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MIGRATION POLICIES IN ITALY: AN ANALYSIS OF THE STATUS DETERMINATION COMMISSIONS' WORK, 2017-2020

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Negli anni si sono affermate politiche di carattere simbolico, rivolte all'acquisizione di consenso, senza alcuna considerazione per le condizioni di efficacia delle misure adottate.

Valeria Ferraris

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ACRONYMS

ASGI – *Associazione per gli Studi Giuridici sull'Immigrazione* = Association for the Legal Studies on Migration

CAS – *Centri di accoglienza straordinaria* = Centers of extraordinary reception

CEAS – Common European Asylum System

CIE – *Centro di identificazione ed espulsione* = Center of identification and expulsion

CFR – Charter of Fundamental Rights of the European Union

CPR – *Centri per il rimpatrio* = Centers for the repatriation

CPT – *Centri di permanenza temporanea* = Centers of temporary permancence

D.L. – *Decreto Legge* = Italian Law Decree

D.lgs. – *Decreto legislative* = Italian Legislative Decree

D.P.R. – *Decreto del Presidente della Repubblica* = Italian Decree of the President of the Republic

EASO – European Asylum Support Office

EC – European Council

EDHR – European Declaration of Human Rights

EU – European Union

FRONTEX – *Frontières extérieures* = External borders

GC – Geneva Convention

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICRC – International Committee of the Red Cross

IOM – International Organization for Migration

IRO – International Refugee Organization

ISS – *Istituto Superiore di Sanità* = Superior Institute of Health

OAU – Organization of African Unity

OECD – Organization for Economic Co-operation and Development

OHCHR – Office of the United Nations High Commissioner for Human Rights

SAI – *Sistema accoglienza integrazione* = System of reception integration

SIPROIMI – *Sistema di protezione per titolari di protezione internazionale e per minori stranieri non accompagnati* = System of protection for beneficiaries of international protection and unaccompanied minors

SPRAR – *Sistema di protezione per richiedenti asilo e rifugiati* = System of protection for asylum seekers

TUI – *Testo Unico Immigrazione* = Italian Immigration Consolidated Act

UNHCR – United Nations High Commissioner for Refugees

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNRRA – United Nations Relief and Rehabilitation Administration

UNRWA – United Nations Relief and Works Agency for Palestine Refugees in the Near East

WHO – World Health Organization

ABSTRACT

The purpose of this thesis is to examine the delicate issue of migration, focusing on the recognition of international protection, which is a right recognized by the states to protect persons fleeing from their own country, where they would run risks, so that they can live a dignified and safe life.

The question raised aims at deepening the impact that migration policies have been having on the body responsible for the recognition of protection in Italy, namely the Territorial Commissions.

Starting from an introduction on the issue of asylum, which has caused intense debates at the jurisprudential level still unresolved today, we will enter the analysis of the Italian regulatory framework on migration and asylum seekers. Following the exposition and analysis of collected data, conclusions will be drawn to highlight the actual impact and, in addition to noting the limits of the Italian policy on immigration, to outline future challenges and suggestions that may be interesting to fill the gaps and criticisms at the regulatory level.

INTRODUCTION

The reasons that push a person to migrate are various; the reasons that push a person to migrate in dangerous ways, facing risks and life, must be serious. According to UN, evaluating migration stock data, that "estimate all migrants residing in a country at a particular point in time"[1], migration is continuously and slowly growing since the end on the 90s. Since it is not possible to precisely evaluate the amount of migrants who move around the world (considering the difficulty to gather data and also the various measurement techniques used by world's countries), it is often considered the source of the Organization for Economic Co-operation and Development (OECD) as a starting point, which analyzed that in 2016 the international migration flows, that refer to the amount of "migrants entering and leaving a country over the course of a specific period"[2], has been increasing but with various fluctuations[3]. Migration to OECD countries fell by 12% in 2008 and 2009, due to the global financial crisis, and then it began to rise again since 2011[4].

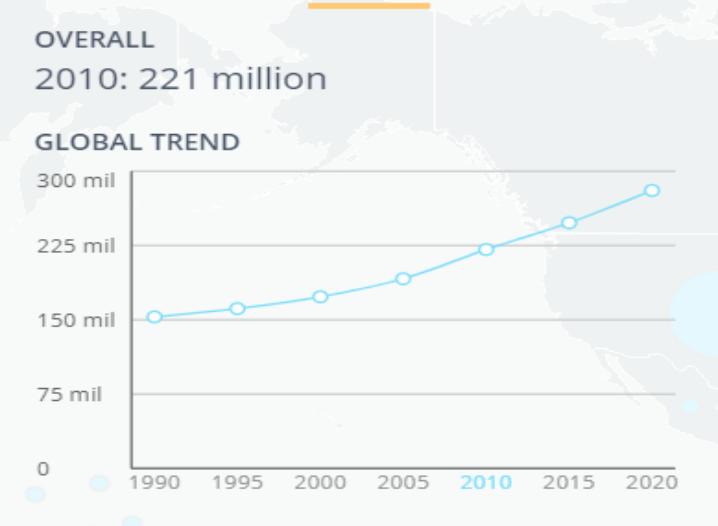

Figure 1[5]. Global migration 1990-2020

[1] Migration Data Portal, 24th September 2020. https://migrationdataportal.org/themes/international-migration-flows
[2] *Ibidem*.
[3] OECD, *Migration Policy Debates*, May 2014. http://www.oecd.org/migration/mig/OECD%20Migration%20Policy%20Debates%20Numero%201.pdf
[4] *Ibidem.*
[5] Migration Data Portal, 24th September 2020. https://migrationdataportal.org/themes/international-migration-flows

These changes have also had an impact on asylum seekers (see fig. 2): among migrants there are also people who, once they have arrived in another country, because that was their goal, or because they have been advised to do so, apply for protection, since they cannot enjoy it in their country of origin, where, on the contrary, they would run risks to their safety. Asylum is an instrument that has historical origins, which over time has undergone changes in its application depending on the interpretations attributed to it.

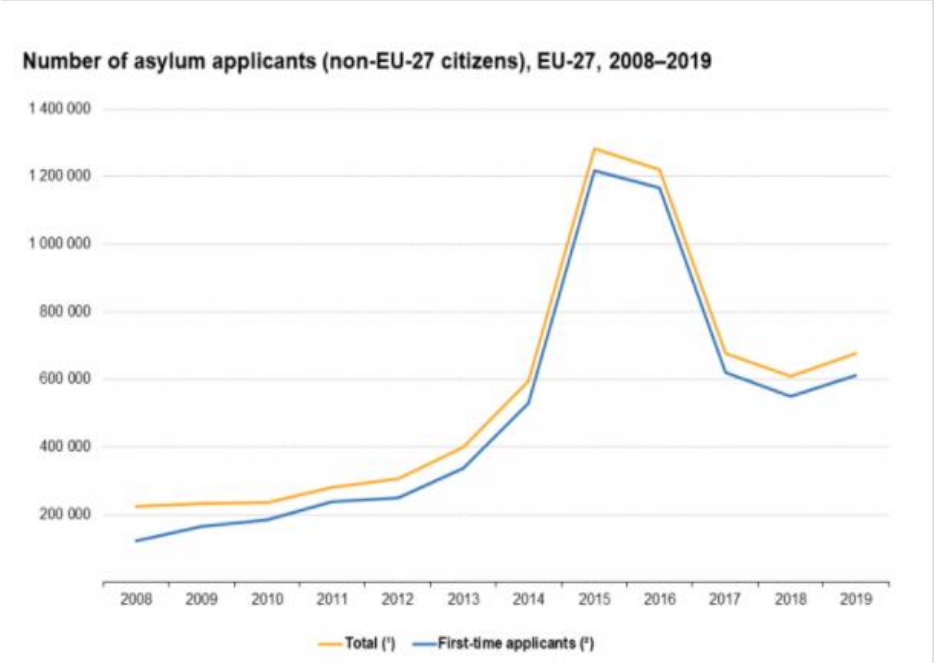

Figure 2[6]. Asylum seekers 2008-2019 (non-European citizens)[7]

[6] Eurostat, *Statistiche in materia di asilo*. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics/it&oldid=496312#Aumento_del_numero_di_richiedenti_asilo_nel_2019

[7] First-time applicants are those who have applied for asylum for the first time in a country; total applicants are those who have already applied once and are renewing elsewhere.

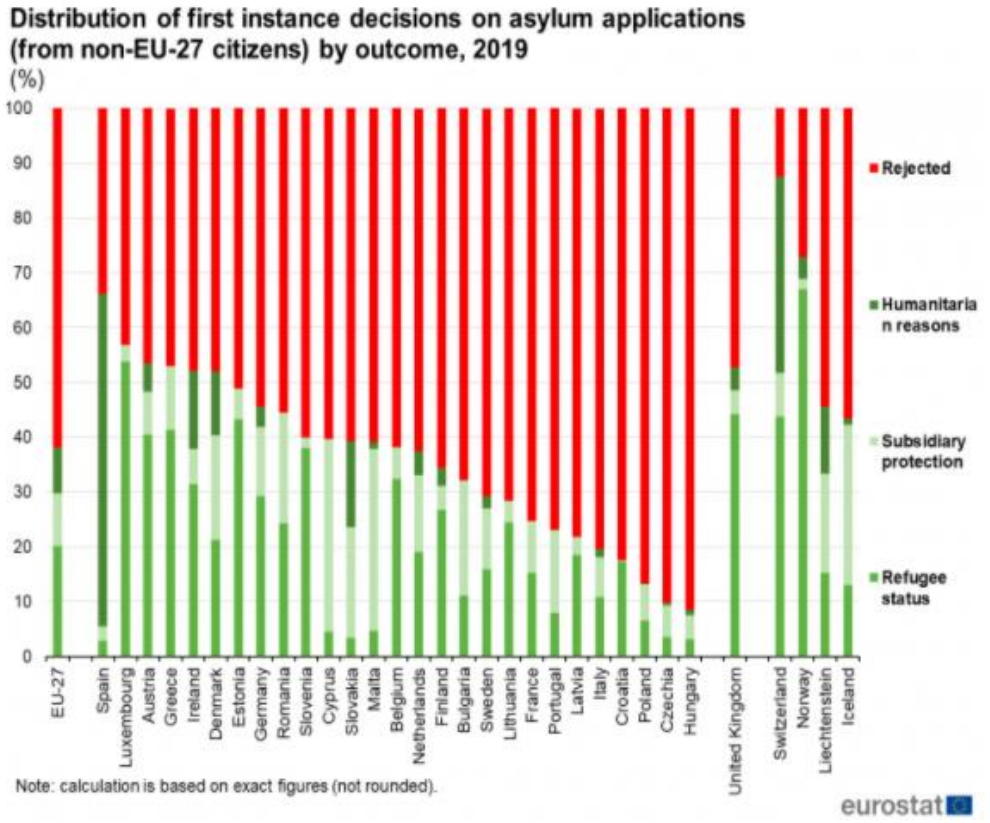

Figure 3[8]. Decisions on asylum applications 2019

As can be seen from fig. 3, despite only covering the year 2019, application rejections are quite high in Europe but, despite this, migrants continue to arrive, and asylum seekers continue to apply for protection.

Migration is strictly related to politics, since all that concerns interventions and initiatives require the drafting of specific legislature, which in turn comes from the political action: this latter can push or pull jurisprudence to establish which are the borders within which it is possible to operate, or instead a potential action is denied. Migration policies are a broad, sensitive and difficult topic that create numerous disputes and discussions, and which require delicate attention. When a person leaves a country to reach another one, there are rules to respect in order to be recognized by a country: we live in an interconnected world, where globalization is rapidly growing but where movements

[8] Eurostat, *Statistiche in materia di asilo*. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics/it&oldid=496312#Aumento_del_numero_di_richiedenti_asilo_nel_2019

cannot be completely free, since it is required to explain where, why and how long we are going somewhere else. Anyways, it is sad to consider that who comes from rich countries has less to declare and the bureaucratic procedures are faster and fewer; on the contrary, who comes from poor and fragmented countries has to follow strict, long, and intricate rules.

The competent body for the recognition of protection, in Italy the Territorial Commissions, has the purpose of evaluating applications. It must make use of the directives dictated by the government; thus, these have an impact on the applicants, to whom the outcome of the evaluation is addressed.

During my curricular internship at the Territorial Commission of Padua from April to June 2021, I had the opportunity to further realize how much politics continuously intersects with the lives of people who migrate: an outcome depends on the regulatory rules that the competent authority applies in a strict and scrupulous manner.

It is highly relevant to remember that asylum, an expression of a fundamental human right, must be recognized. The connection to untouchable rights suggests that it is necessary to guarantee it; therefore, those in charge should always enforce the principle of innocence, which in this context could be interpreted as allowing everyone to make a request and evaluate it, before carrying out the necessary analysis, as truthful. In the conclusions of my paper I will analyze the practice of asylum, which today is highly instrumentalized but, beyond this aspect, the request for protection is a right that must be recognized and therefore everyone has the freedom to be able to express and tell his own story. As far as the examination of the application is concerned, i.e. credibility and risk assessment, one should never think that an applicant wants to evade the authorities.

Therefore, I have decided to delve into the significance of migration policies in the work and responses of the Territorial Commissions in Italy. In order to do so, in the first chapter I will provide an overall normative framework on what concerns asylum, its meaning, its application and interpretation over time. In order to define it, it is necessary to refer to the system of protection provided, first at the international level and then at the national level: the Geneva Convention of 1951 and the subsequent Protocol of New York of 1967 constitute the pivot from which the concept of refugee originates and establish the first

form of protection recognized worldwide, namely *refugee status*; at the European level, a further form of protection, *subsidiary protection*, has been introduced in order to fill the gaps left by the 1951 Convention.

In the second chapter, the Italian regulatory framework on migration will be examined in depth, then going into the issues of asylum seekers. Following a general overview of the history of the first laws made on migration, I will focus on the years from 2017 to 2020. 2017 constituted a major but certainly less visible regulatory change. 2018, on the other hand, created a huge impact on migrants and asylum seekers; while 2020 had the enormous benefit of reintroducing a form of Italian-recognized protection, the so-called *special protection*, that had been removed for two years and instead guaranteed respect for the constitutional right of asylum and recognized the humanitarian reasons that push a person to migrate, considered by other European countries too.

The third chapter aims at providing data on what the debate at the normative level has provoked: the theoretical aspects of migration policies are fundamental in order to understand the data, but the numbers are the expression, the evidence that something has actually been generated. Laws are everything that is hidden under the sea; data are the tip of the iceberg, which is only part of the effect of all process but, as visible, are certainly more impactful.

RESEARCH AND METHODOLOGY

A funnel structure of the text is proposed. In the first part of the paper an introduction to the theme is outlined, then the theme is deepened in the context of interest for the purpose of the thesis, and in the last part the data supporting the question raised are exposed.

To achieve the goal of the thesis, both primary and secondary sources are analyzed.

Data were gathered during the internship at the Territorial Commission of Padua. In addition to objective numbers, the thesis is also developed following the suggestions of the officials of the Territorial Commission, so the data analysis are not only personal evaluations but also outline the feedback of those who work in the field.

The numbers are approximate and serve as a general indication for understanding the proposed situation. The pie-charts are created in order to make the data collected even clearer and more visible. The numbers that refer instead to the data provided by the Ministry of the Interior were gathered through the portal of the Ministry.

The purpose of presenting the data is necessary in order to be able to address a complete analysis of the Italian regulatory framework. Moreover, it is even more possible to compare the numbers in different historical periods in order to have an overview of the context.

Following the exposition of the data, an in-depth analysis of the same is carried out, making reference to the regulatory context in which the facts occurred, and which therefore led to the development of certain results.

PREMISE

The evolution of the right of asylum follows the spread of people's movements. Asylum and refuge are indeed strictly linked, but sometimes they are intended as overlapping terms; instead, the condition of refugee is not the only one which requires protection and, thus, asylum from a country. F. Rescigno [2011] suggests that the term "asylum" is the *genus*, and "refugee" is the *species*: the category of persons in need of protection is much broader than the category to which refugee status is granted, according to the international legislation outlined in the Geneva Convention[9]. Even if the asylum and the status of refugee are distinct concepts, the status of refugee is often referred to as *political asylum* or *political refuge*, meaning that refugee foreigners deserve an inviolability guarantee[10]. This concept comes from the idea that who searches shelter in another country has to do it for reasons that are strictly linked to the political framework. The five grounds according to which status is recognized range from religion, nationality, race, political opinion, and membership to a particular social group, but, anyway, the reason that pushes to persecution and discrimination are politically related: there is no specific reference to this point in the Geneva Convention, but it can be inferred that generally it is a regime, a dictatorship, a state that persecutes a person.

The debate around the matter asylum-refugee is confused and there is still no clear directive. At the international level, the most important document to which states refer is the Geneva Convention, adopted in 1951, which defines status of refugee; at the European level it has been introduced a new form of protection to be recognized in other situations to include more persons, that is the European Directive adopted in 2004, number 83. A comprehensive law on right to asylum is still missing; asylum is more a temporary condition guaranteed to those who ask for protection, but, having lost asylum its efficacy and autonomy, people prefer to reach a form of protection that is more than just asylum, which in turn, at the end of the procedure in case of positive response, is absorbed by a wider and more complete form of protection.

[9] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). Pp. 79-80.
[10] Treccani, *Asilo*. https://www.treccani.it/vocabolario/asilo_res-8909f2ac-adad-11eb-94e0-00271042e8d9/

In this thesis, I will refer to both asylum and refuge, but it is important to keep in mind that, besides the fact that the more correct term should be asylum, the international community even if using the word “asylum” refers to a form of international protection that I will discuss in detail. I deemed this premise noteworthy in order to understand why some terms are preferred to the more correct ones, to avoid misunderstandings and to use the current way of dealing with this issue.

CHAPTER I - THE RIGHT OF ASYLUM

§1.1. The origins of the asylum right

The concept of asylum, contrary to popular belief, does not derive from a recent elaboration: it has instead developed and been changed over the centuries, first appearing in the ancient times, already showing as a core element the circumstance that the life of the person asking it is in danger. Given the complexity of the notion and its mutability, the global community is still trying to improve it and conform it to the current necessities.

The term *asylum* stems from Greek, where the letter *a* indicates deprivation and *sŷlon* derives from the verb *sŷlân*, which refers to a predatory action of pirates and then to any offence to things or persons[11]. We can thus understand that asylum indicates a place where a person does not risk being attacked by someone else, where a person does not occur in danger, which may be life-threatening, or of being robbed, or offended in any way; as a consequence, it is inferred that the right of asylum is the immunity and freedom that a person is guaranteed at a certain place. In the past, this benefit was strictly linked to a religious meaning of the place, in order to inhibit persecutors because, otherwise, they would have violated the sacredness conferred to the place and unleashed the wrath of gods. However, according to the interpretation of historians, the subjectivity of people was negligible rather than the divine intangibility: the protection of human life did not have intrinsic value, it was a mere consequence of the will of gods in a specific place generally a temple; outside of it, it once again lost its worth and became subject to the harsh laws of the earth. Therefore, the right of asylum was also used for physical goods, in order to take advantage of the gods' influence to protect them. The case in which the asylum was linked to individuals was the so-called *asilía personale*, recognized to those who were granted protection due to their role in a society: this is the case of athletes and ambassadors for a reason of esteem; or workers engaged in public utility works. Despite this acceptation, according to which the person was assessed for his subjective qualities, the guarantor in Greece remained the object of the right of asylum, whilst never the active, independent, autonomous subject[12].

[11] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). Pp. 19-20.
[12] *Ibidem*. Pp. 22-23.

Among the Romans, Tiberius in 22 A.D. wanted to establish what were the places to be considered asylum, depending on their antiquity and security. Moreover, in Rome the institution of the asylum was associated to the one of exile, which guaranteed the defendant to avoid the death penalty by preferring to forever live outside the borders of the city. The difference between the two rights is that in the case of the asylum the freedom depended on the deity, while in the case of the exile the subject was active and protagonist of the choice[13].

Again, the right of asylum found application in another religion, Judaism, according to which God himself required Moses to build asylum cities where who had unintentionally killed could find shelter from the right of revenge provided by the monotheistic religion, since Jewish law mitigated the severity of involuntary manslaughter as opposed to voluntary one. It was thus justified the creation of six asylum-cities in order to protect those who could prove the fortuity of their action; they enjoyed temporary and precautionary protection, as long as the person remained in the shelter and at least as long as the high priest was alive, after that, the person was judged before a traditional jury and, if found innocent, was set free, otherwise was handed over to the victim's relatives to suffer the legitimate revenge[14]. In Judaism, the right of asylum added something more than the Greek and Roman ones, since a form of penance was provided within the place of asylum, because the person protected had in any case spilled innocent blood. In this sense, the institution of asylum among the Jewish was approximately associated to the conception of exile: there were both guarantee of protection and of punishment.

In the classical period, the institution of asylum was formally established thanks to the diffusion of Christianism and the subsequent development of the canonical law: the good Christian had the moral duty to provide a shelter to those who needed it, after having committed a sin, thus guaranteeing a possibility of remission[15], since everyone could feel regret and redemption, and therefore everyone should have the chance of salvation. The Christian asylum presented four main characteristics: love of neighbor, - the core element was indeed empathy towards the other that pushes a person to give aid and to take care of

[13] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). Pp. 24-25.
[14] *Ibidem*. Pp. 26-28.
[15] *Ibidem*. P. 28.

someone else-; thoughtfulness; penitence; intercession. Again, the concept of asylum was linked to the religious arena, but, with the canonical law, it was introduced a completely new detail: the subject was no more passive to the wrath of gods; it was instead active and participatory to the process of giving, being also love, empathy, compassion elements that move a person to act for the sake of others. The Christian asylum was institutionalized for the first time in its history on the occasion of the Council of Sardi (a city in Asia Minor, present Turkey) in 343, which established that bishops had the duty to help and protect fugitives. The church became a real institute that also intervened to ask mercy to judges, to soften too hard penalties, and to favor the path towards redemption and re-inclusion of the defendant. In addition to the core aspect of religion, indeed, in the Christian institute of asylum there was a further element, that was the intervention *ratione personae* of the church that went behind the mere religious aim; the bishop could also affect on the extent of the conviction, directly intervening in the legal process. This mechanism did not mean that the church wanted to justify the crime, but it recognized the possibility to strive for eternal salvation also in case of violation; moreover, the church showed its supremacy in front of the statal power. That is why tensions between the State and the Church emerged as an echo of an increasingly evident intrusion by ecclesiastical power into matters that were at first purely state-related: since 392 Teodosio I applied a reshaping of the asylum, also introducing some limitations of applicability to subjects, such as tax debtors and Jewish charged of the crime of lese-majesty[16]. It was then in 430s that the right of asylum was officially recognized, whose violation was punishable by law as sacrilege. In 535 Justinian affirmed the previous edicts but he excluded the right of a protection in case of murder, adultery, kidnappers. With the fall of the Roman Empire, the institute of asylum reached much more relevance, since the church appeared to be the only stable and capable entity to guarantee a shelter, that was extended to more serious crimes, such as betrayal and lese-majesty. Over the centuries, asylum was continuously reshaped and redefined, eliminating the divine character of the same, thus becoming a legal instrument at discretion of rulers. During the middle of the XIX century, the religious right of asylum disappeared at the level of the state; while continuing to be included within the canonical law as associated with a simple sign of respect for the sacred place by not arresting those who had found refuge in there. Starting from the following

[16] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 28. Pp. 28-31.

Code of 1983, there was no more reference to the asylum as an obligation of the church; instead, the ecclesiastical power promised to hand over to the Italian state the perpetrators of a crime.

> *"The decline of the religious asylum coincides with the disappearance of the [Roman] Empire and with the birth of national States committed to strengthening their sovereignty by removing themselves from any other external power, even more so that of the church"*[17].

The gradual disappearance of the religious sense of asylum turned into a new idea of the term, by adapting to the new context: in the modern era, the exile was of particular interest; in 1789 the *Déclaration des droits de l'homme et du citoyen*, article 2 recognizing the oppression resistance as a fundamental right; article 120 of the French Constitution of 1793 that gave asylum to foreigners that were outlawed in their country. In general, a new atmosphere of attention towards these topics, associated to an increasing of the political power in Europe, meaning that states wanted to personally manage their affairs and basically the right, without the intervention of the church, brought to the modern meaning of right of asylum: for the first time, the concept was no more attributed to a compassionate act, instead it emerged as a legal institute strictly tied to the outcoming concept of freedom against an oppressive power and, specifically, tyranny. The political or territorial asylum became indeed an instrument used by democratic countries to grant a shelter to those that belong to a particular category of persons that were oppressed by a non-liberal country where they cannot live, being denied of their fundamental rights[18]. The core element of this newly conceived term was the opposition to any form of tyranny, before being a mere interest in protecting the individual.

Thanks to the revolutionary idea and to the spreading of the ideal of liberty, the asylum is no more linked to a specific place or to a duty of pity and love, but it is a right as we conceive it in a legal sense.

> *"The language of the rights has gradually developed a neutral approach, separating itself from both the divine will and the metaphysical connotations of the idea of natural law; rights have become positive, generalized, internationalized and finally specified, i.e. a new path has*

[17] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 36.
[18] *Ibidem*. Pp. 37-39.

been elaborated towards an increase in the number of rights holder; therefore next to the abstract subject-man, new beneficiaries of rights such as women, minors, elderlies, mentally handicapped persons, newborns, embryos and maybe animals"[19].

