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THE "SECURITY DECREES" I&II, AND THEIR IMPACT ON HUMAN RIGHTS. AN ANALYSIS OF DOMESTIC AND INTERNATIONAL REACTIONS.

A PATH TOWARDS INSECURITY

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Introduction

Research question and hypothesis

The aim of this work is to study and understand the implication of the Security decree I and II on human rights and particularly on the rights of migrants. The two decrees, not deviating from the constant of the history of Italian immigration laws, unite the topic publics of security and immigration. The thesis, developed with a completely neutral approach to the political events that surround the creation of the two decrees, aims to investigate the recent changes and the new regulations on immigration and security with a particular focus on the former. Security decrees I and II are born in a period where, despite facing a significant reduction in the number of entries, immigration flows are still considered under the length of an "invasion alarm" on the Italian coast. The data, on the other hand, diverges significantly from the concept of "invasion". The first hypothesis was that security decree I and II were a violation of international obligations by Italy, however this research study highlighted not only the major violation but also the domestic implications and the challenges regarding the reception system in Italy. The main cause of this challenge is the way in which immigration and public security are linked. This focus on security is developed at the expense of inclusion and integration.

Already during the Gentiloni government and the MoU with Libya, the landings had decreased to around 117 a day. With the new policy adopted by the previous Minister of the Interior, Matteo Salvini, the number has been considerably reduced again. The ISPI data speak of a drop of 61 landings per day. If the security policy of the borders is given its due, the same cannot be said of human rights. According to UNHCR data[1], the lowest number of people arriving in Italy is directly proportional to that of people detained in Libyan prisons. The UNHCR has long reported incredible atrocities at the fate of prisoners.

1 UNHCR data on migration.
https://data2.unhcr.org/en/situations/mediterranean/location/5205.

Furthermore, the Mediterranean has been called "the largest open-air cemetery in the world". According to ISPI researcher Matteo Villa, [2]there are about eight people dying at sea a day with an average of 19 per cent of people trying to get to Italy, a number never registered before. In truth, the security decrees follow a path already outlined broadly by a security policy on immigration. The "Bossi-Fini" law introduces the first changes to the Consolidated Act on the entrance system: it made it compulsory, for example, to present documentation capable of certifying the possession of an employment contract upon arrival. Even today, to obtain a "Residence Card", necessary to remain in Italy for an indefinite period, it is required to work without interrupting the relationship for five years, as the loss of work entails expulsion. The same law introduced the return system that generates more illegality.

In 2017, Parliament approved the text "Urgent provisions for the acceleration of international protection measures, as well as measures to combat illegal immigration" or the "Minniti-Orlando law". The 400 amendments, which supplement the Bossi-Fini legislation presented the same security attitude as the previous text. The main novelties of the law were: the abolition of the second level of judgment for asylum seekers who have appealed against a denial, the elimination of the hearing (the magistrate will examine the video recording of the interview of the asylum seeker at the Territorial Commission) and the extension of the network of detention centres for irregular migrants and the introduction of voluntary work for migrants. Many of these laws have been criticised for being unconstitutional and violations of international rules and obligations. In light of past events, the security decrees seem to follow the security paradigm traced by the predecessors of the former Interior Minister.

Methodology

The research was based on the study of both decrees from a human rights-based approach through the instruments of constitutional law and international human rights law. The reference texts from which the work was developed are *"I profili di illeggimità costituzionale del Decreto Salvini"* [3]and "*Il Decreto Salvini*" [4]for the part concerning constitutional Italian law and international law. Several International and

2 Fact Checking: migrazioni 2018, INSPI online.
https://www.ispionline.it/it/pubblicazione/fact-checking-migrazioni-2018-20415.
3 Gennaro Santoro, "I profili di illeggimità del decreto salvini", 2018.
4 Francesca Curi, "Il decreto Salvini",2018.

European conventions on human rights have been considered in order to understand the international human rights violations. Furthermore, interviews with experts in the field have been carried out in order to better understand how to address the different topic related to this dissertation. Interviews have been done with Marco Omizzolo – sociologist, researcher, and *caporlato* expert, Matteo Bassoli - university professor and founder of Refugee Welcome Italia and Marta Nalin - councillor for integration for the city of Padua.

Limits

The thesis focuses on the violations of migrants' rights and the practical follow-up of the legislator's choices. The technical and procedural phases relating to registration, the abolition of citizenship and aspects other technicalities are mentioned but not studied in deep.

Structure

The dissertation is divided into four chapters. The first three concern the legal framework on the topic while the last is a follow-up on the practical aspect of the decrees. The first chapter of this dissertation will analyse Security Decree I and Security Decree II from a descriptive point of view studying the different articles in order to understand the meaning behind the norms and the novelties introduced by the new decrees of urgency. Security Decree I brings changes to immigration law by establishing the abolition of humanitarian protection, detention in repatriation centres where the times have doubled from a maximum of 90 days to 180 days and concerning public security, introduces stricter control over the hiring of trucks and vans, and DASPO for terrorism suspects. The decree sees the creation of the DASPO for sporting events that is also extended to those suspected of being in preparation for an attack or of flanking a terrorist organization. Regarding Security Decree II, of particular importance are Articles 1,2 and 4 regarding Immigration. Article 1 restricts or prohibits the entry of transit or parking of ships in the territorial sea" for reasons of order and security or when it is assumed that they are "facilitating illegal immigration". Article 2 provides sanctions ranging from a minimum of 150 thousand euros to a maximum of 1 million euros for the captain of the ship "in the event of violation of the prohibition of entry, transit or parking in Italian territorial waters". Article 4 provides for the allocation of 500 thousand euros for 2019, 1 million euros

for 2020 and 1.5 million for 2021 to combat the crime of aiding illegal immigration and undercover police operations.

The Reactions from International and National actors Security Decrees I and II are analysed in the second chapter. UN experts, Special rapporteurs and Human Rights commissioners from the Council of Europe stressed the violation of the decrees under international law and obligation. Such as violation of articles 5 and 6 ICCPR, violation of article 98 of the UN Convention of the Law of the Sea and art 31 of the Geneva Convention 1951. In addition, the report from NHRI, CSOs and NGOs at the UPR are crucial for direct research on the field and the chance to share the information with the other states in order to advocate for solutions. There are also various reactions from the domestic actors including CSOs, NGOs and lawyers. Violations of constitutional obligations have been considered under articles 10, 13, 76 and 77 of the Italian constitution. The same abolition of the humanitarian protection and the extension on the detention period in Hotspot and CPR are considered a direct violation of human rights. The direct and constant attacks on NGOs dealing with sea rescue has been particularly criticized by the experts of the UN and by the Commission of Human Rights of the Council of Europe. It is believed that these constant attacks on those who save lives at sea is contrary to human rights.

The legal framework is outlined in the third chapter, combining the first chapter with the explanation of the legal novelties and the second chapter where domestic and international actors express their doubts on the constitutionality of the decrees according to the Italian Constitution and international obligations. The abolition of humanitarian protection in the Italian system is considered a direct violation of international obligations in which the legislator (repealing article 5 and 6 of the Consolidated Immigration Act) eliminates the connection between national and international commitments. The international obligations connected to human rights had been translated into national ones, putting a ban on removal. In fact, this series of items is not connected to the country of origin and therefore outside the competence of Article 10 of the Constitution Paragraph 3. Concerning the extension on the detention for undocumented migrants, the UNHCR underlines the importance of the "Place of safety" that does not stop at the borders of the first country of aid but also on the way in which migrants are threatened also inside the borders. Remarkably denounced for the bad living situation, the condition of the migrants living the CPR,

Hotspot, CAS and CARA is an issue. With the analysis of the Proactiva Open Arms cases, it is possible to lay out the contrast between the judge and the legislator that decided to put the borders before human rights.

The last chapter arises from the curiosity to understand the follow up on the law on a practical level. To understand the result, the thesis has analysed research done by the NGOs and CSOs working on the field and with migrants followed by direct interviews with experts in the sector. All research showed a gap between the holistic aims of the decrees that the legislators wanted to achieve and the general understanding from the society. This gap is easily understandable in the elimination of the civil registration and abolition of humanitarian protection as examples. In both cases there is a divergency between the norm and the reality. Concerning the civil registration, the law establishes that migrants will have the same rights even without it. But, in practical terms banks, offices and sometimes healthcare services ask for it. The abolition of humanitarian permits sees also a vacuum when the migrant holder of humanitarian protection, once expired has to wait for the new procedure becoming suddenly illegal. Related to the illegality is the vulnerability of migrants that, obliged by their own story, join illegal markets and mafia in order to gain money to send back home and to live. Under this vision migrants are not only targeted as a security problem but also exploited and deprived of their dream and dignity.

In addition, the overall Italian scenario concerning the protection of migrants and humanitarian actors is surely not reassuring. Amnesty International studied the different forms of hate speech used by politicians during the 2018 and the European elections. The phenomenon of migration was the central theme of the reports: 91% of the declarations targeted migrants and immigrants. It seems impossible to consider the process of integration and inclusion under the previous consideration. Indeed, from the South to the North of the country, there are several reactions coming from religious authorities, community based group and municipalities that are fighting against the public security system in favor of immigration with inclusion, integration and most importantly hope for their future. Some consideration of the decrees and their follow up are made in the conclusion.

I Chapter - Security Decree I & Security Decree II: a Descriptive Analysis

On the 4th October, under legislative proposal of the previous Ministry of the Interior, Matteo Salvini, the so-called "security decree" was approved by the Council of Ministers. The original 40 articles become 73 during conversion phase. In order to make the approval of the decree stronger, the government placed the motion of confidence for the Senate and then subsequently for the Chamber of Deputies. Thus, the security decree I was converted in the law n° 132, entered into force on 3 December 2018.The security decree I presents a typical union of migration issue and public security, coherent with the lexical binominal of the title “Immigration and Public Security Decree”. Stating, by implication, that "immigration is a public safety problem". Following the same line, on the 5th August, the Senate vote under motion of confidence the so-called security decree II (security decree bis) approved by the executive on 15 June, on sea rescue reform and the public order. The "Security Decree II" expands the ministerial powers regarding the prohibition of ships entering the territorial sea for reasons of order and public safety and in case of violation of the laws in force concerning immigration. Another area of intervention of the decree in the discussion is the protection of public order pending sporting events.

1.1. The decree of urgency

Art 76. and art 77. of the Italian Constitution establish terms and conditions under which the Government, as executive power, can legislate. The “particularity” is given by the necessity and urgency of some actions. Due to the need and urgency that could not be solved by the ordinary law-making process:

“When the Government, in case of necessity and urgency, adopts under its responsibility a temporary measure, it shall introduce such measure to the Parliament for transposition into law[5]”.

On certain occasions, the law decree tool has overlapped with the borders of the ordinary law-making process. The subject under Government power went through the principles, criteria and object able to be legislated by the executive power under

5 Art. 77 Italian constitution https://www.senato.it/1025?sezione=127&articolo_numero_articolo=77.

art.76[6]. Recently, Stefano Murgia affirmed [7]that :"in the last 40 years, the use of law-decrees by the Government has progressively developed beyond the limits of the Constitution, thus generating three paradoxes in legislation procedures:

1) Poor enforcement of law-decrees before they are "converted into law";

2) A high number of regulations provided by decree-laws;

3) Insufficient time for Parliament to consider other ordinary bills.

The first paradox [8]concerns the nature and purpose of the decree-law. The inflation and the "precarity" of the normative led to a limited application pending the conversion process. The paradox lies in that the Decree-Law sometimes does not produce immediate effects, but effects delayed over time and in many cases, as has emerged from numerous reports, some provisions of the decrees-law do not produce any effect at all.

The second paradox [9]is the creation of acts that in themselves should respond to an objective and emergency necessity, but that is the reality of the facts cannot be implemented because of the no- truthfulness of the act.

The third paradox [10]is the organization of administrative work. In recent years, the abuse of the decree of urgency has meant that Parliament has taken a step back on this priority. Indeed, the legislative body was called to direct its work towards the decisions taken previously by the Government. We are therefore witnessing a progressive marginalization of the ordinary executive power" [11]. During 2015, the Standing Committee on Constitutional Affairs presented its report [12]on the total impact of the decree of urgency which, as pointed out by the then Minister for

6 Art. 76 Italian constitution.
7 Stefano Murgia (2016), Alcuni paradossi dell'abuso della decretazione d'urgenza e gli effetti negativi sull'esercizio della funzione legislativa, Osservatorio sulle Fonti.
8 *Ibidem*. Page 2.
9 *Ibidem*. Page 3.
10 *Ibidem*. Page 5.
11 Relazione della i commissione permanente (affari costituzionali, della presidenza del consiglio e interni) su tutti gli aspetti relativi al fenomeno della decretazione d'urgenza
presentata alla presidenza il 21 luglio 2015 approvata dalla commissione nella seduta del 15 luglio 2015, a pag. 2 conclusione di una procedura di esame svolta ai sensi dell'articolo 143, comma 1, del regolamento.
http://documenti.camera.it/apps/nuovosito/Documenti/DocumentiParlamentari/parser.asp?idLegislatura=17&categoria=016&tipologiaDoc=documento&numero=002&doc=intero.
12 Davide Fiumicelli,L'integrazione degli stranieri extracomunitari può ancora passare dalla "partecipazione politica"? Spunti di carattere comparato e brevi considerazioni sulle proposte più recenti e sulle prassi locali, 2018.

Relations with Parliament Maria Elena Boschi, became Parliament's principal activity. Due to the loss of "necessity and urgency", the number of decrees passed by Parliament grows yearly, sometimes combining the uselessness of the effects with the length of the text. A significant issue is the association between decrees and question of trust for procedural purposes, which denotes the need for the government to overcome the obstacles posed by the opposition, but also often by some groups of the same majority. The widespread use of "urgent" legislation does not exclude the frequent use of delegated laws as well in the financial field. For the transposition of Community directives, despite the costume of the delegation, these are still characterized by less and less binding government action to guiding principles, timing and implementing rules.

1.2. Security decree I and Security decree II: the making

The new legislation on immigration and security was born in the complex setting of two different parties that formed the yellow-green government. The "Yellow-Green government" [13]lasted 14 months. In this brief period, Italy has seen enormous changes in terms of internal and external political affairs. The two parties tried to bring the few common points of their ideological vision into the "Conte I cabinet[14]", not without discussion and challenges from both parts. The challenges and the different political and ideological vision of the two parties were the consequences that brought them to sign a "government contract" of shared point and goals.

On one hand, the League[15] advocates for the transformation of Italy into a federal state, fiscal federalism, regionalism and greater regional autonomy, especially for northern regions. The League party has always opposed illegal immigration, especially when involving non-Europeans. Under the leadership of Salvini, the party has redirected its focus on the latter issue. On the other hand, the Five Stars Movement (M5S)[16] is variously considered populist, anti-establishment

13 The name "yellow-green" come from the colors of the two parties. The term has been used by the media for the duration of the I Conte Cabinet. See http://www.vita.it/it/article/2019/08/20/giuseppe-conte-spegne-il-governo-giallo-verde/152425/ or https://www.agi.it/politica/anno_governo_giallo_verde-5993453/news/2019-08-09/ .

14 The Conte I Cabinet was the 65th cabinet of the Italian Republic. It was led by Giuseppe Conte, an independent, and it was in office from 1 June 2018 to 5 September 2019.

15 From the main site of the Leauge, "Manifests and personal history" section https://www.leganord.org/il-movimento/la-nostra-storia/manifesti.

16 https://www.movimento5stelle.it/ section "Parlamento" in which the Party explain its program.

environmentalist, anti-globalist and Eurosceptic[17]. In the 2018 Italian general election, no political group or party won an outright majority, resulting in a hung parliament. On 4 March, the Centre-right alliance, in which Matteo Salvini's League (LN) emerged as the main political force, winning a plurality of seats in the Chamber of Deputies and in the Senate, while the anti-establishment Five Star Movement (M5S) led by Luigi Di Maio became the party with the largest number of votes. This new "Government of change" [18] was born of a contract between the parties that committed themselves, their ministries and parties to rule by the points decided into the con tract. The contract, in fact, needed to be the "common line" between two forces with vast differences between them.

1.2.1. The government contract: focus on public security and immigration.

The "government of change contract" [19] (*contratto di governo del cambiamento)* was created to be able to rule the country with shared principles. As previosly announced, the League and Five-star movement have different ideological approaches on the most relevant topics. Due to this reason, the first move was the creation of the Conciliation Committee. [20]The Conciliation Committee's role was to resolve the disputes between the two parties. Shared point from both parties, but particularly important for the League, the starting point of their cabinet had to be a new approach towards migration issues, public security and to Police reinforcement.

In the Contract for the Government of Change we can see that for the parties; the immigration policies based on the Consolidated Immigration Act were considered by both parties to be completely unsuccessful. Italy should have played a decisive role at the European level in order to improve the European regulations on migration in all the countries. "The aim is to reduce the pressure of the flows on the external borders and the consequent trafficking of human beings[21]". In addition, another point was that the SAR missions [22]are penalizing Italy, for the clauses that provide for the landing of

18As the both leaders of the parties described themselves in the first appearance as part of the same government https://www.youtube.com/watch?v=XmSZkSLVrqA.
19 Contratto Per Il Governo Del Cambiamento
https://download.repubblica.it/pdf/2018/politica/contratto_governo.pdf.
20 *Ibidem*. Page 6.
21 *Ibidem*. Page 26.
22 Search and rescue (SAR) is the search for and provision of aid to people who are in distress or imminent danger. The general field of search and rescue includes many specialty sub-fields, typically determined by the type of terrain the search is conducted over. These include mountain rescue;ground

ships used for operations in national ports without any responsibility shared by other European states. An important point for both parties was also to overcome the Dublin III regulations.[23]Besides, in observance of the constitutionally guaranteed rights, they proposed that the procedures for verifying the right to refugee status or its revocation be made specific and fast.

Moreover, there is the transparency of the management of public funds destined to the reception system, to eliminate the infiltration of organized crime. It is essential to disrupt the business of smugglers who caused landings and deaths in the Mediterranean Sea and dismantle international criminal organizations for trafficking in human beings, with further cooperation and involvement of the judicial police of other European countries. The assessment of the admissibility of applications for international protection must take place in the countries of origin or transit, with the support of the European Agencies, in structures that guarantee the full protection of human rights. Similarly, provisions must be made for the identification of temporary residence sites for repatriation, with at least one location for each region, subject to agreement with the region itself, and with enough capacity for all irregular immigrants present and traced on the national territory ensuring the protection of human rights. A new strength on corruption and the illegal act was strongly required by the Five-star movement. Corruption would be fought by introducing a new DASPO[24] for corrupt persons, resulting in disqualification from public offices and the perpetual inability to contract with the public administration for those who have been definitively convicted of a corruption offence against the Public Administration. There is the introduction of the "undercover agent" figure and, in the presence of well-founded elements, of the "agent provocateur", to favor the emergence of corruption phenomena in the Public Administration. Another shared point was on public security and more control during strikes and demonstrations, that would be elaborated on in the second law decree on immigration and security.

search and rescue, including the use of search and rescue dogs; urban search and rescue in cities; combat search and rescue on the battlefield and air-sea rescue over water.

23 Dublin III Regulation https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF.

24 Cos'è il "DASPO urbano", Il Post, Settembre 2018, https://www.ilpost.it/2018/09/25/daspo-urbano/.

1.3. Security Decree I: the General Framework

Starting from this common vision on immigration and the necessity to change the Consolidate Act of Immigration, the then Ministry of the Interior[25], Matteo Salvini presented the Security Decree I. [26](D.l. 113/18). The initial idea was to create two decrees on Immigration and Public Security. But in the end the decree was published as a consolidated act. The security decree I has been immediately dubbed as "Salvini Decree". Security decrees have been highly criticized. One of the most severe criticisms around the decrees has been how political propaganda overcame for some aspect the rule of law. In fact, for several times the Minister of the Interior, Matteo Salvini in his rallies, points out how important these two decrees are to "stop the invasion" or to "boycott the friends' 'smugglers". Indeed, this continuous propaganda changes the perception of the main actors involved putting on the "bad lights" people and their lives[27].

Besides, one of the main targets of "yellow-green" politics are the NGOs, particularly the ones involved in the SAR operations as they underline in the "contract for the government of change". On the 4th of October 2014, under a Ministry of the Interior proposal, the Council of Ministries approved the well- known "Security decree I". The original 40 articles became 73. The government put the motion of confidence on acceptance of the decree. It was approved firstly by the Senate and moved to the Chamber of Deputies for the approval. On the 1st of December, the document was transformed in law, and it came into force on the 3rd of December 2018.

The security decree I is divided into three parts: The first part Title I is about "*Provisions relating to the issue of special temporary residence permits for humanitarian needs and in the field of international protection and immigration*", Title II is about "*Provisions concerning public security, prevention and contrary to terrorism and mafia*" and Title III " *Provisions for the functionality of the Ministry of the Interior and the organization and functioning of the National Agency for the administration and management of seized assets and confiscated from organized*

25 On the 8th of August, the League leaves the majority and calls for a return to the polls.
26 Immigrazione e sicurezza pubblica: decreto-legge 4 ottobre 2018, n. 113. https://www.interno.gov.it/it/immigrazione-e-sicurezza-pubblica-decreto-legge-4-ottobre-2018-n-113.
27 In order to understand this point, Amnesty International Italy, with the "hate barometer" studied the political language of Matteo Salvini and all the other candidates at national and European elections. It turned out that the League Party and his leader use continuously the "hate speech" in their rellies. https://www.amnesty.it/cosa-facciamo/elezioni-europee/.

crime". Apart from the news in terms of immigration policy, several novelties concerning public security were highly criticized for their affinity with the "zero tolerance" policy of the USA[28] the decree introduces the use of tasers, and electronic bracelets for specific crimes.

Moreover, it describes other "new" crimes that are the so-called "begging harassment". This specific crime seems, according to CSOs opinion, to target the poorest, the loneliest and the most marginalized by society without taking into consideration their condition. In any case, the same decree underlines that the police officer will decide how and whether to target particular people or not. It also seems very difficult to understand how the opposition and the integration of different categories could take place in this new system. Even if it is the second decree, the decree security bis focuses on the means and the attitude to avoid during strikes and demonstrations, the first decree begins to deal with the opposition.

1.3.1. "The security approach" to the Italian immigration policy

As first action, the new law abrogates the "Humanitarian protection". Before the decree, migrants arriving in Italy could apply for international protection and in this case be considered suitable for three forms of protection: political refuge, subsidiary protection and humanitarian protection. The decree-law regulates the law n. 251 of 2007[29](which implements the European directive n.83/2004[30] was then modified, several years later, by the legislative decree n.18 / 2014[31]). The third form, on the other hand, is a recognition, lasting two years, provided for by Italian law (governed by Decree-Law No. 286/1998 and No. 25/2008) and is granted if the others are not recognized as individual acts. (Consolidated Immigration Act). The first change made by the new decree was the repeal of humanitarian protection because, as several times underlined in the political discourse of Matteo Salvini and the other ministers of the yellow-green government, this instrument is seen to be misused as a global institution.

Indeed, it has been replaced by other special forms of protection. Article 12[32] of the Security Decree I, specifies a list of other forms of protection for the variable period

28 Francesca Curi, Il decreto Salvini, sicurezza ed immigrazione. 2018.
29https://www.gazzettaufficiale.it/eli/id/2008/01/04/007G0259/sg.
30https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32004L0083.
31D.lgs n.18 / 2014.
32Art. 1 D.l 113/1 "Disposizioni in materia di accoglienza dei richiedenti d'asilo" , Title I https://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg.

that can be from 6 months to one year regarding the different needs of the migrants. The new special forms of protection are:

- For medical treatment: the duration is established by the time attested by the health certification, but in any case, it must not exceed one year. It is renewable if the particularly dangerous certified health conditions persist.[33]

- For victims of violence or severe exploitation with real dangers to personal safety.[34]

- For victims of domestic violence (which occurs with violence or abuse): has a duration of one year and allows access to welfare services and study but also the registration in the registry list provided for services to people looking for a job.[35]

- For situations of contingent and exceptional calamity that do not allow the person to return to and stay in the country of origin in safe conditions: its duration is six months (and can be renewed for another six months) and allows carrying out activities but cannot be converted into a residence permit for work reasons.[36]

- In cases of exploitation of the foreign worker who has filed a complaint and cooperates in the criminal proceedings against the employer: it allows the performance of work and at its expiry; it can be converted into a residence permit for work[37].

- For acts of particular civil value (the Minister of the Interior, upon the proposal of the competent prefect, to authorize the release): has a duration of two years and is renewable. It allows access to the study and to carry out work activities. It can be converted into a residence permit for work reasons.[38]

- For the cases of non-acceptance of the request for international protection where the migrant cannot be expelled because in his State the applicant can be victim of persecution for reasons of race, sex, language, citizenship, of religion, political opinion, personal or social conditions (or may risk being sent back to another State in

33*Ibidem*.
34 *Ibidem*.
35 *Ibidem*.
36 *Ibidem*.
37 *Ibidem*.
38 *Ibidem*.

which it is not protected by persecution) or to a State for which there are reasonable grounds to believe that he risks being subjected to torture.[39]

The Territorial Commission, [40]therefore, now has the charge to recognize two forms of protection - refugee or subsidiary protection - or to reject the application. Based on the new provisions, the Commission no longer transmits the application of the rejected application to the Commissioner (*questore*) if it considers "that there may be serious humanitarian reasons", but merely assesses whether there are grounds for denying expulsion. If these conditions exist, the commissioners transmit the documents to the Commissioner for a release of a residence permit, described in this case as a "special protection" for a maximum duration of one year.

The decree increases the time the foreigner stays in the repatriation centers (CPR, the former CIE). When migrants are transferred to these centers once they arrive in Italy, it means that they cannot apply for asylum status, and in this means that they are not eligible to propose it after the first investigations. Mostly in the past, those transferred to the CIE were considered dangerous "for order and public safety".

The new provision of art.2 of the decree 113/18[41] brings the maximum period of detention within the CPR from 90 days to 180 days. The detention must be adopted respecting the guarantees of article 13 of the Constitution, which prohibits any form "of detention, inspection or personal search, or any other restriction of personal freedom, except by reason of the judicial authority and only in the cases and ways provided by law". [42] The decree also establishes "negotiated procedure without prior publication of the call for tenders" within 3 years of its entry into force for the construction and completion of these centers.

39 *Ibidem*.
40 The territorial Commissions for the recognition of international protection examined the requests for recognition of international protection in a decentralized manner.
https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-limmigrazione/commissione-nazionale-diritto-asilo.
41Art. 2 d.l 113 “Prolungamento della durata massima del trattenimento dello straniero nei Centri di permanenza
per il rimpatrio e disposizioni per la realizzazione dei medesimi Centri”.
42Rapporto Centro Studi del Senato, “Rapporto sui Centri di Indentificazione ed Espulsione”, 2017
https://www.senato.it/application/xmanager/projects/leg17/file/Cie%20rapporto%20aggiornato%20(2%20gennaio%202017).pdf.

The previously created instrument of the Assisted voluntary fund to return[43] (*Ritorno volontario assistito*) is taken over, The fund for the implementation of the assisted voluntary repatriation was created during Gentiloni's cabinet thanks to interventions that include the reintegration and reintegration measures for returnees in the country of origin, for the period 2018-2020. An expenditure of 3.5 million euros had been authorized for its implementation for the three years 2018-2020: 500 thousand for 2018; € 1.5 million for 2019 and another € 1.5 million for 2020. The current government, instead, establishes that these funds are not for assisted voluntary repatriation only. For this reason, the 3.5 million euros identified in the last budget law can also be used for other forms of repatriation.

The new decree also changes the status of foreigners able to access to the SPRAR regional network, the Protection System for Applicants and Refugees whose primary function is integration. Before the entry into force of the provision, asylum seekers and those who had been granted an application for international protection could enter the SPRAR network. Now the decree intervenes concerning the beneficiaries of this program, reducing the number of those who can enter the SPRAR network to those who have already obtained international protection (refugee or subsidiary), holders of "special" residence permits, and unaccompanied foreign minors (applicants and not).

Asylum seekers are therefore excluded - those who have submitted an application and are awaiting a response. For this reason, the name of the project has also been changed: it passes from "Protection system for asylum seekers, refugees and unaccompanied foreign minors" to "Protection system for holders of international protection and unaccompanied foreign minors" in Italian "SPIROIMI". The structure of the reception system is also changing. Previously there was a first reception and a second reception (first and second aid). With the new decree, there is a removal of any reference to the second reception. In this way, the asylum seeker will have access to the "essential" reception measures provided for in the original first reception, i.e. the Hotspots and the CAS[44].

43 http://www.cir-onlus.org/en/donations/ritorno-volontario-assistito/.

