁰³

1.4. The situation at the French, Swiss and Austrian land borders

Many migrants attempting to cross the borders with France, Austria and Switzerland have been subject to rejection at the border, often with the use of violence. According to a February 2018 report by Médecins Sans Frontières (MSF), more than twenty people had died in the last two years in the attempt to cross these borders.¹⁰⁴ A detailed account of the situation at the borders in previous years is available in the previous updates of the AIDA report.¹⁰⁵

In response to a freedom of information request by Altreconomia concerning readmissions, the Ministry of Interior stated that from 1 January to 30 September 2019, 231 persons have been readmitted to France of which 40 from the border of Aosta, 178 from the border of Ventimiglia, Liguria, and 13 from the border of Bardonecchia, Piedmont. In the same period, 238 were readmitted in Italy from France, of which 11 to Aosta, 178 to Ventimiglia and 13 to Bardonecchia.

161 persons were readmitted to Switzerland, of which: 10 from Aosta border, 143 from Domodossola, Piedmont, and 8 from Como (Lombardy) while, in the same period, 2,025 persons have been readmitted in Italy from Switzerland, of which 34 to Aosta, 543 to Domodossola, and 1,448 to Como;

49 persons have been readmitted to Austria, of which 35 from Brennero, trentino Alto Adige, and 14 from Tarvisio, Friuli Venezia Giulia. For the same period, 93 persons have been readmitted from Austria to Italy, of which 63 from Brennero (and San Candido), and 30 from Tarvisio.

⁹⁹ Il Friuli, Fermati dopo aver varcato il confine, 16 clandestini riportati in Slovenia, 6 July 2019, available in Italian at: <https://cutt.ly/9yv9DCB>.

¹⁰⁰ Il Gazzettino, Migranti. Fototrappole per animali sul Carso per "catturare" i migranti irregolari, 14 January 2020, available in Italian at: <https://cutt.ly/8yv9FKt>.

¹⁰¹ Avvenire, Rotta balcanica. Migranti come lupi e orsi. Trieste vuole le fototrappole, 15 January 2020, available in Italian at: <https://cutt.ly/fyv9Hfx>.

¹⁰² Triesteprima, Rotta balcanica, Serracchiani: "In arrivo da Roma 40 poliziotti a Trieste", 14 May 2020, available in Italian at: <https://bit.ly/2LVpjln>; see also. Il Piccolo, Nuovi arrivi dalla rotta balcanica. Roma invia 40 agenti al confine, 15 May 2020, available in Italian at: <https://bit.ly/3gpqVBV>.

¹⁰³ Triesteprima, "Stoj" e fucile puntato contro: la gita in bosco si trasforma in un incubo, "Intimano l'alt e gli puntano il fucile contro: la gita in bosco si trasforma in un incubo", 23 May 2020, available in Italian at: <https://bit.ly/2ZCAKXd>; see also, Primorski Dnevnik, »Stoj, sit down« ... nato mu je z avtomatsko puško meril v glavo, 23 May 2020, available in Slovenian at: <https://bit.ly/2ZG61s7>.

¹⁰⁴ MSF, *Fuori campo*, February 2018, available at: <http://bit.ly/2Gagwa2>, 2.

¹⁰⁵ AIDA, Country Report Italy, 2017 Update, March 2018, available at: <https://bit.ly/2Ga01zb>, 22-24.

In March 2019, after strong tensions between Italy and France, the head of the Italian police and that of the French police signed a cooperation agreement to agree on the movement of migrants to the border.¹⁰⁶

Transfers from border regions to the southern regions such as **Apulia** and **Calabria** have continued to take place in 2019 (see Taranto hotspot).

Following an information request by ASGI on 23 August 2018, the Questura of Imperia, **Liguria** stated that there 1,059 persons had been transferred from the border of Ventimiglia to the Crotona, **Calabria** and Taranto, **Apulia** until August 2018. According to the Questura, transfers are carried out by the transport company Riviera and are arranged by simple emails containing the date and time of transfer. Until the end of August 2018, transfers took place five times a month on average.

In addition, throughout 2018, as reported by the Children's Ombudsman (*Garante per l'Infanzia e l'Adolescenza*) voluntary return of unaccompanied children from France, Switzerland and Austria to Italy had gradually intensified.¹⁰⁷ Most of them are voluntarily returning to Italy, the EU country of first entry, as their attempts to migrate to the Northern European countries have been unsuccessful.

2. Hotspots

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

By the end of 2019, four hotspots were operating in: **Apulia** (Taranto) and **Sicily** (Lampedusa, Pozzallo, and Messina). As of 31 December 2019, the hotspots hosted a total of 78 persons, all in Sicily (see [Place of Detention](#)).

In 2018, 13,777 persons entered the hotspots, mainly originating from Tunisia (5,638), Eritrea (2,472) and Sudan (759).¹⁰⁸

Frontex helps with the identification, registration and fingerprinting of recently arrived people, enforcement of return decisions and collection of information on smuggling routes,¹⁰⁹ while EASO helps with the registration of asylum claims and has assisted in *ad hoc* relocation procedures following disembarkation operations.¹¹⁰ UNHCR officers present in the "hotspot", together with the International Organisation for Migration (IOM) should monitor the situation. Save the Children is no longer present. IOM and UNHCR have contracts with the Ministry of Interior for entire areas of competence such as legal information, identification of vulnerable persons and childcare. As highlighted in a recent report by ASGI and other

¹⁰⁶ Il Sole 24 Ore, Migranti ai confini trasferiti solo d'intesa tra Francia e Italia, 19 March 2019, available in Italian at: <https://bit.ly/2WU1AZ4>.

¹⁰⁷ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, 20.

¹⁰⁸ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 132.

¹⁰⁹ Frontex, 'Frontex launching new operation in Central Med', 31 January 2018, available at: <http://bit.ly/2nxJ4md>.

¹¹⁰ In 2019, according to ASGI experience in In Limine project, EASO personnel was present only at Messina hotspot.

organisations, due to contractual terms such as the express obligation of confidentiality, these actors do not make public any information on critical issues that may arise in the implementation of the hotspot approach.¹¹¹

The Consolidated Act on Immigration (TUI), as amended by L 46/2017, provides that foreigners apprehended for irregular crossing of the internal or external border or arrived in Italy after rescue at sea are directed to appropriate “crisis points” and at first reception centres. There, they will be identified, registered and informed about the asylum procedure, the relocation programme and voluntary return.¹¹² Decree Law 113/2018 has subsequently introduced the possibility of detention of persons whose nationality cannot be determined, for up to 30 days in suitable facilities set up in hotspots for identification reasons (see [Grounds for Detention](#)).¹¹³

The Standard Operating Procedures (SOPs) adopted in February 2016 and applying at hotspots also state that “where necessary, the use of force proportionate to overcoming objection, with full respect for the physical integrity and dignity of the person, is appropriate...”¹¹⁴ The law also provides that the repeated refusal to undergo fingerprinting constitutes a risk of absconding and legitimises detention in pre-removal detention centres (CPR) (see [Grounds for Detention](#)).¹¹⁵

The same law also introduced a [Border Procedure](#) automatically applicable in case a person makes the application for international protection directly at the border or in transit areas – both to be identified and indicated by decree of the Ministry of Interior – after being apprehended for evading or attempting to evade controls. The border procedure will also apply to asylum seekers who come from a designated safe country of origin. In this case, the entire procedure can be carried out directly at the border or in the transit area.¹¹⁶

Revealing the purpose of facilitating the application of an accelerated procedure to the people present in the hotspots, the MoI Decree issued on 5 August 2019 and published on 7 September 2019, identified among the transit and border areas, those ones close to hotspots: Taranto, Messina and Agrigento (Lampedusa hotspot).¹¹⁷

Persons arriving at hotspots are classified as asylum seekers or economic migrants depending on a summary assessment, mainly carried out either by using questionnaires (*foglio notizie*) filled in by migrants at disembarkation,¹¹⁸ or by orally asking questions relating to the reason why they have come to Italy. People are often classified just solely on the basis of their nationality. Migrants coming from countries informally considered as safe e.g. Tunisia are classified as economic migrants, prevented from accessing the asylum procedure (see [Registration](#)) and handed removal decisions.¹¹⁹

According to the SOPs, all hotspots should guarantee *inter alia* “provision of information in a comprehensible language on current legislation on immigration and asylum”, as well as provision of accurate information on the functioning of the asylum procedure. In practice, however, concerns with regard to access to information persisted in 2019.

As of April 2019, as part of the monitoring project in Lampedusa, ASGI found that a different type of “foglio notizie” was released to some foreign citizens.¹²⁰ It was detailed to exclude all the reasons that would

¹¹¹ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, available in Italian at: <https://bit.ly/2UoWKDu>. For an overview of critiques in previous years, see AIDA, Country Report Italy, 2017 Update, March 2018, 24-26.

¹¹² Article 10-ter TUI, inserted by Decree Law 13/2017.

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

¹¹⁴ Ministry of Interior, *Standard Operating Procedures applicable to Italian hotspots*, February 2016, available at: <http://bit.ly/2kt9JBX>, para B.7.2.c.

¹¹⁵ Article 10-ter(3) TUI, inserted by Decree Law 13/2017.

¹¹⁶ Article 28-bis(1-ter) Procedure Decree, as amended by Decree Law 113/2018.

¹¹⁷ MoI Decree 5 August 2019, Article 2

¹¹⁸ See the *foglio notizie* at: <http://bit.ly/1LXpUKv>.

¹¹⁹ See ASGI, In Limine report Ombre in Frontiera, March 2020. available in Italian at: <https://bit.ly/3bYpTJF>.

¹²⁰ See the *foglio notizie* at: <https://cutt.ly/Kyv9KMr>.

prevent the expulsion, completed before printing, and delivered to the persons not in the identification phase but immediately after their transfer from the hotspot, at their arrival in Porto Empedocle. In addition, migrants were asked to sign a paper called “Scheda informativa”¹²¹, through which they declared they were not interested in seeking international protection. The declaration was only written in Italian language. After signing these documents they were notified with deferred refoulement orders¹²² and transferred to the CPR Trapani-Milo and Caltanissetta-Pian del Lago. As recorded by ASGI some of these persons had already asked asylum or expressed their intention to seek asylum before the transfers and before signing the scheda informativa.¹²³ Some of them had sent, through ASGI, a certificated e-mail to the Questura of Agrigento, expressing their will to seek asylum.

ASGI monitored the procedure applied to some of these third country nationals, who, only in some cases, obtained the non-validation of their detention orders in CPR. In these cases, the Magistrates considered their request for asylum had not been instrumental in avoiding detention and expulsion orders because it was presented during their stay in the hotspot, therefore before these measures had been applied to them.¹²⁴ (See [Judicial review of the detention order](#))

3. Registration of the asylum application

Indicators: Registration

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

The Procedure Decree provides that applications for international protection are made by non-EU citizens on the territory of the State, including at the border and in transit zones, and in the territorial waters.¹²⁵ Moreover, the Decree also provides for training for police authorities appropriate to their tasks and responsibilities.¹²⁶

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

Under the Procedure Decree,¹²⁷ the asylum claim can be made either at the Border Police upon arrival or at the Immigration Office (*Ufficio Immigrazione*) of the Police (*Questura*), if the applicant is already on the territory. The intention to seek international protection may be expressed orally or in writing by the person concerned in their own language with the help of a cultural mediator.¹²⁸

PD 21/2015 provides that asylum seekers who express their wish to apply for international protection before Border Police authorities are to be requested to approach the competent Questura within 8 working days. Failure to comply with the 8-working-day time limit without justification, results in deeming the

¹²¹ See *scheda informativa* at: <https://cutt.ly/Wyv9LQt>.

¹²² Article 10 (2) TUI Consolidated Act on Immigration.

¹²³ See ASGI, In Limine, La determinazione della condizione giuridica in hotspot, 29 April 2019, available in Italian at: <https://cutt.ly/lyv9XmV>.

¹²⁴ See ASGI, In Limine, Esiti delle procedure attuate a Lampedusa per la determinazione della condizione giuridica dei cittadini stranieri, 29 mei 2019, available in Italian at: <https://cutt.ly/Eyv9ChD>.

¹²⁵ Article 1 Procedure Decree, as amended by the Reception Decree.

¹²⁶ Article 10(1-bis) Procedure Decree, as amended by the Reception Decree.

¹²⁷ Article 6 Procedure Decree.

¹²⁸ Article 3(1) PD 21/2015.

persons as illegally staying on the territory.¹²⁹ However, there is no provision for a time limit to make an asylum application before the Questura when the applicant is already on the territory.

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

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

The Procedure Decree provides that the registration of the application shall be carried out within 3 working days from the expression of the intention to seek protection or within 6 working days in case the applicant has expressed such willingness before Border Police authorities. That time limit is extended to 10 working days in presence of a significant number of asylum applications due to consistent and tight arrivals of asylum seekers.¹³⁰

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

3.2. Lodging the application (*verbalizzazione*)

Fotosegnalamento is followed by a second step, consisting in the formal registration of the asylum application, which is carried out exclusively at the Questura within the national territory. EASO has also provided support in this process from 2017 to 2019.

The formal registration of the application (*verbalizzazione or formalizzazione*) is conducted through the “C3” form (*Modello C3*).¹³¹ The form is completed with the basic information regarding the applicant’s personal history, the journey to reach Italy and the reasons for fleeing from the country of origin. This form is signed by the asylum seeker and sent to the Territorial Commission, before the interview. Asylum seekers shall receive a copy of the C3 and copies of all other documents submitted to the police authorities.

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

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

The Reception Decree provides for the issuance of a “residence permit for asylum seekers” (*permesso di soggiorno per richiesta asilo*), valid for 6 months, renewable.¹³²

¹²⁹ Article 3(2) PD 21/2015.

¹³⁰ Article 26(2-bis) Procedure Decree, as amended by the Reception Decree.

¹³¹ Verbale delle dichiarazioni degli stranieri che chiedono in Italia il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra, available in Italian at: <https://bit.ly/2UWOLx2>.

¹³² Article 4(1) Reception Decree.

3.3. Access to the procedure in practice

Reports of denial of access to the asylum procedure recorded by ASGI continued in 2019. Where they prevent access to the procedure, Questure do not issue any document attesting the intention of the persons concerned to seek asylum. This exposes them to risks of arbitrary arrest and deportation. Obstacles to registration can take different forms, including the following:

Limited opening hours and online appointments

Campania: The Questura of Naples has introduced an online procedure since January 2018 for registration appointments. Once an appointment is made through the system, the applicant obtains a printable receipt with the appointment date when the *fotosegnalamento* and lodging of the application will take place. However, the online appointment system of the Questura is only available once a week on Thursday mornings and allows around 45 people to apply. This means that the spot available to access to the procedure through that system are full within few minutes. Internet access is not ensured at the Questura, meaning that asylum seekers who are not familiar with the system can only access it with the assistance of volunteers.¹³³ In light of the concrete obstacles to accessing the procedure posed by this system, an ASGI lawyer filed an urgent appeal to the Civil Court of Naples in February 2019 concerning a citizen of El Salvador who had been trying to seek asylum since July 2018. After a first rejection, the Civil Court of Naples again ruled on the urgent appeal and, on 29 July 2019, ordered the Questura to proceed with the registration of the asylum application.¹³⁴

Lazio: In Rome, ASGI continued to document problematic access to the procedure in 2019. On 4 February 2020, the Civil Court of Rome ordered the Questura of Rome to register the asylum application of a third country national who had repeatedly tried, unsuccessfully, to submit the application at the Immigration Office of Rome. The decree reiterates that the Questure must put in place an appropriate system for the exercise of the right of asylum and therefore the impediment deriving from the logistical needs of the public administration, which in practice allows a limited daily number of people who can formalize the asylum application - is not legitimate.¹³⁵

Many cases have also been reported to ASGI where asylum seekers were not allowed to enter the building of the Questura and were obliged to wait several hours outside, over a barrier, being exposed to psychological ill-treatment, such as verbal abuse and shouting. On several occasions, courts have found the refusal of Questure to take action for the lodging of asylum applications unlawful.¹³⁶

Residence and requirement of domicile

Article 5(1) of the Reception Decree clarifies that the obligation to inform the police of the domicile or residence is fulfilled by the applicant by means of a declaration, to be made at the moment of the application for international protection and that the address of the reception centres and pre-removal detention centres (CPR) are to be considered the place of residence of asylum applicants who effectively live in these centres.¹³⁷ Article 4(4) of the Reception Decree also states that access to reception conditions

¹³³ AIDA, *Access to protection in Europe: The registration of asylum applications*, October 2018, available at: <https://bit.ly/2PySydX>, 17.

¹³⁴ Civil Court of Naples, Order of 29 July 2019, available in Italian at: <https://cutt.ly/Hyv9Bkf>.

¹³⁵ Civil Court of Rome, Order of 4 February 2020.

¹³⁶ See e.g. Civil Court of Rome, Order 50192/2018, 18 September 2018, available in Italian at: <https://bit.ly/2ZeuMZE>; Civil Court of Palermo, Order 9994/2018, 13 September 2018, available in Italian at: <https://bit.ly/2UxDNOS>. For a discussion, see ASGI, 'Ancora ostacoli, rimossi con provvedimento ex art. 700 cpc all'esercizio del diritto di asilo', 14 November 2018, available in Italian at: <https://bit.ly/2GdE6Vf>.

¹³⁷ Article 5(1) Reception Decree. According to Article 5(2), the address is also valid for the notification of any kind of communication of any act concerning the asylum procedure (see also [Regular Procedure: General](#)).

and the issuance of the residence permit are not subject to additional requirements to those expressly stated by the Decree itself.¹³⁸

With these two provisions,¹³⁹ the Decree has made it clear that the unavailability of a domicile shall not be a barrier to access international protection. Nevertheless, still in 2019 Questura denied access to the procedure for lack of proof of domicile e.g. lease contract, declaration of hospitality including the identity document of the host person. This was the case for instance in **Lazio** (Rome), **Campania** (Naples), **Friuli-Venezia Giulia** (Pordenone), **Sicily** (Palermo, Syracuse), **Sardinia** (Cagliari), **Piedmont** (Novara) and **Lombardy** (Milan).

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

An asylum seeker from Pakistan whose brother was already accommodated in Pordenone, **Friuli-Venezia Giulia** was not registered as an asylum seeker because the Questura claimed he should have registered with the Border Police upon arrival. According to the Questura, he could seek asylum in Pordenone only if Pordenone was his place of residence, to be demonstrated with official statements. The Civil Court of Trieste recognised on 22 June 2018 his right to lodge an asylum application in the place where he was staying and his right to be accommodated there.¹⁴⁰ The appeal by the Government against this ruling was dismissed on 3 October 2018.¹⁴¹ However, again in November 2019 the Questura of Pordenone denied a Pakistani citizen access to the asylum procedure due to the lack of a domicile. The urgent appeal filed before the Civil Court of Trieste is still pending at the time of writing.

A similar appeal was filed against the Questura of Milan, **Lombardy**. On 25 July 2018, the Civil Court of Milan accepted the appeal lodged by a Salvadoran citizen who had been denied access to the procedure since May 2018 on the basis that he had no declaration of hospitality.¹⁴² Again, on **21 August 2019**, the Civil Court of Milan upheld the appeal of a Bangladeshi citizen who was prevented, after 8 hours of de facto detention at Immigration Office, from registering the asylum application because he had no proof of a domicile or residence in Milan. The Court observes that current legislation does not require the application for asylum to be accompanied by a document proving the residence or availability of a domicile in the place where the Questura is located, but the demonstration of having fixed - albeit temporarily - the centre of one's interests in that place must be considered sufficient.¹⁴³

Also in Bolzano, **Trentino Alto Adige**, the Questura refused a Palestinian citizen access to the asylum procedure not recognizing any legal value to the charitable residence he enjoyed in Bolzano after serving a few months in prison in Milan where, according to the Questura, he should have sought asylum. On 7 May 2019 the Civil Court of Trento ordered the Questura of Bolzano to register his asylum application given his documented presence in the city.¹⁴⁴

Also in Rome, **Lazio** people needed to present an urgent appeal before the Civil Court to obtain access to the asylum procedure. On 21 November 2018, the Civil Court of Rome ordered the Questura of Rome to register within 6 days an asylum application. The Court found that the refusal of registration by the

¹³⁸ Article 4(4) Reception Decree.

¹³⁹ Articles 4(4) and 5(1) Reception Decree.

¹⁴⁰ Civil Court of Trieste, Order 1929/2018, 22 June 2018, EDAL, available at: <https://bit.ly/2Gcl4gz>.

¹⁴¹ Civil Court of Trieste, Order 1929/2018, 3 October 2018, available in Italian at: <https://bit.ly/2P8V6Qs>.

¹⁴² Civil Court of Milan, Order 32311/2017, 25 July 2018, available in Italian at: <https://bit.ly/2UtPJBC>.

¹⁴³ Civil Court of Milan, Order of 21 August 2019.

¹⁴⁴ Civil Court of Trento, Order 7 May 2019, available in Italian at: <https://cutt.ly/Gyv9NW7>.

Questura for reasons of insufficient proof of address – the applicant was in fact accommodated at the Baobab¹⁴⁵ camp – was unlawful.¹⁴⁶

In December 2018, the Civil Court of Rome ordered the Questura of Rome to allow a foreign citizen to lodge a subsequent application for asylum, disregarding the lack of residence as irrelevant to access to the procedure.¹⁴⁷ In February 2019, it also accepted the appeal filed by an Egyptian citizen who had been living on the streets of Rome for months because he was unable to apply for asylum. The Court relied on the testimony of a person accompanying the applicant who stated that the Questura had not allowed him to apply because he did not show signs of such vulnerability to take precedence over others.¹⁴⁸

Nationality or presumed merit of applications

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

Lombardy: At the Questura of Milan, as denounced by the NGOs ASGI, Naga and Avvocati per Niente in a letter sent to the Ministry of Interior in April 2016, the Police submits a questionnaire to asylum seekers to assess, from the answers compiled, whether they are refugees or economic migrants, basically applying the same procedure as that applied at [Hotspots](#). Those considered economic migrants are denied accessing the asylum procedure and notified of an expulsion order.¹⁴⁹ The same Questura is also reported to deny access to the applicants' lawyers. Replying to the report, the Questura rejected all accusations, explaining, that lawyers are allowed to intervene on the basis of a specific mandate of their clients and for specific disputes with the immigration offices.¹⁵⁰

This practice has persisted in 2019.¹⁵¹ For persons who spontaneously appear before the Questura of Milan to seek asylum, there is a very high frequency of expulsion measures. This is also the case for people accommodated in temporary reception centres (CAS), whom the Questura considers as shipwreck survivors and not necessarily asylum seekers; it distinguishes the two categories on the basis of the aforementioned questionnaire. Throughout 2017, at least 23 people accommodated in CAS were issued expulsion orders after appearing before the Questura, and notified the [Withdrawal of Reception Conditions](#) at the same time.

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

Friuli-Venezia Giulia: Since 2018, the Questura have started to refuse lodging of asylum applications for asylum seekers falling under the [Dublin](#) procedure. When a Eurodac 'hit' is recorded, Questura move the C3 appointment to a later date and notify a Dublin transfer decision to the persons concerned before that date. Applicants are therefore subject to a transfer before having lodged their application and had the interview. This practice is partially changed in 2019 but not constantly.

Obstacles to nationals of specific countries continued to be witnessed in the [Hotspots](#) in 2019. In Lampedusa, **Sicily**, even before the list of safe countries was adopted, nationals of countries considered

¹⁴⁵ See Baobab website: <https://baobabexperience.org>

¹⁴⁶ Civil Court of Rome, Decree 18015/2018, 21 November 2018, available in Italian at: <https://bit.ly/2KzfBXU>.

¹⁴⁷ Civil Court of Rome, Order 18387/2018, 29 November 2018, available in Italian at: <https://bit.ly/2U9iXjW>.

¹⁴⁸ Civil Court of Rome, Order 29724/2018-1, 27 February 2019, available in Italian at: <https://bit.ly/2G8lJQe>.

¹⁴⁹ For more information and the letter, see: <http://bit.ly/2kB5kli>.

¹⁵⁰ The response appeared on the newspaper Avvenire on 30 April 2016.

¹⁵¹ In 2017, ASGI et al., made the note 'Protezione internazionale: la Questura deve ricevere la richiesta di asilo, non valutarla', 14 June 2017, available in Italian at: <http://bit.ly/2HN8J3V>.

safe have been issued removal orders and have been returned despite having expressly requested international protection (e.g. Tunisian nationals).

In conclusion, even though the Questura is not entitled to know in detail the applicant's personal history, some Questura, before filling in the C3, ask the applicant to provide a written statement concerning his or her personal reasons for fleeing from the country of origin. If the person concerned is not able to write, the interpreter writes for him or her. Because of this practice, the asylum application submitted to the Territorial Commission often includes several contradictions that the person is not able to explain during the personal interview for the protection assessment. This has been reported to ASGI for example in **Friuli-Venezia Giulia**.

Waiting times

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

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

Access to the procedure from detention

In practice, the possibility of accessing the asylum procedure inside a pre-removal detention centre (CPR) appears to be difficult due to the lack of appropriate legal information and assistance, and to administrative obstacles. In fact, according to the Reception Decree, people are informed about the possibility to seek international protection by the managing body of the centre.¹⁵²

As reported to the Guarantor for the rights of detained persons during his visit to the CPR of Turin on 1 March 2018, detainees who intend to apply for asylum must address their request to one of the operators of the managing body. The latter then communicates to the Questura that one of the detainees has requested an appointment, without providing any indication of the intention expressed by the interested party. Detainees wait for the appointment on average between two to three days but, due to the lack of documents certifying the intention to seek asylum, the police authorities could also not be informed of their legal situation and repatriate them before the submission of the asylum application.¹⁵³

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

On 4 April 2020, the Civil Court of Turin accepted the appeal lodged by an asylum seeker detained at the Ivrea District House, ordering the Questura of Turin to register the asylum application. Despite the applicant had expressed several times his will to seek asylum, the Questura had not proceeded and the detainee had received an expulsion order to be executed at the end of the prison sentence.¹⁵⁴

¹⁵² Article 6(4) Reception Decree.

¹⁵³ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

¹⁵⁴ Civil Court of Turin, Order 4 April 2020.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|---|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: ¹⁵⁵ | 33 days |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2019: | 34,728 ¹⁵⁶ |

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

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

By way of exception, the Territorial Commission, in duly justified circumstances, may further exceed this time limit by 3 months where necessary in order to ensure an adequate and complete examination of the application for international protection.¹⁵⁷ In light of the different possibilities of extension, the asylum procedure may last for a maximum period of 18 months.

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

Statistics on the average duration of the procedure in 2019 are not available. The number of asylum applications pending at first instance dropped from 145,906 at the end of 2017 to 98,369 as of 28 December 2018. Of those, in 52,420 (53.3%) cases asylum seekers were waiting for an appointment date for the personal interview. In 2019, to 31 October 2019, pending asylum applications amounted to 42,323 with a decrease of 61 % compared to 2018.¹⁵⁸

As of 31 October 2019, 30,468 asylum applications were filed, with a decrease of 35% compared to the same period of the previous year. In the same period the Territorial Commissions examined 81,162 instances, recognizing international protection in 18 % of cases. Out of these, 11 % for refugee status and 7 % for subsidiary protection. The denials amounted to 66 % of the requests. Humanitarian protection, due to the changes introduced by decree-law n. 113 of 2018, was granted to 1 % of the applicants.¹⁵⁹

¹⁵⁵ The personal interview must be conducted within 30 days of the registration of the application and a decision must be taken within 3 working days of the interview.

¹⁵⁶ In addition 8,075 cases are suspended because of the Dublin procedure, see CNDA data available in Italian at: <https://bit.ly/2LczQZ3>

¹⁵⁷ Article 27(2)(3) Procedure Decree.

¹⁵⁸ Ministry of Interior, hearing at Parliament, 7 November 2019, available in Italian at: <https://bit.ly/2XtVyNE>.

¹⁵⁹ Ministry of Interior, hearing at Parliament, 7 November 2019

Termination and notification

The Procedure Decree states that when the applicant, before having been interviewed, leaves the reception centre without any justification or absconds from CPR or from hotspots, the Territorial Commission suspends the examination of the application on the basis that the applicant is not reachable (*irreperibile*).¹⁶⁰

The applicant may request the reopening of the suspended procedure within 12 months from the suspension decision, only once. After this deadline, the Territorial Commission declares the termination of the procedure. In this case, applications made after the declaration of termination of the procedure are considered [Subsequent Applications](#).¹⁶¹

However, not all subsequent applications submitted after the termination of the 12-month suspension period are subject to a preliminary admissibility examination.¹⁶² During the preliminary examination, the grounds supporting the admissibility of the application and the reasons of the moving away from the centres are examined.¹⁶³ In 2017, ASGI received several reports of suspension of procedures for people whose accommodation had been revoked e.g. in Pordenone, **Friuli-Venezia Giulia**. This has also occurred due to lack of communication between reception centres and Questure in the case of transfers to different facilities, as was the case for people moved out of Cona, **Veneto** due to overcrowding.

Decree Law 13/2017 introduced a new procedure to notify interview appointments and decisions taken by the Territorial Commissions.¹⁶⁴ The CNDA issued a Circular a few days before the entry into force of the law which suspended the implementation of this procedure and required Questure to continue to carry out notifications.¹⁶⁵ However, as of 25 October 2018 the new notification procedure was implemented.

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

- a. **Accommodated or detained applicants:** Interviews and decisions can be notified by the managers of reception or detention centres, who then transmit the act to the asylum seeker for signature. The notification is considered to be carried out when the manager of the reception centre facility communicates it to the Territorial Commission through a certified email message indicating the date and time of notification. The law specifies that such communication must be immediate.¹⁶⁶
- b. **Applicants in private accommodation:** The notification must be made to the last address communicated to the competent Questura. In this case, notifications are sent by postal service.¹⁶⁷
- c. **Non reachable applicants:** The interview summons or decision is sent by certified email from the Territorial Commission to the competent Questura, which keeps it at the disposal of the persons concerned for 20 days. After 20 days, the notification is considered to be completed

¹⁶⁰ Article 23-bis Procedure Decree, inserted by Article 25 Reception Decree.

¹⁶¹ Article 2(1)(b-bis) Procedure Decree, inserted by Article 9 Decree Law 113/2018 as amended by L 132/2018.

¹⁶² This is a preliminary examination governed by Article 29(1-bis) Procedure Decree, to which Article 23-bis expressly refers.

¹⁶³ Article 23-bis Procedure Decree, inserted by Article 25(r) Reception Decree.

¹⁶⁴ Article 11(3) Procedure Decree et seq, as amended by Article 6 Decree Law 13/2017 as amended by L 46/2017.

¹⁶⁵ CNDA Circular No 6300 of 10 August 2017; Circular No 8124 of 19 October 2018.

¹⁶⁶ Article 11(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁶⁷ Article 11(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

and a copy of the notified deed is made available for the applicant's collection at the Territorial Commission.¹⁶⁸

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

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

From 1 January to 31 December 2019, the Territorial Commissions issued 2,546 suspension decisions on the ground that the applicant was not reachable.

Outcomes of the procedure

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

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

Decree Law 113/2018 has abolished the status of humanitarian protection by repealing the provision of the TUI concerning the issuance of a residence permit on serious grounds, in particular of a humanitarian nature or resulting from constitutional or international obligations of the Italian State.¹⁶⁹

Special protection permits are granted to persons who, according to the law, cannot be expelled or refouled.¹⁷⁰ This covers cases where a person risks being persecuted for reasons of race, sex, language, citizenship, religion, political opinions, personal or social conditions, or may risk being sent back to another country where he or she is not protected from persecution, or to a country where there are reasonable grounds to believe that he or she risks being subjected to torture.¹⁷¹ These permits are granted for a duration of one year (see [Residence Permit](#)). Special protection is not granted when it is possible to transfer the applicant to a country, which could offer equivalent protection (*protezione analoga*) to Italy.¹⁷²

Decree Law 113/2018 does not regulate the situation of asylum seekers who applied for international protection before its entry into force on 5 October 2018 and who are still waiting for a first instance decision. As of that date, the Territorial Commissions have already stopped

¹⁶⁸ Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁶⁹ Article 5(6) TUI, as amended by Article 1(1)(b)(2) Decree Law 113/2018.

¹⁷⁰ Article 32(3) Procedure Decree, as amended by Article 1(2)(a) Decree Law 113/2018.

¹⁷¹ Articles 19(1) and 19(1.1) TUI.

¹⁷² Article 32(3) Procedure Decree, as amended by Article 1(2)(a) Decree Law 113/2018.

examining the possibility to grant humanitarian protection, pursuant to instructions from the Ministry of Interior.¹⁷³

However, the Civil Courts and Courts of Appeal have so far agreed on the non-retroactivity of the reform and have continued to grant humanitarian protection to asylum seekers after 5 October 2018, at least for appeals that were submitted prior to the entry into force of the law. According to ASGI, the principle of non-retroactivity should apply to all asylum applications lodged prior to the entry into force of the reform.¹⁷⁴

In February 2019, the Court of Cassation held that Decree Law 113/2018 should be considered non-retroactive for all asylum procedures already initiated at the time of its entry into force.¹⁷⁵ At the moment, however, Territorial Commissions are unequivocally applying the new regime to all ongoing procedures, therefore not granting humanitarian protection, in light with the instructions received by CNDA from the Ministry of Interior to disregard the Court of Cassation judgment, as reported by ASGI.

4. Reject the asylum application as unfounded;
5. Reject the application as manifestly unfounded;¹⁷⁶

According to the new Article 28-ter of the Procedure Decree, an application is deemed to be “manifestly unfounded” where the applicant:

- a. Has only raised issues unrelated to international protection;
- b. Comes from a [Safe Country of Origin](#);
- c. Has issued clearly inconsistent and contradictory or clearly false declarations, which contradict verified information on the country of origin;
- d. Has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision, or in bad faith has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;
- e. Irregularly entered the territory, or irregularly prolonged his or her stay, and without justified reason, did not make an asylum application promptly;
- f. Refuses to comply with the obligation of being fingerprinted under the Eurodac Regulation;
- g. Is detained in a CPR for reasons of exclusion under Article 1F of the 1951 Convention, public order or security grounds, or there are reasonable grounds to believe that the application is lodged solely to delay or frustrate the execution of a removal order (see [Grounds for Detention](#)).¹⁷⁷

6. Reject the application on the basis that an internal protection alternative is available.¹⁷⁸

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

¹⁷³ See e.g. Ministry of Interior, Circular No 83774 of 18 December 2018.

¹⁷⁴ ASGI, *Il regime intertemporale ai tempi del d.l. 113/2018*, October 2018, available in Italian at: <http://bit.ly/2TJaFTI>. See also in English: <https://bit.ly/2ysGHus>.

¹⁷⁵ Court of Cassation, Decision 4890/2019, 23 January 2019, EDAL, available at: <https://bit.ly/2X00wQy>.

¹⁷⁶ Article 32(1)(b-bis) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

¹⁷⁷ Article 28-ter(g) Procedure Decree, citing Article 6(2)-(3) Reception Decree.

¹⁷⁸ Article 32(1)(b-ter) Procedure Decree, inserted by Decree Law 113/2018 and L 132/2018.

In 2019, as monitored by ASGI, in many cases rejections of manifestly unfounded applications were notified together with expulsion orders. Therefore, before the time for appeal was expired, applicants were already moved to CPRs.

In two cases the Judge of the Peace of Agrigento cancelled the expulsion orders regarding two Tunisian citizens who disembarked in Lampedusa considering the orders unlawfully issued pending the deadline to appeal the rejection of their asylum applications, deemed manifestly unfounded due to the fact that Tunisia is considered as a safe country of origin.¹⁷⁹

1.2. Prioritised examination and fast-track processing

Article 28 of the Procedure Decree, last amended in 2018, provides that the President of the Territorial Commission identifies the cases to be processed under the prioritised procedure, when:

- a. The application is likely to be well-founded;
- b. The applicant is vulnerable, in particular if he or she is an unaccompanied child or a person in need of special procedural guarantees;
- c. The application is made by an applicant detained in a CPR or a hotspot;¹⁸⁰
- c-bis The applicant comes from one of the countries identified by the CNDA that allow the omission of the personal interview when considering that there are sufficient grounds available to grant subsidiary protection. The competent Territorial Commission, before adopting such a decision, informs the applicant of the opportunity, within 3 days from the communication, to request a personal interview. In absence of such request, the Territorial Commission takes the decision;¹⁸¹
- c-ter The applicant comes from a designated **Safe Country of Origin**.¹⁸²

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

Regarding unaccompanied children, L 47/2017 has allowed a faster start of the procedure as it allows the manager of the reception centre to represent the child until the appointment of a guardian.¹⁸³ That said, according to ASGI's experience, the prioritised procedure was not widely applied to unaccompanied children in 2018 and 2019.

¹⁷⁹ ASGI, In Limine, Giudice di Pace di Agrigento: illegittimo il provvedimento di espulsione prima che sia decorso il termine previsto per l'impugnazione delle pronunce di diniego della domanda di protezione internazionale, 15 December 2019, available in Italian at: <https://bit.ly/3bWwR9wU>.

¹⁸⁰ Article 28(1)(c) Procedure Decree, as amended by Article 3(2)(b) Decree Law 113/2018.

¹⁸¹ Article 28(1)(c-bis) Procedure Decree, inserted by the Reception Decree.

¹⁸² Article 28(1)(c-ter) Procedure Decree, inserted by Article 7-bis(1)(d) Decree Law 113/2018 and L 132/2018.

¹⁸³ Article 6(3) L 47/2017.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

The Procedure Decree provides for a personal interview of each applicant, which is not public.¹⁸⁴ During the personal interview the applicant can disclose exhaustively all elements supporting his or her asylum application.¹⁸⁵

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

- (a) Determining authorities have enough elements to grant refugee status under the 1951 Refugee Convention without hearing the applicant; or
- (b) The applicant is recognised as unable or unfit to be interviewed, as certified by a public health unit or by a doctor working with the national health system. In this regard, the law provides that the personal interview can be postponed due to the health conditions of the applicant duly certified by a public health unit or by a doctor working with the national health system or for very serious reasons.¹⁸⁶ The applicant recognised as such is allowed to ask for the postponement of the personal interview through a specific request with the medical certificates.¹⁸⁷
- (c) For applicants coming from those countries identified by the CNDA, when considering that there are sufficient grounds to grant them subsidiary protection.¹⁸⁸ The competent Territorial Commission, before adopting such a decision, informs the applicant that he or she has the opportunity, within 3 days from the communication, to be admitted to the personal interview. In absence of such request, the Territorial Commission takes the decision to omit the interview. This provision is particularly worrying, considering that it derogates from the general rule on the basis of which the personal interview is also aimed to verify first whether the applicant is a refugee, and if not, the conditions to grant subsidiary protection.

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

1.3.1. Interpretation

In the phases concerning the registration and the examination of the asylum claim, including the personal interview, applicants must receive, where necessary, the services of an interpreter in their language or in a language they understand. Where necessary, the documents produced by the applicant shall be translated.¹⁸⁹

¹⁸⁴ Article 12(1) Procedure Decree; Article 13(1) Procedure Decree.

¹⁸⁵ Article 13(1-bis) Procedure Decree, inserted by the Reception Decree.

¹⁸⁶ Article 12(3) Procedure Decree, as amended by the Reception Decree.

¹⁸⁷ Article 5(4) PD 21/2015.

¹⁸⁸ Article 12(2-bis) Procedure Decree, read in conjunction with Article 5(1-bis).

¹⁸⁹ Article 10(4) Procedure Decree, as amended by the Reception Decree.

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

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

1.3.2. Recording and transcript

The personal interview may be recorded. The recording is admissible as evidence in judicial appeals against the Territorial Commission's decision. Where the recording is transcribed, the signature of the transcript is not required by the applicant.¹⁹⁰ Following Decree Law 13/2017, implemented by L 46/2017, the law states that the interview has to be taped by audio-visual means and transcribed in Italian with the aid of automatic voice recognition systems.¹⁹¹ The transcript of the interview is read out to the applicant by the interpreter and, following the reading, the necessary corrections are made by the interviewer together with the applicant.

All of the applicant's observations not implemented directly in the text of the transcript are included at the bottom of the document and signed by him or her. The transcript itself is signed only by the interviewer – or the President of the Commission – and by the interpreter.¹⁹² The applicant does not sign the transcript and does not receive any copy of the videotape, but merely a copy of the transcript in Italian. A copy of the videotape and the transcript shall be saved for at least 3 years in an archive of the Ministry of Interior and made available to the court in case of appeal. The applicant can only access the tape during the appeal,¹⁹³ meaning that it is not available at the time of drafting the appeal.

The applicant can formulate a reasoned request before the interview not to have the interview recorded. The Commission makes a final decision on this request.¹⁹⁴ This decision cannot be appealed.¹⁹⁵ When the interview cannot be videotaped for technical reasons or due to refusal of the applicant, the interview is transcribed in a report signed by the applicant.¹⁹⁶

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

¹⁹⁰ Article 14(2-bis) Procedure Decree, inserted by the Reception Decree.

¹⁹¹ Article 14(1) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁹² Article 14(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

¹⁹³ Article 14(5) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

¹⁹⁴ Article 14(6-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

¹⁹⁵ Article 14 (6 bis) Procedure Decree.

¹⁹⁶ Article 14(7) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Some grounds <input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: not available

1.4.1. Appeal before the Civil Court

The Procedure Decree provides for the possibility for the asylum seeker to appeal before the competent Civil Court (*Tribunale Civile*) against a decision issued by the Territorial Commissions rejecting the application, granting subsidiary protection instead of refugee status or requesting the issuance of a residence permit for special protection instead of granting international protection.¹⁹⁷

Specialised court sections

Decree Law 13/2017, implemented by L 46/2017, has established specialised sections in the Civil Courts, responsible for immigration, asylum and free movement of EU citizens' cases.¹⁹⁸ Judges to be included in the specialised sections should be appointed on the basis of specific skills acquired through professional experience and training. EASO and UNHCR are entrusted with training of judges, to be held at least annually during the first three years.¹⁹⁹

By the end of September 2018, 13 Civil Courts had established specialised sections following the 2017 reform, counting a total of 75 ordinary judges and 82 honorary judges.

The Civil Courts of **Milan** and **Messina** had pre-existing specialised sections dealing with immigration and asylum cases.²⁰⁰ Other courts (Cagliari, Campobasso, Catania, Catanzaro, L'Aquila, Lecce, Napoli, Perugia, Potenza, Turin, Trento) have not set up such sections yet.²⁰¹

Not all of the specialised sections of the Civil Courts deal with the backlog of appeals pending before the entry into force of Decree Law 13/2017.²⁰²

The competence of the Court is determined on the basis of the location of the competent Territorial Commission, but also on the basis of the place where the applicant is accommodated (governmental reception centres, CAS, SIPROIMI and CPR).²⁰³

Rules for the lodging of appeals

The appeal must be lodged within 30 calendar days from the notification of the first instance decision and must be submitted by a lawyer.²⁰⁴

However, the time limit for lodging an appeal is 15 days for persons placed in CPR and negative decisions taken under the [Accelerated Procedure](#).²⁰⁵

¹⁹⁷ Articles 35(1) and 35-bis(1) Procedure Decree.

¹⁹⁸ Article 1 Decree Law 13/2017, as amended by L 46/2017.

¹⁹⁹ Article 2(1) Decree Law 13/2017, as amended by L 46/2017.

²⁰⁰ CSM, *Monitoraggio sezioni specializzate*, October 2018, available in Italian at: <https://bit.ly/2lfn1xu>, 7.

²⁰¹ *Ibid.*, 6.

²⁰² *Ibid.*, 11.

²⁰³ Article 4(3) Decree Law 13/2017, as amended by L 46/2017.

²⁰⁴ Article 35-bis(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017.

²⁰⁵ *Ibid.*

The appeal has automatic suspensive effect, except where:²⁰⁶

- a. The applicant is detained in CPR or a hotspot;
- b. The application is inadmissible;
- c. The application is manifestly unfounded;
- d. The application is rejected on some of the grounds for applying the [Accelerated Procedure](#).

However, in those cases, the applicant can individually request a suspension of the return order from the competent judge. The court must issue a decision within 5 days and notify the parties, who have the possibility to submit observations within 5 days. The court takes a non-appealable decision granting or refusing suspensive effect within 5 days of the submission and/or reply to any observations.²⁰⁷

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

Despite the aforementioned provisions on automatic suspensive effect of appeals, the Questura of Naples continued to make an incorrect interpretation of the law in 2018, claiming that, for all appeals submitted after the entry into force of L 46/2017, suspensive effect had to be requested and obtained. The Questura deemed that all applicants automatically fell within the [Accelerated Procedure](#) on the ground that they had applied for asylum after being apprehended for avoiding or attempting to avoid border controls or found irregularly on the territory with the sole aim of avoiding removal or refusal of entry. Following a ruling of the Court of Appeal of Naples which clarified the nature of the accelerated procedure, ASGI requested the Questura to immediately stop this unlawful practice.²⁰⁸

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

As highlighted by ASGI, these indications appear illegitimate in the light of Article 46 (8) of the Directive 2013/32/EU, which establishes the applicant's right to remain on the national territory, until a judge decision on the suspension request has been taken and in light of Article 41, which provides for specific exceptions to this rule.²⁰⁹

After the appeal is notified to the Ministry of Interior at the competent Territorial Commission, the Ministry may present submissions (defensive notes) within the next 20 days. The applicant can also present submissions within 20 days.²¹⁰ The law also states that the competent Commission must submit within 20 days from the notification of the appeal the video recording and transcript of the personal interview and the entire documentation obtained and used during the examination procedure, including country of origin information relating to the applicant.²¹¹ In 2018, a substantial part of EASO caseworkers deployed to Territorial Commissions have assisted in the drafting of submissions in appeal proceedings. In 2019 Interim Experts from EASO deployed as Caseworkers to the Territorial Commissions could draft the

²⁰⁶ Article 35-bis(3) Procedure Decree, inserted by Article 6 Decree Law 13/2017, as amended by Article 3 Decree Law 113/2018.

²⁰⁷ Article 35-bis (4) Procedure Decree.

²⁰⁸ Court of Appeal of Naples, Decision 17/2018, 3 January 2018, available at: <http://bit.ly/2mxJHvD>.

²⁰⁹ ASGI, Asilo e procedure accelerate: commento alla circolare del Ministero dell'Interno, 6 March 2020, available in Italian at: <https://bit.ly/2zfAv9L>.

²¹⁰ Article 35-bis(7) and (12) Procedure Decree.

²¹¹ Article 35-bis(8) Procedure Decree.

Commission's submissions in the appeal procedure, although they had no competence to represent the Commission before the Court. Their submissions was supposed to focus exclusively on factual issues and evidence assessment and not enter into legal argumentation.²¹² The termination of activities of the Interim Experts deployed at the Territorial Commissions expected by the end of 2019²¹³ took place one month before, on November 2019.

