

DUBLIN II Regulation National Report

European network for technical
cooperation on the application
of the Dublin II Regulation



ITALY



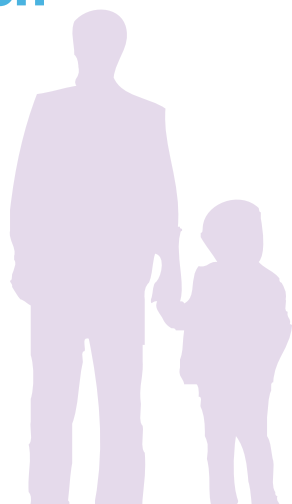
**European
Refugee Fund**



CIR
CONSIGLIO ITALIANO
PER I RIFUGIATI

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Anna Galosi and Cristina Laura Cecchini

ITALY

19th December 2012

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19th December 2012.

Acronyms

CARA: Centro di Accoglienza per Richiedenti Asilo (Accommodation center for asylum seekers)

CIE: Centro di Identificazione ed Espulsione (Expulsion and identification centers)

CIR: Consiglio Italiano per i Rifugiati (Italian Council for Refugees)

D.P.R.: Decreto del Presidente della Repubblica (Decree of the President of the Republic)

E.R.F.: European Refugee Fund

EURODAC: European Dactyloscopy

N.I.R.A.S.T.: Network Italiano per i Richiedenti Asilo Sopravvissuti a Tortura (Italian network for the asylum seekers survived to torture)

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

TAR: Tribunale Amministrativo Regionale (Regional Administrative Tribunal)

UNHCR: United Nations High Commissioner for Refugees

VI.TO: Victims of Torture

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1 *Introduction*

1.1 The Dublin II System: Perspectives and Challenges at the European Level

The Dublin Regulation,¹ as its predecessor the Dublin Convention, was designed to ensure that one Member State is responsible for examining the asylum application of an asylum seeker and to avoid multiple asylum claims and secondary movement. It is confined to fixing uniform grounds for the allocation of Member State responsibility on the basis of a hierarchy of criteria binding on all EU Member States as well as Iceland, Norway, Switzerland and Liechtenstein. On the ten year anniversary of its entry into force this research provides a comparative overview of national practice in selected Member States on the application of this Regulation.

Our research shows that the operation of the Dublin system continues to act to the detriment of refugees, causing families to be separated and leading to an increasing use of detention. The Dublin procedure leads to serious delays in the examination of asylum claims and by doing so, effectively places peoples' lives on hold. The hierarchy of criteria is not always respected whilst Art. 10 is the predominant criterion used in connection with Eurodac. State practice demonstrates that asylum seekers subject to this system may be deprived of their fundamental rights *inter alia* the right to be heard, the right to an effective legal remedy and the very right to asylum itself as access to an asylum procedure is not always guaranteed. Reception conditions and services may also be severely limited for asylum seekers within the Dublin system in a number of Member States. There is an increasing use of bilateral administrative arrangements under Art. 23 and most States resort

¹ Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, L 50/1 25.2.2003.

to informal communication channels to resolve disputes in the allocation of responsibility. Evidentiary requirements are very strict in some Member States, which in turn creates difficulties for asylum seekers in substantiating family links or showing time spent outside the territories of the Dublin system. A number of Member States also apply an excessively broad interpretation of absconding thereby extending the time limits for Dublin transfers further increasing delays in the examination of asylum claims. Furthermore the problems inherent in the Dublin system are also exacerbated by varied levels of protection, respect for refugee rights, reception conditions and asylum procedures in Member States creating an 'asylum lottery'.

The national reports provide an insight into the application of this Regulation at the national level whilst the comparative report outlines the main trends and developments at the European level. This research comes at a time when the Grand Chambers of both the European Court of Human Rights and the Court of Justice of the European Union have questioned the compatibility of the Dublin system with asylum seekers fundamental rights. In addition the EU institutions have recently reached a compromise agreement upon a recast Dublin III Regulation that introduces significant reforms including the creation of a mechanism for early warning, preparedness and crisis management. Despite these significant advances, the findings of this research demonstrates the continuous need to carefully evaluate the foundational principles of the Dublin system and its impact both with respect to asylum seekers' fundamental rights and Member States. It is hoped that this research will aid the Commission's review of the Dublin system within the forthcoming launch of a 'fitness check' and for any future dialogue on the assignment of responsibility for the examination of asylum claims.²

² European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum, An EU agenda for better responsibility-sharing and more mutual trust, COM 2011 [835], 2.11.2011 p.7.

1.2 Overview of *The Dublin II Regulation in Italy*

This report relies on the analysis of the law, literature, national jurisprudence and desk-based research in statistics. The relevant authority enforcing the Dublin II Regulation in Italy – the Dublin Unit³, was contacted different times and finally, on October 22nd 2012, a meeting was held with their Responsible in order to obtain some relevant information for the present report. Finally, the information is also influenced by the observations and experiences of CIR gained during the last years working for the legal and social assistance to asylum seekers in Italy.

Also in 2011, as in the previous years, the comparison between the transfers towards Italy by the other European Members and the ones carried out by Italy towards the other Member States has confirmed that Italy is a “receiving” country. In 2011, in fact, the successful transfers from Italy to other Member States have only been 14 against 4,645 successful transfers from the other Member States to Italy.

This report starts with the analysis of the national legal framework and procedures following the adoption of the European Directives that have been transposed through the Legislative Decrees: 140/2005 (Reception Conditions Directive)⁴, 251/2007 (Qualification Directive)⁵ and 25/2008 (Asylum Procedures Directive)⁶. The report intends to underline the major critical issues, among which: a general problem regarding the length of the procedure, a reception system characterized by a chronic lack of places and by an ineffective integration process. In addition, the aim of this report is also to obtain information on the application of the Dublin II Regulation itself by Italian authorities.

3 The Dublin Unit (Unità Dublino), belongs to the Department for Civil Liberties and Immigration of the Italian Ministry of Interior (Ministero dell'Interno).

4 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

5 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

6 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Within the asylum procedure the right of information is not always guaranteed to the asylum seekers, above all regarding the application of the Dublin II Regulation.

There are many guarantees during the substantive asylum interview before the Territorial Commissions for the recognition of the international protection that generally have a high rate of recognition (almost 50% of the asylum seekers are granted a form of protection).

The national law does not foresee the detention of the asylum seekers in case a procedure of determination under the Dublin II Regulation is initiated. In these cases the asylum seekers benefit from all the rights deriving from this status up to their transfer is carried out. For the Italian law, it implies that they have the same rights as the other international protection seekers, e.g. health assistance, accommodation, right to be informed, right to free legal aid.

The situation of the unaccompanied minors is – in theory – very good, however, in practice, there are different problems, especially regarding the age determination procedure due to the lack of specific rules on the age assessment at national level. Good practice is noted whereby in Italy, the unaccompanied minors are never transferred to other countries under Art. 6 of the Dublin II Regulation if they have no relatives there. However, unfortunately, there is not a real family tracing and, therefore, generally, Art. 6 of the Dublin II Regulation is applied.

The Italian Dublin Unit pays particular attention to the vulnerable asylum seekers and has developed a good practice of collaboration with the NGOs for the re-examination of the transfer decisions referred to this category⁷.

Notwithstanding the European jurisprudence concerning transfers to Greece, a general and official suspension of transfers to that country has not been ruled by the Italian Dublin Unit. On the contrary, the Italian Courts have constantly applied the European principles declaring unlawful every transfer decision to Greece and recently extending them to some cases of transfer to Hungary and Malta.

⁷ See paragraph 3.2 and paragraph 3.3.1.

2

The National Legal Framework and Procedures

2.1 Legal background

Italy has not got a comprehensive asylum law yet. As far as international protection and asylum matters are concerned, the Italian legal framework relies on article 10 – paragraph 3⁸ - of the Constitution which is the first reference to the right to asylum in the legislation and on the 1951 Geneva Convention which was ratified by Italy through the Law 722/1954. Besides these instruments, there are the European Directives which were transposed into national legislation between 2005 and 2008. The *Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers* (hereafter: *Reception Conditions Directive*) was transposed through the Legislative Decree no. 140/2005; the *Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* (hereafter: *Qualification Directive*) transposed through the Legislative Decree no. 251/2007 and the *Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status* (hereafter: the *Procedures Directive*) transposed through the Legislative Decree no. 25/2008 and further changes. Another crucial legislative measure to harmonize common minimum standards for asylum is the *Dublin II Regulation* which was adopted in 2003. The Regulation is directly applicable in Italy. Therefore, there is no national legislation to incorporate it.

8 "A foreigner to whom the practical exercise in his own country of democratic freedoms, guaranteed by the Italian Constitution, is precluded, is entitled to the right of asylum within the territory of the Republic, under the conditions laid down by the law" (Italian Constitution, article 10, paragraph 3).

In Italy, besides article 10 of the Constitution and the international documents above-mentioned, the legal instrument on migration is the “*Consolidated Act on dispositions concerning the immigration regulations and stranger conditions norms*” which is also known as “*Testo Unico*”. Such text was adopted through the Legislative Decree no. 286/1998. The Legislative Decree was modified by the Law 189/2002 (known also as “*Bossi-Fini Law*”) adopted in 2002 through Decree of the President of the Italian Republic No. 303/2004. Another important instrument is the Law 94/2009 (also known as the Security Package – “*Pacchetto Sicurezza*” [*Disposizioni in materia di Pubblica Sicurezza*]) which, among other things, criminalizes migrants who entry and stay in the Italian territory illegally and increases migrants’ length of detention to up to 180 days. In 2011, the EU Returns Directive was transposed through the Legislative Decree n. 89/2011. This Decree raises to up to 18 months the maximum length of detention⁹.

2.2 Procedural background

The institutions involved in the asylum procedures are four¹⁰:

- the *Border Police Point and Questura Police Immigration Office* where the applicant submits his/her request for international protection;
- the *Territorial Commissions for International Protection* (hereafter: Territorial Commissions) are territorial bodies competent for taking a decision on the asylum application. In Italy there are 10 Commissions. Each of them is composed of 4 members: 2 representatives of the Ministry of Interior, one representative of the Municipality (or Province or Region) and one representative of the UN High Commissioner for Refugees

⁹ *Ibidem*, p. 105.

¹⁰ Di Rado, D., “Annex 2 – Asylum Procedures Fact Sheets Italy”, in Ali Cheikh, H., Querton, C., Soulard, E., “Gender-related asylum claims in Europe. A comparative analysis of law policies and practice focusing on women in nine EU Member States”, 2012, p. 189.

(UNHCR). Furthermore, each Commission is competent for the applications lodged in its district of competence (for instance: the Territorial Commission in Milano examines the requests submitted in the region Lombardia while the one in Rome examines those presented in the regions of Lazio, Abruzzo, Sardegna, Toscana, Marche and Umbria);

- the *National Commission* not only coordinates the task of the Territorial Commissions, but also is responsible for the revocation and cessation of the international protection. It also establishes organizational criteria and guarantees uniformity of policy with regard to the granting of protection;
- the *Civil Courts*¹¹ have to examine the appeals against decisions taken by the Territorial Commissions.

Within the Italian legislation there is no admissibility/screening procedure or any accelerated procedure. The Territorial Commissions examine asylum claims on the merit. Asylum applications are given priority if they are found to be manifestly founded, or if the applicant belongs to vulnerable categories, or if the asylum seeker has committed crimes, or if the person has been given an expulsion or rejection order at the border.

If a person wants to apply for international protection in Italy, s/he can lodge the application at the Border Police upon arrival or at the Police Immigration Office if s/he is already in the territory. The asylum procedure is the same both at the borders and at the *Questura*¹².