The subsequent evolution of the right to asylum comes from a necessity to adapt to a new context pushed by the international community, in which states are no more fighting to prevail over other national sovereignties but they are co-operating to reach agreements on issues of importance to anyone. It is thus that in a climate in which the rights of the person assume greater importance, the right to political asylum is replaced by asylum recognized for humanitarian reasons, for which individual may strive. As F. Rescigno suggests [2011], the right of asylum has developed and changed both as a right of the person and as the product and affirmation of the state; it cannot exist without the existence of a state that guarantees it: the revolutionary ideas have introduced a personalistic element to the concept of asylum, but the presence and jurisdiction of a country is required to recognize the subject, to define it, and to give it legal value[20].

§1.2. The 1951 Geneva Convention

Besides the conceptual limitation of the term asylum, one of the most controversial debates concerns the struggle between the personal element, that requires the recognition of protection to those in need in order to guarantee them the enjoyment of fundamental rights, and the right of states to make their own decisions on the issue, asserting the right of sovereignty. Therefore, the institution of asylum depends on the discretion of the state, but it is also contained and evaluated by international standards.

It is interesting to analyze the evolution of the legislation concerning the status of refugees, and then to evaluate the gaps that the law may have left in the asylum field.

The number of refugees changed starting from the XX century, when, as a consequence to the First World War and its subsequent geopolitical changes in Europe, people preferred or were obliged to leave their country of origin in search of safer places to find shelter and protection. In 1917, the October Revolution in Russia and the consequent famine caused the exodus of a million of refugees; this situation required an intervention

[19] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). P. 41.
[20] *Ibidem.* Pp. 42-43.

and, following multiple insistences by the International Committee of the Red Cross (ICRC), the League of Nations, the first experiment of international organization, founded in 1919, directly intervened to find a solution. Fridtjof Nansen was named High Commissioner for the problem of the Russian refugees in Europe, with the aim to define the status of those people and to encourage their inclusion or, whether possible, the repatriation[21]; this task later resulted into a broader mandate, involving refugees from Greece, Armenia, Bulgaria, and others escaping from dangerous situations[22]. At the end the Treaty of Geneva in 1922, the *Nansen passport* was created to allow "refugees who had lost their papers or had no valid papers for other reasons to travel across national borders"[23]. After the death of Fridtjof, the Nansen International Office for Refugees was opened in 1931 and it dealt with refugees from Austria, Germany, the Saar region, Czechoslovakia. Few years later, in 1933 the position of High Commissioner for Refugees from Germany was created, and the American James McDonald was appointed, due to the risky situation of Jewish people, after the first racist and anti-Semitic initiatives taken by Adolf Hitler[24]. With the Nuremberg Laws of 1935, which permanently restricted the rights of the Jewish population on the German territory, the role of the High Commissioner in the German context reduced: the League of Nations preferred to step aside, arguing that Germany had the right to manage its own internal affairs without external intrusion. In general, the League of Nations carried out few initiatives due to the lack of financial resources and to the general unwillingness to accept refugees. Just a few more attempts to denounce the situation of Jewish were made, on the occasion of the 1933 Convention Relating to the International Status of Refugees, claiming that refugees deserve protection and thus cannot be forced to return to their country of origin; and the 1938 Convention Concerning the Status of Refugees from Germany[25].

With the creation of the United Nations following the Second World War, the debate on the theme of refugees acquired another value: the new international organization, unlike

[21] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 54.
[22] Bob Reinalda, *Routledge History of International Organizations – From 1815 to the Present Day*. (Taylor & Francis e-Library: 2009). P. 206.
[23] *Ibidem.* P. 207.
[24] Enciclopedia dell'Olocausto, *La Germania: 1933*. https://encyclopedia.ushmm.org/content/it/map/germany-1933
[25] Bob Reinalda, *Routledge History of International Organizations – From 1815 to the Present Day* (Taylor & Francis e-Library: 2009). P. 208.

the League of Nations, had a more solid and better defined structure; the internal apparatus had greater power to intervene, membership was greater, and, in order to be part of it, basic requirements were introduced to be satisfied -to be a peaceful state, to accept and fulfill the obligations of the Charter of the UN, ratified in San Francisco, 1945[26]. The end of the Second World War brought to a huge increase in the number of refugees, so that in 1943 it was created the UN Relief and Rehabilitation Administration, the UNRRA. The agency had a temporary mandate; the question of repatriation immediately assumed greater importance, rather than true assistance and relocation of refugees. The internal political divergences led instead to the failure of the project, but, since there were still large numbers of migrants to be assisted, the International Refugee Organization (IRO), was created as a non-permanent specialized agency of the UN. It was the first entity to address the refugee situation in as more comprehensive way as possible: it dealt with repatriation, political and legal protection, assistance, identification and registration, transportation, and resettlement in third countries. Given its temporary mandate, the organization could not be truly effective and ended its activities in 1948, making the way to the next agency[27]. Another similar programme to the UNRRA was put in place in 1949, as a consequence to the Arab-Israeli conflict started the previous year, that pushed a wave of Palestinian refugees to leave their territory. The UN created a specific aid programme, the UN Relief and Work Agency for Palestine Refugees in the Near East, the UNRWA. Due to the sensitive situation, the UN appointed a High Commissioner for Refugees, the UNHCR, in 1950; the idea was to put the aid programme into action in the specific emergency, for about three years, indeed the initiatives taken for refugees were assumed to be temporary and local. Instead, over the years, with the succession of geopolitical and historical events that caused an increase in the number of refugees (such as the Berlin crisis of 1953, the Algerian war of independence, the Hungarian uprising[28]), the problem turned out to be permanent or, at least, of long duration and of supranational interest: the UNHCR acquired the role of a fully-fledged

[26] Università degli Studi di Verona, *L'Organizzazione delle Nazioni Unite*. https://docs.univr.it/documenti/OccorrenzaIns/matdid/matdid911443.pdf
[27] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). Pp. 57-60.
[28] Bob Reinalda, *Routledge History of International Organizations – From 1815 to the Present Day* (Taylor & Francis e-Library: 2009). Pp. 351-352.

agency for refugees of the UN, and it is still recognized today as one of the main bodies of the organization with decision-making autonomy[29].

Notwithstanding the little follow-up of the conventions of the thirties (the first convention was ratified by eight states, the second one only by three), the assemblies were at the basis of the UN Convention Relating to the Status of Refugees[30]. The first debate concerned the drafting of article 14 of the Universal Declaration of Human Rights (UDHR). The first version established that "Everyone shall have the right to seek and may be granted asylum from persecution. The UN is bound to secure the asylum in agreement with the member state", but it created discussions around the chosen word *shall*; in addition, the participating states arose their own issues and points of view: Russia, for example, demanded that it was specified that "everyone" could exclude Fascists and Nazis for their activities; the US raised the question of whether the protection granted should be temporary or permanent; Lebanon questioned the value of the universality of the word *everyone*. At the end, the final version adopted, that is still the one present in the UDHR, was a compromise among the states, and it affirms

1. *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

and that

2. *This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

Alice Edwards stated [2005] that article 14 of the UDHR places international refugee law "within the human rights paradigm"[31], since it has the aim to protect fundamental freedoms of people. Article 14 showed an increase in the interest of the protection of refugees, and it brought to the UN General Assembly Resolution 429 (V) of December 1950 that required to convene a conference in order to draft and sign a convention relating

[29] Bob Reinalda, *Routledge History of International Organizations – From 1815 to the Present Day* (Taylor & Francis e-Library: 2009). Pp. 349-351.
[30] *Ibidem.* P. 208.
[31] Alice Edwards, *Human Rights, Refugees, and The Right 'To Enjoy' Asylum* (Oxford University Press: 2005). P. 297.

refugees and stateless persons. From 2nd to 25th July 1951, the UN Conference of Plenipotentiaries of the Status of Refugees and Stateless Persons was held in Geneva. Twenty-six states' delegates were present, and two states, Cuba and Iran, were represented by observers[32].

The Convention Relating to the Status of Refugees, commonly known as the Geneva Convention (GC), was adopted in 1951, and it came into force on 22nd April 1954. The preamble of the document expresses the purposes that are designed to be achieved through cooperation among the states party to the Convention itself. The main objectives are aimed at revising and consolidating previous international agreements, assuring refugees the widest possible exercise of their fundamental rights and freedoms[33]. The Geneva Convention represents the core and most comprehensive codification of the international refugee law, including fundamental features: the definition of refugees' status; duties that are expressed at article 2, according to which every refugee has also obligations to the host country, basically the respect of its laws and regulations; rights explained from article 12 to 34; and, also, reference to the importance of international cooperation, to which articles 35 onward are set aside. Article 1A, paragraph 2 of the Convention provides a definition of the term "refugee":

> *(2) As a result of events occurring before 1st January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*
>
> *In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national*[34].

[32] UNHCR, *Convention and Protocol Relating to the Status of Refugees*.
[33] *Ibidem.*
[34] *Ibidem*. Chapter I, art. 1 A (2).

The only amendment to the Geneva Convention is the Protocol to the Convention signed in 1967, with the aim to remove the limitation of "events occurring before 1st January 1951", as it wanted to include all circumstances that can push people to leave their country and thus require protection somewhere else. This document was added to the Convention, considering that refugee situations had arisen, therefore the necessity changed.

There are many questions of interpretation surrounding the definition, which legal experts in national and international courts have attempted to investigate and clarify, in order to introduce standards that are as acceptable as possible. However, it is often the host country that has to make the assessment according to its practice. The UNHCR has also made available a text, the *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, that brings together information and notions to provide suggestions on how to read certain concepts. The first of the dubious concepts is that of "fear", which is a subjective element but whose evaluation is very important, because it is "inseparable from an assessment of the personality of the applicant, as psychological reactions of different individuals may not be the same in identical conditions"[35]. Moreover, the term "persecution" is considered arbitrary: the UNHCR suggests considering a threat to life, a threat to freedom, and a serious harm, both physical and psychological; it is deemed equally relevant to assess not only the nature of the acts but also the frequency and amount of different persecutory measures[36]. To exist the definition of refugee, there are two fundamental elements that have to be respected: the fact of being outside the borders of his/her country of origin or of nationality, and being victim of a persecution; therefore, the status of refugee emerges when these elements, both objective and subjective aspects, occur simultaneously.

§1.2.1. The Convention's characteristics

The so-called *five grounds* are those reasons why a persecution is carried out: race, religion, nationality, membership to a particular social group, political opinion. *Race* should be referred to all kinds of ethnic groups; racial discrimination may amount to any

[35] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection – Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (2019). Part B, point 2 (a), p. 19.
[36] Art. 9 paragraph 1 (a) and (b), *Directive 2011/95/EU of the European Parliament and of the Council* (2011).

kind of distinction, exclusion, or preference according to race, color, ethnicity. It is difficult to recognize the status of refugee just for a reason of race; most of the times it is associated to membership of a particular group. *Religion* intends all kinds of beliefs and convictions. *Nationality* can be citizenship, but it also refers to membership of an ethnic or linguistic group; it is occasionally overlapped with "race". *Political opinion*, as the Directive 2011/95/EU suggests, shall "include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution" -namely the State, parties or organizations controlling the State, non-State actors-, "and to their policies or methods"[37]. *Membership to a particular social group* is a debated concept, and subject of divergent national practices: according to some states it may include more aspects of the life of a person, instead for others there are less occasions to recognize persecution for this reason. In general, UNHCR's Handbook refers to similar background, habits, social status; it is an innate characteristic, something that people cannot do without, as it is fundamental to their identity and enjoyment of human rights. *Membership to a particular social group* may thus involve sexual orientation, families, women, tribes, or professional groups.

For the recognition of the status, a causal link between the five ground and the fear of being persecuted needs to be demonstrated; in practice, it depends on the jurisdiction of a country: in some common-law states, the causal link is treated as a separate element to be considered, whilst in others the causal link is just inferred in the analysis of the definition of refugee. The sufficient prerequisite for recognizing the status requires the presence of one of two elements, i.e., the fear of persecution is related to racial, religious, national, political, or social characteristics; the persecution is tolerated or encouraged by the authorities for one (or even more) of the five grounds[38].

The status of refugee can be excluded, according to points D, E, F of article 1 of the Geneva Convention, in cases in which applicants are already protected by UN bodies other than UNHCR; to a person who is recognized by authorities, having nationality of a country, and has rights and obligation; to persons who have committed a crime against peace, war crimes, and/or crimes against humanity; who have committed a serious non-

[37] Art. 10 paragraph 1 (e), *Directive 2011/95/EU of the European Parliament and of the Council* (2011).
[38] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection – Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (2019). Guidelines on International Protection No. 1, chapter II, point C, p. 87.

political crime outside their country of origin; who are guilty of acts contrary to the principles of the UN. There are then cessation clauses, at point 1C of the Geneva Convention, that can be for personal changes, i.e. voluntary acceptance of protection from the country of origin; a person has reacquired his/her nationality; or he/she has a new nationality; voluntary resettlement in the country of origin; or can be for reasons that do not justify anymore a protection, i.e. a person can no more refuse to accept protection from the country of origin; a stateless person can go back to the country where he/she had previous habitual residence[39].

§1.2.2. The principle of *non-refoulment*

One of the most relevant principles of the Geneva Convention is the idea that no one shall be expelled from a country where they seek refuge, since a repatriation would constitute a serious risk of being persecuted again because of the five grounds. The so-called *non-refoulment*[40] principle is expressed in article 33; it states that even in cases in which a person has entered illegally a country or has received a provision of expulsion cannot be pushed away from the territory towards states where his/her life or freedom would be at risk. Those who flee from their country and ask hospitality can avail themselves of three instruments of international law: the asylum, the refuge, or, if they do not meet the requirements to benefit from these, they can also avail themselves of the states' obligation not to return the applicants to their country, where, otherwise, they should risk persecution[41].

The idea of *non-refoulment* was already envisaged in the first refugee conventions in the 1930s but was later embodied in the Geneva Convention and became its core principle. It is then recognized in various conventions, starting with the UN Declaration on the Territorial Asylum of 1967; at the regional level in the OAU Convention[42], claiming that

[39] Art. 1, points C, D, E, F. UNHCR, *Convention and Protocol Relating to the Status of Refugees*.
[40] The French term *refouler* means to repel, to push back. See Word Reference, *Refouler*. https://www.wordreference.com/fren/refouler
[41] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). Pp. 89-90.
[42] *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. Art. 2, comma 3: *« Nul ne peut être soumis par un Etat membre à des mesures telles que le refus d'admission à la frontière, le refoulement ou l'expulsion qui l'obligeraient à retourner ou à demeurer dans un territoire où sa vie, son intégrité corporelle ou sa liberté seraient menacées pour les raisons énumérées à l'article 1, paragraphes 1 et 2 »* ; where article 1, paragraphes 1 and 2, defines the term refugee outlining the five grounds also listed in the Geneva Convention. (1969).

no one shall be subject to rejection, return, or expulsion; in the Cartagena Declaration[43], being the principle acknowledged as a rule of *jus cogens*[44]; in the European Directive[45] of 2011.

The non-transfer obligation required by the Geneva Convention is not only addressed to applicants present in the territory, but also to those at the border, with the idea of guaranteeing protection even to those who have not yet applied for asylum, in order to give them the opportunity to do so. Another essential concept encapsulated in *non-refoulment* is the idea that expulsion cannot take place either to the country of origin where there would be a risk of persecution, nor to a third country that does not guarantee that principle: if the latter does not put into practice the obligation of *non-refoulment*, it could transfer the applicant to the country of origin; in this way, the first country of arrival would indirectly breach this duty. The non-expulsion does not apply when refugees are migrating for economic reasons, as there is no risk of persecution in the country of origin. Similarly, in cases where it is determined that the state through which the migrant has transited or the countries of first asylum do not pose a threat to the life and dignity of a person, there is no prohibition on *refoulment*[46]. At the end, the principle does not cover refugees that constitute a danger to the security of the country, "having been convicted by a final judgement of a particular serious crime"[47].

Besides the Geneva Convention that limits the principle of *non-refoulment* to the context of refugees, it is generally stated in human rights law, in which this is inferred from the prohibition of torture or cruel, inhuman or degrading treatment or punishment: the prohibition of torture is a rule of customary international law and of *jus cogens*. For instance, the Universal Declaration of Human Rights (art. 5), the International Covenant

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[43] *Cartagena Declaration on Refugees, Colloquium on the International protection of Refugees in Central America, Mexico and Panama*. Art. 3, comma 5: *"To reiterate the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of jus cogens".* (1984).

[44] From the Latin, the concept is often translated in English as *peremptory norm*: "it refers to certain fundamental, overriding principles of international law". See Legal Information Institute, *Jus cogens*. https://www.law.cornell.edu/wex/jus_cogens

[45] *Directive 2011/95/EU of the European Parliament and of the Council*. Art. 21, para. 1: "*Member States shall respect the principle of non-refoulement in accordance with their international obligations".* (2011).

[46] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). Pp. 91-92.

[47] Art. 33, para. 2, UNHCR, *Convention and Protocol Relating to the Status of Refugees*.

on Civil and Political Rights (art. 7), the European Convention on Human Rights (art. 3), the Banjul Convention (art. 5), the American Convention on Human Rights (art 5 (2)), the UN Convention Against Torture (art. 3) declares that no state should expel, return, or execute a person that would risk torture, degrading, or inhuman treatment[48]. According to this reasoning, thus, "a prohibition on expulsion or return in circumstances in which there is a real risk of torture or cruel, inhuman or degrading treatment or punishment is inherent in the prohibition of such acts"[49]. The idea of the *non-refoulment* is indeed to recognize the fundamental value of human life and dignity, thus, whoever risks a treatment that puts in danger his/her rights shall be protected.

Since the international community has the responsibility to comply with international obligations and the principle of *non-refoulment* is very strong, it is largely agreed that the principle, referred to in refugee law, in international humanitarian law and human rights law, is part of customary international law[50]. Faced with a risk of violation of human rights, moreover, exceptions are not allowed or even taken on a very restrictive interpretation, since it is deemed that the life asset must always prevail. In the specific case of risk of torture and inhuman or degrading treatment, it is never allowed to *refouler* a person[51].

Anyway, despite the fact that many countries have adhered to this principle, there is a lack of homogeneous and explicit legislation in practice, and watchdog bodies that verify the actual implementation of this obligation, which appears to be more a moral and ethical obligation, whose boundaries often blur in front of the interpretations of individual countries.

§1.3. The European Union Law

According to the UN Charter, competences shall be shared among the UN and the regional agencies, that is why also the European Union has room on the asylum matter.

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[48] Erika Feller, Volker Türk and Frances Nicholson, *Refugee Protection in International Law – UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003). Pages 149-158.
[49] *Ibidem.* P. 158.
[50] Alice Edwards, *Human Rights, Refugees, and The Right 'To Enjoy' Asylum* (Oxford University Press: 2005). P. 301.
[51] Erika Feller, Volker Türk and Frances Nicholson, *Refugee Protection in International Law – UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003). Pp. 178-179.

The first occasions in which the EU has taken steps towards this new path was only with the Maastricht Treaty in 1993, as previously the focus was on purely economic issues. In fact, since the mid-eighties, the Cold War, the development of the communications and transport system, the numerous civil wars caused a huge increase in the number of migratory flows. However, the economic situation in Europe was in precarious conditions, and so policies of contingent flows were drafted which provoked the consequent overload of asylum systems at the national level, since asylum seemed to be the only way for migrants who flew for economic reasons to have guaranteed reception in the countries, not being obliged to be returned according to the principle of *non-refoulment*. This situation called for an intervention by the European community, which was committed to finding a solution to the need for an efficient system of cooperation in the area, as well as the idea of eliminating internal border controls to facilitate faster travel: in 1986 the Single European Act introduced the Treaty of Rome[52], according to which the free movement of goods, persons, services, and capital is possible; on this occasion, the European Parliament recommended to adopt a common initiative on migration matter, first of all considering the respect of human rights and solidarity among member states. In 1987, the Parliament listed a series of standards to which states had to conform when dealing with asylum requests: it was deemed fundamental to keep in mind the instruction of the UNHCR on procedures and criteria for the status determination, and the definition of refugee adopted by the Convention of the OAU; moreover, the Geneva Convention's rules shall be applied for those who are persecuted for reasons of sex and their sexual orientation.

With the huge migration flows in Europe, asylum applications have been increasing exponentially, and the Union continuously asks for political, social, juridical integration on the asylum topic; this necessity has to take into account the difficulty in the realization due to the resistance of the states to accepts compromises, losing their principle of sovereignty[53].

[52] The Single European Act had the aim to revise the Treaties of Rome of 1957 setting up the European Economic Community (EEC). The Act wanted indeed to give an additional impulse to European integration and to favor the internal market. See EUR-Lex, *The Single European Act*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0027

[53] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). Pp. 104-105.

§1.3.1. The Schengen Area

The desire to create a single border that would enclose the Union and abolish internal borders to facilitate free and rapid movements led to the conclusion of the first Schengen Agreement in 1985, which was signed by France, Germany, Belgium, the Netherlands and Luxembourg.

The first Schengen Agreement was then taken up and expanded by the Schengen Convention of 1990, which established, among other objectives, the adoption of common rules to control and prevent irregular immigration. The purpose of the Convention was to ensure freedom of movement but also national security and to combat irregular immigration, terrorism, and organized crime. The Schengen Agreement, however, did not make specific and detailed reference to the right to asylum, but it represented from the outset the need to adopt measures concerning border control and to create a common European policy on immigration: the Convention fills this gap, addressing the issue of asylum in Chapter VII[54]. Article 29, paragraph 3 of the Chapter states that "only one Contracting Party shall be responsible for processing that application"[55], and, in the subsequent article, there are listed the criteria to determine which member state should be held responsible.

§1.3.2. The Lisbon Treaty

At the beginning of the 21st century, the principles sanctioned by the Tampere Summit, held in 1999 with the aim of creating a common European asylum system, were implemented, in particular Directive 55 of 2001 that "guarantees temporary protection for one year to those who flee from armed conflict or risk being subjected to systematic or generalized violations of human rights in their country of origin"[56], thus including in the protection system not only those who are defined as refugees, but also displaced persons, i.e. those who flee from difficult situations without leaving the country.

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[54] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). Pp. 105-107.
[55] Official Journal L 239, *The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.* https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):en:HTML
[56] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 137.

In 2003, Directive number 9, modelled on the UK's Immigration Asylum Act, was issued, which aims to provide an incentive to harmonize the conditions of asylum seekers' reception in order to prevent them from continually moving in search of the country where reception is the best.

If the nineties are the decade of the fight against illegal migration, it is with the Lisbon Treaty, signed in 2009, that migration becomes a communitarian policy. The treaty was intended to bring together what had been thought of as the EU's constitution, composed of the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), into a single reform treaty, in order to make the European institutions more efficient[57]. It eliminates the three pillars introduced by the Maastricht Treaty[58], enlarging the communitarian competences and decisions in migration policies. Beyond the perplexities about the document, it is relevant because it enlarges European Parliament's powers and it introduces relevant updates: it establishes a "common policy on asylum, immigration and external border control"[59], and it focuses on the system of reception, protection, cooperation among member states[60].

§1.3.3. The Dublin Convention and Regulation

Another relevant instrument introduced to cooperate and share the competence among states facing the emergency of the high level of migrants is the Dublin Convention, signed in 1990 and entered into force in 1997. The Convention was then superseded by the regulation 343/2003 of the European Council, better known as Regulation Dublin II. It is a more defined and more binding system than the Schengen Agreement and Convention, for both states and asylum seekers, according to which the applications for international protection are considered and processed by the first signatory state where the asylum seeker arrives. The idea is that each case must be examined by a single member state,

[57] Bob Reinalda, *Routledge History of International Organizations – From 1815 to the Present Day* (Taylor & Francis e-Library: 2009). P. 733.
[58] The three pillars introduced by the Maastricht Treaty were economy, a common foreign and security policy, cooperation in justice and home affairs. Bob Reinalda, *Routledge History of International Organizations – From 1815 to the Present Day* (Taylor & Francis e-Library: 2009). P. 727.
[59] *Ibidem*. P. 143.
[60] *Treaty of Lisbon*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2007.306.01.0001.01.ENG&toc=OJ%3AC%3A2007%3A306%3ATOC#d1e585-1-1

which not necessarily needs to be the country of final destination, with the aim to avoid simultaneous asylum requests: asylum seekers may want to apply in different countries in search for the best option, generating the so-called *asylum shopping*; instead, the solution adopted is the *one chance rule*, i.e. every person has the right to a single opportunity to have his/her application for status reviewed. The Dublin Convention also aims at avoiding an excessive exploitation of the right of asylum by migrants migrating for reasons other than those established by Geneva[61].

In order to establish which country is the responsible one, it is necessary to take digital fingerprints of applicants, according to the EURODAC[62] regulation, which states that every state that has implemented the Dublin Regulation must take a fingerprint from each asylum seeker. This procedure is fundamental to compare the fingerprints and determine whether or not an application has already been made. Through this mechanism, signatory states have the possibility to push back an asylum seeker, not only towards another state who has adhered to the regulation, but also towards another one that is different from the states that have received the person: this is the case of the third state, but which has to be safe, according to article 38 of the Procedures Directive of 2013, number 32[63]. It is essential to evaluate if the third country is *really* safe, especially making an individual assessment, since a state can be safe for a person but not for another one. Article 38 lists a series of criteria to deem when making the evaluation, including being sure that in the other country the asylum seeker will be guaranteed life in dignity and freedom, no torture or degrading treatment; the Court of Justice of the EU has repeatedly expressed its opinion on the subject of *refoulment*, stating that the risk of "chain pushbacks" must be taken into account before sending a person back to another country in accordance with Dublin rule[64].

