ACTORS OF PROTECTION AND THE APPLICATION OF THE INTERNAL PROTECTION ALTERNATIVE

NATIONAL REPORT

ITALY

European Refugee Fund of the European Commission

2014

APAIPA Country Report: Italy

I. Acknowledgments.

This country report is based on the research carried out by Mr. Alessandro Fiorini (Asilo in Europa).

ECRE wishes to thank Silvia Zarrella (Università di Bologna) for her cooperation, as well as the National Commission for the Right to Asylum for their support in identifying relevant decisions and their feedback on the report.

II. Glossary of acronyms.

AP: Actors of Protection.

CA: Court of Appeal.

IPA: Internal Protection Alternative.

NC: National Commission.

QD 2004: Qualification Directive (2004/83/EC).

QD 2011: Recast Qualification Directive (2011/95/EU).

TC: Territorial Commission.

III. Background: the national asylum system.

a. Applicable law.

The Italian Constitution (art. 10 par. 3) contains a "right to asylum".[1] However, until the transposition of the first set of EU asylum directives Italian legislation on asylum was scant. The matter is now regulated by:

- Decreto Legislativo 140/2005 (transposing Directive 2003/9/EC)
- Decreto Legislativo 251/2007 (transposing Directive 2004/83/EC)[2]
- Decreto Legislativo 25/2008 (transposing Directive 2005/85/EC) as modified by Decreto Legislativo 159/2008, Decreto Legislativo 150/2011 and law 97/2013
- Decreto Legislativo 286/1998 (Immigration Code), as amended several times: particularly interesting regarding asylum are article 29-bis (regulating the special conditions for refugees willing to exercise their right to family reunification) and article 5 par. 6 (regulating leave to remain for humanitarian reasons)
- Art. 1 of Decreto legge 416/1989 as amended several times (and regulating the

1 "The alien, who, in his country, cannot exercise the democratic freedoms granted by the Italian Constitution, has the right to asylum in the territory of the Republic, according to the conditions established by the law".

2 Decreto legislativo 18/2014 (February 2014), transposing Directive 2011/95/UE, was approved after the research was closed (January 2014). It is therefore not covered in the present research.

SPRAR[3] system)

When this research closed (11/01/2014) Italy had not yet formally transposed Directive 2011/51/EU and Directive 2011/95/UE. However, the text of the corresponding Legislative Decrees was available.

Should the provisional text of the Legislative Decree transposing Directive 2011/95/UE be approved without changes, the Italian legislator, again, will not transpose art. 8 QD.[4] This means, according to the January 2012 Supreme Court decision,[5] that the competent Italian authorities cannot use the Internal Protection Alternative (IPA) to deny a protection claim.

As regards the Actors of Protection (AP) concept, Italy transposed art. 7 QD almost literally into art. 6 of Decreto Legislativo (D.Lgs.) 251/2007. There are only two differences with the 2004 QD: 1) in art. 6 par. 2 (art. 7 par. 2 of the 2004 QD) "*Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent....*" has been transposed with "*Protection consists of the implementation of reasonable steps to prevent...*"; 2) in art. 6 par. 3 (art. 7 par. 3 of the 2004 QD), after the words "*which may be provided in relevant Council acts*", has been added "*and, where appropriate, any guidance provided by other competent international organisations, in particular by the UNHCR*".

Italian law does not contain any specific requirement to make the best interest of the child (BIC) a primary consideration during the examination of the asylum claim. However, according to art. 3 of law 176/1991,[6] the best interest of the child must be a primary consideration in all decisions concerning children, taken *inter alia* by tribunals and administrative authorities. Within asylum laws, the BIC is mentioned in art. 28 of D.Lgs. 251/2007 and art. 8 of D.Lgs. 140/2005, which both state that the tracing of a minor's family members must be carried out taking into consideration the BIC.

b. Institutional set-up.

A person can apply for asylum either at the border or within the Italian territory (at the local police headquarters: "*Questura*"). When the claim is presented at the border, the person is sent to the competent *Questura* to formally lodge the application. *Questure* are thus the only competent authorities at this stage. *Questure* cannot refuse a claim, even if manifestly unfounded. They must fill in a questionnaire (called *"Modello C3*") on the basis of the applicant's statements and send it to the authority competent to examine claims at first instance (the Territorial Commission, see below).

---

3 The SPRAR – Sistema di Protezione per Richiedenti Asilo e Rifugiati (System of Protection for Asylum seekers and Refugees) – is one of the possible options for the reception of asylum seekers and beneficiaries of international protection in Italy. See www.serviziocentrale.it for more information

4 Schema di decreto legislativo recante attuazione della Direttiva 2011/95/UE, available at http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0047.pdf&leg=XVII#pagemode=none.

5 Supreme Court (Corte di Cassazione) , 25.01.2012 (GHA01MRE): http://www.asgi.it/public/parser_download/save/1_itgiurisprudenza.cassazione.2294.religione.pdf

6 Transposing the 1989 New York Convention on the Rights of the Child.

In practice, the time between the oral statement of intention by the asylum seeker and the formal submission of the claim (through the *Modello C3*) may vary significantly, depending on the *Questura*. According to recent research,[7] in some cases it can take up to six months.