44 This type of cut will affect the reception aid in its complexity, and it means that as the Centre is small, the massive cut will not give the chance to work on the integration provided by language schools and training courses. Moreover, the medical and psychological assistance is also reduced. A further rule focuses instead on social cooperatives working in the field of integration and assistance to foreigners, providing for the obligation to publish on their sites every three weeks, the list of subjects to

Additionally, the way in which cooperatives and NGOs work and obtain fund for the reception was changed enormously. The new reception system sees the cut of the 35 euro by 39% to become 21,35 for the small centers and 19 for the big one. On the other hand, the collective reception centers will see a decrease in funding per person per capita 35.00 euros to 26.35 (up to 50 users accepted) and 25.25 euros (from 51 to 300 asylum seekers accepted). The size of the cuts to small towns is practically the same as that provided for the large structures. In other words, reception center with 300 guests will obtain the same daily income of centers with 150 users. [45]

Table 1. The cut to the reception system.

Centre Typology	**Per day Per capita 2018**	**Per day Per capita 2019**	**Fund cut compared to previous call**
Widespread reception in apartments	35,00	21,35	-39%
Collective centres 20	35,00	26,35	-25%
Collective centers 50	35,00	26,35	-25%
Collective centers 150	35,00	25,25	-28%
Collective centers 300	35,00	25,25	-28%[46]

Change action is also taken on the procedures for acquiring Italian citizenship with article 14[47]. First, where before, if two years after the application for citizenship by marriage, the competent authority hadn't expressed itself, it became impossible to reject the request itself. Now, it will no longer be so and will no longer take this form of "silent ascent ". The deadline for the conclusion of citizenship recognition procedures by marriage and naturalization is also extended from twenty-four to forty-eight months (four years). The decree inserts a further condition required for the acquisition of citizenship by foreigners by marriage and by law grant: that of adequate knowledge of the Italian language. Again, the requested contribution for acts relating

whom sums are paid for the performance of services, aimed at integration, assistance and social protection activities.

45FromInMigratione dossier on “La nuova malaccoglienza”, https://www.inmigrazione.it/UserFiles/File/Documents/273_Dossier%20appalti%20accoglienza.pdf.

46 *Ibidem*. Page 2.

47 Art.14 D.l 113/18 “Disposizioni in materia di acquisizione e revoca della cittadinanza”.

to Italian citizenship increased, from 200 euros to 250 euros. The decree also intervenes on the revocation of the granted citizenship.

1.3.2 Public Security

The second part (*Titolo II*) concerns the public security and the prevention of terrorist attacks. [48]Art 16 introduce a series of crimes in which the new provisions allow for the first time the use of electronic bracelets in order to control the perpetration for the crime of mistreatment, stalking and abuse. A rule was introduced concerning the rent of buses and trucks. Following the various events that took place in France and in other European countries, the intention was to avoid terrorist attacks and to reduce the chance that they can take place in Italy. From this point on, it is expected that those who rented vehicles without drivers (excluding those for shared mobility services, such as car sharing) would communicate the identification data of customers to the DPC (the Data Processing Center, a support database IT to the Police Forces) simultaneously, with the stipulation of the contract and in any case before the time of delivery of the vehicle. This data can be stored for a period not exceeding seven days.

In all the provincial capitals, the municipal police are also allowed to use Tasers on an experimental basis. At the end of the experimentation, the municipal administrations will decide, with their regulation, whether to assign these weapons to the local police. The costs for experimentation and staff training will be borne by the Municipalities and the Regions.

The application of the DASPO (i.e. the prohibition of access to sporting events) is also extended to subjects suspected of crimes of terrorism, including international crimes, and of other crimes against the State and public order. The Commission has also approved an amendment that provides to increase the contribution by the organizers of football events for the maintenance of public order the costs of overtime and police force compensation. Furthermore, it extends to the areas on which health centres are located and to those intended for holding fairs, markets and public shows, the application of urban DASPO. The provision also introduces a new crime in the penal code, that of "harassing begging". It will be sanctioned with the sentence of arrest from three to six months and with a fine from 3000 euros to 6000 euros "whoever exercises begging with vexatious methods or by simulating deformities or

48 Art.16 D.l. 113/18.

illnesses or by resorting to fraudulent means to arouse the pity of others ". Moreover, they will be sanctioned as crimes (with imprisonment from one to six years) for roadblock and the obstruction or encumbrance of the tracks. Concerning the abusive exercise of the parking attendant activity, the decree envisaged, in the event of an aggravated hypothesis, the penalty of arrest from six months to a year and a fine from 2 thousand euros to 7 thousand euros.

Besides, more than 15 million euro of resources [49]are allocated to the State Police and the Fire Brigade. The money will be directed to the strengthening of information systems for the fight against international terrorism, including the strengthening of the Nuclear, Bacteriological-Chemical-Radiological units of the Fire Brigade and extraordinary maintenance and adaptation of structures and plants. Additional resources are destined for the strengthening and security of prison facilities. Besides, spending of just under 40 million euros is authorized for the payment of overtime, starting from 2018 to the State Police, t*he Carabinieri, the Guardia di Finanza* and the Penitentiary Police. It is then foreseen to the Municipalities that have respected the budgetary constraints of the budget in the 2016-2018 three-year period, to be able to hire in 2019 municipal police personnel. The decree completely rewrites the article 633 c.p. that defines it as "modifying the custodial sentence (from the current 'up to two years' to 'from one to three years'). It redefines the aggravating circumstances: it is foreseen the penalty of imprisonment from two to four years and if the event that the fact is committed by more than five people or by an armed person. Intervening in the new aggravated hypothesis and foreseeing that if two or more people commit the invasion, the penalty for the promoters or organizers would be increased.

1.3.4. Anti-mafia code

The decree introduces a new coordination mechanism between the subjects, that is between the Public Prosecutor, the national anti-mafia and anti-terrorism persecutor, the quaestor (commissioner) and the director of the Anti-Mafia Investigation Director[50]. In order to improve this coordination between different authorities and avoid prejudice in investigative activities in 2017, the Gentiloni cabinet introduced the need for communication of the proposal to be made at least ten days before the presentation to the court. An obligation that, if not respected, would lead to the

50 Art.18 D.l 113/18.

inadmissibility of the proposal. The new provision instead, among other things, abolishes "the provision of the inadmissibility of the proposal presented in the absence of a prior communication to the public prosecutor". In this way, the need to avoid any prejudices for investigations is partly sacrificed, in the name of the balance of a system that would see the judicial authority and the public security authority placed in an equal position.

Furthermore, based on an amendment approved by the Senate committee, it is envisaged that in the event of the confirmation of a contested decree of patrimonial measures, the judges of the Court of Appeal would have to charge the private party who proposed the appeal payment of court costs. According to the law n.161 of 17 October 2017, this measure existed only to the judgment in the first instance. Now, the provision of the Conte government also applies it in appeal. News is then introduced in the procedures for the management and destination of the confiscated assets to the mafia organizations. Regarding the appointment and dismissal of the judicial administrator, the decree provides that a subsequent ministerial decree establishes the nomination criteria and establishes that the possible tasks cannot be more than three. In addition to various interventions on the tasks of the National Agency for the administration and destination of seized and confiscated assets, for an increase in resources for the commissions charged with managing loose bodies for the mafia, the decree also focuses on the destination of assets and confiscated sums, regulated by article 48 of the Anti-mafia Code. Currently, the confiscated immovable property can be maintained in the patrimony of the State; or to be transferred as a matter of priority to the assets of the Municipality. If confiscated for the crime of Association aimed at the illicit trafficking of narcotic or psychotropic substances (article 74 of the Consolidated Law on drugs).

According to the illustrative report of the decree, this change "takes into account the fact that not all the assets confiscated for this crime can lend themselves to such uses and that the institutions involved could still not be able to use them". [51]Regarding the sale of confiscated goods, the provision extends the range of possible buyers. The Senate Study Center [52]explains that the new standard "provides for the possibility of

51 Dossier Senato, Atto Senato n. 840 XVIII Legislatura.
http://www.senato.it/japp/bgt/showdoc/18/DOSSIER/0/1081229/index.html.
52*Ibidem*.

awarding the highest bidder, balancing rigorous foreclosures and the consequent controls, in order to ensure that the asset does not return to the outcome of the auction in the availability of the organized crime". Furthermore, a property regularization procedure is introduced in the event of sanitary urban planning irregularities.

1.4 Security decree bis and the borders security

1.4.1 Security decree II: general framework

Likewise, the second decree on security and immigration has been controversially accepted. The new structure intervenes in the field of combating illegal immigration, strengthening the effectiveness of administrative action in support of security policies and the fight against violence at sporting events. The security decree II was published in the Official Gazette (GU) on the 15th June 2019, after that the Ministries Council have approved it on the 11th June under proposal of the President Conte and the Ministry of the Interior, Matteo Salvini. The new decree[53], composed by 18 articles, regards "Urgent provisions regards public order and safety", connecting the new provisions to the subject of the first law decree I on Immigration and public security. In this case, the dispositions are created aiming to "stop invasion" and to make Italy safer than before, closing the port externally and increasing rules and number of police officer during demonstrations and strikes, as stated in the cabinet contract, particularly connected to the immigration issue and the need to close the port and to change "the relation with the European Union". The new text intervenes to combat illegal immigration, strengthening the effectiveness of administrative action in support of security policies and the fight against violence at sport events.

With the provision "Borders and Sea" article 1 intervenes on the Consolidated Immigration Act [54]in 1998. The new law establishes that the Minister of the Interior, with a "provision" in agreement with the Ministers of Transport and Defense, "in compliance with Italy's international obligations", may restrict or prohibit the entry, transit or stopover in the territorial sea of ships "for reasons of order and safety. In the second part, it also specifies that the same case can occur when violations of laws against irregular immigration materialize, based on the conditions established in

53 D.l.n 53 14/19 .
https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg.
54 The Consolidated Immigration Act (Testo Unico Sull'immigrazione)
https://www.camera.it/temiap/documentazione/temi/pdf/1105627.pdf?_1557674616893.

article 19, paragraph 2, letter g) of the United Nations Convention on the Law of the Sea of Montego Bay in 1982 (ratified by Italy in 1994).

The decree links its power to the same article of the Montego Bay[55]. Point g of paragraph 2 of article 19 of the Convention states that

"(...) the passage of a foreign ship is considered prejudicial to the peace, good order and safety of the coastal State if, in the territorial sea, the ship is engaged "In the activity of" loading or unloading of materials, currency or persons in violation of customs, fiscal, health or immigration laws and regulations in force in the coastal State ".

According to the Ministry of the Interior, this regulatory intervention has become necessary and urgent in view of the evidence that international geopolitical scenarios may risk reigniting the hypothesis of new waves of migration. The Senate research Centre explains that the norm was designed in "a specific prevention perspective" to prevent "the so-called" prejudicial passage "or" not harmless "of a specific ship" that could violate the Italian immigration laws. This ban, however, will not apply to military ships and those in non-commercial government service.

Concerning article 2, it was [56]envisaged that in the event of non-compliance by the ship's captain with prohibitions and imposed limitations, the payment of an administrative penalty of a minimum of €10,000 to a maximum of €50,000, without prejudice to the applicability of any criminal sanctions. In the event of any repetition of violation, implemented by the same ship, the accessory sanction of administrative confiscation with immediate precautionary seizure is also applied. Previously, this sanction was applied not only to the ship's captain but also to the owner of the boat but lately changed. The administrative sanction is only one: "The person responsible for the crime is the Captain of the ship while the owner - and owner of the vehicle (...) - must proceed to payment only if the commander does not provide it (being able then to retaliate against the author of the violation)".

Furthermore, in the article, it is specified that the administrative offense does not exclude the applicability of criminal sanctions if the fact constitutes a crime, such as

55 United Nations Convention on the Law of the Sea art.19
https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
56 Art 2. “Non-compliance with limitations or prohibitions on the order public security and immigration”.

that of favoring illegal immigration. In addition to the pecuniary administrative sanction, another one is also applied which provides for the confiscation of the boat that does not respect the prohibition of entry into territorial waters. Initially, the decree, later modified in the Commission, provided instead for confiscation only in the case of a repetition of the violation with the same ship. The Prefect provides these sanctions. In addition, a provision was also included in the Commission that provides for the arrest *in flagrante delicto* [57]for the commander of a boat that commits the crime of resistance or violence against warship, according to the art. Navigation code.

"*The commander or officer of the ship, who commits acts of resistance or violence against a national warship, is punished with imprisonment from three to ten years. The penalty for those competing in the crime is reduced from one third to half*."

During the parliamentary process, then, it was established that the seized ships, after a specific request, could be entrusted in custody by the prefect, to the police, to the Port authorities or to the Navy for institutional activities. If, after the seizure, there is the final confiscation of the ship, the latter becomes the property of the State that will be able to re-use it or sell it "separately". If after two years, the ship will not be reused or sold, it can be destroyed.

The decree also focuses on the crime of aiding and abetting illegal immigration. Article 3 in fact modifies Article 51 of the Code of Criminal Procedure [58]which concerns investigations within the jurisdiction of the District Attorney's Office, extending them also to the types of association created to commit the crime of abetting, not aggravated, illegal immigration. Thus, if before the district attorney was competent only for the investigation on the aggravated facilitation of illegal immigration, now they will also be entitled to those for the simple facilitation (before the decree they were the responsibility of the district attorney). The consequence of this rule is that it will now be possible to carry out preventative interceptions for the acquisition of information useful for the prevention of this crime even in cases of minor gravity.

57 In flagrante is a legal term used to indicate that a criminal has been caught in the act of committing an offence (compare corpus delicti).
58 Code of Criminal Procedure
http://www.congreso.es/docu/docum/ddocum/dosieres/sleg/legislatura_10/spl_85/pdfs/27.pdf.

Public funds are then allocated (500,000 euros for 2019, 1 million euros for 2020 and 1 million and a half euros for 2021) for the strengthening of undercover police operations, also with reference to activities to combat crime of abetting illegal immigration[59]. The text also intervenes on the repatriation of foreigners with an irregular position on the Italian territory, establishing a fund that aims to support cooperation initiatives or bilateral agreements for the readmission of these people in their countries of origin. This fund has an initial endowment of 2 million euros for the year 2019 - resources that in the future will be able to increase, up to a maximum quota of 50 million euros, and that will be derived from the "processes of revision and rationalization of expenditure for the management of immigration centers "thanks to the decrease in migratory flows in Italy in the last two years" and to "the interventions for the reduction of the daily cost for the reception of migrants".

The decree also focuses on aspects of public order and security. Article 6 intervenes on the conduct of events in a public place and open to the public. On these occasions it is forbidden to use protective helmets (or another means that makes it difficult to recognize a person), without a justified reason. The penalty is then increased for those who do not comply with these provisions during a demonstration, with a minimum sentence of 2 years and a maximum of three years and a fine of 2000 to 6000 euros.

A new article of law is also created which provides for a prison sentence of one to four years for those who, during the demonstrations, "launch or use illegitimately, in order to create a concrete danger for the safety of people, rockets, flares, fireworks , firecrackers, instruments for the emission of smoke or visible gas or capable of nebulizing gases containing stinging active ingredients, or sticks, maces, blunt objects or, in any case, acts to offend [60]". If the danger refers to the integrity of things and not to people, the penalty is lighter: from 6 months to 2 years in prison.

With article 7, the penalties for a series of crimes committed during demonstrations in a public place and open to the public are also tightened: "Violence or threat to a public official", "Resistance to a public official", "Violence or threat to a political, administrative or judicial body or its individual members", "devastation and pillaging", "interruption of office or public service or public necessity". Furthermore,

59 Annalisa Camilli, "Il decreto sicurezza bis è legge", Internazionale, 6 agosto 2019 https://www.internazionale.it/reportage/annalisa-camilli/2019/08/06/decreto-sicurezza-bis-legge
60 From the d.l. n 53.

it is established that, always during these events, anyone who destroys, scatters, deteriorates or renders, in whole or in part, useless movable or immovable property is punished with imprisonment from one to five years, with the possibility of arrest in the act offense.

Article 15 modifies the art. 10 of the legislative decree 02/22/2017, n. 14 (conv. with amendment in l. N. 48/2017[61]), containing "Urgent provisions on the city safety[62] ". With article 15 the regime of flagrante delicto become peculiar, it changes the previous provision of delayed flagrancy for where arrest was mandatory or optional. The quasi flagrancy disappears completely. Meaning that it does not matter the means by which the person is caught while doing an illegal activity, it will be consider mainly “flagrante delicto”.

In the end, article 16, modified by the Chamber of Deputies, provides for the exclusion of the tenuousness of the fact for the crimes of violence or threat to a public official, of resistance to a public official and of insulting a public official committed against a public official in the performance of his duties. Apart from the general norms and new rules on public security, the last part of the law decree focuses on the Universiade festival that took place in Naples during the summer of 2019[63].

Conclusion

Briefly, the security decree I brings enormous changes in the immigration sectors by establishing the abolition of humanitarian protection, detention in repatriation centers where the durations have doubled from a maximum of 90 days to 180 days. Security approach to citizenship; if a person is considered a potential danger to the State, the revocation of citizenship could be triggered in the event of final conviction. In addition, a citizenship application may be rejected even if presented by someone who has married an Italian citizen. Increase in repatriation funds: € 500,000 allocated for 2018, € 1.5 million for 2019 and € 500,000 for 2020 and closure of the SPRAR the small centers that host migrants, under the aegis of the Municipalities, will no longer

61 https://www.poliziadistato.it/statics/17/legge-18-aprile-2017--n.-48-testo-coordinato.pdf.
62 The"quasi-flagrancy" pursuant to Article 382 of the Code of Criminal Procedure also to "one who, on the basis of photographic video documentation from which the fact emerges unequivocally, is the author, provided that the arrest is not completed beyond the time necessary for its identification and, in any case, within forty-eight hours of the fact").
63 The Universiade is an international multi-sport event, organized for university athletes by the International University Sports Federation (FISU). The name is a combination of the words "University" and "Olympiad". The Universiade is referred to in English as the World University Games or World Student Games.

be able to accommodate asylum seekers but only unaccompanied minors and those who have already received international protection. SPRARs are replaced by the legislature through return to the CAS.

The narrow concern also Public security stricter control over the hiring of trucks and vans, DASPO for terrorism suspects. The decree sees the creation of the DASPO for sporting events that is also extended to those suspected of being in preparation for an attack or of flanking a terrorist organization. The fight against the mafia translates into contrast to mafia infiltration: in local authorities and in public procurement, if a Prefect were to report anomalous or symptomatic situations of illegal conduct, the appointment of an Extraordinary Commissioner is envisaged and the seizure and confiscation of assets: provided the possibility that a property confiscated from criminal organizations is leased "socially" to families in difficult conditions.

Moreover, in terms of Urban Security, a national evacuation plan is created: in which the methods of recognition of employment situations are established, punishment for anyone arbitrarily invading land or buildings of others, public or private, in order to occupy them or otherwise profit from them. Higher penalties if more than five people are involved. The Appropriations are agreed to the State Police and Fire Brigade, in fact for 2018 16 million will be made available, while from 2019 to 2025 the figure will be 50 million each year (37.5 million to the State Police, 12.5 to the Fire Brigade). Testing of the taser also extends to the Local Police of cities with more than 100,000 inhabitants.

To what concern Security decree II, consider as particular important regarding this dissertation are art.1,2 and 4 regarding Immigration. The article 1 established that the Minister of the Interior "may restrict or prohibit the entry of transit or parking of ships in the territorial sea" for reasons of order and security, or when it is assumed that the single text on the crime of "facilitating illegal immigration" has been committed. Article 2 provides for a sanction ranging from a minimum of 150 thousand euros to a maximum of one million euros for the captain of the ship "in the event of violation of the prohibition of entry, transit or parking in Italian territorial waters". An additional sanction is also provided for the seizure of the ship. It is also foreseen the arrest in flagrante delicto for the commander who completes the "crime of resistance or violence against warship, based on the art. 1100 of the navigation code". Article 4

provides for the allocation of 500 thousand euros for 2019, one million euros for 2020 and a million and a half for 2021 to combat the crime of aiding illegal immigration and undercover police operations.

As regards the management of public order during protest and sporting events: "A new criminal offense is introduced, which punishes anyone who, in the course of events in a public place or open to the public, uses in a way to create real danger to people or things rockets, fireworks, firecrackers or similar objects, as well as by resorting to clubs, sticks or other blunt instruments or objects to offend ". Aggravating circumstances are foreseen "if the crimes are committed during demonstrations in a public place or open to the public". In public events open to the public, the use of helmets or any other device that does not allow recognition of a person is prohibited. In article 7 it is planned to tighten penalties for those who commit a series of crimes: "Violence or threat to a public official", "Resistance to a public official", "Violence or threat to a political, administrative or judicial body or to the its individual components "," devastation and pillaging "," interruption of office or public service or public necessity ". The penalties for contempt of a public official are tightened.

II Chapter - Domestic and International Reactions

The chapter will analyse the different opinions and reactions caused by the aforementioned decrees. The general opinion is that the decrees paradoxically brought more insecurity instead of the initial aims the "yellow-green" government was trying to defend and spread. Indeed, indifferently from the political party, in the Italian immigration political history, the theme of immigration has always been linked to one of "public security". Consequently, migrant issues become perceived as public order problem and consequently migrants are people to be scared by. The fear caused by the strengthened public security cannot be a synonym of good reception. The most shared criticism among the reactions that we are going to consider in the chapter is that the security decertation will create more illegality and public security problems. Another important point apart from the insecurity, is the violation of international obligation due to the externalization of borders and the agreement with countries in which migrants are subject to ill-treatment.

Studies from ISPI [64]and InMigrazione[65] shows the numbers of the new illegal migrants in Italy with the elimination of humanitarian protection. While estimates from the Ministry of the Interior website [66]show a regular flow of migration without any crisis (not as the one that happened in Italy from 2013 till 2016), admitting that number of migrants is decreasing. Due to the port closure and the abolition of humanitarian protection, Italy celebrated this low migration flow number as a personal success. But this number shows also a different reality. No fewer people are departing from their countries; economic migrants, climate migrants and refugees are in fact increasing. The most significant point is the agreement with Turkey[67] and Libya[68] to obstruct the migration flow toward Europe. In summary,this chapter

64 Matteo Villa, " The New Irregulars in Italy", ISPI, Decembre 2018 https://www.ispionline.it/en/publication/new-irregulars-italy-21813.
65 La nuova (mala)accoglienza, InMigrazione Dossier https://www.inmigrazione.it/it/dossier/la-nuova-malaaccoglienza.
66 Stime sugli sbarchi 2018. https://www.interno.gov.it/it/sala-stampa/dati-e-statistiche/sbarchi-e-accoglienza-dei-migranti-tutti-i-dati.
67 Regarding the Eu- Turkey agreements. On 18 March 2016, the European Council and Turkey reached an agreement aimed at stopping the flow of irregular migration via Turkey to Europe. According to the EU-Turkey Statement, all new irregular migrants and asylum seekers arriving from Turkey to the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey.
68 Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of

analyses the reaction from international and domestic activities to the security policy on migration.

2. International Reactions

2.1. Special Rapporteur on human rights of migrants and UN experts

Adoption of the aforementioned decrees had served international bodies raise concerns on the potential HR violations. After the conversion on the first decree 113/18, the Special Rapporteurs sent a letter [69]to the Italian government expressing "concern about the violations of the human rights of migrants traveling along the Central Mediterranean route, as well as about violations of the rights of human rights defenders protecting and defending the human rights of migrants, including by rescuing them at sea"[70]. Several points analyse in the document were connected to the immigration policy by Salvini predecessor, Marco Minniti. Indeed, it was under Minniti that it starts the investigation for the NGOs' delivery of humanitarian aid to migrants at sea, on the grounds of possible ties between these organizations and Libya-based smugglers, and specifically the alleged financial flows between them.[71]

The previous Ministry Salvini was convicting of conspiracy against NGOs after the Proactiva Open Arms case[72]. In March 2018, the vessel Open Arms, of the Spanish NGO Proactiva Open Arms, [73]refused to turn over the 218 migrants rescued at sea to the Libyan coastguard taking into consideration the risk of human rights violations migrants are facing in Libya. For the experts and for the Persecutor of Palermo Proactiva Open Arms's action was legitimate given that "Libya isn't yet capable of welcoming migrants rescued at sea while respecting their fundamental rights".[74]In June 2018, the Prosecutor of the city of Palermo dropped all charges against Proactiva

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borders between the State of Libya and the Italian Republic

69 https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24084&fbclid=IwAR0qDlTlHvpCw_PI3IxHxsmLfm3qZjK1dDxBgT-csFjRs6vnDYoC4Fodj44.

70 https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24084&fbclid=IwAR0qDlTlHvpCw_PI3IxHxsmLfm3qZjK1dDxBgT-csFjRs6vnDYoC4Fodj44.

71 Later on the Palermo Persecutor did not find any relation between the two parties from Fabrizio Gatti, Migranti, archiviata l'inchiesta sulla Ong: «Il soccorso in mare non è reato», L'Espresso,20 Giugno 2018 http://espresso.repubblica.it/attualita/2018/06/20/news/migranti-archiviata-l-inchiesta-sulla-ong-il-soccorso-in-mare-non-e-reato-1.323975.

72 Annalisa Camilli, "Tutte le accuse contro l'ong Proactiva Open Arms", L'Internazionale,2018 https://www.internazionale.it/bloc-notes/annalisa-camilli/2018/03/19/proactiva-open-arms-sequestro

73 https://elpais.com/elpais/2019/08/19/inenglish/1566201249_809758.html.

74 From Un experts letter to Italy, 2018 pg 5. https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24084&fbclid=IwAR0qDlTlHvpCw_PI3IxHxsmLfm3qZjK1dDxBgT-csFjRs6vnDYoC4Fodj44.

Open Arms and another NGO, Sea Watch, accused of similar charges in a separate case.

Felipe González Morales, Special Rapporteur on the human rights of migrants; Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children; E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Michel Forst Special Rapporteur on the situation of human rights defenders, Obiora C. Okafor, Independent Expert on human rights and international solidarity wrote a letter to the Italian state where they underline the important role of Italy in saving lives and rescuing them.

"We are deeply concerned about the accusations brought against the Mare Jonio vessel, which have not been confirmed by any competent judicial authority. We believe that this represents yet another political attempt to criminalise humanitarian actors delivering life-saving services that are indispensable to protect humans' lives and dignity[75]*."*

The UN experts said that Italian authorities had failed to properly consider the Italian status under several international norms. Article 98 of the UN Convention on the Law of the Sea. "Article 98 is considered customary law. It applies to all maritime zones and all persons in distress, without discrimination, as well as to all ships, including private and NGO vessels under a State flag," they said. During the security decree II presentation, [76]President of the Cabinet, Conte underline their legacy according to international convention, SAR and UDHR[77]. Even if Italy consider in the new directive the principles of the Sar convention, it cannot avoid its responsibility in terms of human rights obligations.

75 Italy: UN experts condemn bill to fine migrant rescuers, UN expert letter to Italy, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24628&LangID=E.
76 (Agenzia Vista) - Roma, 11 Giugno 2019 - La conferenza stampa a Palazzo Chigi al termine del Consiglio dei Ministri nel corso del quale è stato approvato il cosiddetto decreto Sicurezza bis. Presente il Presidente del Consiglio Giuseppe Conte, con il Ministro degli Interni Matteo Salvini ed il sottosegretario Giancarlo Giorgetti. https://www.youtube.com/watch?v=m0EuRI6hOyA.
77 Even if the UDHR is not a binding document, the affirmation wanted to underline the respect of Italy for human rights, respect that in practise as been less considered than in theory.

In the joint letter special attention is also give to the MoU with Libya and the Code of Conduct [78]to which the NGOs [79]that were working in the SAR operation must follow. The agreement gave more power to the Libyan coast guard. From the 2017 NGOs reported several episodes of intimidation and attacks against civil rescue organizations in Libyan territorial waters and on the high sea, as well as against vessels carrying migrants[80]. An additional conviction was made for the Aquarius and Diciotti cases. The Aquarius [81]was carrying more than 600 migrants who were rescued at sea as well as 123 unaccompanied minors, 11 children and seven pregnant women for seven days. Apart from the delay to dock in the Italian port, Italy delayed also the chance to refuel or take on supplies.