[61] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). Pp. 108-110.
[62] European Regulation number 2725 of 2000 that instituted the *Eurodac* ("European dactyloscopie") to compare the digital fingerprints, in order to apply the Dublin Convention: thanks to this procedure, the system is able to "verify if an asylum seeker or foreigner citizen, who is illegally in a European country, has already applied a request in another European state or if the asylum seeker has illegally entered in the territory of the Union". See *Sistema "Eurodac"*. https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=LEGISSUM%3Al33081
[63] Art. 38, *Directive 2013/32/EU*.
[64] See Corte EDU Ilias e Ahmed c. Ungheria del 14 marzo 2017, Corte EDU causa Sharifi e Altri c. Italia E Grecia del 21 ottobre 2014, Corte EDU del 4 novembre 2014 Tarkel c. Svizzera, Corte EDU M.S.S. c. Belgio e Grecia cit, Corte di Giustizia (Grande Sezione) 19 marzo 2019 nella causa C 163/17, CGUE 16

The Convention establishes that the states' competence shall be assumed according to which country has first given the permit to stay or a visa; has allowed the legal access and the transit in the territory; the asylum seeker has been subject to irregular entry from a non-member state of the EU[65]. It is based on two main principles: the identification of the responsible state, i.e. the one that authorized the entry into the country by issuing a permit or visa; extra-territoriality of negative asylum decisions, according to which rejection of an application in one country results in rejection by all member states. The serious problem of this latter idea of extra-territoriality lays in the fact that there is no real authority who regulates the Geneva Convention obligations' implementation, thus the risk of *refoulment* is by far higher.

While the Dublin Convention was the first attempt aimed at establishing common rules among the then twelve member states of the European Union, the novelty introduced by the Dublin II, i.e. the Council Regulation number 343/2003, provides for the conferral of asylum's jurisdiction on the European Union, including all the countries of the Union with the exception of Denmark and four non-EU countries, namely Switzerland, Liechtenstein, Norway, Iceland; as stated in the Preamble, the procedures for the status recognition and processing asylum applications should be based on "objective, fair criteria"[66].

Among the most relevant points expressed in Dublin II, the reference to humanitarian clause to enlarge the possibility of family reunification for humanitarian reasons, specifically for family or cultural motives[67]. A further advancement of the legislation was introduced by the adoption of the Dublin III in 2013, Council Regulation number 604, which confirms the main principles of the former ones and changes the rule concerning the prohibition on applying in more than one State; the remarkable innovations concerns the extension on the deadlines for family reunification -an institution already discussed

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febbraio 2017 causa C 578/16 PPU C.K., H.F., A.S. c. Slovenia https://www.questionegiustizia.it/data/doc/2794/2021-700-senza-dati-sensibili.pdf

[65] Arts. 5, 6, 7, *Dublin Convention*, Official Journal C 254, 19/08/1997. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A41997A0819%2801%29

[66] Preamble, point 4, *Council Regulation (EC) No 343/2003*.

[67] *Ibidem.* Chapter IV, art. 15.

and recognized by the other Dublin rules; reference to protection for minors; possibility of appeal against an order[68].

§1.3.4. The Common European Asylum System

What the European Union has tried to do is to introduce a common law framework in the region concerning asylum. Besides the international protection recognized all over the world, every country has instead wide room to choose how to internally manage the issue. In 1999, article 78 of the TFEU has ensured necessity to create a common system for international protection, with the aim to uniform the right of asylum and the subsidiary protection; to improve cooperation among states; to create new criteria on the responsibility of states; to share data. It was then created the CEAS, the Common European Asylum System. At its side, EASO, the European Asylum Support Office, is funded as an agency of the European Union by Regulation 439/2010/EU, in order to give aid and assistance to countries and to not leave them alone to manage such sensitive issues. It guarantees the development of the CEAS, strengthening the cooperation among states and supports them to fulfill their obligations on the asylum matter[69].

At present, the system contains a series of laws recognized at the European level, in order to show high standards and much more cooperation to guarantee equity in the treatment of applicants in an open and equal system, independently from the country where the person applies for. The Asylum Procedure Directive wants to make more equal, rapid, and of much more quality decisions on asylum issue; the Directive on the Conditions of Reception guarantees adequate material conditions of reception all over Europe and a complete respect of fundamental human rights. The 2004 Qualification Directive makes more solid decision on asylum, explaining the reasons for the recognition of international protection; it adds integration measures for beneficiaries of international protection[70].

[68] Arts. 6 and 27, *Regulation EU No 604/2013*.
[69] *European Asylum Support Office*. https://www.easo.europa.eu/
[70] *Case Work, CEAS – Sistema europeo comune di asilo*. https://casework.eu/it/lesson/ceas-common-european-asylum-system/#:~:text=CEAS%20%E2%80%93%20Sistema%20europeo%20comune%20di%20asilo&text=L'introduzione%20del%20CEAS%20%C3%A8,a%20raggiungere%20fin%20dal%201999

§1.4. The International Protection

The right to ask international protection is one of the fundamental rights recognized all over the world. The UDHR guarantees the right to asylum at article 14; the ECHR at article 18. The most known form of protection that states can recognize is the political asylum, that is the common status of refugee clearly explained in the Geneva Convention and its Protocol.

The Convention represents the first such comprehensive normative text in the arena of international refugee law, but it also contains relevant gaps. Thanks to this document, an important definition of the term *refugee* has been given, as well as the reference to the required international cooperation. What is lacking, however, is first and foremost an inclusion of a broader spectrum of people fleeing their country of origin who look for a safe shelter. This is the reason why, over the years, the law has developed and updated to fill the gaps left behind.

In Europe, the Union has worked hard to define asylum legislation in ever greater detail. In 2005, it introduced a directive concerning the asylum procedures (2005/85/EC); in 2013 another directive on the procedures of asylum (2013/32/EU); and the same year a directive on the reception's conditions (2013/33/EU).

The Asylum Procedures Directive of 2013 number 32 is also important because it remembers the right to remain in the member state pending the examination of the procedure, i.e., the principle of *non-refoulment*. This right is further developed in the communitarian law; the right to non-transfer is translated in the ECHR to the right to life (art. 2), right to fair trial (art. 6), right to an effective remedy against the violation of the recognized rights (art. 13), respect for family life (art. 8)[71].

One of the main gaps of the Geneva Convention is no reference to situations of conflict and or serious harm in case of repatriation: the document only refers to those cases in which harm -in this specific framework *persecution*- is strictly linked and due to race, religion, political opinion, nationality, or membership to a social group; in other cases, when there is no direct link to these reasons, the status of refugee cannot be applied. This

[71] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). P. 101.

limitation is a huge problem that needed to be faced and solved, and this is why the European Union has acted in this sense. Another form of protection recognized by the international community is the *subsidiary protection*: Qualification Directive 2004 number 83 introduced it to fill the gaps of political asylum, i.e. to provide protection also in cases in which there is no causal link with one of the five grounds listed at article 1A, paragraph 2 of the Geneva Convention, it "should be complementary and additional to the refugee protection"[72]:

> *The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection*[73].

Article 2 (e) of the directive states that:

> *'Person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in article 15, and to whom article 17(1) and (2)*[74] *does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country*[75].

Article 15 explains what serious harm means: it can be the condemnation or execution to death penalty; torture or any inhuman or degrading treatment; a serious and individual threat to the life or person of a civilian due to indiscriminate violence in situations of internal or international armed conflict[76].

Despite the relevance of the new type of international protection, the subsidiary form of protection has raised controversy regarding interpretation. The terms *effective risk* and

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[72] Point 24, *Directive 2004/83/EC*.
[73] Point 5, *Directive 2004/83/EC*.
[74] Art. 17 of the Qualification Directive of 2004 establishes the cases of exclusion, i.e. when a person has committed a crime against peace, a war crime, a crime against humanity; when he/she has committed a serious crime; when he/she has committed crimes against principles and purposes of the UN; when he/she is a danger to the community or security of the host country; when he/she has committed any other crime punishable by imprisonment prior to his/her admission to the member state. See art. 17, *Directive 2004/83/EC*.
[75] Art. 2 (e), *Directive 2004/83/EC*.
[76] Art. 15 (a), (b), (c), *Directive 2004/83/EC*.

serious harm seem to be objective elements, but they instead also refer to a subjective aspect: the risk needs to be concrete, to exist, to be factual; but, at the same time, the threat of a harm is also individual and personal, it can exist for a person but not for another one that lives in the same place. This is the so-called *individualization*, meaning that a person can face individually a serious harm to his/her life. As the UNHCR suggests, in cases of generalized violence, it is important to first consider if a conflict or any other kind of violence perpetrated towards civilians is real and factual; at the same time, they should face a specific risk that other persons do not have. It is indeed complicated to evaluate situations in which a person declares to risk dangerous measures and treatments by private people, and not by the state: they can be threatened by criminal groups, single persons. In these situations, to guarantee protection it is needed to consider the jurisprudence and the previous decisions made by other officials.

In addition to the two protection's forms analyzed, Directive 2001 number 55 of the European Commission has introduced the temporary protection, with the aim to manage "a mass influx of displaced persons" and to balance "efforts between Member States in receiving such persons and bearing the consequences thereof"[77]. It has been introduced in order to face the huge numbers of arrivals in Europe in that period, as an exception to be provided to those who could not go back to their country of origin because of the danger they would experience. The idea of the European community was to guarantee protection even in cases of high numbers of requests, to avoid that the asylum system would be unable to process such amount of applications. Article 3 states that

1. *Temporary protection shall not prejudge recognition of refugee status under the Geneva Convention*

meaning that there is no clear way to apply it. Another limit to this form of protection is that the decision on the adoption is up to the European Council which evaluates the proposal of the Commission that also may receive requests by a member state[78]. In any case, temporary protection is never applied, since it is too complicated to prefer it to any other form of protection, and since it is feared to set a precedent that will convince people to leave their country: it would be a *pull factor*, as this form of protection is broad and

[77] *Directive 2001/55/EC.*
[78] Art. 5, para. 1, *Directive 2001/55/EC.*

has blurred borders on its application; moreover, the fact that the decision has to be taken by the European Council would slow down and complicate procedures' time. It is relevant to remember that every country can, besides the international protection, introduce new forms of protection recognized exclusively at national level, this is another reason why temporary protection is barely considered[79].

§1.5. The right of asylum in Italy

The asylum right in Italy develops following two parallel paths, that are the desire to respect international relations protecting for the individual, and the necessity to recognize a fundamental right to the person. The right of asylum, as outlined in the Italian Constitution, is characterized by a dual nature: right of the person, conceived in subjective way and free from "citizen" concept; and principle of international obligations, since the right is accepted by the international community and thus deserves application in the countries.

The huge debate around the right of asylum in Italy roots in the Republican era, when constituents belonging to different political parties gathered to include the right to asylum among the fundamental principles, placing it among the new constitution's first twelve articles; standings differed and attempts were made to reach a compromise. Communists suggested a link between right to asylum and persecution because of the defense of the rights of freedom and labor; the limit of this proposal was that it only referred to persecuted people and not to those who were not threatened; moreover, this political party wanted to exclude those who fought against democracy in other countries. Socialists and center-right party included in the persecution's reason the fight against all principles expressed in the constitution, not only for freedom and labor. Social democrats and Christian democrats aimed at guaranteeing protection, without necessarily dwelling upon the aspect of persecution as a fundamental requirement for the recognition of asylum right. At the end, this latter proposal prevailed, thus recognizing the maximum protection to those who in their own country could not enjoy their fundamental rights, having they

[79] In chapter 2 I will analyze the Italian situation, and, in this regard, it will be interesting to evaluate the particular condition of huge migration flows that Europe has had to face, as a consequence of the Arab Springs; thus, the then Prime Minister Silvio Berlusconi did not introduced a new form of protection, but he introduced a provisional derogation that would allow automatic recognition of the refugee status to Libyans.

experienced persecutions; the idea of the constituents was to grant asylum to those who were fighting in their countries for those rights that were being enshrined in the newly born constitution[80].

The right of asylum in the Italian Constitution is set off in article 10:

> *1. The Italian legal system conforms itself to generally recognized international law*
>
> *2. The legal condition of the foreigner is regulated by law in conformity to international laws and treaties*
>
> *3. The foreigner, who is prevented in his/her country of origin from effective enjoyment of democratic freedoms guaranteed by the Italian Constitution, has right of asylum in the Republican territory according to conditions set by law*
>
> *4. The extradition of a foreigner for political offences is not allowed*[81]

The law reservation enshrined in article 10, paragraph 2, was widely discussed. There has long been a lack of implementing legislation on the matter, which has led the administrative courts to consider the constitutional provision as merely programmatic[82]. When Italy ratified the Geneva Convention in 1954, it adopted a restrictive interpretation on the topic, limiting the recognition of the refugee status exclusively to people coming from Europe[83]. Lacking implementing rules, the administrative discretion increased, and, as a result, the right to asylum came to be more a right of the state which in arbitrary way carries it out, less recognizing refugee status.

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[80] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). Pp. 212-213

[81] Art. 10, paras. 1-4, Italian Constitution.

[82] The Italian law defines *programmatic rules* the laws that are abstract, that indicates just general guidelines for future goals, they have no direct application and are regulated by ordinary tribunals. On the contrary, *preceptive rules* have immediate application and effectiveness, they are immediately valid. See Basilio Antoci, *La norma giuridica* (2013). https://www.studiocataldi.it/articoli/14143-la-norma-giuridica.asp

[83] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 225.

The United Sections of the High Court[84] in 1997 turned the setting around, establishing that article 10 is an immediately preceptive law[85] which sets up a subjective right[86], "actionable and invocable before the ordinary judicial authority"[87]. In 2002, law number 189, article 32 established that appeal after the response to application for the asylum has to be done to the ordinary tribunal[88].

Article 10, paragraph 3 refers to the right of asylum's application: it is designed only for the Republic territory; thus, it is different from the international law which opens up the possibility of extra-territorial asylum in "seats of diplomatic missions, in consulates, on board warships used for the exercise of public authority"[89]. Although there is no reference in article 10, it might suffice article 2 of the Constitution which aims at guaranteeing rights to all those who cannot enjoy them and providing binding obligations to states. It is remarkable to deem that right of asylum is conceived in the Italian law when someone is limited in his/her freedom because he/she has breached rules of a non-democratic constitution; it should not be recognized to those who have committed acts contrary to a democratic constitution that would have instead allowed the enjoyment of their freedoms: in such case, a violation would not be justified and, consequently, such persons would not be deemed worthy of protection by the Italian state[90].

Another controversial point upon which authorities have discussed is the matter of rights, i.e. which are those freedoms whose limitations and violations cause the asylum recognition. Since in the formulation of the asylum right, article 10 refers to "freedoms" in plural form, it may seem that there is the necessity to have a plurality of freedoms

[84] The High Court or Cassation Court is composed of several sections that gather all together in particular occasions for more qualified and solid decisions. See Dizionario Giuridico, *Sezioni unite*. https://www.brocardi.it/dizionario/3930.html
[85] The definition of *preceptive rules* is explained in footnote no. 66.
[86] The *subjective right* is recognized to the individual, and it is deemed to be absolute, thus it is regulated by the ordinary judge, since cases concern an asset to which a person has full and immediate legal guarantee; the trail between person versus another person is dealt by the ordinary authority. On the contrary, the *legitimate interest* is related to the exercise of the administrative power; it concerns a trail between citizen versus the administrative authority, therefore it is regulated by the administrative tribunal. See Laura Facondini, *Diritto soggettivo e interesse legittimo* (2021). https://www.diritto.it/diritto-soggettivo-e-interesse-legittimo/
[87] Marco Benvenuti, *Il diritto di asilo nell'ordinamento costituzionale italiano. Un'introduzione* (CEDAM: Padova. 2007). P. 41.
[88] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 230.
[89] *Ibidem.* P. 217.
[90] *Ibidem*. Pp. 218-219.

breached[91]. It is suggested that the rights' compression have to be "ongoing and general" to justify the asylum, and not when there is just "right attenuation"[92]. In theory, it should be sufficient the violation of a single right; in practice, more breaches are required; in general, it would seem that it can only be one in particular and determined situations.

§1.5.1. The institution of Commissions

In Italy the apparatus which deals with the status determination is called Territorial Commission. The first institute who dealt with the asylum determination system in Italy was the "Peer Eligibility Committee", created in 1952 on decision adopted by the Italian government and the UNHCR. The 2002 Bossi-Fini law produced relevant innovations changing the former "Central Commission for the recognition of the refugee status" in "National Commission for the Right of Asylum", also arranging the decentralization of the asylum requests with the creation of the "Territorial Commissions"[93]. The National Commission is established in Rome; it handles cases of revocation and cessation of international protection; it addresses tasks and prepares training and refresher courses for each component of the Territorial Commissions; it gathers statistical data; it uploads country of origin information[94] of asylum seekers[95].

Law number 146/2014 establishes that the maximum number of Commissions must be twenty and the possibility of having the Commissions flanked by one or more sections up to a maximum of thirty is recognized. Currently, on the Italian territory there are twenty Territorial Commissions, flanked by twenty-one sections, for a total of forty-one colleges. The headquarters are Ancona, Bari, Bologna, Brescia, Cagliari, Caserta, Catania,

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[91] Marco Benvenuti, *Il diritto di asilo nell'ordinamento costituzionale italiano. Un'introduzione* (CEDAM: Padova. 2007). Pp. 66-68.

[92] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 219.

[93] Ministero dell'Interno, *Commissione nazionale per il diritto di asilo*. https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-limmigrazione/commissione-nazionale-diritto-asilo#:~:text=Il%20predetto%20decreto%20ha%20conservato,per%20il%20Diritto%20di%20Asilo.

[94] Country of Origin Information (COI) is a fundamental research and study on the countries from which asylum seekers come, useful to understand the background of applicants and provide a for the most accurate and high-quality analysis and response possible. See EASO. https://easo.europa.eu/information-analysis/country-origin-information

[95] Ministero dell'Interno, *Commissione nazionale per il diritto di asilo*. https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-limmigrazione/commissione-nazionale-diritto-asilo#:~:text=Il%20predetto%20decreto%20ha%20conservato,per%20il%20Diritto%20di%20Asilo

Crotone, Firenze, Foggia, Lecce, Milano, Padova, Palermo, Roma, Salerno, Siracusa, Torino, Trieste, Verona[96].

The Minniti Decree of February the 17th 2008, number 13, converted with amendment in law 13th April 2017 number 46, in addition to reducing the degree of judgement, changed the composition of the Territorial Commissions, in article 12[97]. Initially, these were composed of an official from the Prefecture who acted as president; a representative of the local police; a representative of the local municipality; and a representative of UNHCR, who had the task of conducting hearings. The new Territorial Commissions are instead composed of an official with prefectorial career who still performs the function of president, appointed by decree of the Ministry of Interior; an expert on international protection and human rights, member of the UNHCR; a minimum of four administrative officials with investigative duties, appointed by order of the Head of Department for Civil Liberties and Immigration of the Ministry of Interior. The term of office of the President of the Commission is three years and is renewable. The meetings of the Commission to proceed to the decision of the application are attended by the president, the UNHCR representative, two investigating officers, including the officer who conducted the interview. In cases of particularly intense flows, an official from the Ministry of Foreign Affairs and International Cooperation may also attend.

The Procedures Directive of 28 January 2008, number 25, at article 3 establishes the area of competence of authorities. The border police office and the police headquarters are competent to receive the application from the applicant; the authority that has to determine the state responsible for examining the application for international protection in application of the European Regulation no. 604 of 2013 is the Dublin Unit, which operates at the Department for Civil Liberties and Immigration; the authorities responsible for examining the application are the Territorial Commissions, established at the Prefectures, under the coordination of the Department for Civil Liberties and Immigration of the Ministry of Interior. Against the decisions of the Commissions, it is possible to lodge an appeal at the Tribunal based in the Specialized Section on

[96] Ministero dell'Interno, *Area I – Commissioni territoriali*. http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/area-i-commissioni-territoriali
[97] Art 12, d. lgs. 17/2017.

Immigration, International Protection, and Free Movement of EU Citizens. Following the decision of the Court, in case of negative response, it is possible to make a further appeal at the Court of Cassation. Until a few years ago, there were three levels of judgement: the competent Tribunal, the Court of Appeal, and the Court of Cassation; with the Minniti Decree of 2017, the levels for judgement have been reduced to two, however causing significant problems and slowdowns, as the Court of Cassation is receiving and having to manage large amounts of files[98].

§1.6. Final considerations

The Italian Constitution refers to the asylum right but, instead, given the increasing intermingling of asylum and refugee status, the right of asylum is losing its value compared to the recognition of refuge: asylum is a more guaranteeing and protective instrument, since it is less conditioned, there are fewer clauses, constraints; it is not subject to specific conditions to be applied. In the case of refugee status, as already mentioned, protection is less inclusive and there are instead more constraints, such as the obligation to be outside of the country of origin.

In any case, in practice right of asylum is less applied and, as a consequence, from being subjective right it has become state's right: it is the state that has this right and that regulates it in a discretionary manner; it is up to it to manage the asylum, separating itself from the constituents' model. It is for this reason that the asylum right is basically never recognized, thus people are guaranteed, in case of positive response, of a form of international protection. The juxtaposition of the two instruments -refugee status and asylum- also emerges in practice, therefore asylum appears to be a fundamental step towards the recognition of the status: it is better to reach the status or subsidiary protection, because asylum that had to be a subjective right, completely satisfying and sufficient, has lost autonomy and consistency[99].

Moreover, the right to asylum is more burdensome for states, which would have to recognize it to too many persons, being it a fundamental right and being they obliged to guarantee it; the compromise at the international level is to deal with the matter using the

[98] Art. 3, *d.lgs. 28/2008*.
[99] Francesca Rescigno, *Il diritto di asilo* (Carocci Editore, Roma: 2011). P. 238.

term and the instrument of refugee status: an international disciplinary on asylum is indeed missing.

CHAPTER II - IMMIGRATION POLICIES IN ITALY

§2.1. Italy towards immigration policies: a complicated history

Legislation and immigration are strictly linked; it is not only that the first one changes according to the second one, but the second one also varies depending on the first one. As Valeria Ferrari suggests [2012], the "implementation and application [of migration law] at national and local level by the competent authorities has strongly influenced the kind of migration that characterized different countries, and thus Italy too"[100]. It is the law that defines migrants, their status; their living and working conditions -i.e. being recognized as citizens or not, having working visa or a permit to stay; the procedures and mechanisms they have to deal with are established by regulation. Over the years, the legislation's evolution has been provoking changes in the migrants' situation, who, for instance, found themselves losing their regular status due to mere changes in laws. It is for this reason that it is relevant and interesting to analyze legislation to understand better migration and vice versa.

Besides the efforts of the European community to create a common European asylum system, every country has regulatory power on its territory.

The first policy on migration matter in Italy was law 943 of 1986, which dealt with illegal flows and equal opportunity's promotion: it introduced right for migrant workers and the possibility to enter the social and health services. Since the first regulation, instead, the migration issue in Italy has been characterized by a general difficulty to legal entrance and stay in the territory, also due to the complexity of job recruitment system for foreigners, who found an easiest and quickest option in undeclared work, therefore putting them in an even more risky situation.

The Martelli Law, entered into force in 1990, constituted a relevant step forward, since it was adopted in the period of Europeanization of the migration issue and thus necessities changed. The 1990 law also followed the first racist episodes, therefore migration became a necessary matter to be discussed in the political arena; the principles established in it

[100] Valeria Ferraris, *Immigrazione e criminalità* (Carocci: Roma. 2012). P. 9.

would remain at the basis of the migration policies in Italy, involving entrance in the country, frontiers' controls, reception system, expulsion rules, family reunification[101].

In 1998, Turco, undersecretary to the presidency of the Council of Ministers, and Napolitano, Minister of Interior, approved the law number 40, later merged into the Immigration Consolidated Act (TUI, Italian *Testo Unico Immigrazione*) number 286 on migration and conditions of the foreigner, that is currently the reference text to which changes have been added over the years. It has been defined as the "more organic and ambitious attempt to systematically restructure Italian migration legislation"[102]. The most relevant element of the law is the introduction of a new form of protection, recognized only at the Italian level, thus a national guarantee: the humanitarian protection. According to the text, it is not possible to remove or refuse the permit to stay in cases in which there were serious reasons, particularly of humanitarian matter, or also in cases of constitutional or international obligations[103]. This legislation found application in article 11 *c-ter)* of the Decree number 394 of the President of the Republic Ciampi, according to which the permit to stay is given

> *"for humanitarian reasons, in cases listed at articles 5, paragraph 6, and 19, paragraph 1, of the Consolidated Act, based upon decision of the Territorial Commissions for the recognition of the refugee status, i.e. acquisition by the applicant of documents about reasons of the request concerning objective and serious personal situations which do not allow for the removal of the foreigner from the national territory"*[104].

Article 19 of the Consolidated Act lists the prohibition of expulsion and *refoulment*: the reasons that recognize humanitarian protection are conditions of vulnerability, such as age; it is also necessary to consider living conditions in the host country, and the objective conditions of the country of origin in relation to the situation of conflict "at low social intensity". This concept refers to the condition of deprivation of human rights due to a conflict that generates widespread violence even if not general, or, at least, of prevalent

[101] Valeria Ferraris, *Immigrazione e criminalità* (Carocci: Roma. 2012). Pp. 12-13.
[102] *Ibidem*. P. 15, See Colombo, Sciortino, 2004, p. 63.
[103] *D.lgs. 25/1998, n. 286.*
[104] *D.P.R. 31/1999, n. 394*.

subjugation towards a particular social group. In this case, a more objective analysis can be done. Paragraph 1 of the article states

1. *In no case it can be ordered expulsion or refoulment towards a country where a foreigner would be at risk for reasons of race, sex, language, citizenship, religion, political opinions, personal or social conditions, or would risk being sent to a country where he/shou would not be protected from persecution*[105].