The asylum application at *border points* is individual and the request is submitted to the Border Police upon arrival. As soon as the asylum application has been submitted, the claimant enters the territory and has access to the procedure. Moreover, at borders fingerprinting and Police reports are undertaken.

11 As far as first instance is concerned, the competent body is the Civil Tribunal which is not specialized in International Protection Law. Whereas, with regard to second instance, there are the Appeal Court (Corte d'Appello) and the Supreme Court (Corte di Cassazione) which is responsible for the legitimacy of the decisions.

12 Consiglio Italiano per i Rifugiati (CIR), "The Dublin Regulation and the asylum procedure in Italy. Are you aware of your rights? Guide for asylum seekers", 2012, p. 3.

At borders, Italy has both official and unofficial points where people can access to the territory. The most important official ones have been set up at Roma-Fiumicino and Milano-Malpensa airports, at the ports of Venezia, Ancona, Bari and Brindisi. According to the Italian law (art. 11 sub-section 6 of Immigration Law 286/98), organizations supporting asylum seekers are allowed to stay at the border points in order to provide assistance with public funds (e.g. legal and social assistance, cultural mediation and support in finding an accommodation). Persons belonging to the vulnerable category are the main target of this assistance. The law establishes that the assistance at the borders run by NGOs must be set up "in transit area, where possible". Clearly the assistance in the transit areas is possible only where these do exist, as is the case of the airports where the NGOs in charge are allowed to be present and offer support. It is more difficult to guarantee an assistance for the access to the asylum procedure at the seaports, where a transit area does not exist. The NGOs in charge have no access to the vessels if not expressly authorized by the Police Authorities and, therefore, they are not always able to support people to have access to the international protection procedure. Also for this reason there have been violations, in particular at the Adriatic ports for the asylum seekers coming from Greece. Through an agreement signed between the Greek and the Italian Governments "On the readmission of the irregular migrants" of April 30th 1999, many asylum seekers who have attempted to enter the Italian territory through the Adriatic coasts, have been rejected to Greece. The asylum seekers have, thus, not been given the possibility to have access to the international protection procedure, hence violating the principle of "*non refoulment*". According to different NGOs' reports, the rejections have been carried out without any formal registration and written decision¹³. However, it should be pointed out that many asylum seekers prefer to be sent back to Greece

¹³ Di Rado, D., "Progetto S.A.B. Servizi alle frontiere: cooperazione pratica. Rapporto finale. 2008 - FER 2006, "Azioni Comunitarie".

See also: ASGI, CESPI, Caritas Italiana, Consorzio Communitas Onlus, AICCRE "IL DIRITTO ALLA PROTEZIONE. LA PROTEZIONE INTERNAZIONALE IN ITALIA. QUALE FUTURO? Studio sullo stato del sistema di asilo in Italia e proposte per una sua evoluzione" (2011) p. 46 and following.

Also: F. Vassallo Paleologo "Controlli alle frontiere marittime e diritti fondamentali dei migranti" in S. Gambino e G. D'Ignazio "Immigrazione e diritti fondamentali tra costituzioni nazionali, Unione Europea e Diritti Internazionali" (2010), p. 23 - 86; Pro Asyl "Human Cargo" (2012).

because they do not want to seek asylum in Italy and rather prefer to reach, irregularly, other European countries where their family members and other nationals live.

An example of good practice is the situation at the Fiumicino airport in Rome where the border points are placed in a transit area. In this way asylum seekers have access to the service upon arrival. The assistance is mainly given by NGOs. Thus, if there are no NGOs at border points and ports, authorities might not give proper information to asylum seekers.

As it stands out from several asylum applications lodged in-country, there are many asylum seekers who enter the Italian borders through unofficial points – for instance Lampedusa Island¹⁴. On the island, information and legal assistance to the newly arrived is given by the staff of the Praesidium Project¹⁵.

As far as the *inland procedure* is concerned, the asylum application has to be lodged at the Police Immigration Office. According to the law, the asylum request should be submitted as soon as possible unless there is a valid reason which excuses the delay. However, lodging the request with delay is not a reason for denying the protection.

In order to apply for asylum, the person is required to indicate a domicile - an address which will be then quoted on the permit of

14 According to the last statistics released by the Ministry of Interior, 1,407 were the migrants who arrived on the Italian coastal borders in the first months of 2012. Within this broader group, 573 migrants arrived at Lampedusa. From these data it stands out that the number of arrivals decreased at the beginning of 2012 with respect to 2011. In fact, 60 thousands migrants arrived in 2011.

15 The Praesidium Project was created in 2006 by the Italian Ministry of Interior together with the Italian Red Cross, the UNHCR, the International Organization for Migration. The aim was to strengthen the system to welcome migrants arriving at Lampedusa. Between 2007 and 2008, the Project was extended also to Sicily in order to consolidate the multi-agency system developed in 2006 and to allow the different organizations within the Project to identify the different groups of migrants including vulnerable categories. So that, after the identification, these groups could be transferred to suitable centers in Sicily. Since 2008, due to the increasing arrivals of unaccompanied foreign minors, Save the Children Italia has become a new partner to the Project. The Project has been trying to strengthen its capability to welcome mixed migratory fluxes arriving at the southern coastal borders. Since 2010, the Project has decided to widen its working area by placing its partner organizations in other regions (Marche, Campania and Calabria) then Sicily (Croce Rossa Italiana, IOM, Save the Children Italia, UNHCR, Ministero dell'Interno, "Progetto Praesidium. Raccomandazioni e buone prassi per la gestione dei flussi migratori misti in arrivo via mare", 2011, p. 5).

stay¹⁶. In such occasion, the Police start an identification procedure which entails fingerprinting and photographing (this procedure is called *fotosegnalamento*). At the end of the identification procedure, the applicant will be given a *cedolino*, a sort of receipt where his/her future appointments at the Questura are written. Usually, together with the *fotosegnalamento*, the formal registration (*verbalizzazione*) of the application will also take place. Thus, the *Modello C/3* (*Modello per il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra*) or simply “*verbale*” is filled in with the information regarding the applicant’s story, the trip s/he has undertaken to reach Italy and the reasons why s/he fled his/her country. During this stage of the procedure the applicant has the right to be helped by an interpreter speaking his/her mother tongue. Before filling in the *Modello C/3* s/he will be asked to provide a written paper concerning his/her personal story which can be written in his/her mother tongue¹⁷.

In this occasion, if the applicant has his/her national passport or other documents regarding his/her personal story, s/he will be expected to give a copy of them to the *Questura* and will be advised to bring them at the interview with the Territorial Commission. These documents may prove to be important in demonstrating what happened in the applicant’s country of origin. With the filling in of *Modello C/3*, the formalization of the international protection application is concluded¹⁸. The *fotosegnalamento* and the formal registration of the international protection application do not take place at the same time, especially in big cities due to the high number of asylum seekers. The delay is a problem because the formal registration is necessary to enter reception centres.

On the date indicated by the *Questura*, the applicant will have to go to the Territorial Commission for the substantive asylum interview. During the interview, the person will be supported by an interpreter of his/her mother tongue. The Commission will ask the applicant questions on him/herself, his/her relatives, the trip s/he undertook to reach Italy, his/her documents, the reasons why s/he fled his/

16 In the practice, the domicile is substituted with a certification issued by some NGOs authorised by Authorities. The NGO certifies the real presence of the asylum seeker in that district.

17 Consiglio Italiano per i Rifugiati (CIR), “The Dublin Regulation and the asylum procedure in Italy. Are you aware of your rights? Guide for asylum seekers”, 2012, p. 3-4.

18 Ibidem.

her country of origin and the reasons why s/he fears to return. According to the law, the interview should take place within 30 days from the lodgement of the application and the Commission should decide in the three subsequent days. In the practice these terms are much longer. In some cities, as in Rome, the whole procedure takes generally longer, from 10 up to 18 months.

After hearing the applicant, the Commission may take the following decisions¹⁹:

- to recognize **refugee status** (a refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country (Geneva Refugee Convention; Law Decree 19 November 2007, n. 251));
- not to recognize refugee status and provide **subsidiary protection** (subsidiary protection is granted to a non-European citizen, or a stateless person, who does not comply with the criteria to obtain the recognition of the refugee status, but there are well-grounded reasons to believe that if s/he returns to his/her country of origin, or in the country where s/he usually lives, s/he might run the effective risk of undergoing serious harm and, because of that risk, s/he cannot or does not want to benefit from the protection of that country (Legislative Decree 19 November 2007, n. 251);
- not to recognize any form of international protection. However, the Commission may consider that the applicant's return to his/her country of origin is temporarily to be avoided. Thus, it may recommend to the Police authorities to issue a permit of stay for humanitarian reasons (Law Decree 28 January 2008, n. 25; art. 5.6 Law Decree 25 July 1998, n. 286);
- not to recognize any form of protection nor the existence of serious humanitarian reasons, providing thus the applicant with an order to leave Italy. In such a case, together with the decision of the Commission s/he will receive a paper (called "*foglio di via*") informing him/her that s/he has to leave Italy within fifteen days.

¹⁹ Idem, p. 7; 8; 10; 12.

Against the decision not to recognize an international protection it is possible to lodge an appeal²⁰ within 15 or 30 days (according to the law, 15 days in case during the procedure the person was required to stay in a CIE²¹ or in a CARA²²; the asylum seeker has 30 days in all other cases²³) from the date when the decision was notified to her/him. In order to lodge an appeal the person needs the assistance of a lawyer. If s/he cannot afford the expenses, s/he has the right to ask the State to pay his/her legal expenses²⁴. In the majority of cases, lodging an appeal automatically suspends the expulsion order. The suspension of such measure is not automatic and the person has to present a specific request to the judge in the following situations:

- during the procedure the applicant has been kept in a CIE;
- during the procedure the applicant was obliged to stay in a CARA since s/he was arrested because s/he had avoided or had tried to avoid the controls at the border (or immediately after);
- the applicant's request has received a negative decision because his/her claim was considered "manifestly unfounded";
- the applicant left the CARA without any justified reason;
- the applicant's request has been declared non-admissible.

²⁰ Idem, p. 7-8.

²¹ CIE stands for Centro di Identificazione ed Espulsione (Identification and Expulsion Centre).

²² CARA stands for Centro di Accoglienza per Richiedenti Asilo (Reception Centre for Asylum Seekers).

²³ For more information see paragraph 3.5.1.

²⁴ This matter is regulated by the law 134/2001; the Decree of the President of the Italian Republic 115/2002; the law 25/2005 and further changes.

2.2.1 *Triggering the Dublin Regulation: how the Dublin Unit works in practice*

After the above-described *fotosegnalamento* procedure, the Police check through the EURODAC whether the person's fingerprints had already been taken in other Member States. If there is a Eurodac hit, the Police contact the Italian Dublin Unit – which, as previously explained, is a unit working within the Office III (Asylum, Special and Subsidiary Protection, Dublin Unit) within the Department for civil services for immigration and asylum of the Ministry of Interior²⁵.

If from the checks carried out by the Dublin Unit, Italy is not responsible²⁶ for the examination of the application, there are two different possibilities according to whether the person has never applied for asylum or has lodged an application to seek protection in another Member State. If the applicant *has never lodged* an asylum application in that Member State, Italy will check whether it accepts to take charge of him/her.

If the applicant *had already lodged* an asylum application in another Member State and the procedure is still ongoing or if the application had not been rejected, Italy will ask to that Member State to take back his/her request.