Hearing

According to the appeal procedure following Decree Law 13/2017, implemented by L 46/2017, oral hearings before the court sections are a residual option. The law states that, as a rule, judges shall decide the cases only by consulting the videotaped interview before the Territorial Commission. They shall invite the parties for the hearing only if they consider it essential to listen to the applicant, or they need to clarify some aspects or if they provide technical advice or the intake of evidence.²¹⁴ A hearing is also to be provided when the videotaping is not available or the appeal is based on elements not relied on during the administrative procedure of first instance.²¹⁵

Since the adoption of Decree Law 13/2017, ASGI has claimed that the use of video recorded interviews, potentially replacing asylum seekers' hearings by the court, does not comply with the right to an effective remedy provided by Article 46 of the recast Asylum Procedures Directive, as an applicant's statements are often the only elements on which the application is based. Therefore, there is no certainty that judges will watch the videos of the interviews, and in any case they will not watch them with the assistance of interpreters so as to understand the actual extent of applicants' statements.

Throughout 2017 and 2018, insofar as Territorial Commissions were still not video-recording interviews, most of the court sections have always held oral hearings with asylum seekers, as set out in the law in case the interview is not video-recorded.²¹⁶ Although Civil Courts such as **Naples** interpreted the law as leaving discretion to the court to omit a hearing even if the videotape is not available, the Cassation Court clarified in 2018 that in such cases the oral hearing is mandatory and cannot be omitted.²¹⁷

On 6 March 2018, the Civil Court of **Venice** adopted a Protocol for its Immigration Section,²¹⁸ which immediately alarmed part of the judiciary and ASGI. The most critical aspect of the Protocol concerns the hearing of the asylum seeker without the presence of the lawyer and the duty of the lawyer to inform the judge, before the hearing, about the possible existence of infectious diseases of the applicant with the obligation to produce medical certification attesting the absence of risks of contagion.²¹⁹

Decision

The Civil Court can either reject the appeal or grant international protection to the asylum seeker within 4 months.²²⁰ Since the entry into force of Decree Law 13/2017, the appeal procedure has sped up considerably.

²¹² ECRE, *The role of EASO operations in national asylum systems*, 2019, 23, available at: <https://bit.ly/2WHE0NN>, p. 23.

²¹³ ECRE, *The role of EASO operations in national asylum systems*, 2019, 20, available at: <https://bit.ly/2WHE0NN>.

²¹⁴ Article 35-bis Procedure Decree, introduced by Article 6(10) Decree Law 13/2017 and L 46/2017.

²¹⁵ Article 6(11) Decree Law 13/2017.

²¹⁶ CSM, *Monitoraggio sezioni specializzate*, October 2018, 27-28.

²¹⁷ Court of Cassation, 1st Section, Decision 28424/2018, 27 June 2018, available in Italian at: <https://bit.ly/2G6XwuS>; Decision 17717/2018, 5 July 2018, available in Italian at: <https://bit.ly/2GfMYeb>. See also: EDAL, Italy – Supreme Court of Cassation, 27th June 2018, no. 28424, available at: <https://bit.ly/36vKlAn>.

²¹⁸ Civil Court of Venezia, Immigration Section Protocol, 6 March 2018, available in Italian at: <http://bit.ly/2prcXpq>.

²¹⁹ Magistratura Democratica, 'Il diritto di difesa non è uguale per tutti', 18 March 2018, available in Italian at: <http://bit.ly/2pskqEH>. See also ASGI, Letter to the Civil Court of Venice, 19 March 2018, available in Italian at: <http://bit.ly/2u3NZ51>.

²²⁰ Article 35-bis(13) Procedure Decree.

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

1.4.2. Onward appeal

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

In case of a negative decision, the asylum seeker can only lodge an appeal before the Court of Cassation within 30 days, compared to 60 days granted before the reform.²²¹

The onward appeal is not automatically suspensive. Nevertheless, the Court of Justice of the European Union (CJEU) found in its *F.R.* judgment of 27 September 2018 that this provision complies with EU law as the recast Asylum Procedures Directive does not contain any provisions requiring a second level of jurisdiction against negative asylum decisions and therefore does not require any automatic suspensive effect for onward appeals.²²²

The request for suspensive effect is examined by the judge who rejected the appeal at Civil Court level and has to be submitted within 5 days from the notification of the appeal.²²³

The 2017 reform has sparked strong reactions from NGOs,²²⁴ and even from some magistrates. Cancelling the possibility to appeal the Civil Court decisions at Court of Appeal, making the hearing of the applicant a mere residual option, further complicating access to free legal aid, reducing the time for appeal to the Court of Cassation, and entrusting the assessment of the request for suspensive effect of onward appeals to the same Civil Court judge who delivered the negative first appeal ruling, drastically reduces the judicial protection of asylum seekers. The Cassation Section of the Magistrates' National Association (*Associazione Nazionale Magistrati*) also highlighted the unreasonableness of the choice to abolish the second level of appeal, which is still provided for civil disputes of much lower value if compared to international protection cases, bearing in mind that the procedure before the Court of Cassation is essentially a written procedure.

The reform has had a visible impact on the caseload before the Court of Cassation, which rose from 374 appeals in 2016 to 10,341 in 2019. In 2019, 3,053 asylum proceedings were decided.²²⁵

The average duration of the appeal process in 2019 is not available.

As regards appeals lodged before the entry into force of L 46/2017, a second appeal can still be brought before the Court of Appeal. The Court of Cassation has clarified that these second-instance appeals follow the same procedure as before the entry into force of the Reception Decree.²²⁶

²²¹ Article 35-bis(13) Procedure Decree.

²²² CJEU, Case C-422/2018 *F.R. v Ministero dell'interno – Commissione Territoriale per il riconoscimento della Protezione Internazionale presso la Prefettura U.T.G. di Milano*, Judgment of 27 September 2018, EDAL, available at: <https://bit.ly/2D1oGCE>.

²²³ Article 35-bis(13) Procedure Decree.

²²⁴ See ASGI and Magistratura Democratica, 'D.L. 13/2017, sempre più distanza tra giudici e cittadini stranieri', February 2017, available in Italian at: <http://bit.ly/2moJoWs>; Antigone, 'Il pacchetto Minniti calpesta i diritti', 12 February 2017, available in Italian at: <http://bit.ly/2l7pjUo>.

²²⁵ Court of Cassation, Report of the Court of Cassation President on the administration of justice in 2019, 31 January 2020, available in Italian at: <https://bit.ly/2WW2xjt>, 47

²²⁶ Court of Cassation, Decision 669/2018, 12 January 2018.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

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

1.5.1. Legal assistance at first instance

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

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

A distinction should be made between national public funds and those which are allocated by private foundations and associations. In particular, the main source of funds provided by the State is the National Fund for Asylum Policies and Services, financed by the Ministry of Interior. The Procedure Decree provides that the Ministry of Interior can establish specific agreements with UNHCR or other organisations with experience in assisting asylum seekers, with the aim to provide free information services on the asylum procedure as well on the revocation one and on the possibility to make a judicial appeal. These services are provided in addition to those ensured by the manager of the accommodation centres.²²⁷ However, following the reform of the reception system brought about by Decree Law 113/2018, implemented by L 132/2018, the new tender specifications scheme (*capitolato d'appalto*) adopted by way of Ministry of Interior Decree on 20 December 2018 has ceased funding for legal support in different reception hotspots, first reception centres, CAS and CPR, and replaced it with "legal information" services (see [Forms and Levels of Material Reception Conditions](#)).

National funds are also allocated for providing information and legal counselling at official land, air, sea border points and in the places where migrants arrive by boat.²²⁸ In addition, some funds for financing legal counselling may also be provided from European projects / programmes or private foundations. However, it should be highlighted that these funds are not sufficient.

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

²²⁷ Article 10(2-bis) Procedure Decree.

²²⁸ Article 11(6) TUI.

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

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

1.5.2. Legal assistance in appeals

With regard to the appeal phase, free state-funded legal aid (*gratuito patrocinio*), is provided by law to asylum seekers who declare an annual taxable income below €11,493.82 (up from €11,369.24) and whose case is not deemed manifestly unfounded.²²⁹ Legal aid is therefore subject to a “means” and “merits” test.

Means test

The law specifies that in case of income acquired abroad, the foreigner needs a certification issued by the consular authorities of their country of origin.²³⁰ However, the law prescribes that if the person is unable to obtain this documentation, he or she may alternatively provide a self-declaration of income.²³¹ Regarding asylum seekers, Article 8 PD 21/2015 clarifies that, in order to be admitted to free legal assistance, the applicant can present a self-declaration instead of the documents prescribed by Article 79 PD 115/2002.

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

Merits test

In addition, access to free legal assistance is also subject to a merits test by the competent Bar Association which assesses whether the asylum seeker's motivations for appealing are not manifestly unfounded.²³² During 2017 and 2018, some Bar Associations such as **Milan** and **Trieste** rejected almost all requests to access to free legal assistance, generally deeming the petitioners' claims as manifestly unfounded.

Moreover, it may occur that the applicant is initially granted free legal aid by a Bar Council but, as prescribed by law, the Court revokes the decision if it considers that the admission requirements assessed by the Bar Association are not fulfilled.²³³ The Court of Cassation has ruled that the withdrawal of legal aid may only be ordered after a concrete assessment of the circumstances of the case, fulfilling both criteria of being manifestly unfounded and gross negligence.²³⁴

L 46/2017 has substantially curtailed access to legal aid, as it reverses the rule applicable to all other proceedings. It establishes that, when fully rejecting the appeal, a judge who wishes to grant legal aid has to indicate the reasons why he or she does not consider the applicant's claims as manifestly unfounded.²³⁵

²²⁹ Article 16(2) Procedure Decree.

²³⁰ Article 79(2) PD 115/2002.

²³¹ Article 94(2) PD 115/2002.

²³² Article 126 PD 115/2002.

²³³ Article 136 PD 115/2002.

²³⁴ Court of Cassation, Decision 26661/2017, 10 November 2017.

²³⁵ Article 35-bis(17) Procedure Decree.

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

In relation to the presence of the lawyer during the hearing, the Civil Court of **Venice** adopted a Protocol for its Immigration Section, which provided that the hearing of the asylum seeker is to take place without the presence of the lawyer (see [Regular Procedure: Appeal](#)).²³⁶ After the letter sent to the President of the Court of Venice by ASGI and Giuristi Democratici,²³⁷ the Court partially corrected the rule, arguing that it was not intended to exclude the assistance of the lawyer but only to limit his intervention during the hearing, to be held between judge and appellant.

2. Dublin

2.1. General

Dublin statistics: 2019

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	4,042	579	Total	35,255	5,979

Source: Ministry of Interior, Dublin Unit, data obtained by ASGI (Data up to date 31 December 2019)

In 2019 there were 7,296 take charge requests in the incoming procedure and 27,959 take back requests. With regards to the outgoing procedure, there were 790 take-charge requests and 3,252 take back requests.

As of September 2019, most of the incoming requests came from Germany and France, followed by: the Netherlands, Austria, Switzerland, Belgium, Sweden, the United Kingdom, and Luxembourg.²³⁸

The data, reported by media as of May 2019, caused quite a stir because the incoming Dublin transfers had exceeded the number of asylum seekers disembarked.²³⁹ While the government boasted fewer arrivals due to the policy of closed ports, the data showed however that a large part of asylum seekers return to Italy from the countries of northern Europe, mostly from Germany. This circumstance revealed once again the contradictory position of the previous interior Minister who had expressed opposition to the reform of the Dublin Regulation.

The proportion was not maintained by the end of the year, when the incoming Dublin transfers were only about half of the people disembarked (11,471 people).

By the end of 2019, out of 34,728 pending asylum applications, 8,075 were suspended because of the ongoing Dublin procedure.²⁴⁰

²³⁶ Civil Court of Venice, Immigration Section Protocol, 6 March 2018, available in Italian at: <http://bit.ly/2prcXpq>.

²³⁷ ASGI, 'ASGI e Giuristi Democratici sul Protocollo Immigrazione del Tribunale di Venezia : gravissima violazione del diritto di difesa', 19 March 2018, available in Italian at: <http://bit.ly/2TA5LJr>.

²³⁸ Ministry of Interior, data obtained by Altreconomia.

²³⁹ Il Sole 24Ore, I migranti rispediti in Italia sono più di quelli che sbarcano, 9 May 2019, available in Italian at: <https://bit.ly/3e9BLdh>.

²⁴⁰ Ministry of Interior, data available at : <https://bit.ly/2ysenbL>.

2.1.1. Application of the Dublin criteria

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

In 2019, the Dublin Unit dealt with 64 new cases of unaccompanied foreign minors eligible for the Dublin family reunification procedure, based on Articles 8 and 17 (2) of the Regulation and another 100 cases registered in the previous years.

As for 2018, in 2019 in most cases of unaccompanied children's family reunification, the child was without documents. Therefore, the request was supported by a copy of the identity document of the relative, by genealogical trees and further interviews on the personal history of the child and his relationship with the family member and by family photos.²⁴¹

In 2018, the Children's Ombudsman noted a general absence of defined and homogeneous procedures for the family reunification procedure and a general lack of information to minors, causing distress, disorientation and distrust, and significantly increasing the risk of absconding from reception centres.²⁴²

Of the 164 unaccompanied children who were involved in the procedure, as of 31 December 2019, 67 have been transferred and 32 were awaiting the transfer, while 28 have absconded from the procedure (most of them after the rejection of the request) and in 27 cases the requests have been definitively rejected. The breakdown of outgoing transfers of unaccompanied children in 2019 was as follows:

Outgoing transfers of children under the Dublin Regulation: 2019	
Country	Number of transfers
Germany	14
Sweden	14
United Kingdom	13
Holland	8
Norway	7
France	4
Switzerland	4
Portugal	2
Liechtenstein	1
Total	67

Source: Ministry of Labour

Family reunification was carried out with parents in 9 cases, siblings in 37 cases, uncles in 19 cases and cousins in 2 cases.²⁴³

²⁴¹ Ministry of Labour, Monitoring report on unaccompanied foreign minors, 31 December 2019.

²⁴² Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TE XUPE>, 14-15.

²⁴³ Ministry of Labour, Monitoring report on unaccompanied foreign minors, , 31 December 2019, 21.

2.1.2. The discretionary clauses

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

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

In some cases in 2018, courts held that the "sovereignty clause" may only be applied as long as a decision on the asylum application has not been issued by any Member State concerning the individual applicant,²⁴⁴ and in "take back" cases the court is not required to assess risks of *refoulement* upon potential return to the country of origin.²⁴⁵ Nevertheless, the Civil Court of Rome ordered the application of Article 17(1) and annulled the transfer to Norway where the applicant had already received a negative decision on his asylum application. The Court took into account the risk situation for personal safety and respect for fundamental rights in the applicant's country of origin, Afghanistan, in addition to the applicant's young age and the absence of a support network in the country of origin.²⁴⁶

In 2019, the Civil Court of Rome confirmed its orientation on the application of the sovereignty clause for Afghan citizens who risked indirect refoulement: by a decision issued on 10 May 2019, the Court annulled the transfer to Germany of an Afghan asylum seeker²⁴⁷ where the applicant risked to be repatriated to his country of origin because of the negative decision on his asylum application.

Also, on May 10, 2019, the Court of Rome applied Article 17 (1) and annulled the transfer to Austria of a Pakistani applicant because of the violation of information obligations pursuant to Articles 4 and 5 of the Dublin Regulation and considering the risks he would have faced when repatriated in Pakistan.²⁴⁸

Notably, as of 11 October 2019, the Civil Court of Rome ordered the application of Article 17 (1) and annulled the transfer to Germany of a Pakistani family taking into account the needs and care of their minor child born immediately after the transfer decision to Germany issued by the Italian Dublin Unit.²⁴⁹ Later, the entire family got the refugee status in Italy.

The Civil Court of Trieste, which has become competent for a huge number of Dublin appeals (see later procedure) as of March 2019 annulled the transfer of an Afghan asylum seeker to Belgium and applying Article 17(1) because of the risks the applicant would have faced in case of return to Afghanistan.²⁵⁰

Later, the same Court changed its orientation: on 5 November 2019, the Court refused to cancel the transfer of an Afghan citizen to Sweden considering Sweden as the only State responsible to assess the risk for the applicant in case of repatriation to his country of origin and arguing that the discretionary clause of Article 17(1) is enforceable only by the State not by the judges.²⁵¹

In the same way, the Civil Court of Trieste refused to apply Article 17(1) to many Iraqi citizens who had already received rejection of their asylum application in the destination countries.²⁵²

²⁴⁴ See e.g. Civil Court of Bologna, Decision 1796/2018.

²⁴⁵ See e.g. Civil Court of Milan, Decision 29819/2018; Civil Court of Caltanissetta, Decision 482/2018; Civil Court of Caltanissetta, Decision 1398/2018.

²⁴⁶ Civil Court of Rome, Decision 7899/2018, 5 June 2018, EDAL, available at: <https://bit.ly/2DbUCEq>.

²⁴⁷ Civil Court of Rome, Decision 15246/2019, 10 May 2019.

²⁴⁸ Civil Court of Rome, Decision 15369/2019, 10 May 2019, available in Italian at: <https://bit.ly/2ZB43cv>.

²⁴⁹ Civil Court of Rome, Decision 20991/2019, 11 October 2019.

²⁵⁰ Civil Court of Trieste, decision 605/2019, 15 March 2019.

²⁵¹ Civil Court of Trieste, decision 5 November 2019.

²⁵² See e.g. Civil Court of Trieste, decision 3095/2019 of 21 October 2019; Civil Court of Trieste decision 105/2020 of 20 January 2020; Civil Court of Trieste, decision 108/2020 PF 20 January 2020.

2.2. Procedure

Indicators: Dublin: Procedure

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

The staff of the Italian Dublin Unit has significantly increased in 2018 and benefitted from the support of EASO personnel, mainly in relation to outgoing requests, family reunification and children. Also in 2019, EASO interim staff supported the Italian Dublin Unit.²⁵³

Decree Law 113/2018 envisages the creation of up to three new territorial peripheral units of the Dublin Unit, to be established by Decree of the Ministry of Interior in identified Prefectures.²⁵⁴ A Circular of the Ministry of Interior issued on 27 December 2018 launched the experimental start-up of a local branch of the Dublin Unit in Gorizia, **Friuli-Venezia Giulia**, for the time being only commissioned to treat peripherally the cases falling under the Dublin Regulation. No transfer decisions had been issued directly by this unit at the time of writing.

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

Since December 2017, a specific procedure has been implemented in Questure of **Friuli-Venezia Giulia** region, on the basis that most of asylum seekers arriving in this region from Nordic countries or the Balkan route fall under the Dublin Regulation. ASGI has witnessed cases where the Questure fingerprinted persons seeking asylum in the region as persons in “irregular stay” (“Category 3”) in the Eurodac database,²⁵⁵ instead of “applicants for international protection” (“Category 1”).²⁵⁶ The Dublin Unit therefore justifies the implementation of the Dublin transfer prior to the lodging of the application on the basis that no asylum application has been made; it should also be noted that “Category 3” fingerprints are not stored in the Eurodac database.²⁵⁷

ASGI has witnessed a unique acceleration of the procedure in the Questure in 2019, where people are notified of a transfer decision within one or two months of arrival and fingerprinting in Italy. In most cases, the Questure of Trieste and Gorizia notify the transfer decision without even proceeding with the lodging (*verbalizzazione*) of the asylum application, as they set the *verbalizzazione* appointment at a distant date to be able to obtain replies from the Dublin State concerned beforehand. Subsequently, they cancel the lodging appointments, and notify the transfer decisions.

Asylum seekers are not properly informed about the procedure or given the possibility to highlight any family links or vulnerabilities. On 25 March 2019, the Civil Court of Rome annulled the transfer of an Afghan citizen to Norway on the basis that the Dublin Unit had not complied with the information obligations set out in Article 4 of the Dublin Regulation, which resulted in the Questura of Gorizia only informing the applicant about the asylum procedure.²⁵⁸

²⁵³ Information provided by EASO, 13 February 2019.

²⁵⁴ Article 3(3) Procedure Decree, as amended by Article 11 Decree Law 113/2018.

²⁵⁵ Article 17 Eurodac Regulation.

²⁵⁶ Article 9 Eurodac Regulation.

²⁵⁷ Article 17(3) Eurodac Regulation.

²⁵⁸ Civil Court of Rome, Decision 6256/2019, 25 March 2019.

According to information available to ASGI, despite the acceleration of the procedure, not many transfers have been made as most of the asylum seekers concerned have submitted appeals, leading to transfers being suspended by the courts, while others have become untraceable or apply for asylum only after having moved onward to other regions of the country.

2.2.1. Individualised guarantees

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

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

2.2.2. Transfers

In case another Member State is considered responsible under the Dublin Regulation, the asylum procedure is terminated.²⁵⁹ The Dublin Unit issues a decision that is transmitted to the applicant through the Questura, mentioning the country where the asylum seeker will be returned and the modalities for appealing against the Dublin decision.²⁶⁰ Afterwards, the Questura arranges the transfer.

The applicants must then present themselves at the place and date indicated by the Questura. Applicants held in CPR are brought by the police authorities to the border from which they will be transferred to the responsible Member State.

Where an appeal is lodged against the transfer decision, the six-month time limit for a transfer starts running from the rejection of the request for suspensive effect, otherwise from the court's decision on the appeal itself.²⁶¹ Since the practical organisation of the transfer is up to the Questura, it is difficult to indicate the average time before a transfer is carried out. The length of the Dublin procedure depends on many factors, including the availability of means of transport, the personal condition of the person, whether or not the police needs to accompany the person concerned etc. However, as the majority of applicants abscond and do not present themselves for the transfer, the Italian authorities often ask the responsible Member State for an extension of the deadline up to 18 months, as envisaged under Article 29(2) of the Dublin Regulation.

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

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

According to the data published by the Ministry of Labour in 2017, the time period between a “take charge” request for unaccompanied children and its acceptance by the destination country was 35 days on average, while it was on average 46 days between the acceptance of the request and the actual transfer

²⁵⁹ Article 30(1) Procedure Decree.

²⁶⁰ Presently, even though L 46/2017 has recognised the jurisdiction of the Civil Court of Rome and stated that the appeal has to be lodged within 30 days, many decisions still direct people to appeal before the Administrative Court of Lazio within 60 days.

²⁶¹ Article 3(3-octies) Procedure Decree, as amended by L 46/2017.

of unaccompanied children.²⁶² No data have been provided for 2019. However, according to ASGI's experience, the duration of the procedure is much longer.

Without prejudice to the one currently applied in **Friuli-Venezia Giulia**, the procedure may last over one year in the rest of the country.

With a Circular Letter of 25 February 2020, the Italian Dublin Unit informed the Dublin Units that due to the ongoing health emergency all Dublin flights are suspended, both incoming and outgoing.

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

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

In **Friuli-Venezia Giulia**, the Dublin procedure is mostly conducted before the application is lodged. In this case, applicants are interviewed by the Questura according to Article 5 of the Dublin Regulation.

On 8 January 2020, the Civil Court of Rome cancelled a transfer decision to Germany adopted by the Dublin Unit against an Afghan citizen because the written summary of the interview did not allow to verify the compliance with the participation guarantees provided for in Articles 4 and 5 of the Dublin Regulation as it did not indicate the language in which the interview had taken place and it was signed by an unidentified "cultural mediator" whose spoken language was not clarified.²⁶³

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

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

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

An applicant may appeal the transfer decision before the Civil Court of Rome within 30 days of the notification of the transfer.²⁶⁴ In case applicants are accommodated in asylum seekers' reception centres when notified about the transfer decision, territorial jurisdiction is determined on the basis of where the centres are located. Therefore the competence falls within the specialised sections of the territorially

²⁶² Ministry of Labour, *I minori stranieri non accompagnati in Italia*, 31 December 2017, available in Italian at: <http://bit.ly/2FvU6Aj>, 14.

²⁶³ Civil Court of Rome, decision n. 1855/2020 of 8 January 2020.

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

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

Competent court

Until the end of 2015, the transfer decisions issued by the Dublin Unit were challenged before the administrative courts: at first instance within 60 days from the notification before the Administrative Court of Lazio and, at the second appeal instance before the Council of State (*Consiglio di Stato*). During 2016, however, the administrative courts expressed with several decisions the position that the Dublin procedure should be understood as a phase of the asylum procedure and, consequently, “Dubliner” asylum seekers as holders of an individual right and not a mere legitimate interest. The administrative courts have therefore stated that the judgment should be entrusted to the jurisdiction of ordinary courts, meaning the “natural judge” of individual rights. In this context, the first significant decision was taken on 18 December 2015 by the Council of State,²⁶⁵ and subsequently by the Administrative Court of Lazio.²⁶⁶ Reiterating this interpretation, Decree Law 13/2017, implemented by L 46/2017, has designated the specialised section of the Civil Courts as competent to decide on appeals against transfer decisions.²⁶⁷

During 2018, the Civil Court of Rome started declaring lack of jurisdiction to decide on appeals lodged by persons accommodated in reception centres throughout the country. According to the Court, in case applicants were accommodated when notified about the transfer decision, territorial jurisdiction should be exclusively determined on the basis of the place of the centres are located, and therefore fall within the specialised sections of the territorially competent Civil Courts and not the location of the Dublin Unit, i.e. Rome.²⁶⁸ This is echoed by the prospective establishment of local branches of the Dublin Units in specific Prefectures following the 2018 reform.

In 2019, the matter was brought before the Court of Cassation which, initially, interpreted the current legislation establishing the jurisdiction of the Civil Court of Rome.²⁶⁹

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

Subsequently, the Court of Cassation expressed an opposite orientation in line with the one of the Civil Court of Rome, recognizing that the territorial jurisdiction depends on the position of the reception centre at the moment of the notification of the transfer decision to the applicants.²⁷⁰

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

Suspensive effect

Article 3 of the Procedure Decree does not unequivocally provide that the transfer is suspended until the time limit for lodging an appeal expires. It states that the lodging of the appeal automatically suspends the transfer if an application for suspension is in in the appeal.²⁷¹ According to ASGI, this should be interpreted as meaning that transfers may be carried out only once the time limit for an appeal has elapsed without an appeal being filed or with an appeal not indicating a request for suspension.

²⁶⁵ Council of State, Decision 5738/2015, 18 December 2015, available at: <http://bit.ly/2lBkoyn>.

²⁶⁶ Administrative Court of Lazio, Decision 9909/2016, 22 September 2016; Decision 11911/2016, 28 November 2016, available in Italian at: <http://bit.ly/2IOS7AX>.

²⁶⁷ Article 3(3-bis) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

²⁶⁸ According to the rule provided in Article 4(3) Decree Law 13/2017, as amended by L 46/2017, this also applies to asylum appeals as it generally refers to “accommodated applicants”.

²⁶⁹ Court of Cassation, decisions 18755/2019; 18756/2019 and 18757/2019, issued on 12 July 2019.

²⁷⁰ Court of Cassation, decision 31127/2019 of 14 November 2019

²⁷¹ Article 3(3-quater) and (3-octies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

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

In **Friuli-Venezia Giulia**, Questure do not proceed with the transfer for those who provide proof of filing the appeal. In Trieste, together with the proof of filing the appeal, the Questura issues a new residence permit to the applicant. In Gorizia the Questura did not issue a residence permit until a decision of suspension was taken by the Court, which in many cases was only notified after many months.

According to the law, the Court should decide on the application for suspensive effect within 5 days and notify a decision to the parties, who have 5 days to present submissions and 5 days to reply thereto. In this case, the Court must issue a new, final decision, confirming, modifying or revoking its previous decision.²⁷² In ASGI's experience, these timeframes were never complied with by the Civil Court of Rome in 2019.

The appeal procedure is mainly written. Within 10 days of the notification of the appeal, the Dublin Unit must file the documentation on which the transfer decision is based and, within the same time limit, may file its own submissions. In the following 10 days, the applicant can in turn make submissions.²⁷³ The court will set a hearing only if it considers it useful for the purposes of the decision.²⁷⁴

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

2.5. Legal assistance

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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

Greece: according to ASGI experience no Dublin transfers to Greece were made in 2019.

Hungary: In late September 2016, the Council of State annulled a transfer to Hungary, defining it as an unsafe country for Dublin returns. The Council of State expressed concerns on the situation in Hungary, considering measures such as the planned construction of an "anti-immigrant wall" expressing the cultural and political climate of aversion to immigration and to the protection of refugees; the option of discontinuing an asylum application if the applicants leave their residence designated for more than 48 hours without permission and the extension of the detention period of asylum seekers.²⁷⁵

²⁷² Article 3(3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

²⁷³ Article 3(3-quinquies) and (3-sexies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

²⁷⁴ Article 3(3-septies) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

²⁷⁵ Council of State, Decision 4004/2016, 27 September 2016, available in Italian at: <http://bit.ly/2kWIO1d>.

Bulgaria: In September 2016 the Council of State also suspended several transfers to Bulgaria on the basis that the country is unsafe.²⁷⁶ The Council of State expressed concerns about the asylum system in Bulgaria due to the critical condition of shelters, some of which appear as detention centres, and more generally of the cultural climate of intolerance and discrimination that reigns in public opinion and among the leaders in the government towards refugees.²⁷⁷ In a ruling of November 2017, the Council of State reaffirmed its position and suspended the transfer of an Afghan asylum seeker to Bulgaria.²⁷⁸

Nevertheless, the Italian Dublin Unit has continued to issue transfer decisions to Bulgaria, which have been annulled by Civil Courts on various occasions. The Civil Court of Rome annulled the transfer of an Iraqi applicant in October 2018.²⁷⁹ In January 2019, the Civil Court of Rome annulled a transfer to Bulgaria of a pregnant woman from Iraq considering, pursuant to the rulings of the Council of State, that the transfer would have been a violation of Article 3(2) of the Dublin Regulation and Article 4 of the Charter of Fundamental Rights of the European Union, as respect for the fundamental rights of asylum seekers is not guaranteed in Bulgaria.²⁸⁰ In February 2019, the Court also annulled the transfer of the woman's husband.²⁸¹

2.7. The situation of Dublin returnees

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

Reception guarantees and practice

The Ministry of Interior Circular of 14 January 2019 specifies that Dublin returnees who had already applied for asylum prior to leaving Italy should be transferred by the competent Prefecture from the airport of arrival to the province where their application was lodged. If no prior asylum application had been lodged, they should be accommodated in the province of the airport of arrival. Family unity should always be maintained.²⁸²

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

Following the *Tarakhel v. Switzerland* ruling,²⁸³ in practice the guarantees requested were ensured mainly to families and vulnerable cases through a list of dedicated places in the SPRAR system (see [Types of Accommodation](#)), communicated since June 2015 to other countries' Dublin Units.²⁸⁴ However, following the 2018 reform of the reception system, Dublin returnees as asylum seekers no longer have access to

²⁷⁶ Council of State, Decisions 3998/2016, 3999/2016, 4000/2016 and 4002/2016, 27 September 2016, available in Italian at: <http://bit.ly/2IIJzAR>.

²⁷⁷ *Ibid.* The Council of State referred in particular to the fifth report on Bulgaria of the European Commission against Racism and Intolerance (ECRI), 16 September 2014.

²⁷⁸ Council of State, Decision 5085/2017, 3 November 2017, available in Italian at: <http://bit.ly/2GKtcVA>.

²⁷⁹ Civil Court of Rome, Decision 15692/2018, 31 October 2018.

²⁸⁰ Civil Court of Rome, Decision 982/2019, 9 January 2019.

²⁸¹ Civil Court of Rome, Decision 3289/2019, 7 February 2019.

²⁸² Ministry of Interior Circular of 14 January 2019, available in Italian at: <https://bit.ly/2P7G5OZ>.

²⁸³ In a ruling concerning an Afghan family with 6 children who were initially hosted in a CARA in Bari before travelling to Austria and then Switzerland, the ECtHR found that Switzerland would have breached Article 3 ECHR if it had returned the family to Italy without having obtained individual guarantees by the Italian authorities on the adequacy of the specific conditions in which they would receive the applicants. The Court stated that it is "incumbent on the Swiss authorities to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together.": ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014, para 120.

²⁸⁴ See e.g. Dublin Unit, Circular: Dublin Regulation Nr. 604/2013. Vulnerable cases. Family in SPRAR projects, 4 July 2018, available at: <https://bit.ly/2OwblGT>.

second-line reception SPRAR, now renamed SIPROIMI. Accordingly, places in second-line reception for vulnerable Dublin returnees are no longer reserved, as asylum seekers do not have access to this type of accommodation.

In a Circular sent to other countries' Dublin Units in the form of an email on 8 January 2019, the Italian Dublin Unit expressly confirmed this new regime and stated the following:

“Consequently, all applicants under the Dublin procedure will be accommodated in other Centres referred to in Legislative Decree No. 142/2015.

In consideration of the efforts made by the Italian Government in order to strongly reduce the migration flows, these Centres are adequate to host all possible beneficiaries, so as to guarantee the protection of the fundamental rights, particularly the family unity and the protection of minors.”²⁸⁵

The latest Circular has been deemed by Germany and the Netherlands as sufficient basis to carry out transfers without requesting individual guarantees.²⁸⁶

The letter seems to imply that places are no longer reserved in second-line reception even for vulnerable Dublin returnees who are beneficiaries of international protection.

On 17 December 2019, the Federal Administrative Court of Switzerland considered that, following the issuance of Legislative Decree 113/2018 ("Salvini" decree), the reference, by the Italian Authorities, to "circular" 8 January 2019 sent by the Dublin Unit of the Ministry of Interior to the EU Member States cannot be considered sufficient guarantee - in light of the jurisprudence of the ECtHR and the Swiss one - to exclude the risk of violation of art. 3 of the Convention in case of transfer to Italy of asylum seekers. Italy must therefore provide additional guarantees regarding specific and concrete treatment in reception centres, with particular reference - but not only - to medical treatment.²⁸⁷

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

Usually, Dublin returnees with an invitation letter (*inviti*) have three days time to arrive to the competent Questura. Time does not change considering the distance to reach.²⁸⁸

In summer 2019 a group of Eritreans arrived at Milan Malpensa were asked to reach Reggio Calabria, after the arrival from Germany which had not made agreements with Italy about their arrival. Often, this is reported to occur in cases of tacit acceptance of incoming requests: in this case people are off the list and the authorities are not warned of their arrival.²⁸⁹

²⁸⁵ Dublin Unit, Circular No 1/2019, 8 January 2019.

²⁸⁶ ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/2G7KZsk>, 18.

²⁸⁷ See ASGI, Svizzera, no al rinvio in Italia dopo il Decreto sicurezza, 16 January 2020, available in Italian at : <https://bit.ly/3cWAiql>.

²⁸⁸ Information to the author from Waldensian Diaconia (operating in Milan Malpensa airport), contacts of the project available at: <https://migranti.diaconiavaldese.org/progetti/#>

and from "A Buon Diritto", operating at Tiburtina Station, Rome, Ngo website: <https://www.abuondiritto.it/>

²⁸⁹ Information provided to the author by Waldensian Diaconia of Milan.

From 20 December 2019, the Questura of Varese organizes the transfers of the Dublin returnees from Malpensa airport to the chosen territories in Lombardy. People not included in advance in the list (often people transferred after of tacit acceptance) are in any case addressed to the Questura of Varese.

On 12 December 2018 the Danish Refugee Council and Swiss Refugee Council published a report with their monitoring of the situation of 13 vulnerable Dublin returnees in Italy in 2017-2018.²⁹⁰ The report illustrates the arbitrariness underlying Dublin returnees' reception by the authorities, timely access to accommodation and to the asylum procedure, and quality of reception conditions. Many asylum seekers have had to wait for several hours or even days without any support at airports such as Rome Fiumicino Airport and Milan Malpensa Airport before being received by the police. Some Dublin returnees were denied access to the Italian reception system upon arrival altogether or had to wait a long time before they were accommodated in SPRAR facilities.²⁹¹

It should be noted that if returnees used to live in asylum seekers' reception centres before leaving Italy, they could encounter problems on their return in submitting a new accommodation request. In fact, due to their first departure and according to the rules provided for the [Withdrawal of Reception Conditions](#), the Prefecture could deny them access to the reception system.²⁹²

The Danish Refugee Council and Swiss Refugee Council widely reported substandard conditions in first reception centres and CAS, falling far below standards for persons with special needs. The two organisations also found that oftentimes the receiving authorities were unaware of the specific vulnerability of the Dublin returnees.²⁹³ In one incident at Caserma Caraverzani, Udine, **Friuli-Venezia Giulia**, an Afghan asylum seeker returned from Austria to Italy committed suicide in August 2018. The person was under treatment by the local mental health service in Austria. It seems that no information was provided about his health status before or after the Dublin transfer.²⁹⁴

In January 2020, the Swiss Refugee Council published an update about their monitoring of the situation on reception conditions in Italy, also in relation to Dublin returnees, that generally confirms the findings of their previous monitoring, as mentioned above.²⁹⁵ They further reported that in Italy until now there is no standardized, defined procedure in place for taking them (back) into the system.

Re-accessing the asylum procedure

Access to the asylum procedure is equally problematic. Asylum seekers returned under the Dublin Regulation have to approach the Questura to obtain an appointment to lodge their claim. However, the delay for such an appointment reaches several months in most cases.²⁹⁶ The competent Questura is often located very far from the airport and asylum seekers have only few days to appear there; reported cases refer to persons arriving in Milan, **Lombardy** and invited to appear before the Questura of Catania, **Sicily**. In addition, people are neither accompanied to the competent Questura nor informed of the most suitable means of transport thereto, adding further obstacles to reach the competent Questura within the required time. In some cases, however, people are provided with tickets from the Prefecture desk at **Milan**

²⁹⁰ Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018, available at: <https://bit.ly/2GdnxMj>. See also *Is mutual trust enough? – The situation of persons with special reception needs upon return to Italy*, February 2017, available at: <http://bit.ly/2KWjiTT>.

²⁹¹ *Ibid.*

²⁹² According to Articles 13 and 23(1) Reception Decree, the withdrawal of reception conditions can be decided when the asylum seeker leaves the centre without notifying the competent Prefecture. See also ASGI, *Il sistema Dublino e l'Italia, un rapporto in bilico*, March 2015.

²⁹³ Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018.

²⁹⁴ Friuliserà, 'Tragedia alla ex Caserma Cavarzerano di Udine', 1 September 2018, available in Italian at: <http://bit.ly/2HxRIST>; Meltingpot, 'Si muore nei confini, su muore in mare, si muore nei campi e si muore anche nei CAS', 14 August 2018, available in Italian at: <http://bit.ly/2XXnSrj>.

²⁹⁵ Swiss Refugee Council, Reception conditions in Italy:

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

²⁹⁶ Danish Refugee Council and Swiss Refugee Council, *Mutual Trust is still not enough*, December 2018.

Malpensa Airport.

Since February 2020, an information desk coordinated by the Waldensian Diaconia of Milan, is operating at Milano Malpensa. The project workers, who replaced the Versoprobo cooperative, are allowed to buy tickets for Dublin returnees invited to the Questura of Varese. They can contact cultural mediators by phone, in order to provide more information in the mother languages needed.

If the competent Questura where people are invited is different from the one of Varese, Dublin returnees have to provide by themselves the tickets to get there.

As for Rome, often Dublin returnees benefit from the NGO “A Buon Diritto” mobile help desk based in Tiburtina Station. Once arrived in Roma Fiumicino airport, Dublin are orally informed about the procedure and endowed with an invitation letter to the competent Questura. They have to reach the Questura autonomously and at their own expense.

According to “A Buon Diritto” experience, Dublin returnees with international protection hardly enter Siproimi and, much more likely, they get to swell the ranks of homeless people.

Dublin returnees face different situations depending on whether they had applied for asylum in Italy before moving on to another European country, and on whether the decision on their application by the Territorial Commission had already been taken.²⁹⁷

- ❖ In “take charge” cases where the person had not applied for asylum during his or her initial transit or stay in Italy before moving on to another country,²⁹⁸ he or she should be allowed to lodge an application under the regular procedure. However, the person could be considered an irregular migrant by the authorities and be notified an expulsion order. In September 2018 a Libyan national arriving from Germany at **Milan Malpensa Airport** after Italy had accepted its responsibility was not allowed to seek asylum and received an expulsion order. An ASGI lawyer is representing the individual before the Magistrates’ Court (*giudice di pace*) of Varese that has not yet decided whether the removal order should be suspended or not. As reported to ASGI, other Dublin returnees were also denied the possibility to apply for asylum in at Milan Malpensa Airport in 2018.
- ❖ In “take back” cases where the person had already lodged an asylum application and had not appeared for the personal interview, the Territorial Commission may have suspended the procedure on the basis that the person is unreachable (*irreperibile*).²⁹⁹ He or she may request a new interview with the Territorial Commission if a final decision has not already been taken after the expiry of 12 months from the suspension of the procedure. If the procedure has been concluded, the new application will be considered a **Subsequent Application** and will be subject to the stringent regulations set out by the Procedure Decree following the 2018 reform.
- ❖ In “take back” cases where the person’s asylum application in Italy has already been rejected by the Territorial Commission,³⁰⁰ if the applicant has been notified of the decision and lodged no appeal, he or she may be issued an expulsion order and be placed in a CPR. According to the new notification procedure applied since the end of October 2018 (see **Regular Procedure: General**), the same could happen even in case the applicant had not been directly notified of the decision, since in case the applicant is deemed unreachable (*irreperibile*), the Territorial Commission notifies the decision by sending it to the competent Questura and notification is deemed to be complete within 20 days of the transmission of the decision to the Questura.³⁰¹

²⁹⁷ For more details, see ASGI, *Il sistema Dublino e l’Italia, un rapporto in bilico*, 2015, available in Italian at: <http://bit.ly/2kH0mvX>, 28.

²⁹⁸ Article 13 Dublin III Regulation.

²⁹⁹ Article 18(1)(c) Dublin III Regulation.

³⁰⁰ Article 18(1)(d) Dublin III Regulation.

³⁰¹ Article 11(3-ter) and (3-quater) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

Courts from other countries have not taken a uniform approach to the compliance of transfers to Italy with fundamental rights, including following the amendments to the reception system by Decree Law 113/2018. Inconsistent court decisions have been noted in Germany and the Netherlands. In Switzerland, courts have not changed their previous position on the legality of transfers to Italy.³⁰² In the United Kingdom, however, the Upper Tribunal annulled a transfer to Italy on 4 December 2018 concerning one asylum seeker and one beneficiary of international protection finding that the threshold for ill-treatment prohibited by Article 3 ECHR may be met in cases involving demonstrably vulnerable asylum seekers and beneficiaries of international protection.³⁰³

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

Article 29 of the Procedure Decree sets out the grounds for inadmissibility. Decree Law 113/2018 has introduced the new Article 29-bis to the Procedure Decree, setting out an additional inadmissibility ground.

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

1. Has already been recognised as a refugee by a state party to the 1951 Refugee Convention and can still enjoy such protection;³⁰⁴
2. Has made a [Subsequent Application](#) after a decision has been taken by the Territorial Commission, without presenting new elements concerning his or her personal condition or the situation in his or her country of origin;³⁰⁵
3. Has made a [Subsequent Application](#) during the execution of an imminent removal order (Article 29-bis).³⁰⁶

According to ASGI, Article 29-bis of the Procedure Decree is likely to violate the recast Asylum Procedures Directive, as the lodging of a subsequent application for the sole purpose of delaying or frustrating removal is not among the grounds of inadmissibility in Article 33(2) of the Directive. Moreover, the Directive does not allow for the omission of the preliminary examination of subsequent applications, except where such application is made by a person with regard to whom a Dublin transfer decision has to be enforced.³⁰⁷

The President of the Territorial Commission shall conduct a preliminary assessment of the admissibility of the application, aimed at ascertaining whether new relevant elements have emerged to the granting of international protection.³⁰⁸ The obligation of the Territorial Commission to inform the applicant of his or her right to submit observations within 3 days in the case of subsequent applications has been deleted by Decree Law 113/2018.³⁰⁹

As regards the new inadmissibility ground, the law states that no assessment of the admissibility of new elements needs to be conducted.³¹⁰

³⁰² ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/2G7KZsk>, 19.

³⁰³ United Kingdom Upper Tribunal, *SM v Secretary of State for the Home Department* [2018] UKUT 429 (IAC), 4 December 2018, available at: <http://bit.ly/2O8aLPG>.

³⁰⁴ Article 29(1)(a) Procedure Decree.

³⁰⁵ Article 29(1)(b) Procedure Decree.

³⁰⁶ Article 29-bis Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

³⁰⁷ In which case the subsequent application must be examined by the responsible Member States in accordance with the recast Asylum Procedures Directive, including a preliminary examination of the new elements submitted: Article 40(7) recast Asylum Procedures Directive.

³⁰⁸ Article 29(1-bis) Procedure Decree, inserted by the Reception Decree.

³⁰⁹ Article 29(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³¹⁰ Article 29-bis Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

On November 13, 2019, the Civil Court of Milan ordered the competent Territorial Commission to conduct the preliminary examination of a subsequent application deemed inadmissible automatically by the Questura pursuant to Article 29bis of the Procedure Decree, disapplying the latter disposition considered not in accordance with Article 40 of the recast Asylum Procedure Directive.³¹¹ (see subsequent application)

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

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

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

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

For applications dismissed as inadmissible, the time limit for appealing a negative decision is 30 days, as in the [Regular Procedure: Appeal](#). However, the appeal has no automatic suspensive effect.³¹²

3.4. Legal assistance

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

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time limit for a first instance decision laid down in the law? Yes No
 - ❖ If yes, what is the maximum time limit? 9 days

³¹¹ Civil Court of Milan, decision of 13 November 2019.

³¹² Article 35-bis(3) Procedure Decree, as amended by Decree Law 113/2018 and L 132/2018.

Decree Law 113/2018 amended the Procedure Decree introducing a border procedure, applicable in border areas and transit zones.³¹³ The law postponed the definition and implementation of the procedure to the issuance of a Mol decree, consequently issued on August 5, 2019 and published on 7 September 2019.³¹⁴

The Mol Decree designates the transit and border areas where the accelerated procedure applies.³¹⁵

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

- a) Trieste and Gorizia;
- b) Crotone, Cosenza, Matera, Taranto, Lecce and Brindisi;
- c) Caltanissetta, Ragusa, Syracuse, Catania, Messina;
- d) Trapani, Agrigento;
- e) Metropolitan city of Cagliari and South Sardinia.³¹⁶

Significantly, many areas correspond to hotspots (Taranto, Catania and Agrigento (Lampedusa hotspot), or CPR (Gorizia and Trieste, Brindisi, Caltanissetta, Cagliari).

Out of the five Territorial Commissions foreseen by the amended Procedure Decree to examine asylum applications subject to the border procedure³¹⁷ the Mol Decree has created only two new sections of Territorial Commissions, Matera (section of Bari) and Ragusa (section of Syracuse), therefore assigning to the Territorial Commissions already competent for the border or transit areas, the task of examining the related applications - where the conditions exist - with an accelerated procedure.