After the Turco-Napolitano law of 1998, in 2002 it was adopted the Bossi-Fini law, number 189, remembered for having increased irregular migrants. This policy, although with several amendments, has been regulating entrance in Italy, access to labor market, life, and expulsion of foreigners; it subordinates the permanence on the Italian territory to a work contract, meaning that only who finds and keeps a job can be ensured a permit to stay and if, on the contrary, the foreigner does not immediately find a job, he/she cannot regularize himself/herself and is therefore at risk of expulsion. The aim of the Bossi-Fini law was to reduce illegal migration but it has, on the contrary, by deciding to introduce immediate expulsion with border guidance, to reduce permit to stay length from four to two years, to enlarge from five to six years to apply for a residence card, increased those phenomena: people have not the possibility to integrate and to find a better job which can guarantee them a higher salary so fast, therefore risking to lose their regularity or not gaining it because they do not have sufficient earnings. It is extremely difficult for foreigners to find a job in order, and they have to satisfy a highly rigid system that "does not coincide with the reality of the Italian labor market"[106]. Marco Paggi from the Association for the legal studies on migration (ASGI) has commented [2017] that this law

> *"[…] has paved the way for a society increasingly characterized by distrust and discriminatory anger. Migration for economic reasons is a serious issue, which needs to be managed in an adequate manner. In the last 15 years this has not been done"*[107].

Previously, migrants could enter the country with the so-called "sponsor", i.e. a relative or friend that guaranteed the person and that helped him/her to pay the journey, to find a

[105] Art. 19, para. 1, *d.lgs. 25/1998, n. 286.*
[106] Ilaria Sesana, "15 anni di "Bossi-Fini", legge frutto di ideologia che ha fatto aumentare gli irregolari", *Altreconomia* (2017). https://altreconomia.it/15-anni-Bossi-fini-legge-frutto-ideologia-aumentare-gli-irregolari/
[107] *Ibidem*.

job, to legalize himself/herself without constituting a burden for the host country; with the introduction of the new regulation and the abolition of that guarantee, migrants have necessarily to satisfy higher requests, exposing themselves to higher risks, such as relying on traffickers and underpaid and exploited black market jobs to repay debts. According to this law, migrants should receive job offer when they are still in the country of origin; but this is just impossible. The Bossi-Fini law has also introduced the form of irregularity at the entrance of the country: when analyzing the files of migrants at the Territorial Commissions, the police headquarters has the duty to signal this form of irregularity; by the way, the warning has no meaning, and it is not considered over the application's evaluation. This shows how too often bureaucracy fossilizes and creates situations bordering on the absurd: on the one hand the competent bodies are obliged to include a report, on the other hand it is a simple sentence, sterile, without any enforcement or regulatory power. Over time, in fact, changes in the law have recognized the right of the foreigner to enter another territory even without having the documents, when he/she immediately declares his/her intention to apply for protection: as stated in the Geneva Convention, the prohibition of *refoulment* prevails until the request of the applicant is not assessed and a decision is issued[108].

After the Bossi-Fini law of 2002, the period of organic amendments to the migration legislation finished and it started a phase of partial but continuous changes that affect the legal status of foreigners. The regulatory framework was tightened by legislative acts deriving from the document *Legislative measures for security*[109], approved in 2008 by the Council of Ministers, among which a decree also concerned the specific refugees' issue[110].

A further critical moment was during the Arab Springs in North Africa in 2011, which caused a huge increase in migration flows to Italy, which invoked the *burden sharing* principle as the emergency situation required an intervention by the entire European

[108] Valeria Ferraris, *Immigrazione e criminalità* (Carocci: Roma. 2012). Pp. 17-20.
[109] *D.lgs. 159/2008* on amendments and integrations to legislative decree 28th January 2008, no. 25, on the application of Directive 2005/85/EC about minimum rules for the procedures applied in Member States for the recognition and revocation of refugee status. https://www.camera.it/parlam/leggi/deleghe/08159dl.htm#:~:text=%22Modifiche%20ed%20integrazioni%20al%20decreto,revoca%20dello%20status%20di%20rifugiato%22
[110] Valeria Ferraris, *Immigrazione e criminalità* (Carocci: Roma. 2012). P. 22.

community. To face the sensitive context, the then President of the Council Berlusconi issued a decree establishing that all citizens coming from north Africa should be granted a six-month permit to stay for humanitarian reasons; in addition, it was also established a programme to manage the humanitarian emergency defining a reception plan in a deal government-regions. All persons coming from Libya received in the centers were then automatically routed towards the asylum request. This plan, despite the fact that in practice it guaranteed protection to the applicants, demonstrates once again the insufficiency of Italian legislation, which has to devise special directives in emergency situations, while lacking an adequate and sufficient asylum system[111].

§2.2. Recent years' migration policies

In Italy migration has always been treated as a security matter, and this has the consequence that legislative initiatives are taken in order to fight against irregular migration, to limit entrance because this would constitute a risk for the country. This negative feeling of increasing risk causes chaos at the regulatory level, as continual modifications are called, aimed at limiting situations of irregularity but, on the contrary, they create confusion and rigidity in the system. Over the years, restrictive measures have been introduced to the regulations on entry, stay and family reunification[112].

It is important to have a hint of the first and previous decisions taken on migration matter to analyze and understand why and how they have influenced on subsequent decrees, opening the way for even less transparent and clear regulations.

§2.2.1. Minniti Decree

In February 2017, the Minister of Interior Marco Minniti in conjunction with Orlando, the then Minister of Justice, propose a decree, then approved by the Prime Minister Gentiloni and the President of the Republic Napolitano, and it enterdeinto force on 18th February 2017. The Law Decree 17/2017 number 13, then converted with amendments by law on 13th April 2017 number 46, has introduced urgent regulation for the acceleration of proceedings concerning international protection issues and for the contrast to irregular immigration. The Minniti Decree, as already stated in Chapter 1 (§1.5.1), has

[111] Valeria Ferraris, *Immigrazione e criminalità* (Carocci: Roma. 2012). Pp. 27-29.
[112] *Ibidem.* Pp. 22-24.

changed the composition of the Territorial Commissions, with the aim to appoint expert personnel on international and national migration laws, hired on a permanent basis. Moreover, it instituted twenty-six specialized sections on immigration and international protection issues; it established procedures for the recognition of international protection, i.e., it introduced a new procedural template, defined the appeal judgments, stated that the appeal against the decisions can be taken within thirty days since the notification of the measure. Minniti simplified regulations concerning the notifications of acts by the Territorial Commissions. The Decree 2017 modified the Immigration Consolidated Act, simplifying identification procedures and making sure of the effectivity of expulsion in case of such measure.

Besides the attempts to reduce timelines and make them more efficient, the big limitation of Minniti Decree was article 19, which concerns urgent regulations to ensure effectivity of expulsions and the strengthening of detention centres for returns: the newly named "permanent centers for returns", better known with the Italian acronym CPR, from the Italian *Centri di permanenza per il rimpatrio*[113], do not change in the way those centers operate and the idea on which they are based. The "temporary detention centers" were introduced by the Turco-Napolitano Law in 1998, which was in fact aimed at reducing illegal migration phenomena; in 2008, the Law Decree number 92 "Urgent measures on public security matter" substituted the name of CPT (*Centri di permanenza temporanea*) in "identification and expulsion centers", CIE (Italian *Centri di identificazione ed espulsione*). Detention in these centers is ordered by the police headquarters in case of being suspected of having committed serious crimes; reasons of public order and security; measures of prevention according to the anti-mafia code; preventing terrorism; being a danger to public order and safety; risk of escape while waiting for the decision on international protection; there are founded reasons to believe that the asylum seeker has presented the application only to postpone or avoid the execution of expulsion. CPR have been strongly criticized as severely restricting personal freedom. They are designed as places of detention while waiting for the foreigner to be expelled from the country, since it is almost never possible to immediately repatriate a person through border accompaniment. According to the Italian government, the centers have to guarantee

[113] *D.l. 17/2017, n. 13*.

assistance and full respect of dignity[114]; instead, Amnesty International had already expressed concerns[115] at the time of the CPT, that constituted a violation of human rights: people are detained in these centers as if they are criminals[116].

Another big limitation of the Decree number 13 is the elimination of the second instance, with the idea of processing the appeals more quickly. The effect is the opposite, since, even today, as the system has not been changed, the asylum seekers' applications often end up in the hands of the Court of Cassation, which obstructs the files and considerably lengthens times. Moreover, the second level of judgement was quite important because it was the one that guaranteed a judgement of merit that gave value to the right of asylum and allowed to overturn a negative opinion from the Territorial Commission; in this way, instead, the Cassation implements only evaluations of legitimacy[117].

A further reproach that can be made to the Minniti-Orlando Decree is not to have introduced any change to the Bossi-Fini law, an "authentic manifesto of migration prohibitionism"[118], since, by establishing the denial of legitimate entry for working reasons, it discharges on the asylum instrument a series of situations that should instead be processed with more transparent and rapid ways.

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[114] Camera dei deputati, *I Centri di permanenza per i rimpatri* (2021). https://temi.camera.it/leg18/post/cpr.html

[115] Amnesty International, *Italia Presenza temporanea, diritti permanenti. Il trattamento dei cittadini stranieri detenuti nei "centri di permanenza temporanea e assistenza" (Cpta)* (2005). http://www.osservatoriomigranti.org/assets/files/Amnesty%20-%20Presenza%20temporanea.pdf

[116] Racist phenomena are frequent, even leading to cases of self-harm and suicide. The most recent, to date, dates back to May 24th, 2021, when a 23-year-old boy, following repeated intimidation, took his own life by hanging himself in his room (cell) in Turin (IT). See Massimo Massenzio, "Torino, 23enne della Guinea si suicida al Cpr. Era stato aggredito a Ventimiglia", *Corriere Torino* (2021). https://torino.corriere.it/cronaca/21_maggio_23/torino-clandestino-23-anni-si-suicida-cpr-359ca72c-bbca-11eb-822f-b2d049d46202.shtml

[117] The principle upon which the work of the Court of Cassation is established is that it only considers if, on the basis of the facts presented, which are no longer be assessed again, the Cassation evaluates whether the judge from whom the appeal originated (in the case of asylum issues, the Tribunal) has correctly applied the law. The Cassation has to assess the legitimacy of the judge's operation and not the specific concrete facts of the individual case, that is, it considers if that interpretation is the constitutionally oriented. See Filodiritto, *Il confine tra merito e legittimità: la necessaria ricostruzione da parte del giudice di legittimità della fattispecie concreta così come effettuata dai giudici di merito* (2019). https://www.filodiritto.com/il-confine-tra-merito-e-legittimita-la-necessaria-ricostruzione-da-parte-del-giudice-di-legittimita-della-fattispecie-concreta-cosi-come-effettuata-dai-giudici-di-merito

[118] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 52-53.

§2.2.2. The Security Decree of Salvini: the 2018 change of direction

One of the most criticized choices in the migration policies' field in Italy is the so much wanted by the new Ministry of Interior Matteo Salvini, the Security Decree, that has created disastrous consequences for the work of the Commissions that I will analyze in the third chapter of this thesis.

In July 2018 Salvini, in accordance with Prime Minister Conte, during his first mandate, and the President of the Republic Mattarella, adopted a directive with the object "Reception services for asylum seekers" to deal with the fact that, due to high numbers of asylum seekers living in reception centers, the asylum procedures lasted so long that applicants remained in the centers for about two years waiting to complete the required path; this situation was not acceptable to the Minister of Interior, who believed that it placed excessive burdens on the Italian state: the aim, therefore, was to review the reception system and rationalize the services for migrants. The Security Decree was preceded by measures that cut costs to reception centers, even though the guests of those structures were more and, thus, more persons were in need of assistance. The decisions taken concerned the detection of performing services for guests of first reception facilities, considering sizes and typologies of the structures, in order to make a detailed analysis of the real needs according to the center; services should be diversified and identified in detail[119].

The Security Decree number 113 was then adopted in October: the idea came from the conviction that security and immigration go hand in hand. The then Prime Minister Conte affirmed:

> *"The aim is to reorganize the entire system of recognition of international protection in order to bring it in line with European standards within a framework of absolute guarantee of individuals' and international charters' rights, something that has not been done for years"*[120].

[119] *Direttiva "Servizi di accoglienza per i richiedenti asilo"*, 23/07/2018.
[120] Portale Immigrazione, *Decreto Salvini, pacchetto sicurezza e immigrazione*. https://portaleimmigrazione.eu/decreto-salvini-pacchetto-sicurezza-e-migranti/

The immediate effect, on the contrary, was a sudden reduction of the access to protection's possibility. The term "for humanitarian reasons" that recognized a form of protection starting from the TUI 1998 was deleted and substituted by permit to stay for special situations. The new special protection created a radical change in migratory policies and in the Commissions' work: its ambiguity and vagueness could not be applied in the same way as humanitarian protection, so much to create a regulatory vacuum that was difficult to fill. The permit to stay recognized through the special protection was restricted to article 19 only, making the several conditions considered by the humanitarian protection disappear. Moreover, it lasted for one year, while the humanitarian one had a two-year term, and that created even more difficulties.

Article 1 of the Decree tried to figure out the risk of unconstitutionality towards which it was heading, since the three forms of protection -status, subsidiary, humanitarian, all together guaranteed the application of article 10 of the Italian Constitution, therefore the form of protection recognized in 1998 would also be deemed fundamental to the enjoyment of an equally fundamental right, the asylum right. The aforementioned article 1 provided for special cases of temporary permits for needs of a humanitarian nature: some of them already existed, introduced by previous laws, others have been introduced by Salvini Decree. A permit for reasons of special protection, granted to victims of violence, exploitation and human trafficking; it was already provided by the Consolidated Act amended by the 2002 Bossi-Fini law; it had six-month term, and it could be renewed for a year; it gave the possibility to the beneficiary to work, and it was convertible. A permit for domestic violence victims, provided by article 18-*bis* of the TUI, had one-year duration; it allowed to work, and it was convertible. A permit for natural catastrophes, introduced by Salvini, given for "exceptional calamity that does not allow for a safe return and for permanence in security conditions"[121]; it was granted for six months but it was not renewable, it was not convertible, it gave the possibility to work; the reference was anyways only to earthquakes, tsunami and similar, not to climate change that may affect people, causing, for instance, incapacity to get by or drought. A permit recognized for particular labor exploitation, granted to whom filed charges and who cooperated in the penal proceedings against the employer. A permit for medical care, introduced by Salvini,

[121] Art. 20-*bis*, para. 1, *d.l. 113/2018*.

for those with exceptionally serious health conditions who, if returned, would incur serious health risks; it had one-year term, it was renewable over the course of medical treatment. A permit for particular civil value, introduced by the Decree; it had two years duration, it was renewable, it could be used to work, it could be converted as a work permit to stay. A permit for special protection in the event of rejection of international protection, introduced by the Decree; it should be used to not *refouler* those in need for particular reasons, such as minors, pregnant women; it had one-year term, it was renewable, it was not convertible[122].

Salvini Decree "creates confusion, damages or eliminates administrative instruments that work, introduces regulations which contrast not only humanity but the most basic principles of rationality"[123]. Article 1 revoked the permit to stay for humanitarian reasons that was in fact very broad because, once it was established that there were no grounds for granting refugee status or subsidiary protection, "serious reasons, in particular of a humanitarian nature or resulting from national and international obligations"[124] were investigated, thus referring to articles 10 of the Italian Constitution and 33 of the Geneva Convention. The new kind of protection wanted by the new Ministrer were instead not clear, they were a set of confusing directives, difficult to interpret and therefore to apply[125].

Article 2 concerned the detention in CPR, which was extended from a maximum of 90 to 180 days: irregular people needed to be identified and, according to Salvini, it was necessary to extend the time to be able to clearly identify everyone; his idea was also to create an effect in arrivals, since a higher number of expulsions would mean less people would try to reach Italy; in addition, the goal was to increase the number of identification and repatriation centers to handle high demands, in collaboration with regions and local institutions[126]. Salvini also introduced two new hypothesis for the detention in CPR,

[122] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 56-58.
[123] *Ibidem*. P. 8.
[124] *D.lgs. 25/1998, n. 286.*
[125] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). P. 42.
[126] Portale Immigrazione, *Decreto Salvini, pacchetto sicurezza e immigrazione*. https://portaleimmigrazione.eu/decreto-salvini-pacchetto-sicurezza-e-migranti/

motivated by the necessity to determine or verify the identity or citizenship of the asylum seeker[127].

In the second part, the Decree focused on international protection dispositions. The changing of migration laws was indeed aimed, first of all, at narrowing refugees right as it was conceived up to that moment. It was extended the list of crimes that caused the revocation or rejection of the asylum, until then limited to serious cases, that were being a danger for the public security or having committed crimes against humanity; Salvini excessively expanded the hostile crimes, i.e., those that deny the granting of international protection or, if it has already been granted, its revocation: the Penal Code articles on violence or threat to a public official, serious personal injury (that causes disease, weakening of a sense or organ, loss of sense, deformation, abortion), female genital mutilation, serious injury to public official, aggravated theft, theft at home and theft by ripping[128]. In the event a person returned to his/her country of origin, the recognized protection ceased immediately.

Article 9 enlarged cases in which people do not have the right to remain in Italy while waiting for the answer by the Commission on the reiterate[129] request with the only aim "to delay or prevent expulsion"[130].

For what concerns the reception system, the SPRAR, that was the system of protection for asylum seekers and refugees (*Sistema di Protezione per Richiedenti Asilo e Rifugiati*), a service of the Ministry of Interior regulated by municipalities, that in Italy managed projects of reception, assistance, integration, instituted in 2002 by Bossi-Fini Law, was substituted by the SIPROIMI, the reception service that was exclusively reserved to holders of international protection, unaccompanied foreign minors, persons in possession

[127] Camera dei deputati, *Il decreto legislativo n. 142 del 2015 (cd. Decreto accoglienza)* (2020). https://temi.camera.it/leg18/post/il_decreto_legislativo_n__142_del_2015__cd__decreto_accoglienza_.html . See art. 3, *d.l. 113/2018*.
[128] Arts. 336, 583*bis*, 583*quater*, 624, 624*bis*, Italian Penal Code.
[129] The reiterate procedure is "an additional application for international protection filed after a final decision has been taken on a previous application […] and where the territorial Commission has made a decision terminating the proceedings or rejecting the application". To be considered admissible, the application should present new elements with respect to the application evaluated under the ordinary procedure. See art. 2, para. 1b), *d.lgs. 25/2008*.
[130] Art. 9, para. 1d), *d.l. 113/2018*.

of permit to stay for special reasons[131], listed in article 18 (situations of violence or serious exploitation), article 18-*bis* (domestic violence victims), article 19, paragraph 2 d-*bis* (serious psychophysical conditions or due to serious pathology), article 20-*bis* (natural disasters), article 22, paragraph 12-*quarter* (particular labour exploitation), article 42-*bis* (acts of particular civil value)[132]. This means that not only the evaluation of the Commissions changed, but also the reception system, that went from including those who had been granted a permit for humanitarian reasons, to an extremely reduced inclusion, only for permits for international protection and specific cases listed above.

Salvini Decree, abrogating permit to stay for humanitarian reasons, reduced the mesh of the reception system for applicants and had relevant consequences on the work of the Commissions, which had to abruptly change their working approach.

§2.2.2.1. The *maxi-amendment* of November 2018

A further aspect of criticism of the Salvini Decree is the use of an instrument of emergency nature such as a Law Decree to deal with a phenomenon which, in consideration of its cyclical nature, it is doubtful that it can be classified as an emergency. In addition, the use of the *trust* (*fiducia*)[133] position, eliminating parliamentary debate at its roots, leads to further doubts of constitutionality, in view of the fact that the subject matter is covered by reservation of law, whose ratio consists in guaranteeing that a matter is regulated by law and not by acts of different nature[134].

With the *maxi-amendment* made to the Law Decree in November 2018, Salvini suggested introducing specific clarifications to article 2-*bis* of Legislative Decree 2008 number 25, regarding the concept of "safe countries". According to the 2008 text, a safe state is one whether

[131] Art. 12, *d.l. 113/2018*.
[132] *D.lgs. 25/1998, n. 286.*
[133] *Trust* is a mechanism according to which Government imposes the approval in Parliament, without amendments, of a decree that is deemed to be fundamental for its own political agenda, to avoid the otherwise automatic fall of the Government itself.
[134] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 121-122.

on the basis of its legal system, the application of the law within a democratic system, and the general political situation, it can be demonstrated that, generally and consistently, there are no acts of persecution as defined in article 7 of the Legislative Decree of November 19, 2007, no. 251[135]*, nor torture or other forms of inhuman or degrading treatment, nor danger due to indiscriminate violence in situations of internal or international armed conflict*[136]

Moreover, other criteria to be considered are legislative dispositions of that country and how they are applied; human rights' and freedom's respect; guarantee of the *non-refoulment* principle; a system of effective remedies against violations of those rights and freedoms[137]. To this concept, the Ministry of Interior established in article 7-*bis* that if a person who came from a country which was recognized as safe asked for asylum, only the fact that he/she originated from there, the application was not considered, and it was even defined as "manifestly unfounded": the idea was that whatever was the reason that pushed a person to leave the country of origin, that person should in any case deserve and be guaranteed secure protection from that safe country[138]. A country is also safe "with the exception of parts of the territory or categories of people"[139], as if it was possible to draw precise boundaries within countries; furthermore, the application for asylum should be made in light of the personal situation, regardless of nationality: article 7-*bis* distorted and oversimplified reality, which is on the contrary much more complex.

§2.2.3. The Security bis Decree of Salvini: 2019

A few months later, on June 14th, 2019, Law Decree number 53 on "Urgent dispositions on public order and security matter" entered into force and it was then converted into the law number 77 of 8 August 2019, advocated by the still Minister of Interior Salvini and approved by the Council's President Conte.

The so-called Security bis Decree contained eighteen articles, all inherent to further tighten the security theme at the center of the political agenda of Salvini; it considerably reduced the possibility of migration. One of the strongest measures taken was over illegal

[135] Art. 7, *d.lgs. 251/2007* lists the persecutory acts to be considered for the evaluation of the refugee status' recognition according to art. 1A of the Geneva Convention.
[136] Art. 2, *d.lgs. 25/2008*.
[137] Art. 3, para. a), b), c), d), *d.lgs. 25/2008*.
[138] Art. 7-*bis*, *Legge 3 dicembre 2018*.
[139] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 122-123.

migration and precisely on sea and land border: the Ministry of Interior was assigned as the authority responsible of controls and recognized as having the power to limit or prohibit the entry, transit, or stopover of vessels (other than military) in territorial waters for reasons of

> *"public order and safety or when the conditions referred to in article 19, paragraph 2, letter g), limited to violations of immigration laws in force, of the UN Convention on the Law of the Sea, with annexes, and the Final Act […]."*[140]

i.e. the passage of the ship involved the loading or unloading of goods or people in such way that laws of the coastal country regulating, among other, the migration field, were breached[141].

The Decree additionally arranged penalties to those who actively participated to favor illegal migration, thus who did not comply to ban and limitation: captains were sanctioned with an administrative sanction between 150,000 and 1,000,000 euros, in addition to potential penal sanctions[142]; in the event of recidivism of the offence, administrative confiscation with immediate precautionary seizure was applied[143]. It also called for a strengthening of the coordination of investigations to combat illegal immigration (article 4); a strengthening of the *refoulment* policy, recognizing a premium for "collaboration in the field of re-admission of irregular subjects present on the national territory and coming from non-European countries" (article 12)[144].

Salvini translated his political agenda into a real fight against illegal immigration, paying particular attention to the usual aspect of security. Beyond the references to security in a broader sense -the Decree in fact inserted rules regarding the strengthening of the rules governing the conduct of outdoor events (articles 6, 7, 13); the strengthening of police garrisons; an acceleration of the execution of criminal measures of final conviction

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[140] Art. 1, *d.l. 14/2019, n. 53*.
[141] Art. 19, para. 2 of the *UN Convention on the Law of the Sea* on "innocent passage" considers "prejudicial to the peace, good order or security of the coastal State" if the foreign ships' activities involve "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". See *United Nations Convention on the Law of the Sea*.
[142] Art. 2, *d.l. 14/2019, n. 53*.
[143] Laura Biarella, "Decreto Sicurezza bis: in vigore le nuove norme", *Altalex* (2019). https://www.altalex.com/documents/leggi/2019/06/12/decreto-sicurezza-bis
[144] Arts. 4, 12, *d.l. 14/2019, n. 53*.

(article 8)-, it is the migrant arena that has undergone the most stringent regulatory squeeze. The 1998 TUI, which was then amended by Salvini in 2019, referred to the need for collaboration on the issue of sea border controls[145]; Salvini put emphasis on sea rescues and inserted a very harsh sanction plan, especially against NGOs.

§2.2.4. Lamorgese Decree 2020: the new Italian protection

One year after the second Decree of Salvini, the new Prime Minister Luciana Lamorgese published a new Security Decree with the aim to reform the Italian migration policies, which is the text currently in force in Italy.

Approved by the then President of the Council Conte, and entered into force in October 2020, the text number 130 with its 12 articles recognized the necessity to introduce a protection in Italy that could really guarantee a form of asylum in addition to the international ones already known. The humanitarian protection that was removed was indeed a safeguard rule that consented to include a high number of people; without it, protection at the national level was not guaranteed, therefore constituting a limit to the breaching of article 10 of the Constitution on the right to asylum. If Salvini's special protection created confusion and impossibility to accommodate the applicant for humanitarian reasons, Lamorgese attempted to solve this situation by widening the inclusion's mesh. The new special protection's ratio, that is the one currently in force, is to safeguard private and family life: for some individuals exclusion from the country where they have applied for asylum would in fact mean a violation of their right to privacy; to this end, the competent Territorial Commission will evaluate the effectiveness of family ties on the territory, the effective social integration that includes the level of language and/or a possible job, the duration of stay in Italy, the existence of family, social, cultural ties in the country of origin, meaning that the absence of these would mean forcing the foreigner to live in a place where there is no longer any link, nor a network of affections that guarantees the dignity of a social and family life.