The criterion applied in the majority of cases is the one referred in Art. 10 c.1 of the Dublin II Regulation. The Italian Dublin Unit declared²⁷ that very rarely the other criteria are applied. For this reason, the procedure for the determination of the responsible Member State starts from the outcomes of EURODAC. During the formal registration of the application the asylum seeker is interviewed by the Police, among others, on the eventual transit Countries. A specific interview during the Dublin procedure is not foreseen.

25 Benvenuti, M., "La protezione internazionale degli stranieri in Italia. Uno studio integrato sull'applicazione dei decreti di recepimento delle direttive europee e sull'accoglienza, sulle qualifiche e sulle procedure", Jovene Editore, 2011, Napoli, p. 332-333.

26 Consiglio Italiano per i Rifugiati (CIR), "The Dublin Regulation and the asylum procedure in Italy. Are you aware of your rights? Guide for asylum seekers", 2012, p. 18.

27 Meeting at the Dublin Unit office on October 22nd 2012.

Once the responsible Member State has been identified, the Dublin Unit sends a transfer decision (*decreto di trasferimento*) to the *Questura*. It is a paper which will be given to the asylum seeker explaining that, on the basis of the Dublin Regulation, s/he will be transferred to another country in order to complete his/her asylum procedure. The decision is normally written in Italian and English, but also in French and German, and it indicates the competent authorities and the deadlines to make an appeal but the removal date is not indicated. Within the following months the applicant will be transferred to the State responsible to examine his/her asylum request.

In such a period s/he will remain in the accommodation center where s/he was addressed when s/he had applied for asylum. Pending the transfer, the applicant will not be detained. Very rarely, as shown by the data, the Italian authorities actually carry out the transfers.

If the person does not agree with the decision concerning his/her transfer taken by the Italian Dublin Unit, within sixty days from the date when s/he was notified the transfer decision, s/he may lodge an appeal to the Regional Administrative Court²⁸ (*TAR*). In order to do it, the applicant will need a lawyer. Hence, it is important that, during this stage, s/he contacts an NGO working in the field of asylum, or a lawyer to be supported. The Police, when notifying the transfer decision, do not inform the asylum seeker on which NGOs or lawyers s/he can refer. The law envisages also the opportunity to lodge an appeal to the President of the Republic within 120 days from the notification of the transfer decision. In this case, the applicant may lodge the appeal without the help of a lawyer, even if in practice it is quite difficult to do so autonomously. In case the applicant cannot afford to pay a lawyer, the possibility to require the State to pay for the expenses is foreseen. It is necessary to prove that the person has no financial sources (asylum seekers can write a personal statement in that regard) in order to access legal aid for the appeal. Appealing against the Dublin decision does not automatically suspend the transfer. The judge, on the basis of the asylum seeker's story, will decide if s/he can remain in

28 Jurisdictional territorial body competent for evaluating in first instance the legitimacy of a decision taken by the Public Administration. *TAR* is not a specialised body in International Protection Law. With regard to the second instance, the competent body is the Council of State (*Consiglio di Stato*) which is a jurisdictional central body.

Italy. In case the decision on the person's appeal is positive the asylum procedure will be continued in Italy. Otherwise the applicant will be sent back to the Member State competent to examine his/her asylum request²⁹.

2.2.2 *The returns to Italy under Dublin II Regulation*

If Italy is responsible for the examination of the asylum application, the Dublin Unit of the country where the person is staying contacts the Italian Dublin Unit and the transfer is organized within the time frame indicated in the table above³⁰.

At the arrival in the main airports (at the border of Fiumicino – Roma; Malpensa –Varese), the applicant finds NGOs/associations which may help him/her to find an accommodation centre and provide him/her with further information on the asylum procedure. At the airport, the Border Police carry out the *fotosegnalamento* and verify the person's identity in the EURODAC database. After having undertaken these procedures, the applicant will receive a letter (called "*verbale di invito*") saying that s/he has to go to the *Questura* competent to continue the asylum procedure. The asylum seeker may be addressed to the office of the *Questura* where s/he was fingerprinted and photographed or to the office where s/he lodged the asylum application or where the documents related to his/her case are kept. The law does not foresee any support for reaching the competent *Questura*. In the practice the NGOs working at the border points can provide the train ticket for that destination on the basis of a specific agreement with the competent Prefecture. However, this support is not always guaranteed and often it happens that the NGO does not have information on the real arrival of the asylum seeker and on whether s/he has found an accommodation there.

Once the person is at the *Questura*, s/he may face different outcomes according to whether s/he did not apply or s/he did apply for asylum when s/he was in Italy previously.

²⁹ Consiglio Italiano per i Rifugiati (CIR), "The Dublin Regulation and the asylum procedure in Italy. Are you aware of your rights? Guide for asylum seekers", 2012, p. 20.

³⁰ Ibidem, p. 21.

If the person had never applied for international protection before, s/he is able to ask for protection now and is entitled to the same rights as the other asylum seekers. Whereas, with regards to the case when the asylum seeker had already applied for protection, four scenarios may arise:

- The first situation takes place when a positive decision on the asylum application had already been taken before the applicant left Italy. If such decision has not been notified to him/her then, the person will be informed and from that moment the terms for the appeal start. If the permit of stay s/he was entitled to is still valid, the procedure will start for its first issuance; in case it is expired, instead, that for its renewal. In the *cedolino*, it will be indicated when the applicant has to go to the *Questura*. If the applicant had been informed regarding that decision before s/he left Italy and s/he had obtained the permit of stay, but s/he does not have it anymore, or, in case it has expired, the procedure for its new issuance/renewal will be started. According to the protection which the person was granted, the applicant is entitled to enjoy the same rights as refugees, beneficiaries of subsidiary or humanitarian protection.
- The second situation occurs when a negative decision on the person's asylum application had already been taken before s/he left Italy. In case s/he had already received the information and s/he did not lodge an appeal, the applicant will be notified an expulsion order and possibly sent to a CIE (Centre for Identification and Expulsion). The asylum seeker can claim again for international protection only when there are new circumstances. In case the person is informed about the negative decision for the first time, s/he has the possibility to lodge an appeal within 15 or 30 days (depending from the applicant's situation, the exact term will be indicated on the paper s/he will receive at the *Questura*). In order to lodge an appeal the asylum seeker needs a lawyer as foreseen by the Law. It is very important, therefore, that s/he gets in contact, as soon as possible, with a lawyer or with an organization working in the field of asylum. In case s/he decides not to lodge an appeal, s/he will have to leave Italy within 15 days at latest. During the appeal procedure, the applicant has the same rights as an asylum seeker if the appeal has a suspensive effect.

- The third situation arises when the applicant's asylum procedure has not come to an end because no decision has been taken on the person's case. The procedure will continue and s/he will have to wait until a decision is taken.
- The last situation occurs when the Commission summoned the applicant for the interview and s/he was untraceable. In this case, the person will receive a negative decision. In such case s/he may specifically request the competent Commission to have a new interview.

The application of the Dublin II Regulation in Italy

3

3.1 The Application of the Dublin II Regulation Criteria and the Practicalities of Dublin Procedures

As pointed out in the Introduction, within the Dublin System Italy is - beyond all doubt - a “receiving” country. Given that the number of the requests of competence addressed by the other Member States overcomes by far that one referred to the requests addressed by the Italian Dublin Unit to another Member State. Only in 2011, on the one hand, the requests received by Italy were 13,715 compared to 1,275 sent by Italy, most of them came from Switzerland (5,806), from Germany (2,005), from Sweden (1,446). On the other hand, out of 1,275 requests of responsibility to other Member States from the Italian Dublin Unit, 210 of them were to Greece, 154 to Malta, 115 to Norway and 101 to the United Kingdom. Notwithstanding the above-mentioned number of requests, it is worth underlining that the transfers successfully carried out from Italy were only 14.

The Dublin Unit, upon request of CIR, provided data on the number of applications both submitted and received divided by the different Member States. On the contrary, they did not give disaggregated data. It was impossible, therefore, to obtain more specific information regarding the application of the discretionary clauses, the modalities of application of the criteria foreseen by the Regulation, and the costs of the Dublin System in Italy, such as consultation procedures, personnel, transfers to other countries and to Italy.

However, on the basis of the data provided³¹, it is possible to deduce some tendencies and start to formulate a few remarks:

³¹ Refer to the Statistics in the Annexes.

- in Italy most of the procedures for determining the Member State responsible for the examination of an asylum application stem from the fact that the asylum seekers' fingerprints have already been stored within the Eurodac database. During the meeting with the Dublin Unit, they have verbally confirmed that generally this is the more frequent initiation of a Dublin procedure to another Member State from Italy;
- from the analysis of the data provided about the requests of responsibility sent by Italy, it is inferable another Italian tendency. In most cases the procedure for the determination of the Member State responsible originates, either towards Member States of transit (as Greece and Malta, where the asylum seekers tend not to apply for international protection because of the bad social conditions), or towards Member States (like Norway or the United Kingdom) where their family members and nationals live and where there are relatively high standards in the functioning of the asylum system and reception conditions but the asylum seekers have been rejected. In these Member States, in fact, the asylum seekers do run the risk to be repatriated, after a negative decision, to countries - like Afghanistan;
- in Italy there are two opposite tendencies that interfere with the functioning of the Dublin System:
 1. on the one hand, there is an "escape from Italy" by the international protection beneficiaries due to the lack of effective integration paths;
 2. on the other hand, there is an "attraction to Italy" by the rejected asylum seekers due to the fact that in Italy there is a high rate of recognitions together with a low rate of forced repatriation to the origin countries.

From the data provided by the Dublin Unit it is also evident that in 2011 there were 1,275 requests of competence addressed by Italy to the other Member States. 196 out of these were accepted but only in 14 cases a real transfer was carried out. Among the possible reasons, one could mention:

- the delay from the part of the Italian Authorities in the issuing of the decision and its notification after the acceptance of the

competence decision by other Member States; - the fact that in many cases the asylum seekers abscond themselves after the notification of the transfer decision, due to their freedom on the Italian territory.

In many cases the Regional Administrative Tribunal (hereafter: TAR) revoked the transfer decision of the applicant towards another country according to Article 20 par. 2 which envisages the revocation of transfer after the time limit of 6 months. The TAR - Lazio for instance, according to a passed judgment within the proceeding RG 5791/2010, declared unlawful a transfer decision to Slovenia handed to the asylum seeker, because it was not executed within the 6-month time limit *“even though the applicant was traceable as he was hosted by a Reception Centre for Asylum Seekers (CARA)³²”*. The transfer decision had been notified more than 5 months after the acceptance from Slovenia.

3.2 *The Use of Discretionary Provisions*

The competent Authorities did not provide with the updated data on the enforcement of the discretionary clauses, both the sovereignty clause – Art. 3 par. 2 - of the Regulation and the humanitarian one – Art. 15.

The last data available dated back 2008³³ pointed out, however, that Italy ordered the enforcement of the above-mentioned clauses and decided to have jurisdiction on 178 cases, only 2 of them according to the humanitarian clause.

Nowadays, it is stated that this tendency remains unchanged because in very few cases in Italy these clauses are enforced, in particular the sovereignty one.

³² Tribunale Amministrativo del Lazio Judgement No. 1873/2011 on 1st May 2011.

³³ CIR “Dubliners Project, final report” April 2010 fulfilled within the communitarian action FER 2007.

However, it is noteworthy that the Italian Central authorities have shown a tendency to apply the discretionary clauses, in particular in cases of vulnerability. The Dublin Unit sent the ministerial note (*Circolare*) dated February 23rd 2009 to all the reception centres, lawyers, Municipalities and social services working for asylum seekers within the SPRAR, highlighted that *“the requests of revision of the applicant’s transfer to another Member State, according to the Dublin Regulation 343/2003, will be taken into account in order to an eventual acceptance. The requests have to be supplied by a proper documentation written in Italian or a certified translation of it, containing the reason why the applicant cannot be transferred, or the effective professional integration of him/her in the Italian territory.”* Thanks to it, a good practice of collaboration has been developed mostly among the social assistance associations which could apply to the revision of the requests in cases of documented vulnerability, through a re-examination procedure by the Dublin Unit.