Once the application is formally lodged, the *Questura* either gives the applicant a residence permit valid for three months (and renewable until the end of the procedure) or, in some cases established by the law, sends them to a reception centre for asylum seekers *(CARA)* or to a detention centre (*CIE*: Centre for Identification and Expulsion).[8] In all cases, the asylum seekers have the right to remain on Italian territory until the examination of their claim at first instance, with some limited exceptions.[9]

Territorial Commissions (TCs) are competent to examine asylum claims at first instance. Each TC is competent in a determined geographic area of Italy. The law provides for a maximum of 10 TCs plus a maximum of 10 "sections" which may be established for a limited period of time in case of mass arrivals of asylum seekers, in order to speed up the procedure.[10]

The TCs are administrative bodies, established by a Ministerial Decree. The members are an officer of UNHCR, a representative of the local authority,[11] a police officer (*Questura*) and a representative of the government (*Prefettura*) as president of the TC. Each member may have one or more substitutes. Except the UNHCR officer, the other members do not work exclusively for the TC and their turn-over rate is very high.
Nothing is said in the law about the competence, skills or background of the members of the TCs.

The ***National Commission*** (NC) is competent to examine cases of revocation and cessation. The NC also coordinates the activity of the TCs, is responsible for the training of their components and collects COI and any other useful information for the monitoring of the asylum claims and the influx of asylum seekers (e.g. in order to propose the establishment of new sections of the TCs). Its members, who are appointed by a Decree of the Prime Minister, are all public officials and the president is a Prefect. UNHCR participates in the activities of the NC but without the right to vote.

c. The procedure.

Asylum seekers have the right to be heard.[12] They are, in general, interviewed by a single member of the TC, even if the law does not provide explicitly for this (rather than interview by

7 ASGI, Il diritto alla protezione, 2011.

8 Art. 26 Decreto Legislativo 25/2008.

9 Art. 7 Decreto Legislativo 25/2008.

10 Art. 4 par. 2 bis Decreto Legislativo 25/2008.

11 It is not mandatory that he or she be a public servant.

12 Art. 12 Decreto Legislativo 25/2008 Exceptions are possible only when the Commission is able to grant refugee status on the basis of the information available or when the asylum seeker is unable to be interviewed (a certificate is needed).

the entire TC).[13] The decision is then taken by the Commission by majority voting (in a tie, the *Prefettura*'s vote prevails). The interview should take place within 30 days of the lodging of the application but this deadline is normally not respected.
Negative decisions must be motivated in fact and in law. In practice, the motivation is often very meagre although an improvement is clear in the most recent decisions.
The TCs can: i) reject the claim, ii) reject the claim as "manifestly unfounded", iii) grant refugee status (five-year residence permit), iv) grant subsidiary protection (three years),[14] or v) grant humanitarian protection (one year).

d. Appeals.

Negative decisions and decisions granting a form of protection different from refugee status can be appealed before the competent tribunal, which is normally the tribunal of the capital of the region where the decision was taken at first instance. It is not a special judicial authority (i.e. the judges are not specialised in the field of asylum law). The appeal must be lodged within 30 days (15 days if the applicant is in a CARA or in a CIE) and in general it has an automatic suspensive effect.[15]

The tribunal examines the claim fully on the merits. The decision of the tribunal can be challenged by both the asylum seeker and the government before the competent Appeal Court ("*Corte d'appello*") within 30 days but with no automatic suspensive effect. The decision of the Appeal Court can be challenged before the Supreme Court ("*Corte di Cassazione*"). The tribunal and the Court of Appeal can grant international protection in their own right.

e. Representation and legal aid.

According to the legislation, asylum seekers may benefit from legal assistance and representation during the first instance of both the regular and prioritised procedure at their own expense. In practice, asylum applicants are usually supported before and sometimes during the personal interview by legal advisors or lawyers financed by NGOs or specialised assisting bodies where they work. Lawyers may be present during the personal interview but they do not play the same role as in a judicial hearing. The applicant has to respond to the questions and the lawyer may intervene to clarify some aspects of the statements made by the applicant. Nevertheless, the vast majority of asylum applicants go through the personal interview without the assistance of a lawyer since they cannot afford a lawyer and specialised NGOs have limited capacity due to a lack of funds.

With regard to the appeal phase, free legal aid (the so-called "gratuito patrocinio"), funded by the State is provided by law. There are however some financial restrictions.[16] In addition,

13 With the exception of art. 12 par. 1 Decreto Legislativo 25/2008 which provides for the possibility that the interview be carried out by a single member on the request of the asylum seekers.

14 After the enter into force of the Legislative Decree which transposes Directive 2011/95/UE, the residence permit for subsidiary protection will be valid for 5 years.

15 Art. 19 Decreto Legislativo 150/2011. Exceptions to the automatic suspensive effect are established in law.

16 The Presidential Decree 115/200229 concerning judicial expenses sets out an important restriction to the enjoyment of this right: only those applicants who may prove to have a yearly taxable income lower than

access to free legal assistance is also subject to a merits test by the competent Bar Council ("Consiglio dell'ordine degli avvocati") which assesses whether the asylum seeker's motivations for appealing are not manifestly unfounded.[17]

IV. Methodology: sample and interviews.

a. Methodology used.

The methodology was based on desk research (mainly national legislation and reports), selection and analysis of case law and interviews/consultations with national stakeholders.

The researcher carried out three interviews.

b. Description of the sample.

The decisions were collected thanks to the collaboration of many small NGOs, lawyers and social workers throughout Italy, who agreed to share information about cases. Around 700 cases were collected during September and October 2013, decided by Territorial Commissions, tribunals and Courts of Appeal in different regions of Italy. The National Commission for the right to asylum also provided 50 decisions in December 2013.

As decision-makers rarely take the AP and IPA concepts into consideration, only a minority of the cases assessed turned out to be relevant to this research. Thus, the sample consists of 56 decisions at 1st instance (competent body: Territorial Commissions); 40 at 2nd and 3rd instance (tribunals and Courts of Appeal); and four Supreme Court decisions.
Two decisions were adopted in 2009, nine in 2010, 27 in 2011, 40 in 2012 and 21 in 2013. In one case the date was not specified but it was certainly after 17 December 2012.