The Decree that was later converted into Law 18 December 2020 number 173 updates the Italian TUI, further emphasizing the need to respect the private and family foreigners' life. The 1998 Decree established a series of conditions that should exclude expulsion and

[145] Art. 11, para. 1-*bis, d.lgs. 25/1998, n. 286*.

rejection for the vulnerable, i.e. according to article 19, expulsion could constitute a violation of the right to respect for the private and family life of the applicant, unless this, adds Lamorgese, is necessary for security and health reasons[146]. Paragraph 1.2. of the article also establishes that, in the event of rejection of the application for international protection, the Commissions transmit the acts to the police headquarters for the recognition of a residence permit for special protection; paragraph 2 defines the categories that should not be subject to expulsion: minors under the age of eighteen, unless they have to follow their expelled parents; foreigners with permit to stay; foreigners cohabiting with relatives within the second degree or with their spouse, of Italian nationality; women in a state of pregnancy or in the six months following their child's birth; foreigners in serious psychophysical conditions or resulting from serious pathologies[147]. On this respect, the ECHR states at article 8

1. *Everyone has the right to respect for his private and family life, his home and his correspondence*[148]

highlighting the relevance of the concept of private life and family.

The Constitutional Court has expressed itself in the pronouncement number 202 of 2013, imposing the application of article 13 paragraph 2-*bis* of TUI with the object "administrative expulsion" also to the foreigner considered dangerous for public safety, who has family ties in the Italian territory. However, judges have stated on the subject recalling the importance of case-by-case assessment, therefore even in situations of possible dangerousness, it is necessary to assess whether the applicant has "subjectively qualified and effective" bonds in Italy[149]. The pronouncement adds that the refusal or revocation of the residence permit "provides for a discretionary assessment of dangerousness in concrete terms only for foreigners who have exercised their right to family reunification or their reunified family members"[150]. It is interesting to analyze the

[146] Art. 19, *d.l 173/2020*.
[147] *Ibidem*. Art. 19.
[148] Section I on Rights and Freedoms, art. 8, para. 1, *European Convention on Human Rights*.
[149] Irene Marconi, "Espulsione dello straniero: rilevano legami familiari in Italia", *Altalex* (2020). https://www.altalex.com/documents/news/2020/07/06/espulsione-straniero-rilevano-legami-familiari-in-italia
[150] Corte Costituzionale, *Sentenza n. 202/2013*. https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2013:202

pronouncement of the Constitutional Court on this issue, because it shows how the presence of family ties can really be an important element of assessment, which can also exceed that of dangerousness. Another aspect worthy of note is the concept of case-by-case assessment, whose use had been drastically reduced by Salvini, but it re-emerges with Lamorgese.

One of the most important novelties of Lamorgese Decree is the prohibitions of expulsion listed in article 19, which are expanded. In addition to the cases analyzed above with respect to expulsion as a violation of the right to private and family life, foreigners who risk being tortured or subjected to inhuman or degrading treatment in their country of origin must also be protected, and systematic and serious violations of human rights in the state of origin must be taken into account. Moreover, there is the respect of the obligations expressed in article 5, paragraph 6 of the TUI, i.e. the need to respect constitutional or international obligations: this amendment is extremely relevant, because it gives value to the principle of *non-refoulment* even when the necessary requirements for the recognition of international protection are not met. Respect for international obligations also refers to fundamental conventions on human rights, such as the Istanbul Convention, which protects women victims of torture and domestic violence[151]. This rule expansion therefore makes it possible to include cases that are not compatible with international protection in special protection, since *non-refoulment* prevails. Another important expansion of article 19, paragraph 1, concerns the idea that persecution can occur also for sexual orientation and gender identity, thus the new special protection is aimed at including people who experience different types of risks: international protection has to be considered when there are clear situations of persecution or discrimination not protected by the country of origin, but when there are no conditions for the recognition of international protection[152]; national protection has to note the violation of personal rights of a person if that person is obliged to return to his/her country.

[151] The Council of Europe Convention on preventing and combating violence against women and domestic violence, commonly known as Istanbul Convention, was approved in 2011. See https://www.coe.int/it/web/conventions/full-list/-/conventions/rms/090000168008482e

[152] Elisa Scannapieco, "Protezione internazionale va riconosciuta al migrante omosessuale che rischia nel paese d'origine. Cassazione civile, sez. I, sentenza 23/04/2019 n° 11176", *Altalex* (2019). https://www.altalex.com/documents/news/2019/05/03/protezione-internazionale-va-riconosciuta-al-migrante-omosessuale-che-rischia-nel-paese-d-origine

The abrogation of humanitarian protection implied a superficial and generic evaluation of requests for protection; with Lamorgese the evaluation is allowed case-by-case, considering the specific and personal situation: this is a fundamental aspect to guarantee the respect of article 10 of the Italian Constitution, of the UDHR, of the ICCPR, of the ICESCR[153]. The updated TUI does not re-introduce humanitarian reasons, but it fills up on the same discretion; this means that it is important to evaluate the state of origin of the asylum seeker, and serious and systematic human rights violations. An applicant should be heard in any case, even when, according to Salvini, the origin from "safe countries" would mean "manifest unfoundedness"; but, instead, the personal situations should not always be part of general considerations of safety in country. Personal experiences are various from what a state's guidelines and values predict -just think that what a person experience in a large urban center is likely to change in a rural area; even if the law in a country that is deemed to be safe are fair, the personal perception can be slightly different.

The Minister has then extended the categories of permits to stay that can be converted into work permits, by adding a new paragraph, 1-*bis* to article 6 of the TUI. In addition to study permits, permits for special protection, for calamities, for elective residence, for the acquisition of citizenship or stateless status, for sporting activities, for artistic activities, for religious reasons, for assistance to minors and for medical treatment can also be converted. The novelty introduced by Lamorgese is that if the special cases wanted by Salvini could not be converted into work permits, the situations that recognize special protection, and also the ones listed above, have 2-year term and they can be converted.

The expansion of permits to stay demonstrates the Lamorgese's interest in sensitive topics, first and foremost that of climate change, which is requiring greater attention than in the past. Salvini Security Decree contained a reference to migrants fleeing dangerous situations, but he limited the risk to natural disasters, such as earthquakes or tsunami. Lamorgese, on the other hand, identifies a broader category, that of the so-called *climatic* or *environmental migrants*, i.e. those who are forced to move from their country of origin due to environmental situations that do not allow them to lead a dignified life or even

[153] Sara Occhipinti, "Decreto immigrazione: le novità sui permessi di soggiorno", *Altalex* (2020). https://www.altalex.com/documents/leggi/2020/12/22/decreto-immigrazione-novita-permessi-soggiorno#p1

impact to such an extent as to risk causing physical harm and/or death. The rise of temperatures that implied the rise of the sea level and the consequent coastal erosion; the increase in drought and the subsequent desertification; the devastation of crops due to the invasion of locusts in the horn of Africa. Some situations due to climate change are in fact making life unlivable in several places of the globe, and many people are forced to leave their country to escape from degrading living conditions and to find asylum in other states. Lamorgese thus expands the concept of natural disaster that, according to Salvini, was "exceptional and contingent" and therefore transitory, replacing these adjectives with the term "grave calamity"[154], to include general grave situations and so as to include climatic migrants[155]. The exceptional circumstances that brought to the admission of the permit to stay for calamity reasons required verification that the conditions that had pushed the applicant to flee were continuing; the new concept of natural disaster does not require an assessment of severity, which had been confirmed in the first instance.

In addition to permit for calamities, it is highlighted the reason of medical treatment: it has the same duration as the treatment; it gives the possibility of conversion into a work permit. With regard to the prohibition of expulsion, there was previously a prohibition to expel those who were in "particularly serious health conditions", but it had many limitations; the new formulation provides for "serious psychophysical conditions or those resulting from serious pathologies"[156], which is more technical and broader: thus, not only those who are at risk of developing a pathology are involved, but also those who have been in serious conditions for a long time.

Also, the permit for "special cases" introduced by Salvini and granted to women victims of violence according to article 18-*bis* assumes in the new Decree greater importance; Lamorgese defines in detail what it implies: it has a duration of one year; it allows access to assistance services, study, enrollment in the registry list; at the end it can be converted into a work permit or for study reasons[157].

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[154] Art. 20-*bis*, para. 2, *d.l. 173/2020*.
[155] Maria Savigni, "Decreto Lamorgese e protezione internazionale: verso una nuova fase dell'accoglienza in Italia?", *DirittoConsenso* (2020). https://www.dirittoconsenso.it/2020/11/28/decreto-lamorgese-protezione-internazionale-nuova-fase-accoglienza-italia/
[156] Art. 19, para. 2d-*bis*, *d.l. 173/2020*.
[157] *Ibidem.* Art. 18-*bis*, para. 1-*bis*.

For what concerns the CPR, the Decree 130/2020 reduces maximum number of days of detention from 180 to 90 days (as it was established previously to Salvini Decree) that can be extended to 30 more days whether the detained foreigner comes from a country with which Italy has a deal on repatriation issue[158]; this initiative comes back to comply with the 2013/32 Procedures Directive. The Decree also states that the detention has priority for those who are deemed a threat for public order and security, or for those who have been convicted to serious crimes; it increases the detention cases for asylum seekers; it is introduced the possibility for the detained foreigner to appeal or complain national or regional or local guarantor[159] on the rights of detained people[160]. According to data gathered, on 31st December 2019 there were 553 people in CPR out of 704 total available places[161]; the number of guests in the centers has decreased to 450 in November 2020[162].

Lamorgese adds a "securitarian provision"[163] that enlarges the concept of *in flagrante* for asylum seekers who carry out acts of vandalism or damage in reception centers. In criminal matters she expands crimes such as those against public security officers and agents, even in the event of tenuousness of the fact; she tightens up penalty for fight; she strengthens the contrast to drug dealing.

The new special protection allows to have a residence permit of 2-year term, it is renewable after opinion by the Territorial Commission, it allows to work, it can be

[158] On this matter, Lamorgese has recently (20th May 2021) met the President of Tunisia to talk about the will to favor more flexibility on repatriations. The aim of the Minister is clearly to increase collaboration with Tunisian authorities. See "Lamorgese a Tunisi: passi avanti su rimpatri, controllo coste", *Ansa* (2021). https://www.ansa.it/sito/notizie/topnews/2021/05/20/lamorgese-a-tunisipassi-avanti-su-rimpatri-controllo-coste_ef0d91e9-ca06-480e-ac82-a8f95fa9f5d6.html

[159] The Guarantor is often expected in many European countries to protect the rights of people whose freedom is breached. It is an independent national body that monitors the places of liberty's deprivation, such as prisons, police offices, centers for migrants, and others. Their aim is to identify issues and, in collaboration with competent authorities, to solve criticalities. See *Garante nazionale dei diritti delle persone private della libertà personale*. https://www.garantenazionaleprivatiliberta.it/gnpl/it/chisiamo.page

[160] Camera dei deputati, *I Centri di permanenza per i rimpatri* (2021). https://temi.camera.it/leg18/post/cpr.html

[161] *Ibidem*. See Ministero dell'interno, Relazione annuale sul finanziamento del sistema di accoglienza di stranieri nel territorio nazionale, Doc. LI, n. 3, p. 44

[162] Camera dei deputati, *I Centri di permanenza per i rimpatri* (2021). https://temi.camera.it/leg18/post/cpr.html. See *Garante nazionale dei diritti delle persone provate della libertà personale*, *il punto*, no 1, 28 ottobre 2020.

[163] Cecilia Claudia Poli, "Il "Decreto Lamorgese": luci e ombre delle modifiche ai decreti sicurezza", *Progetto Melting Pot Europa* (2021). https://www.meltingpot.org/Il-Decreto-Lamorgese-luci-e-ombre-delle-modifiche-ai.html#.YMTSO6gzZPZ

converted in a permit to stay for labor reasons, it allows to come back to the country of origin.

§2.2.4.1. The debate on NGOs that goes on with Lamorgese

One of the most debated controversies that affect Lamorgese is the issue on NGOs. Non-governmental organizations have a decisive role in the rescue operations in the Mediterranean Sea, that has received, after the unfortunate disasters starting from 2013 (at least for what it is possible to remember) the name of cemetery[164]. Focusing on the Mediterranean route (the Balkan one is likewise suffering and awful), migrants that have crossed, or tried to, the sea have done it by makeshift boats, ready to lose their lives at the risk of reaching a territory that could have given them hope. According to the article 98 of the UN Convention on the Law of the Sea, every state shall

> *(a) Render assistance to any person found at sea in danger of being lost;*
> *(b) Proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.*

In addition

> *2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighboring States for this purpose*[165].

Starting from 2013, Italian government has adopted military and humanitarian operations of safe and rescue, SAR, (in Italian *Ricerca e Soccorso*) in the Mediterranean Sea. *Mare Nostrum* was initiated by the then Prime Minister Letta, in October 2013, with the aim to face the humanitarian emergency occurring in the Sicilian Strait due to higher numbers of migrants' flows and to deal with the illegal trafficking of migrants. In consequence to the first activities of *Mare Nostrum*, that had personnel and means of the Navy, Air Force, carabinieri, Italian finance police, port captaincy, police, militaries from the Red Cross,

[164] Alessandra Coppola, Viviana Mazza, Federica Seneghini, Marta Serafini, "La strage del Mediterraneo", *Corriere della Sera* (2021). https://www.corriere.it/reportages/cronache/2016/migranti-morti-mediterraneo/
[165] Art. 98, paras. 1, 2., *United Nations Convention on the Law of the Sea*.

the Ministry of Interior Alfano declared in 2014 that 91,000 were rescued, 499 dead bodies recovered, 718 smugglers arrested. Meanwhile Frontex, the European agency of the coast and border guard, arranged the operation called *Hermes*, from 2011 until 2014, to fight against illegal migration from Tunisia, Libya, Algeria. In 2014 Frontex has then started the operation *Triton* in collaboration with Italy to support the Italian government to deal with the huge migratory flows. From 2014, *Triton* has substituted *Mare Nostrum* and it was operative until 2018, but it differed from the last one because it did not use to reach the Tunisian coasts. *Themis* succeeded *Triton* starting from February 2018, it focused on the role of police; this operation by Frontex and Italy established that rescued people had to be brought to the closest state's harbor and not to Italy[166].

Frontex means only reach the area around and in southern Malta and take too long to arrive at the shipwrecks: this is why NGOs are so active in the Mediterranean, because they reach those missing zones. Frontex itself has declared that "40 percent of rescue operations in sea in the last months of 2016 has been carried out by NGOs' ships"[167]. The role of NGOs has instead raised questions since they have said to be "taxi of the sea" for smugglers, constituting pull factors for migrants, that thus foster people to leave their countries, convinced to have possibilities to reach Italy. Matteo Salvini in 2017 threatened to "denounce the Italian government" for having rescued people off the Libya's coast. The debate has worsened when Salvini, being the new Minister of Interior, set strict rules for NGOs: besides the administrative sanctions that provide for expensive fines and even the risk to incur into criminal penalties, the Ministry of Interior, with the approval of the Defense and Transportation Ministry, can prohibit the entrance of ships in national harbors if they do not respect specific criteria, i.e. the respect of international conventions, and the notification by NGOs to the competent national authorities.

Salvini's tough line was revised by Lamorgese, following the President Mattarella's recommendation. With Salvini, the activity of NGOs was classified as criminal, resulting in the opening of criminal proceedings that could lead to the adoption of seizures of boats;

[166] Sofia Cecinini, "Tutte le operazioni di salvataggio nel Mediterraneo: da Mare Nostrum a Themis", *Sicurezza Internazionale* (2018). https://sicurezzainternazionale.luiss.it/2018/06/18/le-operazioni-salvataggio-nel-mediterraneo-mare-nostrum-themis/

[167] Annalisa Camilli, "Perché le ong che salvano vite nel Mediterraneo sono sotto attacco", *Internazionale* (2017). https://www.internazionale.it/notizie/annalisa-camilli/2017/04/22/ong-criminalizzazione-mediterraneo

under the Minister Lamorgese, in a context of less media clamor, the treatment of NGOs has remained unchanged in its outcomes, albeit with different tools: currently administrative arrests are preferred. This shows the idea that NGOs continue to be criminalized, even if they are precisely the ships that are currently the most active in safe and rescue operations.

§2.3. Last updates: the challenge of coronavirus

World Health Organization has issued in March 2020 the *Interim guidance for refugee and migrant health in relation to COVID-19 in the WHO European Region*, with the aim to address the emergency situation that may particularly affect migrants, since they "may have more health-related risks and vulnerabilities than the general population and often face particular barriers to accessing health care"[168].

In Italy, the *Istituto Superiore di Sanità* (ISS) published data updated on April 22, 2020, about the coronavirus spread among migrants: "5.1% of the cases of COVID 19, notified by the ISS, concerned foreign citizens, for a total of 6,395 out of the 125,000 infected people in the country"[169]. The decisions to close borders and to limit access due to the fear of inability to control the spread of the virus has had enormous consequences on migrants' possibility to reach Europe. In addition to the greater risk of contracting covid because of overcrowded living and working conditions, their impossibility to access to health services, physical and mental stress[170], asylum seekers and migrants have suddenly suffered a direct obstacle to their freedom of movement; it must also be deemed that these people are often fleeing from situations in which their lives, freedoms, and dignity are endangered, so an unexpected slowdown in their movement means lower chances of settling in other territories. Asylum seekers migrate because their life in their country of

[168] World Health Organization, *Interim guidance for refugee and migrant health in relation to COVID-19 in the WHO European Region* (2020). https://www.euro.who.int/__data/assets/pdf_file/0008/434978/Interim-guidance-refugee-and-migrant-health-COVID-19.pdf

[169] Lia Lombardi, "The impact of COVID-19 on migrants in Italy. Local contagion and global health", *Fondazione ISMU* (2020). https://www.ismu.org/the-impact-of-covid-19-on-migrants-in-italy-local-contagion-and-global-health/

[170] World Health Organization, *Interim guidance for refugee and migrant health in relation to COVID-19 in the WHO European Region* (2020). https://www.euro.who.int/__data/assets/pdf_file/0008/434978/Interim-guidance-refugee-and-migrant-health-COVID-19.pdf

origin in not sustainable; yet restrictions do not consider that these people would otherwise be forced to return to a country that does not provide them with sufficient protection to guarantee them a dignified life.

Between March and April 2020, thirteen member states of the EU and Switzerland, Iceland, Norway that adhere to Schengen area, have reinstated controls at internal borders, appealing for the Schengen Code rule on exceptional and serious threat[171]. The health emergency has highlighted the limitations of the asylum system at the European level and thus civil society organizations, European Commission and UNHCR have co-operated to give directives and help in the effective enjoyment of the right to asylum in the pandemic period. UNHCR, OHCHR, IOM, WHO have recalled respect for fundamental rights and the international obligation of *non-refoulment*, stating that instead of pushing back people there are means that respect human rights and refugee protection standards, such as the use of quarantine and health checks[172]. *Refoulment* cannot be justified by any health reason, and it would mean discrimination and non-respect of international obligations: some states, such as Germany and Sweden, have indeed excluded asylum seekers from the limitation procedures[173]. States have autonomously dealt with the emergency, due to the absence of mandatory directives by the European authorities (the European Commission has just elaborated in collaboration with EASO and Frontex non-binding guidelines): some states have preferred to continue asylum seekers' interviews online; in Italy, the National Commission has decided to opt for the complete suspension of interviews as well as of terms of appeal against protection's rejection by the Territorial Commissions[174].

[171] Alessia Di Pascale, "L'attuazione delle garanzie sul diritto di asilo nell'Unione europea nell'ambito dell'emergenza COVID-19", *Fondazione ISMU* (2020). https://www.ismu.org/le-garanzie-sul-diritto-di-asilo-nell-ue-nell-ambito-dell-emergenza-covid-19/

[172] World Health Organizaton, *OHCHR, IOM, UNHCR and WHO joint press release: the rights and health of refugees, migrants and stateless must be protected in COVID-19 response* (2020). https://www.who.int/news/item/31-03-2020-ohchr-iom-unhcr-and-who-joint-press-release-the-rights-and-health-of-refugees-migrants-and-stateless-must-be-protected-in-covid-19-response

[173] Alessia Di Pascale, "L'attuazione delle garanzie sul diritto di asilo nell'Unione europea nell'ambito dell'emergenza COVID-19", *Fondazione ISMU* (2020). https://www.ismu.org/le-garanzie-sul-diritto-di-asilo-nell-ue-nell-ambito-dell-emergenza-covid-19/

[174] Provision no. 2327 of 10 March 2020 of the National Commission. https://www.interno.gov.it/sites/default/files/allegati/decreto_2.4.2020_commissione_nazionale_asilo_covid19.pdf

Following the Security Decrees by Salvini, the amendments suggested by Lamorgese set in a complex environment due to the pandemic challenge. In fact, the spread and management of the coronavirus in 2020 has caused significant delays in the bureaucratic context, thus also impacting on legislation[175]. The situation has required the government to focus only on the emergency, leaving aside the migration issue: the Lamorgese Decree was indeed late to arrive.

§2.3. Final considerations

Migration policies in Italy have never been simple to process; they have created confusion and even panic among people, distorting the perception of what migration actually is, i.e. the scope of the migration phenomena and the migrants' identity. The idea that migrants are exclusively a problem, an issue of criminality and thus deserve to be managed by and relegated to the security field has provoked problems in the regulatory aspects; it has triggered a self-reinforcing vicious circle in which the politicians identify, and treat, migrants as a threat, the population feels unsafe and under an imaginative siege and, therefore, asks for more radical actions to be taken against migrants that are abandoned by the state, often left in sub-human conditions which, of course, only create the condition for the prophecy to self-fulfill itself.

The continuous changes in Italian migration policies have created more confusion on a topic that is already quite complex and deserves better definition. In addition to the political stance that makes the drafting of the successive decrees, the legislation has undergone the changes dictated by the need to fill gaps left by the previous ones.

To date, the last Law Decree that amended the TUI, in 2020, aimed at reintroducing a form of protection at the national level, but it is important to remember that, despite significant changes, it neither eliminates the previous legislation nor abolishes it.

For what concerns the expulsion, Lamorgese Decree strengthens the *non-refoulement* principle and the international obligations; it limits the concept of third safe country, removing the concept of "manifest unfoundedness" if a discretionary assessment of the

[175] Cecilia Claudia Poli, "Il "Decreto Lamorgese": luci e ombre delle modifiche ai decreti sicurezza", *Progetto Melting Pot Europa* (2021). https://www.meltingpot.org/Il-Decreto-Lamorgese-luci-e-ombre-delle-modifiche-ai.html#.YMTSO6gzZPZ

case has not first been made; it also gives value to the idea of private and family life. All these reasons constitute the basis to consider that the last amendments of the TUI are "a fundamental step forward of progress and of respect of migrants' rights" in comparison to the previous legislations, not only Salvini Decree[176].

Having illustrated the Italian migratory legislation, the issue now arising is understanding its actual application, i.e., the practices followed by the Territorial Commissions when recognizing the international protection or, alternatively, where possible, applying the Italian constitutional form of asylum.

In the following table, an overview of the national protections that have followed since 1998 to 2021 is provided.

Before 5 October 2018	From 5 October 2018	From 22 October 2020
Humanitarian protection	Special cases	Special cases
	Special protection (inapplicable)	Wider special protection (applicable to all pending cases)

Table 1. Italian protections over the years.

[176] Cecilia Claudia Poli, "Il "Decreto Lamorgese": luci e ombre delle modifiche ai decreti sicurezza", *Progetto Melting Pot Europa* (2021). https://www.meltingpot.org/Il-Decreto-Lamorgese-luci-e-ombre-delle-modifiche-ai.html#.YMTSO6gzZPZ

CHAPTER III - THE TERRITORIAL COMMISSION

§3.1. The reception system in Italy

Reception system in Italy is regulated by the Reception Decree of 2015, the Legislative Decree number 142/2015, in fulfillment of the European Directive 2013/33. The reception for asylum seekers has to be carried out according to the principles of collaboration at national and regional level; it is based on a first reception phase and on a second reception arranged by specific structures: in the first phase, the foreigner is received in governmental centers of first reception made available by the Ministry of Interior, established following the 1997 Decree number 281[177]; the second reception phase takes place in the structures provided according to the reception of the current SAI, introduced by Lamorgese[178]. In the event of emergency period, temporary reception centers may be created, called CAS (*Centri di accoglienza straordinaria*), established by Prefectures; here the permanence is limited to the time necessary to move the applicant to second reception centers.