Under the border procedure, the entire examination of the asylum application can take place directly at the border area or in the transit zone.³¹⁸

The border procedure may be applied where the applicant:³¹⁹

- Makes an application directly at the designated border areas or transit zones after being apprehended for evading or attempting to evade controls;
- Comes from a [Safe Country of Origin](#).

The border procedure under Article 28-bis(1-ter) of the Procedure Decree follows the same rules as the 9-day [Accelerated Procedure](#) relating to applications made from CPR or hotspots under Article 28-bis(1). Upon receipt of the application, the Questura immediately transmits the necessary documentation to the Territorial Commission, which must take steps for the personal interview within 7 days of the receipt of the documentation. The decision must be taken within the following 2 days.³²⁰

In two circulars issued on 16 October 2019³²¹ and 18 October 2019³²², the Mol gave directives for the application of the border procedure and it attached the specific C3 form to be used to register the asylum application in these cases.

In accordance with the speed imposed by the procedure, the Circulars state that the application for international protection presented at the border and transit areas has to be formalized by the competent

³¹³ Article 28-bis(1-ter) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³¹⁴ Mol Decree, 5 August 2019, published on Gazzetta Ufficiale as of 7 September 2019: <https://bit.ly/3e8wXES>.

³¹⁵ Article 28 bis (1) (1-ter) and (1 – quater) of the Procedure Decree.

³¹⁶ Mol Decree 5 August 2019, Article 2.

³¹⁷ Article 28 bis (1 quarter) Procedure Decree.

³¹⁸ Article 28-bis(1-ter) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³¹⁹ *Ibid.*

³²⁰ Article 28-bis(1) Procedure Decree, inserted by the Reception Decree.

³²¹ Mol Circular, 16 October 2019 available at : <https://bit.ly/3cYKrTs>.

³²² MOI Circular, 18 October 2019, available at: <https://bit.ly/3cZWXSLL>.

Questura at the time of identification connected to the illegal entry. Also, even if the law provides that the President of the Territorial Commission is responsible to identify the cases for accelerated procedures on the basis of the documentation provided,³²³ the Circulars establish that, following the formalisation, the Questura informs the competent Territorial Commission about the application of the border procedure and that the latter, via telephone, fixes the hearing date within 7 days³²⁴. The hearing date is immediately notified to the applicant together with the delivery of the C3.

Circulars expressly excludes the application of the border procedure for attempting to avoid border controls to people rescued at sea following SAR operations and to those who spontaneously turn to the authorities to seek asylum without having been apprehended at the time of landing or immediately afterwards. They also exclude the accelerated procedure to be applied to unaccompanied minors and to vulnerable persons, referring to regulatory obligations.³²⁵

Also, the circulars authorize the establishment of “mobile units” within the territorial commissions in order to carry out the hearing at the border offices. The Circulars assure the availability of accommodations for asylum seekers subject to the border procedure within the centres existing in the provinces identified as transit or border areas by the MoI decree 5 August 2019.

ASGI already underlined how the manner in which the provision is worded could allow for automatic application of accelerated border procedure to persons seeking asylum at the border as it makes its application solely contingent on the person having tried to evade controls. In this sense the provision does not comply with Article 43 the Asylum Procedures Directive, as the attempt to evade border controls is not included in the acceleration grounds laid down in Article 31(8) of the Directive which could lead to the application of a border procedure.

Also, the requirement of Article 43 of the Directive to allow the applicant to enter the territory if the determining authority has not taken a decision within 4 weeks has not been incorporated in the Procedure Decree. The Territorial Commission maintains the possibility of extending the duration of the procedure – while the applicant would remain at the border or in the transit zone – to a maximum of 18 months to ensure an adequate examination of the application.³²⁶

Moreover, according to ASGI, the way the MoI Decree has been drafted, adds other critical issues to the legal framework of the border procedure as the new provisions, referring in a complete generic way to the “transit areas or border areas identified in those existing in the provinces” and not to demarcated areas, such as ports or airport areas or other places coinciding with physical borders with extra EU countries, seem to conflict with the rules of the European Union and therefore to be illegitimate.³²⁷

The law provides for specific information obligation to be carried out before the formalisation of the asylum application under the border procedure. The dedicated C3 merely indicates the application of the border procedure in Italian and the reasons why it is applied, also informing about the exclusion from the accelerated procedure for vulnerable people. However, ASGI has recorded at least two cases in Trieste where vulnerable people, in particular single parents with children, after completing the specific C3 were subject to the border accelerated procedure, considering they came from a safe country of origin.

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

³²³ Article 28 (1 bis) Procedure decree.

³²⁴ Pursuant to Article 28 bis (1-ter).

³²⁵ Probably, in the absence of internal rules in this sense, the reference is to Article 24 (3) Directive 2013/32/UE, see *Questione Giustizia, Le nuove procedure accelerate: lo svilimento del diritto di asilo*, 3 November 2019, available in Italian at: <https://bit.ly/2zZkJjc>.

³²⁶ Article 28-bis(3) Procedure Decree, citing Article 27(3) and (3-bis).

³²⁷ ASGI note, *Le zone di transito e di frontiera*, September 2019, available at: <https://bit.ly/3gmYOmX>.

According to the time frame set by the law, their hearing before the Territorial Commission took place after only 6 days from their arrival. However, the Commission decided not to recognize them any protection but decided to apply the ordinary procedure. The ordinary procedure was applied founding that the three asylum seekers had not evaded or tried to evade any control. One of them, in particular, was seriously wounded in the foot, he could not run away and he went to meet the police officers hoping they could help him. Furthermore, all of them told that, in their way from Slovenia, they had always walked straight without having to pass any checks and that they had realized they had crossed the border only from the license plates of the cars. The Territorial Commission of Trieste observed that the behaviour was not compatible with the intention to avoid border controls but nothing was observed about the fact that the border between Slovenia and Italy is purely internal to the European Union and no suspension of the Schengen Agreement was in place when the applicants crossed the internal border.

Thanks to the TC's decision, the appeal was filed under the ordinary procedure, granting them with automatic suspensive effect. The acceleration of the procedure, however, prevented the applicants from promptly obtaining the useful documentation to prove their origin and their credibility.

Among the first cases at the maritime border, the procedure was applied to some Tunisian citizens rescued at sea in the night between 6 and 7 October 2019. After 20 days of detention in the hotspots of Lampedusa, they were moved to the Questura of Agrigento. At the moment of the formalization of the asylum application, they were informed that a border procedure would have been applied to their applications for the attempt to evade border controls. Subsequently, as the circular of 18 October 2019 excluded the application of the border procedure to persons rescued at sea, the procedure was converted into an accelerated procedure for their coming from a safe country of origin, not taking into any account their vulnerability due to the shipwreck trauma.³²⁸

In the referring cases reported to ASGI, the persons were subject to the accelerated procedure; therefore audited in a very short term, on the initiative of the competent Questura and not on the decision of the President of the competent Territorial Commission as prescribed by law.

4.2. Personal interview

The same guarantees are those applied during the [Regular Procedure: Personal Interview](#) are applied.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

- | | | |
|----------------------------|--|--|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> No |

An appeal against a negative decision in the border procedure has to be lodged before the Civil Court within 30 days.³²⁹ However, the appeal does not have automatic suspensive effect.³³⁰

4.4. Legal assistance

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

³²⁸ Questione Giustizia, "Le nuove ipotesi di procedure accelerate e di frontiera", 9 January 2020, available in Italian at: <https://bit.ly/2WU3g4M>.

³²⁹ Article 35-bis(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

³³⁰ Article 35-bis(3) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

5. Accelerated procedure

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

Article 28-bis of the Procedure Decree, as amended by Decree Law 113/2018, implemented by L 132/2018, provides for different accelerated procedures that foresee different time limits following the immediate transmission of the file from the Questura to the Territorial Commission, depending on the applicable ground:

5-day procedure: The Territorial Commission takes a decision within 5 days of the receipt of the file where:³³¹

1. The applicant comes from a [Safe Country of Origin](#);³³²
2. The applicant makes a [Subsequent Application](#) without presenting new elements.

9-day procedure: The Territorial Commission takes steps to organise the personal interview within 7 days of receipt of the file and decides within the 2 following days where:

3. The asylum application is made by a person detained in a CPR or in a hotspot or first reception centre;³³³
4. The asylum application is made at the border and is subject to the [Border Procedure](#), i.e. following apprehension for evading or attempting to evade border controls, or by a person coming from a safe country of origin.³³⁴

18-day procedure: The Territorial Commission has 14 days upon receipt of the file from the Questura to organise the interview and another 4 days to take a decision, where:³³⁵

5. The application is manifestly unfounded (see [Regular Procedure: General](#));
6. The applicant made an application after being apprehended for irregular stay, with the sole purpose to delay or frustrate the issuance or enforcement of a removal order.

According to Article 28-bis(3) of the Procedure Decree, the Territorial Commission may exceed the above-mentioned time limits where necessary to ensure an adequate and complete examination of the asylum application, subject to a maximum time limit of 18 months.³³⁶ Where the application is made by the applicant detained in CPR or a hotspot or first reception centre, the maximum duration of the procedure cannot exceed 6 months.³³⁷ The law does not clarify whether the procedure can be declared accelerated even if the time limits set out in the law have not been respected.

In practice, in 2017 ASGI reported that asylum seekers whose application had been rejected as manifestly unfounded in some regions only became aware of the fact that they had been involved in an accelerated procedure when they were notified of the negative Territorial Commission decision by the Questura and they had only 15 days instead of 30 to appeal against the decision. Most of the appeals were considered inadmissible by the Civil Court of Naples because they were not lodged within the ostensible 15-day deadline. The judges, after refusing the request for suspensive effect, gave dates for the hearing one year later.

The Court of Appeal of Naples overturned the Court's decisions on 3 January 2018, stating that the shorter time limits for appeal only apply in the cases set out in Article 28-bis(2) of the Procedure Decree and in

³³¹ Article 28-bis(1-bis) Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

³³² However, the CNDA Circular of 28 October 2019 the circular specifies that the accelerated procedure for safe countries must be understood as a 9 days accelerated procedure according to Article 28 bis (1 ter) of the Procedure Decree.

³³³ Article 28-bis(1) Procedure Decree, as amended by Article 3 Decree Law 113/2018 and L 132/2018.

³³⁴ Article 28-bis(1-ter) Procedure Decree, inserted by Article 9 Decree Law 113/2018 and L 132/2018.

³³⁵ Article 28-bis(2) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³³⁶ Article 28-bis(3) Procedure Decree, citing Article 27(3)-(3-bis).

³³⁷ *Ibid.*

cases where an asylum seeker applies from a CPR.³³⁸ It highlighted that in order to safeguard the asylum seeker's rights of defence, the accelerated procedure must be triggered by the Territorial Commission before a decision is taken, and with the applicant being informed thereof, rather than retrospectively applied it after a rejection decision has been issued following the regular procedure.³³⁹

As a result of the Court of Appeal decision, this unlawful practice stopped in 2018.

5.2. Personal interview

The same guarantees are those applied during the [Regular Procedure: Personal Interview](#) are applied.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

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

- | | |
|---|--|
| <ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Administrative <input type="checkbox"/> Yes <input checked="" type="checkbox"/> Some grounds <input type="checkbox"/> No |
|---|--|

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

Time limits for appeals in accelerated procedures: Article 35-bis(2) Procedure Decree		
Ground for accelerated procedure	Legal basis	Days
Safe country of origin	Article 28-bis(1-bis)	30
Subsequent application without new elements	Article 28-bis(1-bis)	30
Border procedure	Article 28-bis(1-ter)	30
Manifestly unfounded application	Articles 28-bis(2)(a) and 28-ter	15
Application after apprehension for irregular entry with the sole purpose of frustrating issuance or execution of removal order	Article 28-bis(2)(c)	15
Applicant detained in a CPR, hotspot or first reception centre	Article 28-bis(1)	15

The time limits for appealing a negative decision under Article 35-bis(2) and corresponding provisions of the Procedure Decree raise issues of consistency following the 2018 reform. More specifically, if Safe Country of Origin is applied as a self-standing ground for applying the accelerated procedure,³⁴⁰ the applicant would have 30 days to lodge an appeal. If, however, the accelerated procedure is applied on the basis of a manifestly unfounded application, which includes safe country of origin grounds,³⁴¹ the applicant would only have 15 days to appeal.

The automatic suspensive effect of the appeal also depends on the ground for applying the accelerated procedure. The appeal in the accelerated procedure generally has automatic suspensive effect, except for the following cases:³⁴²

- Applications by persons detained in a CPR or hotspot or first reception centre;
- Manifestly unfounded applications;
- Applications subject to the [Border Procedure](#);

³³⁸ Article 35-bis(2) Procedure Decree, as amended by Article 6 Decree Law 13/2017 and L 46/2017.

³³⁹ Court of Appeal of Naples, Decision 17/2018 3 January 2018, available in Italian at: <http://bit.ly/2mxJHvD>.

³⁴⁰ Article 28-bis(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³⁴¹ Articles 28-bis(2) and 28-ter(b) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

³⁴² Article 35-bis(3) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

- Applications made after apprehension for irregular entry with the sole purpose of frustrating issuance or execution of removal order.

As stated in [Regular Procedure: Appeal](#), appeals against decisions rejecting the application as manifestly unfounded also lack automatic suspensive effect.

5.4. Legal assistance

The same rules apply as under the regular procedure.

6. Immediate procedure

In addition to the [Border Procedure](#) and the different types of [Accelerated Procedures](#), Decree Law 113/2018 has also amended the Procedure Decree to introduce an “immediate procedure” (*procedimento immediato*), applicable where the applicant:³⁴³

- ❖ Is subject to investigation for crimes which may trigger exclusion from international protection, and the [Grounds for Detention](#) in a CPR apply;³⁴⁴
- ❖ Has been convicted, including by a non-definitive judgment, of crimes which may trigger exclusion from international protection.

Under the immediate procedure, the Questura promptly notifies the Territorial Commission, which “immediately” proceeds to an interview with the asylum seeker and takes a decision accepting the asylum application, suspending the procedure or rejecting the application.³⁴⁵

In case of rejection, and unless special protection has to be granted, the law provides that the applicant has an obligation to leave the national territory even in case of an appeal, i.e. suspensive effect is not automatically granted, nor can it be requested before the court. In this case the legal framework on expulsion of foreigners apply.³⁴⁶

The Procedure Decree also provides that in case the grounds for the immediate procedure arise during the appeal procedure, the suspensive effect previously granted shall be withdrawn.³⁴⁷

In this respect, the immediate procedure seems incompatible with the recast Asylum Procedures Directive, which does not foresee such derogations and only allows for an exception to the right to remain on the territory pending the examination of the asylum application at first instance in the case of a subsequent application or in the context of a surrender or extradition procedure.³⁴⁸

Prefect Sarti (CNDA President) was heard on 11 June 2019 by the Italian Parliament and she informed that, from 18 March 2019 to 7 June 2019, 167 decisions were issued under the immediate procedure ³⁴⁹

³⁴³ Article 32(1-bis) Procedure Decree, inserted by Article 10 Decree Law 113/2018 and L 132/2018.

³⁴⁴ The crimes are those cited by Articles 12(1)(c) and 16 (1)(d-bis) Qualification Decree, which include some serious crimes such as devastation, looting, massacre, civil war, mafia related crimes, murder, extortion, robbery, kidnapping even for the purpose of extortion, terrorism, selling or smuggling weapons, drug dealing, slavery, child prostitution, child pornography, trafficking in human beings, purchase and sale of slaves, sexual violence. Decree Law 113/2018 has also included other crimes excluding the recognition of international protection which are: violence or threat to a public official; serious personal injury; female genital mutilation; serious personal injury to a public official during sporting events; theft if the person wears weapons or narcotics, without using them; home theft. The grounds for detention referred to are those in Article 6(2)(a), (b) and (c) Reception Decree.

³⁴⁵ Article 32(1-bis) Procedure Decree, inserted by Article 10 Decree Law 113/2018 and L 132/2018.

³⁴⁶ *Ibid*, citing Article 13(3), (4) and (5) TUI.

³⁴⁷ Article 35-bis(5) Procedure Decree, as amended by Article 10 Decree Law 113/2018 and L 132/2018.

³⁴⁸ See Articles 9(2)-(3) and 46(8) recast Asylum Procedures Directive.

³⁴⁹ Prefect Sarti, Hearing at Parliament, p. 14, available in Italian at: <https://bit.ly/3cSB1ZL>.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

The Procedure Decree describes the following groups as vulnerable: minors, unaccompanied minors, pregnant women, single parents with minor children, victims of trafficking, disabled, elderly people, persons affected by serious illness or mental disorders; persons for whom has been proved they have experienced torture, rape or other serious forms of psychological, physical or sexual violence; victims of genital mutilation.³⁵⁰

1.1. Screening of vulnerability

There is no procedure defined in law for the identification of vulnerable persons. However, the Ministry of Health published guidelines for assistance, rehabilitation and treatment of psychological disorders of beneficiaries of international protection victims of torture, rape or other serious forms of psychological, physical or sexual violence. The guidelines highlight the importance of multidisciplinary teams and synergies between local health services and all actors coming into contact with asylum seekers (see [Content of Protection: Health Care](#)).

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

The Territorial Commission, on the basis of elements provided by the applicant, may also request a medical examination aimed at ascertaining the effects of persecution or serious harm suffered by the applicants, to be carried out in accordance with the aforementioned guidelines.³⁵¹

Children

The protection of asylum seeking children has been strengthened with the adoption of LD 18/2014 and L 47/2017. Article 3(5)(e) LD 18/2014 provides the obligation to take into account the level of maturity and the personal development of the child while evaluating his or her credibility, while Article 19(2-bis) expressly recalls and prioritises the principle of the best interests of the child.

Any action necessary to identify the family members of the unaccompanied minor seeking asylum is promptly put in place in order to ensure the right to family reunification. The Ministry of Interior shall enter into agreements with international organisations, intergovernmental organisations and humanitarian associations, on the basis of the available resources of the National Fund for asylum policies and services, to implement programs directed to find the family members. The researches and the programs directed to find such family members are conducted in the superior interest of the minor and with the duty to ensure the absolute privacy and, therefore, to guarantee the security of the applicant and of his or her relatives.³⁵²

A member of the Territorial Commission, specifically skilled for that purpose, interviews the minor in the presence of the parents or the legal guardian and the supporting personnel providing specific assistance

³⁵⁰ Article 2(1)(h-bis) Procedure Decree.

³⁵¹ Article 8(3-bis) Qualification Decree.

³⁵² Article 19(7) Reception Decree.

to the minor. For justified reasons, the Territorial Commission may proceed to interview again the minor in the presence of the supporting personnel, even without the presence of the parent or the legal guardian, if considered necessary in relation of the personal situation of the minor concerned, the degree of maturity and development, in the light of the minor's best interests.³⁵³

Survivors of torture

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

Since April 2016, MSF started a project in Rome, **Lazio** in collaboration with ASGI and opened a centre specialising in the rehabilitation of victims of torture.³⁵⁴ The project is intended to protect but also to assist in the identification of victims of torture who, without proper legal support, are unlikely to be treated as vulnerable people.

The Reception Decree provides that persons for whom has been proved they have experienced torture, rape or other serious forms of violence shall have access to appropriate medical and psychological assistance and care on the basis of Guidelines that will be issued by the Ministry of Health, as mentioned above. To this end, health personnel shall receive appropriate training and must ensure privacy.³⁵⁵

Victims of trafficking

Where during the examination procedure, well-founded reasons arise to believe the applicant has been a victim of trafficking, the Territorial Commissions may suspend the procedure and inform the Questura, the Prosecutor's office or NGOs providing assistance to victims of human trafficking thereof.³⁵⁶ LD 24/2014, adopted in March 2014 for the transposition of the Anti-Trafficking Directive, foresees that a referral mechanism should be put in place in order to coordinate the two protection mechanisms established for victims of trafficking, namely the protection systems for asylum seekers and beneficiaries of international protection, coordinated at a central level, and the protection system for victims of trafficking established at a territorial level.³⁵⁷

Giving effect to the legal provision, in 2017 the CNDA and UNHCR published detailed guidelines for the Local Commissions on the identification of victims of trafficking among applicants for international protection and the referral mechanism.³⁵⁸

The Reception Decree clarifies that trafficked asylum seekers shall be channelled into a special programme of social assistance and integration.³⁵⁹ Recognised victims of trafficking can also be accommodated in second-line SIPROIMI reception facilities but only after they have been recognised international protected (see [Special Reception Needs](#)).

1.2. Age assessment of unaccompanied children

The Procedure Decree includes a specific provision concerning the identification of unaccompanied children. It foresees that in case of doubt on the age of the asylum seeker, unaccompanied children can

³⁵³ Article 13(3) Procedure Decree.

³⁵⁴ See Redattore Sociale, 'Migranti, apre a Roma il centro di riabilitazione per le vittime di tortura', 4 April 2016, available in Italian at: <http://bit.ly/1ShpCGG>.

³⁵⁵ Article 17(8) Reception Decree.

³⁵⁶ Article 32(3-bis) Procedure Decree.

³⁵⁷ Article 13 L 228/2003; Article 18 TUI.

³⁵⁸ CNDA and UNHCR, *L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral*, September 2017, available in Italian at: <http://bit.ly/2FttAeK>.

³⁵⁹ Article 17(2) Reception Decree in conjunction with Article 18(3-bis) LD 286/1998 and LD 24/2014.

be subjected to an age assessment through non-invasive examinations.³⁶⁰ The age assessment can be triggered by the competent authorities at any stage of the asylum procedure. However, before subjecting a young person to a medical examination, it is mandatory to seek the consent of the concerned unaccompanied child or of his or her legal guardian.³⁶¹ The refusal by the applicant to undertake the age assessment has no negative consequences on the examination of the asylum application.

On 6 January 2017, Decree 234/2016 adopted on 10 November 2016 entered into force. The Decree lays down a procedure for determining the age of unaccompanied children victims of trafficking, in implementation of Article 4 LD 24/2014.

L 47/2017 has laid down rules on age assessment which apply to all unaccompanied children.³⁶² The Law provides that within 120 days of its entry into force, a decree of the President of the Council of Ministers should be adopted regulating the interview with the minor aiming at providing further details on his family and personal history and bringing out any other useful element relevant to his/her protection.³⁶³ However, to date, such decree has not yet been adopted.

According to Eurostat data, compared to 2018, in 2019 Italy saw a strong increase of age recognition under 14 (from 0.2% to 9%) and a decrease of minors aged 14-17.³⁶⁴

Identification documents and methods of assessing age

The law states that, in the absence of identification documents,³⁶⁵ and in case of doubts about the person's age, the Public Prosecutor's office at the Juvenile Court may order a social / medical examination.³⁶⁶ This provision may put an end to the critical practice of Questure which directly sent children to hospital facilities without any order by judicial authorities, even when children had valid documents.³⁶⁷

The person is informed in a language he or she can understand taking into account his or her degree of literacy and maturity, with the assistance of a cultural mediator, of the fact that an age assessment will be conducted through a social / medical examination. The guardian is also informed of the process.

The examination is conducted under a multidisciplinary approach by appropriately trained professionals, using the least invasive methods possible and respecting the integrity of the person.³⁶⁸

Pending the outcome of the procedure, the applicant benefits from the provisions on reception of unaccompanied children.³⁶⁹ The benefit of the doubt shall be granted if doubts persist following the examination.³⁷⁰

The law also states that the final decision on the age assessment, taken by the Juvenile Court, is notified to the child and to the guardian or the person exercising guardianship and must indicate the margin of error.³⁷¹

³⁶⁰ Article 19(2) Procedure Decree.

³⁶¹ *Ibid.*

³⁶² Article 19-bis Reception Decree, inserted by Article 5 L 47/2017.

³⁶³ Article 5 L 47/2017.

³⁶⁴ Eurostat data, published in March 2020

³⁶⁵ Article 19-bis(3) Reception Decree.

³⁶⁶ Article 19-bis(4) Reception Decree.

³⁶⁷ Elena Rozzi, 'L'Italia, un modello per la protezione dei minori stranieri non accompagnati a livello europeo?', in *Il diritto d'asilo*, Fondazione Migrantes, February 2018.

³⁶⁸ Article 19-bis(5) Reception Decree.

³⁶⁹ Article 19-bis(6) Reception Decree.

³⁷⁰ Article 19-bis(8) Reception Decree.

³⁷¹ Article 19-bis(7) Reception Decree.

Currently, however, according to ASGI's experience, L 47/2017 is not applied uniformly on the national territory. In many places, the multidisciplinary teams required by law have not been established. Consequently, age assessment is still conducted through wrist X-ray, with results not indicating the margin of error. The age assessment is often required even in presence of identity documents and even when there is no reasonable doubt about the minor age. However, the law does not provide the timing for the decision and, pending the results, the minor is often treated and accommodated as an adult, therefore also in situations of promiscuity with adults. Furthermore, the child is often not informed and involved actively in the procedures and he or she is not aware of the reasons for the examinations. On the other hand, a certainly positive element consists in the decrease of cases in which age assessment is requested by untitled authorities, as more and more often only the Prosecutor order it.

In their final report of the programme jointly implemented, UNHCR and the Children's Ombudsman recommended to the authorities involved to proceed with the age assessment only when there is a well-founded doubt about the minor age, based on an individual and objective evaluation.³⁷²

During a visit to the First Aid and Reception Centre (*Centro di primo soccorso et di accoglienza*, CPSA) of Roma Capitale, a first reception centre for children in Rome, **Lazio**, carried out in December 2017, the Children's Ombudsman found that, after a first interview, the children were subjected to age assessment through medical examination in all cases where they had no identification document certifying their age, and then submitted to the photo-dactyloscopic surveys at the offices of the Scientific Police.³⁷³

In its most recent report published in March 2019, the Children's Ombudsman pointed out that, according to the interviewed judges, the frequency of procedures for age assessment is still very low.³⁷⁴

Challenging age assessment

According to L 47/2017, the age assessment decision can be appealed, and any administrative or criminal procedure is suspended until the decision on the appeal.³⁷⁵ Before this law, in the absence of a specific provision, children were often prevented from challenging the outcome of age assessments.

The ECtHR communicated a case against Italy on 14 February 2017 concerning alleged violations of Articles 3 and 8 ECHR, stemming from the absence of procedural guarantees in the age assessment procedure.³⁷⁶

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No

- ❖ If for certain categories, specify which: Article 17 of reception decree (142/2015) has a list of "vulnerable people" such as minors, unaccompanied minors, the disabled, the elderly, pregnant women, single parents with minor children, victims of trafficking in human beings, persons suffering from serious illnesses or mental disorders, persons found to have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, victims of genital mutilation".

³⁷² UNHCR and the Children's Ombudsman, report, May 2019.

³⁷³ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TE XUPE>, 19.

³⁷⁴ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>, 29.

³⁷⁵ Article 19-bis(10) Reception Decree.

³⁷⁶ ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, Communicated 14 February 2017.

2.1. Adequate support during the interview

The Procedure Decree foresees the possibility for asylum seekers in a vulnerable condition to be assisted by supporting personnel during the personal interview even though the legal provision does not specify which kind of personnel.³⁷⁷ During the personal interview, the applicant may be accompanied by social workers, medical doctors and/or psychologists.

According to Reception Decree, unaccompanied children can be assisted, in every state and degree of the procedure, by the presence of suitable persons indicated by the child, as well as groups, foundations, associations or NGOs with proven experience in the field of assistance to foreign minors and registered in the register referred to in Article 42 TUI, with the prior consent of the child, accredited by the relevant judicial or administrative authority.³⁷⁸

Where it emerges that asylum seekers have been victims of slavery or trafficking in human beings, the Territorial Commission transmits the documents to police for the appropriate evaluations.³⁷⁹

2.2. Prioritisation and exemption from special procedures

Vulnerable persons are admitted to the prioritised procedure.³⁸⁰ The Territorial Commission must schedule the applicant's interview "in the first available seat" when that applicant is deemed as vulnerable.³⁸¹ In practice, when the police have elements to believe that they are dealing with vulnerable cases, they inform the Territorial Commissions which fix the personal interview as soon as possible, prioritising their case over the other asylum seekers under the regular procedure. Moreover, this procedure is applied also in case the Territorial Commissions receive medico-legal reports from specialised NGOs, reception centres and Health centres.

Children can directly make an asylum application through their parents.³⁸²

It should be noted, however, that the Procedure Decree does not include any provision for the exemption of unaccompanied children and/or persons in need of special procedural guarantees from the accelerated procedure. No such provisions exist in relation to the border procedure and immediate procedure neither.

However, with the circulars issued on 16 October 2019³⁸³ and on 18 October 2019³⁸⁴, the MoI excludes from the application of the border procedure for attempting to avoid border controls, people rescued at sea following SAR operations, unaccompanied minors and vulnerable persons, referring to regulatory obligations.³⁸⁵ This entails that they are only exempted when they are in the accelerated procedure for attempting to avoid border procedures. If they would in the accelerated procedure for another reason they would not be exempted.

³⁷⁷ Article 13(2) Procedure Decree.

³⁷⁸ Article 18(2-bis) Reception Decree.

³⁷⁹ Article 32(3-bis) Procedure Decree.

³⁸⁰ Article 28(1)(b) Procedure Decree.

³⁸¹ Article 7(2) PD 21/2015.

³⁸² Article 6(2) Procedure Decree.

³⁸³ MoI Circular, 16 October 2019 available in Italian at: <https://bit.ly/3gltWmv>.

³⁸⁴ MOI Circular, 18 October 2019, available in Italian at: <https://bit.ly/3gjrIcU>.

³⁸⁵ Probably, in the absence of internal rules in this sense, the reference is to Article 24 (3) Directive 2013/32/UE. See: *Questione Giustizia, Le nuove procedure accelerate: lo svilimento del diritto di asilo*, 3 November 2019, available in Italian at: <https://bit.ly/2WTPX4d>.

3. Use of medical reports

Indicators: Use of Medical Reports

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

The law contains no specific provision on the use of medical reports in support of the applicant's statements regarding past persecutions or serious harm. Nevertheless, the Qualification Decree states that the assessment of an application for international protection is to be carried out taking into account all the relevant documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution or serious harm.³⁸⁶

Moreover, a medico-legal report may attest the applicant's inability or unfitness to attend a personal interview. According to the Procedure Decree, the Territorial Commissions may omit the personal interview when the applicant is unable or unfit to face the interview as certified by a public health unit or a doctor working with the National Health System.³⁸⁷ Moreover, the applicant can ask for the postponement of the personal interview providing the Territorial Commission with pertinent medical documentation.³⁸⁸

The Qualification Decree allows the Territorial Commission to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues. Where the Territorial Commission deems it relevant for the assessment of the application, it may, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm according to the Guidelines issued by the Ministry of Health by decree on 3 April 2017 to implement Article 27(1-bis) of the Qualification Decree (see [Content of Protection: Health Care](#)).³⁸⁹ When no medical examination is provided by the Territorial Commission, the applicants may, on their own initiative and at their own cost, arrange for such a medical examination and submit the results to the Territorial Commission for the examination of their applications.³⁹⁰

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

The degree of consistency between the clinical evidence and the account of torture is assessed in accordance with the Guidelines of the Istanbul Protocol and recent specialised research.

The medical reports are provided to asylum seekers for free. NGOs may guarantee the support and medical assistance through *ad hoc* projects.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

³⁸⁶ Article 3 Qualification Decree.

³⁸⁷ Article 12(2) Procedure Decree.

³⁸⁸ Article 5(4) PD 21/2015.

³⁸⁹ Article 27(1-bis) Qualification Decree.

³⁹⁰ Article 8(3-bis) Procedure Decree.

The system of guardianship is not specific to the asylum procedure. A guardian is appointed when children do not have legal capacity and no parents or other relatives or persons who could exercise parental authority are present in the territory.³⁹¹ The guardian is responsible for the protection and the well-being of the child.

The Reception Decree, as amended by L 47/2017, provides that affective and psychological assistance is guaranteed to children in every state of the procedure, through the presence of suitable persons indicated by the child and authorised by the relevant authorities.³⁹² It also guarantees that the unaccompanied child has the right to participate, through a legal representative, in all judicial and administrative proceedings concerning him or her and to be heard on the merits of his or her case. To this end, the law also guarantees the presence of a cultural mediator.³⁹³

The individuals working with children shall be properly skilled or shall in any case receive a specific training. They also have the duty to respect the privacy rights in relation to the personal information and data of the minors.³⁹⁴

The Reception Decree provides that the unaccompanied child can make an asylum application in person or through his or her legal guardian on the basis of the evaluation of the situation of the child concerned.³⁹⁵

4.1. Timing of appointment

The Reception Decree, as amended by LD 220/2017, which entered into force on 31 January 2018, provides that the public security authority must give immediate notice of the presence of an unaccompanied child to the Public Prosecutor at the Juvenile Court and to the Juvenile Court (*Tribunale per i minorenni*) for the appointment of a guardian.³⁹⁶ The Juvenile Court is the sole competent authority following the 2017 reform.

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

Where a guardian has not yet been appointed, the manager of the reception centre is allowed to support the child for the lodging of the asylum application at the Questura.³⁹⁷ As clarified by the CNDA, however, the guardian remains responsible for representing the child in the next steps of the procedure.³⁹⁸

4.2. Duties and qualifications of the guardian

According to the Procedure Decree, the guardian has the responsibility to assist the unaccompanied child during the entire asylum procedure, and even afterwards, in case the child receives a negative decision on the claim.³⁹⁹ For this reason, the guardian escorts the child to the police, where he or she is fingerprinted if he or she is over 14, and assists the child in filling the form and lodge the asylum claim. The guardian also has a relevant role during the personal interview before the Territorial Commission, who cannot start the interview without his or her presence.⁴⁰⁰ The law provides that a member of the Territorial Commission, specifically trained for that purpose, interviews the child in the presence of his or her parents or the guardian and the supporting personnel providing specific assistance to the child. For justified reasons, the Territorial Commission may proceed to interview again the child, even without the

³⁹¹ Article 343 et seq. Civil Code.

³⁹² Article 18(2-bis) Reception Decree, inserted by L 47/2017.

³⁹³ Article 18(2-ter) Reception Decree, inserted by L 47/2017.

³⁹⁴ Article 18(5) Reception Decree.

³⁹⁵ Article 6(3) Procedure Decree.

³⁹⁶ Article 19(5) Reception Decree, as amended by LD 220/2017.

³⁹⁷ Article 26(5) Procedure Decree, as amended by L 47/2017.

³⁹⁸ CNDA Circular No 6425 of 21 August 2017, available in Italian at: <http://bit.ly/2Fn38Um>.

³⁹⁹ Article 19(1) Procedure Decree.

⁴⁰⁰ Article 13(3) Procedure Decree.

presence of the parent or the legal guardian, at the presence of supporting personnel, if considered necessary in relation of the personal situation of the children, his or her degree of maturity and development, and in line with his or her best interests.⁴⁰¹

The guardian must be authorised by the Juvenile Court to make an appeal against a negative decision. The law does not foresee any specific provision concerning the possibility for unaccompanied children to lodge an appeal themselves, even though in theory the same provisions foreseen for all asylum seekers are also applicable to them.

Each guardian can be appointed for one child or for a maximum of three children.

To overcome existing deficiencies and lack of professionalism among guardians, L 47/2017 has established the concept of voluntary guardians. A register of such guardians has to be kept in every Juvenile Court.⁴⁰²

The Regional Children's Ombudsman is responsible for selecting and training guardians. The National Children's Ombudsman has established specific guidelines on the basis of which calls for selection of guardians have already been issued in each region.⁴⁰³ Training courses have started in most of the cities.

During monitoring visits carried out between November and December 2017, the Children's Ombudsman noted a strong lack of communication and listening by the guardians who, for example in the experience of children interviewed in the CAS of Cascina Scarampa, Vercelli, **Piedmont** were simply seen as those who "accompany them to the Territorial Commission". In addition, the Ombudsman found serious deficiencies in the provision of information and legal assistance which, according to her, resulted in all unaccompanied children accommodated in that CAS almost automatically submitting an asylum application despite the large number of negative decisions issued by the Territorial Commission. The Ombudsman also found an equally high proportion of asylum seekers among unaccompanied children in first reception centres and CAS in **Apulia** (Taranto), **Lombardy** (Como) and **Tuscany** (Firenze).⁴⁰⁴ According to ASGI's experience, the same problem exists also in other centres. Following the outcome of the visits carried out in 2018, the Children's Ombudsman and UNHCR found that 80% of the minors involved expressly asked for greater listening and involvement in the decisions taken on their own behalf and complained about the lack of information and clarifications on the procedure for requesting international protection.⁴⁰⁵

From the data collected by the Children's Ombudsman from 27 Juvenile Courts within the "Monitoring project of the voluntary guardianship for unaccompanied foreign minors", it emerged that on 31 December 2018, 3,029 volunteer guardians were enrolled in the lists kept by the Juvenile Courts. Of these, most are women (75.4%), people with employment (77.8%) and with a high level of education (83.9% have a degree).⁴⁰⁶

During 2019, the Children's Ombudsman, Save the Children and the Italian Association of Magistrates for Minors and the Family (Aimmf) continued to work on the Ethical Charter, a document of principles

⁴⁰¹ *Ibid.*

⁴⁰² Article 11 L 47/2017.

⁴⁰³ Children's Ombudsman, *Guidelines for the selection, training and registration in the lists of voluntary guardians pursuant to Article 11 L 47/2017*, available in Italian at: <http://bit.ly/2Dgl4tS>.

⁴⁰⁴ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, available in Italian at: <http://bit.ly/2TExuPE>, May 2018, 16.

⁴⁰⁵ Children's Ombudsman and UNHCR, *L'ascolto e la partecipazione dei minori stranieri non accompagnati in Italia. Rapporto finale attività di partecipazione AGIA - UNHCR 2017-2018*, published in May 2019, available at: <https://bit.ly/3cUxKZU>; see also Children's Ombudsman, *Relazione al Parlamento, 2019*, published in March 2020, available at: <https://bit.ly/36pDZ5H>.

⁴⁰⁶ Children's Ombudsman, *Report to Parliament, 2019*, published on 31 March 2020, available at : <https://bit.ly/36pOHsJ>.

intended to guide the guardian in behaviors and decisions to be taken and to guarantee the awareness of their rights to the minor. An English version has also drafted.⁴⁰⁷⁻

In 2019, 6,251 minors were traced on Italian territory. Of these, only 1,680 arrived following disembarkation. The regions most affected by the arrivals of minors were Sicily (21%), for arrivals by sea, Friuli Venezia Giulia (20.8%) and Lombardy (12.8%) for the arrivals by land and by the Balkan route.

Territorial Commissions examined, in 2019, 659 asylum applications of unaccompanied minors compared to the 3,676 examined in 2018.⁴⁰⁸

Unaccompanied asylum-seeking children: 2019	
Nationality	Number
Pakistan	198
Eritrea	68
Somalia	63
Afghanistan	40
Nigeria	30
Bangladesh	29
Gambia	16
Senegal	16
Turkey	15
Others	184
Total	659

Source: Ministry of Labour.

59% of unaccompanied minors' asylum applications were rejected. 21% of applicants have obtained the refugee status, 6.4% were recognized subsidiary protected.

As of 31 December 2019, 5,383 unaccompanied children absconded from accommodation. Of those, 16.4% were Tunisians, 14.7% Afghans and 10.1% Eritreans.⁴⁰⁹

E. Subsequent applications

Indicators: Subsequent Applications

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

⁴⁰⁷ Children's Ombudsman, *Nasce la Carta etica del tutore volontario di minore straniero non accompagnato*, 15 April 2020, available in Italian at: <https://bit.ly/36qeOzZ>.

⁴⁰⁸ Ministry of Labour, *Monitoring report on unaccompanied minors*, 31 December 2019.

⁴⁰⁹ Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2019, available in Italian at: <https://bit.ly/2TASZZg>.

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

Decree Law 113/2018, implemented by L 132/2018, has introduced a definition of “subsequent application” (*domanda reiterata*).⁴¹⁰ An asylum application is considered a subsequent application where it is made after:

- A final decision has been taken on the previous application;
- The previous application has been explicitly withdrawn;⁴¹¹
- The previous application has been terminated or rejected after the expiry of 12 months from suspension on the basis that the applicant was unreachable (*irreperibile*).⁴¹²

In case of subsequent applications, asylum seekers benefit from the same legal guarantees provided for asylum seekers in general and can be accommodated in reception centres, if places are available.

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

1. Preliminary admissibility assessment

As stated in [Accelerated Procedure](#), upon the transmission without delay of the application by the Questura, the Territorial Commission has 5 days to decide on the subsequent application.⁴¹³

The President of the Territorial Commission makes a preliminary assessment in order to evaluate whether new elements concerning the personal condition of the asylum seeker or the situation in his or her country of origin have been added to the asylum application.⁴¹⁴ Where no new elements are identified, the application is dismissed as inadmissible (see [Admissibility Procedure](#)). The possibility in the law for the applicant to submit observations to the Territorial Commission within 3 days has been removed by Decree Law 113/2018.⁴¹⁵

In case the subsequent application is declared inadmissible, reception conditions can be revoked.⁴¹⁶

2. Automatically inadmissible subsequent applications

In addition, Decree Law 113/2018 has introduced a new provision governing “subsequent applications during the execution phase of a removal procedure” (*domanda reiterata in fase di esecuzione di un provvedimento di allontanamento*). Where the applicant makes a first subsequent application during the execution of imminent removal, the application is automatically considered inadmissible on the assumption that it is made with the sole purpose of delaying or preventing the execution of the removal order. Consequently, a preliminary admissibility assessment is not conducted.⁴¹⁷

The law does not clarify how the term “execution phase of a removal procedure” should be interpreted. If this provision is not strictly applied to cases in which the removal is actually being performed, it is likely to result in preventing the asylum application itself as it could be applied to all cases of subsequent applications as currently defined by law. In case of subsequent applications considered as such because they were made after the termination of the procedure through a decision of the Territorial Commission,

⁴¹⁰ Article 2(1)(b-bis) Procedure Decree, introduced by Article 9 Decree Law 113/2018 and L 132/2018.

⁴¹¹ Article 23 Procedure Decree.

⁴¹² Article 23-bis(2) Procedure Decree.

⁴¹³ Article 28-bis(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

⁴¹⁴ Article 29(1)(b) Procedure Decree.

⁴¹⁵ Article 29(1-bis) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

⁴¹⁶ Article 23(1) Reception Decree.

⁴¹⁷ Article 29-bis Procedure Decree, inserted by Article 9 Decree Law 113/2018.

12 months after the applicant left a reception centre or escaped from detention without having had any personal interview, the provision potentially prevents the examination of the reasons for escaping or leaving reception accommodation. In such case, it would also mean that the asylum application would never be subject to any examination.

In practice, the notion of “execution phase of a removal procedure” seems to be read widely. Already in early 2019, the Territorial Commissions of Salerno, **Campania** and Turin, **Piedmont** have declared a subsequent application inadmissible pursuant to Article 29-bis of the Procedure Decree at least in two cases of people who applied again for international protection while being held in a CPR. At the same time, during 2019 in many cases the rule has also been applied to people who spontaneously have gone to the Questura to present the subsequent asylum applications as most of them had already received an expulsion order.

The law also stops short of specifying whether inadmissibility should be declared by the Questura or by the Territorial Commission. The Ministry of Interior Circular of 18 January 2019 contained a template form that the Questura should fill in while delivering a copy to the person concerned.⁴¹⁸ The template form also mentioned that a copy of the act shall be transmitted to the competent Territorial Commission. The template does not provide any indication on deadlines or competent authorities for an appeal.

As a result, during 2019, several times the Questura declared subsequent applications automatically inadmissible without involving in the procedure the competent Territorial Commission and without even mentioning the terms or competent authority for the appeal.

On 3 April 2019, the Civil Court of Rome, accepting an appeal urgently filed by a Nigerian woman whose subsequent asylum application, presented during the detention in the CPR of Ponte Galeria, had been deemed inadmissible by the Questura, observed that, according to the Procedure Decree⁴¹⁹ only the Territorial Commission and not the Questura should have assessed whether the subsequent application fell within the scope of art. 29-bis. Consequently, the Civil Court ordered to release the applicant from the CPR and it ordered the Questura to receive her asylum application and forward it to the Territorial Commission responsible to decide if to evaluate it..⁴²⁰

On 13 November 2019, the Civil Court of Milan ordered the competent Territorial Commission to conduct the preliminary examination of a subsequent application deemed inadmissible directly by the Questura pursuant to Article 29 bis of the Procedure Decree, disapplying this rule considered not in accordance with Article 40 of the recast Asylum Procedure Directive.⁴²¹

Later, on 13 January 2020, a Mol Circular specified that the template notified to the applicant by Questura has the sole task of “informing” the interested party of the existence of the rule in question but that the decision on the inadmissibility is still up to the competent Territorial Commission.⁴²²

In 2019 the number of subsequent applications was 8,778.⁴²³

3. Right to remain and suspensive effect

The Procedure Decree, as amended by Decree Law 113/2018, provides that the right to remain on the territory until a decision is taken by the Territorial Commission is not guaranteed where the applicant:

⁴¹⁸ Ministry of Interior Circular No 10380/2019 of 18 January 2019.

⁴¹⁹ Article 3 of the Procedure Decree

⁴²⁰ Civil Court of Rome, order of 3 April 2019, available in Italian at: <https://bit.ly/36pE6OF>.

⁴²¹ Civil Court of Milan, decision of 13 November 2019.

⁴²² Mol Circular of 13 January 2020, available in Italian at: <https://bit.ly/3c0TEJL>.

⁴²³ Mol citing data from CNDA, available in Italian at: <https://bit.ly/3geAt2B>.

- a. Made a first subsequent application for the sole purpose of delaying or preventing the execution of an imminent removal decision;⁴²⁴
- b. Wishes to make a further subsequent application following a final decision declaring the first subsequent application inadmissible, unfounded or manifestly unfounded.⁴²⁵

The law does not foresee a specific procedure to appeal against a decision on inadmissibility for subsequent applications. The amended Procedure Decree provides, however, that an appeal against an inadmissibility decision on a subsequent application never has suspensive effect, whether automatic or upon request.⁴²⁶ However, the appellant can request a suspension of the decision of inadmissibility, based on serious and well-founded reasons, to the competent court.

The exclusion of the suspensive effect in the event of an appeal with a suspension request – also confirmed by the MoI Circular of 13 January 2020⁴²⁷ - appears illegitimate because it is contrary to the Article 41 of the Directive 2013/32/EU which expressly indicates the cases in which it is possible to derogate from the right to remain on the territory pending the final decision of the Judge on the suspension request.⁴²⁸

For the rest of the appeal procedure, the same provisions as for the appeal in the regular procedure apply (see [Regular Procedure: Appeal](#)).

