

# REFUGEES, DISPLACED PERSONS AND ASYLUM SEEKERS

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## Focus on Facts

### North African Emergency

The substantial inflow of individuals from North Africa in the early months of 2011 led the Italian government to declare the state of emergency, which lasted until 31 December 2012. The relevant milestones are described below.

#### **On 5 April 2011**

the Council of Ministers (by way of *Temporary protection measures for aliens coming from North African countries*) determined what “temporary protection measures shall be ensured in the State’s territory with regard to citizens from North African countries that entered the national territory from 1 January 2011 to the midnight of 5 April 2011.” This order concerned about twenty-five thousand people, mostly of Tunisian nationality.

#### **7 April 2011.**

The “serious situation” that arose in the Maghreb area, in particular in the territory of the Republic of Libya, caused the migration of a substantial number of Libyan citizens “thus creating a humanitarian emergency of considerable magnitude.”

This was the statement made by the Italian government. “It was found accordingly necessary to implement measures of an extraordinary

and urgent nature in order to set up suitable facilities to provide the necessary humanitarian assistance in North African territories whilst effectively countering, at the same time, illegal immigration into the national territory.”

### **12-13 April 2011.**

The so-called *Migrants Reception Plan* was drawn up; this is the official document whereby the national civil protection system set out its operational response as part of the emergency. The plan was to be managed by the Civil Protection Service which had set itself three objectives: affording initial reception; ensuring fair distribution over the Italian territory; and providing assistance. Franco Gabrielli, the then director of Civil Protection, appointed a Commissioner-in-charge to tackle the state of emergency. The latter, in turn, set up a Coordination Committee for the North African Emergency including the Ministry of the Interior, Regions, Provinces and Municipalities. The Committee was joined subsequently by the Ministry of Labour and Welfare Policies, which appointed, on 18 May 2011, Mr. Natale Forlani (Director General of the Ministry of Labour and Welfare Policies) as national manager for unaccompanied children.

Based on the *Reception Plan*, distribution of migrants in Italy would have to be determined according to the relative percentage of resident population in each Region or autonomous Province compared to the total national resident population – this being the “d” factor as per the terminology adopted in Civil Protection documents.

The reception measures for adults were laid down by the Civil Protection Department and coordinated at regional level by the respective managers as nominated by the Regions and appointed by the Commissioner; such managers were in charge of identifying reception facilities, coordinating the influx of individuals and entering into agreements with the managing entities. The innovative feature of this project consists in the fact that, along with typical

sheltering and reception facilities, agreements were also stipulated with hotels, farmhouse accommodations and B&Bs. The per capita cost was set at 46 Euro.

As for the reception of minors, the latter was regulated via the Prime Minister's Office Order 3933 of 13 April; accordingly, "until 31 December 2011, the Minister of Labour and Welfare Policies shall be authorized to provide contributions to the Municipalities that afforded reception to unaccompanied foreign children. The Municipalities shall submit supporting documents as proof of the expenses incurred in order to be granted the said contributions."

By the above order, the Government allocated 30 million Euro to the Civil Protection Fund, as down payment on the sum required in order to overcome the emergency situation, on the basis of the apportionment made available by the Ministry of Economy and Finance; the moneys would be managed in the first place by the Civil Protection Department according to standard accounting rules.

The North African Emergency was extended on 6 October 2011 to 31 December 2012 on account "of the exceptional influx of citizens from North Africa" as per the decree postponing the relevant deadline. By the Prime Minister's Decree of 15 May 2012 the residence permits on humanitarian grounds granted to North African citizens were also extended.

## **26 October 2012.**

The Ministry of the Interior published the *Guidelines for overcoming the North African Emergency*. "The suspended status of the aliens after reception, as well as causing tensions in the areas where they are staying, prevents any initiative from being taken because of the increased time required for sorting out their positions."

Thus, the Ministry determined via the above document that the best way to expedite the procedures for sorting out the legal status in

Italy of individuals coming from those areas was the one outlined by *Vestanet C3*.