The first reception phase is aid and first assistance given to migrants, in addition to their pre-identification in disembarkation areas, in the so-called *hotspots*[179], according to article 8, paragraph 2 of the Reception Decree[180]. In a subsequent moment, asylum seekers enter the governmental centers of first reception, that are aimed at completing identification procedures of foreigners, verbalizing and drafting the international protection's application, verifying health conditions; it is the prefect of the competent zone who establishes the sending of the applicant to those facilities[181]. The centers are established at regional level with decree of the Ministry of Interior; the management of these facilities is entrusted to local authorities, to public or private bodies that work in migration or social assistance sectors[182]. The applicants who have formalized the request

[177] Arts. 8, 9, *d.lgs. 18/2015, n. 142*.
[178] Art. 4, para. 3, *d.l. 173/2020*.
[179] *L'Agenda europea sulla migrazione*. https://temi.camera.it/leg17/temi/l_agenda_europea_sulla_migrazione
[180] Art. 8, para. 2, *d.lgs. 18/2015, n. 142*.
[181] Camera dei deputati, *Il decreto legislativo n. 142 del 2015 (cd. Decreto accoglienza)* (2020). https://temi.camera.it/leg18/post/il_decreto_legislativo_n__142_del_2015__cd__decreto_accoglienza_.html
[182] Art. 9, *d.lgs. 18/2015, n. 142*.

for protection and who are unable to guarantee autonomously "an adequate quality of life for their own sustenance and that of their families" can have access to the second reception facilities[183].

Salvini substituted the former SPRAR, in force from 2002, with the SIPROIMI, with the aim to limit the second reception services only to beneficiaries of international protection and unaccompanied minors, not to asylum seekers, nor to beneficiaries of non-international protection[184], who could therefore only access CAS or governmental centers of first reception. The Security Decrees had significantly lowered the costs of the first reception, eliminated some services, reduced the number of operators in relation to the number of beneficiaries; the new tender specifications for the first reception paved the way for multinationals and for-profit organizations, leaving aside NGOs and cooperatives, "cancelling the positive effects on the territory in terms of employment and income"[185]. The constitutional illegitimacy of the Salvini Decree regarded article 12 too: the elimination of the SPRAR model and the implementation of the CAS managed by the prefectures was unreasonable and discriminatory, first of all because it significantly reduced the mesh of reception, no longer including asylum seekers but only beneficiaries, and interrupted the education and investment programs provided at the regional level[186].

The Law Decree 130/2020 changed again the reception system, proposing a mechanism similar to the one preceding Salvini: the new system introduced by Lamorgese is called SAI, i.e., "System of accommodation and integration" (in Italian *Sistema di accoglienza e integrazione*) and it modified the kind of services of first and second accommodation provided. The new system of protection, that is basically as the one established by Legislative Decree 142/2015, is conceived for asylum seekers, beneficiaries of international protection and unaccompanied minors, but it was also intended, within the limits of available places, for holders of permits to stay: those who have, according to

[183] Art. 14, para. 1, *d.lgs. 18/2015, n. 142*.
[184] Art. 12, *d.l. 113/2018*.
[185] ASGI, *Short overview of the reception system. Italy* (2021). https://asylumineurope.org/reports/country/italy/reception-conditions/short-overview-italian-reception-system/
[186] Appeal from Piedmont Region, signed by lawyer Ugo Mattei, to Cassation Court of January 2019. See Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 134-135.

TUI, social protection for situations of serious violence or exploitation (article 18), special protection for domestic violence (article 18-*bis*), for serious psychophysical conditions or deriving from serious pathologies (article 19), for calamity (article 20-*bis*), for particular labor exploitation (article 22), for acts of particular civil value (article 42-*bis*); those who are considered for "special cases" (according to article 1 of the Law Decree 113/2018); those foreigners entrusted to social services[187].

In the first phase of reception, there is the duty to inform the asylum seeker, through an information brochure, possibly in the applicants' language, about reception conditions and the steps of the international protection's procedure. When the migrant sends the request for protection, he/she receives a receipt of the application, which constitutes a provisional permit to stay; subsequently, he/she receives a residence permit for asylum request of six-month term, whereas the procedure should be concluded within that period. The asylum seeker has to declare to police headquarters the domicile or residence and all the subsequent changes: it is a fundamental aspect, because the notification of the convocation to the Commission for the hearing, as well as the outcome of the decision will be sent to the address provided (via certified e-mail in case the asylum seeker is hosted in a center).

The aid carried out in reception centers involves healthcare assistance, social and psychological assistance, linguistic and cultural mediation, Italian language courses, legal assistance. Favor integration is a fundamental step that can be guaranteed through the adequate assistance; moreover, information is necessary in order to give the applicant the possibility to really figure out what asylum procedure is. Migrants are ensured privacy of the private sphere, mental and physical health protection, union of family nucleus, attention to persons with special needs[188]. Second level services guaranteed are then job orientation and vocational training.

Therefore, before the Decree of 2018, the reception system was distinct on various phases: temporary and preliminary reception at the hotspots; first reception in governmental centers and temporary structures; second reception with SPRAR as the main part of the

[187] Art. 4, para. 3, *d.l. 173/2020*.
[188] Art. 10, *d.lgs. 18/2015, n. 142*.

system. With the 2018 Decree, the reception system was binary and different for typology of beneficiaries and for services carried out: first reception and assistance for asylum seekers and claimants; integrated reception for those who had definitive right to stay. Lamorgese Decree reintroduces a unique system based on functions: first assistance is carried out in governmental and temporary structures (articles 9 and 11 of the Legislative Decree 142/2015); reception at the SAI, the cornerstone of the system which also gives new centrality to the local authorities' net; reception of asylum seekers in CAS only if there are no more places available and limited in time. For what concerns beneficiaries of second reception, SPRAR was open to international and humanitarian protection beneficiaries, asylum seekers; SIPROIMI was carried out for international protection and special cases, calamities, health treatments, particular civil value beneficiaries, unaccompanied minors; SAI to unaccompanied minors, asylum seekers, international protection beneficiaries, beneficiaries of permit for special protection, social protection, health treatments, domestic violence, calamities, particular labor exploitation, particular civil value, special cases.

The Decree of 2020 has attempted to solve the problems left by the previous one, but it still has limitations on the reception matter: the time concerning the passage from first to second reception remains vague, as well as SAI centers are not clearly organized. Also, article 11 of the Decree that issues the extraordinary reception measures, states that the stay in the structure should be limited to the time strictly necessary; on the contrary, reality sees asylum seekers still in CAS and not in the second reception, due to a lack in services available to cover reception needs.

§3.1.1. The Registry Office matter

An important further step in the reception process concerns enrollment in the General Register Office, which has undergone changes in recent years and, as a result, has been subject to doctrinal and jurisprudential debate.

The 2015 Decree simply referred to host structures as "habitual dwelling for the purposes of General Register Office enrollment"[189]. In 2017, Minniti introduced with article 5-*bis* a specific discipline on the General Register Office enrollment of asylum seekers hosted

[189] Art. 5, para. 3, *d.lgs. 18/2015, n. 142*.

in reception facilities: in case of a lack of individual registration, the facility would have provided for the application of the institution of *registry cohabitation*, that is "a set of persons normally cohabiting [...], having habitual dwelling in the same house"[190]. Salvini modified this matter, providing that the residence permit for asylum application was considered a document of recognition, but this did not guarantee "title to General Register Office enrollment"[191]; moreover, he eliminated the concept that the reception center could constitute a place of habitual abode for the purpose of registration, but it should refer to the private residence of the applicant[192]; he abrogated article 5-*bis*, which regulated the special registration of asylum seekers. The Constitutional Court, in the sentence of July 9, 2020, declared article 13 unconstitutional, for violating article 3 of the Constitution[193]: the rule did not allow an adequate control and monitoring of the territory required by the same Security Decree, and constituted discrimination against applicants who were not guaranteed equal treatment with respect to access to services. Italian jurisprudence has in fact recognized the foreign citizen "holder of all the fundamental rights that the constitution recognizes as due to the person"[194]. Even the prohibition of registration to the Registry Office by asylum seekers, as provided for in article 13, has generated many criticisms. The Piedmont region has expressed itself in the appeal to the Constitutional Court:

> *"The provision is dictated by a clear discriminatory intent towards applicants for international protection, who (far from being considered human beings with fundamental rights protected by the internal and international order) are in fact presented to the public as a growing and irrepressible wave of potential criminals ready to any kind of deception in order to enter illegally into the Italian national community".*

[190] Art. 5, *D.P.R. 1989, n. 223*.
[191] Art. 4, *d.l. 113/2018.*
[192] *Ibidem*. Art. 13.
[193] Art. 3 of the Italian Constitution affirms that "every citizen has same social dignity and is equal in front of the law, without any distinction of sex, race, language, religion, political opinion, personal and social condition. […]".
[194] Constitutional Court, sentence no. 148/2008.

The registry residence is a fundamental constitutional right for foreigners because it allows, moreover, the registration to the health system and, therefore, for the assignment of the general practitioner[195].

Lamorgese reintroduces article 5-*bis*, according to which the asylum seeker, who has received a residence permit for asylum application or the receipt of the application for international protection, is automatically "enrolled in the registry of the resident population in accordance with Presidential Decree 223/1989"[196]; the enrollment in the registry cohabitation is reintroduced for applicants housed in the first reception centers and CAS[197].

§3.2. The competent authorities

When a migrant enters in Italy, he/she can immediately ask for international protection at the frontier police office; in alternative, the procedure can be started at the police headquarters with the support of the personnel of reception centers.

The Procedures Directive of 2008, number 25, affirms indeed that the competent authorities for receiving the asylum request are frontier police office and the police headquarters. In application to European Regulation of 2013, number 604, the entity that determines the state responsible for evaluating the request is the Dublin Unit, set at the Department for the Civil Liberties and Immigration, operating at the prefectures, up to a maximum of three. In the event of disagreement with the outcome of the Dublin Unit, an appeal may be lodged at the Tribunal in the Specialized Section for Immigration, International Protection and Free Movement of the European Citizens; the procedure may be initiated within thirty days from the notification of transfer[198].

The authority which deals with the assessment of international protection is the Territorial Commission, established by the Ministry of Interior in some cities, according to the necessities. In the event of rejection of the Commission, the applicant can appeal in the

[195] Appeal from Piedmont Region, signed by lawyer Ugo Mattei, to Cassation Court of January 2019. See Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 135-137.
[196] Art. 5-*bis*, *d.l. 173/2020*.
[197] Antonella Buzzi, Francesco Conte, "L'iscrizione anagrafica dei richiedenti asilo prima e dopo il "Decreto Lamorgese"", *Forum di Quaderni Constituzionali* (2021). www.forumcostituzionale.it.
[198] Art. 3, *d.lgs. 28/2008, n. 25*, updated by the act published the 19 December 2020.

first instance to the competent Tribunal; in case of further negative assessment by the Tribunal, it is possible to appeal to the Court of Cassation. An element of discussion upon this procedure is that Salvini, in the Security Decree, established that the applicant could not enjoy free legal aid in case his/her appeal against the denial of protection was declared inadmissible. This rigid position removed a fundamental right, which is the right to a fair and equal trial: the applicant should have the guarantee to be able to challenge a decision that he/she considers having been made in an unfair way.

The permit for special protection can be released in the international protection system, as residual form of protection, or directly asked to the police headquarters which can release it after the Territorial Commissions' opinion. Some police headquarters, supported in this sense by the Ministry of the Interior circular of 19 March 2021, have promoted a restrictive interpretation of article 19 in the matter of recognition of special protection, by virtue of which it would be subject to the circumstance that the applicant had requested protection for different reasons. Several courts, including Venice Court (no. 3057/2021), Bologna Court (no. 3246/2021) have censured this practice on the basis of a literal interpretation of the law that leads to the exclusion of this restriction. Pursuant to article 19, paragraph 1.2, it is therefore possible that the police commissioner may be directly addressed an application for recognition of a special permit to stay which he/she will have to issue after consulting the Territorial Commission and if, it goes without saying, the conditions exist. Despite the latest considerations, some police headquarters, such as in Trento, keep being reluctant to conceive this path, thus affirming that who interested can only ask for national protection through the international protection system.

As an informative note, it should be mentioned that victims of trafficking and exploitation are eligible for residence permit for humanitarian and, subsequently, special reasons, according to article 18 of the TUI. In this situation, when the condition of trafficking emerges, the police headquarters issue a residence permit for the duration of the investigation or, alternatively, if the victim is received at a center, it is the institution itself that sends the request for the issuance of the residence permit for article 18 of the 1998 Act.

§3.3. The Territorial Commissions' work

When the Territorial Commission receives an application, the convocation's notification is sent to the private domicile through registered mail or through certified mail to the reception center where the applicant is hosted.

The procedures initiated by the Commission are of three types: the ordinary, the priority exam, and the accelerated. The ordinary procedure follows the normal course of the work of the Commission, thus the applicant is convocated to have the interview where he/she can express the story that has pushed him/her to leave his/her country. After the interview, the Commission reunited in the *collegiale*, that is the collegiate moment in which the president, two administrative officers (one has to be the officer that has done the interview and that can therefore explain the story of the asylum seeker), the representative of the UNHCR decide on the case: in general, in a week the collegial can evaluate the case; in the event of more complex cases, time can extend. The decision is notified in a month to the applicant.

There are "priority exams", thus interviews have to be done before others when an asylum seeker belongs to vulnerable category or comes from a country included in the list of the National Commission, according to which for those coming from certain states subsidiary protection is immediately recognized without interviewing the applicant. In the case of priority exams, applications are issued in fewer days and the request is considered "most likely founded".

The reiterated application is a request for international protection that is presented after a decision has been taken by the Commission; in this case, the applicant should propose new elements for accepting to call the person for the interview. The application can be declared "inadmissible" when the asylum seeker has already been recognized refugee by another signatory state of the Geneva Convention and if he/she can be ensured protection from that country; or in the event the applicant does not present new elements for the evaluation but, on the contrary, suggests same application that has already been rejected on the basis of those same elements. The application is instead "manifestly unfounded" when the asylum seeker has made non-pertinent issues, he/she comes from a third safe country, has done incoherent or false declarations, has cheated the authorities presenting

them false information, has illegally entered or has illegally extended the period of stay in the country, has rejected to leave the fingerprints as required by the European Regulation 603/2013, is in one of the conditions listed in article 6 of the Consolidated Act (i.e. danger for the public order and security, waiting for expulsion, the application has been done for the only purpose to postpone or avoid the expulsion). In the case of inadmissibility of the request, the applicant is not called by the Commission to hold an interview; in the event of manifestly unfounded request, he/she has anyways the right to be heard and the Commission has to take a decision on the case.

The accelerated procedure is required in specific situations of emergency, highlighted by the police headquarters. A decision by the Commission should be taken within five days when the reiterated request is made without new element; when the applicant is under penal procedure, or he/she has committed a crime. The convocation and interview has to be done within seven days from the communication by the police headquarters, and the decision has to be taken within two days when the applicant is in CPR, he/she has made request for the only reason to extend or impede expulsion, he/she has made request at the frontier after being blocked, he/she comes from a third safe country, the request is manifestly unfounded: this last one is a relevant aspect, since it shows the importance to listen to a person in any case, even if there are reasons to deem the request unfounded.

According to article 28, paragraph 1, of the Legislative Decree 25/2008, the president of the Territorial Commission, on the basis of the documentation, decides which procedure fits the application, and the procedural decisions have to be communicated to the asylum seeker. Accelerated procedures can never be applied to unaccompanied minors and to applicants with particular necessities. Also, the timing for challenging appeals varies according to the procedure carried out: in the case of ordinary procedure, the applicant can appeal within 30 days from the date of the decision; in the case of the accelerated one, he/she has 15 days.

§3.4. The impact of the immigration policies on the work of the Territorial Commission

From 16 April to 4 June 2021, I have undertaken a curricular internship at the Territorial Commission for the Recognition of International Protection in Padua (IT). During my

experience I had the possibility to understand the wide field of migration and asylum, its dynamics, its practical implications and consequences.

Discussing with officers with whom I have had the pleasure of working, it has emerged how much the change in migration policies has influenced and impacted on the conduct of the Commission's work. The decisions taken by the collegiate panel must necessarily adhere to the current regulation: the legislation at international level does not change and guarantees the same parameters in the analysis of a case, if not justified by geopolitical reasons that mean a change in persecution or war; whilst the fluctuations in the field of national protection have forced the Commissions to adapt and act accordingly several times. If the Italian constitutional asylum, recognized at article 10, has not been changed and, rather, it constituted a fundamental right and as such has remained untouched, the migration policies adopted by the political composition in charge in the government in various historical phases have undergone significant amendments that have spilled over into the entire process of protection's recognition. The saddest point is that these changes have not only impacted on the Commission's work, creating uncertainties, delays, management difficulties; the aspect that makes this confusion a real disaster is that the most impressive and important impact occurs on people, who often put their hopes in the asylum instrument.

It is perhaps redundant to specify it: it is clear that the greatest damage was caused by the Security Decrees of 2018 and 2019, wanted by Matteo Salvini, which have abrogated the humanitarian protection that has been in force since 1998. This statement is not intended to be accusatory in sterile way; it is based, on the contrary, on data and numbers that I could gather during my internship and on other statistics that are at disposal on the Ministry of Interior website.

§3.4.1. Premise to the analysis of data: the renewal of protection

Considering that every form of protection has a duration, renewal is the mechanism that allows for the confirmation or revocation of the recognition itself. Renewal is automatic for the refugee status that allows for the release of the residence permit of five-year term, unless there are significant variations that imply revocation or cessation that are decided at the national level. The subsidiary protection gives a five-year permit to stay; it follows

the same path but, unlike the status, it is the police headquarters that sends the reopening of the opinion: also in this case, the renewal is automatic but, whether the events have changed significantly, it is not the Territorial Commission that removes the protection; instead, the case is brought to the National Commission that is the competent authority for the evaluation of revocation or cessation of the subsidiary protection too.

For what concerns the old humanitarian protection and the current special protection, the police headquarters send the reopening of the case; merit's assessment is asked to the Territorial Commission, which evaluates the requirements' existence or not. In fact, the measure is issued by the police headquarters because the beneficiaries of the Italian form of protection apply to the police, but the renewal is subject to the opinion of the Territorial Commission. Once the decision is taken, an internal measure is sent to the police headquarters specifying whether or not the premises for the renewal exist, and the result is then communicated to the person concerned. The timing of the renewal procedure is rather vague because there are no precise directives dictated by the Ministry of the Interior, but since it is the responsibility of the police headquarters, they can deal with it in a short time or wait up to six months for the renewal.

The way to evaluate the renewal is at the discretion of the Commission: it can be decided to reconvene to investigate certain situations; in Padua, for instance, at least when I was doing my internship, it was often preferred to call the beneficiaries and ask for updated documentation related to work and family, since there was already a high number of convocations that did not allow further ones. There is no specific practice because it is evaluated case-by-case; as a general rule, the file is reopened, the reason for the recognition of humanitarian status is analyzed, and a decision can be made on the basis of what is already in the file, or a request can be made for additional documentation or a hearing.

§3.4.2. Data and analysis: renewal opinions

Data below represent indicative estimates that I was able to collect during my internship in the Territorial Commission in Padua. These numbers are approximate evaluations, also considering that some data have not been updated, others have not been included, others are inaccurate.

It was interesting to consider the data referring to renewals that slightly changed from the application of humanitarian protection to special one. Between 2015 and 2020, an estimate of 340 renewal opinions was proposed at the collegiate meeting at the Padua Commission. Among those 340 renewals, there were 220 negative opinions [table 2]. From 2020, out of an estimated 152 renewal opinions, there were only 23 negative opinions [table 3].

In the first period analyzed [table 2], negative opinions were more than half, and only 30% of the entire renewal opinions received a positive result. The time frame in which so many negative outcomes occurred is obviously that of the significant shift from humanitarian protection to the "special cases" form of protection, following the entry into force of Salvini Security Decree in October 2018. Of those 340, the 102 positive ones were included not as humanitarian protection but renewed as special cases: for certain (unclear) conditions, those humanitarian protection's beneficiaries were brought within the mesh of the new national protection.

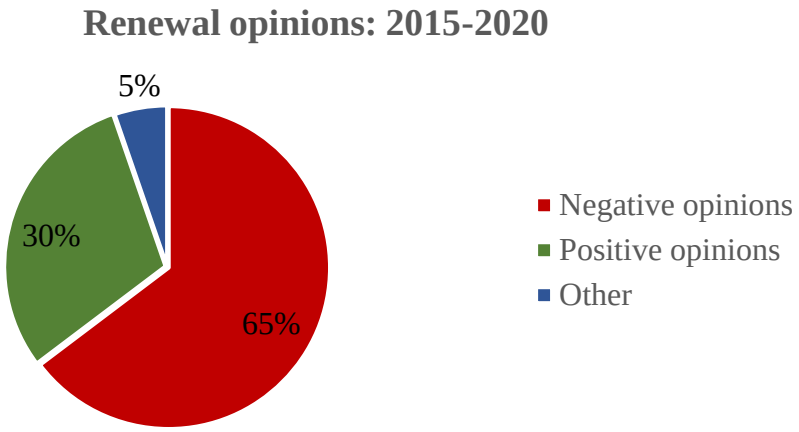

Table 2. Renewal opinions 2015-2020.

A completely different outcome is shown in the subsequent period [table 3], when the new Minister of Interior Lamorgese introduced a form of national protection that can be *de facto* applied: out of 152 renewal opinions, nearly 80% constitutes positive opinions, being re-included in the new special protection. The change in direction is evidenced by the share that changes exponentially, and reveals much greater inclusion meshes that spill over those people subject to judgment.

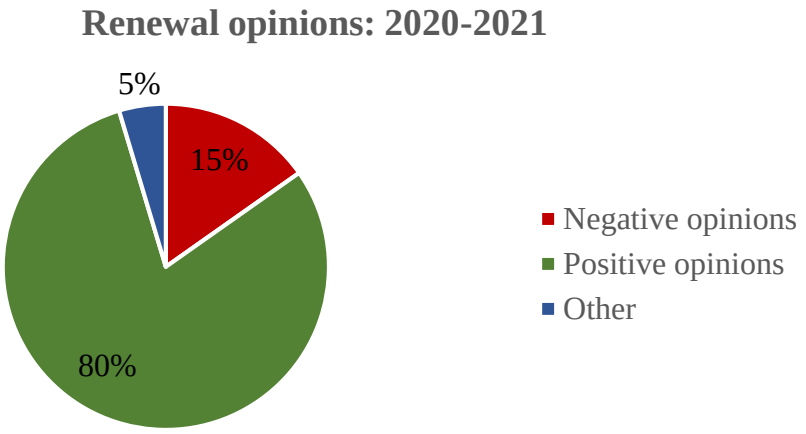

Table 3. Renewal opinions 2020-2021[199]

Data show that there was an initial collapse in renewals since the entry into force of the Salvini Decree. The reason is obvious: humanitarian protection included many situations, namely family reasons, the presence of children, physical problems of all kinds. The special protection decided by Salvini was simply not applicable. The special cases that could be recognized were minimal. Suddenly, the normative meshes of national protection were drastically reduced. This situation created enormous contradictions in Italian migration policies: those who were lucky enough to have arrived up to a month earlier would have been recognized as deserving humanitarian protection and the subsequent renewal required after two years would not have been subject to the tightening of the Security Decree. Basically, it was a mere situation of luck or misfortune, depending on the perspective.

In addition to the numbers that are the evidence of what happened in terms of denied protections, thanks to the feedback I received from the administrative officers of the Commission during my internship, I could understand how dramatic the situation was. The humanitarian protection's renewal tended to be a positive opinion, so it was almost automatic. Instead, the work in the two years under the Salvini Decree had become almost impossible: the difficulty of recognizing special protection in the new stringent protection system prolonged the time of decisions; referring to renewals, as said, if before they were

[199] Here I refer until 4 June 2021, date in which I finished my internship; therefore, the indication of 2021 only considers the first half of the year.

practically automatic and Commission's members did not require much time to come to the decision to renew, with the national protection introduced by Salvini and the difficulty of interpretation debates of not easy solution within the Commission itself started. If previously humanitarian protections were easily recognized or, if already recognized, easily to renew, suddenly people who could present situations identical to the previous ones were deprived of the right to protection, so the situation was quite delicate, and a decision could not be made in a superficial way. Another huge limit of the protection created by Salvini was its different duration compared to humanitarian one: humanitarian protection lasted for two years, the special one for only one year. This meant serious delays because it required more work for the Commission; thus, continuing evaluations for renewal complicated all the process. Moreover, it is not even reasonable to think that a person can really change his/her personal situation in only one year.

Often some sort of stratagems was attempted to be able to recognize protection at least in the most critical situations, but it was not always possible to do so, since the correct application of the law risked being lacking, creating legislative paradoxes. At the same time, the imprecision in the definition of special cases opened up to free interpretations and, indeed, the courts often expressed themselves to clarify and give more specific directives, in order to solve, at least partially, the excessive confusion created in the Territorial Commissions. One of the first attempts to buffer, to the extent possible, the damage created by the Salvini Decree, was the decision taken by the Court of Cassation in October 2019 which stated that the C3, that is the document completed at the police headquarters by asylum seekers, if made before the entry into force of the Security Decree, must be evaluated in the meshes of humanitarian protection, if the case had the requirements to meet it. It may seem like a small step, but it was an important clarification because it guaranteed humanitarian protection at least to those who had applied to a Commission before the issuance of the Decree, reducing, albeit slightly, the numbers of rejections for non-compatibility to the new form of protection.

In addition, a few months later, in February 2019, the I Civil Section of the Court of Cassation expressed itself in the judgment number 4890 further limiting the damage, establishing that the Security-bis Decree was not retroactive, therefore the requests for the recognition of residence permit for humanitarian reasons proposed before the entry

into force of the Decree would be issued on the basis of the precedent legislation at the moment of their application. The decision was then also reclaimed by TAR Basilicata, judgement number 654, underlying the urgency to put a sort of veto on particular situations[200].

Besides the difficulties encountered by the Commission's personnel that has struggled to adopt the new regulation, the situation has also meant difficulties in the timing that prolonged so much that sometimes it was required to postpone the decisions of many cases which therefore have accumulated, creating further slowdowns. This complex context revealed the flaw in the new system imposed by Salvini and, worst of all, the numbers show that the applicants themselves suffered the most impacting consequences.