Year	**Decisions**
2009	2
2010	9
2011	27
2012	40
2013	21
Not specified (but after 17/12/2012)	1
Total	100

42 decisions were positive: in nine cases the applicant was granted refugee status, in 29 cases subsidiary protection, whereas four decisions were Supreme Court cassations of negative decisions.

10,628.16 euros may benefit from free legal aid. The law specifies that in case of income acquired abroad, the foreigner needs a certification issued by the consular authorities of their country of origin. However, the law prescribes that if the person is unable to obtain this documentation, they may alternatively provide a self-declaration of income.

17 See also: ECRE/CIR, Asylum Information Database – Country Report – Italy: http://www.asylumineurope.org/reports/country/italy

In 58 cases the decision was negative from an international protection perspective. However, in 12 of those cases, the applicant was granted humanitarian protection.
Therefore, in 54% of the cases studied, the decision was positive for the applicant, from an international protection or a national (humanitarian) protection perspective, which is roughly in line with the Italian rate of recognition since 2009.

Outcome	**Decisions**
Positive (Refugee Status)	9
Positive (Subsidiary Protection)	29
Positive (cassation of a negative decision)	4
Negative (but Humanitarian Protection)	12
Negative	46
TOTAL	100

The nationalities of the applicants reflect the Italian caseload, with the largest number from Nigeria, followed by Pakistan, Afghanistan and Ghana.

Country of origin	**Decisions**
Nigeria	23
Pakistan	17
Afghanistan	10
Ghana	9

80% of the applicants were men. This also reflects the Italian caseload.
The IPA was taken into consideration by the decision-makers in 35 cases; the AP concept in 72 cases (the two can overlap).

V. National Overview.

a. Actors of protection.

i. The nature of protection.

The rules for assessing an actor of protection are the same for refugee status and subsidiary protection.

1. Prevention of persecution or serious harm.

The law requires that actors of protection take “reasonable steps” to prevent persecution or serious harm. In the majority of cases, decision-makers do not elaborate on the concept of reasonable steps. In one case decision-makers referred to the constant activity to suppress the MEND movement carried out by the Nigerian government.[18] A court considered that the

18 TC (Bologna), 29.06.2011 (NIG21FNS).

Delta region is in a process of “normalisation” due to the efforts of the Nigerian federal authorities, including an amnesty for the militants involved in the conflict.[19]

A minority of cases examined the effectiveness of the legal system operated by a proposed AP. The existence of laws prohibiting discriminatory behaviour and the fact that the alleged agents of persecution were convicted and served seven years in custody have all been considered as clear indicators of effectiveness.[20]

Sometimes a legal system has been considered ineffective on the basis of reliable reports from NGOs and international organisations.[21] In a case of a woman at risk of female genital mutilation (FGM) the decision-makers found that the legal system of Kenya offers protection only to minors and thus was not effective for the applicant.[22] In a decision concerning an applicant from Ghana the legal system was considered ineffective because the inquiries carried out by the local authorities against the alleged agents of persecution were unsuccessful.[23]

In the majority of cases, however, decision-makers simply refer to the possibility for the applicant to seek the protection of the domestic legal system or to the fact that the alleged acts of persecution are prosecuted in the country of origin. In one decision the applicant left his country because he was allegedly threatened by relatives in a land dispute.[24] The tribunal rejected the claim because it found that the facts on which the claim is based are not plausible and, furthermore, are prosecutable in Pakistan (and the applicant did report to the police). One claim was rejected*, inter alia,* because the Albanian authorities' inability or unwillingness to protect the applicant – threatened by a non-state actor - “must be excluded on the basis of what is widely known about Albania”.[25]

In the few cases analysed that concerned persons with special needs, the legal system's effectiveness in detecting, prosecuting and punishing acts of persecution towards persons with characteristics similar to those of the applicant was taken into account.
In a case of an applicant from the Ivory Coast, the Ivorian legal system was considered effective for a woman at risk of FGM because FGM is forbidden by the Ivory Coast's legislation and the authors of such crimes are prosecuted.[26]

In a case of a Nigerian woman, the Nigerian legal system was considered ineffective for protecting trafficked women even if it foresees some form of protection.[27]

---

19 Tribunal of Rome, 5.02.2010 ((NIG66MNS).

20 CA (Bologna), 20.4.2012 (KOS63MNSLG); Tribunal of Bologna, 30.07.2012 (PAK34MNS).

21 TC Torino, 10.04.2013 (NIG06FRSVT); Tribunal of Cagliari, 3.04.2013 (NIG43FRSTO).

22 Tribunal of Bari, 28.07.2010 (KEN29FSPTO).

23 Tribunal of Rome, 20.12.12 (GHA64MRS).

24 Tribunal of Bologna, 15.06.2011 (PAK73MNS).

25 Tribunal of Rome, 12.04.2011(ALB67MNS).

26 Tribunal of Trieste, 12.04.2010 (IVO55FNS).

In one case the Supreme Court said that the Court of Appeal did not properly consider the concrete role of the Nigerian government towards acts of gender-based violence carried out by non-state actors in Nigeria and its ability to protect the victims of such violence.[28]
In the case of a woman from the Democratic Republic of the Congo, the Supreme Court found that the context where the applicant used to live was one of substantial impunity and lack of control by state authorities where gender violence is a normal means of revenge.[29]

However, very little is said in those decisions on how the conclusion was reached. Sometimes the decisions contain a reference to the COI consulted, sometimes they simply refer to "the information at the disposal of the determining authority" and sometimes there is no reference to COI.