To what regard the Diciotti case[82]; on 19 August 2018, the Italian coastguard vessel Ubaldo Diciotti reached the port of Catania with 177 migrants on board.[83] Some of the migrants in serious condition were saved days before but the vessels were not authorized to dock in any port. After docking in Sicily, the other rescued were blocked from disembarking on the orders of the Minister of the Interior. In fact, the migrants were used as leverage to put pressure on the European Union to support Italy and share the responsibility for arriving migrants

But the concerns of the UN experts did not stop there. Especially on the Security Decree I, the UN experts, wrote their concern on the new special protection an abolition of the humanitarian protection. "Whilst persons granted the 'humanitarian' status were provided with a two-year renewable residence permit, the permits issued in the new 'special cases' allow residence in Italy for shorter periods": [84]. Moreover,

78 Codice di Condotta per le Organizzazione non governative nelle operazione di Salvataggio, Ministro dell'Interno
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24084&fbclid=IwAR0qDlTlHvpCw_PI3IxHxsmLfm3qZjK1dDxBgT-csFjRs6vnDYoC4Fodj44.
79 Some organizations, such as Médecins sans Frontières and Jugend Rettet, refused to sign the agreement on the grounds that it would grant Italian authorities additional power to control the work of NGOs and contribute to the smear campaign against them.
80 The Ngo SeaWatch affirmed that the Libyan cost guard mistreated them during SAR operation http://www.vita.it/it/article/2017/11/08/mediterraneo-tutti-gli-attacchi-della-guardia-costiera-libica- alle-ong/145042/.
81 Daniela Fassini, Il caso Aquarius. l'Onu accusa: In Italia campagna diffamatoria contro le ong, Avvenire, 22 novembre 2018.
https://www.avvenire.it/attualita/pagine/ong-sotto-accusa-le-risposte.
82 Annalisa Camilli, Tutto quello che c'è da sapere su il caso Diciotti, L'Internazionale,2018
https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/02/18/diciotti-matteo-salvini
83 *Ibidem*.
84 *Ibidem*.

as the experts underline, unless beneficiaries are granted a conversion of their humanitarian permit into a work or study permit, or they fall under the new special cases listed in the decree law, they will find themselves in an irregular situation and will risk being returned. Moreover, due to the abolition of the SPRAR system and the creation of the SPRIROMI, the fear is that the asylum seeker and the other vulnerable categories will not benefit from any form of integration. Overall, the new measures mentioned in the Security Decree I article 3 create a serious concern in terms of compatibility with article 31 of the 1951 Geneva, Convention on the Status of Refugees and article 13 of the Italian Constitution[85]. The article 3 expands the duration from 90 to 180 days into the return centre (CPR) and the maximum period for identification to 30 days in the hotspot. In addition, the special procedure and the impossibility to convert them in a work permit create some doubts on the chance of regularization.

Lastly, in the letter the UN experts asked the Italian government to indicate to the Human Right Council how the refusal by the Italian authorities to allow NGO vessels carrying rescued persons to dock at Italian ports, or the refused or delayed permission to disembark, are in line with international obligations in relation to the protection of the right to life, such as under article 6 of the ICCPR [86]and how the Italian government will fulfil its obligations to prevent the loss of life of migrants in the Mediterranean Sea and abide by the principle of non-refoulement in coordinating the search and rescue operations involving the Libyan coastguard.

The Special Rapporteur invites Italy to take responsibilities in this matter and to act according to international and domestic obligation and law. The agreements with Libya as other countries did not consider as safe is, according to him a direct violation

85 Art.13 Italian Constitution establish :Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law.
In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for
validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void. Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished.The law shall establish the maximum duration of preventive detention.
https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf
86 Art.6.1 ICCPR Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”.
https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

of the principles of "non-refoulment" art. 6 of the CAT [87]and art 7 of the ICCPR[88]. Last part of the document concerned the question from, the Special Rapporteur on the means and the tools that the government were going to take in order to underline its domestic law to the human right's international obligations. In the last part of the paper, there is also a critical recall to the Palermo protocol principles art 6 (Assistance to and protection of victims of trafficking in persons). [89]

2.2. UPR Mechanism and the Multi-level Approach to Report

The Upr Mechanism and the Alternative body is a distinguished method to understand the response of Italy and the way in which many problems are tackled and perceived internationally. The UPR mechanism enables all the countries of the HRC to understand and know the situation in terms of both positive aspect and alleged violations present in other countries towards the report made by the same state and the alternative report made buy the NGOs, Association and Expert.

The meeting before the nation report day between the other countries and the organization can help the countries to have a clearer idea of what is behind the positive reports by the State and the way in which it presents the goals of the previous years. Despite the fact the some of the recommendations and the way in which state address one each other can be consider "political strategy" some of the recommendation have successfully brought some changes in the legislative domestic

87 Art 6 of the CAT :1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.(…).

88 Art 7 of ICCPR No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

89 Art. 6 of Palermo Protocol: Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases (…)
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

law of some countries. Some example can be: the criminalisation of marital rape in the Republic of Korea in 2013.[90] The Brazilian Civil Rights Framework for Internet (Marco Civil da Internet) aims to strengthen the protection of fundamental freedoms in the digital age, passed in 2014.[91] In 2013 Tajikistan adopted the Law on Print and Other Mass Media of the Republic of Tajikistan[92].

Another important work, for the aim of this research, is the study made by several NGOs on the Field in order to understand the kind of violation that the law have created on the field. Different NGOs, NHRIs and CSOs that participated to the shadow's reports analyse the way in which the decree and the environment in which it is been created generate violation of human rights. The reports gave the chance to understand the civil society point of view, for the purpose of this dissertation, to give a general idea of the consequences of the security decree I and II at different level.

2.2.1. Shadow reports

In their report LFJL[93], Lawyer for justice Libya express their doubts on the Italian Memorandum of Understanding [94](MoU) with Libyan authorities. "Under the MoU, Libya assumes the responsibility of intercepting migrant boats at sea and of returning them to Libyan shores. Italy has contracted to Libya the return of migrants, incentivising Libya to return them to a place where they are likely to face severe human rights violations"; a pushback proxy against the "non-refoulment" principle by authorising a third country to avoid the cross of the Mediterranean Sea. From this perspective, Italy is committing a violation of human rights against migrants due to the externalisation of border control to countries outside Europe. The new approach blocks migrants on the Libyan coast. "The centrepiece of Italy's strategy, backed by the European Council, has been to build the capacity of the Libyan authorities to stop irregular border crossings through provision and refurbishment of ships; training of

90 In the first cycle (2008), Canada Recommended Korea to criminalise marital rape. In the second cycle (2012)Slovakia recommended that domestic violence from the Butterfly effect, Spreading good practice on the UPR implementation.

91 In its second UPR (2012), Estonia recommended that Brazil: "Consider freedom of expression concerns when drafting cybercrime legislation." Passed in 2014, the Brazilian Civil.

92 In the first UPR (2011) of Tajikistan, Switzerland recommended that the state:"Take all measures in order to protect and encourage the freedom of expression and make the limitations to the freedom of expression to comply with the international obligations.".

93 Submission To The 34th Session Of The Universal Periodic Review, Lawyer for Justice Libya report. https://www.upr-info.org/en/review/Italy/Session-34---November-2019/Civil-society-and-other-submissions#top.

94 Memorandum of Understanding, Italy- Libya, 2017. http://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/.

Libyan crews; deployment of Italian navy ships and officials in Libya to support the Libyan authorities to counter irregular migration and human smuggling; and assistance to establish a Libyan Search and Rescue Region and two coordination centres in Libya[95]Vincent Cochetel, the special envoy for the UNHCR (UN High Commissioner for Refugees), gives news from his official twitter profile[96]: from January 1 to September 30, 2018, against "14,500 people intercepted by the Libyan Coast Guard units, the arrivals from Libya to Italy are 12,543. A radical change compared to just over a year ago, the result of the policy of agreements with Tripolitania, the part of Libya governed by Al Serraj, promoted first by former Interior Minister Marco Minniti [97] and now by his successor Matteo Salvini. This was a policy strongly questioned by numerous humanitarian agencies for the real risk of violence and abuse of power against migrants once they returned from where they left, that is, from that unstable land and prey to continuous armed conflicts that today is Libya. Despite everything, Libya has not adopted internal legal standards for the protection of refugees and asylum seekers precisely from those systemic violations of human rights.

Moreover, the IFOR report [98]tries to outline the limits of the propagandist effort made by the previous Ministry of the Interior about Malta and the other safe port. As it is clear from the ratification of SOLAS [99]and SAR [100]convention, Malta did not ratify it leaving Italy as “safe port” where migrants should go. “The SAR and SOLAS

95 In 2017, Italy provided at least four speedboats to the Libyan Coast Guard, promised to deliver a further six, and spent 2,5m euro in the refurbishment of another 4 speedboats to be used by the Libyan General Administration for Coastal Security. In 2018, the Italian government approved the donation to Libya of a further 12 speedboats.
See: Italian Ministry of Interior, Contro il traffico dei migranti: consegnate le prime motovedette alla Marina libica, 21 April 2017,www.interno.gov.it/it/notizie/contro-traffico-dei-migranti-consegnate-prime-motovedette-alla-marina-libica.
96 From UNHCR calls for US$210 million to address deaths and abuses on Central and Western Mediterranean routes, 26 June 2019 https://www.unhcr.org/news/press/2019/6/5d1330db4/unhcr-calls-us210-million-address-deaths-abuses-central-western-mediterranean.html and Vincent Cochetel official account on twitter https://twitter.com/cochetel/status/1186692790480187392.
97 http://www.italy24.ilsole24ore.com/art/government-policies/2017-01-06/migrants-minniti-goes-to-libya-and-meets-fayez-sarraj-102833.php?uuid=ADcDadRC.
98 IFOR, Submission To The 34th Session Of The Universal Periodic Review https://www.upr-info.org/sites/default/files/document/italy/session_34_-_november_2019/ifor_submission_about_italy_-34th_upr_session-_1.pdf.
99 International Convention for the Safety of Life at Sea (SOLAS), 1974 http://www.imo.org/en/about/conventions/listofconventions/pages/international-convention-for-the-safety-of-life-at-sea-(solas),-1974.aspx.
100 International Convention on Maritime Search and Rescue (SAR) http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx.

Conventions, as amended in 2004, and ratified by Italy (…) - dictate an obligation to identify on its territory a safe place ("place of safety" or POS) where rescue operations can be considered concluded; if there is no agreement with a State closer to the area of the event. Malta, however, has never ratified these amendments and therefore, although it must respond to the obligation to coordinate rescue operations, it is not obliged to identify a safe place on its territory; and when it does, it does on the basis of political assessments as was the case when the lifeboat "Alan Kurdi" from the German Ngo Sea-Eye brought 40 migrants saved in the Mediterranean after that Italy refused to welcome them. [101]

AI[102], IFOR, APG23[103] and many others underline the way that Libya cannot be consider as a "safe place" regarding: 1) the Political instability and the civil war and 2) the way in which migrants are treated. MSF and MEDU *(Medici per i Diritti Umani* -Doctors for Human Rights) documented it[104]. With their report, MEDU showed the conditions of serious [105]violation of the human rights of migrants in Libya based on thousands of direct testimonies. According to data collected by Medici per i Diritti Umani in the 2014-2017 time period confirmed if not aggravated in recent months - 85% of migrants from Libya have suffered torture and inhuman and degrading treatment in that country and specifically 79% have been detained / seized in overcrowded places and in poor sanitary conditions, 70% have suffered constant deprivation of food, water and medical care, 65% serious and repeated beatings and

101 Migrant rescue ship with 40 people arrives in Malta after EU deal, Theguardian, https://www.theguardian.com/world/2019/aug/04/migrant-rescue-ship-40-people-arrives-malta-after- eu-deal.

102 Amnesty International Submission For The Un Universal Periodic Review, 34th Session Of The Upr Working Group, November 2019, Italy: Refugees And Migrants' Rights Under Attack https://www.upr-info.org/en/review/Italy/Session-34---November-2019/Civil-society-and-other-submissions#top.

103 Associazione Comunità Papa Giovanni XXIII, The Human Rights Situation in ITALY https://www.upr-info.org/sites/default/files/document/italy/session_34_-_november_2019/associazione_papa_giovanni_xxiii.pdf.

104 Rapporto sulle condizioni di grave violazione dei diritti umani dei migranti in Libia (2014-2017), MEDU and MSF, Sessione del Tribunale Permanente dei Popoli sui migranti Palermo, 18-20 dicembre 2017
http://www.mediciperidirittiumani.org/wp-content/uploads/2017/12/Rapporto-per-Tribunale-Permanente-dei-Popoli.pdf BUT ALSO "FUGGIRE O MORIRE"Rotte migratorie dai paesi sub-sahariani verso l' Europa
http://www.mediciperidirittiumani.org/pdf/FUGGIRE_O_MORIRE_sintesi.pdf.

105On the occasion of the first day of the Permanent Peoples' Tribunal Session on migrants (18-20 December 2017), Medici per i Diritti Umani (Medu) presented in Palermo a report on the conditions of serious violation of the human rights of migrants in Libya. The report is based on more than two thousand six hundred direct testimonies of migrants who have passed through Libya, collected by the operators of Medu over four years (2014-2017), of which more than half in 2017 alone.

lower percentages but still significant rape and sexual outrage, and burns caused by many different tools. [106]

Based on an investigation made by the UNSMIL,[107] Migrants have been subjected to arbitrary detention and torture, including rape and other forms of sexual violence. The violation happened indiscriminately, in government centres as well as in illegal camps, "kidnappings due to extortion, forced labour and illegal killings take place", says the document handed over to the Security Council on 12 February 2018.

In the Report published on December 31, 2018 by United Nations Support Mission in Libya and Office of the High Commissioner for Human Rights[108]. Migrants in Libya are described in this way: “Migrants and refugees suffer unimaginable horrors during their transit through and stay in Libya. From the moment they step onto Libyan soil, they become vulnerable to unlawful killings, torture and other ill-treatment, arbitrary detention and unlawful deprivation of liberty, rape and other forms of sexual and gender-based violence, slavery and forced labour, extortion and exploitation by both.

Several alternative reports have accentuated the way in which Italy has dealt with migrant treatment and security issues. All the submissions underline a push back proxy against the “non refoulement” principle by authorising a third country to avoid the cross of the Mediterranean Sea. Furthermore, several submissions have stated that Law 132/2018 had modified asylum procedures, making it more difficult for people coming from countries deemed ‘safe’ to prove they need protection, increasing the risk of refoulement.

One shared point is also the “hate climate” considered as the constant background of the first Conte Cabinet. Another shared point is the misleading attitude to bloc migrants on the Libya coast due to the help of the authorities. The CILD [109]underline that apart from the abolition of humanitarian protection creating new problems to those migrants that cannot be targeted directly into another special protection, the new

106 Doctors for Human Rights,Exodi 2018, the wab map told by migrants, “The Libyan route”, http://esodi.mediciperidirittiumani.org/en/.
107 S/2018/140, Report of the Secretary-General on the United Nations Support Mission in Libya, 12 February 2018.
108 Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, United Nations Support Mission in Libya, 18 December 2018. https://unsmil.unmissions.org/sites/default/files/libya-migration-report-18dec2018.pdf.
109 CILD, Joined Submission to the 34th UPR of Italy https://www.upr-info.org/sites/default/files/document/italy/session_34_-_november_2019/cild_joint_submission_upr_2019.pdf.

way of entrance to the SPRIROMI is discriminatory. While access to the SPRAR facilities used to be granted to asylum seekers and those who had been recognise either subsidiary protection or refugee status, under the new law only unaccompanied foreign minors, beneficiaries of international protection, and those in possession of "special" residency permits will have access to these reception facilities, within a system that is now called SIPROIMI. Asylum seekers with pending applications, as well as those holding permits for humanitarian protection, have been therefore cut out of the system.

Eliminating the SPRAR network and confining asylum seekers to government or emergency facilities may entail a breach of the Italian Constitution, particularly Article 117, as this would violate Articles 17 and 18 on the conditions for reception under EU Directive 2013/33.[110] Most recently, Italy passed Law no. 132/2018, which provided for the abolition of humanitarian protection, a form of protection additional to the recognition of refugee status and subsidiary protection that allowed migrants to seek protection in Italy. Thus, asylum seekers can no longer be issued a residence permit on humanitarian grounds, except from cases of "special protection" and "special cases" regulated by the new law.

However, not all residence permits issued for special cases can be converted into working residence permits upon expiration, thus jeopardizing migrants' integration in the country. By adopting Law no. 132/2018 Italy restricted the possibility for asylum seekers to obtain protection in our country and most likely this will cause an exponential increase in the number of irregular immigrants. According to recent estimates[111], the end of humanitarian protection will lead to around 130-140,000 immigrants losing their permits by 2020. This adds to the fact that irregular entry and stay is still labelled as a crime - although the Government was tasked with abolishing this offence in 2014 - which results in discrimination against migrants in the access to justice, increasing their vulnerability.

In addition, Law no. 132/2018 amended the procedures for asylum seekers to enrol in civil registry by providing that residence permits for asylum seekers can no more be used as a valid document to submit the registration request. This entails obstacles in

110 *Ibidem*.
111 From "I nuovi irregolare in Italia", Matteo Villa, ISPI online, 18 Dicembre 2018 https://www.ispionline.it/it/pubblicazione/i-nuovi-irregolari-italia-21812.

accessing services such as the National Health System, Employment Centres and schools. “Law No. 132 abolished the status of “humanitarian protection” which was valid for two years and entitled people to a residency permit, thereby enabling them to work.” [112]In addition to the “Code of Conduct” for NGOs. migrants are left in control of LCG because NGOs cannot enter in the territorial sea in order to save them and bring then to a safe place.

Another shared point in all the reports is the lack of legislation due to the failure to ratify the “Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)”. [113]Italy has justified its decision not to ratify the ICRMW by stating that it has ratified the International Labour Organisation (ILO) Conventions No. 143 and 189.76. LFJL argues that although Italy has ratified these two conventions, it has failed to comply with other ILO instruments to which it is a party, including Article 25 of the ILO Forced Labour Convention, which criminalises forced labour and the Equal Remuneration Convention [114](1951) which provides for equal pay for equal work.

Migrants arriving in Italy from sub-Saharan Africa and North Africa constitute a source of cheap and exploitable labour for employers, said the LFJL. The widespread nature of forced or exploitative labour in the Italian agriculture industry is frequently blamed on the system of caporalato, which is prevalent throughout the sector. Caporalato is a system of labour recruitment and intermediation between worker and employer, through which the farm owner hires a caporale, or gangmaster, to recruit and manage the workforce. As Marco Omizzolo, researcher and sociologist, highlights in its latest book “*La quinta Mafia*” [115](The fifth mafia). At the same time as underlining this in the report, Italy condemns illegal migration and targets it as a crime. With the abolition of Humanitarian protection, even more illegal migrants are becoming part of the Caporalato system. Particularly those unable to return home for economic or political reasons. Italian law continues to criminalise irregular migration and relies on the employer to regularise their workers. “Illegal stay” is sanctioned by a

112 Lawyer for Justice Libya, SUBMISSION TO THE 34th SESSION OF THE UNIVERSAL PERIODIC REVIEW page 1.

113 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Adopted by General Assembly resolution 45/158 of 18 December 1990.

114 Equal Remuneration Convention, 1951 (No. 100).
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100.

115 Marco Omizzolo, La quinta Mafia, Radici Future, Settembre 2016

fine of up to EUR 10,000 and can lead to deportation. Further, employers often fail to help to regularise their workers in order "to maintain them in a condition of being liable to be blackmailed". In fact, Amnesty International reported that 47% of interviewed migrants indicated that promises made by their employers to regularise their status were never kept[116]. As a result, migrants who are trafficked, smuggled or enter without a permit are discouraged from reporting abuses to the authorities as they fear being sanctioned and deported. The National Action Plan (NAP) on Business and Human Rights (BHR), used as an excuse to not ratify the ICRMW, is not seen by the different actors as the right way to fight for migrants' rights.

Amnesty International expressed its worries for the new law enforcement on the police officers' powers. Italy has yet to ensure police accountability[117], despite abundant evidence of the need for such measures. The experience of victims and their families in cases of torture, other ill-treatment or deaths in custody demonstrate how challenging it is to ensure that investigations are thorough and impartial, to bring the perpetrators to justice, and to achieve penalties that are commensurate with the gravity of the crimes committed. Italy has also yet to ensure that law enforcement officers can always be effectively identified while carrying out their functions.

The Decree Law 113/2018 extended projectile electric shock weapons and distributed them to municipalities according to their voluntary decision. It also introduces safeguards to put in place to counter risks to health and safety and to avoid misuse of such weapons. Projectile electric shock weapons should be used for public order management but should only be introduced based on clearly defined operations and situations that would otherwise require use of lethal force. Foreigners face several discriminations in the criminal justice system. They are issued as pre-trial detention measures more often than on Italian citizens. Their rights to information, interpretation and translation, and to a lawyer are hindered by several structural

116 Amnesty International, " We Wanted Workers But We Got Humans Instead"Labour Exploitation Of Agricultural Migrant Workers In Italy, page 15.
https://www.amnesty.org/download/Documents/20000/eur300212012en.pdf.

117 Amnesty International Italy launched its campaign "Forza Polizia mettici la faccia" in 2018 with the aim to avoid impartiality. With the European Parliament resolution of 12 December 2012 on the situation of fundamental rights in the European Union, paragraph 192 among other things "urges Member States to ensure that police personnel carry an identification number". The Special Rapporteur of the United Nations for the right to freedom of peaceful assembly and association and that on extrajudicial, summary or arbitrary executions recommend, with regard to the proper management of the demonstrations, that "police officers are clearly and individually identifiable , for example by displaying a name tag or a number".

problems Law no. 132/2018 introduced the possibility for municipalities with over 100,000 inhabitants to equip local police officers with Taser guns, which are potentially lethal. The municipalities of Turin and Palermo opposed the introduction of the Taser.

2.3. The European Court of Human Rights and The Council of Europe Commissioner for Human Rights

The judgement by the European Court of Human right on the Sea Watch 3 indirectly gave an opinion on the changes made by the two new decrees.

The Sea Watch, a German non-governmental organization, lodged an urgent complaint against Italy with the European Court for Human Rights (ECtHR) after a ship it runs, the Sea Watch 3, was barred from docking several EU countries. The European Court of Human Rights (ECtHR) has rejected a request presented by migrant search-and-rescue vessel Sea Watch 3 for the ECtHR to implement interim measures asking Italy to allow the vessel to disembark migrant, the interior ministry responded. However, the court did order Italy to provide necessary assistance to the migrants on board the Dutch-flagged, German NGO-run migrant rescue vessel. It said it expected Italy to assist "persons on board in situations of vulnerability because of their age or state of health". The judgment has been seen by Matteo Salvini as a positive evaluation of his work, but if the judgement had been an acceptance of the security decree II norm, the reality is very different. The “interim measures” to which the Sea Watch was referring are given to a small amount of cases.

Based on the latest available data, the Court accepts *interim measures* [118]requests in only 20% of cases. Moreover, the effectiveness of the measures in question, which are in all respects binding on the States, derives precisely from their exceptional nature, which favours the containment of their absolute number and thus allows the Court to evade them with absolute priority within a matter of time. Finally, more than half of the requests received come from people about to be expelled or extradited to countries where they risk being subjected to treatments contrary to art. 3 or of losing one's life, a situation at least partly different from the one here under consideration, where a

118 In the case Rakete and Others v Itay, The European Court of Human Rights may, under Rule 39 of its Rules of Court, indicate interim measures to any State party to the European Convention on Human Rights.Interim measures are urgent measures which, according to the Court’s well-established practice, apply only where there is an imminent risk of irreparable harm. Such measures are decided in connection with proceedings before the Court without prejudging any subsequent decisions on the admissibility or merits of the case in question.

refoulement to Libya is not in progress, the castaways were in the hand of their rescuers.

Another European reaction came from Dunja Mijatović[119], the European Human Right Commissioner, in her report "Lives Saved. Rights protected. [120]Bridging the protection gap for refugees and migrants in the Mediterranean". The text contains regulatory and practical instructions aimed at ensuring the effective fulfilment of the obligations relating to rescue at sea and the subsequent protection of the fundamental rights of persons rescued. Although this is a recommendation, therefore a non-binding act, the document provides fundamental indications for the reconstruction of the framework of international, conventional and customary sources, which dictate - yes - the imperative rules to which the States they must comply when they organize and implement border controls. It is therefore a document that is useful both for Governments and for judicial bodies and other actors involved in litigation. The first, as they are called to inform the management of migratory flows to principles of humanity that - like them or not - from time are no longer negotiable; the latter, whenever they are called upon to assess the legitimacy of the actions of the former, as well as the lawfulness of the conduct of the private subjects physically engaged in the relief effort.

She argues that current migration policies are likely to discourage the fulfilment of the duty of relief, both by state ships (implicitly referring to Diciotti case) and by private ships, for fear of sanctioning consequences or being stuck at entry of territorial waters. The document also recalls the state obligation to organize relief by identifying its own Search and Rescue Region (SRR) and preparing a Rescue Coordination Centre (RCC). Furthermore, the first RCC contacted, even if out of its SRR, retains responsibility for the event until it is ascertained that the RCC competent for that region, or other RCC, has declared that it assumes coordination and has activated itself in this sense.

119 The current Council of Europe Commissioner for Human Rights. She was elected by the Parliamentary Assembly of the Council of Europe on 24 January 2018 and took up her new post on 1 April 2018. Ms Mijatovic is an expert on media law and media regulation, who served from 2010 to 2016 as the OSCE Representative on Freedom of the Media (RFoM).
120 Council of Europe Commissioner for Human Rights.Lives saved. Rights protected.Bridging the protection gap for refugees and migrants in the Mediterranean, May 2019 https://rm.coe.int/lives-saved-rights-protected-bridging-the-protection-gap-for-refugees-/168094eb87.

Furthermore, based on the principle of non-refoulement art. 3 of the ECHR[121], bringing people back to places where they risk suffering torture, or inhuman or degrading treatment is a serious violation of human rights. For these reasons, Libya cannot currently be considered a haven: as repeatedly highlighted by United Nations bodies, such as the UNSMIL (United Nations Support Mission in Libya), the High Commissioner for Human Rights and the High Commission for Refugees, as well as from various NGOs. In light of some well-known recent episodes, such as that of the Diciotti ship (which is not specifically mentioned), and the more recent one of the Sea Watch 3 ship (instead mentioned), which in January 2019 remained blocked for several days off the coast of Syracuse, the Commissioner observes that the identification of the safe harbour and the landing of migrants must take place within a reasonable time, avoiding delays that can have negative consequences for the health of the people rescued, and that are possibly susceptible of being translated into de facto deprivations of personal freedom, in violation of art. 5 ECHR[122]. Not to mention that, as already discussed, the prospect of delays in disembarking could discourage rescue operations occasionally carried out by private merchant ships, due to the foreseeable economic losses associated with them.

Based on the amendments of the SAR Convention introduced in 2004, the responsibility for identifying a safe port normally falls on the State responsible for the SRR region in which the operation was carried out. Moreover, and not considering that these provisions have not been accepted by Malta, this responsibility does not imply that the safe place must necessarily be identified on the territory of the State that coordinated the operation. This State will in fact be able to identify, by working

121 Art . ECHR Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading reatment or punishment.

122 Aer, 5 ECHR Right to liberty and security: 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order tosecure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent hiseffecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

with other countries, the most suitable landing place; without prejudice to the fact that where it is not possible to find a quick solution, it will have to accept that it takes place on its own territory.

2.4. Domestic reactions to the security decrees

Many reactions against or questioning the two security decrees come from domestic actors such as lawyers, judge, NGOs and associations that works with migrants. Against the decrees several mayors have showed their non – compliance with the decision to not apply the law. Palermo, Crema, Padova, Firenze and Bologna [123]are just examples of cities in which the civil registration of migrants continues. Several lawyers consider the decree against human rights and a direct violation of refugee rights. The same abolition of the humanitarian protection and the special protections have created different doubts and appeals.

While at the international level, the considerations revolved more around the way in which migrants have been treated and the way in which the new system can affect them towards the process of externalisation of the borders, at the domestic level several lawyers, aside from the text somehow not being in line with international law, shared their doubts also on the constitutionality of the decree and as to say the law created by it.

Reading and analysing the Italian reaction it is easy to find a leitmotif in the way in which the different actors react to the two decrees. For this reason, it is easier to divide the different reactions in sectors.

2.4.1. Violation of the art.72 and 77 of the Italian constitution

In this section is underlined the impossibility from the Parliament to work with its normal functions. Even though art 76 and 77 give with different terms and methods, large power to the executive to produce a decree that after 60 days can be converted in law, it has happened several times that the conversion sees the insertion of different amendments to the original project. In the case of the security decree I, there has been a “maxi amendment” to the original body. In addition to it, the cabinet put the “trust question” on the body. This element caused just the acceptance from the Parliament of the law while art 72 of the Italian constitution describes the procedure as the moment

123 Differently from the first three cities, in the case of Bologna and Firenze they decided with a judgment.

in which the legislative power comes back at the end to the Parliament that can discuss about the law.