This consists in a procedure whereby the alien applies to the competent territorial Committee for reconsideration of its previous decision by re-submitting the C3 form, whilst waiving the right to be heard anew, so as to be granted a residence permit on humanitarian grounds.

### **On 31 December 2012**

the North African Emergency (ENA) was over; the relevant measures concerned, according to the press release by the Ministry of the Interior issued on 2 January 2013, “both the 28,313 aliens that came from Tunisia in 2011 following the political crisis in that country and the 28,431 aliens that came from Libya following the well-known war events in addition to 6,000 aliens from the Eastern Mediterranean regions.” Furthermore, Territorial Committees had to assess over 39,000 asylum applications.

The said press release clarified additionally that “conclusion of the extraordinary interventions, which applies according to Parliament’s intention not only to this specific state of emergency but to all the emergency situations existing as of 31 December 2012, will not entail the relinquishment of those individuals that are still in need of protection. This applies especially to those individuals that have yet to finalise the respective proceedings and those that are awaiting the issuance of a humanitarian permit having 1-year duration, which would allow them to work.”

As of 31 December 2012, there were less than 18,000 individuals in the centres managed according to the ENA decision; those individuals were expected to leave the centres in the two subsequent months. During the latter period, i.e. in the months of January and February 2013, management was shifted to the *Prefetti* who had undertaken to develop integration programmes by way of the

European funds for those individuals that were still present in the centres (see the circular letter by the Ministry of the Interior dated 28 February 2013). The latter included family groups and vulnerable persons who, in case additional difficulties were encountered, would be handled by way of the SPRAR (Protection System for Asylum Seekers and Refugees). In the circular letter of the Ministry of the Interior dated 18 February 2013 the deadline for migrants to leave the ENA facilities was set at 28 February 2013. That circular letter also provided that to achieve the said objective “granting of an allowance amounting to 500 Euro” was not to be ruled out. Which actually was the case as from 1 March 2013.

### **“Dublin Regulation” (2000/343)**

On 15 February 2013, an asylum seeker from Ivory Coast set fire to himself at Fiumicino Airport in order not to be deported. The man had applied for asylum in Italy and the application had been rejected by the Committee, which rejection he had not challenged. He had then moved to the Netherlands, where he was arrested by the police and, based on the “Dublin Regulation” (2003/343), he had been sent back to the country where he had applied for asylum, i.e. Italy. Indeed, the latter Regulation provides that an asylum seeker should complete the procedure for being granted asylum in the EU country where he had first been identified. In the case of the 19-year-old man from Ivory Coast, the situation was more complex because the procedure in question had not been completed so that he had actually become an alien illegally staying in Italy. This is why the Police Headquarters of Rome urged him to appear before the Border Police Officers in Fiumicino in order to be deported. Unable to stand the anguish of such a deportation, he decided to set fire to himself; luckily he did not die.

This is perhaps the most extreme manifestation of the tragedy experienced by the individuals addressed by the measure at issue. The underlying reason is that there is a conflict between the

subjective status of feeling a refugee and the opposite view held by the Territorial Committee that is competent for evaluating asylum applications. Furthermore, if the appeal lodged against such rejection is also unsuccessful, the applicant is deprived of whatever protection and would not be even entitled – based on the Regulation – to lodge a new asylum application in another country. Many migrants seek protection in Europe and encounter barriers of all kinds: from the impossibility to choose the country where to lodge an asylum application to the difficulties in obtaining adequate reception.

In February 2012, the “Awning of the Afghans” was set up in Rome. This is a reception centre in the Tor Marancia neighbourhood accommodating 150 individuals from Afghanistan who lived beforehand in the square before the Ostiense railway station under very precarious conditions. The project was conceived by the President of the competent Municipal District Council, Andrea Catarci, by the Municipality of Rome and by some of the associations that have been dealing with this issue for several years.