In both figures, I indicated an estimate of 5% each, indicating "other". Analyzing the report from which I gathered data concerning numbers of renewal opinions, I indeed noticed the wording *upgrade*. In very few contexts, a change in a personal situation could mean a re-assessment of the form of protection required. Among the approximately 340 renewal opinions aforementioned, there were 220 negative ones but among the positive ones it is relevant to consider also those who renounced to the protection, those who could no more be recognized as deserving the humanitarian protection, nor the new form of special cases, nor a withdrawal of all form of protection, but who instead deserved an upgrade, meaning the recognition of one of the two form of international protection: new conditions in the country of origin or in the person could require a higher form of protection. This was, for instance, the case of a person previously deserving humanitarian protection, whose health condition due to HIV had worsened so much as to imply the assessment of that specific disease condition in the country of origin, where this would have been treated in a discriminatory way.

The introduction of Decree 130 in 2020 significantly changes direction and it has been established that the new Decree is applicable to all pending procedures, so that all renewal opinions of permit to stay for humanitarian reasons and for Salvini's special protection are subject to the new directives.

[200] Laura Biarella, "Immigrazione: decreto sicurezza bis non è retroattivo", *Altalex* (2019). https://www.altalex.com/documents/news/2019/07/05/migranti-decreto-sicurezza-no-retroattivita

§3.4.3. Data and analysis: asylum results

The Ministry of Interior has made available some relevant statistics carried out by the National Commission which has gathered data at the national level from the Territorial Commissions, that show the decline in the recognition of the Italian form of protection over the years. Starting the analysis from 2017, the data are as follows:

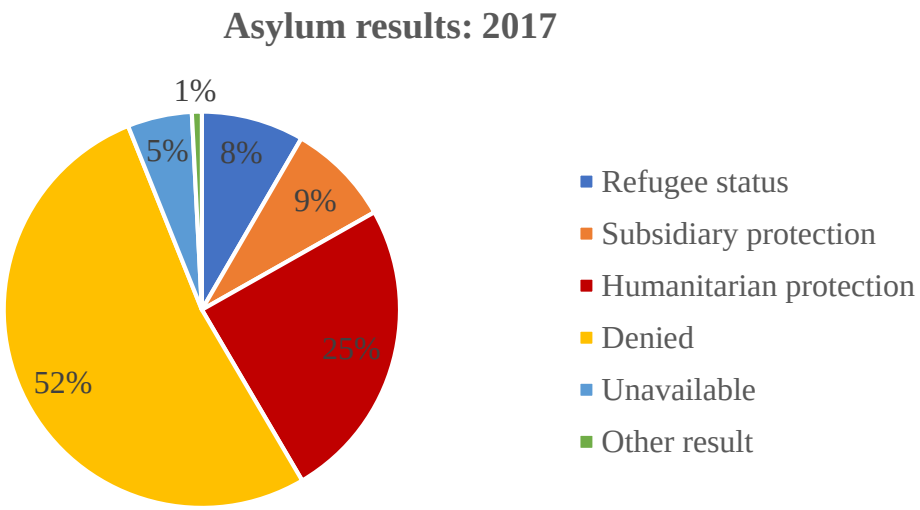

Table 4[201]. Results 2017

[201] Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione, *I numeri dell'asilo* (updated on 3 May 2021). http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo

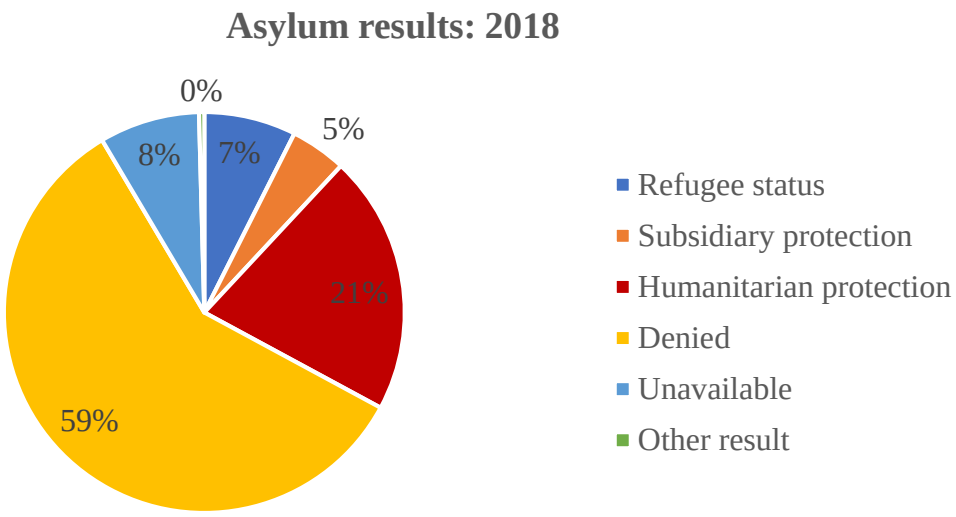

Table 5[202]. Results 2018

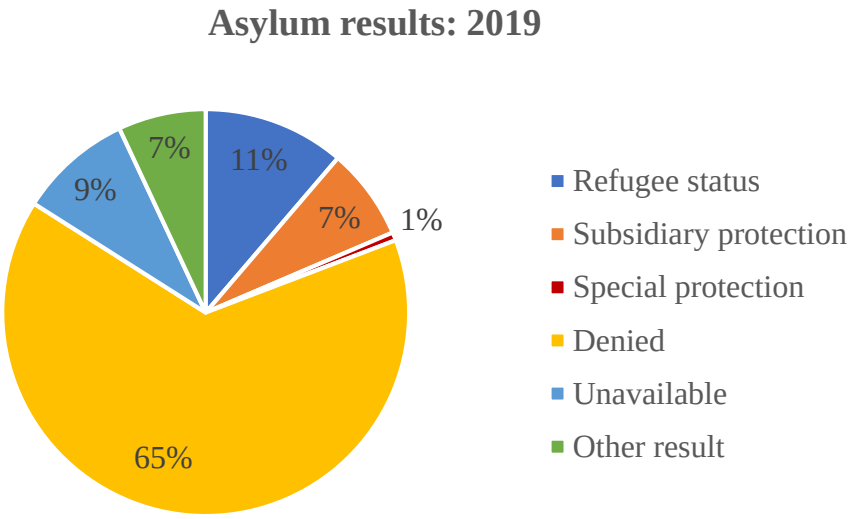

Table 6[203]. Results 2019

[202] Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione, *I numeri dell'asilo* (updated on 3 May 2021). http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo
[203] *Ibidem*.

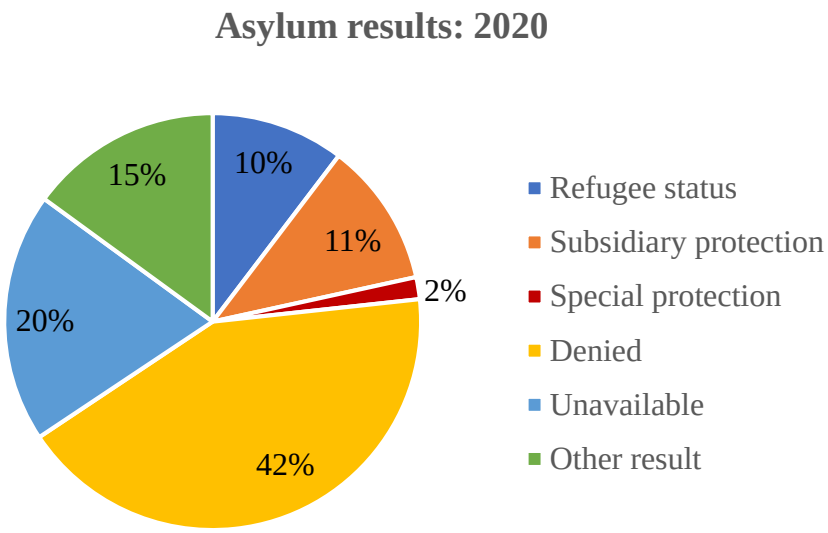

Table 7[204]. Results 2020

Focusing again on Padua Territorial Commission, it emerged that in 2017, out of the 31% of recognition of protection, 21% was for humanitarian reasons; in 2018, until 4 October, out of the 28% recognized, 16% was for humanitarian reasons; in 2019, out of the 21% recognized, 0% received the Italian protection; in 2020, out of the 19% recognized, only 1% received the new special protection[205].

The numbers show that after a clear and significant collapse in Italian protection, there was a slight upturn with the introduction of Lamorgese protection, perceived both in the Padua Commission and in other Commissions, given the statistics provided by the National Commission. In 2019 the only way to recognize Italian protection was the *non-refoulment* principle; with the Lamorgese Decree also ECHR articles 3 (prohibition of torture) and 8 (right to private and family life), in addition to the *non-refoulment* principle, are considered. The sudden drop in the numbers of national protection demonstrates how the cases provided for by the Salvini Decree, in place of humanitarian protection, have proved to be completely insufficient and unsuitable for the effective protection of

[204] Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione, *I numeri dell'asilo* (updated on 3 May 2021). http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo
[205] *Ibidem*.

foreigners and of applicants for complementary forms of protection who were previously entitled to humanitarian protection; they instead remained without protection[206].

All the system of international protection could beneficiate of wide and open reasoning upon which humanitarian protection was based, being it flexible and adaptable to several hypothesis and contexts. It was the guarantee of constitutional asylum, thus a fundamental part of the human rights' system. The Cassation Court affirmed that

> *"humanitarian protection has residual and atypical nature in the pluralistic system field of the international protection of European origin"*[207].

The abrogation of the humanitarian protection has taken away from the Italian legislation a tool that had the peculiarity of being applicable to cases not falling under the scope of other provisions, as a sort of last resort instrument, therefore leaving a dramatic void that was not filled by the new Italian form of protection. The protection guaranteed by humanitarian reasons was of a residual nature but opened up a wide range of cases for its recognition. It considered necessary to evaluate concretely and effectively whether there were humanitarian reasons over the non-recognition of the status or subsidiary, examining both the personal, subjective aspects of the condition of vulnerability and the objective ones when the situation in the country of origin did not ensure compliance with the requirements of article 14, paragraph 1, letter c of Legislative Decree 251/2007 (serious damage due to threat to life or person due to indiscriminate and generalized conflict) but presented contexts of conflict or widespread violence such that humanitarian reasons must necessarily be integrated[208].

The European Community has already introduced typified humanitarian permits: the idea of the instrument of the humanitarian permit is to adapt it to emergency situations; this form of protection is recalled at European level by the Directive number 115/2008 in

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[206] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 132-133.

[207] Annalaura Carbone, "La nuova protezione speciale dello straniero ai sensi del d.l.130/20: eredità della vecchia protezione umanitaria?", *Altalex* (2020). https://www.altalex.com/documents/news/2020/11/02/nuova-protezione-speciale-straniero-ai-sensi-del-dl130-20-eredita-della-vecchia-protezione-umanitaria

[208] Maria Acierno, "La protezione umanitaria nel sistema dei diritti umani", *Questione Giustizia* (2018). https://www.questionegiustizia.it/rivista/articolo/la-protezione-umanitaria-nelsistema-deidiritti-umani_536.php

article 6, paragraph 4, stating that member states may independently have a residence permit "for humanitarian, charitable or other reasons" issued at any time; the European legislation establishes the conditions and scope of application of humanitarian discipline but does not impose a unique rule for each state. The situations typified by the humanitarian permit are those regarding victims of domestic violence and those exploited at work; furthermore, there is an area of application that refers to personal conditions that entail a danger in case of return to the country of origin or serious deprivation of human rights.

The breadth of humanitarian protection required a better definition of the areas in which it applied, namely that of "the right to health, the objective conditions of the country of origin, the new solicitations coming from the jurisprudence of merit, especially in relation to family, social, and labor integration". In 2012, in 2013, and then in 2017 the Cassation Court expressed itself in favor of the recognition of "serious reasons", referring to the social, political, or environmental situation of the country of origin, which entail personal consequences on the applicant, although not presenting persecution or serious harm. In addition to these evaluations, the possible recognition of humanitarian protection also took into account the situation experienced in the host country: the improvement of personal, social, working life should be considered, even if alongside the actual deprivation of human rights in case of return; a return should therefore lead to a regression of the personal and social conditions of the applicant. Another element of evaluation was the objective aspect of the country of origin, characterized by "widespread non-generalized violence" or a situation of general "oppression towards a particular social group": in such case, the personal aspect could be lacking. Even if it was true that "the right to humanitarian protection cannot be recognized simply because the foreigner is in poor health", the scope of protection was very wide since it considered both subjective and objective aspects. This institute was the guarantee of the right to asylum, because without the humanitarian permit, the right to asylum and its strong link with human rights, guaranteed by the pre-existing protection, wavered[209].

[209] Maria Acierno, "La protezione umanitaria nel sistema dei diritti umani", *Questione Giustizia* (2018). https://www.questionegiustizia.it/rivista/articolo/la-protezione-umanitaria-nelsistema-deidiritti-umani_536.php

The extension of article 19 of the TUI, that is the enlargement of the permit for special protection, was written with the aim to highlight the importance of *non-refoulment*; in 2017 it was widened through the addition of the torture's prohibition. With Salvini, article 19 remained the same but, excluding other possibilities to include foreigners, the protection was too restricted. Lamorgese decided for a bigger definition, and this was one of the reasons for the possibility to include more foreigners. The 2020 Decree recognizes the complete ban to expel the foreigner towards the country of origin in case of persecution's or torture's risk; no expulsion of the foreigner whose private and family life would be threatened. For the purpose of the special protection, the Territorial Commission has to assess the nature and the effectivity of family bonds, his/her effective social integration in Italy, the length of the stay in the territory, the existence of family, cultural, or social relations with the country of origin. These evaluations make the protection much wider because it is quite often that the foreigner tries to integrate in society, even just through a work. The new special protection intended by Lamorgese includes a much broader category of people: it can be recognized as the consequence to *non-refoulment* (article 19, paragraph 1 TUI, article 33 GC), as the consequence to exposure to risk of torture or inhuman and degrading treatments (article 19, paragraph 1.1. TUI, article 3 EDHR, article 5 UDHR, article 4 CFR), when international and constitutional obligations recur (article 5.6. TUI), as the consequence to exposure to breach of respect to private and family life (article 8 EDHR). The first cases of special protection's recognition promote article 8 ECHR, concerning labor integration, social integration (remarkable socio-familiar bonds), long absence from the country of origin and lack of relevant relations there.

§3.4.4. What does the sudden abrogation of the humanitarian protection mean?

All the dispositions made by Salvini were aimed at avoiding that the right of asylum could be instrumentalized and used even without grounds to recognize it; instead, the solution of introducing Security Decrees was not the best, it provoked a normative vacuum, according to which also people in need lost their legitimate protection.

Asylum can be instrumentalized, but it is important to consider that who asks for protection is in any case in need of having documents to regularize himself or herself fast: a regular status means find a better job and be more respected. Security Decrees provoked

terrible consequences for people's lives, it was a mere electoral tactic, to demonstrate there was the goal to reduce criminality and improve security all over the country: the effect was opposite, since having no protection recognized, means difficulty to have documents, which means leaving people in a situation of irregularity, which even brings to sad conditions where people need to find jobs in the black market, traveling the path of illegality, dealing drugs or prostitution.

The creation of irregular immigrants, who were not previously so, prevents the state and the regions from "fulfilling constitutionally guaranteed obligations, first and foremost the protection of health"[210].

The Salvini Decree established the abrogation of humanitarian protection, causing high numbers of refusals by the Commissions, but it had in no way explained what would be of the migrants who were previously protected by the protection system.

The attempt to reduce illegal migrants has instead turned into an exponential increase of the same. But without any protection, where do people whom the Italian law has not recognized end up? They become invisible and are forced, for the sake of their survival, to enter the black market, since they cannot enjoy a regular and transparent contract, and are therefore unprotected and most often exploited. The most needy and vulnerable prefer the path that appears to be the easiest one, i.e. drug deal, prostitution, which puts them in a condition of greater risk; but, at least, allows them some income: unfortunately, migrants are often forced into debt in order to migrate, which shackles them in a system that is difficult to break free from. Being protected means being safeguarded and, in addition, having access to a job that allows them to repay their debt.

§3.5. Final considerations

According to article 32 of the Procedures Decree, the Territorial Commissions are obliged to evaluate all the elements provided by the applicant, and then transmit the possible decision to the police headquarters. In case of positive outcome with regard to special protection, the Commission includes in the decision the following wording:

[210] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). P. 134.

"The conditions are met for the transmission of the acts to the police headquarters for the issuance of a residence permit for special protection pursuant to art. 32, paragraph 3, of the Legislative Decree 25/2008[211]".

Analyzing the data above, it is clear that the repeal of humanitarian protection has not only sparked a debate on the unconstitutionality of the fact but has also caused a clear impact on the work of the Territorial Commissions and on their outcomes. The Unified Sections expressed themselves in the judgment 29459/2019 trying to answer the questions raised about the Salvini Security Decree, stating that the legislation did not apply to requests for recognition of the residence permit for humanitarian reasons proposed before the entry into force of the Decree itself[212]; moreover, they analyzed the legislation stating that the degree of social integration in the country could not be considered, since it would be based on an analysis not only of the individual but also of the situation in his/her country of origin and this is not specified in the Decree, so it would not result in a suitable assessment[213].

Making the Salvini Decree non-retroactive was certainly an important aspect of damage limitation, but it was not enough to avoid the drastic reduction in recognized national protections. Only the reintroduction of an applicable form of protection, in the wake of humanitarian protection, guarantees a form of protection of migrants and their fundamental rights.

In any case, it must be remembered that the asylum instrument is not intended to save lives. Often it is exploited, so it appears as the only way to regularize; other times it is used to get documents to be able to move in Europe: it is a risky case for women victims of trafficking who, once received the protection, not being yet free from the networks of trafficking, are, with the excuse of the protection paper, sent to other countries for sex

[211] Article 32.3 provides, in fact, that in cases where the commission does not accept the application for international protection and the conditions listed in Article 19, paragraphs 1 and 1.1. of the Single Act on Immigration apply, the documents are sent to the police headquarters for the issuance of a residence permit for two years, with the wording "special protection". See art. 32, para. 3, *d.lgs.* 25/2008.
[212] *Corte Suprema di Cassazione, Sezioni Unite Civili*. *Sentenza 13 novembre 2019, n. 29459*.
[213] Anna Larussa, "Protezione umanitaria: l'integrazione sociale non è sufficiente", *Altalex* (2019). https://www.altalex.com/documents/news/2019/12/09/protezione-umanitaria-non-sufficiente-la-mancata-integrazione-sociale

work. It is, therefore, a very delicate instrument that requires due precautions and specific analysis.

Beyond the sensitive aspects with which the competent authorities must interface, the new special protection has given rise to a first glimmer of hope, the effects of which will be more visible starting from this year (2021), considering its introduction in October 2020. One of the most positive aspects is that by broadening the spectrum of possibilities for recognition, not only objective factors are taken into account but also the human and social path of a person has a very important value.

Besides the national protection aspect, it is interesting to see from the aforementioned data [tables 4, 5, 6, 7], that rejection rates are always quite high. There was definitely an increase in 2019 due to the significant reduction in national protection and a reduction from 2020, lowering below the half level of the requests received by the Territorial Commissions. Despite this, the high numbers are to be justified with three reasons: first of all, the asylum system is also used in cases where the conditions established by the legislation do not exist, as this mechanism is the only one to be able to guarantee access to long-lasting and simpler residence permits, lacking an effective and inclusive migration policy, which instead is discriminatory towards those who migrate for "simple" economic or other personal reasons, although there is not necessarily a risk to their life or safety; secondly, there is a general resistance and closure towards welcoming foreigners attitude that has been characterizing European countries[214]; thirdly, the consideration that the recognition of protection and thus the release of documents does not always mean positive consequences for migrants, that instead would have the possibility to use regularization to travel and continue an illegal market forced as indebted to powerful people who control and threaten them.

[214] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). P. 238.

CONCLUSIONS

The debate involving the right to asylum is still heated. If asylum refers to a fundamental human right, the international community has rather focused on the instruments provided by protections, which have then been filled by the humanitarian reasons recognized at national level in different countries. The concept of refugee has also surpassed that of asylum, so much that today we speak of status rather than actual asylum.

> *"In practice, the right to asylum has played a marginal role, so much that the cases recognized in the last sixty years do not seem to exceed 200, while as far as refugees are concerned, we are talking about over 27000 people*[215]*".*

Therefore, the right to asylum seems destined to remain confined to doctrinal debate.

> *"*[Italy does] *not seem to have succeeded in defining a model of asylum, indeed, the years that have passed since the entry into force of the constitutional charter have shown a gradual departure from the ideals of freedom and hospitality that had led our constituents to formalize paragraph 3 of article 10 of the Constitution. […]. The implementation of the right to asylum in Italy seems therefore very far from the will expressed by our constituents: legislative and jurisprudential practice seem in fact to have now transformed a perfect subjective right of the individual into a right of the state, entirely subject to its availability and discretion"*[216].

As stated in this thesis, status of refugee is based on the fear of suffering persecutory acts for reasons of race, religion, political opinion, nationality, membership to a particular social group; the asylum seeker cannot enjoy internal protection. In Italy, it realizes in a permit to stay of five years, renewable at the deadline; it gives the possibility for a travel permit and for family reunification, without the necessity to satisfy the salary requirements and accommodation eligibility. It allows to ask for or to convert a work permit, and the European permit to stay for long term, after the five years from the asylum's application. The beneficiary can ask for the citizenship after five years of residence.

The subsidiary protection comes from the effective risk to suffer a serious damage in the country of origin and the asylum seeker cannot or does not want to enjoy internal

[215] UNHCR. www.unhcr.org/statistics
[216] Francesca Rescigno, *Il diritto di asilo*. (Carocci Editore, Roma: 2011). P. 240.

protection. Serious damage can be condemnation to death penalty, torture or other inhuman or degrading treatment, life or physical threat coming from indiscriminate violence during internal or international armed conflict. In Italy, it gives a permit to stay of five years, renewable at the deadline whether the initial recognition's conditions still exist; it is possible to go to the embassy for the passport, except for cases in which there are problems with the country's authorities therefore a travel permit is released. It also gives right to family reunification; it allows for the conversion or request of European residence permit to long-lasting visitors, after five years from the asylum's request, and to the work permit to stay. Beneficiaries can ask for citizenship after ten years of residence.

For what concerns the Italian protection, a note from ASGI had already raised concerns about the possible publication of the Salvini Decree, whose draft already had elements of unconstitutionality: ASGI stated that the repeal of article 5.6 of the TUI is an unconstitutional act in face of articles 2, 10 and 117 of the Constitution, since humanitarian protection was intended to ensure the effectiveness of the fundamental right of the person such as asylum, which is broader than the concept of international protection. The introduction of special residence permits provided by Salvini Decree will never be able to make up for the lack of humanitarian protection previously provided. Another element of unconstitutionality concerns the detention of applicants after identification, which is a clear violation of articles 2, 3, 13.3, 117.1, and article 31 of the Geneva Convention because it sanctions with deprivation of liberty the foreigner not equipped with travel documents. The new provision established "exceptional cases of necessity and urgency" in order to proceed with detention, but these cases are never specified, so as to imply the consideration of a condition common to all applicants, i.e. the lack of identity documents[217].

It is clear that the Salvini's electoral campaign created proselytes of a rotten and confused policy. But here the aim is not to make political invectives, it is instead to analyze the limits and, above all, the consequences that the Decrees have brought with them. They have been a tidal wave on the asylum system and, more generally, on migration.

[217] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano* (People, Gallarate (VA): 2018). Pp. 107-113.

The data I have reported in my thesis are only a part of what Salvini's decisions have created; the effect has been measured by the people who work in the field, whose feedback and considerations are very clear: there is no doubt that the tidal wave has claimed victims, fragile victims, who do not have the opportunity to decide for their own lives, but have to rely on a system that instead of valuing them brings them down, limits them, belittles them.

Court of Cassation, Order 106686/12 affirmed that the constitutional right of asylum was entirely exhausted by the international protections, both refugee status and subsidiary, and also by humanitarian protection. The Decree 113/2018, by removing humanitarian protection, left a void, which has only partially been filled. Parceled out in many special cases (medical care, severe labor exploitation), typification that did not exhaust all the hypothesis of humanitarian protection. Since 130/2020, the non-enforceability of constitutional asylum has been reduced, because it has been given broad space by the special protection.

> *"The humanitarian permit is one of the implementation's forms of constitutional right of asylum. This characteristic confirms its inclusion in the human rights arena and the vocation as being an open and flexible instrument which tends to adequate itself to historical political changes of the migratory phenomenon within which there is a progressive increase of country of origins' criticalities and an increase in escaping reasons"*[218].