Alessandro Pace, lawyer, in his letter to ASGI describes the decree 113/2018 as a violation of the art. 77 of the Italian Constitution[124]. According to the lawyer, the three elements of the decree that are in the main title are against the prescription of art. 77. They should be "clear and homogeneous". Even if the short title is "security decree" the components of the title are not in line with the brief description. Particularly the themes of Immigration and Public security are connected just not indirectly and somehow it is implicit in this way that in the draft the immigration is considered a public security problem. In addition, the previous law on the immigration i.e. "Turco-Napolitano" [125]and "Bossi-Fini[126]" follow the ordinary legislation because they touch upon several articles of the Italian constitution.

Another important element is the new norm of the citizenship. "*The deadline for defining the proceedings under Articles 5 and 9 is 48 months from the date of submission of the application"*[127]. The generality (and therefore the ambiguity) of the provision could lead to the interpreter, potentially not that qualified, to apply the norm at that moment and not that of the moment in which the immigrant arrived in the territory of the Italian Republic [128]. It must only be added that, since "the juridical condition of the foreigner is regulated by law in accordance with international norms and treaties" (Article 10 paragraph 2 of the Constitution), the question of the legitimacy of the relevant provision of the Legislative Decree could be raised n. 113/18 should it conflict with customary norms and international treaties. And the same should be repeated for the right of asylum even if the third paragraph merely specifies "the conditions established by law". Several international agreements on asylum law are in force, to which the Italian legal system must be appropriate.

Furthermore, the decree-law conversion process is a tool in the hands of parliament to control the exercise of the legislative function. Beyond the contents of the decree

124 ASGI,Decreto 113/2018: il parere del prof. Alessandro Pace, 22 October 2018 https://www.asgi.it/asilo-e-protezione-internazionale/decreto-113-2018-il-parere-del-prof-alessandro-pace/.
125 Legge 6 marzo 1998, n. 40, art. 2 legge 30 dicembre 1986, n. 943, art. 1.
126 LEGGE 30 luglio 2002, n. 189.
127 Art.14 security law n. 132/18 .
128 Decreto 113/2018: il parere del prof. Alessandro Pace, 22 October 2018. https://www.asgi.it/asilo-e-protezione-internazionale/decreto-113-2018-il-parere-del-prof-alessandro- pace/.

themselves; the conversion process should not turn into a mere act of ratification due to the question of parliamentary trust. In this case the failed parliamentary function is to be considered an indirect injury of article 77. [129]

2.4.2. Right to asylum, Obligations under international law and Humanitarian protection**.**

The President of the Italian Republic, Sergio Mattarella, wrote in his letter to the President of the Italian Cabinet, Giuseppe Conte that it was his duty to underline that "the constitutional and international obligations of the state remain in force (...) in particular what is directly provided for by the legislative text of article 10 of the Italian Constitution as it derives from the international commitments made by Italy"[130]

As already said in the first chapter, the humanitarian protection has been substituted by special protections within the same tier (international protection). The territorial commission, in case the migrant will not be covered by the subsidiary protection or the refugee status; will use one of the special protections transmitting the documents to the police commissioner for the residence permit in the cases and in the ways established by article 19 paragraph 1 and 1.1. of the TUI[131]. It is noticed that this hypothesis in which the special protection will cover the lack of humanitarian protection is limited. The hypotheses of special protections do not seem to cover the perimeter of the right of constitutional asylum nor the international obligations (Geneva convention, Istanbul convention, ECtHR). As Silvia Albano specifies, there are other prohibitions such as: prohibition of extradition, prohibition of political crimes, prohibition of respect for private and family life, etc. In this and other cases the applicant would be excluded from protections to which Italy should respond.[132]

129 Leonardo Pace, " I vizi formali attinenti al procedimento di conversione in legge del decreto sicurezza e immigrazione" , I profili di illeggitimità costituzinale del decreto salvini, CILD, 2018
130 https://www.quirinale.it/elementi/18099.
131 Art. 19. TUI (Divieti di espulsione e di respingimento)(Legge 6 marzo 1998, n. 40, art. 17)
1. In nessun caso puo' disporsi l'espulsione o il respingimento verso uno Stato in cui lo straniero possa essere oggetto di persecuzione per motivi di razza, di sesso, di lingua, di cittadinanza, di religione, di opinioni politiche, di condizioni personali o sociali, ovvero possa rischiare di essere rinviato verso un altro Stato nel quale non sia protetto dalla persecuzione.
2. Non e' consentita l'espulsione, salvo che nei casi previsti dall'articolo 13, comma 1, nei confronti:
a) degli stranieri minori di anni diciotto, salvo il diritto a seguire il genitore o l'affidatario espulsi;
b) degli stranieri in possesso della carta di soggiorno, salvo il disposto dell'articolo 9;
c) degli stranieri conviventi con parenti entro il quarto grado o con il coniuge, di nazionalita' italiana;
d) delle donne in stato di gravidanza o nei sei mesi successivi alla nascita del figlio cui provvedono
132 Silvia Albano, " Diritto d'asilo costituzionale, obblighi internazionali dello Stato italiano ed abrogazione della protezione Umanitaria", CILD, 2018

According to the CIR, “the decree has zero chance that it will reach the goal that the legislator has set itself: that is, more security in Italy. The abolition of humanitarian protection will create thousands of irregular immigrants who cannot be repatriated, except in a very limited way. The dismantling of the SPRAR will determine new forms of marginality, drifts of social exclusion that will inevitably make people arriving in Italy more fragile, emphasizing the risk of conflicts and making them permeable to radicalization paths".

The abolition of the residence permit for humanitarian reasons explains Arci [133]will produce irregularities, discomfort and conflicts. The reception of asylum seekers, that is, people who in almost all cases have suffered torture and violence, is relegated to the logic of confinement, with the idea of "camps": large private structures with no relationship with local communities and the public. Main issues include the abolition of the permit of stay for humanitarian reasons, extended forms of detention of asylum seekers, the hypothesis of suspension of international protection without a definitive affirmation of the person in the penal context, but also the abolition of the SPRAR and the hypothesis of revocation of Italian citizenship, explains Lorenzo Trucco lawyer for ASGI[134].

Matteo Villa, ISPI researcher, points out that, with the new decree, and "with the abolition of humanitarian protection in 2020 in Italy we will have 60, 000 new irregular immigrants, to be added to the over 70, 000 new irregular immigrants in the status quo scenario. Total: 130,000 new irregular immigrants in Italy.” Anomalous disproportionality occurred between the number of recognitions of forms of international protection expressly regulated at European level and in our legal system due to the uncertain contours of the legislative definition[135]. The repeal of humanitarian protection leads to the repeal of art. 5 co. 6 of the Consolidated Immigration Act which allowed the issuing of a residence permit in the presence of "serious reasons, in particular of a humanitarian nature or resulting from international obligations of the Italian state". In fact, as pointed out by Nazzarena Zorzella,

133 Daniele Biella, “ Decreto Salvini: Eliminata la voce protezione umanitaria, cambia nome e sostanza lo Sprar”,September 2018.
http://www.vita.it/it/article/2018/09/24/decreto-salvini-eliminata-la-voce-protezione-umanitaria-cambia-nome-e-/149128/.
134 Carlo Padula, “ Quale sorte per il permesso di soggiorno umanitario dopo il dl 113/2018?”, ASGI report, 21/11/2018.
135 Nazzarena Zorzella, “L’abrogazione dei permessi umanitari e la sorte di quelli già rilasciati o relativi ai procedimenti in corso”, da “Il decreto Salvini, Immgrazione e sicurezza, Pacini 2018.

[136]lawyer of the Bologna bar, the repeal of the two articles of the Consolidated Text on Immigration (5 and 6) did not actually determine their repeal as they are referred to in Article 10 of the Italian constitution. The legislator of the security decree 113/2018 wanted to link the possibility of humanitarian protection to only two cases "protection for medical care" and for calamity. Furthermore the "special protection" is necessary in the presence of "non refoulement" causes.

The Superior Council of the Judiciary[137](CSM), in the opinion given in relation to the law no. 840[138], affirmed that the first relapse connected to the abrogation of humanitarian protection for humanitarian reasons of which article 5 paragraph 6 of the single text on immigration is certainly represented by the possible re-expansion of the scope of art. 10. In the opinion of the Superior Council of the Judiciary, we also find doubts about the expansion of article 32 of the Italian constitution, due to the taxability of special permits. The opinion shared by all the doctrine that has been expressed up to now on the security decree I is that the repeal of article 5 of the single text on immigration provides for the repeal of the residence permit but not the obligations to which Italy must subject to article 10 of the Constitution. It is assumed, in the same way, that the current situation creates, in any case, an uncertain and difficult treatment of the foreigner.

A further remark is the possibility in which the Territorial Commission finds in the applicant the occurrence of integrating refugee status and subsidiary protection and at the same ascertained risk of torture and persecution. In this case, the Territorial

136 *Ibidem*. Page. 48.

137 Consiglio superiore della Magistratura. The CSM is the body that allocates jurisdiction and guarantees the autonomy and independence of ordinary magistrates. It is a constitutional body insofar as it is expressly enshrined in the Constitution, which sets forth its composition (Art. 104) and its duties (Art. 105). It adopts all the provisions affecting the status of magistrates (including their recruitment through public competitions, their assignment and transfer procedures, promotions and dismissal from service). Moreover, it handles the recruitment of honorary magistrates and manages their activities. Lastly, it is entrusted with the task of judging the behaviour of magistrates subjected to disciplinary actions pursuant to Law N. 195 of 1958, which regulates the Council's general composition and competences.

138 Parere del CSM sul Decreto sicurezza: le criticità rilevate,22 November 2018 https://www.edotto.com/articolo/parere-del-csm-sul-decreto-sicurezza-le-criticita-sollevate or https://www.csm.it/documents/21768/92150/parere+decreto+sicurezza+%28delibera+21+novembre+2018%29/b80ecce0-0d61-e4b4-183c-9e20b48aac55.

Commission will send the applicant to the quaestor for the issue of special protection[139].

Highly debated, was the retroactive power of the abolition of humanitarian protection. ASGI, with as examples judgments by Corte di Cassazione and Corte d'appello[140], said that "the retroactive abolition of the "generic" humanitarian permit would find a further obstacle in overcoming the union of reasonableness unscathed": [141]if the elimination of the "generic" humanitarian permit leaves constitutional interests uncovered, the possibility of justifying retroactivity with a "normative cause adequate "(to use the words of the Constitutional Court) or with "imperative reasons of general interest" (to use the words of the ECtHR).

Moreover, if the art. 1, paragraph 9 of the security decree, intended to differentiate migrants according to whether the Commission has already recognized or not the conditions of the humanitarian permit, it could also be hypothesized a violation of the principle of equality [142], as it would lead to an unreasonable difference in treatment between equally legal entities, a disparity that could depend on delays or erroneous assessments by the Commission.

The systematic interpretation advocated here is based, as well as on the influence of constitutional norms, on the principle of non-retroactivity pursuant to art. 11 *avail. prel. cc*: (preliminary norms) [143]given that the application of that principle is surrounded by various and complex questions, it seems to be possible to believe that, in the absence of a transitional provision on this point, that principle leads to the exclusion that the legislative act wants to eliminate a right question. If a person has arrived in Italy and "repatriation can determine the deprivation of ownership and the exercise of human rights, below the unavoidable nucleus, constituting the statute of

139 The special protection last one year and it can be renew just in case that the issues of torture and danger continue to affect the person. Differently to the other forms of protection this one cannot be transform into a "work visa" permission.
140 Numerous opinions on the security decrees and judgment have been collected by ASGI in a special section.
https://www.asgi.it/diritti-senza-confini/.
141https://www.asgi.it/asilo-e-protezione-internazionale/protezione-umanitaria-e-decreto-salvini-la-sentenza-della-cassazione/.
142 Article 3 of the Constitution.
143 Art 11. Preliminary norms: Effectiveness of the law over time
https://www.brocardi.it/preleggi/capo-ii/art11.html.

personal dignity" (to use the words of the ruling Cass. 4455/2018[144]), the right to a humanitarian residence permit has entered its "legal heritage" and must be recognized, unless a law retroactively affects the rights in question, within the constitutional limits in which this is possible.

Furthermore, the art. 11 the preliminary norms, concurs to exclude the retroactive application of the dl 113/2018, because it would deprive of a past generating event of juridical effect. Legislative Decree 113/2018, in fact, is not limited to regulating the right of residence differently, modifying the legal effects of the operative event, but excludes any importance for serious humanitarian reasons, except for the hypotheses typically foreseen; for this reason, retroactive application would completely deprive a past event of legal effects.

2.4.3. CPR and Hotspot

The art 2 of the security decree I establishes a longer period in the CPR[145](repatriation centre). It was noted that the new decree would be in contrast with the EU legislation governing the matter. Under the directive n. 33/2013[146]. In the doctrine on the matter is clear and it is necessary to distinguish this type of detention with respect to that due to false testimony previously provided for in Article 6 of the decree 142/2015. The maximum duration prescribed by the decree is 180 days maximum limit decided by European directives including the first 30 days in a hotspot where it is supposed to identify the person while when it is no possible, the migrant will be taken to the RPC.

The hotspot approach was presented in 2015 by European Union[147]. Amnesty International's reports in 2016, demonstrate that a host of human rights abuses were taking place in Italy, including excessive use of force by police, arbitrary detention

144 Chiara Favilli, La protezione umanitaria per motivi di integrazione sociale. Prime riflessioni a margine della sentenza della Corte di cassazione n. 4455/2018,Questione Giustizia. http://questionegiustizia.it/articolo/la-protezione-umanitaria-per-motivi-di-integrazion_14-03-2018.php

145 The detention facilities for irregular foreigners are governed by the single immigration text (Legislative Decree 286/1998): these are the Centers for temporary permanence and assistance (CPTA), then defined Temporary Residence Centers (CPT) and subsequently Identification Centers and expulsion (CIE).
With the decree-law 13 of 2017, the identification and expulsion centres (CIE) has been renamed permanence centres for repatriation (CPR) (Article 19, paragraph 1). The same Legislative Decree 13/2017 (art. 19, section 3) has established, to ensure more effective execution of the expulsion orders of the foreigner, the expansion of the CPR network, to ensure the distribution of the structures throughout the territory national.
https://temi.camera.it/leg18/post/cpr.html

146 https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A32013L0033.

147 More infos about The Hotspot Approach on:
https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/hotspot-approach_en.

and collective expulsions, and detail serious allegations of torture and other forms of ill-treatment.[148]On 7 June 2019 ASGI wrote to the Prefecture and the Agrigento Police Headquarters about what was happening in the Lampedusa hotspot centre where foreign citizens continue to be detained for several days outside of any regulatory provision after the direct monitoring process started with "Progetto In Limine[149]".

In the open letter the association reminds the authorities that "the right to personal freedom belongs to every person and can be subject to limitations only in the cases and in the ways provided for by law, through a provision drafted and notified by the authority in charge and validated by the authority judicial. Any other form of limitation of personal freedom is to be considered arbitrary and contrary to what is established by art. 13 of the Constitution and by art. 5 of the European Convention for Human Rights. "

Current and exemplary is the case *of Khlaifia v Italy* [150]In 2011, three Tunisian citizens who arrived on September 16 were held in a first aid and shelter centre (CPSA) on the island of Lampedusa until September 20th. Following a revolt that broke out in the centre, foreign citizens were transferred out of the port of Palermo on two ships, Vincent and Audacia. where they remained respectively until September 27th and September 29th to then be repatriated through deferred refusal. The European Court of Human Rights expressed its views on the matter by stating the violation of article 5, paragraphs 1, 2 and 4 and violation of article 13 (in conjunction with article 3) of the European Convention on Human Rights.

It is believed that the recent security decree I does not solve the problem related to arbitrary detention. Instead it raises many critical points regarding the constitutionality and compatibility with the European directives of the provisions relating to detention. The generalization of the deprivation of personal freedom of foreign citizens by public authorities is indeed serious. Contrary to this practice, the

148 Hotspot Italy: How Eu's Flagship Approach Leads To Violations Of Refugee And Migrant Rights, Amnesty International, 2016 https://www.amnesty.org/en/documents/eur30/5004/2016/en/.
149In Limine is a project that addresses the issues of the hotspot approach, border management policies and access to asylum procedures, in order to structure - through field research, strategic litigation and advocacy - strategies of denunciation and contrast of the practices damaging the liberties and the rights of the foreign citizens arriving in Italy.
150 Khlaifia And Others V. Italy
https://hudoc.echr.coe.int/eng.

Committee of Ministers also expressed itself as part of the procedure for supervising the implementation of Khlaifia in which it is reported "that noting that the domestic legal system has yet to provide an effective remedy enabling migrants to complain about the conditions of their detention in hotspots and, if need be, to obtain appropriate redress, called upon the authorities to rapidly address this shortcoming"[151].

Mauro Palma, [152]Italy's ombudsman for the rights of persons detained or deprived of their liberty, in his report to the Parliament 2019, [153]stressed the essential nature of Article 13 of the Italian Constitution [154]and the conditions required by Article 5 of the European Convention for Human Rights to protect against arbitrariness and to appeal against such deprivation. During the hearing in the Senate, the ombudsman indicated the risks of arbitrariness inherent in the dictates of the law proceeding to the preliminary definition of objective parameters of suitability of the elements. Another place where it is possible to suffer human rights violations are the "waiting rooms" of ports, airports, etc. In some cases, the refoulement at the frontiers involves a long deprivation of personal liberty and in some cases, it is possible to deprive the recipients of the guarantees provided for in general by the legal system. In any case, positive news during the conversion, is the provision of validation by the judicial authority for the explicit prediction of the control of the national ombudsman in all the places of detention.

2.4.4. Third safe country

The security decree provides the designation of a list of safe countries of origin, following the European directive 2013/32 which offers member states the possibility of creating one. Italy never used the notion of "safe country" before because it is in

151 H46-9 Khlaifia and Others v. Italy (Application No. 16483/12).
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168093731d
152 http://unipd-centrodirittiumani.it/en/news/Italy-Mauro-Palma-nominated-first-national-ombudsman-for-the-rights-of-persons-detained-or-deprived-of-their-liberty/4008.
153 Garante Nazionale dei diritti delle persone detenute o private della libertà personale, Relazione al Parlamento 2019.
http://camerapenalemilano.it/public/file/2.%20RELAZIONE%202019.pdf.
154"Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjectedto any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void. Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished. The law shall establish the maximum duration of preventive detention.

contrast with the individual rights explains Chiara Favilli, a professor of European law at the University of Florence and an expert on immigration policies.

The asylum applications of citizens coming from the countries included in the list of safe ones, in fact, will be examined as a priority and accelerated. Once received the documents relating to the case, the territorial Commissions will have 5 days for the decision, and it is not clear if the hearing of the applicant is previously arranged. Nazzarena Zorzella, ASGI lawyer, explain how the procedure is for the asylum seekers. The procedure would make it impossible to prove that he does not belong to a safe country of origin and is in any case an extremely short time compared to the eighteen months envisaged as the maximum duration for the ordinary procedure. Few foreign citizens will wait for months for the outcome of their application for asylum in reception centres throughout the national territory. Many will be at the borders where, within a few days, they could be denied and expelled. A hypothesis that, if it turns out to be apt, would put under pressure especially the ports of Southern Italy and would make repatriation even more fundamental. Favilli instead, thinks that the return to the first country will not increase necessary. Especially for the countries of sub-Saharan Africa, the country of repatriation mains a difficult subject for public opinion to digest. [155] In addition, the CSM express doubt on designation of a country as safe under article 10 of the Constitution[156]. "Finally, as to the sources for identifying the "safe countries of origin", it is noted that the list of the latter originates in an administrative act, with respect to which the power of the judicial authority to reconsider the inclusion in the list of a country through adequate motivation"[157]

2.4.5. Civil registration

The registration is necessary for the issue of the residence certificate and the identity document. These two documents of practice are the prerequisite for the enjoyment of some public services, in particular social services, for example being assigned social workers, access to public buildings, the granting of eventual subsidies, for the 'enrolment in the national health service (for the use of ordinary services such as the general practitioner, while emergency health care is in principle guaranteed also to the

155 Zorzella and Favilli interview, "Paesi d'origine sicuri. Quali saranno le scelte dell'Italia'" https://openmigration.org/analisi/ trashed-2/.
156 CSM, Parere sul decreto sicurezza 21 novembre 2018 https://www.csm.it/web/csm-internet/attualita/news/-/asset_publisher/YoFfLzL3vKc1/content/parere-sul-decreto-sicurezza.
157 CSM, Parere sul decreto sicurezza 21 novembre 2018 https://www.csm.it/web/csm-internet/attualita/news/-/asset_publisher/YoFfLzL3vKc1/content/parere-sul-decreto-sicurezza.

illegal immigrants) and for enrolment at a job centre. Furthermore, a valid ID is required to sign a work contract, to rent a house or to open a bank account. In reality, the situation is very uneven on the Italian territory, for many years, many municipalities have established that residence is required to access these services, while in other municipalities it is permissible to access services with a fictitious residence or residence, but the decree will introduce more ambiguity in this matter and an increase in disputes is to be expected[158]. "Whoever does not have access to registry rights becomes invisible, it is a kind of ghost from an administrative point of view," says researcher Enrico Gargiulo. "Even if a person remains the holder of certain rights, without the actual registration it is excluded," concludes the researcher.

Also, on this point the ASGI, Zorzella and Consolo lawyers believe that registration in the registry is not necessary to guarantee access to the services of asylum seekers. Zorzella and Consolo recall that the same security decree provides for foreigners to be assured of "access to services provided in the territory in accordance with current regulations". In this sense, according to them, the mayors and local administrators should clarify in a circular that the domicile is enough to access the territorial public services without having to show the registration to the registry office, and the same would be true for private services (banks, post offices, insurance companies, real estate agencies).

One of the most contested points of the law is the exclusion of asylum seekers from the registry entry. Law 113/2018 (also known as the security and immigration decree or Salvini decree) provides for changes to article 4 of legislative decree 142/2015 through a paragraph according to which “the residence permit for asylum request does not constitute a title for the registry entry”. According to Enrico Gargiulo, professor of Fundamentals of Social Policy at the Ca 'Foscari University of Venice, the decree introduces a "revolution in the field of registry law", because "for the first time it clearly denies a category of people a perfect subjective right ", contravening the constitution and other general immigration rules such as the 1998 Consolidated Law. The Association of Legal Studies on Immigration (ASGI) of the same orientation

158 Daniela Consoli, L’iscrizione anagrafica e l’accesso ai servizi territoriali dei richiedenti asilo ai tempi del salvinismo, ASGI, 8 January 2019.
https://www.asgi.it/asilo-e-protezione-internazionale/liscrizione-anagrafica-e-laccesso-ai-servizi-territoriali-dei-richiedenti-asilo-ai-tempi-del-salvinismo/.

reiterated the unconstitutionality of this point and announced that it had already filed several appeals, challenging in court some denials of registration. "In fact, we believe that there is no reason that justifies under the constitutional profile a difference of treatment in the registry registration that affects only one category of legally residing foreigners (the holders of the residence permit for asylum request), violating the principle of equality of treatment with Italian citizens provided for in Article 6 of the Consolidated Immigration Act (Law 286/1998) ", reads the release. The appeals that will be brought before a judge will summon the constitutional court for violation of article 3 of the Constitution. The consult in turn will have to establish if this part of the decree is in line with the fundamental card.

However, some jurists call for a different interpretation of the decree. ASGI lawyers Nazzarena Zorzella and Daniela Consolo give credence that the security decree I “does not pose any explicit prohibition, but simply excludes that the residence permit can be a useful document to formalize the residence application the mayors could, with a circular, inform the registry offices to accept the C3 form as valid document for registration in the registry office, that is the asylum application presented to the police station by the asylum seeker upon arrival in Italy, as proof of the regular stay of the foreign citizen in Italy. "The security decree coexists with the Consolidated Immigration Act, in particular with article 6, paragraph 7, which has not been modified by the decree and requires that the legally resident alien be allowed to register." According to the lawyer the mayors could try to interpret the rule in a less restrictive sense, continuing to allow the registration of asylum seekers in the registry using another document as proof of their stay in the country.

For the opening of a current account it is not necessary to have a residence or identity card, a residence permit is sufficient”. For lawyers, the residence permit (also for asylum request) "fulfils the task of demonstrating the regular presence of the non-EU citizen on the Italian territory". In any case, the consequences of the decree on the registers will be important and the number of disputes will also be high. Those who will be denied registration with the registry office may request damages in court for the consequences that they will be forced to face. The Court of Florence, and Civil Courts of Bologna, Palermo, Naples, Turin and Genoa have established that the registration had to be done however giving interpretation to the constitutional article

3, another case in which the constitutional chart gives a clear explanation to the confusing decree legislation.

Conclusion

The security decrees had a worldwide echo. UN expert, Special rapporteurs and Human Right commissioner from the Council of Europe stressed the violation of the decrees under international law and obligation. Such as violation of art 5 and 6 ICCPR, violation of art 98 of the UN Convention of the Law of the Sea and art 31 of the Geneva Convention 1951. In addition, the report from NHRI, CSOs and NGOs for the UPR are crucial for the direct research on the field and the chance to share the information with the other state in order to advocate for solutions. The Proactiva Open Arms, Aquarius and Diciotti case before and the Sea Watch cases later show that for the Italian legislator the "security of the border" is more important than human rights protection causing doubt about the conspiracy against NGOs and SAR operations.

The President of the Italian Republic, Sergio Mattarella, wrote in his letter to the President of the Italian Cabinet, Giuseppe Conte that it was his duty to underline that "the constitutional and international obligations of the state remain in force in particular what is directly provided for by the legislative text of article 10 of the Italian Constitution as it derives from the international commitments made by Italy. Indeed, the unconstitutionality is not just under the art 10 but of the 13,76 and 77 of the Italian Constitution.

Regarding the abolition of the humanitarian permit and the establishment of other form of protection it is in doubt if the new forms of protection can substitute the humanitarian. In fact, these forms of protection last less than the humanitarian protection and in some cases, as in the case of the special protection that can not be transform in the work visa. Highly debated was also the non-retroactivity of the norm that find its explanation in art 11 of the preliminary law. Additionally, the abolition of the SPRAR and the return to CAS will exclude humanitarian permission holder while they are waiting for the appeal to the Territorial Commission. This action will create more irregularity and vulnerability.

The art 2 of the security decree I establishes a longer period in the CPR. The maximum duration prescribed by the decree is 180 days maximum limit decided by European directives including the first 30 days in a hotspot where it is supposed to

identify the person and when the identification it is impossible to take place immediately, the migrant will be transfer to the Centre for repatriation. The Ombudsman for the rights of persons detained or deprived of their liberty, in his report to the Parliament 2019, highlight the essential nature of Article 13 of the Italian Constitution and the conditions required by Article 5 of the European Convention for Human Rights to protect against arbitrariness and to appeal against such deprivation.

Concerning the civil registration, several CSOs and NGOs demand which was the need to avoid the civil registration and giving the same rights to the migrants. Even because on the street level it is easier to let all the social mechanism understand the normative change under the new law. To clarify the situation, ASGI lawyers Zorzella and Consolo recall that the same security decree provides for foreigners to be assured of "access to services provided in the territory in accordance with current regulations". In this sense, according to them, the mayors and local administrators should clarify in a circular that the domicile is enough to access the territorial public services without having to show the registration to the registry office, and the same would be true for private services.

The reading that delineates from these reactions is a greater fear of irregularity and increased security, the same that the legislator has tried to fight. This "self-fulfilling theory" causes a vicious circle that is difficult to disentangle.

III Chapter-The security decrees and its implications: A general analysis

This chapter aims to summarize the most relevant elements discussed in the previous chapter. The first and second chapter, helped to understand the legal framework reactions to the most important topic researched in the dissertations. It is clear at this point that the security decree I and II presents present aspects of unconstitutionality and violate Italy's international obligations. Moreover, on the 24 October 2007, the Constitutional Court of Italy [159]established that art 117 of the Italian Constitution has the effect of attributing.

The consequence of this statement is that the hypotheses deriving from international law constitute constitutional obligations not only for the judges but also for the ordinary legislator. Through this affirmation, the Constitutional Court, gave a relief to the dangers of human rights violations in the countries of origin as torture[160], degrading punishments [161]and right to live [162]in the hypothesis in which such violations did not find the application in the state of refugees or subsidiary protection.

3.1. Abolition of the Humanitarian protection

The art. 1 of the security decree I *"Provisions regarding residence permits for humanitarian reasons and the regulation of exceptional cases of temporary residence permits for humanitarian reasons*" presented new forms of protection as already introduced in the first chapter[163].

Besides the idea of the legislator to connect the new form of protection to the previous humanitarian protection, the five new forms of protection do not cover either the

159 Sentenza Della Corte Costituzionale 348/2007(ECLI:IT:COST:2007:348) http://www.deiurepublico.it/index.php?option=com_content&view=article&id=1354:corte-costituzionale-24-ottobre-2007-n348-349&catid=111 or https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2007&numero=348 and http://www.europeanrights.eu/index.php?funzione=S&op=2&id=284.