The facility known as the “Awning of the Afghans” hosts also undocumented individuals. The latter include two groups: those “in transit” and “the Dublin people”. The former are those who consider themselves in transit, i.e. those who do not intend to remain in Italy as they are crossing Italy to get to Northern European countries. They stop at the “awning” and then leave again committing themselves to human traffickers. The latter group includes both those that have been pushed back to Italy because Italy is competent for evaluating their asylum applications and those that have to be transferred from Italy to another EU country where identification has already taken place and which has been determined by the Dublin Unit to be competent for the relevant asylum application. The awning provides reception for those belonging to the latter group. The process is usually the same: an application is lodged in a EU country; the EU country rejects the application; the appeal against the negative decision is not granted; the applicant is deported. To avoid repatriation, the individual then flees the country. He or she arrives in Italy and lodges

a new asylum application, after which he or she is granted reception until the police realize the applicant has already gone through this process and report his or her presence to the Dublin Unit. In order for Italy's competence to be established, at least twelve months must elapse from the applicant's illegal entrance in the Italian territory. Since the "Dublin people" may not be hosted in a reception centre, they try and find other mechanisms to avoid living on the streets. One of these mechanisms is provided by accommodation under the "awning". On 18 February 2013, the Dublin II Regulation celebrated its 10<sup>th</sup> anniversary. The huge amount of rules making it up has translated over the past years into a steeplechase that ultimately reduces the freedom of movement in the Schengen area of the individuals coming from non-European countries. Nevertheless, migrants try by all means to get to the European country where they wish to live, fleeing the country where they do not feel protected. In many cases, the choice of the country is dictated by the need to join their families who already live in a European country. The Dublin II Regulation failed to take account of this requirement, so that one's next of kin had to live ultimately in different countries away from their countries of origin. This enhances migrants' feeling of being insecure, as they would prefer to apply for asylum where there is a higher number of fellow nationals, the likelihood of integration is higher, and a family network is already available.

The "point of no return" in a migrant's project is reached unquestionably when he or she is fingerprinted. This is shown by the protestations staged on 20 July 2013 in Lampedusa by about 200 individuals, most of them Eritrean nationals, who marched down the streets in the island shouting "no to fingerprints". That is to say, they did not wish a trace of their passage to be retained, not only in Lampedusa, but more generally in Italy. The demonstrators were requesting not to be subjected to fingerprinting in order to be able to leave Italy and reach other States, where the protection afforded to asylum seekers and refugees is more advanced: the reception provided is not limited, like in Italy, to providing food and shelter, as

health care and legal assistance services are available and support is provided in finding housing and employment. Those States consider providing assistance to individuals fleeing from areas where war or civil war is raging as a duty, because the reason for them to leave their countries is out of the question: they had to leave in order to save their lives.

The protestations by the Eritreans in Lampedusa were successful, because they were not identified. Still, it may not always be possible for them to escape identification procedures in their long journey towards the destinations they aim for.

### **Domicile and Residence**

On 24 October 2012, the European Commission brought infringement proceedings against Italy (No. 2012/2189) because of the alleged violation of obligations imposed by EU law as per the procedure, reception conditions and qualification directives. The violations consist, in particular, in the poor accommodation capability of reception centres for asylum seekers and the difficulties in accessing those centres. But there is more to this. The formal notice of infringement also emphasizes the complex procedural machinery to lodge asylum applications. According to the Commission, some of the procedural steps would affect the recognition of the rights envisaged for the beneficiaries of international protection and asylum seekers, such as public health care, welfare and employment.