F. The safe country concepts

Indicators: Safe Country Concepts

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

1. Safe country of origin

The “safe country of origin” concept has been introduced in Italian legislation by Decree Law 113/2018, implemented by L 132/2018.⁴²⁹

1.1. Definition and list of safe countries of origin

According to the law, a third country can be considered a safe country of origin if, on the basis of its legal system, the application of the law within a democratic system and the general political situation, it can be shown that, generally and constantly, there are no acts of persecution as defined in the Qualification Decree, nor torture or other forms of inhuman or degrading punishment or treatment, nor danger due to indiscriminate violence in situations of internal or international armed conflict.⁴³⁰

⁴²⁴ Article 7(2)(d) Procedure Decree.

⁴²⁵ Article 7(2)(e) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018.

⁴²⁶ Article 35-bis(3) and (5) Procedure Decree, as amended by Article 9 Decree Law 113/2018 and L 132/2018. Prior to the 2018 reform, the Procedure Decree stated that suspensive effect was not granted for appeals against the inadmissibility of a second subsequent application.

⁴²⁷ MoI Circular 13 January 2020, available in Italian at: <https://bit.ly/36yrkgQ>.

⁴²⁸ See Le nuove procedure accelerate: lo svilimento del diritto di asilo, 3 November 2019, available in Italian at: <https://bit.ly/2Zu94Uh>.

⁴²⁹ Article 2-bis Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

⁴³⁰ Article 2-bis(2) Procedure Decree.

The assessment aimed at ascertaining whether or not a country can be considered a safe country of origin shall take into account the protection offered against persecution and ill-treatment through:⁴³¹

- a. The relevant laws and regulations of the country and the manner in which they are applied;
- b. Respect for the rights and freedoms established in the ECHR, in particular the non-derogable rights of the Convention, in the International Covenant on Civil and Political Rights, and in the United Nations Convention against Torture;
- c. Compliance with the principles set out in Article 33 of the 1951 Refugee Convention; and
- d. The existence of a system of effective remedies against violations of these rights and freedoms.

The assessment shall be based on information provided by the CNDA, as well as on other sources of information, including in particular those provided by other Member States of the European Union, EASO, UNHCR, the Council of Europe and other competent international organisations.⁴³²

A list of safe countries of origin is adopted by decree of the Ministry of Foreign Affairs, in agreement with Ministry of Interior and Ministry of Justice. The list must be periodically updated and notified to the European Commission.⁴³³

The list, adopted by decree of 4 October 2019 and entered into force on 22 October 2019,⁴³⁴ includes the following countries: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

Even if the law provides that the designation of a safe country of origin can be done with the exception of parts of the territory or of categories of persons,⁴³⁵ the decree merely refers to States without making any distinction and exception.

Indeed, information collected by the Ministry of Foreign Affairs, assisted by the CNDA COI Unit, had indicated, for many countries,⁴³⁶ categories of persons or parts of the country for which the presumption of safety cannot apply.⁴³⁷

The existence of parts of the territory or categories for which the country cannot be considered safe should have led to the non-inclusion of these countries in the list.⁴³⁸

In any case, as highlighted by ASGI,⁴³⁹ the decree appears illegitimate in several respects, as it does not offer any indication of the reasons and criteria followed for the inclusion of each country in the list. Moreover, the country files elaborated by the CNDA and by the Ministry of Foreign Affairs reveal that the choice of countries has not been based on a plurality of sources and, in some cases, the inclusion of only partially safe countries without the distinctions indicated by the CNDA is in contradiction with the results of the same investigation.

⁴³¹ Article 2-bis(3) Procedure Decree.

⁴³² Article 2-bis(4) Procedure Decree.

⁴³³ Article 2-bis(1) Procedure Decree.

⁴³⁴ Ministry of Foreign Affairs Decree, 4 October 2019, Identification of Safe Countries of origin, according to Article 2-bis of the Procedure Decree published on 7 October 2019 n. 235.

⁴³⁵ Article 2 bis (2) Procedure Decree.

⁴³⁶ This is the case of Algeria, Ghana, Morocco, Senegal, Ukraine and Tunisia.

⁴³⁷ The information sheets drawn up for each country were then sent to all the Territorial Commissions as an attachment to the CNDA circular no. 9004 of 31 October 2019, available in Italian at: <https://bit.ly/2TBVjiF>.

⁴³⁸ In this sense, Civil Court of Florence, interim decision of 22 January 2020, available at: <https://bit.ly/2TA3hZD>; see also *Questione Giustizia*, I primi nodi della disciplina sui Paesi di origine sicuri vengono al pettine, Cesare Pitea, 7 February 2020, <https://bit.ly/2zgXZeG>; see also EDAL, Italy: The region of Casamance, Senegal, excluded by the presumption of "safe third countries", 22 January 2020, available at: <https://bit.ly/2yx3Qfu>.

⁴³⁹ ASGI, Nota di commento del Decreto del Ministro degli affari esteri e della cooperazione internazionale 4 ottobre 2019 sull'elenco dei Paesi di origine sicuri, 27 November 2019, available in Italian at: <https://bit.ly/3edVetq>.

1.2. Procedural consequences

An applicant can be considered coming from a safe country of origin only if he or she is a citizen of that country or a stateless person who previously habitually resided in that country and he or she has not invoked serious grounds to believe that the country is not safe due to his or her particular situation.⁴⁴⁰

The Questura shall inform the applicant that if he or she comes from a designated country of safe origin, his or her application may be rejected.⁴⁴¹

An application made by an applicant coming from a safe country of origin can be:

- Subject to **Prioritised Examination**;
- Channelled into an **Accelerated Procedure**, whereby the Territorial Commission takes a decision within 5 days;⁴⁴²
- If made at the border, channelled into the **Border Procedure**, whereby the Territorial Commission takes steps to organise the personal interview within 7 days and has another 2 days to take a decision.

An application submitted by applicants coming from a safe country of origin can be rejected as manifestly unfounded,⁴⁴³ whether under the regular procedure or the accelerated procedure. In this case the decision rejecting the application is based on the fact that the person concerned has not shown that there are serious reasons to believe that the designated safe country of origin is not safe in relation to his or her particular situation.⁴⁴⁴

Following the entry into force of the safe countries of origin list, the CNDA issued two circulars, on 28 October 2019 and 31 October 2019, giving directives to the Territorial Commissions on the application of the new provisions. In particular the CNDA assumed that the inclusion of a country of origin in the safe countries list introduces an absolute presumption of safety, which can be overcome only with a contrary proof presented by the asylum seeker. CNDA also underlined that, in the event of rejection, the applications should always be regarded as manifestly unfounded applications. Consequently, appeals would not have an automatic suspensive effect of the refusal and they should be proposed in the halved terms provided by law in such cases.⁴⁴⁵

In practice, according to ASGI experience, Territorial Commissions are applying the CNDA directives to all rejections of asylum applications in case of safe country of origin.

However, an overall exam of the rules of the Procedure Decree shows that the manifestly unfounded decision is only one of the possible outcomes of the examination of the asylum application when the applicant comes from a country designated as safe.⁴⁴⁶

On 22 January 2020, the Civil Court of Florence deemed the exclusion of the automatic suspensive effect to an appeal lodged by an asylum seeker from Senegal as illegitimate due to the applicant's belonging to

⁴⁴⁰ Article 2-bis(5) Procedure Decree.

⁴⁴¹ Article 10(1) Procedure Decree, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

⁴⁴² However, the CNDA Circular of 28 October 2019 specifies that the accelerated procedure for safe countries must be understood as a 9 days accelerated procedure according to Article 28 bis (1 ter) of the Procedure Decree

⁴⁴³ Article 28-ter(1)(b) Procedure Decree, inserted Article 7 Decree Law 113/2018 and L 132/2018.

⁴⁴⁴ Article 9(2-bis) Procedure Decree, inserted by Article 7 Decree Law 113/2018 and L 132/2018.

⁴⁴⁵ CNDA Circular of 28 October 2019

⁴⁴⁶ Article 32 (1 b bis) read together with Article 2 bis (5) Procedure Decree must be interpreted as meaning that the asylum request is manifestly unfounded only when the applicant has not invoked serious grounds to believe that the country is not safe due to his or her particular situation. Moreover, Article 35 bis of the Procedure Decree links the halving of the time limits for appeal and the absence of automatic suspensive effect to applications that are manifestly unfounded and not, in general, to applications from asylum seekers from countries designated as safe. See *Questione Giustizia, Le nuove procedure accelerate, lo svilimento del diritto d'asilo*, 3 November 2019, available in Italian at: <https://bit.ly/2XqA8Rs>.

a category, that of LGBTI, whose treatment in Senegal, also according to CNDA indications, should have resulted in the exclusion of Senegal from the list of safe countries or should have determined at least the provision, within the decree, of a specific exception for this social group to the rules dictated for asylum applications submitted by safe countries nationals. Consequently, according to the Court, the Territorial Commission should not have refused the asylum application as manifestly unfounded only because of the safe country of origin of the applicant.⁴⁴⁷

2. First country of asylum

The Procedure Decree provides for the “first country of asylum” concept as a ground for inadmissibility (see [Admissibility Procedure](#)). The Territorial Commission declares an asylum application inadmissible where the applicant has already been recognised as a refugee by a state party to the 1951 Refugee Convention and can still enjoy such projection.⁴⁴⁸ The “first country of asylum” concept has not been used in practice.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No

❖ Is tailored information provided to unaccompanied children? Yes No

According to Article 10 of the Procedure Decree,⁴⁴⁹ when a person makes an asylum application, the Questura shall inform the applicant about the asylum procedure and his or her rights and obligations, and of time limits and any means (i.e. relevant documentation) at his or her disposal to support the application. In this regard, police authorities should hand over an information leaflet. The amended Procedure Decree adds that the Questura informs the applicant that if he or she comes from a [Safe Country of Origin](#), his or her application may be rejected.⁴⁵⁰

The Reception Decree provides that Questura, within a maximum of 15 days from the making of the asylum application, shall provide information related to reception conditions for asylum seekers and hand over information leaflets accordingly.⁴⁵¹ The brochures distributed also contain the contact details of UNHCR and refugee-assisting NGOs. However, the practice of distribution of these brochures by police authorities is actually quite rare. Moreover, although Italian legislation does not explicitly state that the information must also be provided orally, this happens in practice at the discretion of Questura but not in a systematic manner. Therefore, adequate information is not constantly and regularly ensured, mainly due to the insufficient number of police staff dealing with the number of asylum applications, as well as to the shortage of professional interpreters and linguistic mediators.

PD 21/2015 provides that unaccompanied children shall receive information on the specific procedural guarantees specifically provided for them by law.⁴⁵² However, during visits to reception centres for unaccompanied children carried out in 2017, the Children’s Ombudsman found a general lack of

⁴⁴⁷ Civil Court of Florence, interim decision of 22 January 2020, cited above; see also: <https://bit.ly/3bWqjA4>.

⁴⁴⁸ Article 29(1)(a) Procedure Decree.

⁴⁴⁹ Article 10(1) Procedure Decree.

⁴⁵⁰ *Ibid*, as amended by Article 7 Decree Law 113/2018 and L 132/2018.

⁴⁵¹ Article 3 Reception Decree.

⁴⁵² Article 3(3) PD 21/2015.

information to children which caused distress, disorientation and distrust, and significantly increased the risk of children absconding from centres.⁴⁵³

The visits to emergency, first and second-line reception centres for unaccompanied children carried out during 2017 and 2018 by the Children's Ombudsman together with UNHCR confirmed the same need to receive more information especially on the asylum procedure.⁴⁵⁴

1.1. Information on the Dublin Regulation

Asylum seekers are not properly informed of the different steps or given the possibility to highlight family links or vulnerabilities in the **Dublin Procedure**, particularly in the context of the specific procedure applied in **Friuli-Venezia Giulia**. On 25 March 2019, the Civil Court of Rome annulled a Dublin transfer on the basis that the Dublin Unit had not complied with the information obligations set out in Article 4 of the Dublin Regulation, as the Questura of Gorizia had only provided the applicant with information about the asylum procedure.⁴⁵⁵

The Children's Ombudsman verified after her visits to reception centres for unaccompanied children that the children had not received the information leaflet provided for in the Dublin Implementing Regulation. This was reported to be the case in the following centres: first reception centre in Mincio-Rome, **Lazio**, CAS Como, **Lombardy**, first reception centre in San Michele di Ganzaria, Catania, **Sicily**, and the "House of bricks" community centre in Fermo-Ancona, **Marche**.⁴⁵⁶

1.2. Information at the border and in detention

According to the law, persons who express the intention to seek international protection at border areas and in transit zones shall be provided with information on the asylum procedure, in the framework of the information and reception services set by Article 11(6) TUI.⁴⁵⁷

Article 11(6) TUI states that, at the border, "those who intend to lodge an asylum application or foreigners who intend to stay in Italy for over three months" have the right to be informed about the provisions on immigration and asylum law by specific services at the borders run by NGOs. These services, located at official border-crossing points, include social counselling, interpretation, assistance with accommodation, contact with local authorities and services, production and distribution of information on specific asylum issues.

In spite of the relevance of the assistance provided, it is worth highlighting that, since 2008, this kind of service has been assigned on the basis of calls for proposals. The main criterion applied to assign these services to NGOs is the price of the service, with a consequent impact on the quality and effectiveness of the assistance provided due to the reduction of resources invested, in contrast with the legislative provisions which aim to provide at least immediate assistance to potential asylum seekers. UNHCR and IOM continue to monitor the access of foreigners to the relevant procedures and the initial reception of asylum seekers and migrants in the framework of their mandates. The activities are funded under the Asylum, Migration and Integration Fund (AMIF).

⁴⁵³ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, available in Italian at: <http://bit.ly/2TE XUPE>.

⁴⁵⁴ Children's Ombudsman and UNHCR, *L'ascolto e la partecipazione dei minori stranieri non accompagnati in Italia, Rapporto finale attività di partecipazione 2017-2018*, May 2019, available in Italian at: <https://bit.ly/2A5VxaB>.

⁴⁵⁵ Civil Court of Rome, Decision 6256/2019, 25 March 2019.

⁴⁵⁶ Children's Ombudsman and UNHCR, *Minori stranieri non accompagnati: una valutazione partecipata dei bisogni - Relazione sulle visite nei centri*, May 2018, 15.

⁴⁵⁷ Article 10-bis(1) Procedure Decree, inserted by the Reception Decree.

The Reception Decree provides that foreigners detained in CPR shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. Asylum seekers detained in such facilities are provided with the relevant information set out by Article 10(1) of the Procedure Decree, by means of an informative leaflet.⁴⁵⁸

The Reception Decree also provides that asylum seekers detained in CPR or in hotspots are informed on the rules in force in the centre as well as on their rights and obligations in the first language they indicate.⁴⁵⁹ If it is not possible, information is provided in a language they are reasonably supposed to know meaning, as ruled by Procedure Decree, English, French, Spanish or Arabic, according to the preference they give.⁴⁶⁰

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?
 Yes With difficulty No

The Procedure Decree expressly requires the competent authorities to guarantee asylum seekers the possibility to contact UNHCR and NGOs during all phases of the asylum procedure.⁴⁶¹ For more detailed information on access to CPR, see the section on [Access to Detention Facilities](#).

However, due to insufficient funds or due to the fact that NGOs are located mainly in big cities, not all asylum seekers have access thereto. Under the latest tender specifications scheme (*capitolato d'appalto*) adopted on 20 November 2018, funding for legal support activities in hotspots, first reception centres, CAS and CPR has been replaced by “legal information service” of a maximum 3 hours for 50 people per week (see [Forms and Levels of Material Reception Conditions](#)).

As for the [Hotspots](#), the SOPs ensure that access to international and non-governmental organisations is guaranteed subject to authorisation of the Ministry of Interior and on the basis of specific agreements, for the provision of specific services⁴⁶². The SOPs also foresee that authorised humanitarian organisations will provide support to the Italian authorities in the timely identification of vulnerable persons who have special needs, and they will also carry out information activities according to their respective mandates. Currently in the hotspots, UNHCR monitors activities, performs the information service and, as provided in the SOPs, is responsible for receiving applications for asylum together with Frontex, EASO and IOM. Save the Children is also present in hotspots.

However, since asylum seekers can be detained for identification purposes in the hotspots, access to the guarantees provided by Article 7 of the Reception Decree in relation to detention centres should also apply (see access to detention facilities). According to Article 7, the access to NGOs with consolidated experience in protecting asylum seekers is allowed; it can be limited for security reasons, public order, or for reasons connected to the correct management of the centres but not completely impeded.⁴⁶³

⁴⁵⁸ Article 6(4) Reception Decree.

⁴⁵⁹ Article 7 (4) Reception Decree

⁴⁶⁰ Article 10 (4) Procedure Decree, to which Article 7 (4) reception decree expressly refers to.

⁴⁶¹ Article 10(3) Procedure Decree.

⁴⁶² SOPS, paragraph B.2

⁴⁶³ Article 7 (3) Reception Decree

However, by December 2019, ASGI tried to obtain access to the hotspot of Lampedusa but it was formally denied. The Prefecture of Agrigento alleged the lack of specific agreements with the Ministry of Interior, as requested by the SOPs. As regards the access guarantees provided by the Reception Decree for detention centres, the Prefecture has considered that it allows limiting the access of NGOs just for the administrative management of the centre and that the presence of EASO, UNHCR and IOM, as well as the access of the Guarantor for the rights of detained people are sufficient to protect migrants.

Access of UNHCR and other refugee-assisting organisations to border points is provided. For security and public order grounds or, in any case, for any reasons connected to the administrative management, the access can be limited on condition that is not completely denied.⁴⁶⁴

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which: Afghanistan, Venezuela, Somalia
2. Are applications from specific nationalities considered manifestly unfounded? Yes No
❖ If yes, specify which: countries included in the safe countries of origin list

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

The issue, on 4 October 2019, of the [Safe Country of Origin](#) decree, has directly affected the treatment and prerogatives of asylum seekers whose nationalities are indicated by the decree, also because of the CNDA directive to consider all rejections as manifestly unfounded applications.

Statistics on decisions in asylum applications in 2019 show a recognition rate of about 92% for **Afghans**, 92 % for Venezuelans, 91% for **Somalis** and 73% for **Iraqis**. Syrians do not appear in the 2019 statistics among the main countries of origin of asylum seekers.

In practice, as already highlighted in [Hotspots](#) and [Registration](#), some nationalities face more difficulties to access the asylum procedure, both at hotspots and at Questure. In the hotspots, ASGI has directly recorded in 2019 that people from **Tunisia** were notified expulsion orders despite having expressly requested international protection.

Statistics on **Algerians** highlight perhaps similar problems, as they are among the main foreign citizens disembarked but not included among the main nationalities of asylum seekers of 2019.

⁴⁶⁴ Article 10-bis(2) Procedure Decree.

Short overview of the Italian reception system

Decree Law 113/2018, implemented by L 132/2018, has brought drastic changes to the design of the Italian reception system, which under the Reception Decree (LD 142/2015) had articulated reception for asylum seekers in different phases:

- ❖ a phase of first aid and assistance,
- ❖ a first reception phase in governmental centres;
- ❖ and a second-line reception phase.

The 2018 reform transformed the second-line reception system known as System of Protection for Refugees and Asylum Seekers (*Sistema di protezione per richiedenti asilo e rifugiati*, SPRAR) into the System of Protection for Beneficiaries of Protection and Unaccompanied Minors (*Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati*, SIPROIMI).⁴⁶⁵

The law now draws a clear division between the reception system for asylum seekers and the one for beneficiaries of international protection (see [Content of Protection: Housing](#)). The two reception systems are no longer communicating and became in all respects two parallel systems. SIPROIMI is now available to adults after international protection has been granted. Only unaccompanied children have immediate access to SIPROIMI. Local authorities can also accommodate in SIPROIMI victims of trafficking; domestic violence and particular exploitation; persons issued a residence permit for medical treatment, or natural calamity in the country of origin, or for acts of particular civic value.⁴⁶⁶

Asylum seekers and humanitarian status holders already hosted in the former SPRAR system as of 5 October 2018 were allowed to remain in this accommodation system until the end of their project.⁴⁶⁷ The Circular letter issued on 27 December 2018 specified that at a later stage, asylum seekers could only be sent back to CAS or first reception centres.⁴⁶⁸

The principle, which was not largely followed up in 2019, was confirmed with a note of 20 December 2019 sent by the *Servizio Centrale* of Siproimi to all reception projects expiring on 31 December 2019, even if all the projects had already been extended until June 2020 by the same authority.⁴⁶⁹

The reception system for asylum seekers is now articulated as follows:

1. First aid and assistance operations that continue to take place in the centres set up in the principal places of disembarkation.⁴⁷⁰ First Aid and Reception Centres (CPSA),⁴⁷¹ created in 2006 for the purposes of first aid and identification before persons are transferred to other centres, and now formally operating as [Hotspots](#).⁴⁷²

⁴⁶⁵ Article 1-sexies Decree Law 416/1989, implemented by L 39/1990, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

⁴⁶⁶ *Ibid*, citing Articles 18, 18-bis, 19(2)(d-bis), 20, 22(12-quater) and 42-bis TUI. The statuses in Articles 20 and 42-bis have been inserted by Decree Law 113/2018.

⁴⁶⁷ Article 12(5) and (6) Decree Law 113/2018, implemented by L 132/2018.

⁴⁶⁸ Ministry of Interior Circular of 27 December 2018.

⁴⁶⁹ See ASGI, Cessazione delle misure di accoglienza per i titolari di protezione umanitaria accolti in Siproimi dal 1.1.2020 nonché annunciati trasferimenti collettivi dei richiedenti asilo dal Siproimi verso strutture di prima accoglienza. Profili di illegittimità e indicazioni agli enti locali e agli enti attuatori per una corretta attuazione delle norme vigenti ,23 December 2019, available in Italian at: <https://bit.ly/3edL4sK>.

⁴⁷⁰ Article 8(2) Reception Decree.

⁴⁷¹ L 563/1995.

⁴⁷² Article 10-ter TUI, inserted by Article 17 Decree Law 13/2017 and L 46/2017.

2. First reception, to be implemented in existing collective centres or in centres to be established by specific Ministerial Decrees.⁴⁷³ This includes the centres previously known as governmental centres for accommodation of asylum seekers (CARA) and accommodation centres (CDA).

Decree Law 113/2018 has abolished the second-line reception phase for asylum seekers but has not amended the provisions according to which first reception, guaranteed in governmental centres, is planned for the first assistance and aimed at carrying out the necessary operations to define the legal position of the foreigner concerned.⁴⁷⁴ Therefore the law seems not to attribute additional targets to the reception system for asylum seekers.

In case of unavailability of places due to a large influx of arrivals, first reception may be implemented in “temporary” structures” (*strutture temporanee*), also known as Emergency Reception Centres (*Centri di accoglienza straordinaria, CAS*), established by Prefectures, subject to an assessment of the applicant’s health conditions and potential special needs.⁴⁷⁵ When reception is provided in CAS, it is limited to the time strictly necessary for the transfer of the applicant in the first reception centres.⁴⁷⁶

The current reception system for asylum seekers promotes reception in large centres and renders reception in small-scale facilities and apartments economically unsustainable, as discussed below. This ultimately represents an attack on those organisations that have pursued the path of integrated and decentralised reception systems not only for SPRAR but also for CAS. The reform is therefore premised on a logic of security and control and no longer on people’s protection.

Whereas the declared purpose of the reform was to reserve resources for the integration of those who will benefit from international protection,⁴⁷⁷ the new system ends up allocating time, energy and public funds to organising just basic assistance for asylum seekers (board and lodging without the access to essential services like Italian classes, legal support, work orientation, psychological assistance), contrary to a logic of protection and considerably slowing down the process of regaining self-sufficiency.

Financing, coordination and monitoring

The overall activities concerning the first reception and the definition of the legal status of the asylum seeker are conducted under the programming and criteria established by both national and regional Working Groups (*Tavolo di coordinamento nazionale e tavoli regionali*).⁴⁷⁸ The Department of Civil Liberties and Immigration of the Ministry of Interior, including through the Prefectures, conducts control and monitoring activities in the reception facilities. To this end, the Prefectures may make use of the municipality’s social services.⁴⁷⁹

With a Decree of 20 November 2018, the Ministry of Interior adopted the tender specifications scheme (*capitolato d’appalto*) for the supply of goods and services related to CPSA, first reception centres, CAS and CPR.⁴⁸⁰ The Capitolato only foresees a basic level of services and drastically reduces funding for the centres (see further [Forms and Levels of Material Reception Conditions](#)).

After the former Ministry of Interior’s announcement of 23 July 2018,⁴⁸¹ in 2019 all Prefectures intended to be bound to refer to the auction bases indicated in the tender specifications schemes provided by the Mol to meet accommodation needs in their respective provinces.

⁴⁷³ Article 9 Reception Decree.

⁴⁷⁴ Article 9(1) Reception Decree.

⁴⁷⁵ Article 11(1) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

⁴⁷⁶ Article 11(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

⁴⁷⁷ Ministry of Interior Circular No 83774/2018 of 18 December 2018.

⁴⁷⁸ Article 9(1) Reception Decree.

⁴⁷⁹ Article 20(1) Reception Decree.

⁴⁸⁰ According to Article 12 Reception Decree.

⁴⁸¹ Ministry of Interior, *Direttiva: Servizi di accoglienza per i richiedenti asilo*, 23 July 2018, available in Italian at: <https://bit.ly/2Hm0rTu>.

In order to tackle the problem of the many calls that went deserted due to the poverty of the offer in terms of funds and services offered, as of 4 February 2020, the new MoI issued a Circular allowing Prefectures to vary minimally the auction bases, substantially with reference to the costs of the surveillance and leases of structures.⁴⁸² (See further)

As highlighted by reports⁴⁸³ and journalistic investigations, the 2018 security decree marked a net change in the reception approach, preferring a system based on big CAS centres, attracting profit companies, such as ORS.⁴⁸⁴

The very low numbers of operators granted by the funds in proportion to the number of guests led to the loss of many jobs⁴⁸⁵ and the services' cut made reception a mere management of food and accommodation, also reducing the positive effects on the host territories, in terms of income and socio-employment integration.⁴⁸⁶

In some cases, the farraginous control mechanisms of Prefectures, responsible for the establishment of CAS centres, have favoured the participation in the reception services of realities connected to underworld and false non-profit organizations, which, according to an investigation now underway, would have falsely attested services never actually performed. These would be contexts related to organized crime.⁴⁸⁷

Despite many announcements, the new government composed by the Democratic Party and the Five Stars Movement has made no changes to the existing situation.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

The Reception Decree sets out the reception standards for third-country nationals making an application for international protection on the territory, including at the borders and in the transit zones or in Italian territorial waters.⁴⁸⁸

⁴⁸² MoI Circular, 4 February 2020, available in Italian at: <https://bit.ly/36nSuqF>.

⁴⁸³ Openpolis, Actionaid, Centri d'Italia, La sicurezza dell'esclusione, October 2019, available in Italian at: <https://bit.ly/2A0YZDx>.

⁴⁸⁴ Valori, Dai timori alla realtà: «I centri-migranti sempre più ghetti senza servizi». E a Trieste rispunta ORS, 31 January 2020, available in Italian at: <https://bit.ly/2TvisTl>.

⁴⁸⁵ Avvenire, Decreto Sicurezza. Accoglienza migranti in crisi, 15mila operatori rischiano il lavoro, 6 May 2019, available in Italian at: <https://bit.ly/3edXbWM>.

⁴⁸⁶ Valori, Accoglienza migranti: i quattro fallimenti del decreto Sicurezza, 31 July 2019, available in Italian at: <https://bit.ly/3c0VIBs>.

⁴⁸⁷ Repubblica, Parma: Fake Onlus: l'indagine sull'accoglienza dei migranti tocca Parma, 2 July 2019, available in Italian at: <https://bit.ly/2A2InLE>.

⁴⁸⁸ Article 1(1) Reception Decree.

It provides that reception conditions apply from the moment destitute applicants have manifested their willingness to make an application for international protection,⁴⁸⁹ without conditioning the access to the reception measures upon additional requirements.⁴⁹⁰ Destitution is evaluated by the Prefecture on the basis of the annual social income (*assegno sociale annuo*).⁴⁹¹

In practice, the assessment of financial resources is not carried out by the Prefectures, which to date have considered the self-declarations made by the asylum seekers as valid. However, during 2018 in Pordenone, **Friuli-Venezia Giulia**, the Prefecture started to claim that asylum seekers were not destitute and thereby to deny access to accommodation even to vulnerable people. This was the case, for example, for two asylum seekers from Armenia, one of them over the age of 65. In both cases the Prefecture held that the expensive journey they undertook to arrive in Italy showed they had sufficient resources to sustain themselves, and in one case took the disability pension received by the applicant in Armenia as a basis for denying reception. The Administrative Court of Friuli-Venezia Giulia held that no assessment of resources had been actually done by the Prefecture, considering the reference to the minimum invalidity pension and to the cost of the travel insufficient as a ground to decide that there was no need to be accommodated.⁴⁹² After this decision, the Prefecture accepted to revoke the second denial of access to accommodation in self-defence, as it was unable to demonstrate the absence of destitution.

1.1. Reception and obstacles to access to the procedure

According to the practice recorded in recent years and continuing in 2019, even though by law asylum seekers are entitled to material reception conditions immediately after claiming asylum and undergoing initial registration (*fotosegnalamento*), they may access accommodation centres only after their claim has been lodged (*verbalizzazione*). This implies that, since the *verbalizzazione* can take place even months after the presentation of the asylum application, asylum seekers can face obstacles in finding alternative temporary accommodation solutions. Due to this issue, some asylum seekers lacking economic resources are obliged to either resort to friends or to emergency facilities, or to sleeping rough.⁴⁹³

As reported by MSF in February 2018, at least 10,000 persons were excluded from the reception system, among whom asylum seekers and beneficiaries of international protection. Informal settlements with limited or no access to essential services are spread across the entire national territory, namely Ventimiglia, Turin, Como, Bolzano, Udine, Gorizia, Pordenone, Rome, Bari and Sicily.⁴⁹⁴

Recent examples of asylum seekers facing obstacles to accessing accommodation include the following:

Campania: as of 4 October 2019, the Administrative Tribunal of Campania accepted the appeal lodged by an Afghan citizen who had asked accommodation since March 2019 without receiving any answer from the Prefecture of Naples.⁴⁹⁵ As of 29 October 2019, the Prefecture of Naples notified the applicant the accommodation provided for him.

Lombardy: an Afghan citizen who was waiting to be accommodated for more than one month after the formalization of his asylum application, lodged an appeal against the administrative silence of the Prefecture of Milan. The Administrative Tribunal of Lombardy, as of 17 December 2019, accepted the

⁴⁸⁹ Article 1(2) Reception Decree.

⁴⁹⁰ Article 4(4) Reception Decree.

⁴⁹¹ Article 14(1) and (3) Reception Decree. For the year 2018, the amount corresponded to €5,889 and for 2019 to €5,953.87.

⁴⁹² Administrative Court of Friuli-Venezia Giulia, Decision 184/2018, 23 May 2018.

⁴⁹³ For more information, see MSF, *Fuori campo*, February 2018, available in Italian at: <http://bit.ly/2Gagwa2>; *Fuori campo*, March 2016, available in Italian at: <http://bit.ly/2letTQd>, 11; ANCI *et al.*, *Rapporto sulla protezione internazionale in Italia*, 2014, available in Italian at: <http://bit.ly/15k6twe>, 124.

⁴⁹⁴ MSF, *Fuori campo*, February 2018, 2, 36.

⁴⁹⁵ Administrative Tribunal of Campania, 4 October 2019, decision 4738/2019, available in Italian at : <https://bit.ly/3cZoWSx>.

appeal and ordered the Prefecture to give an answer to the applicant's accommodation request within 30 days.⁴⁹⁶

Despite the aforementioned cases, the full extent of this phenomenon is not known, since no statistics are available on the number of asylum seekers who have no immediate access to a reception centre after the *fotosegnalamento*. Moreover, the waiting times between the *fotosegnalamento* and *verbalizzazione* differ between Questure, depending *inter alia* on the number of asylum applications handled by each office (see [Registration](#)).

1.2. Reception at second instance

With regard to appellants, the Reception Decree provides that accommodation is ensured until a decision is taken by the Territorial Commission and, in case of rejection of the asylum application, until the expiration of the timeframe to lodge an appeal before the Civil Court. When the appeal has automatic suspensive effect, accommodation is guaranteed to the appellant until the first instance decision taken by the Court.

However, when appeals have no automatic suspensive effect, the applicant remains in the same accommodation centre until a decision on the suspensive request is taken by the competent judge. If this request is positive, the applicant remains in the accommodation centre where he or she already lives.⁴⁹⁷ Where the appeal is made by an applicant detained in a CPR requesting the suspensive effect of the order, in case it is accepted by the judge, the person remains in the CPR or, if the detention grounds are no longer valid, he or she is transferred to governmental reception centres.⁴⁹⁸

The amendments made by Decree Law 113/2018, implemented by L 132/2018, on the exclusion from suspensive effect during the appeal for some asylum applications or the requirement to request explicitly in some cases the suspensive effect such as for [Subsequent Applications](#), had an impact on reception. In Trieste, **Friuli-Venezia Giulia**, in February 2019, people notified of an inadmissibility decision received on the same day a decision of withdrawal of reception conditions and an expulsion order.

As regards reception during onward appeals, following Decree Law 13/2017, implemented by L 46/2017, the withdrawal of accommodation to asylum seekers whose claims have been rejected at first appeal has become very common. Usually the applicant does not quickly obtain suspensive effect, which has also become extremely difficult to get (see [Regular Procedure: Appeal](#)).

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2019 (in original currency and in €): €75

According to the law, the scope of material reception conditions and services offered to asylum seekers shall be defined by decree of the Ministry of Interior so as to guarantee uniform levels of reception across the territory, taking into account the peculiarities of each type of reception centre.⁴⁹⁹ The Reception Decree provides for a monitoring system in reception centres by the Prefecture, through the social services of municipalities.⁵⁰⁰

⁴⁹⁶ Administrative Tribunal of Lombardy, 17 december 2019, decision 2724/2019, available in Italian at : <https://bit.ly/3c40wWZ>.

⁴⁹⁷ Article 14(4) Reception Decree.

⁴⁹⁸ Article 14(5) Reception Decree.

⁴⁹⁹ Article 12(1) Reception Decree.

⁵⁰⁰ Article 20(1) Reception Decree.

The latest decree approving the tender specifications schemes (*capitolato d'appalto*) was adopted on 20 November 2018.⁵⁰¹

Under the tender specifications schemes issued following Decree Law 113/2018, the daily amount per person allocated to the centres' management was reduced from €35 to €21, *de facto* forcing contractors to opt for large centres, reducing the number of operators and the activities offered in the centres.

As expected, government policies on the design of the reception system opened a market for large companies such as European Homecare in Germany and the UK, Hero in Norway, and ORS in Switzerland. The latter, already present in the accommodation sector in Rome according to a 2018 report⁵⁰², won the call for tenders for the first accommodation centre based in Ferneti, at Trieste border with Slovenia, in 2019.⁵⁰³

Moreover, the tender specification schemes only guarantee basic needs such as personal hygiene, pocket money, and €5 for phone cards. They no longer cover integration services. Compared to the Capitolato published in 2017, the following expenses are no longer covered: Italian language courses; orientation to local services; professional training; leisure activities.

The new schemes also omit psychological support (which is maintained only in CPR and hotspots), replace legal support with a "legal information service" reduced to 3 hours a week for 50 people, and significantly reduce cultural mediation to an overall 12 hours a week for 50 people. No services for vulnerable people are provided, thus leaving the protection of these persons to purely voluntary contributions.

In 2019 Prefectures published new calls for tenders strictly in line with the new Capitolato.

However, many calls went deserted due to the poverty of the offer, in terms of funds and services offered. Therefore, in the meantime, many Prefectures had to renegotiate the tenders in order not to leave the reception centres uncovered.⁵⁰⁴ This has happened, for example, in Florence, Siena, Bologna, Genoa, Modena, Trieste.⁵⁰⁵ However, even in these contexts, the situation created is an extremely precarious limbo in which the most worthy organizations have tried to guarantee with less funds the services that the government has not foreseen and required, considering them not essential.

With the express purpose of dealing with deserted calls and homogenizing the responses of Prefectures in their territories, as of 4 February 2020, the new Mol issued a Circular allowing Prefectures to minimally vary the auction bases.⁵⁰⁶

The suggested flexibility of the tender specifications schemes, limited to an increase around € 3 per day, does not affect in any way the type, quality and quantity of services to be guaranteed as it only allows to adjust the daily amount to the different costs of the accommodation facilities leased along the national territory and to foresee an increase on surveillance services, in line with the preference for big centres, aimed at control rather than integration of the asylum seekers.⁵⁰⁷

⁵⁰¹ Ministry of Interior Decree of 20 November 2018, available in Italian at: <https://bit.ly/2UEELoG>.

⁵⁰² Valori, *Migranti gli sciacalli della finanza brindano a Salvini*, January 2019, available in Italian at: <https://bit.ly/2TE4TmV>.

⁵⁰³ Valori, *Dai timori alla realtà: «I centri-migranti sempre più ghetti senza servizi»*. E a Trieste rispunta ORS January 2020, available in Italian at: <https://bit.ly/2A6jv5W>.

⁵⁰⁴ According to the report published by Openpolis and Actionaid on October 2019, from the entry into force of the new tender specifications schemes (10 December 2018) to the beginning of August 2019, out of the 428 procurement contracts banned by 89 Prefectures, more than half were extensions of ongoing contracts or procedures aimed at solving specific situations, usually to find temporary solutions pending the put in place of the new system. See the first part of the report available at: <https://bit.ly/3bRPbZO>.

⁵⁰⁵ Valori, *Accoglienza migranti, i quattro fallimenti del decreto sicurezza*, 31 July 2019 available at: <https://bit.ly/2yx6a6c>.

⁵⁰⁶ Mol Circular, 4 February 2020, available at: <https://bit.ly/36rb6WQ>.

⁵⁰⁷ Redattore Sociale, *Accoglienza migranti, più fondi ma sui servizi non si cambia. "Solo maquillage"*, 6 February 2020, available in Italian at: <https://bit.ly/2zrLJYL>.

Moreover, the circular allows Prefectures to admit, in selecting the managing companies, to derogate from the minimum professionalism requirements indicated in the tender specification scheme, including, for example, the minimum three-year experience in accommodation services.

As documented by the Actionaid and Openpolis report, the tender specification schemes resulted in 2019 in the disappearance of many small centres (CAS) also because of the third sector's refusal to take part to a reception system based on the mere control of migrants.⁵⁰⁸

In Rome and Milan the accommodation scene sees the prevalence of big social cooperatives (Medihospes in Rome and Versoporobo in Milan) and the appearance of profit-making organizations without any social purpose such as Ospita Srl, Engel Italia Srl, Nova Facility and Ors Italia srl.⁵⁰⁹

The appeals filed by small and specialized social cooperatives and non-profit organizations against the call for tenders were rejected or are still pending before the Administrative Tribunal of Lazio at the time of writing.

The law does not provide a definition of “adequate standard of living and subsistence” and does not envisage specific financial support for different categories, such as people with special needs.

In relation to financial allowances i.e. pocket money for personal needs, each asylum seeker hosted in first reception centres receives €2.50 per day as pocket money. Although the level pocket money in CAS is agreed with the competent Prefecture, according to the Decree of 20 November 2018, the amount received by applicants hosted in CAS should be €2.50 per day for single adults and up to €7.50 for families.

The Reception Decree does not provide any financial allowance for asylum applicants who are not in accommodation and often, where there are no places available in CAS or governmental centres, the Prefecture sends asylum seekers to one of those facilities, thereby exceeding their maximum reception capacity. As a result, this causes overcrowding and a deterioration of material reception conditions (see [Conditions in Reception Facilities](#)).

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

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

⁵⁰⁸ Actionaid, Openpolis, La sicurezza dell'esclusione, Second part, December 2019, available in Italian at : <https://bit.ly/3d0z65i>.

⁵⁰⁹ Openpolis and Actionaid report that in Rome 83.5% reception places are located in large centres. Medihospes manages 63% of all reception places. In Milan, 64% of reception places are provided in large centres. See: <https://bit.ly/2ysJleg>; for a complete picture of the accommodation system in Milan see NAGA, Senza Scampo, December 2019, available at: <https://bit.ly/2M5Inxr>; see also Internazionale, Il decreto Salvini ha favorito il “business dell'accoglienza”, 17 February 2020, available at: <https://bit.ly/3ep41sD>.

According to Article 23(1) of the Reception Decree, the Prefect of the region where the asylum seeker's accommodation centre is placed may decide, on an individual basis and with a motivated decision, to revoke material reception conditions on the following grounds:⁵¹⁰

- (a) The asylum seeker did not present him or herself at the assigned centre or left the centre without notifying the competent Prefecture;
- (b) The asylum seeker did not present him or herself before the determining authorities for the personal interview even though he or she was notified thereof;
- (c) The asylum seeker has previously lodged an asylum application in Italy;
- (d) The authorities decide that the asylum seeker possesses sufficient financial resources; or
- (e) The asylum seeker has committed a serious violation or continuous violation of the accommodation centre's internal rules or the asylum seeker's conduct was considered seriously violent.

The law does not provide for any assessment of destitution risks when withdrawing reception. However, while assessing the withdrawal of reception conditions, the Prefect must take into account the specific conditions of vulnerability of the applicant.⁵¹¹

Asylum seekers may lodge an appeal before the Regional Administrative Court (*Tribunale amministrativo regionale*) against the decision of the Prefect to withdraw material reception conditions.⁵¹² To this end, they can benefit from free legal aid.

Available figures seem to corroborate an overly broad use of withdrawal provisions. According to an investigation carried out by Altreconomia since 2017 and updated in 2019, on the basis of data from 60 Prefectures out of 106, between 2016 and 2019, at least 100,000 asylum seekers and beneficiaries of international protection lost the right to accommodation in reception centres. According to the report, the numbers of withdrawals between 1 January 2018 and 30 September 2019 were as follows: 1,679 in Bari, Apulia, 1,326 in Cosenza, Calabria; 891 in Cuneo, Piedmont, 540 in Naples Campania; 1,172 in Gorizia, of which 95% of cases concerned voluntarily abandonment of the reception facilities, 76 in Udine, Friuli Venezia Giulia, most of which for violation of house rules; 534 in Milan, Lombardy.⁵¹³

3.1. Departure from the centre

According to the Reception Decree, when asylum seekers fail to present themselves to the assigned centre or leave the centre without informing the authorities, the centre managers must immediately inform the competent Prefecture.⁵¹⁴ In case the asylum seeker spontaneously presents him or herself before the police authorities or at the accommodation centre, the Prefect could decide to readmit the asylum seeker to the centre if the reasons provided are due to *force majeure*, unforeseen circumstances or serious personal reasons as the ground to be readmitted to the centre.⁵¹⁵

Certain Prefectures have interpreted this ground particularly strictly:

⁵¹⁰ See also Article 13 Reception Decree.

⁵¹¹ Article 23(2) Reception Decree.

⁵¹² Article 23(5) Reception Decree.

⁵¹³ Altreconomia, *Così le prefetture italiane hanno escluso 100mila persone dall'accoglienza in quattro anni*, 1 December 2019, available in Italian at: <https://bit.ly/36r8hVB>. See also, the previous investigations: '40mila richiedenti asilo tagliati fuori dal sistema di accoglienza in due anni', 30 May 2018, available in Italian at: <https://bit.ly/2tRv2zR>; 'Richiedenti asilo: i numeri record delle revoche dell'accoglienza', 1 March 2018, available in Italian at: <http://bit.ly/2FVb7Eg>.

⁵¹⁴ Article 23(3) Reception Decree.

⁵¹⁵ Article 23(3) Reception Decree.

Veneto: On 22 September 2017, the Prefecture of Verona issued a note which provides for the automatic withdrawal of reception conditions without any evaluation of individual circumstances in cases of unauthorised absence of even one night from the reception centre, where it is not adequately justified.⁵¹⁶

Campania: On 16 June 2017, the Prefecture of Naples adopted a new regulation to be applied in CAS. The regulation provides for the “withdrawal of reception measures” in case of unauthorised departure from the centre even for a single day, also understood as the mere return after the curfew, set at 22:00, and at 21:00 in spring and summer. ASGI has challenged the regulation before the Council of State claiming a violation of the law, as the Prefecture has effectively introduced a ground for withdrawal of reception conditions not provided in the law but the Council of State rejected the appeal believing that the regulation did not automatically lead to the withdrawal of the reception measures, as the recipients were allowed to represent their reasons to the administration.⁵¹⁷

Tuscany: As of 14 May 2019, the Council of State (Consiglio di Stato) confirmed the decision of the Administrative Court of Tuscany against a Prefecture of Tuscany and accepted the appeal lodged by an asylum seeker whose reception conditions had been withdrawn due to the absence of one night from the reception centre. The Council of State noted that this behaviour should be considered a departure from the centre and not abandonment and that as such it can only cause the withdrawal of the reception conditions if duly justified as a serious violation of the house rules.⁵¹⁸

Lombardy: As reported by NAGA⁵¹⁹, during 2109 the Prefecture of Milan has started a greater control of the night registers, exerting pressure on the CAS centres’ management so that individual absences had to be communicated immediately. As a result, the centres no longer have any chance to manage the guests’ absence, in the light of their personal situation. As of 19 February 2020, the Administrative Court of Lombardy cancelled the withdrawal decision adopted by the Prefecture of Milan on 6 November 2019, observing that the absence from the facility for one night does not mean an abandonment of the centre and that in any case the measure violates Article 20 of the Reception Directive because it is not proportionate and it does not ensure respect for human dignity.⁵²⁰

3.2. Violation of house rules and violent behaviour

In case of violation of the house rules of the centre or of violent behaviour, the manager of the reception facility shall send to the Prefecture a report on the facts that can give rise to the potential withdrawal of reception conditions within 3 days from their occurrence.⁵²¹ The duty to involve the asylum seeker in the procedure and to allow him or her to make submissions prior to the issuance of a decision was highlighted in a recent ruling of the Administrative Court of **Campania**, which annulled a decision taken solely on the basis of declarations made by the manager of a reception facility in Naples.⁵²²

The law does not clarify what is meant by “serious violations” of the centre’s house rules and, in ASGI’s experience, this has allowed Prefectures to misuse the provision revoking reception measures on ill-founded grounds. According to ASGI, such misuse of the provision amounts to a violation of the Article 20 of the recast Reception Conditions Directive according to which the withdrawal of reception conditions should be an exceptional measure. It also infringes Article 20 of the Directive since it does not include measures through which the reception measures may be reduced without being completely withdrawn.

⁵¹⁶ Prefecture of Verona, Note 66/2017. See LasciateCIEntrare, ‘Verona e le “facili” revoche dall’accoglienza dei richiedenti asilo’, 11 January 2018, available in Italian at: <https://bit.ly/2yqYphW>.

⁵¹⁷ Council of State, decision 06454/2019 of 26 September 2019.

⁵¹⁸ Consiglio di Stato, decision 1322/2019, 14 May 2019, available in Italian at: <https://bit.ly/2Twonlk>.