Only in one case among those analysed did the decision-makers find a possible IPA when a state actor (the police) was the actor of persecution. This appears to indicate a presumption in practice that effective protection is not available when the state is the actor of persecution.[30] In a case of an applicant from a village in the Southeast of Turkey, it was not raised as a presumption, but rather as a conclusion by the authority that in another part of Turkey the ethnic intolerance would certainly be less.[31]

However, the cases assessed do not appear to demonstrate such a presumption when the state merely tolerates persecution by a non-state actor. It is not always clear in the decisions whether the state tolerates the persecution or cannot protect against it or a mix of both. Sometimes the possible role of the state as AP is not considered at all. In some cases, the persecution came from private actors, in particular family members, and the decision-makers found a possibility of IPA without assessing whether the state tolerated the persecution or not.

2. Durability of protection.

No cases reviewed referred to the non-temporary nature of the protection.

3. Access to protection.

The law requires verification that the applicant can actually access protection,[32] but this was very rarely assessed in the decisions studied. Most decisions do not mention the criteria used to determine whether the applicant has access to the protection. In several cases a finding that the applicant did not seek the protection of their state before leaving negatively

---

27 TC Torino, 10.04.2013 (NIG06FRSVT)

28 Supreme Court (Corte di Cassazione), 10.01.2013 (NIG48FRETO).

29 Court of Cassation, 24.09.2012 (DRC54FRETO).

30 Tribunal of Milano, 12.11.2009 (TUR50MNS).

31 Tribunal of Milano, 12.11.2009 (TUR50MNS).

32 Art. 6 (2) D. Lgs. 251/2007 transposing art. 7 (2) 2004 Qualification Directive.

affected the application or the applicant's credibility.[33] In one case of an applicant from Pakistan, the fact that the applicant lodged a complaint against the alleged persecutor was considered as access to state protection without any elaboration on whether the authorities acted on the complaint.[34] In another case, the applicant from Pakistan was one of the most important members of the PML-N party in his village. He alleged persecution by the members of a rival party (PML-Q). According to the tribunal, considering that the threat came from a member of the rival party and the president of the applicant's party is the Prime Minister, it is possible to presume that the applicant can find adequate protection from the authorities of his country.[35]

In a case of an applicant from Ghana the applicant was granted subsidiary protection because the protection of the authorities would not have been accessible, given the power of the agent of persecution.[36]

Sometimes the evaluation of the applicant's access to protection is based on considerations which have little to do with the case. In a case of a Nigerian applicant, the decision-makers rejected the applicant's statement that she could not access the protection of the authorities against persecution from Muslims, based on the victory of Christian political forces at recent elections in Nigeria.[37] In another case of a Nigerian woman applicant, she was considered as having access to state protection because during the interview she said that in Nigeria she was assisted by a barrister.[38]

ii. Actors of protection (art. 7(1)).

a.i.1. General criteria.

In transposing Article 7(2), Italy did not transpose the term “generally provided”. Decision makers normally refer to both the willingness and the ability to provide protection. However, some cases referred only to the willingness. Some decisions are based on the fact that the applicant could seek/avail himself of the protection of the state, without any explicit evaluation of the state’s ability and willingness to protect.[39]

No cases were identified where a non-state actor was taken into consideration as a possible AP.[40]

33 See e.g., MAL69MNS; SIE13MNS; GHA85MNS, GHA89MNSUM, MAL91MNS, NIG100MNS.

34 Tribunal of Bologna, 15.06.2011 (PAK73MNS).

35 Tribunal of Trieste, 15.10.2013 (PAK11MNS).

36 TC (Foggia), 15.02.2013 (GHA57MSP).

37 C.A., 24.02.2012 (NIG42FNS)

38 TC (Bologna) (NIG76FNSTO).

39 TC (Bari), 02.02.2012 (IRQ09SPPD/TO); TC (Torino), 17.12.12 (NGE46MNS).

40 This is confirmed by the letter sent to ECRE on 29th July 2013 by the Head of the Italian National Commission on the right to asylum.

a.i.2. State actors of protection.

a.i.2.a.i. Criteria for a state to be an AP.

According to a leading Supreme Court case, the state authorities' ability to protect the applicant cannot be a mere hypothesis which is not based on adequate logical support or factual elements.[41]

When carried out, the evaluation of whether a state can provide protection is based on:

- the existence of laws the applicants can rely on for protection against persecution. For example, in one case dealing with persecution for homosexuality the court found that homosexuality is legal in Kosovo and a law prohibits discrimination based on sex [sic.]. Therefore sex-based persecution [sic.] by non-state actors can be punished by the authorities.[42]
- (less frequently) the existence of an effective system for detecting and prosecuting/punishing crimes. For example, in a case of an applicant from Pakistan, the judge found that the fact that the agents of persecution were convicted and detained for 7 years demonstrates the existence of a functioning justice system in Pakistan and the applicant and his family could find protection.[43]

However, in the majority of cases, decision-makers simply refer without further explanation to a possibility (or lack thereof) of protection by the authorities.

- The territorial Commission denied refugee status to a married couple who left Iraq because the wife's family did not accept their marriage because they could be protected by "organs of the Iraqi state".[44]

Some claims were rejected because the applicant could seek the protection of the state authorities. In a case of an applicant from Niger, the Commission found the applicant not credible, especially regarding the reasons why he left his country without seeking the protection of state authorities.[45]

Some decisions take into account the fact that the applicant's family continues to live in the country and conclude that the state is, therefore, an actor of protection. In a case of a Senegalese applicant - a Wolof man from the region of Casamance, Senegal – who feared persecution by rebels fighting for the independence of Casamance, according to the Commission, the fact that his family decided to stay in that region (and the applicant's statement that the police and the army were active against the rebels) seems to confirm that the state authorities were willing and able to protect.[46]

---

41 Supreme Court, 25.01.2012 (GHA01MRE).

42 Tribunal of Rome, 20.12.2012 (KOS64MNSLG).

43 Tribunal of Bologna, 30.07.2012 (PAK34MNS).

44 TC (Bari), 02.02.2012 (IRQ09SPPD/TO).

45 TC (Torino), 17.12.12 (NGE46MNS).

46

In a case of a Christian woman from Nigeria, who feared persecution by her Muslim family-in-law, the court did not accept the applicant's allegation that she could not avail herself of the protection of the authorities because they would fear Muslims. According to the court this statement was not credible, given the victory of the Christian parties in recent elections.[47]
In two cases, from Guinea and Ivory Coast, a new regime was considered to not yet be in a position to provide protection.[48]

a.ii. Situations where a state cannot be an AP.