In these cases, especially in 2009 and 2010, the Dublin Unit revoked many transfer decisions enforcing the sovereignty clause by Art. 3 Par. 2 of the Regulation. However, this practice shows that in Italy does not exist an automatic enforcement of these clauses. They are, therefore, subjected to a discretionary evaluation case-by-case which often takes place after the notification of the decision upon a request of re-examination.

Italy has never taken a stand on the necessary automatic enforcement of the sovereignty clause, not even when the transfer to another Country involves the presence of a general risk of violation of human rights caused by gross and systematic violations (Greece for instance). In this regard, CIR has asked the competent authorities to adopt a general policy to suspend transfers to Greece following the M.S.S ruling, but the Dublin Unit has never taken an official position on this issue.

Even though, compared to the past years, numbers are now derisory; from the data provided by the Dublin Unit emerges that in 2011 the requests to Greece were 210. Two of them had been accepted in contrast both with the European and the Italian jurisprudence.

From a jurisprudential point of view, the application of the discretionary clauses had a strong evolution.

Concerning transfers to Greece, the process has been long and uneasy. The Italian Administrative Judges have considered unlawful all the decisions which envisaged transfers to Greece, in the beginning because the Directives on international protection were not implemented by that Member State and a provision of automatic negation existed for all the interrupted procedures. Afterwards, the decisions were based on the proven fact that in Greece no basic conditions of reception and admission of the procedure for international protection were, and are still, carried out. These judgements have allowed the use of the Regulation, in order not to transfer to that Country asylum seekers arrived in Italy³⁴.

According to a subsequent judgment of TAR-Lazio³⁵, even though Greece has ratified and implemented “Procedures Directive” (2005/85/CE) on 11/07/08, “Qualification Directive” (2004/83/CE) on 30/07/07 and “Reception Directive” (2003/9/CE) on 13/11/07, and since July 2008 the automatic denial of the asylum procedures so-called “interrupted” has been no longer enforced, *“the situation of the asylum seekers in Greece is better than before, but not comparable to that existing in other Member States, as emerges from examining the Recommendation of the United Nations High Commissioner for Refugees on December 2009 (subsequent to the implementation of the EU Directives). The High Commissioner stated that “the organization goes on opposing to transfers to Greece according to the Dublin II Regulation taking into account the problems observed in the Greek asylum procedure.”*

On the basis of the above-mentioned jurisprudence which recalls the principles of the European jurisprudence, as it will be then illustrated, the Dublin Unit, in establishing who is responsible to examine an asylum claim already submitted, has the obligation to verify the real existing conditions in the Member State responsible under Dublin and to enforce the sovereignty clause whenever a situation of violation of the obligations derived from the European provisions and a lack of respect of the standards foreseen by them will be proven.

34 Tribunale Amministrativo del Lazio judgement no. 1363/2011 dated 11th February 2011; Consiglio di Stato: parere cautelare ordinanza no. 3428/2009 14th July and Tribunale Amministrativo del Lazio judgement no. 8508/2010 26th April.

35 Tribunale Amministrativo del Lazio judgement no. 1551/2012 dated 15th February 2012.

The lack of evaluation of these circumstances and the consequent transfer to these Member States can lead to a violation of Articles 3 and 13 of the European Convention of Human Rights by Italy.

The above-mentioned principles are recently enforced in order to declare unlawful the transfer decisions to countries as Hungary³⁶ and Malta. In a recent judgment the Court³⁷ condemned the Italian authorities also to the payment of the judicial expenses “*due to the persistence of the Dublin Unit not to enforce the precautionary measures disposed by this Court, concerning transfers to Greece, where many legal arguments are still pending.*”

Concerning the sovereignty clause, one can put in evidence, moreover, how the jurisprudence has often expressed the necessity of its application also in case of poor health conditions in individual cases. The TAR - Lazio³⁸ has deemed it valid these conditions also when “*the asylum seeker presented a complex syndromic situation ascribable to repeated and continuous traumatic experiences and he needed to be frequently subjected to psychiatric and specialist check-ups*”.

3.3 Vulnerable Persons in the Asylum Procedure

3.3.1 General legal framework for vulnerable asylum seekers in Italy

In order to analyse how the Dublin System affects the treatment of the vulnerable people, it is necessary to start from the analysis of the laws.

The Dublin II Regulation does not define the notion of vulnerable asylum seekers³⁹ whereas there is a clear definition within the Italian decrees that have transposed the European Directives.

³⁶ Tribunale Amministrativo del Lazio judgement no. 5292/2012 11th June 2012.

³⁷ Tribunale Amministrativo del Lazio n. 7880/2012.

³⁸ Tribunale Amministrativo del Lazio judgement no. 5784/2011.

³⁹ From: CIR (eds. Di Rado, D), “Dubliners Project. Final report” (2010), p. 50.

Art. 8 of the Legislative Decree 140/2005 foresees, in fact, that vulnerable people should be considered those who are “minors, disabled people, elderly people, pregnant women, single parents with children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence”.⁴⁰

The Italian legislation has then added for these categories of vulnerable persons particular guarantees, such as:

- some dedicated places within the system of integrated reception supplied by the SPRAR;
- a priority examination within the procedure for the recognition of the international protection (Art. 28 c. 1.b in the Legislative Decree 25/2008);
- the presence of a supporting figure, if deemed necessary, or the guardian in case of minors, at the interview with the Territorial Commission (Art.13 in the Legislative Decree 25/2008);
- the possibility not to be interviewed, when there are sufficient grounded reasons for the recognition of the refugee status or when the applicant has provided a certificate issued by a public health institution proving his/her impossibility to be interviewed (Art. 12 in the Legislative Decree 25/2008). This provision, though, not expressly foreseen in case of vulnerability, is applied in these cases.

As said in the paragraph above concerning the application of the discretionary clauses, although a specific provision on this matter is not foreseen within the Regulation, the Dublin Unit has always showed to care about the asylum seekers with particular vulnerability and has also issued a targeted Ministerial note (see par. 3.1.) giving the possibility to lodge documented claims of re-examination. This availability has allowed to bring to a positive end many claims of re-examination regarding decisions of transfer to other Member States.

In 2011, as an instance, CIR has assisted a Pakistani woman, an extremely fragile case, victim of rape in her country of origin who did not want to be transferred to Sweden, even if the competence

⁴⁰ From: Idem, p. 50-51.

of her case had already been accepted by the Swedish Dublin Unit. After some months of suspension, the Italian Dublin Unit accepted the competence of this case upon a request made by CIR. The Dublin Unit had applied for the “sovereignty clause” properly on the basis of the vulnerability of the woman, as certified by a medical doctor.

The same attention has not been often paid by other Member States. This has emerged, by way of example, from the evaluation of the situation at Fiumicino Airport with reference to the return to Italy of some asylum seekers particularly vulnerable on the basis of the Dublin II Regulation: their particular conditions have led the Italian Authorities to adopt targeted initiatives of support⁴¹. An example of these initiatives is the Questura - Immigration Office that has set up an office at the Fiumicino airport allowing to determine the juridical situation of the Dublin returnee and, as a consequence, to give him/her the right assistance⁴². Targeted accommodation services for Dublin returnees have been set up and have been funded yearly through E.R.F. In this way, in particular the vulnerable people – that have been sent back to Italy by other Member States – find an accommodation immediately.

3.3.2 *Victims of torture*⁴³

In order to analyse the different aspects linked to the *prise en charge* and to the reception of the victims of torture, it is necessary to start from the same definition of torture as it is outlined by the international law.

41 ASGI, CESPI, Caritas Italiana, Consorzio Communitas Onlus, AICCRE “IL DIRITTO ALLA PROTEZIONE. LA PROTEZIONE INTERNAZIONALE IN ITALIA. QUALE FUTURO? Studio sullo stato del sistema di asilo in Italia e proposte per una sua evoluzione” (2011) p. 160 and following.

42 For further information see paragraph 3.6.2.

43 de Donato, M., “Handbook Maieutics. Elaborating a common model interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper International status to victims of torture and violence”, December 2012 ; ASGI, CESPI, Caritas Italiana, Consorzio Communitas Onlus, AICCRE “IL DIRITTO ALLA PROTEZIONE. LA PROTEZIONE INTERNAZIONALE IN ITALIA. QUALE FUTURO? Studio sullo stato del sistema di asilo in Italia e proposte per una sua evoluzione” (2011) p. 175-176.

In the last days of the editing of this Report the *Camera dei Deputati*⁴⁴ has voted by a large majority the ratification and execution of the optional Protocol to the 1984 UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Thanks to this Protocol, also in Italy, an independent authority will be established with the power of control and monitoring of the detention centres (e.g. prisons, CIEs, forensic hospitals, etc.). Furthermore, this Protocol foresees that a UN Committee may inspect the same detention centres. This is an important starting point in order to have in Italy a real system of prevention and monitoring against torture.

Actually, in Italy there is a picture extremely disrupted: in fact, there is no standardised procedure and, in practice, it may happen that special needs are not raised at this stage. This is particularly true in overcrowded camps (centres for the reception of asylum seekers, CARA), such as the one in Crotone (South Italy) where the number of asylum seekers can reach 1,000”.⁴⁵

In Rome, among some innovative experiences, it is worth mentioning the Network N.I.R.A.S.T. (*Network Italiano per i Richiedenti Asilo Sopravvissuti a Tortura*) promoted by CIR together with the UNHCR and the National Commission for the Right to Asylum, which puts together 10 public medical centres all over Italy, specialized in the treatment and certification of torture survivors. This Network guarantees the proper implementation of the medical aspects in the frame of many projects, such as “Together with VI.TO”. This project, implemented by CIR, foresees paths of integrated assistance targeted specifically to victims of torture, also if they are cases which fall under the Dublin Regulation. Since 1996, in fact, CIR has been successfully experimenting a multidisciplinary approach addressed to victims of torture which includes legal, social, medical and psychological services.

⁴⁴ The *Camera dei Deputati* (Chamber of Deputies) is one of the two parliamentary assemblies constituting the Italian Parliament.

⁴⁵ From: CIR (eds. Di Rado, D), “Gender-related asylum claims in Europe” (May 2012), p. 147.

Among specific experiences in this field, we wish to mention also *Sa.Mi.Fo*⁴⁶ in Rome and “*Ferite Invisibili*” (Invisible wounds).⁴⁷

3.3.3 *Unaccompanied minors*

In the Italian law - according to the “*Regolamento recante le missioni del Comitato per i Minori Stranieri*” (Regulation containing the missions of the Committee for the Foreign Minors), *D.P.C.M. 9/12/1999, n. 535* - “a foreign unaccompanied minor present on the national territory (...) is a minor without the Italian citizenship or without the citizenship of other European Union’s Member States, who has not applied for asylum and is for any reason present on the Italian territory without assistance and representatives on behalf of his/her parents or of other adults legally responsible for him/her according to the laws regulating within the Italian legal system”.