160 Proibhition of torture art. 3 of ECHR "None shall be subjected to torture or to inhuman or degrading treatment or punishment".

161 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment article 1.

162 Article 2 ECHR Everyone's right to life shall be protected by law. This right is one of the most important of the Convention since without the right to life it is impossible to enjoy the other rights. No one shall be condemned to death penalty or executed. The abolition of death penalty is consecrated by Article 1 of Protocol No. 6.

163 New form of protection, chapter I p 4.

constitutional right to asylum [164] or the international law and Italian obligation. The right to asylum [165]is considered for the European jurisdiction a fundamental right. Like all fundamental rights, it is subject to the balance of powers of equal rank, it is equally valid, and it cannot suffer for its content to be lower for need to protect public safety or the provision of available resources.[166]

As already displayed in the II chapter, the UN expert highlights the way in which the abolition of humanitarian protection and the new reception system would affect migrants within the precedent instrument of the humanitarian protection. Asides from the fact that the Geneva Convention on the status of refugees remains relatively narrow, complementary forms of protection aimed at ensuring further protection than the international one have spread at European and national legal systems.

Silvia Albano [167]considers the new protections as a direct violation of international obligations in which the legislator (repealing article 5 and 6 of the Consolidated Text on Immigration) eliminates the connection between national and international commitments. Through these articles, international obligations connected to human rights had been translated into national ones, putting a ban on removal. In fact, this series of items is not connected to the country of origin and therefore outside the competence of Article 10 of the Constitution Paragraph 3. The Declaration on Territorial Asylum adopted by the General Assembly of the United Nations [168]in 1967 provides in Article 1(1) that, "*asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, it shall be respected by all other States."* In addition to the Declaration, a vital principle is the principle of non-refoulement.

164 Camera dei Deputati, Immigrazione – Diritto d'asilo e status di rifugiato La L. 189/2002[5] https://www.camera.it/cartellecomuni/leg14/RapportoAttivitaCommissioni/testi/01/01_cap09_sch06.htm.

165 The right to asylum is present in: 1951 United Nations (UN) Convention Relating to the Status of Refugees (ratified in 1952), the additional 1967 protocol; articles K1 and K2 of the 1992 Maastricht Treaty as well as the 1985 Schengen Agreement, which defined EU immigration policy. Finally, the right of asylum is defined by article 18 of the Charter of Fundamental Rights of the European Union.

166 Gaetano Silvestri, presidente emerito della Corte Costituzionale, "Il diritto fondamentale di asilo e di protezione intenazionale", ASGI, Catania 2018.

167 Silvia Albano, "Diritto di asilo costituzionale, obblighi internazionale dello stato Italiano ed Aborgazione della protezione umanitaria, from " Profili di illegittimità costituzionale del decreto Salvini", Antigone Edizioni, 2018.

168 Declaration on Territorial Asylum, art. 1(1), G.A. Res. 2312, U.N. GAOR, 22d Sess., Supp. No. 16, at 81, U.N. Doc. A16912 (1967) see ROMAN BOED, THE STATE OF THE RIGHT OF ASYLUM IN INTERNATIONAL LAW.

In a judgement of 2004, the Court of Cassation [169] included the instrument of humanitarian protection within the scope of fundamental rights, thus understanding humanitarian protection in the forms of protection for any situation in which the need for protection for constitutional or international requirements is necessary. Referring to the inviolable rights of the man of art 2 of the constitution[170], the prohibition against rejecting Article 3 of the ECtHR and Article 19 of the Charter of Fundamental Rights of the European Union; it follows that humanitarian protection is not recognised only as an internal instrument, but also as an international obligation, as established by the same ECtHR Court on November 15, 1996, in *Chahal v. the UK*[171]. In the sentence the Court established that "Article 3 is thus wider than that provided by Article 32 and 33 of the United Nations 1951 Convention on the Status of Refugees". [172]

It is also taken in consideration that the legislator of the decree has, in any case, created a type of protection of the appointment of "special protection" guaranteed, limited to the circumstances in which the request does not cover either the state of refugee nor the subsidiary protection[173]. Indeed, as we underline before, the new form of protection lasts one year, and the legislator does not allow the processing from special permission to a work visa. Therefore, it is implicitly emphasizing the special character of the permit would lead to leave the country after the end of the emergency or in any case, for a limited time.

In January 2009, the European Council on Refugees and Exiles (ECRE) undertook a limited update of its 2004 survey on complementary and subsidiary protection in

169 The Supreme Court of Cassation (Italian: Corte Suprema di Cassazione) is the highest court of appeal or court of last resort in Italy. It has its seat in the Palace of Justice, Rome. Appeals to the Court of Cassation generally come from the Appellate Court, the second instance courts, but defendants or prosecutors may also appeal directly from trial courts, first instance courts. The Supreme Court can reject, or confirm, a sentence from a lower court. If it rejects the sentence, it can order the lower court to amend the trial and sentencing, or it can annul the previous sentence altogether. A sentence confirmed by the Supreme Court of Cassation is final and definitive, and cannot be further appealed for the same reasons.

170 Art. 2 The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political,economic and social solidarity be fulfilled.

171 ECtHR - Chahal v. The United Kingdom, Application No. 22414/93, 15 November 1996.

172 https://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr.

173 I chapter page 7.

European Union Member States[174] The general supplementary regulations have reduced the gap between the interpreter and the complementary protection, reclassifying it to the humanitarian clause. There are various examples in which European legislators have adopted a discipline like the one adopted by the Italian legislator in the new regulations. For example, Belgium presents a residence permit for people who cannot be repatriated for reasons of greeting. The Netherlands, on the other hand, has adopted a regulation which specifies in detail the protection cases for humanitarian reasons.[175]

As already underlined in the second chapter, the reason behind the abolition of the humanitarian protection by the legislator is " the anomalous disproportion occurred between the number of recognitions of forms of international protection expressly regulated and at European level and in our legal system ".[176] Consequently, the part of Article 5 and 6 of the Consolidated Immigration Act was repealed, which consented to the issuance of the permit without the ordinary conditions, but solely for severe humanitarian reasons or cases that oblige the states nationally and internationally. Indeed, as Nazzarena Zorzella underlined,[177] the abolition of the humanitarian protection has not abolished all the national and international obligations that fund their basis in the art. 10 of the Italian Constitution. Moreover art. 2 of the Consolidated Immigration Act established "The fundamental rights of the human person provided for by the rules of domestic law are guaranteed to the foreigner at the border [178]".

One of the most asked questions about the abolition of the Humanitarian protection has been if the law can be considered binding also for the past or merely for the future. Several judgments establish that "the law provides only for the future; it has no retraction effect "[179] according to the principles of the non-retroactivity of the law of the Italian constitutional law. Therefore, as stated by Nazzarena Zorzella[180], the

174 European Council of Refugees and Exiles (ECRE), Complementary Protection in Europe, July 2009 https://www.refworld.org/pdfid/4a72c9a72.pdf.
175 *Ibid*. page 9.
176 XVIII LEGISLATURA – DISEGNI DI LEGGE E RELAZIONI – DOCUMENTI, DISEGNO DI LEGGE N 840 http://www.senato.it/service/PDF/PDFServer/DF/340021.
177 Nazzarena Zorzella, " L'Abrogazione dei permessi umanitari e la sorte di quelli già rilasciati o relativi a procedimenti in corso, " Il decreto Salvini" page 50.
178 Legge 6 marzo 1998, n. 40, art. 2 legge 30 dicembre 1986, n. 943, art. 1.
179 Art. 11 preleggi cc La legge non dispone che per l'avvenire: essa non ha effettoretroattivo (25 Cost.; 2 c.p.).
180 II chapter Page 21.

provisions of the security decree cannot be applied to the comments in progress and neither to the administrative proceedings before the territorial commission that started before October 5th. With the decision of the Supreme Court of Cassation on the February 2019[181], it excluded decree 113/2018 from being applied to administrative proceedings already commenced before the Territorial Commission or in circumstances against the verification or denial checks, excluding, in particular, those that the aforementioned paragraph 9 has interpreted in the sense of precluding the ascertainment of the right to the humanitarian protection that the Territorial Commission had not already recognized on the date of entry into force of the decree.

3.2. Rescue at the sea and criminalization of NGOs

On December 15, 2016, with an article in the Financial Times, the British newspaper came into possession of a confidential report by Frontex, the European agency for the control of external borders, which denounced the alleged links between human trafficking and human business industries.[182] From that moment on, NGOs have been considered as a "pull factor" [183]for the traffickers. The general narrative about the exchange between traffickers and SAR mission NGOs continues to be one of the most important points for all the populist parties around Europe.

Formerly in 2017, during the Gentiloni cabinet[184], the Minister of the Interior Minniti drafted the "Voluntary *Code of Conduct for Search and Rescue Operations*

181 Cass. Civ., Sez. I, 19 febbraio 2019, n. 4890, ASGI, https://www.asgi.it/notizie/cassazione-protezione-umanitaria-decreto-salvini-non-retroattiva/.

182 Article 19 Meaning of innocent passage:1. Passage is innocent so long as it is not prejudicial to the peace, goodorder or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law. 2. Passage of a foreign ship shall be consideredto be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (b) any exercise or practice with weapons of any kind;(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State; (d) any act of propaganda aimed at affecting the defence or security of the coastal State; (e) the launching, landing or taking on board of any aircraft; (f) the launching, landing or taking on board of any military device; (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State; (h) any act of wilful and serious pollution contrary to thisConvention; (i) any fishing activities;(j) the carrying out of research or survey activities;(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;(l) any other activity not having a direct bearing on passage.

183 Annalisa Camilli, Le navi delle ong influiscono sulle partenze di migranti dalla Libia?, L'Internazionale, 21 January 2019 https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/01/21/ong-pull-factor-migranti-libia.

184 The Gentiloni Cabinet was the 64th cabinet of the Italian Republic, in office from 12 December 2016 to 1 June 2018. The government was headed by Paolo Gentiloni, former Minister of Foreign Affairs of the Renzi Cabinet.

undertaken by civil society Non-Governmental Organisations in the Mediterranean Sea, 2017". [185]The CoC was a document with aiming to regulate NGOs and vessels flying third states' flags in Libyan territorial waters and on the high seas. Some of the measures envisaged in the proposed CoC objectively diminished the capacity of NGOs operating at sea to save lives. For instance, the case of the absolute prohibitions of transhipment of migrants to other vessels (even when this would put some lives at risk) and of telephone communications or light signals (even necessary to ensure the safety of any search and rescue operation legally undertaken). Imposing those conducts upon boats engaging in SAR operations may thus trigger the international responsibility of Italy[186].

The European Commission for Human rights in the 2019 Report [187]underlines how the Italian politics towards life at the sea has changed in these years, from 2014 MareNostrum activities[188], to be continued with operation Sophia[189](EUNAVFOR MED operation Sophia)and Frontex[190]and in the end the limitation of pacific passage by foreign vessels; the action in terms of human rights protection has changed enormously. In addition, the drafting of a Code of Conduct for non-governmental

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The cabinet was formed after Matteo Renzi's resignation as Prime Minister, due to the result of the 2016 constitutional referendum. The new cabinet preserved most of the ministers of the former Renzi cabinet. It was led by the centre-left Democratic Party (PD), and it originally included the New Centre-Right (NCD) and the Centrists for Europe (CpE) as junior partners. It also included a few non-party independents.

185 Minister dell'Interno, Codice Di Condotta Per Le Ong Impegnate Nelle Operazioni Di Salvataggio Dei Migranti In Mare., 2017.
https://www.interno.gov.it/sites/default/files/codice_condotta_ong.pdf.

186 It is also clear that Italy lacks jurisdiction over those areas and that any attempt to exercise such jurisdiction by Italy would be in contrast with basic principles of international law of the sea, as codified in the 1982 UN Convention on the Law of the Sea.

187 Council of Europe Commissioner for Human Rights.Lives saved. Rights protected.Bridging the protection gap for refugees and migrants in the Mediterranean, May 2019
https://rm.coe.int/lives-saved-rights-protected-bridging-the-protection-gap-for-refugees-/168094eb87.

188 The Mare Nostrum Operation was launched by the Italian Government on 18 October 2013, as a military and humanitarian operation aimed at tackling the humanitarian emergency in the Strait of Sicily, due to the dramatic increase in migration flows. The Operation ended on 31 October 2014, coinciding with the start of the new operation called Triton. From: Ministro Della DIfesa, Mare Nostrum Operation.
http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx.

189 Since 7 October 2015, as agreed by the EU Ambassadors within the Security Committee on 28 September, the operation moved to phase 2 International Waters, which entails boarding, search, seizure and diversion, on the high seas, of vessels suspected of being used for human smuggling or trafficking. Last 20 June 2016, the Council extended until 27 July 2017 Operation Sophia's mandate reinforcing it by adding two supporting tasks: training of the Libyan coastguards and navy; contributing to the implementation of the UN arms embargo on the high seas off the coast of Libya.

190 Frontex helps EU countries and Schengen associated countries manage their external borders. It also to helps to harmonise border controls across the EU. The agency facilitates cooperation between border authorities in each EU country, providing technical support and expertise.
https://europa.eu/european-union/about-eu/agencies/frontex_en.

organisations (NGOs) by Italy in July 2017, with the backing of the EU, has coincided with criminal and administrative proceedings against shipmasters (captains of ships) and NGOs, as well as political decisions to deny entry into territorial waters and ports. In the report, the Commissioner also stressed the importance of safe rescue operations in accordance with the words of the Committee of Ministries of Europe, international obligations and international maritime law.

"The protection of the right to life is part of the core of the European Convention on Human Rights and one of the fundamental values of the democratic societies that make up the Council of Europe. It is imperative for member States to fully respect their legal obligations regarding protecting human life at sea"[191]

Besides the international value, the conspiracy against the NGOs was hypothetically one the elements that brought the previous Ministry of the Interior to draft the security decree II in which article 1 and 2 establish general rule about the "security of the borders" and the vessels that enter in Italian territory and that do not respect the limitation of article 1. The UN experts in the wrote "We are deeply concerned with the "chilling effect" these attacks and measures could have on migrant rights defenders and on civil society in general. Ongoing attempts to restrict SAR operations by NGOs risk endangering thousands of lives by limiting rescue vessels from accessing the perilous waters near Libya".[192]

Articles 1 and 2 of the security decrees II are against art 19 of the Montego Bay Convention. Both directives oblige humanitarian ships to comply with the indications given by the Libyan coastguard. However, this point is in contrast with the SAR Convention [193]which instead provides the captain with the responsibility to assess

191From the "Right saved, Life protected" citing the Committee of Ministers, Reply to PACE Recommendation 2137(2018), 'International obligations of Council of Europe member States: to protect life at sea', Doc. 14831, 14 February 2019. The commitment to saving lives of migrants is also reiterated in Objective 8: Save lives and establish coordinated international efforts on missing Endnotes - Page 53 migrants, of the UN Global Compact for Safe, Orderly and Regular Migration, 11 January 2019.

192 On 12 November 2018, a group of UN Special Rapporteurs wrote to the Italian government over concerns of violations of migrants' rights as well as the criminalisation of solidarity. https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24084&fbclid=IwAR18ix29ggJOAUc1DlDQeA0EY5VMTy10ctytLUaLCeZdzS1ll9aPkxg4MAY.

193 With the Law n. 147 of 04.04.1989 Italy ratified the 1979 Hamburg Convention on maritime rescue and with D.P.R. n. 662 of 1994 gave effect to the Hamburg Convention '79. With this provision, sea rescue came out of the dimension of activities to be implemented with the means available now to enter a highly professional phase of operation, with specially trained and equipped integrated vehicles. The Regulation provides an organizational and functional structure for the sector, establishing the respective functions of the arrangements concerned entrusting the task of efficient search and savings

when he finds himself the best choice to guarantee safety and protection of human life at sea. If the indications ask to bring people to an unsafe port like Libya, the captain has every reason to refuse. " Moreover, the same presence of action with the Libyan coast guard be a violation of the principle of non-refoulment as specified in several reports mentioned in the second chapter. The Art 3. [194]And 4[195] of the SAR Convention underline the need to cooperate between states and the important task of the Rescue Coordination Centre.

Indeed, as already underlined in the II Chapter, Libya did not ratify the convention. This means that it is not mandatory for the Libyan coast guard to rescue people at the sea and, even in the case they do. The general safe process is directly by the RCC of Rome, even if it is not written in security decree II.

The limitation for the passage of the vessels has indirectly caused two different events: 1) the Closure of Italian ports with individual decisions taken case by case[196]and the conspiracy against NGOs that try to help and rescue people at the sea. The policy of "closed ports" has been commented on by the United Nations High Commissioner for Human Rights highlighting the radical incompatibility with the

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services within the entire region to the General Command of the Port Authority. Of Italian interest in the sea, which extends well beyond the borders of territorial waters. The General Command assumes the functions of I.M.R.C.C. (Coordination center for the Italian maritime rescue), National Center for Coordination of Maritime Rescue, which is responsible for all the activities aimed at searching for and saving human life at sea, through the use of the air-naval component of the Corps of Capitanerie of port, with the auxiliary event of other military and civil rescue units. The I.M.R.C.C. - functionally identified in the structure of the General Command's Operating Center - maintains contact with the rescue coordination centres of other States to ensure international collaboration under the Hamburg Convention.

194 Chapter 3 - Co-operation between States Requires Parties to co-ordinate search and rescue organizations, and, where necessary, search and rescue operations with those of neighbouring States. The Chapter states that unless otherwise agreed between the States concerned, a Party should authorize, subject to applicable national laws, rules and regulations, immediate entry into or over its territorial sea or territory for rescue units of other Parties solely for the purpose of search and rescue.

195 Chapter 4 - Operating Procedures The Chapter says that each RCC (Rescue Co-ordination Centre) and RSC (Rescue Sub-Centre) should have up-to-date information on search and rescue facilities and communications in the area and should have detailed plans for conduct of search and rescue operations. Parties - individually or in co-operation with others should be capable of receiving distress alerts on a 24-hour basis. The regulations include procedures to be followed during an emergency and state that search and rescue activities should be co-ordinated on scene for the most effective results. The Chapter says that "Search and rescue operations shall continue, when practicable, until all reasonable hope of rescuing survivors has passed".

196Depsite the fact that the port were consider closed, Article 83 of the Navigation Code states that it is the Minister of Transport who decides whether to "limit or prohibit the transit and parking of merchant ships in the territorial sea, for reasons of public order, the safety of navigation (...) determining the areas to which the prohibition extends ".Secondly, as verified by the Association for Legal Studies on Immigration (Asgi) through various requests for public access to deeds known as Foia (Freedom of information act) the Ministry of the Interior and especially the Ministry of transport do not have adopted a formal provision for the closure of ports.

obligations deriving from the UNCLOS, SOLAS and SAR Conventions on the international law of the sea, as well as with the principle of non-refoulement.

In accordance with art. 21.1 UNCLOS (which reflects general principles on the allocation of jurisdiction at sea): "The coastal State may adopt laws and regulations , in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of the h) prevention of infringement of the immigration law and regulation of the costal State".

The progressive inhibition of the relief activities provided by NGOs and other private ships in the central Mediterranean, in fact, involves very serious risks for the fundamental rights of migrants, destined for the statistically increasingly more considerable likelihood of losing their lives in a shipwreck or being recovered by the Libyan Coast Guard and brought back to a country where arbitrary detentions, torture and sexual violence are involved in a tragic daily life.

Regarding the "closed port" it is also important to highlight that for international human rights law and for constitutional law art. 2 to save life is mandatory. [197]Anyone who can intervene has the legal obligation to do so and otherwise it can be configured as an emergency omission (according to articles 1113 [198]and 1158 [199]of the navigation code). In the event of an accident at sea, whoever finds himself in the rescue must be held responsible for the crime of negligent shipwreck and murder. This is, in short, the normative dictation to which anyone who goes by sea and crosses people in difficulty must comply: be they migrants, boaters, cruise passengers or crews.

Secondly, after the rescue there is the POS [200]of which to bring the survivors. The place of safety (POS) is to be understood as the place where, first and foremost, the

197 Art. 2 The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political,economic and social solidarity be fulfilled.
198Art 1113 Navigation Code: Anyone who, under the conditions regulated in articles 70, 107, 726, requested by the competent authority, fails to cooperate with the means of qualification, has the assistance of a ship, a float, an aircraft or a person in danger or all of it the distinction of a fire is punished with imprisonment from one to three years.
199 Art 1158 Navigation Code: The commander of a ship, a float or a national or foreign aircraft, which fails to aid or attempt to rescue in cases where it is obliged to do so under this code, shall be punished with imprisonment for up to two years. The penalty is imprisonment from one to six years, if a personal injury results from the fact; from three to eight years, death ensues. If the offense is committed through fault, the penalty is imprisonment for up to six months; in the cases indicated in the preceding paragraph, the penalties provided for therein are reduced by half.
200 Legal Brief on International Law and Rescue at Sea, UNHCR https://www.unhcr.org/487b47f12.pdf.

security and health care of survivors can be guaranteed. In practical terms, this means that the SAR operation is finished when people are in a place that can be considered safe.

The identification of this place is the responsibility of the SAR rescuers which coordinates the individual rescue action unless you are in territorial waters where the exclusive competence of the coastal State remains. The safe place is always the State closest to the site where the rescue operations take place. They are not considered "safe" ports of countries where one can be persecuted for political, ethnic or religious reasons, or be exposed to threats to one's life and freedom. For example, UNHCR believes that Libya does not meet the criteria [201]to be designated as a safe place to carry out landing procedures following rescues at sea, considering the volatility of security conditions in general and, more particularly, towards third-country nationals. These conditions contemplate detention under conditions that do not meet the standards and frequent abuses.

Taking into consideration articles 11 and 12 of the Consolidation Act on the Immigration, the cause of exclusion of the liability under art. 4 law 689/1988[202], concerns those facts in which the perpetrator is not responsible for the violation because "he committed the act to perform a duty, to exercise a legitimate faculty or a state of necessity or self-defence."[203] Art.12 [204]shows a series of conditions which, as demonstrated by the judicial practise relating to art. 12 of the Consolidated

201 Posizione sui rimpatriati in Libia.
https://www.unhcr.it/wp-content/uploads/2016/01/Libya_update_I_October_2015.pdf
202 Legge 24 novembre 1981, n. 689 .
http://www.edizionieuropee.it/LAW/HTML/37/zn69_04_009.html.
203 *Ibidem*. Art 4 .
Art. 4. (Causes of exclusion of liability). It is not responsible for administrative violations which have committed the fact in the fulfilment of a duty or the exercise of a legitimate faculty or a state of necessity or legal defence. If the violation is committed by order of the authority, the public responds official who gave the order. Municipalities, provinces, mountain communities and their consortia, public assistance and charitable institutions (IPAB), non-profit non-commercial entities that carry out social welfare and health institutions operating in the National Health Service and their administrators are not liable for administrative and civil penalties concerning the hiring of workers, compulsory insurance and further obligations, relating to work performed in the form of the work contract and subsequently recognized as relationships of subordinate employment, provided that they are exhausted as of 31 December 199.
http://www.edizionieuropee.it/LAW/HTML/37/zn69_04_009.html#_ART12.
204 Ibidem. Art 12 "Art. 12. (Scope of application) The provisions of this Chapter are observed, insofar as they are applicable and unless otherwise stated, for all violations for which an administrative sanction is provided for the payment of a sum of money, even when this sanction is not provided to replace a penalty. They do not apply to disciplinary violations.".
http://www.edizionieuropee.it/LAW/HTML/37/zn69_04_009.html#_ART12_.

Immigration Act are likely to present with very high frequency in the subject matter. Beginning with the fulfilment of a duty, the norms of international law force the commander of the ship to save people in danger and to lead them, without exposing them and further risks, to a place of safety; a place where the respect fundamental rights are guaranteed (art 98 Montego Bay and art 10 SAR Convention). In relief, the state of necessity[205], which led the judges to exclude the responsibility of the rescuers and at the same time affirm that the actual smugglers are deliberately qualified to place the migrants on a boat unsuitable for this additional part of the crossing, thus exploiting the relief effort and thus having to answer for the irregular entry according to the mediated authority scheme.

Regarding these international provisions, the Court of Cassation in the criminal case Cass., Section I pen., 28 February 2014 (dep. 27 March 2014), n. 14510 [206]said that " in such cases, the rescue intervention is a must, in accordance with the international conventions on the law of the sea (the Hamburg Convention of 04.47.1979, ratified by law n.147 / 1989 and the relative Presidential Decree No. 662 of 1984, and art. 98, of the Montego Bay Convention), even after having known about the illegality of immigration, and therefore the conduct implemented in extraterritorial waters is ideally linked to that to be consumed in territorial waters[207]". Finally, with the judgment of the GIP of Trapani [208]also the legitimate defence was recognized in the hands of some migrants who were rebelled against the commander's decision, taken on the basis of indications from the Italian maritime coordination centre, to bring them back to Libya, thus exposing them to the current danger of unjust offenses to life and physical integrity.

3.2.1. The Open arms case and the Place of Safety

The NGO Proactiva Open Arms has been accused by Matteo Salvini of smuggling migrants during rescue operations at sea. Following the accusation, the rescue ship was impounded by the Italian authorities. This post examines the decision issued on

205 State of necessity reflects an international customary rule according to which a factual situationof grave and imminent peril for the essential interests of a State would legally justify a breach of an international obligation by such State as the only means to safeguard such essential interests.
206 Cass. Pen., Sez. I, ud. 28 febbraio 2014 (dep. 27 marzo 2014), n. 14510 https://www.penalecontemporaneo.it/d/3118-sussiste-la-giurisdizione-italiana-per-il-reato-di-favoreggiamento-dell-immigrazione-irregolare-qua.
207 Ibidem.
208 Court of Trapani. Judgment in abridged judgment https://www.asgi.it/wp-content/uploads/2019/06/2019_tribunale_trapani_vos_thalassa.pdf.

16 April 2018 by the pre-trial judge of Ragusa (Sicily) that ordered the release of the Open Arms vessel.

The case tackled on one hand, the pullback strategy created with the agreement between Libya and Italy and on the other, the pre-trial order, helping us to understand the intersection between law of the Sea and human rights duties. Indeed, the order issued on 16 April is an important step forward in the definition of the notion of 'place of safety' because the decision by the judge in Ragusa interprets 'place of safety' in accordance with the human rights of migrants, and rightly overcomes inappropriate distinctions based on migrants' statuses. The duty of delivering people to a 'place of safety' is an asymmetrical provision of international law. On the one hand, the SAR Convention states that a rescue is not complete until the persons are delivered to a 'place of safety'; but international law does not impose an unequivocal duty on states to allow the disembarkation of rescued persons on their territories. In fact, the international duty of safety is overstepped by the principle of territorial sovereignty [209]which establishes that states decide who can enter their territory and who cannot. This translated to the rescue ships as the duty to swiftly disembark rescued people to a 'place of safety', but they might not be able to do so because of states' refusal to let them in.[210]

The 2004 amendment to the SOLAS and SAR [211]convention provides that the state [212]coordinating the search and rescue zone where the rescue takes place has 'the responsibility to provide a place of safety, or to ensure that a place of safety is provided'. Indeed, the Amendment does not solve the existing ambiguities that return to the principle of the territorial sovereignty of the state.

Open Arms is one of the three vessels that Proactiva Open Arms, a Spanish NGO, uses to conduct its rescue missions in the Mediterranean Sea. Working in

209 Giovanni di Stefano, " Theories on Territorial Sovereignty: A Reappraisal", reserchgate, May 2009.

210 The 'Tampa affair' was emblematic: in August 2001, the Norwegian ship Tampa was refused permission for days to disembark hundreds of rescued people on the Australian coast. The problems faced by the Tampa triggered international reactions, and ultimately led to the adoption of the 2004 Amendment to the SAR and the SOLAS conventions, which was a – modest – attempt to prevent similar situations from occurring again.

211 http://www.imo.org/en/OurWork/Facilitation/personsrescued/Documents/Resolution%20MSC.155-%2078.pdf.

212 Not all the states accepted the amendements, for example Malta did not ratified it. https://esil-sedi.eu/the-open-arms-case-reconciling-the-notion-of-place-of-safety-with-the-human-rights-of-migrants/.

collaboration with the Italian coast guard, since July 2016 the NGO has saved 25,700 lives at sea. On 15 March 2018, the Maritime Rescue Coordination Centre in Rome informed the Open Arms vessel of the presence of a dinghy sailing in international waters, 40 n.m. Off the Libyan coast. Open Arms was heading towards it, in order to verify its conditions, when the Libyan coast guard took over the coordination of the search and rescue operations and ordered the NGO vessel to 'stay out of sight'. The Open Arms did not comply with the instructions received from the Libyan authorities. Instead, the NGO vessel rescued the people from the dinghy, and then sailed towards a second dinghy that had been spotted in the meantime; while embarking people from this second boat, a Libyan coastguard unit arrived. A couple of hours of high tension followed, during which the Open Arms crew were verbally and physically threatened by the officials of the Libyan coast guard. Still, the NGO managed to complete the rescue of the people from this second dinghy (rescuing 218 people in total) and headed north, in search of a 'place of safety' where it could disembark the migrants.