Not always is an asylum application accepted immediately by the police headquarters. This may occur because the applicant is faced with bureaucratic, highly discretionary procedures that prevent him or her from completing the application. One of these procedures has to do, for instance, with the maximum number of daily applications the police headquarters decide to handle, which causes useless queues and prevents obtaining whatever results in most of the cases. Another obstacle has to do with the lack of a domicile,

which proves indispensable in order to finalise the application even though it is not one of the fundamental preconditions to lodge such applications. This is provided for by Section 2 of Presidential decree No. 303 of 16 September 2004, which reads as follows: “(Handling the application for recognition of refugee status) The Border Police office receiving the asylum application takes note of the personal details communicated by the applicant, invites him or her to choose domicile and, in the absence of any impediments, authorizes him or her to visit the geographically competent police headquarters to which the application is transmitted, also via IT networks, after filling out the ad-hoc forms. Where no border police office is present in the place of entrance into the national territory, the geographically competent police headquarters shall discharge the relevant tasks. The procedure shall be attended, where possible, by an interpreter speaking the applicant’s language. If the applicant is a woman, female staff shall be attending.”

Thus, the applicant is invited to visit the police headquarters being equipped with a domicile, but this is not indispensable to lodge the application. In yet other cases, it is not enough for the domicile to be taken at a legal counsel, as the Immigration Office of the police headquarters requires also a house renting contract or a declaration of accommodation provided to be submitted. This happened in Florence where an applicant of Syrian nationality lodged the asylum application and was invited to come back in one month holding proof not only of the housing (i.e. that he was the assignee of a house) but also of his income. This was clearly an abuse committed by the competent office, which, having been notified of this, declared they had mistaken the asylum application procedure by that envisaged to issue other types of residence permit. Still, there is little doubt that this mistake had caused considerable inconvenience to all the individuals that had been trying to finalise their applications in that period.

Another obstacle that is often encountered by asylum seekers in police headquarters relates to the lack of mediators. There are

actually mediators from the most frequent nationalities, but they are not enough to handle all the applications. It is still the police headquarters in Florence where the applicant is required not only to fulfil the said housing obligations, but also to appear with a mediator or, at least, with an interpreter if he or she has not sufficient command of the Italian language.

## **Legislation and Policies**

In 2012, 17,350 individuals lodged asylum applications in Italy. Their numbers were halved compared to the preceding year when, in the midst of what had been termed an emergency (the North African Emergency, ENA), 34,000 international protection applications had been lodged. One of the reasons for this drop is certainly related to the poor quality of the reception processes made available in Italy. This would point to the circumstance that other destinations are preferred where it is easier for asylum seekers to complete their migration projects and be afforded the tools required to carry on their lives autonomously.

The Territorial Committees, i.e. the bodies in charge of evaluating asylum applications, had to handle 27,290 cases that were not all of them related to individuals that had applied for asylum in 2012. Many of them dated back to the preceding year. 22,030 applications were granted including 15,485 for humanitarian protection, 4,495 for subsidiary protection, and 2,050 for recognition of refugee status. Of the 1,235 appeals lodged following rejection or because the Committee's evaluation did not correspond to the case made by applicant, 790, i.e. more than half of them, were upheld.

In 2013, 25,838 applications were evaluated, of which 7,043 were rejected and 16,296 granted. More specifically, the latter included

3,144 applications for recognition of refugee status, 5,654 for subsidiary protection, and 7,458 for humanitarian protection.

In the early months of 2014, there were 18,884 applications yet to be evaluated from preceding years. Some of these applications date back to 2008 and are not that recent. The problem is certainly related to the circumstance that Territorial Committees are not enough compared to the number of applications and in spite of the increased number of such Committees. A solution devised consists in asking the applicant whether he or she wishes to be heard individually rather than by the whole panel of Committee members. Under Section 12 of legislative decree No. 25/2008, the personal interview of asylum applicants with the Committee should take place under suitable circumstances so that the applicant can exhaustively describe his or her need for protection. The applicant has the right to be heard in the presence of all the members of the Committee. However, if there is a reasoned request to do so, the Italian legislation allows gender-sensitive interviews to be held as well as individualized interviews in the presence of one single member. This procedure may only be implemented at the applicant's explicit request, who may resort to it if he or she finds it difficult to narrate his or her story before a group of listeners rather than to a single person. One of the circumstances where this is usually the case is when the applicant is a woman that has declared to have been the victim of rape, and therefore prefers to speak to a single person. However, this procedure has actually become a practice the Committee proposes to the applicant because of organizational shortcomings. The risk here is that the minutes of the hearing are drawn up summarily rather than in full, so that some passages in the applicant's story may be left out whilst they might prove fundamental with a view to the final assessment.