As in some other EU countries, in Italy the law provides that priority should be given to the applications of unaccompanied minors and sometimes specifies maximum delays shorter than for adults.⁴⁸

Art. 6 of the Regulation foresees: “*Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.*”

⁴⁶ SA.MI.FO is a health service which addresses the needs of asylum seekers and refugees. Such Service stems from the collaboration between the Association Centro Astalli and the Public Health Service of Rome. SA.MI.FO has started its activities in 2007. <http://www.centroastalli.it/index.php?id=366> (Last consultation: December 2012)

⁴⁷ *Ferite invisibili* is a project carried on by Caritas of Rome in 2005, aimed at the psycho-social rehabilitation of migrants and refugees victims of torture, violence and other traumas. Clinical activities, carried out by psychiatrists, psychologists, cultural mediators and volunteers, are accompanied by training, research and screening of the population at risk. <http://www.caritasroma.it/2012/03/ferite-invisibili> (Last consultation: December 2012)

⁴⁸ The number of in-coming requests to Italy has nearly doubled since 2009 when Switzerland, entering the area Schengen, has adhered to the Dublin Regulation.

It is fundamental to point out what happens in practice with reference both to the “family tracing” and to the case when a family member is not present. In Italy a real family tracing system does not exist and, therefore, there is a very scarce application of Art. 6 par.1. Furthermore, Italy implements on a large scale the second part of that article but interprets it that the State where the minor has lodged his/her application for asylum is the present State i.e. Italy. In fact, when a family member is not present, the minor is never sent back to another Member State even if this would be responsible according to a different reading of Art. 6(2) of the Dublin II Regulation. The same does not happen in other European Member States. Many are the cases in which the unaccompanied minors arrive in Italy after having been transferred from another Member State.

In Italy, however, there is a special issue of minors treated as minors or as adults depending on the statements made by asylum seekers (if they said they were adults to avoid to remain in centres for minors with the intention to go in another country) and on rules of age assessment applied in Italy and those countries that transferred the minors to Italy under the Regulation without the consensus of the interested persons (considered minors by the sending countries). If a child declares to be adult in Italy and minor in the country he reaches, s/he will be treated as an adult in Italy, if s/he is sent back there on the basis of the Regulation, according to his/her previous declarations, with the risk to live in the street or with their communities in occupied buildings. CIR has several times asked the competent authorities to treat them as minors and, in case of doubt, to submit them to age assessment, but no procedural change has been registered so far. On the contrary, if asylum seekers declare to be minors in Italy, as well as in another country, when they are transferred to Italy under the Regulation they are treated as unaccompanied asylum seekers and are therefore channelled in *ad hoc* centres for minors.⁴⁹ Any time when in doubt on the age of the person, the authorities submit him/her to the age assessment.

⁴⁹ France Terre d’Asile / Final Report of the Project “Improving the implementation of the right to asylum for unaccompanied children within the European Union” (2012) - p. 44.

3.3.3.i *The asylum procedure for unaccompanied minors*

According to Art. 6 of the Procedure Decree (D.lgs. 25/2008) each asylum seeker (minors included) may lodge an asylum request.

When the asylum request is made by an unaccompanied minor, the competent Police authorities suspend the procedure and immediately inform both the Juvenile Court (*Tribunale per i Minorenni*) territorially competent and the Judge for guardianship (*Giudice tutelare*). The Judge for guardianship is competent to appoint the legal guardian⁵⁰ who will be responsible for the minor for all the assistance s/he needs till the age of 18. The judge for guardianship appoints a guardian in the following 48 hours from the communication made by the Police Immigration Office.

The legal guardian takes immediately contact with Police Authorities to confirm and reactivate the asylum procedure and the adoption of those measures related to the accommodation and the care of the minor. The legal guardian has the responsibility to assist the minor during the whole asylum procedure, and even afterwards, in case s/he obtains a negative decision⁵¹. For this reason the legal guardian accompanies the minor to the Police, where s/he could be fingerprinted if s/he is over 14, and assists the minor to fill the form and formalize the claim. The legal guardian accompanies the unaccompanied minor at the Territorial Commission (hereafter: Commission) where the hearing takes place. The Commission proceeds with the hearing only at the presence of the legal guardian. The minor is informed on the significance and the consequences of the hearing.

50 In Italy, the guardian is responsible for the protection and the well being of the child. The system of legal guardianship does not stand for asylum procedures only. Guardians are usually social workers from Municipalities.

51 In case of a negative decision of their asylum request, minors can present an appeal through the legal guardian who has to be authorised by the Judge for guardianship. Like for adults, they can make an appeal before the ordinary Tribunal, before the Court of Appeal and the Cassation. In case of rejection of the asylum request, the Circular of the Minister of the Interior of December 23rd 1999 establishes that, the minor falls under the competence of the Italian Committee for Foreign Minors and obtains a stay permit for minor age if no other stay permit can be issued on other grounds (custody, family reasons, etc.).

The minor seeking asylum shall benefit from the reception services of SPRAR. In case it is not possible to accommodate the minor within SPRAR centres targeted for unaccompanied minors due to unavailability of places, accommodation and assistance are temporarily assured by the Municipalities' authorities where the minor is present. It is important to underline that, according to Art. 26 par. 6 of the Procedure Decree, "in no case the unaccompanied minors can be accommodated and/or retained within the facilities described in Art. 20 and 21" [i.e. in the CARAs - Accommodation Centres for Asylum seekers - and in the CIEs - Centres of Identification and Expulsion].

3.3.3.ii The correct identification of minors and the Age assessment of minors

The correct identification of the minors is a pre-requisite to allow them to have access to specific guarantees and measures foreseen by law.

Art. 19 of the Legislative Decree 25/2008 foresees: "in case of doubts on the age, the unaccompanied minor can – at any stage of the procedure – be subjected, if s/he and his/her guardian agree, to the age assessment through non-invasive examinations. If the age assessment carried out does not give a sure result, the guarantees foreseen for minors have to be applied".

It has been underlined that the refusal by the applicant to undertake the age assessment has no negative consequences on the reception of the asylum request.

In Italy there are no specific provisions on the age assessment procedure, however, from the law on minors it is possible to desume some principles. These principles are contained in a Protocol on the Age Assessment of the Foreign Unaccompanied Minors. This document has been elaborated by the Italian Authorities with the counselling of many experts but, it has never been formally adopted and, therefore, applied. Among the guarantees mentioned in that Protocol there are: the informed consent of the minor, the obligation to issue to the minor a medical certificate translated into a language for him/her understandable, the obligation to notify the

decision related to the age determination, the obligation to specify the modalities for the appeal against the age determination, the obligation to indicate the margin of error in the age determination assessment.

In the practice, in most cases, the international protection seekers who declare to be minor are subjected to the age assessment procedure without the legal guardian, who is – almost in all cases – nominated afterwards. Very often, furthermore, the medical report does not indicate the margin of error, although the medical literature indicates that it is not possible to determine with certainty the age of the person (margin of error is of at least 2 years). The age assessment is often carried out by no specialised doctors who often ignore or scarcely know the cultural background of the migrant and the consequences of the results of the examination. Minors are verbally notified the medical results and for that it is not possible to appeal directly against the age determination. Generally, the age ascertained is either indicated directly in the expulsion order or – in case of an asylum claim – it is desumable from the fact itself that, to the minor, have not been applied the specific guarantees but the ones for the adults.

UNHCR, CIR, Save the Children have requested that the margin of error shall always be indicated in the medical certificate and, in doubtful cases, the benefit of doubt principle should be applied.

NGOs urged that age assessment should not be carried out systematically and exclusively through x-ray method. A copy of the medical certificate should be handed over to all minors and their consent to be exposed to x-ray methods should be asked in each case.

3.4 *The Rights of Asylum Applicants in the Dublin Procedure*

3.4.1 *Right to information*

In 2009/2010, when CIR implemented the Project “Dubliners”, the Italian Dublin Unit (also involved in that project) stated that asylum seekers were informed on the content of the Regulation because asylum seekers were provided with a leaflet in 11 languages. Currently, on the Ministry of the Interior website there is a *vademecum* in Italian⁵². In 2012 the Ministry of Interior – with an E.R.F. project – has encharged CIR to edit a leaflet and a website in 10 languages⁵³. This leaflet, that explains in a user-friendly manner the Dublin procedure, has been distributed to many administrations (even to Police offices).

Despite the national authorities claiming that information is usually well disseminated, it seems that in some cases “Dublin cases” are only provided with partial information, sometimes not at all, and often without an interpreter.

Generally, the interview before the Police during the formalization phase is made in a language the asylum seekers do not fully understand and they are not informed about the reason why the information is requested and its pertinence related to the Regulation’s applicability. According to our experience, indeed, it occurs very frequently that the Immigration Office explains the Dublin procedure in a superficial manner. Furthermore, very frequently, when “Dublin cases” receive an explanation by the authorities, this is not adequate to their educational level: asylum seekers, therefore, do not understand the explanation given. It is true that a written document helps but it is not always

⁵² The Italian version is available on the website of the Ministry of the Interior http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/16/0728_vademecum_richiedenti_asilo.pdf, while the English version is available on the website of the “Servizio Centrale” <http://www.serviziocentrale.it/file/server/file/Guida%20richiedenti%20protezione-inglese.pdf>

⁵³ <http://www.helpdubliners.it/>

understandable because of the language, because of the legal terms and because it can happen that asylum seekers are illiterate. From our experience, the majority of the interviewees cannot understand what the Dublin procedure and the decision taken by the Dublin Unit are. Furthermore, they do not know about their rights and consequently they can hardly lodge an appeal.

As far as “cultural and family ties” are concerned, no specific questions are submitted to asylum seekers about familiar or other considerable links to a certain Member States, they are not informed on the rules governing family reunion under Dublin criteria or - for example - the possibility, in certain Member States, for unmarried couples living together on a stable basis, to be considered in a similar way as married couples.

After the formalization of the asylum application, if a procedure for determining the Member State responsible for examining the application starts under the Regulation, no information is provided to the asylum seeker, not even when it implies a delay on the whole procedure.

During the procedure, frequently it happens that the wording “Dublin” figures in the receipt of the asylum claim (*cedolino*) without providing the asylum seeker with the explanation of the meaning of it.

The applicant usually waits for months without knowing if the above-mentioned procedure started, towards which country it has been addressed and the basis on which it has been laid down.

In the majority of cases, it is only thanks to the help of NGOs providing “Dublin cases” with adequate information, that asylum seekers are able to go through the whole procedure. When necessary, the NGOs contact the public authorities to get the information needed.

In Italy the decision of the Dublin Unit is notified to the person by a written decision handed out by the Police. Nevertheless – sometimes - it is not very clear for the asylum seeker that s/he can lodge an appeal; this information is always provided by NGOs.

3.4.2 *Withdrawal of the asylum application*

In Italy an asylum seeker can withdraw the claim for international protection at any stage of the recognition procedure through an application form available at the Immigration Office of *Questura* (Police). In case of withdrawal, the procedure stops and the Commission will never rule on the case.

It cannot be possible, instead, to consider as implicit the withdrawal of the asylum application only because the asylum seeker left the centre (CARA or SPRAR), is untraceable, or left Italy. In these cases the Territorial Commission for the recognition of the international protection has to decide on the basis of the information at its disposal even if the applicant is not physically present.

When the decision is taken in the absence of the applicant, it is formally indicated and usually the outcome is the rejection of the claim for “untraceability” (*diniogo per irreperibilità*). In this case the law foresees that the applicant can request another hearing and the procedure of international protection starts again when a date for a new interview is notified.