The vessel was forced to stop in Malta and to disembark a woman and her three-month old infant who needed emergency health treatment. But, instead of asking Malta for authorization to disembark all the rescued people, Open Arms continued its journey to Italy. According to the captain's statements, they did so because Malta always denies migrants permission to land. After two days of navigation, Open Arms reached the Italian coast and obtained authorization to disembark the rescued people in Pozzallo (Sicily). Shortly after the safe landing, the NGO was informed that the Catania prosecutor had charged two members of the Open Arms' crew with belonging to a criminal organization and smuggling migrants. While the first accusation was quickly dismissed, the charge of smuggling stood, and the Open Arms boat was consequently impounded by the police.

The order concerning the pre-trial seizure of the Open Arms vessel focused on whether it was plausible to think that the defendants had committed the crime (*the fumus commissi delicti test*). In particular, the judge examined whether the conduct of the Open Arms crew, which refused to hand over the migrants to the Libyan authorities and brought them to Italy instead, should be considered migrant smuggling. For its part, the NGO argued that they acted under a 'state of necessity' (Article 54 of the Italian criminal code): the unlawful conduct is justified by the

necessity to protect the perpetrator or another person from an imminent and serious danger.

First, the order notes that migrants were not in imminent danger: their dinghies, despite being overcrowded, were not leaking and the weather conditions were good. Also, the Libyan coast guard was ready to intervene and rescue the people: Open Arms could have complied with the Libyan authority's orders and handed over the migrants. However, the decision also examined the second phase of the rescue: the delivery of the rescued people to a 'place of safety'. Here, the pre-trial judge reached a different conclusion. The decision states that:

"it cannot be considered 'safe' a place where a person seriously risks being exposed to the death penalty, torture, persecution, sanctions or inhuman and degrading treatments, or his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". [213]

The pre-trial judge, relying on official reports, held that Libya does not guarantee the necessary minimum level of human rights protection. Libya cannot be considered a 'place of safety' and, as [214]long as the situation remains unchanged, the refusal of the members of the NGO to hand over the migrants to Libyan authorities and to bring them to Italy was justified by a state of necessity.

In the end we can consider the decision as a minestone for several reasons: first, the decision provides an interpretation of the concept of 'place of safety' that is in line with international human rights law. The pre-trial order, then confirmed in appeal, states that a ship master shall not only save people from the immediate danger of drowning but must also take the rescued people to a place where they do not risk being tortured or persecuted.

Secondly, the decision does not fall into the trap of making misleading distinctions between refugees and other migrants. It recognizes to all the right not to be delivered to a place where they can be exposed to the treatments prohibited by Article 3 ECHR. This is important to counteract the common belief that only refugees have the right

213 decreto_rigetto_sequestro_preventivo_tribunale_Ragusa_gip http://questionegiustizia.it/doc/decreto_rigetto_sequestro_preventivo_tribunale_Ragusa_gip.pdf.
214 *Ibidem*.

not to be deported to Libya, while other migrants, called ‘irregular’ or ‘economic migrants’, can be pushed back.

3.3. The core principle of non-refoulement

Highly linked to the juridical status of refugees is the core principle of non-refoulement. It rules the right not to be sent back to a country in which the refugee’s life or liberty would be threatened. This right was set out for the first time in the 1951 Convention. As previously addressed, art 33 [215]of the Geneva Convention establishes the explicit prohibition of refoulement for refugees whose life or freedom would be threatened in the refugee’s country or in the host country. In addition, Article 3 of the Convention against the Torture strongly defines prohibition on refoulement. At European level, the European Court of Human Rights in accordance with the prohibition on torture established by article 3 of the European Convention on Human Rights has also developed this prohibition of non-refoulment for all the people that risk their life coming back to their country because they could be under mistreatment, torture of other dangerous activities. The object of the prohibition of refoulement is the prevention of human rights violations. For this reason, the prohibition is not intended for past rights but is prospective in scope.

The prohibition of non-refoulement in the 1951 Convention has an absolute character. State parties to the Convention are not allowed to make reservations to the prohibition of refoulement, [216]but it does present some exceptions. Art 33 of the Geneva Convention states that a “refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”. Moreover, Article 63(1) TEC establishes that EU secondary law must be concordant with the Refugee Convention and other relevant international treaties. This entails that States are bound to adopt directives and regulations in accordance with these treaties and, consequently to respect the refugee's

215 ARTICLE 33. PROHIBITION OF EXPULSION OR RETURN('REFOULEMENT)1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

216 Article 42(1) establishes that at the time of signature, ratification or accession a State can make reservation to the provision of the Convention, but with exception of articles 1, 3, 4, 16(1), 33 and 36 to 46. This has been reiterated by the 1967 Protocol.

right of being protected from refoulement. The Charter of Fundamental Rights of the European Union (hereafter CFR) at Article 19(2) refers to non-refoulement by stipulating as it follows:

"No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment".[217]

The non-refoulement principle is considered customary law. For example, in the *Nicaragua case*[218], the ICJ recognized that the prohibition on the threat or case of force established by article 2 (4) of the UN Charter was also valid as a principle of customary law, even concerning States that were parties to the Convention.

Under this point, the main agreement with Libya can be considered a direct violation of the non-refoulement principles. The Italian Government therefore acts in clear contradiction of the right to asylum enshrined in the Italian Constitution and the duty to respect human rights guaranteed by international law principles binding upon Italy. Moreover, repatriation to third state countries is not considered in line with the international obligations and where migrants can be affected by mistreatment is another violation of the same principle. The security decree I establishes an enormous amount of time in which the migrants can be detained in centres for the repatriation in order to process their request and to send them back in case they are not coming from a dangerous country. Indeed, in this practice there is the lack of consideration of domestic racism and dangerous mistreatment that affects some third state countries.

3.3.1. Detention in CPR and Hotspot.

The UNHCR points to the need to avoid disembarkation of rescued asylum seekers and refugees in territories where their lives and freedoms would be threatened and, in a POS, where the migrants and refugees can be considered safe and far from torture and mistreatment. Particularly, in their assessment, member states should not limit themselves only to the considerations of a place of safety as elaborated in maritime law. They should take full account of human rights-related considerations. The risk of persecution, torture, or inhuman or degrading treatment, including the risk of chain

217 Article 19 Protection in the event of removal, expulsion or extradition https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
218 From " Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*" UNHCR, citing the Nicaragua v. Unted States case.

refoulement. According to the European Commissioner, "*Member states should conduct full assessments on the basis of reliable and objective sources, including for instance information from the UN and NGOs*."[219]

The detention in the Hotspots [220]and CPR and the extension of the period in the hotspot, is a direct violation under the art. 11 of the ICCPR. Security decree I and the conversion law 132/2018 introduce the "detention in order to identify the asylum seeker". The duration of this detention is thirty days maximum. The article describes the period as the one necessary to identify the person. But in case the thirty days have not been enough to identify the person, the asylum seeker, can be detained for 180 days maximum. Indeed, the maximum amount of time is in accordance with Directive 2008/115/CE [221]. The Directive provides that the deprivation of personal liberty cannot, as a rule, exceed the six months extendable for another 12 months in exceptional cases (in the case of non-cooperation by the expelled or third country for documentation).

In this regard, in 2014, the Senate Extraordinary Commission for the Protection and Promotion of Human Rights published a report [222]on the former CIE which highlighted the improbability that repatriation could take place after the first 45 days if it has not happened before. It follows that the prolongation of the terms of detention of migrants sacrifice their personal freedom without this measure driving from greater efficiency in the management of returns. Before the entry into force of security decree I, the protection of the personal freedom of the foreigner within the hotspot was administrative and not normative. It may be argued that the new law, in this sense, gives an interpretation of the repeated violations of Article 13 of the Constitution as had happened in the past.

The case *Khlaifia and others v. Italy* is a milestone on the topic. The ECtHR had expressed itself by highlighting the violation of Article 5 and Article 13 of the ECHR,

219 From "lived saved, rights protected" 2019, p 20.
220 Indeed, the detention in the hotpost is a violation under ICCPR but recognized and support by European Union even if against the European Chart of Fundamental Rights .
221 Directive 2008/115/EC Of The European Parliament And Of The Council Of 16 December 2008 On Common Standards And Procedures In Member States For Returning Illegally Staying Third-Country Nationals.
Https://Eur-Lex.Europa.Eu/Legal-Content/EN/TXT/?Uri=CELEX%3A32008L0115.
222 Rapporto sui centri di identificazione ed espulsione in italia, commissione straordinaria per la tutela e la promozione dei diritti umani, rapporto sui centri di identificazione ed espulsione - gennaio 2017.

adding that the deprivation of liberty of the three Tunisian boys was contrary to the general principle of legal security and did not protect the individuals from arbitrary decisions.

There have been many criticisms regarding the constitutionality and the compatibility with European norms regarding the treatment of asylum seekers such as from the point of view of suitable places, the deprivation of personal freedoms of the individual and the inhuman conditions to which migrants are subjected during the period of arbitrary detention. Moreover, the CPR are against the principle of non-refoulement. [223]

3.3.2. Detention in the HOTSPOT

One of the essential operational measures proposed in the Dublin III Agenda, was the adoption of a new "system based on hotspots" (hotspot approach) for managing the massive influx of migrants. This system was conceived as an immediate response to a severe migration crisis and had to be implemented in changing and complicated circumstances. The "crisis point" (hotspot) was defined as "an area on the external border of the EU affected by disproportionate migratory pressure". Most migrants enter the EU at these hotspots and, according to the Commission, this is where the EU must provide operational assistance to ensure that incoming migrants are registered and routed, as appropriate, to relevant national procedures of follow up.

Initially, in the apparent attempt to reduce the pressure on border states such as Italy, a hotspot approach was combined with a scheme that provides for the relocation of asylum seekers to other EU member states. However, this solidarity aspect of the hotspot approach has proved largely illusory: so far, 1200 people have been relocated from Italy compared to 40,000 promises, compared to over 150,000 new arrivals by sea this year. Italian authorities are at the forefront of efforts to rescue people along the dangerous Mediterranean route.

During a migrant emergency, in 2016, Amnesty International had already denounced the difficult conditions in which migrants lived in hotspots. The report shows how the so-called "hotspot approach", promoted by the European Union to identify migrants

223 From “The principle of non-refoulement under international human rights law” OHCHR documents.
https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf.

and refugees upon arrival, not only compromised their right to seek asylum, but also fuelled horrific episodes of violence, with the use of beatings, electroshock and sexual humiliation. Amnesty researcher Matteo de Bellis says that "EU leaders have pushed the Italian authorities to the limit and beyond the limit of what is legal. The result is that traumatized people, who arrive in Italy after harrowing journeys, are subjected to misleading definitions of their status and in some cases to appalling abuses by the police, as well as to illegal expulsions. "

Amnesty International Interview more than 1000 migrants, in the report there are various examples; a 25-year-old Eritrean woman said she was repeatedly slapped on the face by a policeman until she agreed to let her fingerprints go. "Others say they saw themselves denied food and water. In one case medical assistance was denied to a pregnant woman who had already provided fingerprints at another hotspot. In some cases, preventive detentions exceed 48 hours. The Amnesty report recalls that Italian law does not provide for coercive actions to obtain physical samples from individuals who do not cooperate. [224]

The D.L. 113/18 with art. 6 of the Legislative Decree 142/2015, introduces the paragraph 3 bis. It establishes that migrants can be held for the time strictly necessary, and in any case for a period not exceeding 30 days, in select rooms at the facilities indicated in art. 10b, co. 1, legislative decree 286/98 the "crisis points", [225]i.e. the hotspots which are set up in first aid and reception centres or in those that are set up in primary aid centres and reception or the opening reception Government Centres referred to in art. 9, Legislative Decree 142/2015, but perhaps also in the Police Headquarters where the identification procedures of the persons whose expulsion for irregular stay take place.

3.4. The CPR and Returners

The abolition of humanitarian protection and the small number of cases in which a residence permit can be issued will result in an increasing number of migrants

224 Hotspot italy: how eu's flagship approach leads to violations of refugee and migrant right, Amnesty International, 2016 , https://www.amnesty.org/en/documents/eur30/5004/2016/en/.

225Article. 10 ter of Legislative Decree 286/98 was inserted with Legislative Decree CD. "Minniti-Orlando "converted into Law 46/2017. It is expected that the foreigner traced during the irregular crossing of the internal or external border, or connected in the territory national following rescue operations at sea (therefore any foreigner, requested by the fact that he is or not an asylum seeker) is conducted for the needs of first aid and assistance (where necessary) and for fingerprinting operations even for the purposes of the EURODAC regulation, at the "Points of crisis" set up within the structures referred to in Law 563/95 (Italian law of Puglia) and at the first reception centers.

detained in the CPR. The question concerning the extension of the maximum duration of detention of foreign citizens awaiting forced repatriation is also controversial. Italy has bilateral repatriation agreements exclusively with four countries (Nigeria, Tunisia, Morocco and Egypt), Nigeria and Tunisia integrated functioning, yet the danger is that imprisonment of all I internal CPR may not achieve the purpose for which it is intended.

In the second chapter, the general idea of the ombudsman for prisoners Italy has been underlined. As for the Court of Cassation judgment on 2014, Mauro Palma sees the provision for the creation on the CPR as a general violation to human rights and freedoms. Wanting to see the provision in a positive way, the Ombudsman hopes that is that thanks to the law, the time of detention will remain at the average, and not increase. Indeed, among the major problems reported by the Guarantor are the poor material and hygienic conditions of the structures, the absence of activity, the failure to open the centre to organized civil society, the lack of transparency starting from the lack of a system for recording critical events, the lack of consideration of the different legal positions of the persons and of the different needs, the difficulty in accessing the information and the absence of a complaints procedure to assert violations of rights. This is the situation due to the absence of a reference regulation that establishes, as happens in the example of criminal detention, the rights that people withheld can enjoy.

As pointed out by Palma in the annual report, it is also important to evaluate the "suitable location" as decreed. These “suitable locations” indicate places of detention outside the CPR, thinking to the fact that the places of administrative detention concern persons not subject to a penal measure. Therefore, if one intends to place the structures and premises suitable for the security rooms in use by the Police Forces in the event of arrest or detention, it is necessary to reiterate that the valid European and international standards for the security chambers, [226]must apply all the more for suitable premises, also taking into account the obligation of the State to mitigate the loss of freedom as much as possible, ensuring the environment and the conditions of detention.

226 Camere di sicurezza, Report Annuale del Garante dei Detenuti 2019. http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/00059ffe970d21856c9d52871fb31fe7.pdf.

Furthermore, the assignment of CPR management tasks to private parties, does not exonerate, as has been mentioned, the State from its responsibilities, which are not in any way 'diluted' by the circumstance of not having the direct management of such Centres. As specified in the Guiding Principles on 'Business and Human Rights' of the UN Human Rights Council: “States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights”[227]

3.5. The elimination of the SPRAR and the return to the CAS

On the official SPRAR site the SPRAR is describe as “the protection system for asylum seekers and refugees (SPRAR) is constituted by the network of local authorities for the realization of integrated reception projects”. [228]In the same way, "integrated reception" is also considered, besides board and lodging, even information, accompaniment, assistance and orientation measures, through the construction of individual socio-economic integration paths. Although cut by the new immigration decrease, the SOLAR system has always been considered a "flagship" for Italy The SPRAR, activated by the network of local authorities in collaboration with the reality of the third sector, have joined the National Fund for asylum policies and services (a difference of first reception systems like CAS[229] and CARA[230] who are privately managed but built with public money). Today the SPRAR hosts 23,000 refugees and asylum seekers in 400 municipalities. Despite their sustainable nature, made up of small numbers of refugees and well-established integration models, they are the least integrated reception centres. The numbers were however comfortingly on the increase: with a capacity at the national level of 35869 places (of which 3488 for

227Principi guida su imprese e diritti umani, http://www.iriss.cnr.it/irisswp/wp-content/uploads/2016/09/principi-guida-su-imprese-e-diritti-umani-con-commentario.pdf.
228 SPRAR description https://www.sprar.it/lo-sprar.
229 According to law 142/2015, if the availability of places within the first and / or second reception facilities are exhausted, extraordinary measures are taken by the Prefect, in temporary structures and limited to the time strictly necessary for the transfer of the applicant to the first or second reception facilities.
230 Governative centres of the first reception https://www.openpolis.it/parole/che-cosa-sono-i-cas-lo-sprar-e-gli-hotspot/. Moreover to understand the different tools of the Italian asylum process see: SHORT OVERVIEW OF THE ITALIAN RECEPTION SYSTEM https://www.asylumineurope.org/reports/country/italy/reception-conditions/short-overview-italian-reception-system.

unaccompanied minors), according to the Idos report, [231]in 2016 already SPRAR allowed the economic autonomy for 41% of asylum seekers present on Italian soil.

The security decree I creates a new type of reception system in which the SPRAR is eliminated and there is the birth of another system “the SPIROMI” for minors and international protection holders. This means that an enormous amount of the other protection holders is cut out from the system and they are considered outside the reception procedure. The rest of the people under other forms of protection are send to the CAS - the Centre for extraordinary reception. The CAS were imagined to be used as substitute for the lack of places in the ordinary reception structures or the services set up by the local authorities, in the case of large and close arrivals of applicants, but with the security decree they become the standard structures. These structures are identified by the prefectures, in agreement with cooperatives, associations and hotel structures, according to the procedures for awarding public contracts, having heard the local authority in whose territory the structure is located. The stay should be limited to the time strictly necessary for the transfer of the applicant to the second reception facilities.

In the CAS, the beneficiaries are accepted until the end of their procedure for international evaluation. The timing of this procedure is exceptionally long in Italy (even reaching two years in extreme cases). This is due to a "supply chain of asylum application" (police immigration offices, members of the Territorial Commissions for the evaluation of applications for international protection, secretariats of the same for the production and transmission of the minutes and the documents, courts for the appeal of the denied) that has never been overall sufficiently enhanced and adequate in a system logic;

Guests often end the reception period without the necessary tools to continue their migration journey under the banner of autonomy, dignity and legality and, given the number of places of the second reception not appropriate to that of the first. The Prefectures may be forced to grant extensions. There is, therefore, a direct relationship between the quality of the reception that develops and the times of the beneficiaries who benefit from it.

231 Summary at https://www.dossierimmigrazione.it/.

The series of interventions and the tools taught during the guests' stay in the centre depend on the way in which funds are used, generally prefectures' fund is very different from each other, found in the "famous" € 26.00 a national average. Normally, such a low level of income can only lower the quality level (due to the necessary cut of some services for integration) and to stimulate large centres (which under the economies of scale can reach economic sustainability).

Moreover, as is cited in the report, the dimensions of the CAS can generate a different social income also in the neighbours. The size of the reception facilities is one of the first qualitative parameters on which the path of inclusion of the accepted person may depend. If it is true that "we are also the place in of which we live" (in both a physical and relational sense), a small and quality reception centre continues a positive path of growth for the person received. On the contrary, overcrowded structures can affect a negative path of the interaction of asylum seekers with Italy. Small collective centres, but also widespread hospitality in the apartments, are therefore fundamental elements.

In addition, the quality of the first reception will be the basis for the SPRAR (second reception system). The good integration systems that starts in the first reception will be a good start to dwarf the second reception time. Indeed, The good effects of the second reception (SPRAR) are connected to the quality of the first: the more the C.A.S. become places where to start integration processes, the more SPRAR can reduce the reception times necessary for concrete, decisive and definitive integration in Italy. On the contrary, if the C.A.S. is imagined as little places of containment and expectation. With a logic of assistance (providing food, lodging and necessities) and without the proposal of services for integration, a delay of the whole national system and a severe slowing down of the times of reception that comes at the expense of refugees and, therefore, of public accounts.

3.5.1 The abolition of the SPRAR System

On the official SPRAR site, the SPRAR: " the protection system for asylum seekers and refugees (SPRAR) is constituted by the network of local authorities for the realization of integrated reception projects".[232] In the same way, "integrated reception" is also considered, besides board and lodging, even information, accompaniment, assistance and orientation measures, through the construction of individual socio-economic integration paths. Although cut by the new immigration decrease, the SOLAR system has always been considered a "flagship" of Italy. The Sprar, activated by the network of local authorities in collaboration with the reality of the third sector, has joined the National Fund for asylum policies and services (a difference of first reception systems like Cas and Cara who are privately managed but built with public money). Today the SPRAR hosts 23,000 refugees and asylum seekers in 400 municipalities.

There are many interesting examples of the way in which the SPRAR system impacts on the general environment in which it was created. Even if the majority are positive, we should also consider that none of these systems are perfect. The SPRAR system works with small and voluntary numbers while on the other hand, workers highlight the problem of the bigger one. Several social workers describe the SPRAR as difficult to manage in a situation where operators and beneficiaries live in conditions in which it is difficult to construct the contours of legitimization from the events of everyday life. There are several discomforts: from building a common language between operators to that with those who work in other services. Marco Omizzolo, a researcher and sociologist, has repeatedly highlighted [233]how capable and well-prepared people are needed for optimal integration; professional figures capable of understanding the interlocutor's difficulties.

3.6. The registry entry and Citizenship

The current legislation of the security decree abrogates the law previously to Article 5bis, re writing 5.3 and 4.1 of the decree 142/2015. The new law establishes that the residence permit for asylum request does not allow the registration of personal data but is an identification document. The reference to the reception centre as a place of

232 https://www.sprar.it/lo-sprar.
233 Interview to Marco Omizzolo at Amnesty International headquarter in Rome, 29/05/2019 on fold on my laptop .

permanent residence for registration is eliminated. Access to services is recognized at the place of residence.

With the order of May 2, 2019, the Court of Bologna reconstructs the legislation about registration, highlighting that it takes place on the basis not of a title but of the declaration, which must be verified by the offices in charge of the foreign cities.

In compliance with the rules about stay in Italy. The order of the Court of Bologna of 2 May 2019 follows that of the Court of Florence of 18 March 2019, offering an interpretation of the provision introduced by the Legislative Decree 113/2018, according to which the residence permit for asylum request does not constitute a title for the registry registration. At the same time, the judges also examine the specific provisions applicable to foreign citizens who require registration and identifies that the art. 6, co. 7 TU immigration Legislative Decree 286/98 provides for equal treatment with Italian citizens with the only difference that the foreign citizen must prove the regularity of the stay.

The interpretation of the rules concerning the registration of asylum seekers is also consistent with the principle of non-discrimination for everyone, as expressed under article 14 of the ECHR. It guarantees the effective exercise of the inviolable rights (Article 2 of the Constitution) and the social rights that also derive from the registration in the registry office.

In other words, the Mayors of all the Municipalities can and must apply the principles, without fear of incurring censorship or obligatory, since it is not a question of disobeying the law but of merely using it. It should be considered, as regards the strict compliance with the law, as well observed by the Bolognese and Florentine courts, including a public interest, not only to follow an unnecessary judicial dispute (inevitable in the face of inactivity or refusal to register personal data) and therefore an expenditure of public resources, but to ensure that local authorities have a strength of the quantity and quality of their local community.

Regarding the citizenship new norms, it seems affected by several aspects of illegality. Art 14 and ECtHR. Moreover, concerning the automatism of the dissolution

of the citizenship, The European Court of Human rights has the "Engel criteria"[234] for administrative sanctions having a criminal content.

Antonello Ciervo points out that the law introduces the hypothesis of automatic revocation of citizenship only with respect to those who have acquired it (*iure soli*) only if they are in contrast with Article 22 of the Constitution[235]. In fact, for Italian citizens (*iure sanguinis*), citizenship can never be revoked; while other citizens will be able to see it revoked if they commit certain types of crime. Furthermore, the automatic revocation of the citizenship can be due to "political reason", but it is a violation of art 22 of the Italian constitution. The Constitutional Court already expresses the compliance with article 22 on two different occasions. Firstly, with judgment n 87 1975, for the case of an Italian woman that married a non-Italian man. In this case the automatic loss of the Italian citizenship was due to the automatically acquisition of her husband's nationality (citizenship).[236] Another case concerning the automatically loss of citizenship was the judgment in 30 of 1983 [237]where the Court established the illegality of the law 555/1912 where the descent could be Italian, in cases where lineage was coming from the male side.

Antonello Ciervo in his paper on the modification of citizenship status, "*Le modifiche in materia di cittadidanza*"[238] shows how art. 14 of the law decree 118/2018 contradicts art. 8 of the Convention on the reduction of statelessness[239]. Indeed, the art 8 of the cited Convention accepts the loss of citizenship for 2 reasons:

that, inconsistently with his duty of loyalty to the Contracting State, the person has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or has conducted himself in a manner seriously prejudicial to the vital interests of the State; or that the person has taken an oath, or made a formal declaration, of

234 The Engel Criteria Are Criteria Created By The Court After The Case Of Engel And Others V.The Netherlands. They Are: The First Criterion Is The Legal Classification Of The Offence Under National Law, The Second Is The Very Nature Of The Offence And The Third Is The Degree Of Severity Of The Penalty That The Person Concerned Risks Incurring.
235Art. 22 Of The Italian Constition: No-One May Be Deprived Of His Legal Capacity, Citizenship, Or Name For Political Reasons.
236 Sentenza N. 87 Anno 1975, Corte Costituzionale, Http://Www.Giurcost.Org/Decisioni/1975/0087s-75.Html
237 *Ibidem*.
238 Antonello Ciervo, "Le Modifiche In Materia Di Cittadindanza", Il Decreto Salvini, 2018 P. 187 .
239 Convention On The Reduction Of Statelessness, 1961, Https://Www.Unhcr.Org/Ibelong/Wp-Content/Uploads/1961-Convention-On-The-Reduction-Of-Statelessness_Eng.Pdf. Italy Ratified The Convention In 2015 With Law N 162/2015.

allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

Conclusion

From the reaction of the second chapter and the legal framework of the first chapter, the third chapter gives us the chance to analyse the security decree I and security decree II mixing the international and national human rights law to understand the reaction of the different actors. It seems necessary to underline the nature of the norms created by the decree that need to follow the Italian obligation in accordance to international human rights law.

The abolition of the humanitarian protection has a different meaning to the the new form of protection that do not respond completely to the same obligation of the Italian system according to the previous norms of the 5 and 6 Consolidated Immigration Act . Moreover, even if with the given independence to the national state, the same figure of the humanitarian protection is part of the Fundamental Rights of European Union and part of the right to asylum of the Declaration on Territorial Asylum adopted by the General Assembly of the United Nation. In addition, the same special protection that must substitute the humanitarian protection are, according to the critics from lawyers and CSOs, not helpful in the long-term period as it was for the humanitarian protection.

Another point is the consequences of art 1 and 2 of the security decree II and the way in which NGOs have been the target of this new politics that, as we will see in the fourth chapter, will bring to the decision to close the port for individual cases and to tackle the NGOs in helping human trafficking. Indeed, the appeal and the pretrial from the Proactiva Open Arms case shows the affirmation of the principle of non-refoulement over the territorial sovereignty. In opposition to the legislator, the judge considers Libya as a non-safe place.

Moreover, the civil registration is fair, as the judgment from the ordinary judge in Bologna and in Florence. Indeed, the civil registration is necessary for several reasons that have not been considered by the legislator. In fact, at the street level, the gap between the knowledge from the municipalities and the knowledge from the offices, banks and sometimes sanitary systems created several issues solved by the explanation of the new norms on the field.

Concerning the reception system, the reintroduction in the “short term” of the Hotspot and the additional time in the CPR cannot be considered a direct violation because the legislator has chosen the maximum timing decided by the European condition. A different situation is the one that regards the main aspects of the reception system in terms of help and treatment. Research on CPR and Hotspot showed a world of income but without services for the hosted migrants. The situation does not change in the long term with the implementation of the CAS, and the expulsion of the migrants from the SPRAR system.

IV Chapter-From theory to reality. Consequences of the securities decrees on the field.

This chapter aims to analyse the consequences of the security decree on the field in order to understand the effect and effectiveness of the laws. Considering what has been previously analysed, it is evident that the security decree presents some irregularities in terms of unconstitutionality and violations of international obligations. Despite the evidence, in several interview, the ministry of the Interior stressed that the decree has been created to give a holistic approach to the immigration policy already in use[240]. Truly, it has created several problems for Prefectures and Police Headquarters that from one day to another saw rule changed in terms of civil registration and renovation of visa and permits to stay in Italy. Another critical point has been the translation of the limitation to the vessels to pass into Italian territorial seas subsequently translated in the decision to close the port. Furthermore, the intent to reduce public insecurity improving the duration of stay in the Hotspot centre and detention centre for repatriation (CPR) caused a direct violation of human rights to all the migrants forced to live in unaccommodating situations without dignity. The riot in Lampedusa and in several CPRs demonstrates how the ideal forced reclusion can bring people to act foolishly.