As said, the above procedure has turned into a mechanism to cope with the slow processing pace of Territorial Committees. In the 2012 to 2013 period the consequences – all of them negative – of this

approach came to light. Still, one should acknowledge in the first place that the substantial number of protection applications in 2011 and 2012 did slow down the handling of casework by Territorial Committees, who had to tackle a workload they were not ready and organized to deal with. During the North African Emergency period, the best solution would have been to grant collectively a stay permit on humanitarian grounds - which actually was the approach endorsed by the Ministry of the Interior via the “Guidelines for overcoming the North African Emergency” issued in the final stages of the ENA - whilst those who did not accept that kind of protection could have been heard by the Committees. Only in this way could one have managed to handle the many incoming applications expeditiously.

The impact of the above situation is especially to be felt in the reception system for asylum seekers, which is regulated by legislative decree No. 140/2005 transposing Directive 2003/9/EC – laying down minimum standards for the reception of asylum seekers in Member States. Under Article 13(2) of the Directive, “Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.” Under Article 5(2), [NOTE: REFERENCE WOULD APPEAR TO BE WRONG] “If it is found that an asylum seeker who has been granted the stay permit does not have sufficient means to ensure a standard of living adequate for his and his family members’ health and subsistence, he shall be entitled to benefit from reception measures together with his family members.”

The Italian reception system envisages different centres depending on the stage in the reception process. They are listed here in chronological order following arrival of a displaced person in Italy: CPSA (First aid and reception centres – Centri di primo soccorso e accoglienza); CDA (Reception centres – Centri di accoglienza); CARA (Reception centres for asylum seekers – Centri di accoglienza per richiedenti asilo); SPRAR (Protection system for asylum seekers and refugees – Sistema di protezione per richiedenti asilo e rifugiati). CPSA (First

aid and reception centres) were set up by an Inter-Ministerial decree of 16 February 2006 and are intended for the temporary reception (on average, 48 hours) of asylum seekers.

Reception centres (CDA) were set up by Law No. 563/1995 (“Apulia Law”) and afford initial assistance to asylum seekers pending the definition of their legal status in Italy.

SPRAR is the protection and reception system for asylum seekers and refugees that operates throughout Italy in pursuance of Law No. 189/2002. It is made up of the network of local authorities that rely on the National Fund for asylum policies and services, insofar as the latter makes financial resources available. The reception is of an integrated nature, as it is not limited to food and shelter; in fact, the projects developed throughout Italy envisage information, support, assistance and orientation measures by way of customized social and economic integration processes. For the 2014 to 2016 period, SPRAR can accommodate up to 16,000 individual positions as per the decree of 17 September 2013 adopted by the Ministry of the Interior – Department for Civil Liberties and Immigration, implementing the decree by the Minister of the Interior dated 30 July 2013.

The CARA (Reception centres for asylum seekers)<sup>1</sup> were set up by legislative decree No. 25/2008 in order to accommodate international protection seekers in the cases provided for by Section 20 – i.e. whenever it is necessary to check or establish the asylum applicant’s nationality or identity, or if the person applied for protection after being arrested in the act of eluding or attempting to elude border controls or immediately thereafter. The third case where reception in CARA is envisaged applies to asylum seekers that lodged their applications after being arrested because of their staying illegally in Italy. The three different situations are matched by three different

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1 The following CARAs are currently in operation: Agrigento, Lampedusa – 381 posts (First Aid and Reception Centre); Cagliari, Elmas – 220 posts (First Aid and Reception Centre); Caltanissetta, Contrada Pian del Lago – 360 posts (Reception Centre); Lecce - Otranto (First Reception Centre); Ragusa Pozzallo (First Aid and Reception Centre) – 172 Posts.