3.4.3 *Effective Remedies*

The decision under Dublin II Regulation can be appealed within 60 days before the Regional Administrative Tribunal. In order to guarantee an effective remedy the Italian law foresees that in case of appeal the migrant has to be assisted by a lawyer and is admitted to the free legal aid (*Patrocinio a spese dello Stato*, so-called *Gratuito Patrocinio*) when there are the conditions mentioned by the D.P.R. 115/2002. The law refers to a situation of need and to appeals that are not manifestly unfounded. Not all the lawyers can provide a free legal aid, because it is necessary that the lawyer is registered in a specific list. Although this list is public, however, in the practice, it is not easy for the asylum seekers to find an available lawyer nor do the authorities assist them providing automatically a lawyer. It is often thanks to the support of NGOs that the asylum seekers manage to be assisted freely by a lawyer.

The appeal has no suspensive effect unless the Court awarded it upon a specific request of the claimant.

After an appeal the Court must evaluate the lawfulness of the transfer decision. In case the Court deems that the transfer decision is illegitimate, due to a violation of the Dublin II Regulation or of another rule, or when necessary for the application of the sovereignty clause⁵⁴, it revokes the transfer decision and declares the Italian authorities' responsibility. In fact, even when a more detailed investigation is needed, it is made by the Court itself. Furthermore, the Court, as seen before, if necessary, applies directly the discretionary clauses - both the humanitarian clause and the sovereignty one.

The most frequent appeals are on the basis of these reasons:

- procedural failures of the Dublin Unit: lack of sufficient investigations for the determining of the Member State responsible, not founded reasoning concerning the transfer decision. An example could be when - during the determination procedure on the responsible Member State - the authorities do not verify adequately the real conditions of the claimant or the existence of other circumstances that could change the final decision. The Dublin Unit issues a transfer decision where indicates the responsible Member State but does not supply any reasoning on the decision;
- violation of the Dublin II Regulation: particularly with reference to the non-respect of the timeframes foreseen by Art. 20;
- necessary application of the discretionary clauses because the Member State is not considered as safe or because the asylum seeker is vulnerable and therefore not transferable.

54 For more information see paragraph 3.2.

3.5 Reception Conditions and Detention

3.5.1 *The arrangement of the Italian reception system and of the detention system*

The Italian reception system for the international protection seekers is characterized by the existence of several actors which are not coordinated by a central service. In particular, there are governmental centres - Reception Centres for Asylum Seekers (hereafter: CARAs), the national System of Protection for Asylum Seekers and Refugees (hereafter: SPRAR), the facilities set up by the Civil Protection (*Protezione Civile*) and the reception system in the big cities managed by the Municipalities.

According to the law in this reception system the international protection seeker is accommodated during the procedure for the determination of the responsible Member State up to his/her actual transfer.

The system has always been characterized by a chronic lack of places that has brought to the creation of parallel reception systems run by the Civil Protection and established to tackle emergencies. Emergencies are the massive flows that disembarked on the Italian coasts in the last years – the most recent arrivals refer to the so-called “North Africa Emergency”. According to NGOs, such inadequate and fragmented system wastes resources and provides beneficiaries with ineffective integration processes. In such a framework the international protection seeker during the procedure for the determination of the responsible Member State is more affected from the gaps of the reception system. In fact, from the moment of the notification of the transfer decision the claimant often remains outside a reception facility without his/her actual removal is carried out.

In order to describe the reception system and how it works, it is deemed it necessary to talk about the phenomenon of self-organized settlements that have mushroomed in big cities to face the lacking of places. Such insufficiency has always characterized the reception system, in particular in metropolitan areas.

It must be said that the access to the reception system is not immediate since it occurs only after the formal registration of the international protection request – that takes place very often after several months with respect to the *fotosegnalamento*. While waiting for the formal registration, above all in the metropolitan areas, the asylum seeker finds him/herself without any accommodation.

THE CARAs

The CARAs⁵⁵ have been established in 2008 through the Legislative Decree 25/2008 transposing into the Italian law the Procedure Directive. These facilities host international protection seekers for up to 35 days⁵⁶. However, in the practice, the period is prolonged to 6 months since the international protection procedure is stretched over the foreseen end of the reception in the CARA⁵⁷.

Beneficiaries enter these centres⁵⁸:

- when it is necessary to verify or determine their nationality or identity;
- when applying for international protection after having been stopped for having avoided or attempting to avoid border control, or immediately afterwards;
- when lodging an application after having been found in a condition of illegal stay.

55 Currently there are 8 CARAs spread around Italy: Friuli (Gorizia – Gradisca d’Isonzo with 138 places); Lazio (Roma – Castelnuovo di Porto with 650 places); Puglia (Bari-Palese – area aeroportuale with 744 places; Brindisi – Restinco with 128 places; Foggia – Borgo Mezzanone with 856 places); Calabria (Crotone – Sant’Anna with 875 places); Sicily (Caltanissetta – Contrada Pian del Lago with 96 places; Trapani – Salina Grande with 260 places). In Senato della Repubblica (Commissione straordinaria per la tutela e la promozione dei diritti umani), *“Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per i migranti in Italia”*, 2012, p. 108-110.

56 For more information see paragraph 2.2.

57 International Catholic Migration Commission (ICMC), *“MAYDAY! Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe”*, 2011, p. 111.

58 As foreseen by art. 20, paragraph 2 of the Legislative Decree 25/2008. See: Servizio Centrale SPRAR, Ministero dell’Interno, Commissione Nazionale per il Diritto d’Asilo, *“Guida Pratica per i Richiedenti Protezione Internazionale”*, 2008, p. 176.

CARAs are not a form of detention: the law itself establishes that international protection seekers are to be granted the opportunity to get out and to ask the permission to temporary leave. Nonetheless, the accommodation in CARAs depends on the truly permanence of international protection seekers in the facilities since they cannot leave without authorization even if the asylum seeker can freely go out of the centre during the day. According to Art. 22 paragraph 2 of the Legislative Decree 25/2008, the reception ends if the international protection seekers leave the CARAs without well-founded reasons.

In general CARAs are big buildings that can host high numbers of people and are, therefore, not adequate to house persons for long periods of time⁵⁹. According to a study carried out by *Médecins sans Frontières* in 2010⁶⁰, it is impossible that all the guests are assisted individually with regard to information, protection and assistance. The most critical situations emerge in the Centres (Bari, Caltanissetta, Crotone, Foggia) which host the highest number of migrants: there is limited space and not sufficient staff to assist, to give legal counselling and to allow guests to socialize⁶¹.

THE SPRAR

In addition to these governmental centres, there is the SPRAR which was set up by Law 189 in 2002. The System is promoted by the Ministry of the Interior and funded by the National Fund for Asylum Services and Policies. It consists of a network of voluntary local authorities that carry out projects of integrated reception coordinated by the Central Service: the staff provides beneficiaries with assistance in beginning the process of integration on the Italian territory. The service's targets are both international protection seekers and people who have already been granted a form of protection⁶².

⁵⁹ Ibidem. See also: Muižnieks, N, "Report following his visit to Italy", 2012, p. 35-36

⁶⁰ Médecins sans Frontières, "On the other side of the wall. A tour of Italy's migrant centers", 2010, p. 1-6.

⁶¹ Ibidem.

⁶² International Catholic Migration Commission (ICMC), "MAYDAY! Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe", 2011, p. 111-112.

The length of stay within SPRAR's projects varies according to the person's status⁶³:

- international protection seekers have the right to stay until they receive the Territorial Commission's decision;
- people having an international protection (refugee status; subsidiary protection) and permit of stay for humanitarian reasons have the right to stay up to 6 months;
- applicants who received a negative decision from the Territorial Commission and who appealed against such decision, have the right to stay in the reception project until they can work on the basis of article 11 Legislative Decree 140/2005.

The length of stay in SPRAR centres may be extended to up to 6 months or longer periods in case of exceptional circumstances and well-grounded reasons. As far as vulnerable categories are concerned, this period may be prolonged up to 11 months in cases of specific vulnerabilities⁶⁴.

Beneficiaries enter SPRAR's projects only if their cases have been reported to SPRAR by:

- the staff of CARAs;
- Questura;
- Prefecture;
- other reception centres.

In 2011, the number of places available within the SPRAR were 3,000. Within this broader category, 500 were the places for vulnerable categories (in particular, 134 for unaccompanied minors and 50 for people suffering from mental diseases)⁶⁵. Such

63 *"Rapporto di ricerca Mediazioni Metropolitane – Studio e sperimentazione di un modello di dialogo e intervento a favore dei richiedenti e titolari di protezione internazionale in situazione di marginalità"*, available at <http://www.caritasroma.it/wp-content/uploads/2011/05/Mediazioni-Metropolitane-Rapporto-di-ricerca.pdf>.

64 Ibidem.

65 ASGI, CESPI, CARITAS ITALIANA, CONSORZIO COMMUNITAS ONLUS, AICCRE, "Il diritto alla protezione in Italia. Quale futuro? Studio sullo stato del sistema d'asilo in Italia e proposte per una sua evoluzione", 2011, p. 198.

number is in strong contrast with the number of international protection requests lodged in Italy each year. For instance, in 2011, the applications were 37,350⁶⁶. Therefore, there is a disproportion between the international protection requests (37,350) and the availability of places in SPRAR projects (3,000). In order to face such discrepancy – especially in case of massive flows such as those arrived during 2011 because of the uprisings in North African countries – the Civil Protection facilities (17,984 places) have been established. Thus, the disproportion may lead to a short length of stay which does not allow to complete the integration process and to people remaining for too long periods in reception projects hampering thus the turn-over foreseen.

THE CIVIL PROTECTION SYSTEM

Besides the governmental centres and the SPRAR, in order to tackle the massive flows of persons coming from the North African countries, it has been established – as said previously – the system run by the Civil Protection. Such system has been appointed responsible for implementing a Plan to manage migrants' reception through a decree⁶⁷ declaring the existence of an emergency. Currently, such Plan is giving assistance to 17,984 persons through facilities managed by the Regions as of September 28th 2012⁶⁸. The centres, set up by the Regions through the Civil Protection's funds, are working in parallel with the other reception centres.

⁶⁶ On the basis of the data published by the Ministry of Interior.

⁶⁷ As a consequence of the Decree of the Council of Ministers' Presidency of February 12th 2011, on April 13th 2011 the Government issued the ordinance n. 3933 of Council of Ministries' President ordering the Civil Protection's Department.

⁶⁸ Data available at http://www.protezionecivile.gov.it/jcms/it/view_dossier_wp?contentId=DOS24974 (last consulted on October 25th 2012).

THE FACILITIES IN METROPOLITAN AREAS

In many Italian cities, the Municipalities⁶⁹ have established their own reception systems that concern international protection seekers, Dublin cases and holders of international protection. This happens even if the Municipalities' accommodations have not been set up to comply with the Reception Directive and its Legislative Decree. Each system has its own entry rules and capacity at local level. Therefore, it is not possible to describe them comprehensively as it is deemed it necessary to focus on the fact that these facilities have been established to tackle the lacking of the governmental centres and of the SPRAR. Although the Municipalities' centres have assisted international protection seekers and holders of protection, it is not their aim and, therefore, such structures do not offer targeted services. Moreover, it must be considered that the entry in these systems is difficult because of the existing disproportion between the lacking of places and the requests of accommodation lodged in each Municipality⁷⁰.

THE SELF-ORGANIZED SETTLEMENTS

Lacking a reception and assistance policy for the international protection beneficiaries and the asylum seekers, in the practice a phenomenon has originated: the self-organized settlements. These have mushroomed to host both international protection seekers and migrants in big cities. With respect to Rome, where 1,200 up to 1,500 people are expected to live in these settlements, Milano host less people because the Municipality has hampered the birth of new ones⁷¹.

69 The Municipality of Rome, for instance, runs 21 reception centres providing around 1300/1400 places; the Municipality of Milano offers around 400 places and the Municipality of Torino provides 201 places.