Inside the borders, the abolition of civil registration showed two different realities. The first one is the way in which even the "street level bureaucracy" can be infused with political choices. [241]Concerning the public security; the return to the CAS and the creation of SPIRIOMI gave the idea of a basic distinction between migrants of first and second class, the same distinction that seems evident in the acquisition of citizenship for migrants and the way in which penal judgment is dealt with[242]. Moreover, the reduction of the reception system made it hard for the small tenders to be able to participate. Creating an affordable tender for the big centres[243], which in most of the cases is so, there is more interest in the enrichment than in the

240 Matteo Salvini sul decreto sicurezza - Porta a porta 07/11/2018 https://www.youtube.com/watch?v=YVPh3vOO2Tc.
241 Matteo Bassoli, highlights the intervention of the street level bureaucracy and the way in which sometimes the bureaucracy machine did not reply in the correct way.- From Matteo Bassoli Interview, on fold of my laptop 29/09/2019.
242 Marta Nalin, assessore all'inclusione del comune di Padova, "Decreto sicurezza, un anno dopo£ Welcome Festival, October 2019.
243 From InMigrazione Dossier, "la (mala)accoglienza" page 3.

implementation of a good integration system, indirectly pushing the migrants to be in contact with illegal crime organisations. Finally, some forms of real integration and inclusion continue to give hope: substituting the hospitality by SPRAR with other shapes and forms depending on the origin of the host but with the same aim to help and include people before any borders.

4.1. The external border of Italy

In the last months the "agreement with Libya" and the "third safe countries" have been one of the most important topics on the political agenda. Against any proof, the previous ministry of the Interior continues to claim that Libya and Tunisia can be considered "safe port" and that the approach of the CSOs helping and rescuing people at the sea is just a way to help trafficking humans. The celebration of the reduced disembarkations in Italy with the famous slogan "less landing less dead" [244]clashes with the report from several IMO, UNHCR and INGOs on the horrible condition in Libya and Tunisia. Indeed, as INSPI research shows[245].

The mortality rate along the central Mediterranean route has always been very high[246]: around 2 percent, which corresponds to the death of a person every fifty who undertakes the crossing. "Before 2017, four thousand people died each year. There was a first drop in the number of deaths at sea (which reached around 1,100) when departures from Libya were reduced, following the Minniti-Gentiloni government's agreements with the Tripoli government. But the danger of the route has not decreased, on the contrary it has always remained around 2 per cent. Furthermore, there is no univocal relationship between departures and the number of deaths. "The risk of deaths at sea has risen to 6 percent with closed port policies: this figure is important, because it denies those who say that if departures decrease, the dead decrease".[247]

The externalisation of the border continue to be applied by Matteo Salvini[248], brought in practical terms two different actions: the attempt to close the port and the

244 Ministry of the Interior Salvini, on Diciotti case. https://www.youtube.com/watch?v=Y7yrSgOvAf0.
245 Factchecking on migration, INSPIONLINE, https://www.ispionline.it/it/pubblicazione/fact-checking-migrazioni-2018-20415.
246 https://www.internazionale.it/bloc-notes/annalisa-camilli/2019/10/09/migranti-tunisia-morti.
247 *Ibid*, Matteo Villa, Factchecking on migration, Inspionlie.
248 History of the agreement between Libya and Italy at .https://www.osservatoriodiritti.it/2019/02/08/accordo-italia-libia-migranti/ and https://www.operalapira.it/libia-3/.

increasing amount of time of migrants at the borders of Italy before in the Hotspot and later in the CPR in case the thirty day period was not enough in order to recognise the migrant's identity or in case the migrant is intended to be returned to their country of origin. On this second aspect several agreements with the third countries have been made in order to let people come back in a voluntary or forced way, veritably now in Egypt and Nigeria 'agreements are ongoing, while the others presented challenges, also since sometimes it is even harder for the country of origin to identify the person.

4.1.1. The decision to close the port: the Diciotti and the Sea Watch 3

Amnesty International in its "report yearbook" described the 2018 as "the Diciotti Year[249]". On 16th August 2018, due to compliance with national and international laws requiring assistance to anyone who is in difficulty at sea, the "Ubaldo Diciotti CP 941" vessel of the Italian Coast Guard rescued 190 migrants. For five days the boat remained off the coast of Lampedusa: only 13 migrants were permitted to land because of serious health conditions. [250]

On August 20th, the Diciotti ship headed towards the port of Catania at the disposal of Transport Minister Danilo Toninelli but the Interior Ministry denied the authorization for the landing, leaving 177 migrants aboard the ship. According to Interior Minister Matteo Salvini, the government is waiting for other European states to undertake considering their request for international protection. On 22 August, 29 unaccompanied minors were released. Only on the night between the 25th and 26th August, the landing of the 148 people still aboard the Diciotti was authorized, which were accepted by the Italian Bishops' Conference, Albania and Ireland. Then Matteo Salvini received a guarantee notice, is under investigation for kidnapping, illegal arrest and abuse of office by the MP of Agrigento, Luigi Patronaggio. The file was then sent to the prosecutor's office led by Carmelo Zuccaro who, on November 1st, asked for filing for the events that occurred in the port of the Etna capital. The Court of Ministers of Catania rejected the request for dismissal and on 24 January 2019 asked the Senate for authorization to proceed against Salvini.

249 Elisa De Pieri e Matteo De Bellis, Rights Today: il '18, l'anno della Diciotti, Amnesty International,10 December 2018 .
https://www.amnesty.it/rights-today-18-lanno-della-diciotti/ And https:/ /www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf.
250 Information on the Diciotti Cases at https://www.repubblica.it/argomenti/nave_diciotti.

The judges of Catania motivated the decision with these words: "It is the conviction of this court that the conduct under examination has led to multiple violations of international and national norms, thus only identifying that undoubted illegitimacy integrating the hypothesized crime. Aggravated kidnapping provided for in article 605 of the penal code (paragraphs I, II n.2 and III), because "the obligation to save life at sea is a precise duty of the States and prevails over all the rules aimed at combating irregular immigration".[251]

The request sent to the Senate points out that even the Constitutional Court itself, in different circumstances, has been able to highlight that the discretion in the management of migratory flows meets clear limits, from the point of view of compliance with the Constitution and the balancing of interests of constitutional importance, in the reasonableness, in the norms of international treaties that bind the Contracting States and, above all, in the inviolable right of personal freedom (article 13 of the Constitution), since it is an asset that cannot be attenuated with respect to foreigners in view of the protection of other goods constitutionally protected .

The inviolability of the right to personal freedom is also recognized by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. For these motivational reasons "the hypothetical excuse cannot be discerned the court concludes when the minister's decision constituted an explicit violation of the international conventions regarding the methods of reception of migrants rescued at sea, and at the same time, there were no public order profiles of pre-eminent interest and such as to justify the continued permanence of migrants on board the Diciotti. On 19 February, the majority of the Immunity Committee voted against the authorization to proceed against Salvini. On March 20 the Senate rejected the authorization request pursuant to art. 96 of the Constitution with 237 votes in favour and 61 against: Minister Salvini is safe.

Another well-known case is the Sea Watch 3 case. A few days after the publication of Security decree II, Carola Rakete and the crew of the Sea Watch 3 saved people at the sea and then brought them to the first POS of Italy. While the Sea Watch 3 was arriving near the Lampedusa coast, the Coast Guard told the crew that the vessels

251 Domanda di Nave Diciotti: la domanda di autorizzazione a procedere in giudizio presentata nei confronti del Ministro Salvini
http://www.giurisprudenzapenale.com/2019/01/24/nave-diciotti-la-domanda-di-autorizzazione-a-procedere-in-giudizio-presentata-nei-confronti-del-ministro-salvini/.

were not authorized to enter Italian territorial seas. For the state of necessity and urgency, the Captain decided to defy the Italian block and enter in the Italian sea.

"I have decided to enter the port of Lampedusa. I know what I'm risking, but the 42 rescued are exhausted. I'm bringing them to safety now," [252]the ship's captain said. According to security decree II, the Italian Interior Ministry had the power to deny access to territorial waters to vessels that it considers are a risk to security or public order and fine them. The previous ministry of the Interior, Matteo Salvini, stressed that in case the Captain was entering in the Italian territorial water she would face criminal charges. As already explained in the second chapter, the ECHR expressed on the case when the Sea Watch 3 appealed for the interim measure.

Carola Rakete decided to enter the port of Lampedusa to bring the 42 lives to safety. On her arrival she was arrested and brought under house arrest. The arrest was, however, not long enough, the judge of the preliminary investigations of Agrigento, Alessandra Vella, rejected all the requests of the prosecutor against the commander of the Sea Watch that violated the prohibition of disembarking in Lampedusa, did not stop at the alt of the Guard of Finance and docked hitting the patrol boat that had come in to the dock to prevent the unauthorized arrival of the ship. The investigating judge overturned the prosecutor's line. He did not validate the arrest. For the magistrate, the crime of resistance to the public official and violence against a warship cannot be identified because there is an "exonerating" feature: Carola acted for the "fulfilment of a duty".

Apart from the general rhetoric, the port did not close. The official denials arrived from the presidents of the Italian port authorities to the contrary of what the media and the Minister of the Interior has continued to say for months. In addition, for the Italian law, the Ministry of Transportation and Infrastructure are the ones able to decide whether the port can be closed or not. Article 83 of the Navigation Code established that the Minister of Transport, not the Interior Minister, may "restrict or prohibit the transit or parking of merchant ships in the territorial sea for reasons of public order, navigation safety and, in concert with the Minister of the Environment, for reasons of protection of the marine environment". The Association for Legal

252 Alessandra Ziniti, “Sea-Watch forza il blocco e si avvicina al porto. Di nuovo l'alt della Guardia di finanza a un miglio dalla costa”, La Repubblica, 27 June 2019.
https://www.repubblica.it/cronaca/2019/06/27/news/migranti-229740237/ and Sea-Watch and Cpt. Rackete Enforce Human Rights Where EU Fails .

Studies on Immigration (ASGI) carried out six civic access actions to verify if any closure measures had ever been taken. It means that no administrative act emerged. "So far there is no legal obstacle opposable to the ships of humanitarian organizations in relation to docking on our coasts.

Based on an analysis by ISPI[253], in Conte's first Cabinet there were 25 "crises at sea", during which the boats were kept off the Italian coast for an average of nine days before reaching a solution that allowed it to dock in the port and the landing of the rescued migrants. In the first period (especially in 2018) the people saved were taken to other EU countries, particularly Malta and Spain. In 2019, on the other hand, in 80% of cases the crises ended with the landing of migrants in Italy. The Italian government has started negotiations with other EU states, asking that some of them take charge of a quota of migrants landed. In this context of "ad hoc negotiations", the negotiation has almost always been delegated to the European Commission, which after having contacted the member states notified Italy of their willingness to accept relief.

What was the outcome of these negotiations? The boats for which Italy has sparked a crisis have finally landed 1,346 people in Italy, obtaining that other European countries take charge of 593 migrants. For every ten people who landed in Italy following a crisis at sea, Italy managed to relocate just over four. Being in most cases autonomous arrivals with small boats, ISPI analysis shows Italy has not been able to "close the ports" and keep them off and has therefore always allowed the landing without negotiating with the other European partners. If we compare the number of landings with the "crises at sea" we can therefore say that Italy has contributed to a crisis and asked for relocation for only for 9% of migrants landed, and that it managed to wrest "European solidarity" (i.e. promises of relocation) for only 4% of the total number of landings."[254]

With regards to the arbitrary decision to close the port, the reply arrived in different ways. If the fight between political parties continues, mediatic level NGO's and CSOs

253 Umberto de Giovanelli, Intervista al Presidente ISPI Giampiero Massolo: "Il mondo rischia una nuova crisi", ISPI online,30 september 2019 https://www.ispionline.it/it/pubblicazione/giampiero-massolo-il-mondo-rischia-una-nuova-crisi-24056 and Matteo Villa, Sbarchi in Italia: il costo delle politiche di deterrenza, ISPIonline, 01 ottobre 2018. https://www.ispionline.it/it/pubblicazione/sbarchi-italia-il-costo-delle-politiche-di-deterrenza-21326

254 *Ibidem.*

have decide to give strong and precise answers. People Before the Borders, IWelcome and IoAccolgo are not the only example. Since the draft of the security decree I the *Tavolo d'asilo*[255] have expressed their discomfort with the Italian situation. Concerning the parliamentary meeting (*audizione parlamentare*) with the civil society organisation, a vigorous reaction from the Table took place when the Parliament excluded the Sea Watch from the parliamentary meeting. In fact, in solidarity with Sea Watch, the NGOs group decided to desert.

4.1.2. The Detention in the Hotspot and CPR

Between 2018 and 2019, Coalizione Italiana per le Libertà e i Diritti civili (CILD), Associazione Studi Giuridici sull'Immigrazione (ASGI) and IndieWatch started to observe the situation of CPR and Hotspot thanks to the project "inLimine" [256] joined later by ActionAid Italy. In March 2018, under the law 132/18 the coalition reported the inhumane conditions in which the migrants lived in the hotspot of Lampedusa. These violations were reported to the Procurator of Agrigento, to the Prefecture of Agrigento, to the ASL of Palermo and to the Ombudsman; persons were deprived of personal liberty in order to call the need to activate their duty of control. During the stay in the Lampedusa hotspot, it was verified that it was materially made impossible to submit the request for international protection. One of the many violations of rights that occurred in this structure that led CILD and ASGI lawyers to present some urgent requests to the European Court of Human Rights[257], which, in considering the appeals admissible, put some questions to the Italian Government on the matter of complaints submitted. In recent days, two ordinary appeals have been presented and others will follow in the coming days.

Following the closure of the hotspot, the migrants were transferred to the CPR with a deferred rejection order. An illegal practice justified by the provisions issued by the Quaestor of Agrigento who considered them socially dangerous based on the simple

255 The group is formed by : A Buon Diritto, ACLI, ActionAid, Amnesty International Italia, ARCI, ASGI, Centro Astalli, CIR,, CNCA, Comunità di S.Egidio, Comunità Papa Giovanni XXIII, Emergency ONG, Focus – Casa dei Diritti Sociali, Intersos, Legambiente, Mediterranean Hope (Programma Rifugiati e Migranti della FCEI), Medecins du Monde – Missione Italia, Oxfam, Senza Confine gruppo Abele, Libera, Mediterranea Saving Humans, Open Arms, Open Arms Italia ODV, Sea-Watch.

256 Inlimine project at https://www.asgi.it/in-limine/.

257 Hotspot e Centri di Permanenza per i Rimpatri. Violazioni dei diritti umani e dei diritti di difesa dei migranti, Conferenza Stampa Inlimine, 10 aprile 2019 https://cild.eu/wp-content/uploads/2018/04/Dossier-Lampedusa.pdf.

origin from the hotspot. Concerning the migrants transferred to the CPR of Turin, the accusation of social dangerousness has fallen giving them the chance to live i the detention centre while the opposite fate has happened to those taken to the CPR of Potenza where there have been wide violations of the rights of defence.

Other evidence of the inhumane conditions came from the same guests of CPR. The CPR of Turin, on the 6th August last year, was damaged by arson. [258]Some of the people imprisoned in the CPR have risen on the rooves as a protest against the conditions in which they were forced to live. Two months later, however, several housing units were destroyed, set on fire by Maghreb citizens detained for over a month and a half in the centre. "It is a powder keg, and the lack of personnel does not help" was the comment of the secretary of SIAP (Italian union belonging to the police), Pietro di Lorenzo.

Important aspect not taken into consideration by the legislator is the psychological damage to the people inside the hotspot and CPR. The secure approach towards human rights make migrants victims and enemies of the state without giving them any help in order to bypass the Libyan trauma. There are several cases reported by the InLimine project of self-harm or, in the worst cases suicide. [259]

4.2. Inside the border of Italy

Internally, the changes that the legislator brought to the immigration policy are in practical terms: the abolition of humanitarian protection, the elimination of civil registration and a more challenging path for the citizenship, the closure of the SPRAR system and the passage to the SPIRIOMI. Even if on the legislative level the substitution could not seem very hard to bring in practice, the passage from the theory to the practice sometimes is harder than expected, like in this case.

The new norms have underlined a communicative difficulty that did not immediately help the passage from the old practice to the new one. The abolition of the humanitarian protection and the elimination of the civil registration needed a deeper explanation to the norm by the report from the Senate in which it was clarified that for

258 https://ilmanifesto.it/la-denuncia-di-un-ragazzo-detenuto-nel-cpr-di-corso-brunelleschi-a-torino-la-situazione-e-molto-peggio-di-quello-che-credete/.

259According to the testimonies gathered, often the guests of the center, taken by desperation, also because of the traumas suffered, perpetrated acts of serious self-harm or tried to rebel against the continuous abuses suffered. According to the testimonies gathered, the police forces present in the center responded violently with arbitrary searches insults and threats.

the first issue after the humanitarian protection the holder can see their status modified to special protection, and that the elimination of the civil registration will not cause any loss to the migrants in terms of rights. Despite the clarification, it brought confusion at bureaucratic level and not only that; if for the humanitarian protection holder, the question of 'what next' after that the permit expires regards municipalities for the civil registration, the daily life is to be a theatre of questions and perplexities.

In addition, the return to the CAS and the abolition of the SPRAR has not been seen in a good way from the civil society and the NGOs working on the field. In the last year it was the SPRAR system, the small centres with professional experts, giving the right satisfactions in terms of integration and inclusion that should be the goal of all immigration policy. On the contrary the legislator approached the issue, the abolition of the humanitarian protection and the lack of provision for the future, even with the consciousness on the Italian system, legitimizing further the criticism that the migration policy are made just to close the borders and not according to human rights fundamental provisions.

4.2.1. Regarding the civil registration

As already underlined in Chapter II, the Legislative Decree establishes that the residence permit for asylum requests will not allow the registration. After the conversion of the D.L. 113/2018, which entered into force on October 5, 2018, in the Law 132/2018, the possibility of enrolment in the register of asylum seekers was precluded and, in some cases, was even prevented from holders of subsidiary protection.

For the legislator the lack of civil registration does not change the rights of the migrants that will have the same rights that they had before but without the registration to the local Questor. The security decree I links access to local services to the place of residence of the applicant: in a reception centre, if accepted, or, if not accepted, at the place of residence declared at the presentation of the application for international protection. For the CIR, [260]the need to avoid the registration of subjects in the registry office is not clear, and then making sure that they have all the benefits

260 http://www.cir-onlus.org/en/.

is troublesome[261]. Moreover, the first doubts about service delivery are also born by CIR, in fact it is thought that it will be much more difficult to access public health, to non-compulsory school etc. Marta Nalin [262]observed after different meetings and research on the city of Padua that the main problem of the norm is not the limitation of registration, even if the knowledge of people in the territory is highly important for all the municipalities, [263]but the knowledge of the different parts of the daily machine for migrants that asked the civil registration for normal actions: to open a bank account, to ask for a job and to join a sports team. In this occasion the main problem was the lack of communication between the legislator, the municipalities and the environment in contact with the migrant.

Matteo Bassoli, founder of Refugee Welcome Italy gave a different vision of the new norms. He highlighted at the way in which the "street level bureaucracy" act in the new regulations[264]. From several "reports the independence of street level bureaucracy acquires a political connotation. Usually after a request that must be a denial form prefecture in order to appeal to the judge. Indeed, several cases were closed with the non- compliance and the not reply from the Prefecture[265]". From a juridical point of view, the actions do not allow the migrant to appeal leaving him in a "unsolved" personal situation, an action that should be considered illegitimate for the Italian legal system.

After the two decrees and the consequent law, on one hand, various lawyers from ASGI and 'Avvocati di Strada' decided to help refugees and asylum seekers in their fight in order to receive the civil recognition, while on the other had, several mayors, based on the observations and in-depth examinations of various legal experts, opposed the prohibition of registering asylum seekers, assuming personal signature responsibilities, such as the Mayor Leoluca Orlando of the city of Palermo, Sergio Giordani mayor of Padova and Stefania Bonaldi from the city of Crema while others did the same after the denial decided by the judge. In March 2019, the Court of Florence ruled that asylum seekers need to be registered following an appeal for non-

261 Iscrizione anagrafica art 13, CIR, http://www.cir-onlus.org/wp-content/uploads/2018/11/Scheda-Salvini-Iscrizione-anagrafica.pdf.
262 councilor for inclusion and integration at Padua's municipality
263Interviw with Marta Nalin, on fold.
264 Interview to Matteo Bassoli, Onfold on my laptop.
265 *Ibidem.*

registration of an asylum seeker[266]. In addition, in order to sensitize more mayors and municipalities to the topic, the melting pot project together with the campaign " LasciateCientrare" is trying to convince different mayors to register asylum seekers. [267] The initiative aims to ask the mayors to take a position on the question of the right to civil registration, follows the recent judgment supported by the lawyer Consoli di Asgi who brought the order of Court of Florence of 18th March 2019 where the non-registration prohibition was affirmed. The requirement established the registration for the mayor of Scandicci. [268]

The opposite case occurred in Trento where the Court of Trento [269]rejected the appeal lodged by an asylum seeker of Venezuelan origin against the refusal of registration by the municipality of Bolzano[270]. The Court highlighted that "there is no evidence of a violation of the principle of equality, given that the situation of the asylum seeker is certainly different from that of the citizen resident in the registry in any Italian municipality, as the two subjective legal situations cannot be subjected to substantial equalization ". The appeal was rejected with the conviction to pay the costs by the appellant in the absence of "the existence of any circumstance suitable for suggesting that an irreparable prejudice against the non-registration of the personal data exists".

In general, the most widespread interpretation between the Courts and municipal administrations is that the decree does not in any way prevent the registration of asylum seekers. And if that were the case, the rule would simply be empty. However, a question of unconstitutionality is pending at the Council because some Courts (Ancona, Milan, Ferrara) have in fact considered that the rule was clear in disposing the prohibition and that it was therefore more than "suspect" of unconstitutionality ".

4.2.2. CAS and SPRAR

Security decree I established from one part the host as the CAS for asylum seeker and SPIROIMI for international protection holder and minors. In the first chapter, the

266Tribunale di Firenze, ordinanza del 18 marzo 2019 https://www.asgi.it/wp-content/uploads/2019/05/Tribunale-di-Firenze-ordinanza-del-18-marzo-2019- est.-Carvisiglia-xxx-avv.-Consoli-c.-Comune-di-Scandicci-Fi.pdf 267https://www.lasciatecientrare.it/i-comuni-rispettino-la-normativa-liscrizione-anagrafica-va- garantita-anche-ai-richiedenti-asilo-nonostante-la-legge-salvini/.

268*Ibidem.*

269 Iscrizione all'anagrafe negata per i richiedenti asilo: Trento,L'Adige.it, 13 June 2019.

270 TRIBUNALE ORDINARIO DI TRENTO SEZIONE CIVILE, R.G. 1718/2019 https://www.dirittoimmigrazionecittadinanza.it/allegati/fascicolo-n-2-2019/umanitaria-6/418-16-trib- tn-11-6-2019/file.

passage from the amount of 35 euro for each migrant in the reception system to 26 euro for the small centres and 18 for the bigger one is explained. In the dossier "la Malaaccoglienza", [271] InMigrazione analyse the new effects on the tender. The analysis is focused precisely on the effects of the new tender specifications for calls for bids for Extraordinary Reception Centres set up by the Prefectures, which represent quantitatively over 90% of the reception that Italy guarantees for applicants for international protection. The cuts are not "horizontal", but commensurate with the number of people received in each structure and the type of reception carried out. [272] Indeed, the cut will come at the expense of a good reception system by cutting all the services that the fair structure gave in the past. All the services for integration disappear. The private individual who decides to participate in the new calls announced by the Prefectures to manage the Extraordinary Reception Centres will no longer have to worry about guaranteeing the teaching of the Italian language, the support for the preparation for the audition in the Territorial Commission for its own asylum request, the professional training or the positive management of free time.

Generally, CAS are bigger than SPAR for the original aim, to be structured where the people are going to live no longer than a couple of months before, while the State finding a different solution. Problem is that since the immigration crisis in Italy the CAS system has begun the normal standard procedure. The reason why these structures are considered normal is because the term "emergency" has become a synonym of ordinary reception. At the end of 2018 the report INMigrazione "Accoglienza straordinaria"[273] reported over 178,338 places organised throughout Italy to host asylum seekers in Extraordinary Reception Centers (CAS) from the South to the North of the country.

Defining the absolute number appears impressive, it is a capacity of the first reception of just three asylum seekers per thousand inhabitants. In absolute terms, accommodating more asylum seekers in Extraordinary Reception Centers are

271 La Nuova (Mala) Accoglienza Radiografia Del Nuovo Schema Per Gli Appalti Dei Centri Di Accoglienza Straordinaria Per I Richiedenti Asilo Https://Www.Inmigrazione.It/Userfiles/File/Documents/273_Dossier%20appalti%20accoglienza.Pdf.
272 *Ibid.* Page 3 .
273 Straordinaria Accoglienza, Dossier InMigrazione, 2018 https://www.inmigrazione.it/it/dossier/straordinaria-accoglienza.

Lombardy (27,131 places put up for tender), Campania (17,500) and Lazio (16,449); though these regions are home to only 0.3% of beneficiaries[274].

In proportion to the number of residents, Molise (3,673 places put out to tender) has instead a more significant presence of asylum seekers received in the CAS: over one for every 100 inhabitants. On average, these numbers show a different idea than the one of the “invasions” to which the public opinion is used to. On the one hand, the numbers per region are not exceptional, and on the other, in proportion to the host community, asylum seekers represent a minimal number. Although there is not an excess of funds used nor overcrowding, the CAS exist in a permanent state of emergency. Two factors mainly determine this anomaly and criticality:[275]

Firstly, in the CAS, the beneficiaries are accepted until the end of their procedure for international evaluation. The timing of these procedures are exceptionally long in Italy (even reaching two years in extreme cases). This is due to a "supply chain of asylum application" (police immigration offices, members of the Territorial Commissions for the evaluation of applications for international protection, secretariats of the same for the production and transmission of the minutes and the documents, courts for the appeal of the denied) that has never been overall sufficiently enhanced and adequate in a system logic.

Secondly, guests often end the reception period without the necessary tools to continue their migration journey under the banner of autonomy, dignity and legality and, given the number of places of the second reception not appropriate to that of the first, the Prefectures may be forced to grant extensions. There is, therefore, a direct relationship between the quality of the reception that develops and the times of the beneficiaries who benefit from it.

Moreover, as is cited in the report, the dimensions of the CAS can generate a different social income also in the neighbours. The size of the reception facilities is one of the first qualitative parameters on which the path of inclusion of the accepted person may depend. If it is true that "we are also the place in of which we live” (in both a physical and relational sense), a small and quality reception centre continues a positive path of growth for the person received. On the contrary, overcrowded structures can affect a

274 *Ibidem*. page 5
275 *Ibidem*.

negative path of the interaction of asylum seekers with Italy. Small collective centres, but also widespread hospitality in the apartments, are therefore fundamental elements.

Regarding SPRAR, despite their sustainable nature, made up of small numbers of refugees and well-established integration models, they are the least integrated reception centres. The numbers were however in comforting increase: with a capacity at the national level of 35869 places (of which 3488 for unaccompanied minors), according to the IDOS report,[276] in 2016 already SPRAR allowed the economic autonomy of 41% of asylum seekers present on Italian soil.

On different occasions, the SPAR system gave a new chance also to Italian small towns. We should also underline that differently to the CAS, the SPRAR are under the ANCI (*National Assembly of the Italian Municipalities*). Some of these cases are:

- Riace now closed after the judicial report that involved the mayor Mimmo Lucano. This village of two thousand people in the province of Reggio Calabria, first famous almost exclusively for bronze, has returned to repopulate itself thanks to the SPRAR system, which has given rise to a perfect integration between locals and foreigners who also benefited from the local economy.

- Satriano, a small town of 3,000 inhabitants in the Catanzaro area, also repopulated thanks to migrants who found work in small local shops or as local volunteers. "Satriano was dead, thanks to them he is alive again".[277]

- In Chiesanuova, a town of 200 inhabitants in the province of Turin, the arrival of children of migrants from the SPRAR avoided the closure of the elementary school. The small town count 25 foreigners from the SPRAR. [278]

- Other fascinating cases are those of Asti, where the guests of the Villa Quaglina SPRAR are dedicated to the sowing and packaging of Piedmontese corn through organic farming.