Some decisions have found that countries of origin whose authorities are not the source of persecution or tolerating it are nevertheless unable to provide protection. The reasons have included corruption (Nigeria, Colombia); inability to control indiscriminate violence (Nigeria, Afghanistan, Somalia, Ivory Coast, Mali, Guinea, Iraq), for which subsidiary protection is sometimes granted as a blanket policy;[49] inability to protect a particular group (e.g. trafficked women in Nigeria;[50] women at risk of FGM in Kenya;[51] women at risk of gender-based violence in DRC and Nigeria;[52] minority clans in Somalia);[53] power of a non-state agent of persecution (Taliban in Pakistan and Afghanistan;[54] Mungiki group in Kenya;[55] powerful individuals in Pakistan and Ghana); and a new democracy (Guinea) which was not in full control of the army and there was deemed to be a high risk of instability.[56]

TC (Torino), 21.09.2012 (SEN17MNS).

47 C.A., 24.02.2012 (NIG42FNS).

48 Tribunal of Rome, 10.06.2013 (GUI12MSP) and Tribunal of Roma, 12.02.2012 (IVO70MSP).

49 For example, based on a circular of the National Commission for the right to asylum in June 2012, applicants from Mali were systematically granted subsidiary protection (SP) until June 2013, when a new circular recommended granting humanitarian protection. See for instance: Tribunal of Roma, 12.02.2012 (IVO70MSP) and CA (Roma) 24.02.2011 (IVO94MSP) (protection granted due to a constant lack of minimal security conditions).

50 Nigeria has been found inadequate to protect against re-trafficking because, even though the legal and institutional framework foresees protection, such measures cannot be guaranteed in each case (TC Torino, 10.04.2013 (NIG06FRSVT)).

51 In rural Kenya FGM is a prerogative of families and tribes which the government is unable to limit (Tribunal of Bari, 28.07.2010 (KEN29FSPTO).

52 The DRC's authorities were found unable to protect, where the applicant lived in a context of substantial impunity where gender violence is a normal means of revenge or pressure (DRC54FRETO). Nigerian authorities were found unable to protect because, according to numerous COI sources, women are seriously exposed to the risk of degrading treatment in Nigeria (Supreme Court (Corte di Cassazione), 10.01.2013 (NIG48FRETO); NIG52FSP; Tribunal of Cagliari, 3.04.2013 (NIG43FRSTO).

53 Somali authorities have been found inadequate to protect minority groups from Al Shabaab (SOM31MRS).

54 This was determined based on COI in the case of Pakistan (CA (Naples), 24.06.2012 (PAK24MSP); TC (Bologna) 18.09.2012 (PAK02MRS), and on a report from Amnesty International (AFG84MSP) or the UNCHR Eligibility Guidelines (AFG96MSPUM) for Afghanistan. In that case (AFG96MSPUM), subsidiary protection was granted because of the general situation of insecurity in Afghanistan (ie: the Commission found the applicant's statements not credible re: persecution arising from the Taliban).

55 This was determined based on COI (KEN51MSP).

56 Tribunal of Rome, 10.06.2013 (GUI12MSP).

Sometimes the vulnerability of the applicant is taken into account when assessing the possible role of the state authorities as AP, in particular towards gender-based violence in Nigeria and DRC. In two cases regarding women victims of gender-based violence – the Supreme Court quashed decisions of the Courts of Appeal because they failed to adequately consider the authorities' passive role towards acts of violence carried out by non-state actors against women in social contexts of impunity.[57]

b. The Internal Protection Alternative.

b.i. Assessment of the IPA.

The IPA is used only in a few cases, normally as an alternative argument to reject the claim or (more often) as part of broader reasoning on the applicant's credibility. When decision-makers use the IPA, they sometimes ask the applicant whether, in the country of origin, there is a region where they could feel safe. Otherwise (or when the applicant does not indicate any region), they generally do not propose a specific region, but simply refer to a relocation in "another part of the country".[58] In such cases, no analysis on the risk of persecution or serious harm is carried out. What emerges from this research is that, after an important decision of the Supreme Court of January 2012,[59] almost all decision-makers stopped (if they had ever started) to apply IPA.

b.i.1. Safety in the region.

Even when a specific region is proposed, the absence of risk is not thoroughly verified. Sometimes decision-makers refer to a generic availability of state authorities' protection in the proposed region[60] or to a lack of interest from the agents of persecution.[61] Sometimes, they take into account the fact that the applicant's family is living safely in the region (PAK75MNS). In a case of an applicant from the Ivory Coast, the fact that the applicant had already lived in the capital was considered to demonstrate the absence of a risk.[62]

The IPA was considered only in one case involving an unaccompanied minor.[63] The Commission eventually granted subsidiary protection because it was too dangerous to relocate to Panjshir based on the 2010 UNHCR Guidelines on the assessment of the international protection needs of asylum seekers from Afghanistan.

---

57 Supreme Court (Corte di Cassazione), 24.09.2012 (DRC54FRETO) and 10.01.2013 (NIG48FRETO).

58 See e.g., IND33MNS; TC (Bologna), 29.06.2011 (NIG21FNS); TC (Verona), 18.07.2013 (NIG44MNS); TC (Torino), 18.01.2012 (COL27MNS); BUR38MNS, Tribunal of Milano, 12.11.2009 (TUR50MNS).