reception periods, which range supposedly from 20 days (first case) to 35 days for the applicants in the remaining two situations. Upon expiry of the said deadlines, the applicant is entitled to a three-month stay permit, which may be renewed until a decision is made on the application. However, it may happen that asylum seekers remain in CARA for much longer, i.e. until they are notified of the decision taken by the Territorial Committee. Thus, as was the case with the Bari CARA, asylum seekers may remain there for over 12 months. But this does not allow the applicant to be afforded a type of reception similar to that envisaged in SPRAR projects. In fact, the services made available in CARA include legal, social and health care assistance; for the remainder, including language courses, everything is left to the managing body, but the applicant is not obliged to take part in any further initiatives. Accordingly, having completed the reception process, the applicant is often deprived of the necessary tools to start a social integration process on his or her own. Which is conversely not the case in SPRAR. The latest Report<sup>2</sup> shows that “in 2011, 2,099 individuals left the reception system, of whom 37% continued their integration processes, whilst 30% left the reception system on their own initiative and 28% because of the expiry of reception deadlines; 4% of them had been removed and 1% chose voluntary assisted repatriation.” The figures show a drop in the individuals leaving the system with good integration levels compared to the preceding year. This might be due to the difficulties in finding a job despite the monitoring and guidance provided by the managing body.

In spite of the above difficulties, the SPRAR model is as of now the only valid model in Italy for starting a decent integration process by overcoming the reception centres approach. In the SPRAR concept, the individuals are hosted in small groups mostly in flats. In 2011, the latter arrangements had been made available in 74% of the cases; for the remainder, accommodation was provided in “collective centres” (20%) and sheltering communities (6%).

Based on the above explanation of the difference between SPRAR network and CARA model, one can easily grasp why longer case-handling periods prove detrimental to the applicants that are hosted in the latter facilities. They have to live for several months with a substantial number of individuals without any privacy and without knowing for how long they will have to remain there. At all events, the length of stay in CARA is an issue that impacts the capability of the reception system as a whole to cope with the actual number of applications.

In a broader perspective, the access to asylum procedures takes place via a complex machinery and is fraught with several obstacles – as pointed out by the European Commission in the **letter of formal notice pursuant to Article 258 of the Treaty on the Functioning of the European Union**, where it finds that Italy fails to comply with the obligations imposed by EU law with regard to the following:<sup>3</sup>

- Limited capacity of reception centres for asylum seekers, and de facto inconsistencies in granting access to reception;
- Asylum application procedures, in particular the lack of effective access in practice to the relevant procedure, both in general and with particular regard to the asylum applicants falling under the scope of Dublin Regulation procedures.

In the Commission's view, the difficulties encountered show that some provisions in the reception conditions Directive fail to be taken into account and implemented by the Ministry of the Interior. One first consequence is the forfeiture of the benefits envisaged for asylum seekers. Only think of the lengthy procedure for granting the asylum application stay permit, which is supposed to be delivered to the applicant shortly after lodging of the relevant application. The lack of this document makes it impossible for an applicant to access health care and makes it difficult for him to access municipal reception centres. According to the 2010 SPRAR Report, which is one of the documents the Commission relied on in drafting its considerations and guidance, the term for granting the asylum

application stay permit was complied with in only 46% of the cases. This is the main focus of the criticisms levelled by the Commission, which highlighted the incompatibility of our system with Articles 3 (Immediate application of the reception conditions directive as from the time the asylum application is lodged), 13 (Access to material reception conditions such as food, shelter, clothing and daily subsistence allowance as from the lodging of the asylum application along with health care assistance), and 17 (Specific conditions afforded to vulnerable categories also from the medical standpoint) of the reception conditions directive.

Although Article 14 affords Member States some flexibility as for the specific arrangements of the material reception conditions, the Commission's view is that it is necessary in any case to meet asylum seekers' fundamental needs; failure to comply with the aforementioned provisions is said to make the Italian system incompatible with Articles 1 and 4 of the Charter of Fundamental Rights of the EU (Inviolability of human dignity and Prohibition of torture and inhuman or degrading punishments or treatments) as well as with Article 3 of the European Human Rights Convention (Prohibition of torture and inhuman or degrading treatment).