276 Statistical Dossier on Immigration, IDOS 2018 .
277 Lorenzo Totaro and Flavia Rotondi, Italian Villages Welcome Refugees to Avoid Oblivion, 1 march 2016 https://www.bloomberg.com/news/articles/2016-03-01/italian-villages-reach-out-to-refugees-as-oblivion-fear-mounts.
278 Chiesanuova,il piccolo borgo dell'accoglienza
https://www.avvenire.it/attualita/pagine/chiesanuova-il-piccolo-borgo-dell-accoglienza....

- Or in Valderice, a town of 12, 000 inhabitants in the province of Trapani, where the refugees are busy cultivating and sowing in land confiscated from the mafia thanks to the project I Sapori dell'inter-cultura. Another initiative of the SPRAR, Orti social, of the municipalities of Aidone and Villarosa in the province of Enna, is allowed to allocate fruit and vegetables to needy families, thanks to work in migrant fields.

The SIPROIMI is the System of protection for holders of international security and unaccompanied foreign minors. The number of financed projects is 877 for 35,881 posts, with 1,825 Municipalities involved and with more than 27, 000 people accepted. Social security is reserved for beneficiaries of international protection. In addition to the latter, "some categories of foreigners can still gain access; for example, "those who must be subjected to urgent or indispensable medical care, those who are victims of mistreatment, domestic violence, of grave labour exploitation, those who cannot return to their own country due to calamities or those who have carried out acts of particular civil value, as well as unaccompanied foreign minors for whom there are planned itineraries based on their condition".

The asylum seekers who have already started their journey in the SPRAR will continue to remain in reception until the application is rejected[279], or until the expiry of the project started by the local authorities and in which they have been included, as well as foreigners who hold a valid humanitarian permit issued on the basis of the previous legislation. Local authorities will therefore be able to bring the projects already financed to their natural expiry without being interrupted; where the asylum seeker sees his position regarding the request for international protection positively defined or obtain a residence permit for the special cases provided for by the new provisions, can stay in SIPROIMI.

Those who have already received a humanitarian permit based on the previous legislation continue to remain legitimately in the territory and remain registered in the registry office until the expiry of the title or even subsequently, being able to convert the latter into a work permit or for family reunification or, in any case, obtain one of special permission, subject to the conditions.

279 With art. 3 of the Security Decree I the humanitarian protection is abolish for people that require it after the 5th of October.

4.2.3. Between new special protection and illegality. Is it a choice?

As we saw in some cases, protection for humanitarian reasons can be transformed into other special forms of protection under law 132/18. But, in case there will be a transformation, there is a gap between the moment in which the permit expires and the moment of transformation into another permit. It is a common idea that the period in which the migrants have no protection, they will be considered illegal under Italian law, or the case in which the migrant will not receive any further protection and will become illegal and forced to return in his country.

Matteo Villa, ISPI researcher, showed the possible amount of new illegals that the decree would create, those that will enter hypothetically in the illegal trafficking and in the caporalato system according to Marco Omizzolo[280]. At the beginning of the year, Marco Villa had explained in an interview with Linkiesta [281] that the inevitable effect is to reduce the beneficiaries of the reception circuit and to increase the number of irregular immigrants.The first data explains Matteo Villa, ISPI (Institute for International Politics Studies) migration expert, says that if, on average, about 25% of migrants first enjoyed humanitarian protection, last month they passed with special permits at 3%. The arithmetic consequence is that there will be more irregular migrants. And which are the implication for the new illegals?

According to the esteems from InMigrazione, most of the new illegals will be attracted to the illegal job exploitation particularly in the agricultural, industrial and textile fields. Illegal migrants are the easiest "victims" of the human trafficking and exploitation due to their illegal status and the need, for many of them to send money back home. [282] For ISTAT, in recent years the unobserved economy has grown, The statistical institute quantifies the unobserved area of the economy at 208 billion euros coming from illegal investments.[283]

In his book "the fifth mafia" Matteo Omizzolo, explains the relationship between the caporalato near Latina and the Sikh population that worked in the field and, as he

280 Interviw with Marco Omizzolo, 2018, https://www.linkiesta.it/it/article/2019/02/01/il-decreto-sicurezza-un-regalo-alle-mafie-che-salvini-dovrebbe-combatt/40933/.
281 https://www.linkiesta.it/it/article/2019/02/01/il-decreto-sicurezza-un-regalo-alle-mafie-che-salvini-dovrebbe-combatt/40933/.
282 In a MPHs assessment report on the returnees from Saudi Arabia to Addis Abbeba, the victimsthe victims showed a strong sense of depression due to having been captured and sent back to Ethiopia. Many of them wanted to continue living in degrading conditions in order not to return home without a job. This, in many African countries, is considered more shameful than exploitation itself.,
283 https://www.istat.it/it/archivio/8095.

explained as far as migrants become illegal in our country there are more chances to enter in the caporalato system for them. “Migrants are gold” said an entrepreneur during the investigation made by the FanPage site[284]. The entrepreneur, not knowing that he was filmed by a secret camera said that migrants are an incredible source of money because they are easy to exploit but they cannot rebel due to the illegal status. The sentence can summarise the way in which migrants are perceived by Italian society or as a problem or as solution to analyse and to exploit somehow. The global context of migration (and the corresponding economic-social flows) has been fertile ground for the creation of new forms of real slavery, thanks to a virtually inexhaustible demand and supply. On the one hand, the "personal goods" are a resource that will never be lacking, on the other hand the "economic pressures" that increase this market have an ever-expanding force and power.

Also in the book, Omizzolo adds that illegal migrants will have the same fate for the simple rules of supply and demand of money that migrants need to send back home and the easiest way to earn something. Surely the Italian reception world is rich of good realities that work very hard to help migrants to be included in the Italian society, but there is no doubt that it depends on the migrants’ fortune. There are several cases in which the unlucky migrants were in CAS and CARA property of the mafia, ready to take advantage of the situation of vulnerability of the people as it happened for the CARA of Mineo. [285]

The "Sardinia Job" operation, conducted by the Guardia di Finanza in January 2018, discovered a tour of 37 companies, with the aim of providing labour in subcontracting and evading the application of labor contracts and the payment of VAT. In Ragusa, on the other hand, there have been several operations conducted over the last two years, most recently those that in May and June 2018 saw 6 Romanian caporali arrested for being involved in human trafficking for the purpose of labor exploitation in the

284 Bloody Money 7 - Il business degli esseri umani: "Migranti sono oro. Chi controlla? Solo i cittadini, https://www.youtube.com/watch?v=yUUavtwNUvg&t=421s.

285 MEDU asked for the closure of the CARA of Mineo in 2015 after some reserch on the field showed several violation of human rights happening in the CARA. According to Legislative Decree 25/2008, a CARA should host an asylum seeker for a maximum period of 35 days, time necessary for the definition of the procedure for the recognition of international protection. Nevertheless, the team during his interviews MEDU was able to verify that on average the applicant is called for the first hearing at the Territorial Commission of Catania or Syracuse no earlier than 12 months from arrival in the CARA. The CARA of Mineo example is useful to uderline the role of some politicians in the irregular activity into the reception center. In this case studies found illegal workers under a caporale and prostitution.

Sicilian countryside. Several examples of caporalato around Italy. indeed, if we think about the Caporalato as a single element there is not a lot to talk about. But the operations conducted by the Police and Judiciary Forces are bringing out a complex system of exploitation that has complex implications, interregional and international branches. They range from the business of trafficking managed in the countries of origin by the Italian and foreign mafias, to the exploitation of labor through interregional trafficking between the various harvesting campaigns, up to the management of convenient companies that "offer" services to companies in difficulty.

From a legislative point of view, the law against illegal employment was definitively approved by Parliament on October 18, 2016, and indeed represents an important goal for the labour market and workers' rights. With the entry into force of the rules contained therein, penalties for those committing this kind of crime are exacerbated; in fact, the new regulation provides for a punishment for the crime of illicit intermediation and exploitation of labour, which will be from 1 to 6 years in prison. Penalties may be increased up to 8 years if there is violence or threat and a fine of 500 to 1,000 euros for each recruited worker[286].

The main problem with the caporalato is the tacit agreement between the two or three parties that take part in the economic cycle. The owner that knows the situation of their “employees”, the “caporale” that once gained his position feel more in accordance with the Owner than the other workers, indeed his role is the hardest one. He oversees the production. If the workers do not work as the owner asked, they will be paid less and so will he. And then there is the worker. He needs the money to send back home and most of the time he does not know how to exit from the exploitation circle in which he has entered.

4.4. Hopeful and good practice

It can seem hard, at this point, to imagine a good path for inclusion and integration into the Italian system. Despite all the problems linked to the “ordinary” way of inclusion, and some excellence from the South to the North of Italy, in the last year smart solutions arrived from different sectors in order to welcome migrants and to overlap the juridical limitation of international and bilateral agreements.

286 https://www.lavoroediritti.com/leggi-e-prassi/reato-di-caporalato-testo-legge-gazzetta-ufficiale.

In the last months, the Italian reception system, saw as a protagonist the religious world that without any reservation has welcomed migrants from all over the world and opened their doors to share the message of charity and peace[287]. From the university world another reply to the strong policy undertaken by the previous cabinet has arrived, welcoming students in need from different African countries. And finally, municipalities, community and civil society have launched different platforms and ways to welcome and include migrant's through an excellent job in the reception system.

4.4.1. Humanitarian Corridors and University Corridors

"The poor who move are especially afraid of the peoples who live in well-being", said Pope Francis in his interview with "Ilsole24ore" and he also underlined that the migrants themselves respect the culture and laws of the country that welcomes them so as to jointly field a path of integration and to overcome all fears and anxieties". Pope Francis has always been outspoken on social issues. "Europe needs hope and the future" is his slogan for this hard time.[288]

In September 2015, Pope Francis invited "every parish, every religious community, every monastery, every shrine in Europe, to welcome a refugee family". The Waldensian Church and the Evangelical Communities in Italy, the Community of Sant 'Egidio and the Italian Episcopal Conference (through Caritas Italiana and Fondazione Migrantes) decided to reply to the call creating the "Humanitarian Corridos". A Legal entry channel conceived and structured with the dual objective of transferring people affected by war and conflict, and refugees in Lebanon, Ethiopia, Jordan and Turkey into Italy safely as well as demonstrating that solidarity and alternatives to dangerous travel to Europe are possible.[289]

The Humanitarian Corridors are highly welcomed by the Italian government for the legal procedure and for the ways in which the people coming in Italy are selected, known and choose because of their situation differently to the way towards other kinds of Migrants enter in Italy. Before the cabinet crisis of the August 2019, the

287 https://www.avvenire.it/attualita/pagine/cosa-fa-la-chiesa-cattolica-per-i-migranti/ https://www.linkiesta.it/it/article/2019/01/11/chiesa-valdese-progetti-finanziamenti-migranti-omosessuali/40698/.

288 https://www.ilsole24ore.com/art/lavoro-denaro-europa-migranti-intervista-papa-francesco-AEn2tdlF.

289 On the basis of the Italian experience, similar programs were subsequently promoted in France, in March 2017, for the benefit of 500 people from Lebanon, and in Belgium in November 2017 for 150 people (from Lebanon and Turkey). Similar initiatives have also been carried out by small states such as the Republic of San Marino and the Principality of Andorra.

previous Ministry of Interior welcomed[290] the refugees and one asylum seeker who had arrived at the Fiumicino Airport. “Our goal is to open the state to the one escaping from the war and close to the one that will bring war in Italy”, he said during the welcoming process.

The Human corridors won the Nansen prize 2019 by the UNHCR defined as the Nobel prize for cooperation. “From Rome we ask to open European corridors because all of you deserve a peaceful future” said the director of Sant ’Egidio Marco Impagliazzo.[291] From an operational point of view, the Ministry of Foreign Affairs and International Cooperation, through its diplomatic representatives, will issue an entry visa for the migrants arrived by humanitarian corridors.

The Ministry of the Interior ensures the completion of security checks before the visa is issued and, at the time of arrival in Italy, at the Rome Fiumicino airport, where surveys are performed. The beneficiaries are welcomed at facilities identified and financed by the private proposing associations, which also guarantee the subsequent paths of socio-cultural integration, without charges for the State. After the transfer of the beneficiaries to the reception locations, the territorial committees responsible for dealing with the applications for the recognition of international protection are involved according to the normal procedural procedure established by the current legislation for asylum seekers. The latest protocol agreement is from 2017.

In the “*Oltre-Mare*” [292] report from Caritas, the humanitarian model is described as a “unicum” in all the international protection panorama. The process is divided into different phases: 1) selection of potential candidates and then of project beneficiaries. The recognition at least before faceless on the part of UNHCR and the condition of vulnerability[293]; 2) the list of beneficiaries, confirmed by ARRA and UNHCR, is sent to the Ministry of the Interior and Foreign Affairs respectively for the respective

290 https://www.youtube.com/watch?v=z0rEoof1dD4.
291 Nasen prize 2019, Fiumicino aiport https://www.youtube.com/watch?v=QwAkNJRRJdM.
292 Oltre Mare, Caritas Amborsianae, 2018 https://download.caritasambrosiana.it/wp-content/uploads/2019/04/Oltre_il_mare_Rapporto_Corridoi_Umanitari_2019.pdf.
293 Beneficiaries of Humanitarian Corridors may be "persons deemed worthy by the UNHCR, at least prima facie, of the recognition of refugee status" pursuant to the Geneva Convention of 1951 (and its 1967 Protocol), but also potential applicants for protection however in conditions of objective vulnerability determined by their personal situation, age and health conditions.

security checks, 3) medical check-up on the basis on the IOM international procedures [294]and the requirements demanded from Italy;4) Once landed in Italy, the beneficiaries of the Humanitarian Corridors declare their willingness to apply for International Protection directly at Fiumicino airport.

Once landed in Italy the refugees go in the welcoming community, previously chosen by a match procedure during the selections. The Italian Episcopal Conference financially supports the diocesan Caritas in the path of welcoming the beneficiaries of Humanitarian Corridors, recognizing a contribution of 15 euros per day / per capita for a year of reception, with the possibility of providing financial support further to support individual integration pathways or interventions on specific vulnerabilities.[295]
The refugee is trained toward all the processes. The project, apart from the communities, also connects refugees with third persons that want to help them. *With the project "Protetto: Un rifugiato a casa mia" (*Protected: A refugee in my house). The aim is to create a connection between the refugee and the host. The host (family, community, church) will help the refugee to reach independence and autonomy.
Finally, the results (obtained so far) following the International were for most full recognition of Refugee Status (97%), an individual case was issued Humanitarian Protection.

An additional entry mechanism is the implementation of student sponsorship programs for refugees. The UNI-CO-RE program "University Corridors ". UNI-CO-RE was created to give the possibility to refugee students in Ethiopia to continue their academic career at the University of Bologna. The university corridors will be carried out on an experimental basis in Bologna in the academic years 2019/2020 and 2020/2021.

4.4.2 Municipalities: the Padua example.

Padua was trying to step from the CAS system to an entirely SPAR system seeing that the integration was working in the right direction. For this reason, in the moment in which the law changed, the municipalities started two important projects in order to continue the "good reception" as their previous aim. One of the main problems with the cut in the CAS is the teaching of language. With less funding, the migrants will

294 Migration Health Assessment e Significant Medical Conditions.
295 From "Oltre-Mare" dossier pag 48.

find it difficult be able to learn the language. The municipality has launched a protocol of good practices with the CPIA provincial adult education centre. The goal is to create a table (group) involving the CPIA and potentially universities and all the subjects that deal with language learning in the area (cooperatives, various schools and schools created by volunteers). The idea is to make a map of the tools already available on the one hand and on the other hand with the help of the CPIA and the University to support those realities (language teaching associations) to support the volunteers and give them extra teaching skills.[296]

Moreover, thanks to the Extraordinary Fund for Work, a second project is born. The aim is to transform the humanitarian permits in "*doti lavoro*" (work visa). The project involves the two most significant social associations that are Legacoop and Coop Cooperative that have identified a subject that is the consortium "Veneto Insieme" that will do project coordination work. In practice, a person will go to the counter, will be profiled, and based on their profile, he will be shown the right path; based on their skills, the migrant can start to work at one of the institutions. Companies, under incentive, would hire migrants.[297]

4.4.3. Community based reply: Refugee Welcome Italy

Refugee welcome reply to the continuous question “why not take them home with you?” with an important contribution, suggesting how you can do it in different ways. By opening your family door, sharing space and home with someone that needs it. The method is composed of three ingredients: a digital platform, a rigorous methodology and a team of trained activists, of which there are over 200 today in Italy. On the Refugees Welcome website people can register themselves as welcoming subjects, as refugees or as activists. After registration, a facilitator calls the registered person to understand his or her expectations and motivations regarding the possibility of receiving a refugee.

This is followed by a training course, useful for knowing the conditions of refugees and focused on reception and a home visit, to learn about the environment that is preparing to host it. The combination and the meetings between the refugee and the family are followed step by step with the mediation of the association: if all goes well, the cohabitation (also signed by a hospitality contract) can start, during which the

296 From the Interview with Marta Nalin, on fold on my laptop.
297 *Ibidem*.

autonomy project also starts the refugee elaborated together with Refugees Welcome, undertaking to resume studying, finding a job and attending a professional training course. The families in this path become more active and aware and are real "natural mentors" for refugees who try to fit into a new community, activating their human and professional resources.

Matteo Bassoli underlines that the aim is the social inclusion of someone, in order to destroy barriers and prejudices that are still present in the Italian society. The idea is a continuous exchange of tradition, stories and culture able to enrich one each other. The approach touches on the basic human interactions giving the chance to spread new habit between friends and family creating a new general identity in which the "they" and "we" are substituted by the "us."[298]

Conclusion

The externalisation of the borders and the decision to close the port have been justified by the previous legislator with the intent to protect Italian safety. Apart from the territorial sovereignty of the state and the violation of human rights, it seems difficult to understand how the current norms on detention and deprivation of the right to freedom from migrants can make the country safer.

Even the easiest narration, in this instance, case law, can create complications on the field. In this case the "complications" are created by the interpretation of the security decrees first and the law later. Particularly because when the interpretation does not concern the administrative or bureaucratic offices the interpretation by ordinary people that do not know the tools and the laws can be harder. In this panorama, the different reactions on the street level are more than understandable. However it seems very hard to see the intent to create a more holistic law in order to simplify the previous documentation.

"Immigrants are essential for maintaining the social security system which, without them, risks collapse", said Tito Boeri, former director at INPS. And this is somehow true under different aspects. From the agriculture to the textile industry it is known that migrants are exploited, and we need this exploitation in order to continue with our daily life and necessity in terms of food and clothes. But this exploitation put

298 Interview to Matteo Bassoli, on fold on my lapotop .

migrants already in vulnerable condition, in danger, action completely against the justice of the state.

In the last months, under these circumstances, the Solidarity Observatory launched a new campaign on Change. Org. “Those who reject refugees are trampling on the rule of law", [299]asking to the President of the Italian Republic Sergio Mattarella, “to provide the necessary measures to return a country not disfigured by forces that without the essential balancing of powers and institutional roles risk leading to the tearing of constitutional principles at the base of the rule of law and the supervision of international conventions signed by our country”.[300]

Aside from the darkest reception and integration system, Italy is full of good projects and big hearts able to give a second hope to those that lost it. Even if in a challenging environment, the chance to help people to rebuild their life away from their home should not be an exception. Learning language, improving new skills and learning something more from the host country is the only way to exceed the public security problem at the basis of the security decrees.

299 Referring to the previous ministry of the infrastructure, Danilo Toninelli, had marked as 'troublemakers' the migrants who on board the Vos Thalassa protested to the commander of the boat when they realised they were headed south towards Libya.
300 Ibidiem.

Conclusion

"There are so many ways to make walls: with concrete or with rules." The research that led to the creation of this thesis makes this sentence seem incredibly accurate and consistent. The sentence in question is by Lorenzo Trucco, President of the Association of Legal Studies on immigration, as a comment on the Bossi-Fini law. It would seem suitable even for the period in which the two decrees have been drafted. The security decrees brought, as we have seen in the previous chapters, many changes juridically and systemically. The continuous change in the issues that arise from the regulatory approach causes enormous instability even within the system itself. Every government since the 1990s has wanted to put its mark on the Italian migration policies causing slowdowns, criticisms and misinformation. The permanent imperative of the need for security is translated in vigorous enforcement inside the borders and the attempt to externalise the borders. Migration policy has always had stopping points and walls between migrants and Italian citizens. A custom that also seems to emerge from the latest decisions through a different law on citizenship that criminally punishes the migrant with the loss of Italian nationality and longer waiting times for receiving it. Or the decision to close the port to vessels that helps migrants and to accuse them of assisting traffickers.

It seems hard in this complex barricade to create a model that can break down the social and political prejudices. Surely this goal could be reached with a different approach far from the constant division and alienation of migrants and asylum seekers compared to the social, political needs of the "*bel Paese*". Unlike the anti-migrant propaganda, migrants are needed, and the whole community benefits from their presence in Italy. The estimates of the research published on Science Advances, [301]on the macroeconomic evidence of a positive impact on the economy of the host countries, indicate that these shocks have positive effects on European economies: they significantly increase per capita GDP, reduce unemployment, and improve the balance of public finances; the additional public expenditures, which is usually referred to as the "refugee burden," is more than outweighed by the increase in tax

301 Hippolyte d'Albis, Ekrame Boubtane and Dramane Coulibaly, Macroeconomic evidence suggests that asylum seekers are not a "burden" for Western European countries, Science Advances , 20 Jun 2018
https://advances.sciencemag.org/content/4/6/eaaq0883.

revenues.[302] The outcome of this research is that migrants are not only important for the European national economy but also necessary in order to make it grow. But is it mutual? The answer is, it depends. The Italian third sector is full of good realities and good examples of first and second reception. For example, Banca Etica [303]in June 2019 granted 110 million euros of credit lines to hundreds of realities (I Girasoli, Il pomograno, Etnos, Progetto Sud, Less and many others ...) that in the national territory deal with migrants. More than 350 SPRARs and more than 300 CAS, belonging to 162 organisations, are benefiting from a financial contribution granted in different forms and services with a commitment that has reached many assisted migrants in Italy - close to 20 thousand units. Examples of good practice in terms of integration and inclusion are many around Italy, from the one already cited here, the one cited in the fourth chapter and many others like the CIR, CIAC and LESS. The point in common between all these different realities are the vision of dignity, love for the others and inclusion at the basis of human relation.

However, this is not the only face of the reception system. Through the eyes of LasciateCIentrare and InLimnie, it clears how the new decrees show on the spotlight the bad- reception system and its implication. From Trento to Sicily the new decree establishes less control, less freedom and less money to help migrants to integrate themselves. In some cases, the binominal union of Security and Immigrations sees police barracks becoming CPRs. The almost ironic choice indeed continues to highlight the vision of the migrants not as a person, but as a public security case to detain, mistreat and send back. In addition, the cutbacks to the reception system make integration impossible. The CAS are sometimes without guards, without control and without any form of help. In this way people that fight for their life and live in unimaginable situations are closed in a space without even thinking to their personal need or culture and tradition. And this seems the perfect setting for a constant escalation of anger and insecurity.

This insecurity is translated into vulnerability for the same migrant. Particularly for those that will become illegal when the humanitarian protection expires. According to Matteo Villa, the latest decree-law could add a further 70,000 irregular immigrants to

302 *Ibidem*.
303 Corrado Fontana, In Banca Etica Nessuno è Straniero, Banca Etica, 2019 https://www.bancaetica.it/blog/storie-realta-finanziate/banca-etica-nessuno-straniero.

the number of new irregular immigrants envisaged by the base scenario, more than doubling the original illegal immigrants present in Italy. At the current rate, the repatriation of irregular migrants in their countries of origin will have only a marginal effect: to repatriate them all would take 90 years, and only on the condition that no illegal immigrants arrive in the next century. We must therefore consider what could be the future for many illegal migrants.

Most of them are and will be victims of the *Caporalato* system. The large part of undocumented migrants work in the industry or in the agricultural field, in 2018 the number of workers in agriculture increased compared to the previous year by over 40 thousand units, of which 14 thousand are foreigners. Of these, only 3,305 are of non-EU origin. To this number, however, we should add, here more than elsewhere, the mass of black laborers, not registered by INPS and forced to work shifts and miserable wages. Urmila Bhoola, the United Nations special rapporteur on contemporary forms of slavery, visited Italy from 3 to 12 October 2018[304]. During her stay she urged the Italian government to effectively prevent the exploitation of migrants in the agri-food sector, victims of illegal hiring, addressing the problem at its roots and recognising all migrants as holders of rights. Indeed the Caporalato system, even in a legislative framework that tries to decrease it, is still a giant problem for Italy. Connections between cooperatives and illegal traffic, mafia and CAS make the system hard to destroy and discover.

In response to labour exploitation, in some regions ethical agriculture projects based on that of SOS Rosarno were born, including Contadinazioni, for the production of olives in western Sicily, Funky Tomato in Basilicata and Sfruttazero for tomato sauce in Puglia. All these initiatives have different similarities, as these are small-scale projects that combine the cultivation and production of local products, involve both Italians and migrants, counteract the exploitation of labour in agriculture, distribute their products through alternative collaborative channels. Another significant initiative is the Tomato Revolution campaign launched by Altromercato, the leading fair trade company in Italy, with numerous specialised sales outlets. The project involves the production of organic tomatoes by workers with regular contracts and the support of

304 Country visit to Italy (3-12 October 2018), Ms. Urmila Bhoola, Special Rapporteur on contemporary forms of slavery, including its causes and consequences. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23708&LangID=E.

farmers and various social projects in Puglia. In 2018, in Puglia Land! Onlus has launched the project "In campo senza Caporale", for the development of transparent supply chains to guarantee environmental protection and respect for workers' rights. The project promotes the social inclusion of a group of foreign workers with the organisation of vocational training courses and placement in selected organic companies, as well as housing in the nearby urban centres.

These are just other examples of an economic and social experience in which there are not differences between people based on their origin. There is no need to distinguish between “them” and “us” in order to give a social advantage to one of the groups. As Marta Nalin said in her interview, “there is no need to distinguish between people, people have needs usually more than one. The right goal of the politic is to understand them according to the subject, not decided which interest is over the others”. The only way to ensure that the rights and needs of everyone are understand on the same level is assessing the human rights approach to the issue and not tackle it as public security compliance. On a practical point, to avoid the “self-fulfilling prophecy” of the migrants as problems for security, it is coming to the point in which integration and inclusion would be the first aim. The SPRAR system translated this philosophy in a safe place where integration can occur. According to estimates, 70% of people leaving the SPRAR in 2017 (over 9,000) have completed the reception process, having acquired the tools for their own autonomy. 25,480 adults have attended at least one language course, 15,976 a professional training course and carried out a training internship and 4,265 beneficiaries who found employment in work[305]. Moreover, the SPRAR represents a good occasion also for the small town as has been explained in the fourth chapter.

At this point there are several actions that at different levels can be embraced in order to improve the reception system in Italy. From a political point of view the government should:

- End explicit or implicit rhetoric towards SAR NGOs. Good steps in this direction have been taken by the former ministry of the Interior Lamorgese who in the meeting with the representatives of the NGOs who provide aid at

305 Il nuovo atlante degli SPRAR, report Anci.
https://ancitoscana.it/il-mondo-anci/organi/assemblee/1964-nei-centri-sprar-il-70-dei-migranti-apprende-un-lavoro-e-impara-l-italiano.html.

sea identified "a first step for the launch of a direct dialogue". The comparison was positively received by the same NGOs that asked to relaunch the sea rescue activities and to stop the deaths in the Mediterranean.

- Move from a security model to one of integration. The renewal of the agreements with Libya and the "repatriation decree" of the new Foreign Minister, Di Maio, seem to be nothing but a continuation of Salvini's policy. The renewal of the agreements with Libya leads to new problems. The first is the lack of knowledge of the fate of those who are repatriated. The funds that Italy allocates to Libya should go to support other government institutions besides the Coast Guard, and above all to support the NGOs that still try to work in that country, despite the war. Moreover, the agreement may imply violations of the non-refoulement principle. The life of migrants and asylum-seekers, entitled to specific rights under international law, should never be put consciously at risk by States that must respect their human rights obligations.

Another consideration needs to be made on the Italian social structure, in order to prepare the cities to create and bring good reception practices. This response can only be given through dialogue and a renewed training policy for the operators who deal with immigrants and the population of the neighbourhoods that join them. What is needed is not only a knowledge of real issues and causes but also a balance between investment in terms of reception, awareness and information programs. There is a specific need to overcome the racist paradigm and the consequent hate. Italy needs more knowledge from the community to the political parties, because it is a country that structurally and politically lends itself to the reception, and it is the task of the entire community to use this opportunity by operating on two levels. Informing the community and the public opinion beyond the propaganda and giving back hope and dignity to those who have lost it

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