59 Supreme Court, 25.01.2012 (GHA01MRE).

60 Tribunal of Trieste, 12.04.2010 (IVO55FNS).

61 TC (Roma), 05.06.2013 (MAL83MNS).

62 Tribunal of Trieste, 12.04.2010 (IVO55FNS).

63 TC (Foggia), 25.02.2011 (AFG32MSPUM).

In one case, the Commission considered, *inter alia*, that the applicant – who left Pakistan because he was threatened by non-state actors in a land dispute – could relocate to Karachi, where his family had already relocated and had not been threatened any more.[64]

In one case, the applicant, a shepherd of Bambara origin, left his region (Segou) because he had been threatened by thieves. He went to Bamako and then left Mali. The Commission rejected the claim mainly because it is difficult to believe that, in case of return to Bamako, the thieves would persecute him also there.[65]

b.i.2. Securing human and social rights.

When decision-makers identify a region of protection they do not carry out an in-depth inquiry on the region but take into consideration aspects like the fact that the applicant spent a period of time in the proposed region or a relative lives there. No explicit reference has been found regarding access to basic political and social rights in the IPA. It has not been possible to identify a constant practice towards applicants with special needs, given the extremely low number of such cases among the decisions examined.

When the IPA concept is applied, the assessment of the living needs is not carried out. Sometimes the actual protection region is not identified at all and even when decision-makers do identify a protection region, the living needs of the applicant are not examined.

a. General circumstances.

The cases that considered general circumstances in the IPA context sometimes took into account the size of the country,[66] as decision-makers sometimes found it not credible that the applicant would be in danger in every region of the country of origin, situations of armed conflict in the country,[67] and inability of the persecutor to harm the applicant in another part of the country (e.g. the capital). None of the decisions analysed referred to the rights and living standards in the proposed protection region.

b. Personal circumstances.

The possibility of an IPA for an unaccompanied minor was taken into account in only one case (and excluded on the basis of the general situation of violence in the country of origin).[68] The IPA was applied in only in one case regarding an applicant with special needs (woman at risk of FGM).[69] In that case, the tribunal did not take into account the conditions

64 TC (Bologna), 02.03.2011 (PAK71MNS).

65 TC (Roma), 5.06.2013 (MAL83MNS).

66 In Tribunal of Bologna, 29.07.2012 (CAM37MNS), when SP was at issue, the judge found that it was not credible that the applicant's relatives would be able to find him in every part of Cameroon.

67 Three cases from Senegal made reference to the region where conflict was on-going (Casamance) to show that an IPA was possible in Senegal (TC (Torino), 21.09.2012 (SEN17MNS); Tribunal of Bologna, 21.09.2012 (SEN61MNS) and 7.05.2012 (SEN36MNS).

68 TC (Foggia), 25.02.2011 (AFG32MSPUM)

69 Tribunal of Trieste, 12.04.2010 (IVO55FNS).

for a person with the characteristics of the applicant. In one case an IPA was considered too difficult because the applicant suffered from diabetes (however, the applicant was granted only humanitarian leave to remain).[70] Only a very few decisions clearly stated that the applicant was a trafficking victim. In these cases the IPA was not applied. None of the decisions reviewed proposed an IPA for an LGBT applicant.

c. "Stay/settle"

None of the decisions examined explicitly considered the reasonableness of an applicant staying or settling in a protection region. Decision-makers sometimes considered the fact that the applicant's family was living in the proposed IPA, or that the applicant spent a certain period of time in the proposed region before leaving his or her country.

b.i.3. Access.

Access to protection in the IPA region is not generally evaluated. The fact that the applicant spent a certain period of time in the proposed protection region or that their family lives there is generally considered sufficient. In some cases decision-makers do not identify a specific location. None of the cases reviewed verified the possibility for the applicant to travel to the IPA region.

b.ii. Application of the IPA.

b.ii.1. Procedure.

b.ii.1.a. In which procedure is the IPA applied?

In the cases studied, the IPA was only ever used in main proceedings. An application can only be considered inadmissible if the applicant already has Convention refugee status in another state, or if it is a repeated claim.[71] Italy does not have a border procedure. The law specifies some cases in which an application must be examined with priority, but still in the ordinary procedure; however the research did not find any instances of the IPA being used in this context.

b.ii.1.b. At what point in the procedure is the IPA applied?

The normal use of the IPA is during a main proceeding to assert an alternative ground for rejecting the claim, alongside a determination that the applicant is not at risk. Additionally, the IPA was used in this alternative fashion in two cases where the applicant was found not to have provided sufficient elements of evidence to allege a risk of persecution or serious harm requiring international protection.[72]

---

70 TC (Verona), 18.07.2011 (NIG44MNS).

71 Art. 29 Decreto Legislativo 25/2008.

72 In TC (Bologna), 02.03.2011 (PAK71MNS), the Commission rejected the claim because the applicant was not credible, his statements were not detailed, and the facts fell outside the scope of the 1951 Convention. Furthermore, he "could live without any problem in a city far from the one where the facts allegedly took place". In PAK73MNS the tribunal found that, regarding SP, the applicant did not provide sufficient elements to

In three cases, the IPA was used as a threshold argument to deny a claim before fully assessing the risk of persecution or serious harm. In a case of a Nigerian applicant, the applicant feared persecution from a secret organisation that carried out voodoo practices. According to the Commission, even assuming his statements were true, it was not credible that this organisation could find him wherever he went in Nigeria. Thus, it was not possible to exclude the feasibility of repatriation to another city, far from his former residence.[73] In a case of an applicant from Ivory Coast both AP and IPA were used as a threshold argument. The court found that, even assuming the applicant's statements that she left Ivory Coast because her family would force her to undergo FGM and to marry were credible, Ivorian legislation forbids FGM and the authors of such crimes are prosecuted. Furthermore, the court found that the alleged risk was limited to the applicant's village of origin and she could relocate, in particular to the capital where she had been living for a long time and where police could protect her.[74] In a case of a Nigerian applicant, the Court of Appeal found that the applicant had not contested the Tribunal's finding that she could relocate to another part of Nigeria because she had no particular ties with the place where she used to live.[75]

b.ii.1.c. Notice and opportunity to challenge the IPA.