⁵¹⁹ NAGA, Senza Scampo, December 2019, available in Italian at: <https://cutt.ly/byOB3Wr>.

⁵²⁰ Administrative Court of Lombardy, decision 329/2020, 19 February 2020.

⁵²¹ Article 23(4) Reception Decree.

⁵²² Administrative Court of Campania, Decision 5476/2018, 12 September 2018, available in Italian at: <https://bit.ly/2VJU2VL>.

Prefectures have interpreted conditions strictly or have considered certain forms of conduct to be “serious” without evaluating them in the context in which they occurred:

Veneto: The aforementioned note of the Prefecture of Verona, dated 22 September 2017, provides for the automatic withdrawal of reception conditions without any evaluation of individual circumstances in violations of the prohibition of smoking and consumption of alcohol and drugs, both inside and outside the centre, as well as the accumulation of more than one absence from Italian language courses.

Tuscany: On 9 July 2019, the Administrative Court of Tuscany accepted the appeal lodged by an asylum seeker whom the Prefecture had withdrawn from the reception conditions due to repeated non-compliance with the house rules. The Court⁵²³ observed that the Prefecture had not taken into account the vulnerability of the applicant, mother of a three-year-old girl and with concrete difficulties in looking after herself.

Liguria: On 15 October 2019, the Council of State confirmed the decision of the Prefecture of Savona which had considered the absence of an asylum seeker from the centre for one night a serious violation of the house rules.⁵²⁴

Similarly, in **Friuli Venezia Giulia:** by the end of January 2020, the Prefecture of Pordenone notified the withdrawal of the reception conditions to an asylum seeker from Peru because of his absence from the centre for one night. The man had formalized his asylum application only one month before, therefore he was not even admitted to work to sustain himself.

On 15 May 2020 the Administrative Court of Friuli Venezia Giulia ordered the Prefecture to make a new exam of the withdrawal decision before 30 of June 2020, taking into account the Article 20 of the recast Reception Conditions Directive.⁵²⁵

On 26 September 2018, the Administrative Court of **Tuscany** asked the CJEU to rule on the compatibility of Article 23 of the Reception Decree with Article 20(4) of the recast Reception Conditions Directive, to ascertain whether violations of general rules of the domestic legal system, not specifically laid down in the house rules of the reception centres, can constitute serious violations of the house rules for the purpose of withdrawing reception conditions.⁵²⁶

On 15 April 2020 the Administrative Court of **Tuscany** decided to disapply Article 23 (let. e) of the Reception decree considered contrary to Article 20 of the recast Reception Conditions Directive⁵²⁷ (see further par. 3.3.)

3.3. Possession of sufficient resources

Another worrying practice relates to withdrawal of reception conditions for reasons of sufficient resources (see [Criteria and Restrictions to Access Reception Conditions](#)).

Prefectures use the annual social income level to evaluate the sufficiency of the applicant’s financial resources so as to justify the withdrawal of reception conditions. According to the Reception Decree, if it is established that the applicant is not destitute, the applicant is required to reimburse the costs incurred for the measures from which he or she has unduly benefitted.⁵²⁸

In several cases in 2019, as in 2018, however, Prefectures have withdrawn reception conditions based on a decision that does not comply with the law or the spirit of the recast Reception Conditions Directive. For example, the Prefecture of Pordenone, **Friuli-Venezia Giulia** decided to withdraw reception

⁵²³ Administrative Court of Tuscany, decision 1170/2019, 9 July 2019, available at: <https://cutt.ly/2yOB7n2>.

⁵²⁴ Council of State, 15 October 2019, decision 7018/2019, available at: <https://cutt.ly/xyOB75i>.

⁵²⁵ Administrative Court of Friuli Venezia Giulia. Interim measure n. 42/2020, 15 May 2020.

⁵²⁶ Administrative Court of Tuscany, 1481/2018, 12 November 2018, EDAL, available at: <https://bit.ly/2VKeHsL>.

⁵²⁷ Administrative Court of Tuscany, decision no 00437/2020 of 15 April 2020.

⁵²⁸ Article 23(6) Reception Decree.

conditions of persons who started to work based on a mere assumption of sufficient economic resources. In one case, the decision was taken with retroactive effect, as of the month following the starting date of employment, even though the person's financial remuneration had not exceeded the reference limit set by law. On 13 March 2019, the Administrative Court of Friuli-Venezia Giulia rejected the appeal lodged in this case considering that the choice of the Administration to evaluate the applicant's income conditions on the basis of a prognostic criterion, calculated over a reasonable period of observation, was in accordance with the purposes and criteria of the state of indigence's assessment.⁵²⁹

In other cases Prefectures have taken a withdrawal decision solely based on a presumption of existence of resources. In 2018, this was the case in Matera, **Basilicata** where the Prefecture revoked reception conditions of asylum seekers who had been employed. On 3 January 2019, ASGI sent a letter to the Prefecture of Matera requesting a review of the decisions and asking it to ascertain the effective sufficiency of resources for the asylum seeker involved in the procedures.⁵³⁰

In 2019 the Administrative Court of Basilicata accepted the appeals lodged by 7 young asylum seekers, lodged in CAS facilities of Matera whose reception conditions were revoked due to the fact that "they had carried out work activities". The decisions did not take into account the gains, nor the stability of the revenues, nor the vulnerability of the people involved. The applicants had worked as labourers in the countryside of the Metaponto, but only occasionally and for very low wages.⁵³¹

On 15 April 2020 the Administrative Court of Tuscany cancelled the withdrawal of the reception conditions decided against a Pakistani asylum seeker by the Prefecture of Florence based on the availability of economic resources and on the violation of the house rules for the failure to communicate the beginning of a work activity.

The Court confirms that the assessment of the availability of resources must be made on an annual basis, and not on the income received monthly. Also, recalling the CJEU decision on the case C-233/18, the Court decides to disapply letter e) of Article 23 of the Reception decree considered contrary to the recast Reception Conditions Directive.⁵³²

Where detention grounds apply to asylum seekers placed in reception centres, the Prefect orders the withdrawal of the reception conditions and refers the case to the Questura for the adoption of the relevant measures.⁵³³

Following the 2018 reform of the reception system, the above rules no longer apply to the withdrawal of accommodation in SIPROIMI.

4. Freedom of movement

Indicators: Freedom of Movement

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

Italian legislation does not foresee a general limitation on the freedom of movement of asylum seekers. Nevertheless, the law specifies that the competent Prefect may limit the freedom of movement of asylum

⁵²⁹ Administrative Court of Friuli Venezia Giulia, decision No. 122/2019 of 13 March 2019.

⁵³⁰ Meltingpot, 'Revoca dell'accoglienza per presunta "sufficienza di mezzi economici" nei confronti di richiedenti asilo e titolari di Protezione. Le associazioni scrivono al Prefetto di Matera', 8 January 2019, available in Italian at: <https://bit.ly/2lfRY4G>.

⁵³¹ Lasciateci centrare, 6 June 2019, available in Italian at: <https://cutt.ly/WyOB60J>.

⁵³² Administrative Court of Tuscany, decision no 00437/2020 of 15 April 2020.

⁵³³ Article 23(7) Reception Decree.

seekers, delimiting a specific place of residence or a geographic area where asylum seekers may circulate freely.⁵³⁴ In practice, this provision has never been applied so far.

4.1. Dispersal of asylum seekers

Asylum seekers can be placed in centres all over the territory, depending on the availability of places and based on criteria providing about 2.5 accommodated asylum seekers per thousand inhabitants in each region. The placement in a reception centre is not done through a formal decision and is therefore not appealable by the applicant.

At the end of 2019, the total number of asylum seekers accommodated was 67,036 (not including those in Siproimi) and their distribution across the regions was as follows:

Distribution of migrants arriving in Italy per region: 31 December 2019		
Region	Number of migrants	Percentage
Lombardy	10,576	15%
Lazio	5,766	8%
Campania	5,340	8%
Emilia-Romagna	7,066	10%
Sicily	3,316	5%
Piedmont	6,716	10%
Tuscany	4,840	7%
Veneto	5,400	8%
Apulia	2,181	3%
Calabria	2,092	3%
Liguria	2,998	4%
Friuli-Venezia Giulia	2,373	3%
Marche	1,522	2%
Trentino-Alto Adige	1,687	2%
Abruzzo	1,193	2%
Sardinia	1,194	2%
Umbria	1,166	2%
Molise	426	1%
Basilicata	986	1%
Valle d'Aosta	120	0%

Source: Ministry of Interior Cruscotto Statistico Giornaliero

Transfers between reception centres

After their initial allocation, asylum seekers may be moved from one centre to another, passing from: (1) CPSA / hotspots; to (2) governmental first reception centres or to CAS.

Asylum seekers are often moved from one CAS to another, in order to try to balance the asylum seekers' presence in the centres across the regions and provinces. These transfers are decided by Prefectures, while the consideration for people's choice to move varies from place to place. Transfers cannot be appealed.

⁵³⁴ Article 5(4) Reception Decree.

The first reception centre of Castelnuovo di Porto, Rome, **Lazio** was closed in January 2019; more than 300 asylum seekers accommodated there were moved within a week without notice or information and without taking into account the individual paths that linked many of them to the local social network and labour market. The transfer modalities triggered widespread criticism.⁵³⁵

On 7 June 2019, the MoI communicated to the Centre HUB Mattei in Bologna, **Emilia Romagna**, the decision to close the centre due to urgent renovation works and transfer within a week the 169 hosted asylum seekers to Caltanissetta, Sicily, without keeping in consideration people's integration in the territory. Thanks to the mobilisation of the local civil society, asylum seekers were able to remain in the municipal area and only few people moved voluntary to Sicily. The centre was recently reopened as CAS⁵³⁶.

4.2. Restrictions in accommodation in reception centres

The Reception Decree also clarifies that asylum applicants are free to exit from first reception centres during the daytime but they have the duty to re-enter during the nighttime. The applicant can ask the Prefecture for a temporary permit to leave the centre at different hours for relevant personal reasons or for those related to the asylum procedure.⁵³⁷ The law does not provide such a limitation for people accommodated in CAS, but rules concerning the entry to /exit from the centre are laid down in the reception agreement signed between the body running the structure and the asylum seeker at the beginning of the accommodation period.

Applicants' freedom of movement can be affected by the fact that it is not possible to leave the reception centre temporarily e.g. to visit relatives, without prior authorisation. Authorisation is usually granted with permission to leave for some days. In case a person leaves the centre without permission and does not return to the structure within a brief period of time (usually agreed with the management body), that person cannot be readmitted to the same structure and material reception conditions can be withdrawn (see [Reduction or Withdrawal of Material Reception Conditions](#)).

On 16 June 2017, the Prefecture of Naples adopted a new regulation to be applied in CAS. The regulation establishes a curfew at 22:00, or 21:00 in spring and summer. The regulation also foresees [Withdrawal of Reception Conditions](#) if the curfew is not observed. The regulation has been challenged by ASGI before the Council of State but the latter rejected the appeal considering that the regulation cannot imply an automatic withdrawal of the reception conditions since the administration is required to evaluate case-by-case the reasons of the absence.

However, in these situations the existence itself of measures regulating the access to the structure and the potential lack of legal advice prevent recipients from challenging revocations.

⁵³⁵ Redattore Sociale, 'Non difendiamo i grandi centri ma così è inumano', 23 January 2019, available in Italian at: <https://bit.ly/2TEGca1>.

⁵³⁶ <https://cutt.ly/WyONeu7>.

⁵³⁷ Article 10(2) Reception Decree.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres: 6,014⁵³⁸
2. Total number of places in the reception centres: 72,675⁵³⁹
3. Type of accommodation most frequently used in a regular procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other
4. Type of accommodation most frequently used in an accelerated procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing CPR

There are no available comprehensive statistics on the capacity and occupancy of the entire reception system, given the different types of accommodation facilities existing in Italy. The following sections contain information and figures on: CPSA / hotspots; governmental reception centres; and CAS.

At the end of 2019, the number of asylum seekers and beneficiaries of international protection in the reception system was 67,036 distributed among 10 governmental reception centres and hotspots, and 6,004 in CAS.

Compared to 2018, the number of CAS decreased by 33% but the changes imposed by the tender specifications led to the closure of many small CAS centres and the distribution of migrants in large CAS with few or no services.

Occupancy of the reception system: 31 December 2019		
Hotspots	First reception centres and CAS	Total
73	66,958	67,036

Source: Ministry of Interior

1.1. First reception: CPSA / Hotspots

The Reception Decree states that the first rescue and assistance operations take place in the centres regulated by L 563/1995, which, though improperly, is considered to govern the First Aid and Reception Centres (CPSA) present at the main places of disembarkation.⁵⁴⁰ During 2016, the Government clarified that such centres served as **Hotspots**. According to the SOPs, persons should stay in these centres “as short as possible”, but in practice they are accommodated for days or weeks.

By the end of 2019, four hotspots were operating in Apulia (Taranto) and Sicily (Lampedusa, Pozzallo, and Messina), while Trapani hotspot was converted into a CPR. The hotspots of Lampedusa and Pozzallo have been reopened following the temporary closure in 2018; put in place only partially in the case of Lampedusa.⁵⁴¹ A total of 78 persons were accommodated in hotspots at the end of the year, all in Sicily.⁵⁴²

⁵³⁸ Data up to date 21 October 2019. These data do not include Siproimi centres.

⁵³⁹ This is the number of persons accommodated in CPSA, hotspots governmental reception centres and CAS at 21 October 2019.

⁵⁴⁰ Article 8(2) Reception Decree.

⁵⁴¹ Il Fatto Quotidiano, ‘Anac: “Anomalie negli appalti dell’hotspot migranti. Troppe proroghe e affidamenti diretti in maniera impropria”’, 15 March 2018, available in Italian at: <http://bit.ly/2GbcamP>; ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018.

⁵⁴² MOI, *Cruscotto Statistico Giornaliero*, 31 December 2019, available in Italian at: <https://cutt.ly/ryONrC5>.

1.2. Governmental first reception centres

The Reception Decree provides that the governmental first reception centres are managed by public local entities, consortia of municipalities and other public or private bodies specialised in the assistance of asylum applicants through public tender.⁵⁴³

At the time of writing, first reception centres are established in the following regions in Italy:

First reception centres by region	
First reception centre	Region
Gorizia (CARA)	Friuli-Venezia Giulia
Udine (Caserma Cavarzerani)	Friuli-Venezia Giulia
Trieste (Ferneti)	Friuli-Venezia Giulia
Pordenone (Hub Caserma Monti)	Friuli-Venezia Giulia
Bologna (Mattei)	Emilia-Romagna
Foggia (Borgo Mezzanone)	Apulia
Bari	Apulia
Brindisi	Apulia
Crotone (Sant' Anna)	Calabria
Caltanissetta	Sicily
Agrigento (Villa Sikanian) ⁵⁴⁴	Sicily
Treviso (ex Caserma Serena)	Veneto
Milan	Lombardy

In early 2019, some centres were closed by the Government. This is the case of Castelnuovo di Porto, Rome, Lazio,⁵⁴⁵ whose closure, albeit long awaited, has sparked serious criticism for the way in which it happened, and Cona, Venice, Veneto.⁵⁴⁶

The first governmental centre of Mineo (Catania), Sicily, was definitively closed as of 10 July 2019. As for the other centres, the way in which it was closed, the scarce or no consideration of vulnerable situations and the transfer of the guests to equally low-threshold centres, mainly in the Cara of Isola Capo Rizzuto, Crotone, have raised bitter criticisms also among organizations such as Doctors for Human Rights (Medu), who have called for the centre's closure for years.⁵⁴⁷

In Trieste, Ors society won the tender for the first reception centre located on the border with Ferneti which, until October 2019, had hosted 1,500 asylum seekers coming from the Balkan route.

⁵⁴³ Article 9(2) Reception Decree.

⁵⁴⁴ As of 15 October 2019, the Villa Sikanian centre has been closed. See Agrigento notizie: <https://cutt.ly/7yONt2U>; however, in April 2020, due to Covid-19 emergency, 70 people disembarked in Lampedusa have been placed there in fiduciary isolation. See : <https://cutt.ly/KyONyEK>.

⁵⁴⁵ Redattore Sociale, 'Non difendiamo i grandi centri ma così è inumano', 23 January 2019, available in Italian at: <https://bit.ly/2T4Dzt2>; 'Cara Castelnuovo parlamentare blocca un pullman con i migranti', 23 January 2019, available in Italian at: <https://bit.ly/2W0tn6P>.

⁵⁴⁶ Venezia Today, 'Chiuso centro di accoglienza Conetta', 20 December 2018, available in Italian at: <https://bit.ly/2O4ouXH>.

⁵⁴⁷ Repubblica, Cara di Mineo, ecco perchè non c'è da festeggiare, 10 July 2019, available in Italian at: <https://cutt.ly/HyONuy1>.

1.3. Temporary facilities: CAS

In case of temporary unavailability of places in the first reception centres, the Reception Decree provides the use of Emergency Reception Centres (*centri di accoglienza straordinaria*, CAS). The CAS system, originally designed as a temporary measure to prepare for transfer to second-line reception, expanded in recent years to the point of being entrenched in the ordinary system. The Reception Decree adopted in August 2015 missed the opportunity to actually change the system and simply renamed these centres from emergency centres to “temporary facilities” (*strutture temporanee*).

The CAS are identified and activated by the Prefectures, in cooperation with the Ministry of Interior. Following Decree Law 113/2018, CAS facilities can be activated only after obtaining the opinion of the local authority on whose territory the structures will be set up.⁵⁴⁸ Activation is reserved for emergency cases of substantial arrivals but applies in practice to all situations in which, as it is currently the case, capacity in ordinary centres are not sufficient to meet the reception demand.

The CAS are specifically designed only for the first accommodation phase for the time “strictly necessary” until the transfer of asylum seekers to a first reception centre.⁵⁴⁹ The services guaranteed are merely essential as in the first reception centres (see [Forms and Levels of Material Reception Conditions](#)).⁵⁵⁰

Decree Law 113/2018, implemented by L 132/2018, refrained from defining time limits for transfer to first reception centres, thus further endorsing a temporary and precarious approach to reception for asylum seekers. That said, the law states that within one year of the entry into force of the reform, the Minister of Interior shall monitor the progress of migratory flows with a view to the gradual closure of the CAS centres.⁵⁵¹

There are over 6,000 CAS established across Italy.⁵⁵² As underlined (see [Forms and Levels of Material Reception Conditions](#)), following the Mol tender specification schemes most of the small CAS were obliged to close, leaving the accommodation scene to large centres managed by profit organizations or big social cooperatives.

The fact that the majority of available places are currently in CAS, coupled with the cancellation of the possibility to access second-line reception facilities, illustrates a reception policy based on leaving asylum seekers in emergency accommodation during the entire asylum procedure.

1.4. Private accommodation with families and churches

In addition to the abovementioned reception centres, there is also a network of private accommodation facilities which are not part of the national reception system, provided for example by Catholic or voluntary associations, which support a number of asylum seekers and refugees. Several churches had already accommodated refugees and many others have decided to do so following the Pope’s call of 6 September 2015.⁵⁵³

It is very difficult to ascertain the number of available places in these forms of reception. The function of these structures is relevant especially in emergency cases or as integration pathways, following or in lieu of accommodation in SPRAR prior to the reform.

⁵⁴⁸ Article 11(2) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018. Prior to the reform, the law provided that the local authorities should only be notified and issue a non-binding opinion.

⁵⁴⁹ Article 11(1) and (3) Reception Decree, as amended by Decree Law 113/2018 and L 132/2018 only refer to Article 9 on first reception centres and no longer to second-line centres.

⁵⁵⁰ Articles 10(1) and 11(2) Reception Decree.

⁵⁵¹ Article 12-bis Decree Law 113/2018, as amended by L 132/2018.

⁵⁵² According to the latest figures on file with the author, on 21 October 2019 the number of CAS was 6,004

⁵⁵³ Il Fatto Quotidiano, ‘Profughi, l’appello di Papa Francesco: “Ogni parrocchia accolga una famiglia”’, 6 September 2015, available in Italian at: <http://bit.ly/2GjNpIL>.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

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

Given the extremely small number of arrivals in 2019, the lack of access to reception is not related anymore to the absence of places but often to the difficulties in the registration of the asylum application (see [Registration of the asylum application](#)).

Reception conditions only have to satisfy a basic level in first reception centres and in CAS. The Reception Decree provides that the respect of private life, gender and age specific concerns, physical and mental health, family unit and the situation of vulnerable persons shall be ensured in first reception centres and CAS. Measures to prevent any form of violence and to ensure the safety and security of applicants shall be adopted.⁵⁵⁴

As stated in [Forms and Levels of Material Reception Conditions](#), the Decree of the Ministry of Interior of 20 November 2018 providing the tender specification schemes (*capitolati*) for first reception, cancelled all integration services as well as funding related to psychological support, which is now guaranteed only in CPR and hotspots. Conversely, former SPRAR projects ensured interpretation and linguistic-cultural mediation services, legal counselling, teaching of the Italian language and access to schools for minors, health assistance, socio-psychological support in particular to vulnerable persons, training and re-training, support at providing employment, counselling on the services available at local level to allow integration locally, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.⁵⁵⁵

Subsequently, the indications contained in the circular dated 4 February 2020 issued by the new Mol did not change the situation, allowing to exceed the prices indicated only in consideration of the higher costs of rents and surveillance.

In practice, reception conditions vary considerably not only among different reception centres but also between the same type of facilities. While the services provided are the same, the quality can differ depending on the management bodies running the centres. While the SPRAR system published an annual report on its reception system, no comprehensive and updated reports on reception conditions are available for the entire Italian territory.

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

The recent adoption of the safe countries list together with the issue of the border procedures and, more generally, the application of accelerated procedures, will probably have a significant impact on the times and on the right to reception conditions, denying, due to an incorrect use of the institute of manifestly

⁵⁵⁴ Articles 10(1) and 11(2) Reception Decree.

⁵⁵⁵ Article 30 Ministry of Interior Decree 10 August 2016.

unfounded decisions, the protection to guarantee to asylum seekers even shortly after their arrival. (see accelerated procedure).

2.1. Conditions in first reception centres

Whereas first reception centres are the main form of accommodation following the 2018 reform, the law still states that their aim is to offer accommodation to asylum seekers for the purpose of completion of operations necessary for the determination of their legal status,⁵⁵⁶ and of medical tests for the detection of vulnerabilities, to take into account for a subsequent and more focused placement.⁵⁵⁷

First reception centres are collective centres, up until now set up in large facilities, isolated from urban centres and with poor or otherwise difficult contacts with the outside world.

Generally speaking, all governmental centres are very often overcrowded. Accordingly, the quality of the reception services offered is not equivalent to reception facilities of smaller size. In general, concerns have systematically been raised about the high variability in the standards of reception centres in practice, which may manifest itself in: overcrowding and limitations in the space available for assistance, legal advice and social life; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information.⁵⁵⁸ Nevertheless, it must be pointed out that the material conditions also vary from one centre to another depending on the size, the occupancy rate, and the level and quality of the services provided by the body managing each centre.

In May 2019, after the closure of small CAS facilities, 250 persons were moved to centre of Cavarzerani that reach a number of over 420 hosted persons, including families. Some reports showed the conditions of overcrowding⁵⁵⁹ and some members of Parliament expressed their concern after their visits due to the fact that also pregnant women, families with children and people with health problems had been placed in the centre.⁵⁶⁰

In February 2020 the mayor of Udine presented a project for the redevelopment of the area which could no longer be designated for the reception of asylum seekers.⁵⁶¹

Managers tend to avoid accommodating together people of the same nationality but belonging to different ethnicities, religion, or political groups in order to prevent of the rise of tensions and violence.

2.2. Conditions in CAS

According to the Reception Decree, services guaranteed in temporary centres (CAS) are the same as those guaranteed in first reception centres.⁵⁶²

The chronic emergency state under which the CAS operate has forced the improvisation of interventions and favoured the entry into the reception network of bodies lacking the necessary skills and, in the worst cases, only interested in profits.

The functioning of CAS depends on agreements by the management bodies with the Prefectures and on the professionalism of the bodies involved, there are notable cases in which the reception conditions were

⁵⁵⁶ Article 9(1) Reception Decree.

⁵⁵⁷ Article 9(4) Reception Decree.

⁵⁵⁸ This is a recurring concern: Council of Europe Commissioner for Human Rights, *Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012*, CommDH(2012)26, 18 September 2012, 36.

⁵⁵⁹ Pictures showing the overcrowding conditions of the centre in May 2019 are available at Repubblica, Friuli, caos sull'accoglienza e i richiedenti asilo tornano in caserma. Le associazioni: "È una deportazione, at : <https://cutt.ly/lyONpuO>.

⁵⁶⁰ <https://cutt.ly/uyONpGs>.

⁵⁶¹ Telefriuli, 6 February 2020, available in Italian at: <https://cutt.ly/9yONanw>.

⁵⁶² Articles 11(2) and 10(1) Reception Decree.

equal to those of former SPRAR, such as the CAS of Trieste, **Friuli-Venezia Giulia**.⁵⁶³ As discussed in [Forms and Levels of Material Reception Conditions](#), however, the new calls for tenders modelled on the Ministry of Interior tender scheme of 20 November 2018 already resulted in the disappearance of these virtuous projects.

This happened, for example, in Milan, **Lombardy**, where 11 third sector managers, in many cases small companies with a strong social vocation, decided not to participate in new tenders.⁵⁶⁴

In Livorno, **Tuscany**, in 2019, the vast majority of third sector managers have decided not to participate in the new tenders, therefore all small and many medium-sized centres have closed and the number of available places in reception has drastically decreased. The migrants hosted in centres that have been closed have often been transferred to other locations. Others, not to abandon the integration paths developed over time, have decided to stay in Livorno with high risks of social marginality.⁵⁶⁵

2.3. Conditions in makeshift camps

As discussed in [Criteria and Restrictions to Access Reception Conditions](#), at least 10,000 persons were excluded from the reception system as of February 2018, among whom asylum seekers and beneficiaries of international protection.

Informal settlements with limited or no access to essential services are spread across Italy. A report by MSF published in February 2018 described the situation in some makeshift camps.⁵⁶⁶

By the end of 2018, some of these camps had been rapidly evacuated. This happened to the Ferrhotel in Bari.⁵⁶⁷ In both cases people were warned only two days before the eviction and it is not clear if they have been transferred to proper reception facilities or simply have been evicted.

The makeshift camp of San Ferdinando, **Calabria**, a tent camp where among others migrants, some asylum seekers and agricultural workers were living, was evacuated on 6 March 2019. Asylum seekers have been dispersed or transferred to CAS of other regions. Many of them protested because they would lose their job and salary.⁵⁶⁸

On 30 July 2019 the former Olympic village (MOI), in **Turin**, was evacuated and the over 400 migrants who were living there moved to other accommodations. The eviction plan, the media explained, was accelerated due to the extremely insecure conditions of one of the two buildings.⁵⁶⁹

Since January 2018, the Naga network has been monitoring the informal settlements in **Milan** where they found living, among others, asylum seekers who had no access to the asylum procedure, asylum seekers who were waiting for weeks to register their asylum application and who were therefore prevented from accessing the reception conditions, and also beneficiaries of international protection forced to abandon the sprar/siproimi reception due to the expiry of their project.

The report,⁵⁷⁰ published in December 2019 offers a description of the types of informal settlements frequently subject, even in 2019, to evictions. Among these:

⁵⁶³ ASGI, *Il diritto d'asilo tra accoglienza ed esclusione* (Dell'Asino, 2015) and *Il Sistema Dell'accoglienza Di Trieste: Report Statistico 2017*, 19 July 2018, available in Italian at: <https://bit.ly/2O1vJiD>.

⁵⁶⁴ Openpolis and Actionaid, third report, available in Italian at: <https://cutt.ly/7yONslR>.

⁵⁶⁵ Openpolis and Actionaid, second report, available in Italian at: <https://cutt.ly/uyONs8z>.

⁵⁶⁶ MSF, *Fuori campo*, February 2018, 2, 36.

⁵⁶⁷ Il Giornale, 'Bari, sgomberati i locali della Ferrhotel occupati da extracomunitari', 12 October 2018, available in Italian at: <https://bit.ly/2HBfOGQ>.

⁵⁶⁸ Internazionale 'A San Ferdinando sgomberata una tendopoli se ne apre un'altra', 6 March 2019, available in Italian at: <https://bit.ly/2F2S3EQ>.

⁵⁶⁹ Repubblica, *Operazione Moi libero: sgomberate le ultime due palazzine. Salvini: stop a nuove arbitrarie intrusioni*, 30 July 2019, available in Italian at: <https://cutt.ly/syONdnk>.

⁵⁷⁰ Naga, *Senza Scampo*, December 2019, available in Italian at: <https://cutt.ly/1yONfN4>.

- ❖ Abandoned covered structures (such as old industrial warehouses, railway warehouses, building sites whose work has been interrupted), buildings without walls and with no divided spaces;⁵⁷¹
- ❖ Open spaces such as parks, disused construction sites or railway yards, where many of the people cleared of the covered structures subject to evictions went to live;
- ❖ Abandoned buildings (old spas, offices, schools) originally not intended for housing with spaces built and organized according to a division into units (offices, apartments, rooms);
- ❖ public parks.

In **Foggia**, in the Capitanata area, **Apulia** region, from June to September 2019 the Doctors for Human Rights (MEDU) mobile clinic assisted 225 people (209 men and 16 women) carrying out 292 medical visits and 153 legal orientation interviews operating mainly in five informal settlements: the Ghetto of Rignano Gargano, Borgo Mezzanone, the farmhouses of Poggio Imperiale and Palmori. 60 % of the people were regular asylum seekers or international protected or humanitarian protected. The remaining 40% were in irregular condition.⁵⁷²

The final report "The Bad Season" (La Cattiva Stagione)⁵⁷³ written by MEDU illustrates the living and working conditions of the labourers and describes the unhealthy settlements, isolated without any minimum basic service and with pervasive exploitation of workers.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers? ❖ If yes, when do asylum seekers have access the labour market?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 2 months
2. Does the law allow access to employment only following a labour market test?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Does the law only allow asylum seekers to work in specific sectors? ❖ If yes, specify which sectors	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Does the law limit asylum seekers' employment to a maximum working time? ❖ If yes, specify the number of days per year	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Are there restrictions to accessing employment in practice?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

According to the Reception Decree, an asylum seeker can start to work after 60 days from the moment he or she lodged the asylum application.⁵⁷⁴ Even if he or she starts working, however, the asylum seeker permit cannot be converted into a work or residence permit.⁵⁷⁵

Even though the law makes a generic reference to the right to access to employment without indicating any limitations, and albeit being entitled to register with Provincial Offices for Labour, in practice asylum seekers face difficulties in obtaining a residence permit which allows them to work. This is due to the delay in the **Registration** of their asylum applications, on the basis of which the permit of stay will be consequently issued, or to the delay in the renewal thereof.

⁵⁷¹ According to the report, following the evictions, by the end of 2019 only one of these spaces would still be occupied.

⁵⁷² Immediato, Più di 200 migranti curati nei ghetti della provincia di Foggia, quasi la metà era irregolare, 21 October 2019, available in Italian at: <https://cutt.ly/wyONgAc>.

⁵⁷³ Medici per i diritti umani, report La Cattiva Stagione, 21 October 2019, available in Italian at : <https://cutt.ly/JyONhtH>.

⁵⁷⁴ Article 22(1) Reception Decree.

⁵⁷⁵ Article 22(2) Reception Decree.

Furthermore, employers are not confident to hire asylum seekers who are in possession of only the asylum request receipt or of the request for renewal of the six-month permit because the receipt, although bearing the photograph and legally equated to the residence permit, has no expiry date. They prefer to hire people with original permits.

Moreover, as reported to ASGI, many Provincial Offices for Labour do not allow asylum seekers under the Dublin procedure to enrol on the lists of unemployed persons and some Questure have expressed a negative opinion about the possibility for these people to be employed before it is confirmed that Italy is responsible for their asylum application. During 2018, some regions where this occurred such as **Friuli-Venezia Giulia** changed their position on this issue. However, in 2019, ASGI was told the problem was still occurring along the national territory.

In addition, the objective factors affecting the possibility of asylum seekers to find a job are language barriers, the remote location of the accommodation and the lack of specific support founded on their needs.

Decree Law 113/2018, implemented by L 132/2018, has abolished the possibility for asylum seekers to be involved in activities of social utility in favour of local communities.⁵⁷⁶ The (former) SPRAR system was the only integrated system that provided these kind of services to residents. Asylum seekers or beneficiaries of international protection accommodated in the SPRAR system were generally supported in their integration process, by means of individualised projects which include vocational training and internships.⁵⁷⁷

As asylum seekers now no longer have access to SIPROIMI centres, their integration pathways will not start in the reception centre except for those who manage to enter the SIPROIMI after having obtained international protection. As discussed in [Forms and Levels of Material Reception Conditions](#), the calls for tenders for first reception centres and CAS, modelled on the tender specifications scheme (*capitolato*) published by the Ministry of Interior on 20 November 2018, no longer provide integration services such as professional orientation services. This resulted in a considerable difference of opportunities in accessing integration programmes as they will strictly depend on the services provided by the reception centres where asylum seekers are accommodated.

The 2018 reform has also abolished the provision allowing asylum applicants seekers in the (former) SPRAR centres to attend vocational training when envisaged in programmes eventually adopted by the public local entities.⁵⁷⁸ Vocational training or other integration programmes can be provided also by the means of National public funds (*8xmille*) or AMIF. In this case, the Ministry of Interior can finance specific projects to NGOs at national level concerning integration and social inclusion. The projects financed under AMIF are, however, very limited in terms of period of activity and in number of beneficiaries.

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

Italian legislation provides that all children until the age of 16, both nationals and foreigners, have the right and the obligation to take part in the national education system. Under the Reception Decree, unaccompanied asylum-seeking children and children of asylum seekers exercise these rights and are

⁵⁷⁶ Article 22-bis(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018 now only refers to beneficiaries of international protection, no longer to asylum seekers.

⁵⁷⁷ SPRAR, *Manuale per operatori*, April 2015, available in Italian at: <https://bit.ly/2UzwNBf>, 34-37.

⁵⁷⁸ Article 22(3) Reception Decree has been repealed by Article 12 Decree Law 113/2018.

also admitted to the courses of Italian language.⁵⁷⁹ The Reception Decree makes reference to Article 38 TUI, which states that foreign children present on Italian territory are subject to compulsory education, emphasising that all provisions concerning the right to education and the access to education services apply to foreign children as well.

This principle has been further clarified by Article 45 PD 394/1999, which gives foreign children equal rights to education as for Italian children, even when they are in an irregular situation. Asylum seeking children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs. They are automatically integrated in the obligatory National Educational System. No preparatory classes are foreseen at National level, but since the Italian education system envisages some degree of autonomy in the organisation of the study courses, it is possible that some institutions organise additional courses in order to assist the integration of foreign children.

In practice, the main issues concerning school enrolment lie in: the reluctance of some schools to enrol a high number of foreign students; the refusal from the family members and/or the child to attend classes; and the insufficiency of places available in schools located near the accommodation centres and the consequent difficulty to reach the schools if the centres are placed in remote areas.

In some cases, attempts to make up for the lack of places in Italian language courses by introducing other courses have not delivered positive results. In Udine, **Friuli-Venezia Giulia**, additional literacy courses were introduced in October 2017 for asylum seekers during morning hours, which coincided with middle school classes. This led to protests by parents and the teaching staff.⁵⁸⁰

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
 Yes No
2. Do asylum seekers have adequate access to health care in practice?
 Yes Limited No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
 Yes Limited No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
 Yes Limited No

Asylum seekers and beneficiaries of international protection are required to register with the National Health Service.⁵⁸¹ They enjoy equal treatment and full equality of rights and obligations with Italian citizens regarding the mandatory contributory assistance provided by the National Health Service in Italy.

There is no distinction between asylum seekers benefitting from material reception conditions and those who are out of the reception system, since all asylum seekers benefit from the National Health System.

1. Practical obstacles to access to health care

The right to medical assistance is acquired at the moment of the lodging of the asylum application but very often the exercise of this fundamental right is hindered and severely delayed, depending upon the attribution of the tax code assigned by Questure when lodging the asylum application. This means that it

⁵⁷⁹ Article 21(2) Reception Decree.

⁵⁸⁰ Udine Today, 'Lezioni ai richiedenti asilo a fianco dei ragazzi delle medie: è caos', 29 October 2017, available in Italian at: <http://bit.ly/2GncxrV>.

⁵⁸¹ Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

reflects the delay in lodging the asylum claim, which corresponds to several months in certain regions (see [Registration](#)).

Pending enrolment, asylum seekers only have access to medical treatment ensured by Article 35 TUI to irregular migrants: they have access to emergency care and essential treatments and they benefit from preventive medical treatment programmes aimed at safeguarding individual and public health.⁵⁸²

Asylum seekers have to register with the national sanitary service in the offices of the Local Health Board (*Azienda sanitaria locale*, ASL) competent for the place they declare to have a domicile.⁵⁸³ Once registered, they are provided with the European Health Insurance Card (*Tessera europea di assicurazione malattia*, TEAM), whose validity is related to the one of the permit of stay. Registration entitles the asylum seeker to the following health services:

- Free choice of a general doctor from the list presented by the ASL and choice of a paediatrician for children (free medical visits, home visits, prescriptions, certification for access to nursery and maternal schools, obligatory primary, media and secondary schools);
- Special medical assistance through a general doctor or paediatrician's request and on presentation of the health card;
- Midwifery and gynaecological visits at the "family planning" (*consultorio familiare*) to which access is direct and does not require doctors' request; and
- Free hospitalisation in public hospitals and some private subsidised structures.

Delays in the issuance of health cards had been exacerbated in 2016 due to the attribution of special tax codes to asylum seekers other than the ones attributed to other people, consisting in numerical and not alphanumeric codes.⁵⁸⁴ Such obstacles were reported with regard to access to health cards in 2019 too. These problems persist also with regard to access to other social rights.

The right to medical assistance should not expire in the process of the renewal of the permit of stay,⁵⁸⁵ however in practice, asylum seekers with an expired permit of stay have no guarantee of access to non-urgent sanitary treatments for a significant length of time due to the bureaucratic delays in the renewal procedure. This also means that where asylum seekers do not have a domicile to renew their permit of stay, for example because their accommodation right has been revoked, they cannot renew the health card.

Medical assistance is extended to each regularly resident family member under the applicant's care in Italy and is recognised for newborn babies of parents registered with the National Health System.⁵⁸⁶

Regarding the effective enjoyment of health services by asylum seekers and refugees, it is worth noting that there is a general misinformation and a lack of specific training on international protection among medical operators.⁵⁸⁷ In addition, medical operators are not specifically trained on the diseases typically affecting asylum seekers and refugees, which may be very different from the diseases affecting Italian population.

One of the most relevant obstacles to access health services is the language barrier. Usually medical operators only speak Italian and there are no cultural mediators or interpreters who could facilitate the mutual understanding between operator and patient.⁵⁸⁸ Therefore asylum seekers and refugees often do not address their general doctor and go to the hospital only when their disease gets worse. These

⁵⁸² Article 21 Reception Decree; Article 16 PD 21/2015.

⁵⁸³ Article 21(1) Reception Decree, citing Article 34(1) TUI; Accordo della Conferenza Stato-Regioni del 20 dicembre 2012 "Indicazioni per la corretta applicazione della normativa per l'assistenza sanitaria alla popolazione straniera da parte delle Regioni e Province Autonome italiane".

⁵⁸⁴ Ministry of Interior Circular of 1 September 2016; Revenue Agency Circular No 8/2016.

⁵⁸⁵ Article 42 PD 394/1999.

⁵⁸⁶ Article 22 Qualification Decree.

⁵⁸⁷ See M Benvenuti, *La protezione internazionale degli stranieri in Italia*, Jovene Editore, Napoli 2011, 263.

⁵⁸⁸ *Ibid.*

problems are worsening due to the adverse conditions of some accommodation centres and of informal settlements (see conditions in makeshift camps).

2. Contribution to health care costs

Asylum seekers benefit from free of charge health services on the basis of a self-declaration of destitution submitted to the competent ASL. The medical ticket exemption is due to the fact that asylum seekers are treated under the same rules as unemployed Italian citizens,⁵⁸⁹ but the practice is very different throughout the country.

In all regions, the exemption is valid for the period of time in which applicants are unable to work, corresponding by law to 2 months from the lodging of the asylum application (see [Access to the Labour Market](#)). During this period they are assimilated to unemployed people and granted with the same exemption code.

For the next period, in some regions asylum seekers are no longer exempted from the sanitary ticket because they are considered inactive and not unemployed. In other regions such as **Piedmont** and **Lombardy**, the exemption is extended until asylum seekers do not actually find a job. In order to maintain the ticket exemption, asylum seekers need to register in the registry of the job centres (*centri per l'impiego*) attesting their unemployment.

The entry into force of Decree Law 113/2018, implemented by L 132/2018, which abolished civil registration of asylum seekers (see [Civil Registration](#)), has also created difficulties for access to health treatment with exemption from a medical ticket. In Italy, people can in fact benefit from an exemption from medical costs not only in the case of unemployment but also on the basis of (low) income. However, to do so, one must produce documentation that certifies income based on the Equivalent Economic Situation Indicator (*Indicatore della situazione economica equivalente*, ISEE). However, such documentation is only issued to residents by the Fiscal Assistance Centres (*Centri assistenza fiscale*, CAF) Although the Decree Law clarifies that all services must be ensured to asylum seekers on the basis of their domicile only, in the absence of internal circulars, health service offices are denying this right.

In addition, during 2019, some health districts have refused to register asylum seekers without residency. This was the case, for example, until July 2019, of the health district of North Naples. With an order filed on 10 July 2019, the North Civil Court of Naples accepted the appeal of an asylum seeker, clarifying that the lack of residence does not affect the right of registration in the national health system.⁵⁹⁰

3. Specialised treatment for vulnerable groups

Asylum seekers suffering from mental health problems, including torture survivors, are entitled to the same right to access to health treatment as provided for nationals by Italian legislation. In practice, they may benefit from specialised services provided by the National Health System and by specialised NGOs or private entities.

The Ministry of Interior has clarified that the Guidelines on assistance and rehabilitation of refugees and subsidiary protection holders victims of torture or serious violence, issued by Decree on 3 April 2017 to implement Article 27(1-bis) of the Qualification Decree, also apply to asylum seekers (see [Content of Protection: Health Care](#)).

⁵⁸⁹ Ministry of Health Circular No 5 of 24 March 2000.

⁵⁹⁰ Civil Court of North Naples, order no. 40687 of 10 July 2019, available in Italian at: <https://cutt.ly/DyO8rjp>; see also ASGI, *I richiedenti asilo hanno diritto all'iscrizione al SSN anche in assenza di residenza*, 11 July 2019, available in Italian at: <https://cutt.ly/eyO8r3T>.

In order to ensure the protection of the health of foreign citizens in Italy, ASGI has collaborated with the Italian Society of Migration Medicine (*Società italiana di medicina delle migrazioni*, SIMM) since 2014, monitoring and reporting cases of violation of the constitutional right to health.

Since 2015, ASGI also collaborates with MSF, providing legal support for migrants victims of violence. As of April 2016, the two organisations have started a project in **Rome** opening a centre specialising in the rehabilitation of victims of torture.⁵⁹¹ The project is intended to protect but also to assist in the identification of victims of torture who, without proper legal support, are unlikely to be treated as vulnerable people.⁵⁹² More recent information is not available.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

Yes

No

Article 17(1) of the Reception Decree provides that reception is provided taking into account the special needs of the asylum seekers, in particular those of vulnerable persons such as children, unaccompanied children, disabled persons, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence, victims of trafficking and genital mutilation, as well as persons affected by serious illness or mental disorders (see [Identification](#)).

There are no legal provisions on how, when and by whom this assessment should be carried out. The Reception Decree provides that asylum applicants undergo a health check since they enter the first reception centres and in temporary reception structures to assess their health condition and special reception needs.⁵⁹³ The Decree provides, in theory, that special services addressed to vulnerable people with special needs shall be ensured in first reception centres.⁵⁹⁴ However, the reduction of funding and services provided in first reception centres under the 20 November 2018 tender specifications scheme (*capitolato*) of the Ministry of Interior and the exclusion of psychologists' services from eligible costs will render the effective identification and protection of these categories of people even more precarious (see [Forms and Levels of Material Reception Conditions](#)).

Decree Law 113/2018, implemented by L 132/2018, has repealed the provision that envisaged the activation of special reception services in the SPRAR/SIPROIMI facilities for vulnerable people.⁵⁹⁵ Currently, in case vulnerable people reach to access the Siproimi system after the grant of a title of protection that allows the access) they could enjoy some additional services allowed by the Decree 18 November 2019 for disabled persons and persons affected by serious illness or mental disorders.⁵⁹⁶

The law clarifies the need to set up specific spaces within governmental first reception centres where services related to the information, legal counselling, psychological support, and receiving visitors are ensured.⁵⁹⁷ Where possible, adult vulnerable people are placed together with other adult family members already present in the reception centres.⁵⁹⁸ The manager of reception centres shall inform the Prefecture

⁵⁹¹ Redattore Sociale, 'Migranti, apre a Roma il centro di riabilitazione per le vittime di tortura', 4 April 2016, available in Italian at: <http://bit.ly/1ShpCGG>.

⁵⁹² MSF, *Fuori campo*, February 2018, 39.

⁵⁹³ Articles 9(4) and 11(1) Reception Decree.

⁵⁹⁴ Article 17(3) Reception Decree.

⁵⁹⁵ Article 17(4) Reception Decree has been repealed by Article 12 Decree Law 113/2018 and L 132/2018.

⁵⁹⁶ Article 34 MoI Decree 18 November 2019

⁵⁹⁷ Article 9(3) PD 21/2015.

⁵⁹⁸ Article 17(5) Reception Decree.

on the presence of vulnerable applicants for the possible activation of procedural safeguards allowing the presence of supporting personnel during the personal interview.⁵⁹⁹

1. Reception of families and children

The Reception Decree specifies that asylum seekers are accommodated in facilities which ensure the protection of family unity comprising of spouses and first-degree relatives.⁶⁰⁰ The management body of the reception centres shall respect the family unity principle. Therefore they cannot separate children from parents who live in the same wing of the facility. In practice, it may happen that a father is accommodated in a wing for single men and his wife and children in the wing for women. In general, dedicated wings are designed for single parents with children. It may also happen that the parents are divided and placed in different centres, and usually the children are accommodated with the mother.

It may happen in first reception centres that families are divided in case the accommodation conditions are deemed not adequate and suitable for children. In these situations mothers and children are hosted in a facility, and men in another.

On 3 April 2019, the Court of Cassation clarified that minors are considered accompanied only when they can be considered assisted by a present parent. In any case of family members other than parents the Juvenile Court has to activate the guardianship.⁶⁰¹ Following this decision, Juvenile Courts gave indications to authorities not to directly accommodate minors with relatives different other than parents.