The legislation on reception of international protection seekers is affected by the lack of coordination between the provisions introduced over the years. The enactment of legislative decree No. 25/2008 (so-called Procedures Decree) gave rise to a reception system that is partly other than the one already envisaged in legislative decree No. 140/2005 (so-called Reception Decree). Section 20 of legislative decree 25/2008, regulating reception in CARA centres as set up by the decree itself, is not in line with the provisions on reception of asylum seekers laid down in legislative decree No. 140/2005. It should also be pointed out that there are several gaps in the regulatory provisions on conditions for and maximum length of stay in the individual facilities.

However, it is not just reception the only area fraught with criticalities in the asylum-related system. One feature here concerns exactly the lodging of the asylum application. It appears that some local authorities apply unreasonable requirements in terms of documents and/or impose limitations on registration of stay (in particular, the requirement of a permanent address). An example was quoted in the Focus section, i.e. the case where an address is to be specified for the applicant's domicile to be supported by ad-hoc documentation at the time the application is lodged. Failing this, the police do not handle the application. This practice is justified by alleging the need for the police headquarters to contact the applicant in view of subsequent communications (setting the date for the drawing up of the official report). However, this approach is far from legitimate because it is not in line with the "procedures decree" that only refers to a "dwelling" rather to the applicant's residence or domicile. "Dwelling" means the "place where an individual is to be found also provisionally" as per Section 43(2) of Italy's Civil Code.

Furthermore, the domicile to be taken under Section 2(1) of Presidential decree No. 303/2004 as regards asylum seekers that are granted reception is the centre determined specifically by the U.T.G. of the Prefecture in accordance with legislative decree No. 140/2005. However, the asylum seeker is actually stopped before being able to lodge the application.

Whilst it is understandable that an address for the person's domicile may be requested, this should not be the criterion to finalise the application. The ultimate effect produced by all these circumstances is that the prospective asylum applicant is in many cases obliged to pay someone else in exchange for a fictitious accommodation if he or she is not hosted at one of the reception facilities that are authorized to work as domicile for applicants.

The same problem has arisen in respect of the beneficiaries of a different type of protection, as they needed an address of residence to renew the relevant stay permit. In many cases it was exactly the

inability to meet this requirement that delayed the renewal of the respective permits, which produced highly serious consequences – including the inability to be afforded medical care.

### **EU Regulation No. 604/2013**

On 26 June 2013 EU Regulation No. 604/2013 was published in the Official Journal of the EU (so-called “Dublin III” Regulation), which lays down the criteria and mechanisms to determine the Member State responsible for examining an international protection application lodged in one of the Member States by a third-country national or a stateless person.

The Regulation amended some of the provisions applying to the determination of the EU Member State responsible for examining an application for international protection along with the arrangements and timeline for such determination. The main innovations are listed below:

- The definition of “minor’s family member” was expanded to include relatives rather than just the closest family members (mother, father, siblings);
- It was provided that the appeal lodged by the applicant entails suspension of the transfer procedure;
- Terms were laid down also for the take back procedure. It is no longer necessary for 18 months to elapse in order for the new Member State to be regarded as competent, since competence as determined on the basis of illegal entry will cease 12 months after the person’s crossing the border, or else after 5 months of continued stay in another Member State which will accordingly become responsible for examining the application;
- It is possible for the applicant to be detained in case he is at risk of absconding;
- Provisions were introduced to enable the exchange of medical information between the countries concerned in order to protect

the applicant.

In the letter of formal notice sent in 2012, the European Commission highlighted some criticalities relating to the application of the Dublin Convention in Italy; they concerned, in particular, the reception of individuals falling under the scope of application of the latter instrument, which is never appropriate to meet the needs of those individuals. Two main groups can be distinguished in this connection, as pointed out in the Focus section: those that have to be transferred from Italy to another European country, where identification has already taken place and which has been found by the Dublin Unit to be responsible for examining the asylum application; those that are sent back to Italy by another State that is not responsible for examining the asylum application.