In some cases applicants were asked during the interview in the main stage of the procedure about the existence of parts of the home country where they could feel safe. A positive answer was used to raise the IPA possibility, but no applicants were informed that the IPA could be applied on the basis their answer. The transcript of the interview is provided to the applicant, who may ask for corrections before signing it. The first opportunity the applicant has to formally challenge the IPA is upon appeal.

b.ii.2. Policy.

b.ii.2.a. Type of protection claim.

There are no rules in Italian law on the IPA. No remarkable difference has emerged between refugee status or subsidiary protection in practice. Sometimes the IPA is applied only to refugee status, sometimes only to subsidiary protection, sometimes to deny both but without a clear pattern. In a very limited number of cases IPA was applied in situations of armed conflict (especially in the Casamance region of Senegal).
The IPA was applied in only one case when there was a state actor of persecution. The claim of a Kurd asylum seeker from Turkey was rejected, *inter alia*, because he could not explain why, instead of leaving his country, he did not relocate in another part of Turkey where the level of ethnic intolerance is certainly lower.[76] When the persecution comes from a non-state agent, no cases have been found where the IPA was applied and the decision-

---

prove he was at risk and, furthermore, could easily relocate because he had no ties with the region of Pakistan where the facts occurred.

73 TC (Verona), 18.07.2011 (NIG44MNS).

74 Tribunal of Trieste, 12.04.2010 (IVO55FNS).

75 CA (Bologna), 30.03.2012 (NIG08FNS).

76 Tribunal of Milano, 12.11.2009 (TUR50MNS).

makers said that the state tolerated the persecution. However, in some cases decision-makers found a possibility of an IPA without assessing whether the state was tolerating the persecution.

b.ii.2.b. Frequency of application.

In principle, decision makers should not assess the IPA. According to the Italian National Commission for the right to asylum,[77] decision-makers do not use it to deny claims. During the research, however, cases where the applicability of the IPA was assessed were identified, most (but not all) before the January 2012 Supreme Court ruling against its use.[78]

For example, the Court of Appeal rejected an appeal because the applicant - a Nigerian woman allegedly persecuted by non-state actors - was not credible.[79] Regarding denial of subsidiary protection, the Court found that she could relocate within Nigeria. In another case from a Nigerian applicant, the Tribunal found that the applicant – a Nigerian woman from River State allegedly threatened by the MEND - could easily live in areas where the MEND is not active.[80] In a case regarding a Malian applicant, the Territorial Commission found that the threats received by the applicant did not prevent him from relocating to another part of Mali.[81]

b.ii.2.c. IPA as a blanket policy.

When applied, the IPA is considered on a case-by-case basis, with some recurring patterns, e.g. persons fleeing conflicts that involve a limited part of the country (Casamance region) or people fleeing from non-state agents of persecution with no ability to operate outside the applicant's area of origin (e.g.: family members, secret societies, gangster groups).

b.ii.2.d. Frequency of application of IPA (countries/applicants).

The application of IPA should be excluded for all applicants. In practice, it is normally excluded for applicants who are persecuted by a state agent (only one exception has been found).[82] When used, the IPA is applied most frequently to applicants from Nigeria (persons fleeing persecution from secret societies/gangs/family members) and Pakistan (persecution from non-state actors, including the Taliban), then Ghana (non-state actors), Mali (non-state actors) and Senegal (conflict in the Casamance region).

c. Assessment of facts and circumstances.

The Supreme Court has defined the general rules on the burden of proof in the asylum procedure: the authorities have a duty to cooperate with the applicant in ascertaining the

77 Letter from the Ministry of the Interior (Commissione Nazionale Asilo) to ECRE, 29th of July 2013.

78 Supreme Court, 25.01.2012 (GHA01MRE).

79 CA (Bologna), 30.03.2012 (NIG08FNS).

80 Tribunal of Bologna, 8.03.2012 (NIG22FNS).

81 TC (Verona), 06.02.2012 (MAL82MNS).

82 Tribunal of Milano, 12.11.2009 (TUR50MNS).

elements of the claim, e.g. acquiring *ex officio* information about the legal system and political situation in the country of origin.[83] This is a departure from the ordinary rules of the civil procedure, where the party that is claiming a legal right bears the burden of proof.

The burden of proving the elements of protection specified in Article 7 of the Qualification Directive should be interpreted accordingly, but this is not always clear in practice. Sometimes decision-makers examine at least some of the elements. For example in a case of a Nigerian woman applicant, the Commission examined the Nigerian legal and institutional framework and found that even though some form of protection for victims of trafficking is foreseen, such measures cannot be guaranteed in each case.[84] In other cases it is not clear an assessment is performed, as for example in one case where a married couple left Iraq because the wife's family did not accept their marriage.[85] The Commission, in separate but almost identical decisions, denied refugee status because "organs of the Iraqi state" could protect them.

The lack of a provision on IPA in Italian legislation makes it difficult to identify a standard of proof when it is applied. When a protection region is identified, the burden of proof seems to be on the state. When, more typically, no protection region is identified, the burden seems to be on the applicant (who has not demonstrated a risk throughout the country). For instance, in a case of an applicant from Colombia, who feared persecution from a drug cartel because he refused to work as a smuggler, the Commission considered that he had not been able to prove the cartel could search for him on the whole Colombian territory. [86]

d. Decision quality

d.i. Country of origin information.

d.i.1. Sources of COI.