Following the 2018 reform of the reception system, families accommodated in first reception centres or CAS could be subsequently transferred to a SIPROIMI facility only when at least one member of the family has been granted international protection or another status that allows access to second-line reception (see [Content of Protection: Housing](#)). However, the transfer depends on factors such as the composition of the family, its vulnerability and/or health problems and the availability of places in the SIPROIMI system.

In May 2019, many small CAS closed due funding cuts made by the calls modulated on the new tender specifications schemes. Following these closures more than 300 people were transferred to Cavarzerani centre. Among them also many families with even very young children.⁶⁰²

Based on NGOs' experience, no specific or standardised mechanisms are put in place to prevent gender-based violence in reception centres. As a general rule, permanent law enforcement personnel is present outside governmental centres with the task of preventing problems and maintaining public order. Generally speaking, the management body of governmental centres divides each family from the others hosted in the centre. Women and men are always separated.

2. Reception of unaccompanied children

The Reception Decree states that the best interests of the child have priority in the application of reception measures, in order to ensure living conditions suitable for a child with regard to protection, well-being and development, including social development, in accordance with Article 3 of the Convention on the Rights of the Child.⁶⁰³

In order to evaluate the best interests of the child, the child shall be heard, taking into account his or her age, the extent of his or her maturity and personal development, also for the purpose of understanding his or her past experiences and to assess the risk of being a victim of trafficking, and the possibility of

⁵⁹⁹ Article 17(7) Reception Decree.

⁶⁰⁰ Article 10(1) Reception Decree.

⁶⁰¹ Court of Cassation, 3 April 2019, decision 9199/2019

⁶⁰² Repubblica, Friuli, caos sull'accoglienza e i richiedenti asilo tornano in caserma. Le associazioni: "È una deportazione, available in Italian at: <https://cutt.ly/xyO8uH0>.

⁶⁰³ Article 18(1) Reception Decree.

family reunion pursuant to Article 8(2) of the Dublin Regulation as long as it corresponds to the best interests.⁶⁰⁴

At the end of 2019, the total number of unaccompanied children accommodated in Italy was 6.054. Of those, 94.5% were accommodated in reception facilities while 5.4% were accommodated in private housing (with families).⁶⁰⁵ The majority of unaccompanied children were accommodated in **Sicily** (19%), followed by **Lombardy** (13.6%), **Friuli-Venezia Giulia** (11%), **Emilia-Romagna** (10%), Tuscany, (7.6%) **Lazio** (7.1%), Veneto (4.9%), Piedmont (4.3%), Apulia (3.7%) and Liguria (3.4%).⁶⁰⁶

5,383 unaccompanied children absconded from accommodation. Of those, 16.4% were Tunisians, 14.7% Afghans and 10.1% Eritreans.⁶⁰⁷

In the final report drawn up following the visits carried out jointly between 2017 and 2018, the Children's Ombudsman and UNHCR highlighted how, despite the fact that the number of unaccompanied minors has decreased, a high number of them are accommodated in a limited number of regions, a circumstance that does not facilitate the minors social paths.⁶⁰⁸

Since 2015, the management of the Fund for the reception of unaccompanied minors has been transferred from the Ministry of Labour to the Ministry of Interior.⁶⁰⁹ Through the Fund, the Ministry provides, with his own decree, after hearing the Unified Conference, to cover the costs incurred by local authorities for the reception of unaccompanied foreign minors, within the limits of the resources allocated. According to the 2019 budget law, the Fund for the reception of minors has approximately 150 million euros for 2019 and 170 million for 2020 and 2021.

The interventions in favour of unaccompanied foreign minors are also funded by resources from the European Asylum, Migration and Integration Fund (AMIF) 2014-2020.⁶¹⁰

2.1. Dedicated facilities for unaccompanied children

At the end of 2019, there were 1,060 reception facilities hosting unaccompanied children, mainly boys aged 16 or 17.⁶¹¹

Out of the 6,054 accommodated unaccompanied children, 5,150 were in second-line reception facilities (85%) which include SIPROIMI facilities, second-line accommodation facilities funded by AMIF and all second-level structures authorised at regional or municipal level. Another 572 were in first reception centres.⁶¹²

SIPROIMI

According to the law, the accommodation of unaccompanied children shall primarily take place in SIPROIMI (former SPRAR) facilities.⁶¹³ All unaccompanied children, including those seeking asylum, have access to SIPROIMI.

⁶⁰⁴ Article 18(2) Reception Decree.

⁶⁰⁵ Ministry of Labour, half yearly Monitoring report on Unaccompanied children, 31 December 2019, available in Italian at: <https://cutt.ly/jyO8oq2>.

⁶⁰⁶ Ministry of Labour, *I minori stranieri non accompagnati*, 31 December 2019, available in Italian at: <https://cutt.ly/2yO8o14>.

⁶⁰⁷ *Ibid*, 3.

⁶⁰⁸ Children's Ombudsman and UNHCR report, May 2019, available in Italian at: <https://cutt.ly/SyO8sdV>.

⁶⁰⁹ 2015 Stability Law (Law 190/2014, Article 1 (181-182)

⁶¹⁰ Chamber of Deputies, Study Service, 19 March 2020, available in Italian at: <https://cutt.ly/myO8ddD>.

⁶¹¹ Ministry of Labour, monitoring report. 31 December 2019, available in Italian at: <https://cutt.ly/ZyO8dBu>.

⁶¹² *Ibid*, 26.

⁶¹³ Article 19(2) Reception Decree.

Children reaching adulthood in SIPROIMI centres can remain there until a final decision on their asylum application.⁶¹⁴ Circulars issued by the Ministry of Interior of 27 December 2018 and 3 January 2019 specified that in case the unaccompanied child is granted international protection, he or she can stay in SIPROIMI for another 6 months. The same Circulars specified that unaccompanied children who obtained an administrative extension of their placement can remain in second-line reception for the entire duration of the extension.

The new Siproimi Guidelines issued by the Ministry of Interior with decree of 18 November 2019 regulates the matter in the same way.⁶¹⁵

According to ASGI, SIPROIMI should also accommodate unaccompanied minors asylum seekers who have become adults and who did not have access to second-line reception due to lack of places.⁶¹⁶ Siproimi Guidelines adopted by MoI Decree of 18 November 2019 provided additional specific activities and services in favour of unaccompanied minors and in particular the activation of services aimed at promoting family foster care; aimed at supporting the paths of autonomy, also by promoting forms of support for housing autonomy in the transition to adulthood; encouraging the connection with the voluntary tutors. It also provides specialized services dedicated to minors with particular fragility.⁶¹⁷

As of January 2020, 4,003 places were financed for unaccompanied children in 155 SPRAR/SIPROIMI projects, including 13 AMIF-funded projects.⁶¹⁸ The number of places dedicated to unaccompanied children still falls short of current needs, i.e. 6,054 unaccompanied children present in the reception system.⁶¹⁹

First reception centres and CAS for unaccompanied children

In case of lack of available places in the SIPROIMI system and for immediate relief and protection purposes, unaccompanied children may be accommodated in governmental first reception facilities. The first reception facilities are funded by AMIF, implemented by the Ministry of Interior in agreement with the local authority on whose territory the structure is located, and managed by the Ministry of Interior also in agreement with the local authorities.⁶²⁰

Where implemented, stay in first reception centres cannot exceed 30 days and must last for the strictly necessary time for identification, which must be completed within 10 days. This serves to identify and assess the age of the child and to receive any information on the rights recognised to the child and on the modalities of exercise of such rights, including the right to apply for international protection. Throughout the time in which the child is accommodated in the first reception centre, one or more meetings with an age development psychologist are provided, where necessary, in presence of a cultural mediator, in order to understand the personal condition of the child, the reasons and circumstances of departure from his or her home country and his or her travel, as well as his or her future expectations.⁶²¹

The Ministry of Interior Decree issued on 1 September 2016 has identified the structural requirements and the services ensured in such centres.⁶²² The Decree states that these centres are located in easily

⁶¹⁴ Article 12(5-bis) Decree Law 113/2018, as amended by L 132/2018.

⁶¹⁵ Article 38 MoI Decree 18 November 2019.

⁶¹⁶ According to ASGI, although the Ministry of Interior does not clarify it, It would not be justified a different treatment of unaccompanied children who obtained an administrative extension of their placement but who, due to the unavailability of places in SIPROIMI, have not been included within this system during the minor age, see ASGI, *Emergenza covid-19 e percorsi dei minori non accompagnati dopo i 18 anni*, 13 March 2020, available in Italian at: <https://cutt.ly/NyO8h6T>.

⁶¹⁷ MoI Decree, 18 November 2019, Article 35, available in Italian at: <https://cutt.ly/hyO8jXD>.

⁶¹⁸ SIPROIMI, *I numeri dello Sprar/Siproimi*, January 2020, available in Italian at: <https://cutt.ly/oyO8k8E>.

⁶¹⁹ Data as of 31 December 2019, Ministry of Labour monthly report available in Italian at: <https://cutt.ly/NyO8l8p>.

⁶²⁰ Article 19(1) Reception Decree.

⁶²¹ *Ibid.*

⁶²² Ministry of Interior Decree of 1 September 2016 on the establishment of first reception centres dedicated to unaccompanied minors.

accessible places in order to ensure access to services and social life of the territory and that each structure can accommodate up to a maximum of 30 children.⁶²³

During 2017 and 2018, the Children's Ombudsman and UNHCR jointly implemented a programme of visits to emergency, first and second-line reception centres for unaccompanied children.⁶²⁴ The visits have made it possible to ascertain that the permanence of minors in first reception centres is extended well beyond the deadline of 30 days, and continues in most cases up to the actual completion of age, involving the lack of access to second reception projects. In the first accommodation and identification centre of Rome -CPSA - It has been found that the actual average time of stay it is about 10 days, during which children undergoing identification procedures are forbidden from leaving the centres. The visits to some first reception centres found limited conditions possibility of movement by minors. According to the rules in force in these centres, in order to protect the potential victims of trafficking, minors could not own cell phones and exit only in the presence of operators.

As reported by the Children's Ombudsman, the frequent stay in these first reception centres well beyond the prescribed 30 days often creates feelings of despondency and abandonment among children. This can play an important role in absconding from centres.⁶²⁵

If even first reception centres are saturated, reception must be temporarily assured by the public authority of the Municipality where the child is located, without prejudice to the possibility of transfer to another municipality in accordance with the best interests of the child.⁶²⁶ According to Article 19(3-bis) of the Reception Decree, in case of mass arrivals of unaccompanied children and unavailability of the dedicated reception centres, the use of CAS to accommodate children is permitted.⁶²⁷

Similar to the temporary shelters for adults (see [Types of Accommodation](#)), these CAS are implemented by Prefectures. The law states that each structure may have a maximum capacity of 50 places and may ensure the same services as governmental first reception centres dedicated to children.⁶²⁸ Also in this case, no time limit is actually provided for the staying in these centres; according to the law, accommodation is limited to the time "strictly necessary" until the transfer to adequate structures.⁶²⁹ In any event, these temporary centres cannot host children under the age of 14. The accommodation of children has to be communicated by the manager of the temporary structure to the municipality where the structure is located, for the coordination with the services of the territory.⁶³⁰

At the end of 2019, first reception centres accommodated 572 unaccompanied children. These centres include government centres financed by AMIF, CAS activated by the Prefects; first reception facilities authorised by the municipalities or regions; and emergency and provisional centres.

Specifically as regards AMIF-funded first reception centres, from 23 August 2016 to 31 December 2019, the total number of unaccompanied children hosted was 6,598. By the end of 2019, 8 AMIF funded projects were operational on the national territory and, out of these, 7 were operational in Sicily and 1 in Molise for 200 total places. Out of those, 1,326 minors made an application for international protection (only 90 more than 2018), 2,950 voluntarily left accommodation, while 3,566 have been transferred, of whom 3,482 to second-line reception facilities belonging to the SPRAR/SIPROIMI network or in second-line reception facilities financed with AMIF funds.

⁶²³ Article 3 Ministry of Interior Decree of 1 September 2016.

⁶²⁴ Children's Ombudsman and UNHCR, *L'ascolto e la partecipazione dei minori stranieri non accompagnati in Italia, Rapporto finale attività di partecipazione 2017-2018*, May 2019, available in Italian at: <https://cutt.ly/LyO8zDa>.

⁶²⁵ Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019, available in Italian at: <https://bit.ly/2v2oNt6>.

⁶²⁶ Article 19(3) Reception Decree.

⁶²⁷ Article 19(3-bis) Reception Decree, citing Article 11.

⁶²⁸ Article 19(1) Reception Decree.

⁶²⁹ Article 19(3-bis) Reception Decree, citing Article 19(2)-(3).

⁶³⁰ Article 19(3-bis) Reception Decree.

At the end of 2019, there were 76 unaccompanied children present in these facilities.⁶³¹

The Children's Ombudsman has critically highlighted the lack of sufficient numbers of centres for unaccompanied children in the border areas, resulting in a lack of adequate response to the needs of unaccompanied children in transit at the northern borders.⁶³²

The reception of unaccompanied children not transferred to the governmental centres or SIPROIMI facilities remains under the responsibility of the city of arrival. The amended Reception Decree states that the interested municipalities should not have any expenses in charge.⁶³³

The Ministry of Interior has developed guidelines for the accommodation of unaccompanied minors in first reception centres, with practical information on the procedures to be followed for daily work.⁶³⁴

2.2. Accommodation with adults and destitution

Unaccompanied children cannot be held or detained in governmental reception centres for adults and CPR.⁶³⁵ However, throughout 2017 and 2018, both due to the problems related to age assessment (see [Identification](#)) and to the unavailability of places in dedicated shelters, there have been reported cases of children accommodated in adults' reception centres.⁶³⁶

Throughout 2017, more appeals were presented to the ECtHR to protect unaccompanied children placed in adult reception centres in Italy, including Rome, **Lazio**,⁶³⁷ and Como, **Lombardy**.⁶³⁸

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

According to the Procedure Decree, upon submission of an asylum application, police authorities have to inform applicants through a written brochure about their rights and obligations and the relevant timeframes applicable during asylum procedures (see [Provision of Information on the Procedure](#)).⁶³⁹ The brochure also includes information on health services and on the reception system, and on the modalities to access to these services. In addition, it contains the contact details of UNHCR and other specialised refugee-assisting NGOs. The Reception Decree contains a provision on the right to information, confirming the obligation to hand over the brochure, as stated above, and states that this information is provided in reception centres within 15 days from the presentation of the asylum application. This information is ensured through the assistance of an interpreter.⁶⁴⁰

This provision, unlike Article 5 of the recast Reception Conditions Directive, does not explicitly foresee that information shall be provided orally.

⁶³¹ Ministry of Labour, Monitoring report *I minori stranieri non accompagnati*, 31 December 2019, 28.

⁶³² Children's Ombudsman, *I movimenti dei minori stranieri non accompagnati alle frontiere settentrionali*, 29 March 2019.

⁶³³ Article 19(3) Reception Decree, as amended by Article 12 Decree Law 113/2018 and L 132/2018.

⁶³⁴ MoI Guidelines available in Italian at: <https://cutt.ly/2yO8nAN>.

⁶³⁵ Article 19(4) Reception Decree.

⁶³⁶ Children's Ombudsman and UNHCR, *L'ascolto e la partecipazione dei minori stranieri non accompagnati in Italia, Rapporto finale attività di partecipazione 2017-2018*, May 2019, available in Italian at: <https://cutt.ly/vyO8mh2>.

⁶³⁷ ECtHR, *Bacary v. Italy*, Application No 36986/17, Communicated on 5 July 2017.

⁶³⁸ ECtHR, *M.A. v. Italy*, Application No 70583/17, Communicated on 3 October 2017.

⁶³⁹ Article 10(1) Procedure Decree.

⁶⁴⁰ Article 3 Reception Decree and Article 10 PD 21/2015.

However, in practice the distribution of these leaflets, written in 10 languages,⁶⁴¹ is actually quite rare at the Questure. Although it is not foreseen by law, the information is orally provided by police officers but not in a systematic way mainly due to the shortage of professional interpreters and linguistic mediators. The gaps in providing information is of concern to NGOs as it is considered necessary that asylum seekers receive information orally, taking into consideration their habits, cultural backgrounds and level of education which may constitute obstacles in effectively understanding the contents of the leaflets.

Upon arrival in the reception centres, asylum seekers are informed on the benefits and level of material reception conditions. Depending of the type of centre and the rules adopted by the managers of the reception centres, asylum seekers may benefit from proper information of the asylum procedure, access to the labour market or any other information on their integration rights and opportunities. Generally speaking, leaflets are distributed in the accommodation centres and asylum seekers are informed orally through the assistance of interpreters.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes With limitations No

According to the Reception Decree, applicants have the opportunity to communicate with UNHCR, NGOs with experience in the field of asylum, religious entities, lawyers and family members.⁶⁴² The representatives of the aforementioned bodies are allowed to enter in these centres, except for security reasons and for the protection of the structures and of the asylum seekers.⁶⁴³ The Prefect establishes rules on modalities and the time scheduled for visits by UNHCR, lawyers, NGOs as well as the asylum seekers' family members and Italian citizens who must be authorised by the competent Prefecture on the basis of a previous request made by the asylum applicant living in the centre. The Prefecture notifies these decisions to the managers of the centres.

It is worth noting that these centres are open, therefore asylum seekers are free to contact NGOs, lawyers and UNHCR offices outside of the centres.

Concerning Milan, Naga volunteers reported that, in 2019, as in previous years, to access the CAS centres it was necessary to request a clearance from the Prefecture of Milan, which in turn requires authorization of the Ministry of Interior. After months, and after repeated reminders, it was possible to make the visit to the CAS centres requested, but, unlike what happened until 2017, the visits took place not only with the necessary and usual presence of the operators in the centre, but also in the presence of an official of the Prefecture and without the possibility of visiting the structure.⁶⁴⁴

Concerning the governmental first reception centres for unaccompanied children, the law allows entry into the centres for members of the national and European Parliament, as well as to UNHCR, IOM, EASO and to the Children's Ombudsman, to the Mayor or a person delegated by him or her. Access is also allowed to persons who have a motivated interest, because of their institutional engagement within the region or the local authority where the centres is based, to child protection agencies with long experience, to representatives of the media, and to other persons who present a justified request.⁶⁴⁵

With regard to access to SPRAR centres by virtue of Article 15(5) of the Reception Decree, lawyers and legal counsellors indicated by the applicant, UNHCR as well as other entities and NGOs working in the

⁶⁴¹ Italian, English, French, Spanish, Arabic, Somali, Kurdish, Amharic, Farsi and Tigrinya.

⁶⁴² Article 10(3) Reception Decree.

⁶⁴³ Article 10(4) Reception Decree.

⁶⁴⁴ Naga, Senza Scampo, December 2019.

⁶⁴⁵ Article 7 Ministry of Interior Decree of 1 September 2016.

field of asylum and refugees protection have access to these facilities in order to provide assistance to hosted asylum seekers.

G. Differential treatment of specific nationalities in reception

Once in reception, there are no recorded differences among asylum seekers on the basis of their nationalities. However, problems have been reported as regards the possibility to access the asylum procedure and the reception system for specific nationalities (see [Registration](#)).

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of persons detained in 2019:	
❖ CPR	Not available
❖ Hotspots	Not available
2. Number of persons in detention at the end of 2019:	
❖ CPR	591 ⁶⁴⁶
❖ Hotspots	78
3. Number of detention centres:	
❖ CPR	9
❖ Hotspots	4
4. Total capacity of detention centres:	
❖ CPR	1,380 ⁶⁴⁷
❖ Hotspots	Not available

The Reception Decree prohibits the detention of asylum seekers for the sole purpose of examining their asylum application.⁶⁴⁸ However, the new provisions introduced by Decree Law 113/2018, implemented by L 132/2018, create the risk of automatic violation of this principle since they foresee detention in suitable facilities set up in hotspots, first reception centres or subsequently in pre-removal centres (*Centri di permanenza per il rimpatrio*, CPR) for the purpose of establishing identity or nationality).⁶⁴⁹

The number of persons entering the hotspots in 2019 is not available at the time of writing.

As of 20 June 2019, as reported from the Guarantor for the rights of detained persons, 2,267 people had been detained in CPRs, out of which 1,022 actually returned.⁶⁵⁰

The number of CPR has increased from five in 2017 to nine in 2019: **Restinco** in Brindisi, **Bari**, **Caltanissetta**, **Ponte Galeria** in Rome (only for women), **Turin**, **Palazzo San Gervasio** in Potenza, **Basilicata**, **Trapani**, Gradisca d'Isonzo in Gorizia, Macomer, Cagliari, in Sardinia.

The total official capacity of the centres was 1,380 places as of early 2020.

Persons applying for asylum in CPR are subject to the [Accelerated Procedure](#).

⁶⁴⁶ Data at 21 October 2019.

⁶⁴⁷ Situation as in early January 2020.

⁶⁴⁸ Article 6(1) Reception Decree.

⁶⁴⁹ Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

⁶⁵⁰ Hearing at Chamber of Deputies of the Guarantor for the rights of detained persons, 27 June 2019, available in Italian at: <https://cutt.ly/wyO8EI6>.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: Yes No
 - ❖ at the border: Yes No
2. Are asylum seekers detained in practice during the Dublin procedure?
 Frequently Rarely Never
3. Are asylum seekers detained during a regular procedure in practice?
 Frequently Rarely Never

Heard in Parliament in June 2019, the Guarantor for the rights of detained persons expressed concern that many people had been detained without legal basis and in fact most had been released on the orders of the judges.

For example, he found that in the first six months of 2019, in the CPR of San Gervasio, out of 491 persons detained, only 80 had been repatriated while in 349 cases the judge had not validated the detention. Similarly, in Bari, of 267 persons detained, only 39.3 % were repatriated and in 123 cases the detention was not validated by the judge.⁶⁵¹

1.1. Asylum detention

Asylum seekers shall not be detained for the sole reason of the examination of their application.⁶⁵² An applicant shall be detained in CPR, on the basis of a case by case evaluation, when he or she:⁶⁵³

- (a) Falls under the exclusion clauses laid down in Article 1F of the 1951 Convention, following a decision of the CNDA;
- (b) Is issued an expulsion order on the basis that he or she constitutes a danger to public order or state security,⁶⁵⁴ or as suspected of being affiliated to a mafia-related organisation, has conducted or financed terrorist activities, has cooperated in selling or smuggling weapons or habitually conducts any form of criminal activity,⁶⁵⁵ including with the intention of committing acts of terrorism;⁶⁵⁶
- (c) May represent a danger for public order and security.

According to the law, to assess such a danger, previous convictions, final or non-final, may be taken into account, including the conviction adopted following the enforcement of the penalty at the request of the party pursuant to Article 444 of the Italian Criminal Procedure Code, in relation to certain serious crimes,⁶⁵⁷ to drug crimes, sexual crimes, facilitation of illegal immigration, recruiting of persons for prostitution, exploitation of prostitution and of children to be used in illegal activities.

⁶⁵¹ Hearing at Chamber of Deputies of the Guarantor for the rights of detained persons, 27 June 2019, available in Italian at: <https://cutt.ly/YyO8Uv6>.

⁶⁵² Article 6(1) Reception Decree.

⁶⁵³ Article 6(2) Reception Decree.

⁶⁵⁴ Article 13(1) TUI.

⁶⁵⁵ Article 13(2)(c) TUI.

⁶⁵⁶ Article 3(1) Decree Law 144/2005, implemented by L 155/2005.

⁶⁵⁷ Article 380(1)-(2) Criminal Procedure Code is cited, which refers to individuals who have participated in, among others, the following criminal activities: (a) child prostitution; (b) child pornography; (c) slavery; (d) looting and vandalism; (e) crimes against the community or the state authorities.

With regard to this provision, the Court of Cassation annulled an order of the Court of Turin to extend the detention of an asylum seeker convicted for resistance to a public official. The Court considered that the granting of the benefit of the conditional suspension of the penalty contradicted the finding of a threat to public order;⁶⁵⁸

- (d) Presents a risk of absconding.

The assessment of such risk is made on a case by case basis, when the applicant has previously and systematically provided false declarations or documents on his or her personal data in order to avoid the adoption or the enforcement of an expulsion order, or when the applicant has not complied with alternatives to detention such as, stay in an assigned place of residence determined by the competent authority or reporting at given times to the competent authority.⁶⁵⁹ Following Decree Law 13/2017, implemented by L 46/2017, repeated refusal to undergo fingerprinting at hotspots or on the national territory also constitutes a criterion indicating a risk of absconding.⁶⁶⁰

1.2. Pre-removal detention

The Reception Decree also provides that:

- (e) Third-country nationals who apply for asylum when they are already held in CPR and are waiting for the enforcement of a return order pursuant to Article 10 TUI or an expulsion order pursuant to Articles 13 and 14 TUI shall remain in detention when, in addition to the abovementioned reasons, there are reasonable grounds to consider that the application has been submitted with the sole reason of delaying or obstructing the enforcement of the expulsion order.⁶⁶¹

1.3. Detention for identification purposes

Furthermore, a 2018 amendment to the Reception Decree has added that:

- (f) Asylum seekers may be detained in hotspots or first reception centres for the purpose of establishment of their identity or nationality. If the determination or verification of identity or nationality is not possible in those premises, they can be transferred to a CPR.⁶⁶²

As those premises had not yet been identified, detention in hotspots occurs *de facto*.⁶⁶³ (see duration of detention for identification purposes). In **Lampedusa**, the civil society organisations were able to observe that the centre gate was constantly closed and migrants could leave the centre only through openings in the fence, regularly adjusted by the administration and reopened by migrants. On the other hand, people taken to Lampedusa are *de facto* detained on the island, because, without an identity document, they cannot purchase a title of travel and leave.⁶⁶⁴

While the law does not clarify the procedure relating to the validation of this form of detention, the Ministry of Interior Circular of 27 December 2018 generically refers to validation by the judicial

⁶⁵⁸ Court of Cassation, Decision 27739/2018, 31 October 2018.

⁶⁵⁹ Article 13(5), (5.2) and (13) and Article 14 TUI. Article 13 TUI, to which Article 6 Reception Decree refers, also includes the obligation to surrender a passport but this should not be applied to asylum seekers because of their particular condition.

⁶⁶⁰ Article 10-ter(3) TUI, inserted by Decree Law 13/2017 and L 46/2017.

⁶⁶¹ Article 6(3) Reception Decree.

⁶⁶² Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

⁶⁶³ Guarantor for the rights of detained persons, *Relazione al Parlamento*, 15 June 2018, available in Italian at: <http://bit.ly/2TZy9ol>, 233.

⁶⁶⁴ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018, available in Italian at: <http://bit.ly/2FF2obD>.

authority. According to ASGI, the same procedure envisaged for other grounds for detention of asylum seekers should apply to these cases.

In addition, the law does not specify in which cases the need for identification arises, thus linking detention not to the conduct of the applicant but to an objective circumstance such as the lack of identity documents.

According to ASGI, the new detention ground represents a violation of the prohibition on detention of asylum seekers for the sole purpose of examining their application under see Article 8(1) of the recast Reception Conditions Directive. People fleeing their countries often do not have identification documents and cannot contact the authorities of the countries of origin as this could be interpreted as re-availing themselves of the protection of that country.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law? Reporting duties
 Surrendering documents
 Financial guarantee
 Residence restrictions
 Other
2. Are alternatives to detention used in practice? Yes No

Article 6(5) of the Reception Decree makes reference to the alternatives to detention provided in the TUI. To this end, authorities should apply Article 14 TUI to the compatible extent, including the provisions on alternative detention measures provided by Article 14(1-bis).

The TUI provides that a foreign national who has received an expulsion order may request to the Prefect a certain period of time for voluntary departure. In that case the person will not be detained and will not be forcibly removed from the territory. However, in order to benefit from this measure, some strict requirements must be fulfilled:⁶⁶⁵

- ❖ No expulsion order for state security and public order grounds has been issued against the person concerned;
- ❖ There is no risk of absconding; and
- ❖ The request of permit of stay has not been rejected as manifestly unfounded or fraudulent.

In case the Prefect grants a voluntary departure period, then by virtue of Article 13(5.2) of the Consolidated Act on Immigration, the chief of the Questura resorts to one or more alternative measures to detention such as:

- (a) The obligation to hand over passport to the police until departure;
- (b) The obligation to reside in a specific domicile where the person can be contacted;
- (c) The obligation to report to police authorities following police instructions.

The Reception Decree provides that when the detained applicant requests to be returned to his or her country of origin or to the country from which he or she came from, the removal order⁶⁶⁶ shall be immediately adopted or executed. The repatriation request corresponds to a withdrawal of the application for international protection.⁶⁶⁷

⁶⁶⁵ Articles 13(5.2) and 14-ter TUI.

⁶⁶⁶ Pursuant to Article 13(4) and (5-bis) TUI.

⁶⁶⁷ Article 6(9) Reception Decree.

In case the applicant is the recipient of an expulsion order,⁶⁶⁸ the deadline for the voluntary departure set out by Article 13(5) shall be suspended for the time necessary for the examination of his/her asylum application. In this case the applicant has access to reception centres.⁶⁶⁹

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never
- ❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 Frequently Rarely Never

3.1. Detention of unaccompanied children

The law explicitly provides that unaccompanied children can never be held detention.⁶⁷⁰ However, there have been cases where unaccompanied children have been placed in CPR following wrong age assessment. On 9 February 2019, LaciatoCIEntrare reported of an unaccompanied minor detained in the CPR of **Trapani** since 20 January 2019, even though his family had sent his birth certificate to the facility manager to prove his minor age.

Children have also been detained in hotspots in practice.

After the shipwreck of 23 November 2019, the survivors, including three unaccompanied minors, were moved into the Lampedusa hotspot in a de facto detention situation. After 20 days, and after the presentation of urgent appeals to the ECtHR and the request for clarifications sent by the Court to Italy, the minors were transferred to appropriate centres.⁶⁷¹

A total of 2,700 children were placed in hotspots in 2018, including 2,002 unaccompanied and 698 accompanied children.⁶⁷² No information was available for 2019 at the time of writing.

3.2. Detention of other vulnerable groups

Detention of children in families in CPR is not prohibited. Children can be detained together with their parents if they request it and if decided by the Juvenile Court. In practice, very few children are detained.

Following the 2017 reform, the law also prohibits the detention of vulnerable persons.⁶⁷³ According to the law, in the framework of the social and health services guaranteed in CPR, an assessment of vulnerability situations requiring specific assistance should be periodically provided.⁶⁷⁴

In CPR, however, legal assistance and psychological support are not systematically provided, although the latter is foreseen in the tender specifications scheme (*capitolato*) published by the Ministry of Interior on 20 November 2018. To date, no protocol on early identification of and assistance to vulnerable persons, and on the referral system to specialised services and/or reception centres has been adopted. Although standards of services in CPR centres are planned following the national regulation on

⁶⁶⁸ The expulsion order to be executed according to the procedures set out in Article 13(5)-(5.2) TUI.

⁶⁶⁹ Article 6(10) Reception Decree.

⁶⁷⁰ Article 19(4) Reception Decree.

⁶⁷¹ ASGI, In Limine, La Corte EDU chiede chiarimenti all'Italia sull'hotspot di Lampedusa, 12 December 2019.

⁶⁷² Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 133.

⁶⁷³ Article 7(5) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

⁶⁷⁴ Article 7(5) Reception Decree.

management of the centres, they are insufficient and inadequate, especially for vulnerable categories of individuals. Moreover, the quality of services may differ from one CPR to another. In this respect, the Reception Decree provides that, where possible, a specific place should be reserved to asylum seekers,⁶⁷⁵ and Article 4(e) of the Regulation of 20 October 2014 of the Minister of Interior provides the same for persons with special reception needs.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):	
❖ Asylum detention	12 months
❖ Pre-removal detention	6 months
❖ Detention for the purpose of identification	1 month
2. In practice, how long in average are asylum seekers detained?	
❖ CPR	Not available
❖ Hotspots	Not available

4.1. Duration of detention for identification purposes

According to the SOPs applying at hotspots, from the moment of entry, the period of stay in the facility should be as short as possible, in accordance with the national legal framework.

However, the newly introduced Article 6(3-bis) of the Reception Decree introduces the possibility to detain asylum seekers in hotspots for the purpose of determining their identity or nationality. The law states that this should happen in the shortest possible time and for a period not exceeding 30 days. If identification has not been possible within that timeframe, they could be sent to CPR for detention up to 180 days.⁶⁷⁶

The provision of a detention period up to 30 days and extendable to up to 180 days in the CPR seems incompatible with the principle laid down in Article 9 of the recast Reception Conditions Directive according to which an applicant shall be detained only for as short a period as possible.

During 2018 and before the reform, ASGI was able to observe that *de facto* detention in hotspots took place mainly in the first days after arrival and lasted until the identification procedures were concluded.⁶⁷⁷

Responding to ASGI requests of September 2019, the Prefectures of Agrigento⁶⁷⁸, Ragusa⁶⁷⁹, Messina,⁶⁸⁰ Taranto,⁶⁸¹ reported that the detention for identification purposes is still not applied and that appropriate places for detention for identification purposes have not yet been identified.

Thus, during 2019, as observed by ASGI as part of the In Limine project, the situation remained almost unchanged compared to 2018 and a *de facto* detention, therefore devoid of any control of legitimacy by the judicial authority, continued in the hotspots during the identification phase and, in the case of Lampedusa hotspot, even after that phase.⁶⁸²

The **Lampedusa** hotspot continued, in 2019, to be a place where *de facto* detention is carried out.⁶⁸³ Unlike other hotspots, the centre does not have an internal regulation, there is no system for regulating

⁶⁷⁵ Article 6(1) Reception Decree.

⁶⁷⁶ Article 6(3-bis) Reception Decree, inserted by Article 3 Decree Law 113/2018 and L 132/2018.

⁶⁷⁷ ASGI et al., *Scenari di frontiera: il caso Lampedusa*, October 2018.

⁶⁷⁸ Answer from the Prefecture of Agrigento, 10 September 2019, available in Italian at: <https://cutt.ly/wyO8Ssu>.

⁶⁷⁹ Answer from the Prefecture of Ragusa, 5 September 2019, available in Italian at: <https://cutt.ly/uyO8S0q>.

⁶⁸⁰ Answer from the Prefecture of Messina, 20 September 2019, available in Italian at: <https://cutt.ly/XyO8Dgi>.

⁶⁸¹ Answer from the Prefecture of Taranto, 23 September 2019, available in Italian at: <https://cutt.ly/IyO8Fet>.

⁶⁸² Il trattenimento dei richiedenti asilo negli hotspot tra previsioni normative e detenzione arbitraria, 30 September 2019, available in Italian at: <https://cutt.ly/4yO8GLX>.

⁶⁸³ See: ASGI, In Limine, The theatre of Lampedusa, From the spectacularisation of NGO disembarkations to the silence on the day-to-day management of arrivals by sea, 19 July 2019, available in English at

the entry and the exit from the structure. The military who guard the entrance do not allow foreign citizens to exit and to enter the gate and some people who are in the centre manage to exit through holes in the perimeter network, which is damaged in several places.

The practice is well known to the authorities. In a circular letter sent in 2018 to the Director of the Lampedusa hotspot, the Prefecture of Agrigento specified that the exit and the return from and to the centre must take place only and exclusively through the main gate and that anyone caught at damaging the net could incur in penalties and damages.⁶⁸⁴ On 13 April 2019, In Limine legal workers witnessed the military preventing three foreign citizens from leaving the main gate.⁶⁸⁵

The regulation⁶⁸⁶ states that the "guests" have the possibility to leave the facility during daytime - from 8:00 a.m. to 8:00 p.m.- but only after the fotosegnalamento (making and registering the application) operations and with prior police authorization, but it does not specify within what time period the operations must be concluded.⁶⁸⁷

4.2. Duration of asylum and pre-removal detention

The maximum duration of detention of asylum seekers is 12 months.⁶⁸⁸ The duration of pre-removal detention has been extended from 90 to 180 days.⁶⁸⁹ According to ASGI, the difference between the maximum duration of ordinary detention for third-country nationals (6 months) and the maximum duration of detention of asylum seekers (12 months) appears as an unreasonable violation of the principle of equality provided for by Article 3 of the Italian Constitution, resulting in a discriminatory treatment of the latter category. Moreover, it is not clear if the 30-day duration of detention for identification reasons may or may not be counted in these maximum detention periods.

When detention is already taking place at the time of the making of the application, the terms provided by Article 14(5) TUI are suspended and the Questore shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, in order to allow the completion of procedure related to the examination of the asylum application.⁶⁹⁰ However, the detention or the extension of the detention shall not last longer than the time necessary for the examination of the asylum application under the [Accelerated Procedure](#),⁶⁹¹ unless additional detention grounds exist pursuant to Article 14 TUI. Any delays in the completion of the administrative procedures required for the examination of the asylum application, if not caused by the applicant, do not constitute a valid ground for the extension of the detention.⁶⁹²

In 2019 and early 2020 in at least two cases Civil Courts have released asylum seekers detained in CPR. The Courts observed that time limits of the accelerated procedure as regulated by art. 28bis of the Procedures Decree were exceeded, without any justification. In these two cases asylum seekers had

<https://inlimine.ASGI.it/the-theatre-of-lampedusa/>; and Borderline Sicilia Onlus, article on Metlingpot, Il confine Lampedusa. Prassi illegittime, indifferenza e resistenza, 29 September 2019, available in Italiana at: <https://cutt.ly/zyO8Kts>.

⁶⁸⁴ Circular letter sent from the Prefecture of Agrigento to the Director of Lampedusa hotspot, available in Italian at: <https://cutt.ly/myO8Le0>.

⁶⁸⁵ ASGI In Limine, ASGI, The theatre of Lampedusa.

⁶⁸⁶ Pozzallo hotspot regulation, available in Italian at: <https://cutt.ly/AyO8Zdg>.

⁶⁸⁷ Questione Giustizia, "Vietato girare in asciugamano: i regolamenti interni degli hotspot tra illegittimità e retoriche discriminanti, 24 June 2019, available in Italian at: <https://cutt.ly/JyO8ZMH>.

⁶⁸⁸ Article 6(8) Reception Decree.

⁶⁸⁹ Article 14(5) TUI, as amended by Article 2 Decree Law 113/2018 and L 132/2018.

⁶⁹⁰ Article 6(5) Reception Decree.

⁶⁹¹ Pursuant to Article 28-bis(1) and (3) Procedure Decree.

⁶⁹² Article 6(6) Reception Decree.

been detained in CPR for more than two months without the audition having been set.⁶⁹³ (see also Judicial Review)

According to the Reception Decree, the applicant detained in CPR or for identification reasons in hotspots or first governmental reception centres, who appeals against the rejection decision issued by the Territorial Commission, remains in the detention facility until the adoption of the decision on the suspension of the order by the judge.⁶⁹⁴ The detained applicant also remains in detention as long as he or she is authorised to remain on the territory as a consequence of the lodged appeal.⁶⁹⁵ The way the law was worded before did not make it clear whether, when the suspensive request was upheld, asylum seekers could leave the CPR, and in practice they did not.

In this respect the Questore shall request the extension of the ongoing detention for additional periods of no longer than 60 days, which can be extended by the judicial authority from time to time, until the above conditions persist. In any case, the maximum detention period cannot last more than 12 months.⁶⁹⁶

The average duration of detention in CPR in 2019 is not available.

Out of 4,092 persons detained in CPR in 2018, 807 were released by the Questore following the expiry of the maximum time limit of detention.⁶⁹⁷ No data were available at the time of writing for 2019.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? Yes No

1.1. Pre-removal detention centres (CPR)

Under the Reception Decree, asylum seekers can be detained in CPR where third-country nationals who have received an expulsion order are generally held.⁶⁹⁸

According to the Ministry of Interior, seven pre-removal centres of the existing 9 are currently operational, following the re-purposing of the hotspot of **Trapani** into a CPR. The CPR of **Potenza** was urgently opened by the end of January 2018 and made operational shortly thereafter. The pre-removal centre of **Caltanissetta** was closed in the first few months of 2018 due to the damages caused by an internal uprising, and reopened in December 2018, with a capacity of 96 persons.

The latest data available on capacity of CPR and persons detained therein are as follows, updated at 21 October 2019⁶⁹⁹:

⁶⁹³ Civil Court of Turin, decision 5114/2019, 6 August 2019, procedure 19920/2019, available in Italian at: <https://cutt.ly/6yO8BKm>; Civil Court of Trieste, decision 30/2020, 13 January 2020, available in Italian at: <https://cutt.ly/lyO8NjY>.

⁶⁹⁴ Article 35-bis(4) Procedure Decree.

⁶⁹⁵ Article 6(7) Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

⁶⁹⁶ Article 6(8) Reception Decree.

⁶⁹⁷ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, 135.

⁶⁹⁸ Article 6(2) Reception Decree.

⁶⁹⁹ MOI; data obtained by Altreconomia.

Capacity and detentions by CPR		
CPR	Official capacity ⁷⁰⁰	Persons detained in 2019
Brindisi	48	Not available
Bari	126	Not available
Caltanissetta	96	Not available
Rome	250	Not available
Turin	210	Not available
Potenza	150	Not available
Trapani	205	Not available
Total	1,085	Not available

Source: Ministry of Interior

By the end of December 2019 and in early January 2020 other CPR started their activity:

- Gradisca d'Isonzo, Gorizia, **Friuli-Venezia Giulia**: already previously used as a Centre for Identification and Expulsion (CIE) opened again on 16 December 2019.⁷⁰¹ The first people detained were moved there after a fire partially destroyed the CPR of Bari.⁷⁰² By the end of December it was hosting around 60 people but its capacity is for 150 people.
- Macomer, Cagliari, **Sardinia**: the CPR has been set up in a former prison and it started its activity on 20 January 2020. The contract was awarded to the ORS Italia Company belonging to the Swiss ORS Company.⁷⁰³

The opening of further CPR is planned in:

- Milan, **Lombardy**: 140 places should be provided in a building on Via Corelli, already previously used as CIE;⁷⁰⁴
- Heard in Parliament on 20 November 2019, the Ministry of Interior anticipated the next reopening of the former prison Oppido Mamertina, **Reggio Calabria**, and informed about negotiations for the rental of the property of the former CIE of Modena, **Emilia-Romagna**.⁷⁰⁵

The opening of the former Caserma Serini, Montichiari, Brescia, Lombardy, has no longer been mentioned.

Decree Law 13/2017, implemented by L 46/2017, had foreseen the extension of the network of the CPR to ensure the distribution across the entire national territory.⁷⁰⁶ In order to speed up the implementation of CPR, Decree Law 113/2018 encourages the use of negotiated procedures, without tender, for works whose amounts are below the EU threshold relevance and for a maximum period of three years.⁷⁰⁷

⁷⁰⁰ However MOI data shows that the actual capacity is of 708 total places.

⁷⁰¹ See Ansa Migranti: apre Cpr a Gradisca. Prefetto, fino a 150 posti. Circa 200 telecamere di sorveglianza, aggregati 50 militari', 16 December 2019, available in Italian at: <https://cutt.ly/xyO82wh>.

⁷⁰² Il quotidiano Italiano, Bari rivolta al Cpr incendiati 3 moduli, migranti trasferiti e lavoratori a rischio, 19 December 2019, available in Italian at: <https://cutt.ly/UyO82CW>. Hurriya Fuoco e scontri nel CPR di Bari Palese, 15 December 2019, available in Italian at: <https://cutt.ly/hyO898n>.

⁷⁰³ La Nuova Sardegna, Macomer, il nuovo CPR affidato alla società svizzera ORS, 16 December 2019, available in Italian at: <https://cutt.ly/2yO83Ky>.

⁷⁰⁴ Linkiesta, 'Migranti, ora il business si chiama detenzione e rimpatrio (e a fare i soldi sono i francesi)', 14 February 2019, available in Italian at: <http://bit.ly/2YwGPS7>.

⁷⁰⁵ Hearing in Parliament, Luciana Lamorgese, MOI, 20 November 2019, available in Italian at: <https://cutt.ly/oyO84e7>.

⁷⁰⁶ Article 19(3) Decree Law 13/2017 implemented by L 46/2017.

⁷⁰⁷ Article 2(2) Decree Law 113/2018, implemented by L 132/2018.

1.2. Hotspots

As described in the [Hotspots](#) section, there are four operating hotspots, where 379 persons were present as of 21 October 2019.⁷⁰⁸ In September 2018, the hotspot of Trapani was converted into a CPR.

Hotspot	Capacity
Lampedusa	96
Pozzallo	234
Taranto	400
Messina	160
Total	890

The Reception Decree does not provide a legal framework for the operations carried out in the First Aid and Reception Centre (CPSA) now converted into hotspots. Both in the past and recently in the CPSA, in the absence of a legislative framework and in the name of unspecified identification needs, asylum seekers have been unlawfully deprived of their liberty and held for weeks in conditions detrimental to their personal dignity. The legal vacuum, the lack of places in the reception system and the bureaucratic chaos have legitimised in these places detention of asylum seekers without adopting any formal decision or judicial validation.

In the case of *Khlaifia v. Italy*, the European Court of Human Rights (ECtHR) has strongly condemned Italy for the detention of some Tunisians in Lampedusa CPSA in 2011, noting the breach, to them, of various rights protected by ECHR. In particular, the Court found that the detention was unlawful, and that the conditions in which the Tunisians were accommodated – in a situation of overcrowding, poor hygienic conditions, prohibition of contacts with the outside world and continuous surveillance by law enforcement, lack of information on their legal status and the duration and the reasons for detention – constituted a violation of Article 3 ECHR, the prohibition of inhuman and degrading treatment, and of Article 5 ECHR, in addition to the violation of Article 13 ECHR due to the lack of an effective remedy against these violation.⁷⁰⁹ The Grand Chamber judgment of 15 December 2016 confirmed the violation of such fundamental rights.⁷¹⁰

Although the new Article 6(3-bis) of the Reception Decree foresees the possibility of detention for identification purposes in specific places, such places are not specified and they will not be identified by law. In a Circular issued on 27 December 2018, the Ministry of Interior specified that it will be the responsibility of the Prefects in whose territories such structures are found to identify special facilities where this form of detention could be performed. At the time of writing, such facilities have not yet been identified (see [Duration of detention for identification purposes](#) par. 4.1.)

According to ASGI, detention in facilities other than CPR and prisons violates Article 10 of the recast Reception Conditions Directive, which does not allow any detention in other locations and also because in these places, the guarantees provided by this provision are not in place. According to ASGI, the amended Reception Decree also violates Article 13 of the Italian Constitution, since the law does not indicate the exceptional circumstances and the conditions of necessity and urgency allowing, according to constitutional law, for the implementation of detention. Moreover, the law makes only a generic reference to places of detention, which will be not identified by law but by the prefectures, thus violating the “*riserva di legge*” laid down in the Article 13 of the Constitution, according to which the modalities of

⁷⁰⁸ MOI, data obtained by Altreconomia.