70 Leo, L., "Aspetti critici del sistema di protezione internazionale in Italia", 2012, p. 14.

71 "Rapporto di ricerca Mediazioni Metropolitane – studio e sperimentazione di un modello di dialogo e intervento a favore dei richiedenti e titolari di protezione internazionale in situazione di marginalità", available at <http://www.caritasroma.it/wp-content/uploads/2011/05/Mediazioni-Metropolitane-Rapporto-di-ricerca.pdf>. For further information on self-organized settlements see: Pro Asyl, "The living conditions of Refugees in Italy", 2010, p. 11-19.

THE CIEs AND THE DETENTION OF INTERNATIONAL PROTECTION SEEKERS

In Italy, the law does not foresee imprisonment for international protection seekers. However, they can be placed in administrative detention in closed Identification and Expulsion Centres (CIEs) if⁷²:

- they have committed crimes;
- they have already been issued an expulsion order;
- they are in conditions foreseen by Art. 1 paragraph F of the Geneva Convention.

Their placement in CIEs has to be approved by the *Questore* (head of the Police)⁷³.

The Legislative Decree 25/2008 foresees a “prioritized” procedure that shortens the time frames of the procedure when the Territorial Commissions have to examine applications lodged by persons in CIEs. The international protection seekers are held in CIEs until their procedure is defined. If the person – at the end – is granted a form of protection, s/he is released. Instead, if the person is denied it, s/he remains detained. The maximum length of detention was from 60 days to 180 days according to Law 94/2009. Through the transposition of the EU Returns Directive, the length has been extended to up to 18 months. Such prolongation has to be approved within 48 hours following the *Questore*’s decision by a “*Giudice di Pace*” (Judge of Peace).

On the existing conditions in CIEs, many studies - describing the situation of severe violations and of unease - have been written⁷⁴.

⁷² Art. 21 in Legislative Decree 25/2008.

⁷³ For more information see paragraph 2.2.

⁷⁴ For information on the conditions in CIEs see: “Italy: Un Special Rapporteur on the human rights of migrants concludes his third country visit in his regional study on the human rights of migrants at the borders of the European Union: Italy”, available at: <http://www.statewatch.org/news/2012/oct/un-special-rapporteur-italy.pdf> (last consulted: October 26th, 2012); Médecins sans Frontières, “On the other side of the wall. A tour of Italy’s migrant centers”, 2010, p. 1-6; Senato della Repubblica [Commissione Straordinaria per la tutela e la promozione dei diritti umani], “Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per i migranti in Italia”, 2012, p. 108-110.

3.5.2 Dublin Cases: not an alternative form of reception

According to the data provided by the Dublin Unit in 2010, 2,739 were the Dublin cases sent back to Italy from other Member States⁷⁵.

	Period: January-December 2010
Transfers from other Member States to Italy	2,739

With regard to some disaggregated data about Dublin cases' arrivals, the Report relies on information regarding people arriving to the most relevant border points (Roma Fiumicino – 2,187 and Milano Malpensa - 297) in 2010. Considering that the Roman border presents a higher number of beneficiaries of protection (1,212) than the Milanese one (80), it is possible to suppose that most of the returnees are people who chose to seek international protection in another Member State although they were granted protection in Italy. In such cases the Dublin Unit is involved even though it is not clear whether the return of the beneficiaries of international protection is carried out under the enforcement of the Dublin II Regulation. Such trend is not only due to other countries' pull factors (family or community links; hope to enjoy a better welfare), but also to the lack of integration processes available as soon as persons are granted international protection status⁷⁶. Below the data concerning the Dublin returnees in 2010 with regard to the two main Italian international airports:

⁷⁵ Source: Italian Dublin Unit.

⁷⁶ ASGI, CESPI, CARITAS ITALIANA, CONSORZIO COMMUNITAS ONLUS, AICCRE, "Il diritto alla protezione. La protezione internazionale in Italia. Quale futuro? Analisi di alcuni dei principali dati che emergono dalla ricerca", 2011, p. 20-22.

Roma Fiumicino		Milano Malpensa	
Legal status of Dublin cases		Legal status of Dublin cases	
International protection seekers	302	International protection seekers	199
Beneficiaries of protection	1,212	Refugees	7
Other	673	Subsidiary protection	60
Total	2,187	Humanitarian protection	13
		Denials	18

The Italian legal framework does not foresee any particular reception system for Dublin cases. The Report examines the reception distinguishing between two scenarios⁷⁷.

The first scenario concerns persons whose application has to be examined by another Member State waiting for their transfer. Since the Italian law does not establish that persons - who are waiting to be transferred to another Member State on the basis of the Dublin II Regulation – have to be detained, international protection seekers who received transfer orders are accommodated within the reception centres (CARAs or SPRAR projects) above described at the same conditions of the international protection seekers.⁷⁸

⁷⁷ ASGI, CESPI, CARITAS ITALIANA, CONSORZIO COMMUNITAS ONLUS, AICCRE, *“Il diritto alla protezione in Italia. Quale futuro? Studio sullo stato del sistema d’asilo in Italia e proposte per una sua evoluzione”*, 2011, p. 167, 168.

⁷⁸ Ibidem.

The second scenario refers to Dublin Returnees - persons who were issued transfer orders from other Member States and, as a consequence, were sent back to Italy. Within this broader category, another distinction is deemed necessary according to whether the returnee had already enjoyed the reception system while s/he was in Italy.

If returnees (international protection seekers, beneficiaries of international protection or of a permit of stay for humanitarian reasons had not been placed in reception facilities while they were in Italy, they may still enter reception centres. Due to the lack of available places in reception structures and to the fragmentation of the reception system⁷⁹, the length of time necessary to find again availability in the centres is – in most of the cases - too long. Since, there is no general practice, it is not possible to make a quantification of the time necessary to access to an accommodation. However, in the last years, temporary reception systems have been established to house persons transferred to Italy on the basis of the Dublin II Regulation. However, it concerns a form of temporary reception that lasts until their juridical situation is defined or, in case they belong to vulnerable categories, an alternative facility is found.

Such temporary reception has been set up thanks to targeted projects funded by the European Fund for Refugees. For instance, in Rome, there are currently projects providing assistance to 200 persons – within this broader category 60 places are for vulnerable categories⁸⁰.

However, it happens that Dublin returnees are not accommodated and find alternative forms of accommodation such as self-organized settlements⁸¹.

If returnees, who have already been granted a form of protection, had already enjoyed the reception system when they were in Italy, they have no more right to be accommodated in CARAs. However, they may be accommodated in these centres in case places are available to allow them to restart the administrative procedure to obtain a permit of stay.

79 For more information see paragraph 3.5.1.

80 For instance, one of the temporary projects for vulnerable people is run by the Red Cross in Rome. Such project is about to start.

81 Pro Asyl (eds. Bethke, M., & Bender, D.) «*The living conditions of refugees in Italy*», 2011, p. 23.

Frequently, the time foreseen in accommodation facilities is not enough for the beneficiaries of international protection to fully integrate themselves. Therefore, also persons, who have been granted protection and are not under the Dublin II Regulation, experience the same problems.

3.6 Member State Co-operation

CIR did not receive information on the cooperation among Member States. The Dublin Unit has indicated that there are no official bilateral agreements on the implementation of the Dublin II Regulation, however, a good co-operation with the other Member States is guaranteed through periodical meetings. They confirmed also that in Italy there are two liaison officers, one from the United Kingdom and one from Germany, who generally intervene to facilitate the solution of some individual cases particularly vulnerable⁸².

The practice widespread, especially in the past, on the Adriatic coasts⁸³ - where the Police authorities applied the bilateral agreement between the Greek and the Italian Governments "On the readmission of the irregular migrants" of April 30th 1999 - does not deal strictly with the enforcement of the Dublin System. In fact, although in an unlawful manner, the bilateral agreement was applied by the Police supervising the border control and not by the Dublin Unit. In such cases the violation consisted not in transferring the asylum seekers under the Dublin II Regulation but in not allowing them to access the international protection procedure by treating them as ordinary irregular migrants.

⁸² Meeting at the Dublin Unit Office on October 22nd 2012.

⁸³ For more information see paragraph 2.1.

3.7 *The Impact of European Jurisprudence at national level*

In Italy, since the decision *MSS versus Belgium and Greece*, as we previously said, no general and/or official suspension of transfers has been ruled by the Dublin Unit. The practice is still based on examination of each individual case. As shown by data, even in very rare cases, the Dublin Unit is still proceeding competence requests to Greek authorities.

On the contrary, the Italian Courts are adopting the principles deduced from this judgement, and the ECJ decisions C 411/10 and 493/10 are constantly taken into consideration by the Courts and are cited, on a regular basis, in non-transfer decisions.

In a recent judgement of the *TAR-Lazio*, already mentioned, the Italian authorities were condemned to pay the legal expenses because Italy had not respected the principles laid down by the European Jurisprudence. The decision states that “*the non-respect of the European principles concerning Greece on the part of the Italian Government implies serious responsibilities both on the diplomatic side and on the image of the Country*”.

The Court always clarifies that:

- on the basis of the above-mentioned judgements, an absolute assumption that the Member State respects the human rights does not exist, but it must be proved;
- the reports by international NGOs and UNHCR constitute suitable information in order to make a proper evaluation of the case.

Recently the Italian Courts, on the basis of these principles, have started to extend to many cases the sovereignty clause (Art. 3 Par. 2 of the Regulation), and have indeed stated to revoke the transfer to Hungary⁸⁴ and Malta⁸⁵.

⁸⁴ *TAR* judgement no. 5292/2012.

⁸⁵ *Consiglio di Stato ordinanza cautelare* no. 4195/2012.

3.8 *Good Practices in Italy*

- Thanks to a specific note adopted in 2009 by the Italian Dublin Unit, NGOs have developed a good collaboration for the re-examination of the transfer decisions in case of vulnerable asylum seekers. For more information refer to Paragraph 3.2. (“The Use of Discretionary Provisions”) and also 3.3.1. (“General Legal Framework for Vulnerable Asylum Seekers in Italy”).
- The Italian Law does not envisage the administrative detention of those who have to be transferred to another Member State under the Dublin II Regulation. In fact, the Law foresees that the asylum seeker who has received a transfer decision has to enjoy from the same rights as the other asylum claimants up to the actual removal.
- The Italian Authorities have implemented the Art. 6 of the Dublin II Regulation in case of unaccompanied minors with no relatives on the European territories. In these cases the Dublin Unit does not issue transfer decisions. For more information refer to Paragraph 3.3.3.

4 *Conclusion and Recommendations*

On the basis of what emerged from this report, we recommend the strengthening of some relevant guarantees in order to ensure effective benefit of the right to asylum. In particular:

- the Italian authorities should ensure the respect of the principles set by the jurisprudence of the Strasbourg Human Rights Court and the Luxembourg Court of Justice of the European Union.. As a consequence, any transfer to Greece should be suspended and Italy should take over responsibility for examining protection requests presented in Italy. Furthermore, before the adoption of any decision of transfer the Dublin Unit should make a precise evaluation of the situation existing in the destination Member State and apply the sovereignty clause any time there is the risk of a violation of human rights in that State;
- the Italian authorities should reduce the length of the recognition procedure, also respecting the timeframes foreseen by the Dublin II Regulation. Furthermore, the right to information should be better guaranteed, in particular in case of the initiation of a Dublin procedure;
- the Italian authorities should guarantee the right of asylum seekers to reception that respects the European standards. It is necessary to create a central coordination of the different actors in charge of reception and assistance, to raise the number of accommodation places without using always emergency remedies, to guarantee the right to reception also during the period prior to formalization of the asylum claims and to coordinate the services in order to realize an effective integration path;
- the Italian authorities should improve the access to the effective remedies through an easier way to get free legal aid directly providing lawyers specialized in asylum matters;

- the Italian authorities should presume the minor age even when the minors transferred to Italy by another Member State had declared to be adults before leaving Italy. Also in case Italy does not recognize the age determination ascertained by the transferring Member State, the Italian authorities should proceed to a new age assessment respectful of the fundamental guarantees and, in the meanwhile, treat them as minors. In age disputed cases the applicants should be granted the benefit of the doubt in their favour, as minors.