The COI Unit of the National Asylum Commission submits COI reports upon request of judicial authorities. Only in a minority of cases, first instance (administrative) decisions mention the COI consulted. When they do it, UNHCR guidelines are often cited. On the contrary, judges normally mention the sources that have been consulted and sometimes quote relevant extracts. But UNHCR's guidelines are not among the most cited by judges. Judges often cite Amnesty International as a reliable source of COI, and the Italian Ministry of External Affairs website regarding the general situation of violence in Nigeria.[87] Reports from the UKBA, USDOS, Irish RDC, ANSO and European Parliament resolutions are taken into account as well, though in a limited number of cases. Sometimes decision-makers – in particular at 1st instance – refer simply to "*the information at the disposal of this authority*" or

83 Corte di Cassazione, Sezioni Unite Civili, 21 October 2008, n° 27310/2008.

84 TC Torino, 10.04.2013 (NIG06FRSVT).

85 TC (Bari), 02.02.2012 (IRQ09SPPD/TO).

86 TC (Torino), 18.01.2012 (COL27MNS).

87 www.viaggiaresicuri.it, aimed at informing Italian citizens wishing to visit another country on the level of security, etc.

the "*available information on the applicant's country of origin*". This can be an obstacle to challenging the accuracy of the COI.

d.i.2. Up-to-date.

The requirement to use up-to-date information in the asylum procedure is established by the law,[88] which explicitly mentions UNHCR and the Minister of External Affairs. Since Article 8 of the Qualification Directive has not been transposed, there is no such requirement specifically regarding the IPA.

COI used in the asylum procedure is generally up-to-date. However, only a minority of cases the 1st instance decisions examined contained a reference to the COI used by the decision-makers (such references are less uncommon in the most recent decisions). Decisions at 2nd and 3rd instance and of the Supreme Court normally refer to (and quote) the COI used by the judges.

d.i.3. Specific to the region.

It has not been possible to identify a decision which mentioned COI specific to an IPA region.

d.i.4. Challenging COI or introducing alternative COI.

An applicant can challenge the state's use of COI at the appeal stage of the procedure (provided that a reference to COI is made in the motivation of the decision). The applicant and their lawyer must be granted access to all information relevant to the asylum procedure that could be the object of an appeal.[89] Courts can evaluate the evidence produced by the state.

d.ii. Templates, guidelines and training

There is no national template for asylum interviews. Each Territorial Commission has developed its own template which may slightly differ from the others. Some TCs regularly ask a question that could be interpreted as comprising part of an IPA assessment ("*Are there any parts in your home country where you would feel safe?*" or "*Could you live in [name of the region of possible relocation]?*" or similar). In a few of the cases studied, the answer was used to deny international protection. In two cases from Nigerian applicants both the administrative authority and the tribunal rejected the claim because the applicant, during the interview before the TC, said she could live in other areas of Nigeria, where the MEND is not active.[90]

A few decisions referred to UNHCR Guidelines. This does not necessarily mean that UNHCR Guidelines (and other COI) are not normally taken into account, especially considering that one member of each TC is a UNHCR representative.

88 See in particular Art. 8 par. 3 D.Lgs. 25/2008.

89 Art. 17 D. Lgs 25/2008.

90 TC (Bologna), 29.06.2011 (NIG21FNS); Tribunal of Bologna, 8.03.2012 (NIG22FNS).

In particular, Eligibility Guidelines on Afghanistan (2010) and Somalia (2010) were used to assess the situation of generalised violence in those countries; Guidelines on the applicability of refugee status to victims of trafficking (2009) were used to assess the risk of re-trafficking in Nigeria; and the Guidance Note on refugee claims relating to female genital mutilation (2009) was used to assess protection against FGM in Nigeria. The “Revised statement on article 1D of the 1951 Convention” (2009), the UNHCR Position on returns to Mali (2012) and Eligibility Guidelines on Cote d'Ivoire (2012) have also been cited.

Members of the Territorial Commissions attend courses and training schemes organised by the National Asylum Commission. Training focuses on topics such as interviewing techniques and the use of COI. In the context of the EASO Special Support Plan to Italy, dialogue is ongoing with a view to increasing expertise of asylum officers. Under this plan additional training in COI research methodologies has been provided to asylum officers who serve on the Territorial Commissions, so that they can supplement the research provided by the COI Unit of the National Asylum Commission.

VI. National recommendations

These recommendations are considered particularly relevant to the Italian context, and are complementary to the general recommendations provided in the APAIPA comparative report.

- If the State makes use of the concept of Actor of Protection, it must do so with careful regard to international law, and must rigorously follow the guidance provided in Article 7 of the Recast Qualification Directive and in Article 6 of the Decreto Legislativo 251/2007 as modified by Decreto Legislativo 18/2014. In particular, the authority should demonstrate that the applicant can effectively be protected by a specific actor of protection and will have access to protection and that the protection is not temporary.

- Where State agents are the actors of, or tolerate, the persecution or serious harm, there should be a presumption that effective protection is not available.

- In line with the judgement of the Supreme Court of 25 January 2012, the internal protection alternative should not be applied at all, either as a main or subsidiary argument to deny international protection.

- First instance decision should have a clear reference to the Country of Origin Information used by the decision-maker.

ecre
European Council
on Refugees and Exiles

European Council on Refugees and Exiles

Rue Royale 146
1000 Brussels
Belgium

T. +32 2 234 38 00
F. +32 2 514 59 22

ecre@ecre.org

www.ecre.org