⁷⁰⁹ ECtHR, *Khlaifia and Others v. Italy*, Application No 16483/12, Judgment of 1 September 2015.

⁷¹⁰ ECtHR, *Khlaifia and Others v. Italy*, Grand Chamber, Judgment of 15 December 2016.

personal freedom restrictions can be laid down only in legislation and not in other instruments such as circulars.⁷¹¹

1.3. Transit zones

During visits carried out in early 2019 at the Rome Fiumicino and Milano Malpensa airports, the national Guarantor for detained persons found that, in 2018, 260 people, in the case of Rome and, 333 people, in the case of Milano, were held at the border crossing for over 3 days immediately after their arrival in Italy, as they were considered not entitled to enter the national territory. Some of them were held in these areas for 8 days.⁷¹²

In both areas, as evidenced by the Guarantor, access to lawyers is effectively prevented.

Responding, on 10 October 2019, to an open letter from ASGI, the Ministry of Interior, Central Directorate for Immigration, has made it known that the staying even for several days in the transit area is not supposed to be considered as detention and therefore to have the defence rights guarantees related to detention because it is implemented as part of the immediate refoulement procedure that does not provide for jurisdictional validation.⁷¹³

However, the Guarantor for detained persons concluded in his report that a de facto detention contrary to Articles 13 of the Italian Constitution and to Article 5 of the ECHR⁷¹⁴ was configurable in the situation where people were unable to enter Italy since they were notified an immediate refoulement measure and were obliged, at the disposal of the border police, to stay in special rooms in the transit area of the airports. This period of time varied according to the availability of flight connections with the place of origin.

Article 13 (5 bis) TUI, as amended by DL 113/2018,⁷¹⁵ introduced the possibility of detaining people, to be expelled after being in Italy, in suitable premises at the concerned border office.

Responding to ASGI requests, the air border police offices of Rome Fiumicino and Milan Malpensa communicated in early 2020 that still no premises have been identified within the transit areas of the two airports for the detention of those who have to be expelled and that therefore no detention measures had been carried out in these areas.⁷¹⁶

However, the authorities attached to the answer related to Rome Fiumicino the project for the identification of the detention places.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

⁷¹¹ ASGI, *Manifeste illegittimita' costituzionali delle nuove norme concernenti permessi di soggiorno per esigenze umanitarie, protezione internazionale, immigrazione e cittadinanza previste dal decreto-legge 4 ottobre 2018, n. 113*, 15 October 2018, available in Italian at: <http://bit.ly/2FCsyLW>.

⁷¹² Guarantor for detained persons report, available in Italian at: <https://cutt.ly/PyO86HW>.

⁷¹³ Letter from Ministry of Interior, 8 October 2019, available in Italian at: <https://cutt.ly/WyO4qYF>.

⁷¹⁴ Guarantor report, page 7. See also, *Questione Giustizia, Zone di transito internazionali degli aeroporti, zon grigie del diritto*, 9 December 2019, available in Italian at: <https://cutt.ly/EyO4wL9>.

⁷¹⁵ Article 13(5bis) as amended by Article 4 (1) DL 113/2018 converted by L. 132/2018 introduced the possibility of detaining the people to be expelled, pending the validation procedure and in the event of no availability of places at the CPRs, in structures in the availability of the Public Security Authority. Detention is ordered by the Magistrate (Giudice di Pace) at the request of the Questore with the decree which sets the hearing to validate the expulsion. After this hearing, the Magistrate, at the request of the Questore, may authorize further detention, for a maximum of 48 hours, in suitable premises at the border office concerned.

⁷¹⁶ Article 13 (5 bis) TUI.

In relation to detention conditions, the Reception Decree provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed to the detainees. Separation of persons in respect of gender differences, maintaining, where possible, the family unity and the access to open-air spaces must be ensured.⁷¹⁷

The Reception Decree states that foreigners detained in CPR shall be provided by the manager of the facility with relevant information on the possibility of applying for international protection. The asylum applicants detained in such facilities are provided with the relevant information set out by Article 10(1) of the Procedure Decree, by means of an informative leaflet.⁷¹⁸

Detention conditions are monitored *inter alia* by the [Human Rights Commission](#) of the Senate, the [Inquiry Commission on the reception system](#) set up by the Chamber of Deputies, as well as the [Guarantor for the rights of detained persons](#).

2.1. Overall conditions

Hotspots

Conditions in hotspots vary given that the facilities host different numbers of persons at any given time. Due to the informal **redistribution** policy of migrants disembarked and the slowness of the relative procedures, the people disembarked and accommodated at the hotspots have lived a long time in conditions of overcrowding, with poor hygiene conditions and in most cases a de facto detention.⁷¹⁹

As for **Lampedusa**, on 22 August 2019, media reported that the hotspot was hosting 250 people compared to the 96 official places.⁷²⁰ Eight migrants rescued by the Open Arms had been placed in one room, with suffocating heat and poor sanitation. In September 2019, NGOs reported that the hotspot was hosting up to 300 people, to face the informal relocation policies.⁷²¹

As of 2 September 2019 Borderline Sicily denounced that the hygiene kits were not distributed to all migrants, as well as telephone cards to warn relatives of having survived. The telephones in the centre were broken, the mess did not exist and people ate on the ground or on mattresses, with food distributed under the sun and with queues of hour. The conditions of overcrowding were constant.⁷²²

As of 9 December 2019, some lawyers supported by ASGI filed urgent appeals the European Court of Human Rights, according to Article 39 of the Court regulation, to obtain the urgent transfer of the hotspot guests where survivors of the shipwreck of 23 November 2019 were also accommodated. The Court asked Italy for clarification as images sent from the guests inside the centre showed bathrooms without doors, mattresses without sheets and rubble scattered on the floors.⁷²³ On 15 December 2019, after 20 days of staying, people were moved to other centres.

The **Messina hotspot** consists of a series of zinc plate containers capable of accommodating up to 250 people. ASGI, Actionaid and Borderline Sicilia published a report on the situation after a visit carried out

⁷¹⁷ Article 7(1) Reception Decree.

⁷¹⁸ Article 6(4) Reception Decree.

⁷¹⁹ Bordeline Sicilia, *Europa Frotniera Sud, un'altra estate di morti in mare e diritti calpestati*, 2 September 2019, available in Italian at: <https://cutt.ly/QyO7stf>; see also: Border Criminologies blog, *Forced Mobility and the Hotspot Approach: The Case of the Informal Disembarkation Agreements*, 12 February 2020, available in English at: <https://cutt.ly/OyO7d6f>.

⁷²⁰ Repubblica.it, *Lampedusa, l'hotspot è sovraffollato, i migranti di Open Arms in 8 in una stanza*, 22 August 2019 available in Italian at: <https://cutt.ly/lyO7f6h>.

⁷²¹ Bordeline Sicilia, 29 September 2019, <https://cutt.ly/LyO7g2B>.

⁷²² Bordeline Sicilia, September 2019, available in Italian at: <https://cutt.ly/YyO7xGc>.

⁷²³ ASGI, *La Corte Edu chiede chiarimenti all'Italia sull'hotspot di Lampedusa*, 12 December 2019, available in Italian at: <https://cutt.ly/dyO7vuR>. See also, video TG 3 Regione Sicilia, 6 December 2019, <https://cutt.ly/MyO7vNF>.

on 25 July 2019.⁷²⁴ Containers - air conditioned and equipped with small lockers to hold personal belongings - have a capacity of 12 or 10 beds (6/5 bunk beds in each container). The centre has 16 bathrooms, one for disabled persons, and 22 showers. Out of these, 3 toilets and 2 showers are placed in the area for "vulnerable" people. A tensile structure acts as a canteen but in the summer months it is not used because too hot. People receive a hygiene kit, at the entrance, and a pocket money of € 2.50 per day and 2 telephone cards, 5 euros each.

The report underlined some critical issues:

at the time of the visit, 5 couples were sharing the same container equipped with bunk beds. The guests reported that the hygiene kit was insufficient and so was the food. The asylum seekers present, were accommodated in the hotspot for about two months after having been rescued by Sea-Watch 3 and disembarked in Lampedusa on 29 June 2019. They had not been registered to the national health service. As a result they only had access to the clinic inside the centre. Though sharing spaces with adults, children could not be vaccinated and victims of torture or violence did not have access to specialist visits. People were found not informed about the redistribution procedure.

On 3 October 2019, the NGOs sent a letter to the Ministry of Interior reporting about the situation, as well proposing some recommendations.⁷²⁵

Taranto: for about three years the hotspot has been used as a place where foreign people apprehended along the northern borders were held. The people who land on the Apulian coast are instead transferred and identified at the "Don Tonino Bello" centre in Otranto. A delegation from ASGI and Oxfam visited the area in May 2019.⁷²⁶ The centre, located near the steel mill (former Ilva), has 400 beds distributed between large tensile structures and containers, of about 8 places each, the latter reserved for unaccompanied minors, families and vulnerable people. According to what was reported during the interviews conducted by the delegation, among the people brought to the hotspot there are also asylum seekers, people with pending appeals, vulnerable people and, sometimes, unaccompanied minors. People are identified and then, generally during the same day, differently addressed according to their personal situation (reception centres, centres for minors, CPR).

A data access requested by ASGI in September 2019 to the Questura of Imperia confirmed that the transfers of third country nationals found without a residence permit were going on from Ventimiglia to the Taranto hotspot.

CPR

Persons held in CPR vary significantly in terms of social origin, psychological condition, health condition, legal status. According to the law, asylum seekers detained in CPR should be placed in a dedicated space.⁷²⁷ However, as reported by the Guarantor for the rights of detained persons in his report of visits to CPR in 2016 and 2017 detained persons in all structures were in a precarious state without any consideration of legal status, not even that of asylum seekers.⁷²⁸ In 2019, the Guarantor reported that he had recommended all CPR to favour as much as possible the separation between those who come from the criminal circuit and those who are only in a position of administrative irregularity or who are asylum seekers. Only the prefecture of Brindisi had responded by committing to identify different organizational methods.⁷²⁹

According to ASGI members' experience, asylum seekers are not placed in dedicated spaces in CPR.

⁷²⁴ ASGI; Hotspot e redistribuzione dei migranti: troppe criticità. Le richieste di ASGI, Borderline e ActionAid, 9 October 2019, available in Italian at: <https://cutt.ly/NyO7nxK>.

⁷²⁵ <https://cutt.ly/XyO7mFk>.

⁷²⁶ See ASGI, <https://inlimine.ASGI.it/visita-allhotspot-di-taranto>.

⁷²⁷ Article 6(2) Reception Decree.

⁷²⁸ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 29.

⁷²⁹ Guarantor for the rights of detained persons, *Relazione al Parlamento 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, page 196.

By the end of December 2019 and at the beginning of 2020 in many CPR there were riots due to the living conditions inside the centres. As denounced by the Guarantor and reiterated by the media, this is the only means that the CPR detainees have to contest the reception conditions. Unlike detainees in prisons, they have no complaints rights.⁷³⁰

After visiting the **CPR of Turin**, on January 2020, the Guarantor for the rights of detained persons of Turin compared the persons' cells to "zoo cages" and denounced that the migrants had their phones seized. The member of the College of the National Guarantor denounced that migrants lived in seven-person rooms where the bathroom is not even separated from the place where people sleep and that there were no places to sit, therefore foreign citizens are forced to eat on the ground with dishes on their legs.

The National Guarantor for the rights of detained persons, heard at Parliament in June 2019, reported that during a visit to the CPR of Turin he found two rooms in the basement, the existence of which had been denied to the national Guarantor by the responsible authorities. The writing on the walls made it possible to understand the presence of people placed at least for limited periods of time inside those rooms.⁷³¹

Following a visit to the CPR of **Trapani** in January 2020, a member of Parliament presented a question to the Ministry of Interior representing the poor living conditions of the centre with whole parts to be restored and explaining that the people detained had all referred to him about the difficulty of talking with lawyers, the failed or late responses to health problems and ill-treatment by law enforcement agents.⁷³²

Regarding the services, according to media, during 2019 there has been a significant reduction in personal services. The doctor who previously worked 144 hours a week is now present in the facility for 42 hours (-70.83%). The same situation for the psychologist, from 54 to 24 hours a week, to the mediator from 108 to 48 and even to the lawyer, from 72 hours to just 16.⁷³³

As of December 2019, a journalistic reportage informed that the Ministry of Interior declared that the **CPR of Palazzo San Gervasio in Potenza** should be closed and had ordered the progressive transfer of people to other CPRs. The reportage cites reports of IOM, UNHCR and the Guarantor for detained persons on the inhumane and degrading conditions of the centre. All detainees interviewed reported that the housing modules were missing doors and windows. Their statements were confirmed by pictures. The detainees also reported that the toilets were unusable and there were no sinks and the heating often did not work so the staff distributed heavier clothes. Staff reported there were no chairs but only a small table in the small room where the prisoners' lawyers have access. According to the media report the Public Prosecutor had opened an investigation that would focus in particular on improper giving of sedatives to detainees.⁷³⁴

Shortly thereafter, on January 2020, another news report reported an ongoing investigation on abuses inside the centre and sedated detainees.⁷³⁵

⁷³⁰ Il Dubbio, CPR da Gorizia a Trapani migranti in rivolta per le condizioni di vita, 8 January 2020, available in Italian at: <https://cutt.ly/syO7Rcy>.

⁷³¹ Hearing at Chamber of Deputies of the Guarantor for the rights of detained persons, 27 June 2019, available in Italian at: <https://cutt.ly/JyO7TZ3>.

⁷³² Trapani Oggi, Cosa succede al CPR di Trapani Milo Interrogazione al Ministro dell'Interno del deputato del PD Fausto Raciti, 22 January 2020, available in Italian at: <https://cutt.ly/VyO7Ur9>.

⁷³³ Article of Torino Oggi, "CPR di Corso Brunelleschi il Garante lancia l'allarme Gabbrie come allo zoo una persona non può soggiornare lì", 22 January 2020 available in Italian at: <https://cutt.ly/WyO7ItQ>.

⁷³⁴ La Gazzetta del Mezzogiorno, "Un lager chiamato CPR che non riesce a chiudere. Il Ministero: "Svuotate la struttura". Ma resta lettera morta", 14 December 2019.

⁷³⁵ Il Mattino di Foggia, "Maltrattamenti nel Cpr di Palazzo San Gervasio", la scoperta del giornalista investigativo Amendolara su Panorama: "Sedavano gli immigrati", 9 January 2020.

On June 2019 the Guarantor for detained persons reported concern about the fact that, at Palazzo San Gervasio, there is not even a place to eat so the detainees eat on the bed, and about the fact that people work in structures that are basically containers, and lawyers also meet people in containers.⁷³⁶

In the CPR of **Pian del Lago, Caltanissetta**, on 12 January 2020, a Tunisian citizen lost his life. Lasciateci centrare declared to have received several reports from the persons inside the centre on the ignoble conditions of the centre, cold rooms, no windows, and requests for inmate health care remained unanswered.⁷³⁷

On 18 January 2020, a man from Georgia died in the CPR of **Gradisca d'Isonzo** (Gorizia). The testimony collected from the inside revealed heavy violence committed by law enforcement officers.⁷³⁸ However, the first results of the appraisal ordered by the prosecutor, even though excluding that death is natural, exclude a direct connection to the violence suffered.⁷³⁹

In providing for a distribution of CPR on the entire national territory, Decree Law 13/2017, implemented by L 46/2017, specified that this should have followed an accentuation of the role of the Guarantor for the rights of detained persons, and an extension of the power of access for those who do not require authorisation, and an absolute respect for human dignity.

Transit zones

Between January and February 2019, the Guarantor for detained persons visited the transit areas of the airports of Rome Fiumicino and Milan Malpensa where people who just landed in Italy are held while awaiting for the immediate refoulement to be carried out.

With respect to the areas where the detention takes place in Rome, the Guarantor observed that the place appears unsuitable for the permanence of people for a period of time longer than 24 hours. The European Committee in its report on the visit carried out in June 2017, pointed out the inadequacy of the environments, in particular due to the lack of natural air and light and the impossibility of accessing the outdoors and the transfer of people to other facilities in case of stay longer than 24 hours.⁷⁴⁰

As for Malpensa, according to the testimonies collected by ASGI within the In Limine project, the size of the common room is about 8x6 meters, not enough to accommodate the number of people who are kept there. The room has no windows and the camp beds are made of iron, without mattresses. The possibility of going out in the open air is not given.⁷⁴¹

2.2. Activities

According to Article 4(h) of the CIE Regulation, social, recreational and religious activities shall be organised in the centres. However, the shortage of recreational activities in CPR bears especially negative impact on living conditions of people staying in the CPR 24 hours a day for prolonged periods, thus being one of the main factors entailing distress among people in detention.

By January 2020, the Guarantor for the rights of detained persons of Turin stressed that in the **CPR of Turin** there are no re-educational courses or activities of any kind and recommended, among other things,

⁷³⁶ Hearing at Chamber of Deputies of the Guarantor for the rights of detained persons, 27 June 2019, available in Italian at: <https://cutt.ly/eyO701E>.

⁷³⁷ Lasciateci centrare, Aymen, morto di CPR a Caltanissetta, 12 January 2020.

⁷³⁸ Avvenire, La denuncia. Migrante georgiano morto a Gradisca. Lo spettro di un nuovo "caso Cucchi"?, 23 January 2020.

⁷³⁹ Avvenire, "Autopsia sul migrante morto a Gradisca " Decesso non dovuto a percosse" 27 January 2020.

⁷⁴⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), available at: <https://www.coe.int/en/web/cpt/italy>.

⁷⁴¹ ASGI, In Limine, Il valico di frontiera aeroportuale di Malpens, La privazione della libertà dei cittadini stranieri in attesa di respingimento immediato, available in Italian at: <https://cutt.ly/wyO73RG>.

the organization of recreational activities (with the involvement of external subjects as well), the use of the sports centre and the possibility to switch the light on and off independently and not centrally.⁷⁴²

As for the CPR of Gradisca d'Isonzo, after the visit made on 20 January 2020, following the death of the Georgian citizen, an Italian parliamentarian reported that many of the guests were taking sedatives and psychotropic drugs and that the common and leisure areas, such as the canteen or the football field, were not used. He also reported an abnormal deterioration situation, since it was a new structure and he underlined how people were living in cages in situations of coexistence between those who had committed crimes and those who were only in a situation of administrative irregularity.⁷⁴³

2.3. Health care and special needs in detention

Access to health care is guaranteed to all persons in detention. The law provides as a general rule that full necessary assistance and respect of dignity shall be guaranteed.⁷⁴⁴ The law further states that the fundamental rights of detained persons must be guaranteed and that inside detention centres essential health services are provided.⁷⁴⁵

Moreover, the Reception Decree provides that asylum seekers with health problems incompatible with the detention conditions cannot be detained and, after the amendment made by Decree Law 13/2017 and L 46/2017, it also establishes the incompatibility of detention for vulnerable people, as defined by Article 17 of the Reception Decree.

However, the delegates of the LasciateCIEntrare campaign who visited the CPR of **Bari** and **Brindisi** on 5 August 2018 verified the presence of people whose state of health was incompatible with the state of detention.⁷⁴⁶

Within the socio-health services provided in the CPR, a periodical assessment of the conditions of vulnerability requiring special reception measures must be ensured.⁷⁴⁷ In this regard, Article 3 of the CIE Regulation describes in details the health services provided to detainees and the possibility for the Prefecture to stipulate specific agreements with the public health units.

The CPR of **Caltanissetta** is equipped with a separate area dedicated to medical care.⁷⁴⁸ Following the death of a Tunisian man on 12 January 2020, the other detainees reported he had not received enough health assistance.

Both in the CPR of **Brindisi** and in that of **Turin**, the Guarantor verified between February and March 2018 the practice of using the rooms of sanitary isolation for punitive purposes, although the isolation is not provided for by the CIE Regulation even as an exceptional measure.

By December 2018, the Human Rights and Migration Law Clinic published the "Uscita d'Emergenza" report, relating to the health protection of detainees within the CPR of Turin. The report revealed that the health policy within the Centre was highly characterized by an informal approach, since no type of prior technical evaluation was foreseen regarding the compatibility between the migrant's state of health

⁷⁴² CittAgorà, "CPR la Garante comunale per i detenuti monitora le condizioni di vita del centro, 21 January 2020.

⁷⁴³ Il Friuli, Il Garante visita il Cpr di Gradisca: "Situazione tesa", 20 January 2020.

⁷⁴⁴ Article 14(2) TUI.

⁷⁴⁵ Article 21(1) and (2) PD 394/1999.

⁷⁴⁶ LasciateCIEntrare, 'Migranti, Lasciateci entrare nei CPR di Bari e Brindisi online il report', 7 November 2018, available in Italian at: <http://bit.ly/2CIFwpQ>.

⁷⁴⁷ Article 7(5) Reception Decree.

⁷⁴⁸ Guarantor for the rights of detained persons, *Rapporto sulle visite nei CIE e negli hotspot in Italia 2016/2017*, 11 May 2017, 15.

and the restrictive measure. Even therapeutic continuity was hardly guaranteed. In addition, the number of medical personnel was not appropriate for the number of guests within the Turin facility.⁷⁴⁹

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|------------------------------|---|-----------------------------|
| ❖ Lawyers: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

Decree Law 13/2017, implemented by L 46/2017, has clarified that access to CPR is guaranteed under the same conditions as access to prisons. This means that the Guarantor for the rights of detained persons and parliamentarians, among other official bodies, has unrestricted access to CPR.

However, in June 2019, the parliamentarian Riccardo Magi asked to access the CPR of Trapani with a delegation from ASGI and LasciateCentrare. Generally referring to the rules on access to CPR, the Prefect of Trapani refused the entry of the delegation.⁷⁵⁰ ASGI lodged an appeal before the Administrative Court of Sicily, which, on 20 September 2019, declared that the public administration has no discretion to limit the access of a Member of Parliament and those accompanying him. The Court recognised the parliamentarian has a subjective right to enter CPR and to choose the delegation, and therefore the administrative judge declared itself not competent to decide on the case, as it falls under the jurisdiction of the ordinary judge.⁷⁵¹

As CPR and eventually hotspots are places where asylum seekers are detained, Article 7 (2) of the Reception Decree applies. It states that UNHCR or organisations working on its behalf, family members, lawyers assisting asylum seekers, organisations with consolidated experience in the field of asylum, and representatives of religious entities also have access to CPR.⁷⁵² Access can be limited for public order and security reasons or for reasons related to the administrative management of the centres but not fully impeded.⁷⁵³

However, the regulation of CPRs requires an authorisation from the competent Prefecture for family members, NGOs, representatives of religious entities, journalists and any other person who make the request to enter CPR.⁷⁵⁴

According to ASGI experience, Prefectures apply the regulation of CPR significantly restricting the scope of the guarantees provided by Law 46/2017 and by Reception decree.

Access to CPR for journalists is quite difficult. They have to pass through two different stages before gaining authorisation to visit the CPR. Firstly, they need to make a request to the local *prefecture* (the local government representative), which then forwards the request to the Ministry of Interior who investigates the applicant, before finally sending the authorisation back to the Prefecture.

During his visits carried out between February and March 2018 in the CPR of Brindisi, Bari, Potenza and Turin, the Guarantor for the rights of detained persons verified that the possibility of religious practice was

⁷⁴⁹ Human Rights and Migration Law Clinic (HRMLC), *Uscita d'Emergenza, Rapporto sulla tutela della salute dei trattenuti nel CPR di Torino*, December 2018, available in Italian at: <https://cutt.ly/LyO747R>.

⁷⁵⁰ See for more information: <https://cutt.ly/GyO77SA>.

⁷⁵¹ Administrative Court of Sicily, decision 2360/2019, 20 September 2019.

⁷⁵² Article 7(2) Reception Decree.

⁷⁵³ Article 7(3) Reception Decree.

⁷⁵⁴ Article 6 (4) and (5) MoI Decree 20 October 2014

strongly limited since no minister of worship actually has access to the centres and there were no spaces set up for places of worship.⁷⁵⁵

In order to inform and raise awareness on the effective situation and conditions of migrants inside Italian administrative detention centres, the LasciateCIEntrare campaign organizes visits inside CPR with journalists, lawyers, members of Parliament and NGOs.

The Senate highlighted in its December 2017 report that it has often welcomed in its delegations visiting CPR the mayors or the municipal and provincial counsellors of the cities that host CPR. They are unable to enter themselves in those facilities unless authorised by the Prefectures but, as highlighted in the report, easier access could establish closer links to the concerned local populations.⁷⁵⁶ The situation as regards mayors' access to detention facilities remained the same in 2018.

During 2018, LasciateCIEntrare found serious obstacles to access CPR. A visit to the CPR of Bari on August 2018 was interrupted for one hour after the Prefecture claimed the delegation had not been authorised even though a Member of the European Parliament was present.⁷⁵⁷ In 2019, all access requests presented by LasciateCIEntrare to visit the CPR of Bari, Trapani, Caltanissetta, Turin, Brindisi, Palazzo San Gervasio, Gradisca d'Isonzo, and Ponte Galeria (Rome) were denied.⁷⁵⁸

In April and May 2019 ASGI asked access to the CPR of Caltanissetta but it was denied. In November 2019, ASGI asked access to the CPR of Turin but it was formally denied. The Prefecture of Turin, after collecting the negative opinion by the Ministry of Interior, used order and security reasons and considered ASGI not included among the subjects allowed to access CPRs according to the MOI Decree issued on 20 October 2014 (CPR regulation).

In both cases ASGI lodged an appeal before the Administrative Court assuming the violation, above all, of the Reception Decree.

On 30 April 2020 the Administrative Court of Piemonte ordered the authorities to make a new exam of the access request, considering the refusal illegitimate, as it was not motivated.⁷⁵⁹ For similar reasons, in December 2019, ASGI was also denied access to the hotspots of Lampedusa (See [Access to NGOs and UNHCR](#)).

As of November 2019, ASGI asked access to the transit zones but the competent authorities never answered to the request.⁷⁶⁰

Access to the Taranto hotspot was authorized to a delegation of ASGI and Oxfam in early May 2019.⁷⁶¹

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 30 days | |

⁷⁵⁵ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁷⁵⁶ Senate, *CPR Report*, December 2017, 24.

⁷⁵⁷ LasciateCIEntrare, 'Migranti, Lasciateci entrare nei CPR di Bari e Brindisi online il report', 7 November 2018, available in Italian at: <http://bit.ly/2CIFwpQ>.

⁷⁵⁸ Meltingpot, *Morti e proteste nei CPR. Ma il Ministro e il Governo non se ne accorgono*, 13 January 2020.

⁷⁵⁹ See ASGI, *CPR: TAR Piemonte, si deve motivare il diniego di accesso*, 12 May 2020, available in Italian at: <https://cutt.ly/oyO5eu9>.

⁷⁶⁰ ASGI, *In Limine Project*, 18 February 2020, see: <https://cutt.ly/6yO5rMM>.

⁷⁶¹ See: <https://inlimine.ASGI.it/visita-allhotspot-di-taranto/>.

Asylum seekers cannot be sent to CPR before they have had the possibility to seek asylum, due to lack of proper information on the asylum procedure or because they are denied access to the procedure (see [Registration](#)). In this case they are subject to the procedure for irregular migrants provided by the TUI.

The detention decision must be validated within 48 hours by the competent Magistrates' Court (*giudice di pace*). After the initial period of detention of 30 days, the judge, upon the request by the Chief of the Questura, may prolong the detention in CPR for an additional 30 days.⁷⁶² After this first extension, the Questore may request one or more extensions to a lower civil court, where it is decided by a Magistrates' Court, in case there are concrete elements to believe that the identification of the concerned third-country national is likely to be carried out or that such delay is necessary to implement the return operations. The assessment concerning the duration of such an extension lies with the magistrate who decides on a case-by-case basis. The third-country national has the right to challenge the detention. The TUI, in fact, provides the right to appeal a detention order or an order extending detention.⁷⁶³

Decree Law 113/2018, implemented by L 132/2018, has provided for the possibility of detention in premises other than CPR. According to the amended Article 13(5-bis) TUI, in case of unavailability of places in the CPR located in the district of the competent Court, the Magistrate, upon request by the Questura, and fixing by decree the hearing to validate the detention, may authorise the temporary stay of the foreigner in different and suitable structures in the availability of the Public Security Authority until the conclusion of the validation procedure. In case the unavailability of places in CPR remain even after the validation hearing, the Magistrate can authorise the stay in suitable places near the Border Police Office concerned until the effective removal and in any case not exceeding 48 hours following the validation hearing.⁷⁶⁴

If, after being sent to a CPR or other places according to Article 13(5-bis) TUI, third-country nationals apply for asylum, they will be subject to detention pursuant to Article 6 of the Reception Decree. In these cases the competence to the judicial review on the validation or extension of detention is up to the specialized section of the competent Civil Court, having regard to the place where the centre is located.⁷⁶⁵

The Questore's order related to the detention or the extension thereof shall be issued in writing, accompanied by an explanatory statement, and shall indicate that the applicant may submit to the court section responsible for validating the order, personally or with the aid of a lawyer, statements of defence. Such order shall be communicated to the applicant in the first language that the applicant has indicated or in a language that the applicant can reasonably understand.⁷⁶⁶

According to the law, the applicant takes part in the hearing on the validation of detention by videoconference, allowing the lawyer to be present at the place where the applicant is located. The presence of a police officer should ensure that there are no impediments or limitations on the exercise of the asylum seeker's rights.⁷⁶⁷ As stressed during the discussion of the provision in the Senate, the lawyer is then forced to choose between being present next to the client or next to the judge at the validation hearing.⁷⁶⁸

The Questore shall transmit the relevant files to the competent judicial authority to validate the detention for a maximum period of 60 days, in order to allow the completion of procedure related to the examination

⁷⁶² Article 14(5) TUI.

⁷⁶³ Article 14(6) TUI.

⁷⁶⁴ Article 13(5-bis) TUI, inserted by Article 4 Decree Law 113/2018 and L 132/2018.

⁷⁶⁵ Article 3 (1 c), read in conjunction with art. 4 (3) Law decree 13/2017 converted by Law 46/2017 and Article 6 (7) Reception Decree.

⁷⁶⁶ Article 6(5) Reception Decree, as amended by L 46/2017. Nevertheless, as reported to ASGI, some Questore, when issuing the detention order, do not provide asylum seekers with copy of such orders nor explanations of the reasons for detention.

⁷⁶⁷ Article 6(5) Reception Decree, as amended by L 46/2017.

⁷⁶⁸ Senate, *2017 CPR Report*, December 2017.

of the asylum application.⁷⁶⁹ However, the detention or the prolongation of detention shall not last beyond the time necessary for the examination of the asylum application under accelerated procedure,⁷⁷⁰ unless additional detention grounds are present pursuant to Article 14 TUI. Any delays in the completion of the administrative procedures required for the examination of the asylum application, if not caused by the applicant, do not constitute valid ground for the extension of the detention.⁷⁷¹

On 6 October 2016, in the case *Richmond Yaw and others v. Italy*, the European Court of Human Rights condemned Italy for a violation of Article 5 ECHR regarding the detention in CPR of some Ghanese asylum seekers, whose detention had been extended without a validation hearing and therefore without ensuring a debate between the parties.⁷⁷²

On 15 January 2019, the Court of Palermo ruled that the request to extend the detention of an asylum seeker within CPR of Trapani was inadmissible in the absence of the procedural guarantees provided by law. The request for extension had in fact been sent to the Court by the immigration office of the Questura without any written provision adopted by the Questore of Trapani and nothing had been notified to the person concerned.⁷⁷³

On 6 August 2019, the Civil Court of Turin ordered the immediate release of an asylum seeker detained for over two months without the audition having been set, considering the unjustified exceeding of the accelerated procedure terms regulated by art. 28 bis of the Procedures Decree. The Court decided on a review request ruled by Article 9 (5) Directive 2013/33/EU, self-executing in Italy.⁷⁷⁴

The Civil Court of Trieste rejected on 13 January 2020, the request to extend the detention of an asylum seeker within the CPR of Gradisca d'Isonzo, for the unjustified exceeding of the accelerated procedure terms.⁷⁷⁵

In 2019 the Civil Court of Palermo assessed the legitimacy of the detention of some foreign citizens transferred from the Lampedusa hotspot to the Trapani CPR. As monitored by ASGI (see Hotspot) during their stay in hotspot these persons had already expressed their will to seek asylum but before their transfer they were asked to sign an information sheet “**scheda informativa**” declaring to be no longer interested in seeking international protection. Transferred to the CPR of Trapani these persons again expressed their will to seek asylum before the Magistrate (Giudice di Pace) during the detention validation hearing. Their detention was validated as the Magistrates based their decision on the statements contained in the information sheet (*scheda informativa*). Only after about 20 days, they reached to register their will to seek asylum to the competent Questura. Deciding on the validity of their detention order, in one case the Civil Court of Palermo considered the asylum applications submitted for the sole purpose of delaying or preventing the execution of the removal order pursuant to Article 6 (3) of the Reception Decree.⁷⁷⁶ In two other cases the Civil Court of Palermo did not validate the detention of two asylum seekers denying value to the statement contained in the *scheda informativa* considering it was not sufficient to fulfill the duty of information on the right of asylum pursuant to art. 10 ter TUI and in any case considering it was unreliable for the way it was hired.⁷⁷⁷

Out of 4,092 persons placed in detention in 2018, 954 were released following an order from the court. No information was available about 2019 at the time of writing.

⁷⁶⁹ Article 6(5) Reception Decree.

⁷⁷⁰ Pursuant to Article 28-bis(1) and (3) Procedure Decree.

⁷⁷¹ Article 6(6) Reception Decree.

⁷⁷² ECtHR, *Richmond Yaw and others v. Italy*, Application No 3342/11, Judgment of 6 October 2016.

⁷⁷³ Civil Court of Palermo, Decision 439/2019, 15 January 2019, available at: <http://bit.ly/2UIWEvH>.

⁷⁷⁴ Civil Court of Turin, decision 5114/2019, 6 August 2019, procedure 19920/2019, available in Italian at: <https://cutt.ly/kyO5bvZ>.

⁷⁷⁵ Civil Court of Trieste, decision 30/2020, 13 January 2020, see: <https://cutt.ly/cyO5Jth>.

⁷⁷⁶ Civil Court of Palermo, see: <https://cutt.ly/yyO5n4g>.

⁷⁷⁷ Civil Court of Palermo, decision available in Italian at: <https://cutt.ly/myO5LIE>.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

According to Article 2 of the CIE Regulation the individual is informed of his or her rights and duties in a language he or she understands and is provided with the list of lawyers. Due to the broad discretion of each Prefecture in authorising access to CPR (see section on [Access to Detention Facilities](#)), however, lawyers may have problems in entering these detention structures.⁷⁷⁸

Under the TUI, free legal aid must be provided in case of appeal against the person's expulsion order, on the basis of which third-country nationals who have not lodged their asylum application can be detained.⁷⁷⁹

Free legal aid is provided for the validation or extension of detention of third-country nationals. However the effectiveness of the legal defence is compromised due to the circumstance that relevant documents are sent in advance to the judge (Giudice di Pace) but not to the lawyer who, therefore, generally manages to see the reasons underlying the request for validation or extension of the detention only immediately before the hearing.

The same situation concerns the defence of asylum seekers who do not have or no longer have the right to remain in the centre (therefore in Italy) pending the judicial decision on their asylum application, since in such cases the jurisdiction is of the Giudice di Pace and not of the Civil Court.⁷⁸⁰

Free legal aid is also provided for the validation of detention of asylum seekers, as well. In this case, the asylum seeker concerned can also request a court-appointed lawyer. Lawyers appointed by the State have no specific expertise in the field of refugee law and they may not offer effective legal assistance. In addition, according to some legal experts, assigned attorneys may not have enough time to prepare the case as they are usually appointed in the morning of the hearing.

In his report published after the visit carried out in February 2018 in the CPR of **Brindisi**, the Guarantor for the rights of detained persons, expressed concern about a communication he found of the local Prefecture addressed to the managing body about the need to reduce access to the CPR to the legal advisers of the detainees, limiting it only to Monday to Friday and in time slots established by the same managing body. Noting how the limitation is improper, he asked for the reasons.⁷⁸¹

Some Bar Councils such as those in **Turin** and **Bari** set up specific lists of Court-appointed lawyers specialised in immigration law.

As for legal assistance inside the CPR, it should be provided by the body managing the centre, which however does not often guarantee this service and usually provides low-quality legal counselling. In this regard, it appears that there is a lack of sufficient and qualified legal assistance inside CPR.⁷⁸²

Another relevant obstacle which hampers persons detained in CPR from obtaining information on their rights and thus enjoying their right to legal assistance is the shortage of interpreters available in the detention centres, who should be provided by the specific body running the structure.

⁷⁷⁸ LasciateCIEntrare, *Mai più CIE*, 2013, 7.

⁷⁷⁹ Article 13(5-bis) TUI.

⁷⁸⁰ Article 6 (7) LD 142/2015.

⁷⁸¹ Guarantor for the rights of detained persons, *Rapporto sulle visite effettuate nei centri di permanenza per il rimpatrio (Febbraio – Marzo 2018)*, 6 September 2018, available in Italian at: <http://bit.ly/2uvu4cr>.

⁷⁸² Senate, *CIE Report*, September 2014, 30.

E. Differential treatment of specific nationalities in detention

Following a Ministry of Interior Circular of January 2017, encouraging Questure to trace **Nigerians**, and in light of the readmission agreements signed by Italy with countries such as Tunisia, practice indicates that these nationalities are particularly targeted for detention. Also, as for Tunisians, ASGI could observe that their treatment in the hotspot of Lampedusa was different (see detention in hotspot).

According to the data published by a journalistic investigation, there are 7,054 returns made in 2019.⁷⁸³ Most of the returned are Tunisians and Moroccans. The Guarantor for the rights of the detained persons expressed concern about the high number of returns to Egypt (about 363 in 2019).

⁷⁸³ Pagella Politica, Salvini non parla più di rimpatri? I dati su quanto (non) ha fatto al governo, 17 February 2020.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
 - ❖ Refugee status 5 years
 - ❖ Subsidiary protection 5 years
 - ❖ Special protection 1 year

International protection permits for both refugee status and subsidiary protection are granted for a period of 5 years.⁷⁸⁴

The application is submitted to the territorially competent Questura of the place where the person has a registered domicile.

The main problem for the issuance of these permits is, often, the lack of a domicile (registered address) which must be provided to the police. Domicile has to be attached to the application submitted to the Questura, but some beneficiaries of international protection do not have a fixed address to provide. Even if it is possible to have a registered address at an organisation's address – a legal, not an actual domicile – not all Questuras accept an organization's address as domicile and also the organisations not always allow beneficiaries of protection to use their address.

The renewal of the residence permit for asylum is done by filling out the appropriate form and sending it through the post office. After the application for renewal has been submitted, people have to wait a long time up to several months to know the outcome of the request and to obtain the new permit.

According to the law, the residence permit for **subsidiary protection** can be renewed after verification that the conditions imposed in Article 14 of the Qualification Decree are still satisfied.⁷⁸⁵ The application is sent back to the administrative Territorial Commission that decided on the original asylum application and the Commission uses information provided by the police station, about any crimes committed during the person's stay in Italy, to deal with the case. In practice, these permits are usually renewed and the main reason why renewal may not happen is the commission of serious crimes.

Another frequent reason why these permits are not renewed is evidence that the refugee has had contacts with his or her embassy or has returned to the country of origin, even for a short period. Sometimes, on this basis, the non-renewal procedure has been initiated even for **subsidiary protection** beneficiaries but thanks to the legal defence the refusal has been cancelled. On 27 February 2019, the Civil Court of Naples accepted the appeal lodged by a Nigerian citizen to whom the Questura of Naples refused to issue the subsidiary protection status permit because she did not have a passport from her country of origin.⁷⁸⁶

Following the abolition of the humanitarian protection status upon entry into force of Decree Law 113/2018 on 5 October 2018 (see [Regular Procedure](#)), two-year residence permits for humanitarian protection reasons can no longer be renewed to those who had previously obtained such permit.

The government justified the abolition of humanitarian protection with the need to delimit the issuance of this residence permit, claiming to circumscribe the humanitarian reasons to certain hypotheses and introducing, for this purpose, some new residence permits that can be released directly by the Questuras

⁷⁸⁴ Article 23(1) and (2) Qualification Decree.

⁷⁸⁵ Article 23(2) Qualification Decree.

⁷⁸⁶ Civil Court of Naples, Decision 35170/2018, 27 February 2019.

in “special cases” (*casi speciali*): the permit for medical treatment,⁷⁸⁷ the permit for particular civil value,⁷⁸⁸ the permit for natural calamity.⁷⁸⁹

On the other hand, special protection (*protezione speciale*) permits have a one-year duration and allow access to the labour market but, contrary to permits for humanitarian protection, they cannot be converted into a labour residence permit. They can be renewed, subject to a favourable opinion by the Territorial Commission.⁷⁹⁰

The 2018 reform has provided for a transitional regime only for those who have been waiting for the issuance of the first residence permit for humanitarian protection or those to whom the Territorial Commissions had already granted, although not yet communicated, humanitarian protection before 5 October 2018. These persons receive a residence permit for “special cases” granted for two years and convertible into a labour residence permit.⁷⁹¹ Upon expiry, if not converted into work permits, the “special cases” permits are not renewed. The only option for the holders of such permit is then to obtain a “special protection” permit if they meet the conditions. However, as mentioned above, the latter is only valid for one year and cannot be converted into a work permit.

2. Civil registration

Beneficiaries of international protection or special protection can apply for registration.

Decree Law 113/2018 has repealed the rules governing civil registration (*iscrizione anagrafica*) of asylum seekers,⁷⁹² and stated that the residence permit issued to them does not constitute a valid title for registration at the registry office.⁷⁹³

Many organisations, including ASGI, have raised the discriminatory aspect of this rule which, by denying a subjective right to one single category of foreigners, asylum seekers, would violate the principle of equality enshrined by Article 3 of the Italian Constitution. In fact, the TUI, which was not amended, states that the registration of personal data and changes to such data for legally residing foreigners are carried out under the same conditions as Italian citizens.⁷⁹⁴

On 18 March 2019, the Civil Court of Florence upheld the appeal brought by an asylum seeker confirming his right to be registered at the registry office. According to the Court, even after the changes made by Decree Law 113/2018, the law cannot be interpreted in such a way as to exclude asylum seekers from the right to residence. Such an interpretation would violate the constitutional principle of equality and the prohibition of discrimination pursuant to Article 14 ECHR.⁷⁹⁵

⁷⁸⁷ Article 19(2)(d-bis) TUI, inserted by Article 1(1)(g) Decree Law 113/2018 and L 132/2018.

⁷⁸⁸ Article 42-bis TUI, inserted by Article 1(1)(q) Decree Law 113/2018 and L 132/2018.

⁷⁸⁹ Article 20-bis TUI, inserted by Article 1(1)(h) Decree Law 113/2018 and L 132/2018. It is issued when the country to which the foreigner should return has a situation of contingent and exceptional calamity that does not allow the return and the stay in safe conditions. The permit is valid for 6 months, only in national territory, and allow to work but it is not convertible into a work permit.

⁷⁹⁰ Article 32(3) Procedure Decree, as amended by Article 1(2)(a) Decree Law 113/2018 and L 132/2018.

⁷⁹¹ Article 1(9) Decree Law 113/2018 and L 132/2018.

⁷⁹² Article 5-bis Reception Decree was repealed by Article 13 Decree Law 113/2018 and L 132/2018.

⁷⁹³ Article 4(1-bis) Reception Decree, inserted by Article 13 Decree Law 113/2018 and L 132/2018.

⁷⁹⁴ Article 6(7) TUI.

⁷⁹⁵ Civil Court of Florence, Order 361/2019, 18 March 2019, available in Italian at: <https://bit.ly/2TZ9DTG>.

Later, many other Civil Courts upheld the appeals brought by asylum seekers. This was, among others, the case of Bologna,⁷⁹⁶ Genova,⁷⁹⁷ Prato,⁷⁹⁸ Lecce,⁷⁹⁹ Cagliari,⁸⁰⁰ Parma,⁸⁰¹ Catania,⁸⁰² Rome,⁸⁰³ Bergamo, Palermo,⁸⁰⁴ Bari.⁸⁰⁵

The Civil Court of Trento and the one of Turin rejected the appeal.

In 4 cases, the Civil Courts concerned⁸⁰⁶ sent the documents to the Constitutional Court to assess the compatibility of the foreclosed civil registration for asylum seekers with the principles of the Italian constitution and in particular with the principle of equality referred to in Article 3 of the Constitution. The decision is expected in 2020.

Some municipalities have openly declared they will refuse to apply the amendments to the law.⁸⁰⁷ The Mayor of Naples, **Campania**, for instance, has decided to register asylum seekers in the registry of temporarily resident persons.⁸⁰⁸

At the same time, the amended Article 5(3) of the Reception Decree states that asylum seekers have access to reception conditions and to all services provided by law in the place of domicile declared to Questura upon the lodging of the application or subsequently communicated to Questura in case of changes.⁸⁰⁹ As some provisions of social welfare are conditional upon registration at the registry office, the Reception Decree should allow access to all social assistance services to asylum seekers on the basis of their domicile only; by considering their domicile equivalent to residence. However, in 2019 and in early 2020, despite this provision, the lack of civil registration has led in many cases to deny asylum seekers access to social care services as public administration officials had not received instructions on how to guarantee these rights without civil registration.

2.1. Registration of child birth

The childbirth can be registered at hospital within 3 days from the birth, or later at the municipality, with the presentation of a valid identification document.

2.2. Registration of marriage

According to the Italian Civil Code, foreign citizens who intend to contract a marriage in Italy must present a certification of the absence of impediments to contracting the marriage (*nulla osta*), issued by their embassy.⁸¹⁰ **Refugees** can substitute the *nulla osta* with a UNHCR certification. This practice was established following a formal note sent on 9 April 1974 by the Ministry of Justice to the Ministry of Foreign Affairs, copying UNHCR.

⁷⁹⁶ Civil Court of Bologna, Order of 2 May 2019, available in Italian at: <https://cutt.ly/AyO5Nh2>.

⁷⁹⁷ Civil Court of Genova, Order of 22 May 2019, available in Italian at: <https://cutt.ly/eyO6y4y>.

⁷⁹⁸ Civil Court of Prato, Order of 28 May 2019, available in Italian at: <https://cutt.ly/kyO6QD3>.

⁷⁹⁹ Civil Court of Lecce, Order of 4 July 2019, available in Italian at: <https://cutt.ly/NyO6WG0>.

⁸⁰⁰ Civil Court of Cagliari, Order of 31 July 2019, available in Italian at: <https://cutt.ly/OyO6EhO>.

⁸⁰¹ Civil Court of Parma, Order of 2 August 2019, available in Italian at: <https://cutt.ly/ZyO6Rtn>.

⁸⁰² Civil Court of Catania, Order of 1 November 2019, available in Italian at: <https://cutt.ly/cyO6ToX>.