The Lamorgese Decree does not intervene in the international protection, it only modifies -without eliminating- Salvini Decree. Salvini Decree recognized a series of permits to stay, the so-called "special cases", in addition to a permit for special protection, which exclusively referred to article 19 of the TUI, i.e. expulsion's prohibition[219]. The permit wanted by Salvini was not convertible, it lasted for only one year. The 2020 Decree does not introduce again the humanitarian protection, but it amends article 19 of the TUI, it

[218] Maria Acierno, "La protezione umanitaria nel sistema dei diritti umani", *Questione Giustizia* (2018). https://www.questionegiustizia.it/rivista/articolo/la-protezione-umanitaria-nelsistema-deidiritti-umani_536.php

[219] Note that article 19 of the Consolidated Act updated in October 2018 states that no one can be expelled towards a country where he/she risks persecution or torture; also, no expulsion for unaccompanied minors, foreigners with a permit to stay, foreigners who live with their relatives within 2nd grade or partner with Italian nationality, pregnant women or within six months from the child's birth; *non-refoulment* to disabled people, elderly people, minors, single-parent family members with minors, victims of grave psychological, physical, sexual violence. See Security Decree October 2018.

then recalls articles 3 and 8 of the ECHR on inhuman and degrading treatments, and private and family life. Therefore, the current national protection consists of permit to stay for social cases and the former permit for humanitarian reasons: a permit for social protection under article 18, that concerns violence or serious exploitation of the foreigner, it gives assistance and social integration; permit for domestic violence victims under article 18-*bis*; permit for labor exploitation under article 22, paragraph 12-*quarter*; "special cases" for the already recognized humanitarian protections before the entry into force of the Decree 2018.

Lamorgese Decree also introduces new residence permits, for health treatment, for natural disasters, for religious reasons, for sport activities, for artistic work, for research, for acts of civil value, for elective citizenship or citizenship purchase or statelessness. The health treatment is also inserted in article 19, at paragraph 2 and Lamorgese refers to wider cases and not only to grave health conditions. Natural disasters are another important concept that is extremely relevant for the Minister of Interior, including within it more cases. All permits of Lamorgese are convertible in work permits.

What should be done at the Italian regulatory level to definitively reform the Bossi-Fini law was suggested by the bill in the Chamber of Deputies the 15 June 2017 by Maestri, Civati, Brignone, Pastorino and others, entitled "Amendments to the discipline of immigration and the condition of the foreigner. Ratification and implementation of Chapter C of the Council of Europe Convention on the Participation of Foreigners in Public Life at the Local Level, done at Strasbourg on February 5, 1992."

Among the proposals, diversification and simplification of the entries, since "the physical, material and legal walls to the regular entry have so far only made it inhuman, dangerous, expensive and unsafe to face their migration project, and have built a thriving market for the mafias, for exploiters of cheap labor, for traffickers of human beings"; it is suggested the residence permit for job research, a more reasonable hypothesis than the concept of regularity limited to the idea of entering Italy being already employed.
The second proposal is the simplification of residence permits and the introduction of a "mechanical regularization mechanism", i.e. simply demonstrating the availability to work or the existence of particular emotional ties in the territory.

Then, it is suggested to pay more attention to the protection of minors and family reunification, fundamental institutions, expression of inalienable rights that recall the Convention of the Rights of the Child and the right to a private and family life.
Another important step is to limit the use of expulsions for more serious violations and instead favor voluntary repatriation; in addition to the fundamental closure of the CPR that have repeatedly shown that they do not guarantee respect for human dignity and life.
Ensure non-discrimination and equal treatment are other fundamental aspects. This, for example, has been guaranteed by the reintroduction of article 5-*bis* of the TUI, affirming the possibility for applicants to register in the registry office, the first step for many important rights, such as health, equal treatment, and residence.
They should be included clauses to fight against all forms of racism and hate speech; protect victims of trafficking, violence, severe sexual and/or labor exploitation.
It should then be guaranteed fair and uniform processes for all foreigners. In this sense it would be interesting to update the system of the appeal following a negative decision by the Territorial Commissions, which instead are long, slow, and confusing processes.
It is also proposed to introduce foreigners to municipal elections, i.e. for those who have been regularly residing in Italy for at least five years, recalling the liberal concept of "no taxation without representation": it is a paradox to ask and encourage entry into the labor market by foreigners, who contribute to the income of the country, without allowing them an active participation in political and social life.
At the end, the hypothesis of abolishing the crimes that punish the irregular entry or stay of foreign citizens[220] is as well relevant.

All these proposals failed in 2017. However, they should be considered nowadays to reform a legislative system that still has too many gaps to be able to efficiently guarantee the fundamental rights of migrants.

The crisis of the last years and the increasing of asylum requests in European Union have been having the consequence to find difficulties in protecting efficiently and sufficiently asylum seekers, specifically in some European countries that are more exhibited to

[220] Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano*. (People, Gallarate (VA): 2018). Pp. 91-99.

external border, Italy among the first ones; moreover, the complicated management of all the applications has let emerge the weaknesses of the cooperation system, starting from the Dublin mechanism, that has been hardly criticized[221].

It is evident that asylum is a fundamental human right that should be granted without doubt and limitations to those who apply for it. It is also true that asylum has become a tool used by migrants to regularize themselves. But does it make sense to accuse these people of a fault committed by Italian politicians, who failed to outline a sufficiently clear and inclusive migration policy that could meet the risks and needs of those who leave their country? Does the fact that these people seek their fortune make them less honest than those who flee to protect themselves from the dangers they face in their country of origin? Even if on different levels, aren't the risks incurred by the so-called economic migrants, who emigrate because there is a risk that their lives cannot be lived with the same dignity as in another country, also dangers?

It is true that the instrument of asylum was born with a different foundation: the evolution of the term is clear, since it starts from a religious concept of protection that is due to avoid the wrath of gods, but, over time, it becomes a secular instrument symbol of human morality for which protecting a man is a matter of respect, love, empathy towards others. Despite the development and diffusion of the term has followed a certain course, it denotes a confusion in the matter in Italy since the last decades, so much that it is necessary a premise to specify that when we speak of asylum in Italy we should mean the constitutional asylum, the one that refers to article 10 of the Constitution, but instead it is used to label the forms of international protection.

The uncertainties and inability to pursue a clear and defined line over the years have left flaws in the regulatory system and dragged problems that are far from being firmly resolved. The best solution would be to fully reform the legislation, not patching up where necessary: Lamorgese has done important work in the area of asylum seekers; she has made up for significant problems that Salvini Decree had created, first and foremost

[221] Pietro Manzini, Andrea Lollini, *Diritti fondamentali in Europa. Un casebook* (Bologna: Il Mulino, 2015). P. 243.

creating "illegal immigrants", abandoning them in contexts of irregularity and therefore vulnerability, which can mean danger and bad ways.

However, Lamorgese did not think of reforming the whole system, she did not abolish Salvini Decree, she only modified it. This attitude is evidence of the general atmosphere of inability to take responsibility on the part of the competent authorities to implement important and definitive decisions. We are faced with continuous changes that, while on the one hand may also be necessary because adapting to different times is necessary -just think, in addition to the much better definition of special protection, about the introduction of important concepts such as that of calamity that goes to include climate change that impacts on people's lives and, therefore, the new label of environmental migrants, a very current and highly sensitive definition-, on the other hand, they have only created more vacillation in the Italian migratory legislative system: reshaping to new needs, to new contexts, cannot be synonymous with taking courage and reforming the system, as it would mean repainting the cracked walls but not solving the flaws in the foundations. They are like band-aids stuck on cracks that need tape.

According to lawyer Mattei, one of the first points in which Salvini Decree falters is the use of urgency order, established in article 77 of the Italian Constitution, where in reality there were no situations of urgency such as to justify the nature of the Decree itself: just before the Decree was approved, in 2017 Eurostat data detected a small number of protection receivers in Italy equal to 10% compared to those in Germany, for example; moreover, migration flows had already been a structural and constant phenomenon for some time, obviously endowed with oscillations, but already foreseen and studied, therefore nothing new[222]. This consideration can be applied more generally to all the decrees that have been adopted over the years: the Minniti Decree, the Salvini Decree, the Lamorgese Decree. None of these has had the courage (or the tools?) to question and overcome the Bossi-Fini law of 2002, instead "abusively using the normative tool of the Law Decree". There have been minimal attempts to enforce the interpretation suggested by the TUI of 1998, which did not evaluate only the realities related to immigration in terms of numbers, arrivals, criminality, irregularity; but instead considered foreigners also

[222]Stefano Catone, Giuseppe Civati, Giampaolo Coriani, Andrea Maestri, *Il Capitale disumano*. (People, Gallarate (VA): 2018). Pp. 129-132.

in the perspective of their permanent settlement, and therefore endowed with socio-economic, civil and political rights, such as the right to study, work, social and personal life. The "serious lack of a comprehensive organic law at the forefront of the migratory theme"[223] is evident, but Lamorgese has at least put in place some important pieces that can hopefully be the starting point of a normative evolution that will take into account more the aspect of integration and individual rights of migrants.

While waiting for the result from the Territorial Commission, migrants have a permit to stay every six months; if they do not receive any protection, they are generally suggested the path of appeal: during all the procedure, they are still guaranteed a residence permit; on the contrary, if they do not appeal and if they cannot receive a permit to stay for other reasons than for application to international protection, they become irregular people. Asylum constitutes a simpler way to have a permit to stay, since the other paths are just too complex and slow. There is no easy way to migrate, to be hosted, to be protected, to convert a work permit: this is why there are high numbers of rejected applications, because most of the times there are no legislative requirements for the protection's recognition. The absence of documents creates situations of greater vulnerability: one becomes clandestine, this creates fear and the risk of taking bad paths and ending up in exploitation networks.

If the recognition of protection is a guarantee in many circumstances, it should not be thought that this is the solution to all evils. Situations have been verified in which Nigerian women victims of trafficking, still subject to the power of the so-called *madams*[224], i.e. women traffickers, often former victims, who represent mediators who harass women to induce them to prostitution, may be forced to use the document affirming protection in order to travel in Europe and prostitute themselves elsewhere, according to trafficking networks. These phenomena make us reflect on the fact that the piece of paper does not save anyone, unfortunately it is increasingly difficult to control illegal and

[223] Cecilia Claudia Poli, Il "Decreto Lamorgese": luci e ombre delle modifiche ai decreti sicurezza", *Melting Pot Europa*. (2021). https://www.meltingpot.org/Il-Decreto-Lamorgese-luci-e-ombre-delle-modifiche-ai.html#.YN2R9OgzZPb

[224] Adaobi Tricia Nwaubani, "Chi costringe alla prostituzione le ragazze nigeriane in Italia", *Internazionale* (2016). https://www.internazionale.it/notizie/adaobi-tricia-nwaubani/2016/11/21/prostituzione-italia-nigeria

exploitative networks; however, in most cases it is better to have a document than not to have it.

BIBLIOGRAPHY

Acierno, Maria. "La protezione umanitaria nel sistema dei diritti umani", *Questione Giustizia*. 2018. https://www.questionegiustizia.it/rivista/articolo/la-protezione-umanitaria-nelsistema-deidiritti-umani_536.php

Amnesty International, *Italia Presenza temporanea, diritti permanenti. Il trattamento dei cittadini stranieri detenuti nei "centri di permanenza temporanea e assistenza" (Cpta)*. 2005. http://www.osservatoriomigranti.org/assets/files/Amnesty%20-%20Presenza%20temporanea.pdf

Ansa. *Lamorgese a Tunisi: passi avanti su rimpatri, controllo coste*. 2021. https://www.ansa.it/sito/notizie/topnews/2021/05/20/lamorgese-a-tunisipassi-avanti-su-rimpatri-controllo-coste_ef0d91e9-ca06-480e-ac82-a8f95fa9f5d6.html

Antoci, Basilio. *La norma giuridica*. 2013. https://www.studiocataldi.it/articoli/14143-la-norma-giuridica.asp

Appeal from Piedmont Region, signed by lawyer Ugo Mattei, to Cassation Court of January 2019.

ASGI, *Short overview of the reception system. Italy.* 2021. https://asylumineurope.org/reports/country/italy/reception-conditions/short-overview-italian-reception-system/

Benvenuti, Marco. *Il diritto di asilo nell'ordinamento costituzionale italiano. Un'introduzione.* CEDAM: Padova. 2007.

Biarella, Laura. "Decreto Sicurezza bis: in vigore le nuove norme", *Altalex.* 2019. https://www.altalex.com/documents/leggi/2019/06/12/decreto-sicurezza-bis

Buzzi, Antonella; Conte, Francesco. "L'iscrizione anagrafica dei richiedenti asilo prima e dopo il "Decreto Lamorgese"", *Forum di Quaderni Constituzionali*. 2021. www.forumcostituzionale.it.

Camera dei deputati, *I Centri di permanenza per i rimpatri*. 2021. https://temi.camera.it/leg18/post/cpr.html

Camera dei deputati, *Il decreto legislativo n. 142 del 2015 (cd. Decreto accoglienza).* 2020. https://temi.camera.it/leg18/post/il_decreto_legislativo_n__142_del_2015__cd__decreto_accoglienza_.html

Camilli, Annalisa. "Perché le ong che salvano vite nel Mediterraneo sono sotto attacco", *Internazionale.* 2017. https://www.internazionale.it/notizie/annalisa-camilli/2017/04/22/ong-criminalizzazione-mediterraneo

Carbone, Annalaura. "La nuova protezione speciale dello straniero ai sensi del d.l.130/20: eredità della vecchia protezione umanitaria?", *Altalex*. 2020.

https://www.altalex.com/documents/news/2020/11/02/nuova-protezione-speciale-straniero-ai-sensi-del-dl130-20-eredita-della-vecchia-protezione-umanitaria

Cartagena Declaration on Refugees, Colloquium on the International protection of Refugees in Central America, Mexico and Panama.

Case Work, CEAS – Sistema europeo comune di asilo. https://casework.eu/it/lesson/ceas-common-european-asylum-system/#:~:text=CEAS%20%E2%80%93%20Sistema%20europeo%20comune%20di%20asilo&text=L'introduzione%20del%20CEAS%20%C3%A8,a%20raggiungere%20fin%20dal%201999

Catone, Stefano; Civati, Giuseppe; Coriani, Giampaolo; Maestri, Andrea. *Il Capitale disumano*. People, Gallarate (VA): 2018.

Cecinini, Sofia. "Tutte le operazioni di salvataggio nel Mediterraneo: da Mare Nostrum a Themis", *Sicurezza Internazionale*. 2018. https://sicurezzainternazionale.luiss.it/2018/06/18/le-operazioni-salvataggio-nel-mediterraneo-mare-nostrum-themis/

Coppola, Alessandra; Mazza, Viviana; Seneghini, Federica; Serafini, Marta. "La strage del Mediterraneo", *Corriere della Sera*. 2021. https://www.corriere.it/reportages/cronache/2016/migranti-morti-mediterraneo/

Constitutional Court, *Sezioni Unite Civili*. *Sentenza 13 novembre 2019, n. 29459*.

Constitutional Court, sentence no. 202/2013.

Constitutional Court, sentence no. 148/2008.

Corte EDU Ilias e Ahmed c. Ungheria del 14 marzo 2017, Corte EDU causa Sharifi e Altri c. Italia E Grecia del 21 ottobre 2014, Corte EDU del 4 novembre 2014 Tarkel c. Svizzera, Corte EDU M.S.S. c. Belgio e Grecia cit, Corte di Giustizia (Grande Sezione) 19 marzo 2019 nella causa C 163/17, CGUE 16 febbraio 2017 causa C 578/16 PPU C.K., H.F., A.S. c. Slovenia https://www.questionegiustizia.it/data/doc/2794/2021-700-senza-dati-sensibili.pdf

Decreto del Presidente della Repubblica 1989, n. 223.

Decreto del Presidente della Repubblica 1999, n. 394.

Decreto Legge 172/2020.

Decreto Legge 14/2019, n. 53.

Decreto Legge 113/2018.

Decreto Legge 17/2017, n. 13.

Decreto Legislativo 18/2015, n. 142.

Decreto Legislativo 159/2008 on amendments and integrations to Legislative Decree 28th January 2008, no. 25, on the application of Directive 2005/85/EC about minimum rules for the procedures applied in Member States for the recognition and revocation of refugee status.

Decreto Legislativo 28/2008, n. 25.

Decreto Legislativo 28/2008, n. 25, updated by the act published the 19 December 2020.

Decreto Legislativo 251/2007.

Decreto Legislativo 25/1998, n. 286.

Di Pascale, Alessia. "L'attuazione delle garanzie sul diritto di asilo nell'Unione europea nell'ambito dell'emergenza COVID-19", *Fondazione ISMU*. 2020. https://www.ismu.org/le-garanzie-sul-diritto-di-asilo-nell-ue-nell-ambito-dell-emergenza-covid-19/

Directive 2013/32/EU.

Directive 2011/95/EU of the European Parliament and of the Council.

Directive 2004/83/EC.

Directive 2001/55/EC.

Direttiva "Servizi di accoglienza per i richiedenti asilo" 2018.

Dizionario Giuridico, *Sezioni unite*. https://www.brocardi.it/dizionario/3930.html

Dublin Convention, Official Journal C 254, 19/08/1997.

EASO. *Country of origin information*. https://easo.europa.eu/information-analysis/country-origin-information

Edwards, Alice. *Human Rights, Refugees, and The Right 'To Enjoy' Asylum*. Oxford University Press: 2005.

Enciclopedia dell'Olocausto, *La Germania: 1933*. https://encyclopedia.ushmm.org/content/it/map/germany-1933

EUR-Lex. *Sistema "Eurodac"*. https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=LEGISSUM%3Al33081

EUR-Lex, *The Single European Act*.

European Convention on Human Rights.

Eurostat, *Statistiche in materia di asilo.* https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics/it&oldid=496312#Aumento_del_numero_di_richiedenti_asilo_nel_2019

Facondini, Laura. *Diritto soggettivo e interesse legittimo*. 2021. https://www.diritto.it/diritto-soggettivo-e-interesse-legittimo/

Feller, Erika; Türk, Volker; Nicholson, Frances. *Refugee Protection in International Law – UNHCR's Global Consultations on International Protection*. Cambridge University Press, 2003.

Ferraris, Valeria. *Immigrazione e criminalità*. Carocci: Roma. 2012.

Filodiritto, *Il confine tra merito e legittimità: la necessaria ricostruzione da parte del giudice di legittimità della fattispecie concreta così come effettuata dai giudici di merito*. 2019. https://www.filodiritto.com/il-confine-tra-merito-e-legittimita-la-necessaria-ricostruzione-da-parte-del-giudice-di-legittimita-della-fattispecie-concreta-cosi-come-effettuata-dai-giudici-di-merito

Garante nazionale dei diritti delle persone private della libertà personale. https://www.garantenazionaleprivatiliberta.it/gnpl/it/chisiamo.page

Istanbul Convention.

Italian Constitution.

Italian Penal Code.

L'Agenda europea sulla migrazione. https://temi.camera.it/leg17/temi/l_agenda_europea_sulla_migrazione

Larussa, Anna. "Protezione umanitaria: l'integrazione sociale non è sufficiente", *Altalex.* 2019. https://www.altalex.com/documents/news/2019/12/09/protezione-umanitaria-non-sufficiente-la-mancata-integrazione-sociale

Legal Information Institute, *Jus cogens*. https://www.law.cornell.edu/wex/jus_cogens

Legge 3 dicembre 2018.

Lombardi, Lia. "The impact of COVID-19 on migrants in Italy. Local contagion and global health", *Fondazione ISMU.* 2020. https://www.ismu.org/the-impact-of-covid-19-on-migrants-in-italy-local-contagion-and-global-health/

Manzini, Pietro; Lollini, Andrea. *Diritti fondamentali in Europa. Un casebook.* Bologna: Il Mulino, 2015.

Marconi, Irene. "Espulsione dello straniero: rilevano legami familiari in Italia", *Altalex.* 2020. https://www.altalex.com/documents/news/2020/07/06/espulsione-straniero-rilevano-legami-familiari-in-italia

Massenzio, Massimo. "Torino, 23enne della Guinea si suicida al Cpr. Era stato aggredito a Ventimiglia", *Corriere Torino*. 2021. https://torino.corriere.it/cronaca/21_maggio_23/torino-clandestino-23-anni-si-suicida-cpr-359ca72c-bbca-11eb-822f-b2d049d46202.shtml

Migration Data Portal, 24th September 2020. https://migrationdataportal.org/themes/international-migration-flows

Ministero dell'Interno, *Area I – Commissioni territoriali*. http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/area-i-commissioni-territoriali

Ministero dell'Interno, *Commissione nazionale per il diritto di asilo*. https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-limmigrazione/commissione-nazionale-diritto-asilo#:~:text=Il%20predetto%20decreto%20ha%20conservato,per%20il%20Diritto%20di%20Asilo

Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione, *I numeri dell'asilo*. Updated on 3 May 2021. http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo

Ministero dell'interno, Relazione annuale sul finanziamento del sistema di accoglienza di stranieri nel territorio nazionale, Doc. LI, n. 3.

Nwaubani, Adaobi Tricia. "Chi costringe alla prostituzione le ragazze nigeriane in Italia", *Internazionale.* 2016. https://www.internazionale.it/notizie/adaobi-tricia-nwaubani/2016/11/21/prostituzione-italia-nigeria

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

Occhipinti, Sara. "Decreto immigrazione: le novità sui permessi di soggiorno", *Altalex.* 2020. https://www.altalex.com/documents/leggi/2020/12/22/decreto-immigrazione-novita-permessi-soggiorno#p1

OECD, *Migration Policy Debates*, May 2014. http://www.oecd.org/migration/mig/OECD%20Migration%20Policy%20Debates%20Numero%201.pdf

Official Journal L 239, *The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.* https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):en:HTML

Poli, Cecilia Claudia. "Il "Decreto Lamorgese": luci e ombre delle modifiche ai decreti sicurezza", *Progetto Melting Pot Europa*. 2021. https://www.meltingpot.org/Il-Decreto-Lamorgese-luci-e-ombre-delle-modifiche-ai.html#.YMTSO6gzZPZ

Portale Immigrazione, *Decreto Salvini, pacchetto sicurezza e immigrazione*. https://portaleimmigrazione.eu/decreto-salvini-pacchetto-sicurezza-e-migranti/

Provision no. 2327 of 10 March 2020 of the National Commission. https://www.interno.gov.it/sites/default/files/allegati/decreto_2.4.2020_commissione_nazionale_asilo_covid19.pdf

Regulation 604/2013/EU.

Regulation 343/2003/EC.

Reinalda, Bob. *Routledge History of International Organizations – From 1815 to the Present Day*. Taylor & Francis e-Library: 2009.

Rescigno, Francesca. *Il diritto di asilo*. Carocci Editore, Roma: 2011.

Savigni, Maria. "Decreto Lamorgese e protezione internazionale: verso una nuova fase dell'accoglienza in Italia?", *DirittoConsenso*. 2020. https://www.dirittoconsenso.it/2020/11/28/decreto-lamorgese-protezione-internazionale-nuova-fase-accoglienza-italia/

Scannapieco, Elisa. "Protezione internazionale va riconosciuta al migrante omosessuale che rischia nel paese d'origine. Cassazione civile, sez. I, sentenza 23/04/2019 n° 11176", *Altalex*. 2019. https://www.altalex.com/documents/news/2019/05/03/protezione-internazionale-va-riconosciuta-al-migrante-omosessuale-che-rischia-nel-paese-d-origine

Sesana, Ilaria. "15 anni di "Bossi-Fini", legge frutto di ideologia che ha fatto aumentare gli irregolari", *Altreconomia*. 2017. https://altreconomia.it/15-anni-Bossi-fini-legge-frutto-ideologia-aumentare-gli-irregolari/

Treaty of Lisbon. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2007.306.01.0001.01.ENG&toc=OJ%3AC%3A2007%3A306%3ATOC#d1e585-1-1

Treccani, *Asilo*. https://www.treccani.it/vocabolario/asilo_res-8909f2ac-adad-11eb-94e0-00271042e8d9/

Università degli Studi di Verona, *L'Organizzazione delle Nazioni Unite*. https://docs.univr.it/documenti/OccorrenzaIns/matdid/matdid911443.pdf

UNHCR. www.unhcr.org/statistics

UNHCR, *Convention and Protocol Relating to the Status of Refugees*.

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection – Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*. 2019.

United Nations Convention on the Law of the Sea.

Word Reference, *Refouler*. https://www.wordreference.com/fren/refouler

World Health Organization, *Interim guidance for refugee and migrant health in relation to COVID-19 in the WHO European Region*. 2020. https://www.euro.who.int/__data/assets/pdf_file/0008/434978/Interim-guidance-refugee-and-migrant-health-COVID-19.pdf

World Health Organizaton, *OHCHR, IOM, UNHCR and WHO joint press release: the rights and health of refugees, migrants and stateless must be protected in COVID-19 response*. 2020. https://www.who.int/news/item/31-03-2020-ohchr-iom-unhcr-and-who-joint-press-release-the-rights-and-health-of-refugees-migrants-and-stateless-must-be-protected-in-covid-19-response

WEBSITES

ANSA – https://www.ansa.it/

ASGI – https://www.asgi.it/

Camera dei deputati – https://www.camera.it/leg18/1

Corriere di Torino – https://torino.corriere.it/

Dizionario giuridico – https://www.brocardi.it/dizionario/

EASO – https://www.easo.europa.eu/

Enciclopedia dell'Olocausto – https://encyclopedia.ushmm.org/it

EUR-Lex – https://eur-lex.europa.eu/homepage.html?locale=it

Eurostat – https://ec.europa.eu/eurostat

Frontex – https://frontex.europa.eu/

Garante nazionale dei diritti delle persone private della libertà personale – https://www.garantenazionaleprivatiliberta.it/gnpl/

Internazionale – https://www.internazionale.it/

IOM – https://www.iom.int/

ISS – https://www.iss.it/

Migration Data Portal – https://migrationdataportal.org/

Ministero dell'Interno – https://www.interno.gov.it/it

OECD – https://www.oecd.org/

OHCHR – https://www.ohchr.org/EN/pages/home.aspx

Portale Immigrazione – https://www.portaleimmigrazione.it/

Treccani – https://www.treccani.it/

UNHCR – https://www.unhcr.org/

WHO – https://www.who.int/

World Reference – https://www.wordreference.com/it/