A. Bibliography

- ASGI, CESPI, Caritas Italiana, Consorzio Communitas Onlus, AICCRE, *“Il Diritto alla protezione. La protezione internazionale in Italia. Quale futuro? Studio sullo stato del sistema di asilo in Italia e proposte per una sua evoluzione”*, 2011
- Benvenuti, M., *“La protezione internazionale degli stranieri in Italia. Uno studio integrato sull’applicazione dei decreti di recepimento delle direttive europee e sull’accoglienza, sulle qualifiche e sulle procedure”*, 2011
- Consiglio Italiano per i Rifugiati (eds. Di Rado, D.), *“Dubliners Project – final report. Research and exchange of experience and practice on the implementation of the Council Regulation Dublin II establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national”*, 2010
- Consiglio Italiano per i Rifugiati (CIR), *“The Dublin Regulation and the asylum procedure in Italy. Are you aware of your rights? Guide for asylum seekers”*, 2012
- Croce Rossa Italiana, IOM, Save the Children, UNHCR, Ministero dell’Interno, *“Progetto Praesidium. Raccomandazioni e buone prassi per la gestione dei flussi migratori misti in arrivo via mare”*, 2011
- de Donato, M., *“Handbook Maieutics. Elaborating a common model interdisciplinary working methodology (legal-psychological) to guarantee the recognition of the proper International status to victims of torture and violence”*, December 2012
- Di Rado, D., *“Progetto S.A.B. Servizi alle frontiere: cooperazione pratica. Rapporto finale”*, 2008 - FER 2006, “Azioni Comunitarie”
- Di Rado, D., *“Annex 2 – Asylum Procedures Facts Sheets Italy”*, in Ali Cheikh, H., Querton, C., Soulard, E., *“Gender-related asylum claims in Europe. A comparative analysis of law policies and practice focusing on women in nine EU Member States”*, 2012

- F. Vassallo Paleologo “Controlli alle frontiere marittime e diritti fondamentali dei migranti” in S. Gambino e G. D’Ignazio “Immigrazione e diritti fondamentali tra costituzioni nazionali, Unione Europea e Diritti Internazionali” (2010)
- France Terre d’Asile, “Final report of the project – Improving the implementation of the right to asylum for unaccompanied children within the European Union”, 2012
- Human Rights Commissioner of the Council of Europe (Nils Muižnieks), “Report following his visits to Italy from July 3rd to July 6th 2012”, 2012
- International Catholic Migration Commission (ICMC), “MAYDAY! Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe”, 2011
- “Italy: Un Special Rapporteur on the Human rights of migrants concludes his third visit in his regional study on the human rights of migrants at the borders of the European Union: Italy”, available at: <http://www.statewatch.org/news/2012/oct/un-special-rapporteur-italy.pdf> (last consulted: October 26th 2012)
- Leo, L., “Aspetti critici del sistema di protezione internazionale in Italia”, 2012
- Médecins sans Frontières, “On the other side of the wall. A tour of Italy’s migrant centres”, 2010
- Pro Asyl (eds. Bethke, M., & Bender, D.), “The living conditions of refugees in Italy”, 2011
- “Rapporto di ricerca Mediazioni Metropolitane – studio e sperimentazione di un modello di dialogo e intervento a favore dei richiedenti e titolari di protezione internazionale in situazione di marginalità”, available at: <http://www.caritasroma.it/wp-vontent/uploads/2011/05/Mediazioni-Metropolitane-Rapporto-di-ricerca.pdf> (last consulted on November 9th 2012)
- Senato della Repubblica (Commissione straordinaria per la tutela e la promozione dei diritti umani), “Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per i migranti in Italia”, 2012
- Servizio Centrale SPRAR, Ministero dell’Interno, Commissione Nazionale per il Diritto d’Asilo, “Guida pratica per i richiedenti protezione internazionale”, 2008
- Servizio Centrale SPRAR, “Rapporto annuale del Sistema di Protezione per i Richiedenti Asilo e Rifugiati”, 2010/2011

B. Relevant Statistics

	2011	2010	2009	2008
REQUESTS OF COMPETENCE				
Requests sent by Italy to the other Member States	1,275	1,607	1,377	1,562
Requests sent by the other Member States to Italy	13,715	9,673	10,596 ¹	5,710
TOTAL	14,990	11,280	11,973	7,272
TRANSFERS				
Transfers from Italy to the Member States	14	113	47	125
Transfers from the Member States to Italy	4,645	2,739	2,658	1,098
TOTAL	4,659	2,852	2,705	1,223

Source: Dublin Unit, Ministry of Interior.

TAKE-CHARGE/TAKE-BACK REQUESTS BY OTHER MEMBER STATES TO ITALY

(considered period: January 1st - December 31st 2011)

Requesting State (*)	Accepted	Pending	Acquired information	Rejected requests/ withdrawn requests	TOTAL
Austria	317	64	191	143	715
Belgium	219	228	0	53	500
Bulgaria	0	0	2	1	3
Cyprus	0	0	0	0	0
Czech Republic	5	0	2	0	7
Denmark	150	14	54	26	244
Estonia	1	1	0	0	2
Finland	33	114	3	0	150
France	197	431	30	158	816
Germany	1429	152	5	419	2005
Greece	3	0	0	10	13
Hungary	1	0	3	0	4
Iceland	2	2	2	3	9
Ireland	4	1	8	3	16
Latvia	1	2	1	1	5
Lithuania	0	0	1	0	1
Luxembourg	9	26	0	2	37
Malta	1	1	0	4	6
The Netherlands	137	282	13	45	477
Norway	372	151	315	116	954
Poland	3	1	2	0	6
Portugal	1	1	0	0	2
Romania	6	0	0	1	7
Slovakia	4	0	0	0	4
Slovenia	7	0	0	10	17
Spain	5	2	0	2	9
Sweden	744	357	218	127	1446
Switzerland	2473	2410	377	546	5806
United Kingdom	356	6	18	74	454
TOTAL	6480	4246	1245	1744	13715

Source: Dublin Unit – Ministry of Interior.

TAKE-CHARGE/TAKE-BACK REQUESTS BY ITALY TO OTHER MEMBER STATES

(considered period: January 1st - December 31st 2011)

Country to which Italy has sent a take-charge/ take-back request (*)	Accepted	Pending	Acquired information	Rejected requests/ withdrawn requests	TOTAL
Austria	10	46	0	47	103
Belgium	5	15	0	15	35
Bulgaria	1	1	0	4	6
Cyprus	0	4	0	3	7
Czech Republic	0	1	0	5	6
Denmark	3	13	0	8	24
Estonia	0	0	0	0	0
Finland	1	5	0	2	8
France	15	33	0	33	81
Germany	13	41	0	25	79
Greece	2	105	0	103	210
Hungary	5	14	0	11	30
Iceland	4	9	4	1	18
Ireland	2	2	1	0	5
Latvia	12	6	1	5	24
Lithuania	0	1	0	0	1
Luxembourg	0	1	0	0	1
Malta	20	62	0	72	154
The Netherlands	16	9	0	16	41
Norway	41	26	0	48	115
Poland	1	6	0	2	9
Portugal	0	1	0	1	2
Romania	0	3	0	14	17
Slovakia	1	6	0	11	18
Slovenia	10	6	0	7	23
Spain	4	19	0	13	36
Sweden	6	31	0	16	53
Switzerland	12	31	1	24	68
The United Kingdom	12	37	1	51	101
TOTAL	196	534	8	537	1275

Source: Dublin Unit – Ministry of Interior.

STATISTICAL DATA ON UNACCOMPANIED MINORS IN ITALY

Years	2009	2010
First instance	Applicants for international protection considered to be unaccompanied minors are 409	Applicants for international protection considered to be unaccompanied minors are 306
Nationalities	Nationalities (40) Afghanistan: 90 Nigeria: 72 Somalia: 39 Eritrea: 36 Gambia: 28 Ivory Coast: 22 Ghana: 18 Turkey: 14	Nationalities (32) Afghanistan: 124 Turkey: 24 Eritrea: 16 Guinea Conakry: 16 Nigeria: 12 Ivory Coast: 13 Somalia: 7 Algeria: 7
Sex	Males: 361 Females: 48	Males: 280 Females: 26
Age	0-13: {14} 14-15: {51} 16-17: {344}	0-13: {14} 14-15: {33} 16-17: {259}

Source: Commissione Nazionale per il Diritto di Asilo (National Eligibility Commission) published in "Improving the implementation of the right to asylum for unaccompanied children within the European Union" (2012).

C. Relevant National Case Law

Administrative Regional Tribunal judgments:

1. TAR-LAZIO C. n. 6471/2009 s. n. 7880/2012 of September 19th 2012.
2. TAR-LAZIO C. n. 9252/2009 s. n. 4195/2012 of February 15th 2012.
3. TAR-LAZIO C. n. 11877/2010 s. n. 3455/2011 of March 10th 2011.
4. TAR-LAZIO C. n. 7579/2010 s. n. 7096/2011 of September 1st 2011.
5. TAR PUGLIA-Lecce C. n. 1352/2010 s. n. 324/2011 of February 1st 2011.
6. TAR-LAZIO C. n. 5791/2010 s. n. 1873/2011 of March 1st 2011.
7. TAR-LAZIO C. n. 8463/2010 s. n. 7102/2011 of September 1st 2011.
8. TAR-LAZIO C. n. 7657/2010 s. n. 5784/2011 of July 1st 2012.
9. TAR-LAZIO C. n. 6568/2010 s. n. 1551/2012 of February 15th 2012.
10. TAR-LAZIO C. n. 2150/2011 s. n. 678/2012 of January 20th 2012.
11. TAR-LAZIO C. n. 3310/2011 s. n. 5292/2012 of June 11th 2012.

Council of State judgment:

12. Council of State C. n. 6992/2012 Suspension decision n. 4195/2012 of October 19th 2012.

European network for technical cooperation on the application of the Dublin II Regulation

By creating a European-wide network of NGOs assisting and counselling asylum seekers subject to a Dublin procedure, the aim of the network is to promote knowledge and the exchange of experience between stakeholders at national and European level. This strengthens the ability of these organisations to provide accurate and appropriate information to asylum seekers subject to a Dublin procedure.

This goal is achieved through research activities intended to improve knowledge of national legislation, practice and jurisprudence related to the technical application of the Dublin II Regulation. The project also aims to identify and promote best practice and the most effective case law on difficult issues related to the application of the Dublin II Regulation including family unity, vulnerable persons, detention.

During the course of the project, national reports were produced as well as a European comparative report. This European comparative report provides a comparative overview of the application of the Dublin II Regulation based on the findings of the national reports. In addition, in order to further enhance the knowledge, we created information brochures on different Member States, an asylum seekers' monitoring tool and a training module, aimed at legal practitioners and civil society organisations. They are available on the project website.

The Dublin II Regulation aims to promptly identify the Member State responsible for the examination of an asylum application. The core of the Regulation is the stipulation that *the Member State responsible for examining the asylum claim of an asylum seeker is the one where the asylum seeker first entered.*

www.dublin-project.eu

European Partner Organisations:



Hungarian Helsinki Committee



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Comisión Española de
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