⁸⁰³ Civil Court of Rome, Order of 25 November 2019, available in Italian at: <https://cutt.ly/ryO6T39>.

⁸⁰⁴ Civil Court of Palermo, Order of 23 January 2020, available in Italian at: <https://cutt.ly/QyO6UWW>.

⁸⁰⁵ Civil Court of Bari, Order of 28 February 2020, available in Italian at: <https://cutt.ly/myO6GBM>.

⁸⁰⁶ Civil Courts of Ancona, Milan, Ferrara and Salerno. See ASGI, L'iscrizione anagrafica per i richiedenti asilo tra pronunce che riconoscono il diritto e rinvii alla Corte Costituzionale, available in Italian at: <https://cutt.ly/jyO6M57>.

⁸⁰⁷ Lettera 43, 'Il sindaco Orlando ha sospeso il decreto Salvini a Palermo', 2 January 2019, available in Italian at: <https://bit.ly/2F3kWRk>.

⁸⁰⁸ Repubblica Napoli, 'Migranti, de Magistris sfida il governo: "I richiedenti asilo nell'elenco temporaneo dell'anagrafe"', 15 January 2019, available in Italian at: <https://bit.ly/2TDuEEc>.

⁸⁰⁹ Article 5(3) Reception Decree, as amended by Article 13 Decree Law 113/2018 and L 132/2018.

⁸¹⁰ Article 116 Civil Code.

In order to obtain authorisation for the marriage, refugees must produce:

- A declaration (affidavit), signed before the Civil Court or before a notary and certified by two witnesses;
- The decision granting them refugee status;
- A valid residence permit; and
- A valid document of the future spouse.

The law does not provide a solution for beneficiaries of **subsidiary protection** who cannot request the *nulla osta* from their embassy with a view to registering a marriage. In this case, they can follow the procedure set out in the Article 98 of the Italian Civil Code, which entails a request for the marriage authorisation to the municipality and, after the refusal of the request for want of *nulla osta*, an appeal to the Civil Court, asking the Court to ascertain that there are no impediments to the marriage.

With a decree issued on February 2012, the Civil Court of Bari has authorised the marriage between a subsidiary protection holder and an asylum seeker even in the absence of authorisation from their country of origin. The Court observed that in relation to the certification needed for contracting a marriage, “refugees and subsidiary protection beneficiaries appear to have similar positions, but unjustifiably treated in a non-homogeneous way...”⁸¹¹

3. Long-term residence

Indicators: Long-Term Residence

- | | |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2019: | Not available |
|---|---------------|

According to Article 9(1-bis) TUI, refugees and subsidiary protection beneficiaries residing in Italy for at least 5 years can obtain a long-term resident status if they have an income equal or higher than the minimum income guaranteed by the State. The starting point to count the period of stay for beneficiaries of international protection is the date of submission of the application for international protection.⁸¹²

In case of vulnerabilities, the availability of a free dwelling granted by recognised charities and aid organisations, contributes figuratively toward the income to the extent of 15% of the amount.

Contrary to other third-country nationals, international protection beneficiaries do not have to prove the availability of adequate accommodation responding to hygiene and health conditions, nor to pass the Italian language test, before obtaining long-term residence.⁸¹³

The application to obtain the long-term residence permit is submitted to the Questura and must be issued within 90 days.⁸¹⁴ The issuance of the permit is subject to a contribution of €130,46.⁸¹⁵

4. Naturalisation

Indicators: Naturalisation

- | | |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship? | |
| ❖ Refugee status | 5 years |
| ❖ Subsidiary protection | 10 years |
| 2. Number of citizenship grants to beneficiaries in 2019: | Not available |

⁸¹¹ Civil Court of Bari, Decree of 7 February 2012, available in Italian at: <http://bit.ly/2GUUsJAR>.

⁸¹² Article 9(5-bis) TUI.

⁸¹³ Article 9(1-ter) and (2-ter) TUI.

⁸¹⁴ Article 9(2) TUI.

⁸¹⁵ Ministerial Decree of 8 June 2017.

Italian citizenship can be granted to **refugees** legally resident in Italy for at least 5 years.⁸¹⁶ Beneficiaries of **subsidiary protection** are instead subject to the general rule applied to third-country nationals: they can apply for naturalisation after 10 years of legal residence.⁸¹⁷

In both cases, the beneficiary's registration at the registry office must be uninterrupted. This is particularly challenging for beneficiaries of international protection, as the law does not ensure to them an accommodation after getting a protection status and, due to the precarious situation they come to face, they will be hardly able to maintain a residence. Moreover, following the entry into force of the Decree Law 113/2018, implemented by L 132/2018, registration at the registry can only be obtained after the grant of a protection status ([Civil Registration](#)).

The 2018 reform has also introduced the requirement of good knowledge of the Italian language of at least B1 level, attested through specific certifications or through the qualification in an educational institution recognised by the Ministry of Education.⁸¹⁸ Applications presented after 5 December 2018 without meeting this requirement have been rejected.⁸¹⁹

The amended Citizenship Act also provides that citizenship obtained by way of naturalisation can be revoked in the event of a final conviction for crimes committed for terrorist purposes.⁸²⁰ The law does not provide any guarantee to prevent statelessness.

Naturalisation procedure

The application is submitted online through the website of the Ministry of Interior, by attaching the extract of the original birth certificate and the criminal records certificate, issued in the country of origin and duly translated and legalised. The originals are submitted to the Prefecture of the place of residence.

Refugees can replace the documentation requested to prove their exact personal data and their legal position in the country of origin with a declaration (affidavit), signed before the Court and certified by two witnesses. This possibility is not provided by law for beneficiaries of **subsidiary protection**. However, on 13 November 2019, the Civil Court of Rome recognized a woman of Sierra Leone with subsidiary protection status, the right to produce self-signed certificates, instead of a criminal record and birth certificates from the country of origin, to request the Italian citizenship, assessing the risk she would have incurred by turning to the authorities of her country of origin.⁸²¹

The application is subject to the payment of a €250 (up from €200) contribution.

The evaluation of the citizenship application is largely discretionary. As consistently confirmed by the case law of the Administrative Courts,⁸²² the denial may be motivated by the lack of knowledge of Italian language and insufficient social inclusion in the national context. Even if not provided by law, as evidence of social inclusion, it is usually requested that the income of the last 3 years be equal or higher than the minimum income guaranteed by the State.

Decree Law 113/2018, implemented by L 132/2018 has extended the time limit for the completion of the procedure from 730 days to 48 months from the date of application.⁸²³ As before, this is a non-mandatory time limit. The new time limit applies to all pending procedures. The Administrative Court of Lazio decided

⁸¹⁶ Articles 9 and 16 L 91/1992 (Citizenship Act).

⁸¹⁷ Article 9(1)(f) Citizenship Act.

⁸¹⁸ Article 9.1 Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

⁸¹⁹ Ministry of Interior Circular No 666 of 28 January 2019.

⁸²⁰ Article 10-bis Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

⁸²¹ Civil Court of Rome, decision 21785 of 13 November 2019

⁸²² See e.g. Administrative Court of Lazio, Decision 8967/2016, 2 August 2016.

⁸²³ Article 19-ter Citizenship Act, inserted by Article 14 Decree Law 113/2018 and L 132/2018.

that it also applies to cases already brought to Court before the date of coming into force of the Decree Law, since the Decree Law is silent on the date of entry into force.⁸²⁴

The person concerned is notified about the conclusion of the procedure by the Prefecture. In case of approval, he or she is invited to give, within 6 months, the oath to be faithful to the Italian Republic and to observe the Constitution and the laws of the State. In case of denial, he or she can appeal to the Administrative Court.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

5.1. Grounds for cessation

According to Article 9 of the Qualification Decree, a third-country national shall cease to be a **refugee** if he or she:

- (a) Has voluntarily re-availed himself or herself of the protection of the country of nationality;
- (b) Having lost his nationality, has voluntarily re-acquired it;
- (c) Has acquired Italian nationality, or other nationality, and enjoys the protection of the country of his or her new nationality;
- (d) Has voluntarily re-established him or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
- (e) Can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality; or
- (f) In the case of a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

The change of circumstances which led to the recognition of protection is also a reason for the cessation of **subsidiary protection**.⁸²⁵

Decree Law 113/2018 has introduced a new provision to the Qualification Decree according to which any return of a beneficiary of international protection to the country of origin which is not justified by serious and proven reasons is relevant for the assessment of cessation of international protection.⁸²⁶

In both cases, the change must be of non-temporary nature and there must not exist serious humanitarian reasons preventing return to the country of origin.⁸²⁷ Although the law provides that protection may cease in these cases, this does not happen in practice. The Qualification Decree states that, even when the situation in the country of origin has changed, the beneficiary of international protection can invoke

⁸²⁴ Administrative Court of Lazio, Decision 1323/2019.

⁸²⁵ Article 15(1) Qualification Decree.

⁸²⁶ Articles 9(2-ter) and 15(2-ter) Qualification Decree, inserted by Article 8 Decree Law 113/2018 and L 132/2018.

⁸²⁷ Articles 9(2) and 15(2) Qualification Decree.

compelling reasons arising out of previous persecution for refusing to avail him or herself of the protection of the country of nationality not to be returned.⁸²⁸

5.2. Cessation procedure

The CNDA is responsible for deciding on cessation.⁸²⁹ According to the law, cessation cases of **refugees** have to be dealt individually.⁸³⁰ No specific groups of beneficiaries in Italy specifically face cessation of international protection but, according to CNDA statistics most cessation decisions concern nationals of Pakistan and Mali.

However, several cases of cessation of **subsidiary protection** have been started by the CNDA in 2017 and 2018 regarding people who were found at airports or borders with stamps on their passports attesting they had returned to their country of origin. The new provision introduced by Decree Law 113/2018 on the relevance of any return of the beneficiary to the country of origin for cessation, will likely result in automatically initiating the cessation procedure in such cases.

The person concerned must be informed in writing of the specific reasons why the Commission considers whether to review of his or her legal status. The person has the right to take part in the proceedings, to request to be heard and to produce written documentation, but has not access to free legal assistance. The CNDA sets a hearing only if it is deemed as necessary. If the person, duly notified, fails to appear, the decision is made on the basis of the available documentation.

The Commission should decide within 30 days after the interview or after the expiration of time allowed for sending documents. An appeal against the decision can be lodged before the competent Civil Court, within 30 days from notification. The appeal has automatic suspensive effect and follows the same rules as in the [Regular Procedure: Appeal](#).⁸³¹

The person who has lost refugee status or subsidiary protection may be granted a residence permit on other grounds, according to the TUI. The CNDA can approve an international protection status different from the status ceased or, if it considers that the foreigner can not be expelled nor refouled, it can transmit the documents to the *Questura* for the issuance of a residence permit of special protection.⁸³² If the permit of stay for refugee status or subsidiary protection expires in the course of proceedings before the CNDA, it is renewed until the Commission's decision.⁸³³

In practice, cessation is not applied on the basis of changed circumstances. The CNDA starts cessation procedures after receiving information from the *Questura* or the Territorial Commission that the beneficiary has returned to his or her country of origin. Available statistics from the CNDA refer to the following number of cessation and withdrawal procedures:

Cessation and withdrawal statistics			
	1 Jan – 31 Dec 2017	1 Jan – 31 Dec 2018	1 Jan – 30 Apr 2019
Protection maintained	107	94	53
Cessation	216	252	39
Withdrawal	47	42	15
Total decisions	370	388	107

Source: CNDA, 21 May 2019.

⁸²⁸ Articles 9(2-bis) and 15(2-bis) Qualification Decree.

⁸²⁹ Article 5 Procedure Decree; Article 13 PD 21/2015.

⁸³⁰ Article 9(1) Qualification Decree.

⁸³¹ Article 35-bis(3) Procedure Decree.

⁸³² Article 33(3) Procedure Decree, referring to the amended Article 32(3).

⁸³³ Article 33 Procedure Decree; Article 14 PD 21/2015.

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice?
 Yes With difficulty No

Cases of withdrawal of international protection are provided by Article 13 of the Qualification Decree for **refugee status** and by Article 18 of the same Decree for **subsidiary protection**.

Both provisions state that protection status can be revoked when it is found that its recognition was based, exclusively, on facts presented incorrectly or on their omission, or on facts proved by false documentation.

Withdrawal is also imposed when, after the recognition, it is ascertained that the status should have been refused to the person concerned because:

- (a) He or she falls within the exclusion clauses.

Decree Law 113/2018, implemented by L 132/2018, has extended the list of crimes triggering exclusion and withdrawal of international protection, including violence or threat to a public official; serious personal injury; female genital mutilation; serious personal injury to a public official during sporting events; theft if the person wears weapons or narcotics, without using them; home theft.⁸³⁴

- (b) There are reasonable grounds for regarding him or her as a danger to the security of Italy or, having been convicted by a final judgment of a particularly serious crime, he or she constitutes a danger for the public order and public security.

The withdrawal of a protection status,⁸³⁵ and the appeals against it,⁸³⁶ are subject to the same procedure foreseen for **Cessation** decisions.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
 Yes No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?
 Yes No
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? Yes No

⁸³⁴ Articles 12(1)(c) and 16(d-bis) Qualification Decree, as amended by Article 8 Decree Law 113/2018 and L 132/2018.

⁸³⁵ Article 33 Procedure Decree; Article 14 PD 21/2015.

⁸³⁶ Article 19(2) LD 150/2011.

Since the entry into force of LD 18/2014, the family reunification procedure governed by Article 29bis TUI, previously issued only for refugees, is applied to both **refugees** and beneficiaries of **subsidiary protection**.

Beneficiaries can apply at Prefecture as soon as they obtain the electronic **Residence Permit** – that means several months in some regions – and there is no maximum time limit for applying for family reunification.

Contrary to what is provided for other third-country nationals,⁸³⁷ beneficiaries of international protection do not need to demonstrate the availability of adequate accommodation and a minimum income. They are also exempted from subscribing a health insurance for parents aged 65 and over.

Beneficiaries may apply for reunification with:⁸³⁸

- (a) Spouses aged 18 or over, that are not legally separated;
- (b) Minor children, including unmarried children of the spouse or born out of wedlock, provided that the other parent has given his or her consent;
- (c) Adult dependent children, if on the basis of objective reasons, they are not able to provide for their health or essential needs due to health condition or complete disability;
- (d) Dependent parents, if they have no other children in the country of origin, or parents over the age of 60 if other children are unable to support them for serious health reasons.

Where a beneficiary cannot provide official documentary evidence of the family relationship, the necessary documents are issued by the Italian diplomatic or consular representations in his or her country of origin, which makes the necessary checks at the expense of the person concerned. The family relationship can also be proved by other means, including the DNA test, and through UNHCR involvement. The application cannot be rejected solely for lack of documentation.

2. Status and rights of family members

According to the law,⁸³⁹ family members who do not have an individual right to international protection, have the same rights recognised to the sponsor. Once in Italy, they get a residence permit for family reasons,⁸⁴⁰ notwithstanding whether they were previously irregularly present.⁸⁴¹ These provisions do not apply to family members who should be excluded from the international protection.⁸⁴²

Minor children, present with the parent at the moment of the asylum application, also obtain the same status recognised to the parent.⁸⁴³

C. Movement and mobility

1. Freedom of movement

Refugees and beneficiaries of subsidiary protection, like asylum seekers, can freely circulate within the Italian territory, without prejudice to the limits established by Article 6(6) TUI, for the stay in municipalities or localities affecting the military defence of the State. They can also settle in any city if they can provide for themselves.

⁸³⁷ Article 29-bis TUI, citing Article 29(3) TUI.

⁸³⁸ Article 29(1) TUI.

⁸³⁹ Article 22 Qualification Decree.

⁸⁴⁰ Article 30 TUI.

⁸⁴¹ Article 30 TUI.

⁸⁴² Occurring cases governed by Articles 10 and 16 Qualification Decree.

⁸⁴³ Article 6(2) Procedure Decree; Article 31 TUI.

If accommodated in a government reception centre (see [Reception Conditions: Freedom of Movement](#)), they could be requested to return to the structure by a certain time, in the early evening. More generally, in order not to lose their accommodation place, they are not allowed to spend days out of the structures without authorisation.

Once obtained a place in a SPRAR project, beneficiaries have to accept it even if it implies to be moved to a different city. If they refuse the transfer, they have to leave the reception system definitively.

2. Travel documents

Travel documents for beneficiaries of international protection are governed by Article 24 of the Qualification Decree.

For **refugees**, the provision refers to the 1951 Refugee Convention and states that travel documents (*documenti di viaggio*) issued for refugees are valid for 5 years, renewable. They could be refused for serious reasons related to public order and national security. These are usually automatically given to refugees.

Beneficiaries of subsidiary protection can get a “travel permit” (*titolo di viaggio*), as opposed to a travel document (*document di viaggio*), explaining in a note to the *Questura* the reasons why they cannot ask or obtain a passport from their country’s embassy. They can get a travel document if they have no representative authorities of their country in Italy.

Therefore, they can invoke reasons linked to their status and to their asylum stories. However, the Council of State has clarified in a case on travel permits for **beneficiaries of humanitarian protection** that the reasons to be adduced are not implicit in the reasons why the protection has been recognised and that it is not enough to generally declare that, because of the problems faced in the country of origin, it is impossible to contact the diplomatic authorities of that country in Italy.⁸⁴⁴

Beneficiaries can also invoke reasons linked to the procedures applied by their embassies or to the lack of documentation requested, such as original identity cards or birth certificates. The *Questura* verifies whether the person in fact is not in possession of these documents, looking at the documents he or she provided during the asylum procedure. In some cases, immigration offices contact the embassies asking confirmation of the reported procedure.

The applicant assumes responsibility, under criminal law, for his or her statements. Evidence, such as a written note from the embassy refusing a passport, is not required but helpful if provided.

The *Questura* can reject the application if the reasons adduced are deemed unfounded or not confirmed by embassies. According to the law, rejection can also be decided in case of doubts on the person’s identity, but administrative case law has affirmed that it is contradictory to deny, on this basis, the travel document to someone who has obtained a residence permit on international protection grounds.⁸⁴⁵

On 10 October 2019 the Administrative Court of Sardinia accepted an appeal lodged against the refusal of the *Questura* of Cagliari to issue a travel document to a Malian citizen, subsidiary protected, whose embassy had refused to issue a passport due to the lack of some documents. The Court considered the doubts of the *Questura* regarding the applicant’s identity unfounded as he had corrected his personal data during the hearing before the competent Territorial Commission.⁸⁴⁶

⁸⁴⁴ Council of State, Section III, Decision No 451, 4 February 2016, available at: <http://bit.ly/2k5xcFS>.

⁸⁴⁵ Administrative Court of Lazio, Decision 11465/2015, 30 September 2015, available at: <http://bit.ly/2kgkOFB>.

⁸⁴⁶ Administrative Court of Sardinia, interim decision 260/2019, 10 October 2019.

The same Court issued a similar decision on 26 February 2020, again ordering to the Questura of Cagliari to issue a travel document to a subsidiary protected who could not get a passport from his embassy.⁸⁴⁷

In case of rejection, the beneficiary concerned can appeal to the Administrative Court.

However, on 23 February 2020, the Civil Court of Florence recognized its jurisdiction over an appeal filed against the delay in issuing a travel document to a refugee. The Court ordered the Questura of Florence to release the travel document requested by the applicant two years earlier, considering the right to obtain the travel document an individual right of international protected, not a mere legitimate interest. Therefore, the Court found the case correctly attributed to the jurisdiction of an ordinary court, meaning "natural judge" of individual rights.⁸⁴⁸

Acting against the widespread practice of some Questura not to respond to applications for travel documents submitted by holders of subsidiary protection, an ASGI lawyer has lodged an appeal against the administrative silence of the Questura of Turin, **Piedmont**. The case concerned a Senegalese holder of humanitarian protection but the rules applied and referred to by the Administrative Court of Piedmont which upheld the appeal are the same as for subsidiary protection holders.⁸⁴⁹ The Court accepted the appeal and ordered the Questura to adopt a reasoned decision on the request within 30 days.⁸⁵⁰

Italian law does not prohibit beneficiaries of **subsidiary protection** from using the Italian travel permit to go back to their country of origin.

D. Housing

Indicators: Housing

For how long are beneficiaries entitled to stay in SIPROIMI?	6 months
Number of beneficiaries staying in reception centres as of 31 December 2019	24,388 ⁸⁵¹

In Italy, beneficiaries of international protection face a severe lack of protection concerning accommodation. The reform of the reception system by Decree Law 113/2018, implemented by L 132/2018, provides a clear distinction between asylum seekers, accommodated of first reception centres and CAS, and beneficiaries of international protection, who have access to second-line reception.

Once more, against the backdrop of another reform of the reception system, ASGI claims that mainstreaming reception into the obligations of municipalities in the context of social services, in line with the Italian constitutional settlement, would have been a better solution.⁸⁵²

⁸⁴⁷ Administrative Court of Sardinia, interim decision 44/2020, 26 February 2020.

⁸⁴⁸ Civil Court of Florence, decision of 23 February 2020.

⁸⁴⁹ Article 24(2) Qualification Decree.

⁸⁵⁰ Administrative Court of Piedmont, Decision 34/2018, 8 January 2018.

⁸⁵¹ Ministry of Interior, Cruschetto Statistico giornaliero, 31 December 2019, available in Italian at: <https://cutt.ly/ZyO67j4>.

⁸⁵² According to Article 118 of the Italian Constitution, administrative functions are attributed to the municipalities. See ASGI, *Manifeste illegittimita' costituzionali delle nuove norme concernenti permessi di soggiorno per esigenze umanitarie, protezione internazionale, immigrazione e cittadinanza previste dal decreto-legge 4 ottobre 2018, n. 113*, 15 October 2018, available in Italian at: <https://bit.ly/2W4am3n>. For a more detailed analysis, see Gianfranco Schiavone, 'Le Prospettive Di Evoluzione Del Sistema Unico Di Asilo Nell'unione Europea E Il Sistema Di Accoglienza Italiano. Riflessioni Sui Possibili Scenari' in Fondazione Migrantes, *Il diritto d'asilo, minori rifugiati e vulnerabili senza voce, Report 2017*, February 2017.

1. Stay in first reception centres and CAS

Asylum seekers who are granted international protection can later access second-line reception, discussed below. However, there are no longer provisions dealing with the transition from first reception for asylum seekers to second-line reception for beneficiaries. As a consequence, since the coming into force of Decree Law 113/2018 on 5 October 2018, it has become even more difficult than before to obtain authorisation from the Prefecture to stay in CAS or first reception centres once a protection status has been granted.

A protection status does not allow the holder to remain in first reception facilities or CAS. This creates a protection gap in practice, given the scarcity of places in the SIPROIMI. Already before the reform, on the basis of a strictly literal interpretation of this Decree some public administration offices considered that material conditions may immediately cease after the status recognition.

Although depending on the discretionary decisions of the responsible Prefectures and on bureaucratic delays, beneficiaries of international protection, after obtaining protection status, could be allowed to stay in the reception centre a few months, a few days, or even just one day after the notification.

The situation worsened after the coming into force of the Decree Law 113/2018 as even those Prefectures – such as the one of Trieste – which allowed accommodation for a long period after the status notification - informed the organizations involved in managing accommodation centres that beneficiaries will be only allowed to stay in reception centres until obtaining the electronic residence permit.

The Decree of 18 November 2019 gave a legal basis for the withdrawal of accommodation for beneficiaries but only for those accommodated in the Siproimi system.

Currently, most of the Prefectures only allow beneficiaries to wait for the issuance of electronic residence permit.

These situations have lead beneficiaries of international protection to face risks of destitution and homelessness. (see informal settlements).

2. Accommodation in SIPROIMI

Second-line reception is provided through the System for the Protection of Refugees and Unaccompanied Minors (*Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati*, SIPROIMI), the former SPRAR established by L 189/2002. SIPROIMI is a publicly funded network of local authorities and NGOs which accommodates unaccompanied children, also under some conditions after the coming of age (see Reception of Unaccompanied Children), beneficiaries of international protection and people who have obtained some other residence permits for specific reasons.⁸⁵³

It is formed by small reception structures where assistance and integration services are provided. SIPROIMI centres are run by local authorities and together with civil society actors such as NGOs. According to the Ministry of Interior Decree of 18 November 2019, the accommodation centres ensure interpretation and linguistic-cultural mediation services, legal counselling, teaching of the Italian language and access to schools for minors, health assistance, socio-psychological support in particular to vulnerable persons, training and re-training, support at providing employment, counselling on the services

⁸⁵³ These categories of migrants are: victims of trafficking, foreigners who have obtained a residence permit for medical treatment victims of domestic violence; people who have obtained a residence permit because of a natural calamity in their country of origin; victims of particular exploitation; and holders of a residence permit obtained thanks to acts of particular civil value.

available at local level to allow integration locally, information on (assisted) voluntary return programmes, as well as information on recreational, sport and cultural activities.⁸⁵⁴

In contrast to the large-scale buildings provided in Governmental centres (former CARA and CDA) CPSA and CAS, SIPROIMI is comprised of 809 smaller-scale decentralised projects as of January 2020.⁸⁵⁵ The projects funded a total of 31,284 accommodation places.⁸⁵⁶ This is a decrease of the 875 projects with 35,650 places that existed at the beginning of 2019. Of those, 155 reception projects with 4,003 financed places are dedicated to unaccompanied children, while 45 reception projects with 663 financed places are destined to persons with mental disorders and disabilities.

By Decree issued on 18 November 2019⁸⁵⁷, the Ministry of Interior adopted new Guidelines for the Siproimi system, replacing the ones included in the Decree issued on 10 August 2016 and filling the void created after that the reform occurred in 2018 had cancelled any reference to the former SPRAR from the reception decree, separating the accommodation of asylum seekers from the one of beneficiaries of international protection.

The Decree also regulates the new form of financing mechanism, which takes place annually, and provides for an advance to be paid by the local authority and for a partial interim payment after reporting what has already been received.⁸⁵⁸

The Moi Decree of 18 November 2019 states that reception in Siproimi lasts six months.⁸⁵⁹

Only in some cases, indicated by the Decree, the reception conditions can be extended with a total of six months, with adequate motivation and prior authorization. In particular, the decree allows the extension for the conclusion of expiring integration paths, or for extraordinary circumstances related to health reasons. Furthermore, the extension of six months could be authorized in case of vulnerabilities, as indicated in Article 17 of the Reception decree. In this case the request for extension must contain the explicit indication and evidence of the vulnerability.

A further six months can be granted in case of persistent serious health reasons or to allow the completion of the school year.⁸⁶⁰

The Moi Decree also dictates specific rules for the withdrawal of reception conditions which can be ordered in the event of:

- a) serious or repeated violation of the house rules, including damages to the facilities or or serious and violent behaviour;
- b) unjustified failure to present in the structure identified by the Central Service;
- c) unjustified abandonment of the facility beyond 72 hours, without prior authorization from the local authority;
- d) application to the beneficiary of the measure of pre-trial detention in prison.

The withdrawal of the reception measures is disposed by the local authority.⁸⁶¹

Following the Court of Cassation decision on non-retroactive applicability of the repeal of humanitarian protection to those who had applied for asylum before the entry into force of the Decree Law 113/2018 (4 October 2018, converted by L 132/2018) some Administrative Tribunals considered the reform provided

⁸⁵⁴ Article 34 Moi Decree 18 November 2019.

⁸⁵⁵ SIPROIMI, *I numeri dello Sprar/Siproimi*, January 2020, available at <https://www.sprar.it/i-numeri-dello-sprar>.

⁸⁵⁶ *Ibid.*

⁸⁵⁷ Decree of the Ministry of Interior, 18 November 2019, published on 18 November 2019 on Gazzetta Ufficiale, available in Italian at: <https://cutt.ly/ayPqqeE>.

⁸⁵⁸ Article 28 attachment A to the Moi decree 18 November 2019.

⁸⁵⁹ Article 38 Moi Decree 18 November 2019.

⁸⁶⁰ Article 39 Moi Decree 18 November 2019.

⁸⁶¹ Article 40 Moi Decree 18 November 2019.

by L 132/2018 not producing retroactive effects also for the accommodation rights of humanitarian protection holders. This was the case of the Administrative Tribunal of Lombardy – Brescia⁸⁶² and of the Administrative Tribunal of Veneto.⁸⁶³

Humanitarian protected who had appealed against the access refusal could therefore enter the Siproimi accommodation system.

On 11 June 2019, the Administrative Tribunal of Lazio – Roma provisionally ordered the Ministry of Interior to review the refusal to admit a Nigerian woman with her little daughter, holders of humanitarian protection, to the Siproimi system. The case has not yet been finally discussed because of the suspension of hearings due to Covid-19. The discussion is now scheduled for June 2020.

Both the Administrative Tribunal of Basilicata and the Administrative Tribunal of Calabria-Catanzaro which initially affirmed the right of access to Siproimi for humanitarian protected,⁸⁶⁴ later changed their orientation on the matter, observing that the Reception Decree (Article 14) did not provide – even before the law reform- for any reception right after the recognition of a kind of protection.⁸⁶⁵

Closing a particularly politically tense affair, on 21 May 2019 the Administrative Court of Calabria canceled the provision through which the Ministry of Interior had, in October 2018, revoked the SPRAR Project from the Municipality of Riace, suddenly interrupting a ten-year reception system. According to the Ministry, the Municipality of Riace managed the SPRAR reception system outside the legal rules. The Court, while recognizing some managerial inefficiencies of the project, declared the Ministry's provision unlawful for violating the legal rules of the proceeding, as the Ministry had not contested the specific violations deemed nor indicated a deadline for each of them to eliminate them, in the case were founded.⁸⁶⁶ At the time of writing no other Siproimi accommodation projects were re-started in Riace.

3. Access to public housing

Refugees and beneficiaries of subsidiary protection have a right to access public housing units under the same conditions as nationals.⁸⁶⁷ The plan focused on accompaniment towards housing solutions for both those who leave CAS and those who leave SIPROIMI centres, and highlights the importance of starting measures for residence in time in order for beneficiaries to access public housing within the limits of availability in each region.

In some regions, access to public housing is subject to a minimum residence requirement on the national territory. In **Friuli-Venezia Giulia**, for example, access has been limited to those who can prove 5 years of uninterrupted residence in the region. This can represent a further obstacle for beneficiaries of international protected as **Civil Registration** at the registry office can only be obtained after the recognition of a protection status.

⁸⁶² Administrative Tribunal of Lombardy – Brescia, 10 July 2019, decision 649/2019, available in Italian at: <https://cutt.ly/jyPqraW>; similarly, Administrative Tribunal of Lombardy – Brescia decisions n. 676/2019, n. 453/2019, n. 406/2019, n. 407/2019.

⁸⁶³ Administrative Tribunal of Veneto, 20 December 2019, decision 1395/2019, available in Italian at: <https://cutt.ly/RyPqyA2>.

⁸⁶⁴ Administrative Tribunal of Basilicata, 11 March 2019, decisions 274/2019 and 275/2019, available in Italian at: <https://cutt.ly/eyPqufu>; Administrative Tribunal of Calabria -Catanzaro, 31 July 2019, decision 1492/2019 available in Italian at: <https://cutt.ly/3yPquBb>.

⁸⁶⁵ Administrative Tribunal of Basilicata, 18 September 2019, decision 717/2019, available in Italian at: <https://cutt.ly/lyPqogf>; Administrative Tribunal of Calabria -Catanzaro, 11 September 2019, decision 1639/2019, available in Italian at: <https://cutt.ly/0yPqo6V>.

⁸⁶⁶ See ASGI: TAR Calabria: annullato provvedimento di revoca al Progetto Riace. ASGI: una vittoria del diritto, 22 May 2019, available in Italian at: <https://cutt.ly/qyPqair>.

⁸⁶⁷ Article 29 Qualification Decree; Article 40(6) TUI.

E. Employment and education

1. Access to the labour market

The residence permit issued to refugees and to subsidiary protection beneficiaries allows access to work and even to public employment, with the only permissible limit of positions involving the exercise of public authority or responsibility for safeguarding the general interests of the State.⁸⁶⁸ However, the Navigation Code states that enrolment of cadets, students and pupils is reserved only for EU or Italian citizens, a rule that appears to be discriminatory.⁸⁶⁹

Beneficiaries are entitled to the same treatment as Italian citizens in matters of employment, self-employment, subscription to professional bodies, vocational training, including refresher courses, for training in the workplace and for services rendered by employment centres.

With an amendment introduced to the budget law in December 2017, tax incentives are provided for social cooperatives, which will recruit beneficiaries of international protection with a permanent contract in 2018.⁸⁷⁰

According to the law, the Prefects, in agreement with the Municipalities, promote any initiative for the voluntary involvement of beneficiaries of international protection in activities of social utility in favour of local communities. The activities are unpaid and financed by EU funds.⁸⁷¹

2. Access to education

According to the law, minors present in Italy have the right to education regardless of their legal status. They are subject to compulsory education and they are enrolled in Italian schools under the conditions provided for Italian minors. The enrolment can be requested at any time of the school year.⁸⁷²

The law distinguishes between minors under the age of 16 and over 16.

- Minors under 16 are subject to compulsory education and they are enrolled in a grade corresponding to their actual age. Taking into account the curriculum followed by the pupil in the country of origin and his or her skills, the Teachers' Board can decide otherwise, providing the assignment to the class immediately below or above the one corresponding to the minor's age.⁸⁷³
- Minors over 16 and no longer subject to compulsory education are enrolled if they prove proper self-preparation on the entire prescribed programme for the class they wish to follow.⁸⁷⁴

Current legislation does not allow the establishment of special classes for foreign students and the Circular of the Ministry of Education of 8 January 2010 maintains that the number of non-nationals in school classes should be limited to 30%.

Schools are not obliged to provide specific language support for non-national students but, according to the law, the Teachers' Board defines, in relation to the level of competence of foreign students, the necessary adaptation of curricula and can adopt specific individualised or group interventions to facilitate learning of the Italian language.

⁸⁶⁸ Article 25 Qualification Decree.

⁸⁶⁹ Article 119 Navigation Code.

⁸⁷⁰ Royal Decree 327 of 30 March 1942. See Redattore Sociale, 'Rifugiati equiparati a categorie protette: incentivi a cooperative che li assumono', 19 January 2018, available in Italian at: <http://bit.ly/2FSIz5o>.

⁸⁷¹ Article 22-bis Reception Decree, as amended by Article 8 Decree Law 13/2017 and L 46/2017.

⁸⁷² Article 38 TUI; Article 45 PD 394/1999.

⁸⁷³ Article 45(2) PD 394/1999.

⁸⁷⁴ Article 192(3) LD 297/1994.

As underlined by the Ministry of Education in guidelines issued on February 2014, special attention should be paid to Italian language labs. The Ministry observes that an effective intervention should provide about 8-10 hours per week dedicated to Italian language labs (about 2 hours per day) for a duration of 3-4 months.⁸⁷⁵

The Qualification Decree also specifies that minors holding refugee status or subsidiary protection status have access to education of all levels, under the same procedures provided for Italian citizens,⁸⁷⁶ while adult beneficiaries have the right of access to education under the conditions provided for the other third-country nationals.

International protection beneficiaries can require the recognition of the equivalence of the education qualifications.

F. Social welfare

Article 27 of the Qualification Decree specifies that beneficiaries of international protection are entitled to equal treatment with Italian citizens in the area of health care and social security.⁸⁷⁷

Social security contributions in Italy are mainly provided by the National Institute of Social Security (*Istituto Nazionale di Previdenza Sociale*, INPS), the National Institute for Insurance against Accidents at Work (*Istituto Nazionale Assicurazione Infortuni sul Lavoro*, INAIL), municipalities and regions.

The provision of social welfare is not conditioned on residence in a specific region but in some cases is subject to a minimum residence requirement on the national territory. This is namely the case for income support (*Reddito di Cittadinanza*), to be paid from 1 April 2019, which is subject to 10 years of residence on the national territory out of which at least 2 years' uninterrupted residence.⁸⁷⁸

This can entail serious obstacles for beneficiaries of international protection in practice, more so after the entry into force of Decree Law 113/2018, according to which the registration at the registry office can only be obtained after the grant of a protection status (see [Civil Registration](#)).

G. Health care

Article 27 of the Qualification Decree specifies that beneficiaries of international protection are entitled to equal treatment with Italian citizens in the area of health care and social security.

Like asylum seekers, beneficiaries of international protection have to register with the national health service.⁸⁷⁹ They have equal treatment and full equality of rights and duties as Italian nationals concerning the obligation to pay contributions and the assistance provided in Italy by the national health service.

Registration is valid for the duration of the residence permit and it does not expire in the renewal phase of the residence permit.⁸⁸⁰ As highlighted by MSF in March 2016, problems related to the lack of accommodation and to the lack of a domicile for beneficiaries of international protection also affect the exercise of their right to medical assistance, as the renewal of the health card depends on the renewal of

⁸⁷⁵ For more information, see ASGI, *Minori stranieri e diritto all'istruzione e alla formazione professionale. Sintesi della normativa vigente e delle indicazioni ministeriali*, ASGI, March 2014, available at <http://bit.ly/2kHi5Sf>.

⁸⁷⁶ Article 26 Qualification Decree.

⁸⁷⁷ Article 27 Qualification Decree.

⁸⁷⁸ Article 2(1)(a)(2) Decree Law 4/2019.

⁸⁷⁹ Article 34 TUI; Article 16 PD 21/2015; Article 21 Reception Decree.

⁸⁸⁰ Article 42 PD 394/1999.

the permit of stay and many health services (such as the choice of a general doctor) are connected with the place of domicile given for the renewal of the residence permit.⁸⁸¹

1. Contribution to health spending

Similar to asylum seekers after their right to work is provided, in some regions – such as **Lazio** and **Tuscany**, beneficiaries of international protection are no longer exempted from contribution to health spending (*partecipazione alla spesa sanitaria*), also known as “sanitary ticket”, because they are considered inactive and not unemployed. In other regions such as **Piedmont** and **Lombardy**,⁸⁸² the exemption is extended until asylum seekers do actually find a job. However, only a few regions such as **Friuli-Venezia Giulia** and **Apulia** apply the same principle to beneficiaries.

On 18 April 2016, ASGI and other NGOs sent a letter to the Ministry of Health, asking it to give effect to Article 17(4) of the recast Reception Conditions Directive, according to which asylum seekers may be required to contribute to the costs for health care only if they have sufficient resources, for example if they have been working for a reasonable period of time. ASGI also asked the Ministry to consider that, following the adoption of the LD 150/2015 for granting the right to exemption from participation in health spending, distinctions can no longer be drawn between unemployed and inactive persons.⁸⁸³ On 9 May 2016, the Ministry of Health replied to have involved the Ministry of Economy and the Ministry of Labour and Social Policy in order to achieve a uniform interpretation of the aforementioned rules.

While waiting for the Government to take an official position on the matter, ASGI lawyers have lodged an appeal against the refusal to exempt an Iraqi female refugee from contribution to health spending on the ground that she was inactive and not unemployed, since she was entitled to access the labour market. The Civil Court of Rome upheld the appeal and stated that, after the entry into force of LD 150/2015, the distinction between unemployed and inactive persons is no longer valid. Therefore even beneficiaries of international protection are entitled to the aforementioned exemption.⁸⁸⁴

In 2018, the Civil Court of Rome confirmed the previous decision and upheld the appeal filed by a Sudanese citizen with subsidiary protection status, reaffirming the right to the exemption from the “sanitary ticket” provided to the benefit of people without employment and income.⁸⁸⁵

Unfortunately, the law is not equally applied across the national territory. In 2018, ASGI filed numerous appeals in **Lombardy** against the denial of the right to exemption for inactive beneficiaries of international protection. In a ruling of 22 October 2018, the Court of Appeal of Milan upheld the appeal stating that under the law it is not possible to make any distinction between those who have already had a job and who lost it (unemployed) and those who have never had it such a, for example, asylum seekers and refugees (inactive people).⁸⁸⁶ The Civil Court of Brescia ruled on 31 July 2018 in a similar way.⁸⁸⁷

As the problem persisted in 2019, the Court of Appeal of Venice has once again clarified that the distinction between inactive and unemployed cannot be placed for the purpose of access to health services.⁸⁸⁸

⁸⁸¹ MSF, *Fuori campo: Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale*, March 2016, available in Italian at: <http://bit.ly/1S5IHGh>.

⁸⁸² See Note of Piedmont Region, Health Office, 4 March 2016.

⁸⁸³ Article 19 LD 150/2015 states that “unemployed” are workers who declare, in electronic form, their immediate availability to exercise work activities.

⁸⁸⁴ Civil Court of Rome, Decision 33627/16, 17 February 2017, available at: <http://bit.ly/2nIv0HF>.

⁸⁸⁵ Civil Court of Rome, Decision 5034/2018, 13 June 2018.

⁸⁸⁶ Court of Appeal of Milan, Decision 1626/2018, 22 October 2018, available at: <https://bit.ly/2uTd5kx>.

⁸⁸⁷ Civil Court of Brescia, Order 5185/2018, 31 July 2018, available in Italian at: <https://bit.ly/2GdgbVJ>.

⁸⁸⁸ Court of Appeal of Venice, decision 15/2020 of 27 April 2020.

2. Specialised treatment

To implement Article 27(1-bis) of the Qualification Decree, the Ministry of Health published on 22 March 2017 the Guidelines for the planning of assistance and rehabilitation as well as for treatment of psychological disorders of refugees and beneficiaries of international protection victims of torture, rape or other serious forms of psychological, physical or sexual violence.⁸⁸⁹ The Guidelines, adopted by the Ministry of Health by a Decree issued on 3 April 2017, specify that they also apply to asylum seekers.

The Guidelines highlight the importance of early detection of such vulnerable cases in order to provide probative support for the asylum application, to direct the person to appropriate reception facilities and to a path of protection even after the grant of protection, but also to provide for rehabilitation itself. According to the Guidelines, the recognition of a traumatic experience is the first step for rehabilitation. The work of multidisciplinary teams and the synergy of local health services with all those who in various ways come into contact with protection holders or asylum seekers – reception operators, educators, lawyers – is deemed decisive in these cases.

According to the Guidelines, the medical certification, to be understood not as a merely technical act but as the result of a network collaboration, must follow the standards set out by the Istanbul Protocol and maintain maximum impartiality, without expressing any judgment on the veracity of the individual's narrative but only being limited to an assessment of the consistency of the person's statements with the verified outcomes. The Guidelines also propose templates of health certificates to be adopted in cases of torture, trauma, psychiatric or psychological disorders and propose the use of the final formulas suggested by the Istanbul Protocol; evaluation of non-compatibility, compatibility, high compatibility, typicality, specificity.

The organisation of a network collaboration as required by the Guidelines has not yet started in all the health care institutions across the national territory. At the moment, the guidelines seem to be applied in Rome, Parma, Trieste and Brescia.

⁸⁸⁹ Ministry of Health, *Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale*, 22 March 2017, available in Italian at: <http://bit.ly/2EaINAY>.

ANNEX I – Transposition of the CEAS in national legislation

The following section contains an overview of incompatibilities in transposition of the CEAS in national legislation:

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
Directive 2011/95/EU Recast Qualification Directive			
Directive 2013/32/EU Recast Asylum Procedures Directive	<p>Article 40</p> <p>Article 41 and Article 46 (5) (6) and (8)</p> <p>Articles 9 (2) - (3) and Article 46 (8)</p> <p>Articles 43 and 31 (8)</p>	<p>Article 29 bis Procedure Decree</p> <p>Article 35 bis (5) Procedure Decree</p> <p>Article 32 (1-bis) Procedure Decree, Article 35 bis (5) Procedure decree</p> <p>Article 28 bis (1 ter) Procedure Decree</p>	<p>Article 29 bis allows to automatically avoid the exam of the subsequent asylum application in cases not included in the Procedures Directive</p> <p>Need to leave the national territory after inadmissibility decision issued on a first subsequent application: Article 41 of Directive 2013/32 / EU does not include this hypothesis in cases where it is not possible to await on the national territory the judge's decision on the suspension request.</p> <p>Article 46 states the right to an effective remedy does not exclude the right to await the decision on the request for suspension in these cases.</p> <p>The Procedure Decree provides that when the grounds for the immediate procedure arise during the appeal procedure, the suspensive effect previously granted shall be withdrawn.</p> <p>In this respect, the immediate procedure seems incompatible with the recast Asylum Procedures Directive, which does not foresee such derogations and only allows for an exception to the right to remain on the territory pending the examination of the asylum application at first instance in the case of a subsequent application or in the context of a surrender or extradition procedure.</p> <p>Border procedure: the attempt to evade border controls is not included in the acceleration grounds laid down in Article 31(8) of the Directive which could lead to the application of a border procedure.</p>

	Article 11 (2)	Article 9(2-bis) Procedure Decree	<p>Also, the requirement of Article 43 of the Directive to allow the applicant to enter the territory if the determining authority has not taken a decision within 4 weeks has not been incorporated in the Procedure Decree.</p> <p>In case of asylum seekers coming from a safe country of origin, the decision rejecting the application is based on the fact that the person concerned has not shown that there are serious reasons to believe that the designated safe country of origin is not safe in relation to his or her particular situation. The law allows TC not to motivate the reasons of rejections but to only refer to the country of origin</p>
Directive 2013/33/EU Recast Reception Conditions Directive	<p>Article 20 (1)</p> <p>Article 20 (4)</p> <p>Article 20 (5) and (6)</p> <p>Article 8 (1) and (3)</p> <p>Article 17 (2)</p>	<p>Article 23 Reception Decree</p> <p>Article 6 (3 bis) Reception Decree</p> <p>Article 12 DL 113/2018 converted by L 132/2018</p>	<p>The law only provides for the withdrawal of reception conditions without any progression and proportion to the contested behaviour.</p> <p>Moreover the law provides for the withdrawal of reception conditions even in case of violation of the house rules while Article 20(4) of the Directive does not allow the withdrawal of reception conditions in these cases</p> <p>Also, the Italian law does not oblige authorities to ascertain, before issuing the withdrawal decision, that the asylum seeker can maintain dignified standards of living (Article 20 (5) of the Directive)</p> <p>The law allowing detention of asylum seekers for identification purposes does not specify in which cases the need for identification arises, thus linking detention not to the conduct of the applicant but to an objective circumstance such as the lack of identity documents. According to ASGI, the new detention ground represents a violation of the prohibition on detention of asylum seekers for the sole purpose of examining their application under Article 8(1) of the recast Reception Conditions Directive. Also, it seems to violate Article 8(3) of the recast Reception Conditions Directive, according to which the grounds for detention shall be laid down in national law.</p> <p>The Decree Law 113/2018 amended the Reception Decree and deeply reformed the accommodation system for asylum seekers in Italy only providing them, even if</p>

			vulnerable, with basic services. The standard of living does not meet in the specific situation of vulnerable persons
Regulation (EU) No 604/2013 Dublin III Regulation	Article 28	-	Asylum seekers cannot be detained for the purpose of Dublin transfers