The latter group can be broken down into three sub-sets: the first one includes those that had already applied for asylum in Italy and had then moved elsewhere; the second one includes those that, before leaving Italy, had only been fingerprinted as found subsequently via the Eurodac checks; the third one includes those that had already been afforded protection in Italy and had tried to apply for asylum also in another Member State. It may be the case that the documents are mislaid or are withdrawn by the local authorities. At the time of getting back to Italy, the applicant has to pay considerable sums to retrieve the documents. The same applies to those that have to finalise their asylum applications and, in order to expedite the procedure by the Committee, have to turn to the same police headquarters where they had initially lodged their applications; this entails substantial travelling costs in order to reach the relevant locations – e.g. in the case of an individual that is sent back to Fiumicino and then has to travel to Crotona, in Calabria. In that case the applicant has not only to pay for transportation, but also consider whether he or she will be able to find accommodation with a reception centre. For the remainder of “Dublin cases”, no reception arrangements are envisaged – as described in the paragraph concerning the Tor Marancia awning in the Focus section.

## **European Directive 2011/51/EU**

A major innovation regarding asylum in Italy has to do with the approval by the Council of Ministers (18 December 2013) of a legislative decree that transposes EU Directive 2011/51 and enables granting an EU long-term residence permit also to the beneficiaries of international protection (refugees and beneficiaries of subsidiary protection). The draft of the decree had been approved on 9 December 2013, shortly after the shipwreck in Lampedusa, as part of the measures to tackle the “immigration emergency”.

The decree facilitates integration of the beneficiaries of international protection because it confers on them the status of long-term residents, which may also be retained if the international protection ceases to be afforded and will facilitate the applicants’ mobility throughout the EU.

## **Discrimination and Violence**

- **14 January 2012:** a boat that had left from Libya bound for Malta, with 55 individuals on board, all of them Somalis, capsizes. All the persons are gone missing apart from one, whose corpse was found subsequently.
- **23 February 2012:** Rome, Hirsi judgment.
- **3 May 2012:** Venice. In the hold of a ferry coming from Greece an Afghan boy was found dead by asphyxia in the truck where he had absconded to escape police controls.
- **25 May 2012:** the corpse of a thirty-year-old man, probably from the Sub-Saharan region, was retrieved by the coastguard opposite Lampedusa.
- In the night between **Friday 16 and Saturday 17 August 2012**, about 300 individuals reached Italy and were rescued by the coastguard off the coast of Sicily. They were on board of two boats, of which one carried 95 individuals and the other one about 195; other boats were said to be arriving in Lampedusa,

one of the main terminals of this flow of migrants.

- **31 October 2012:** Lecce. A sailboat with 13 migrants was stopped as it was trying to reach the coast.
- **9 November 2012:** Brindisi. A tent camp hosting 80 immigrants was set up. The mayor, Mr. Consales, declared: “We were left alone.”
- **1 January 2013:** Trapani. Among the migrants thrown out to sea by the traffickers, there is a corpse.
- **2 January 2013:** Rome. The North African Emergency is extended by two additional months.
- **7 January 2013:** Padoa. A group of about one hundred individuals from North Africa destroyed a reception facility in Via del Commissario, between the Beata Pellegrina parish church and Salboro, to protest against the lack of whatever jobs.
- **14 January 2013:** Otranto. Disembarkation of migrants.
- **14 January 2013:** Rosarno. Risks may arise anew for public order because of the massive inflow of migrants for the seasonal harvesting of citrus fruit in the Gioia Tauro plane.
- **1 February 2013:** Padoa. Five youths from Ghana, holding humanitarian residence permits, were summoned to the police headquarters to collect the much coveted travelling documents. However, they were handcuffed on coming to the office because of the “rebellion” that had taken place on 7 January.
- **26 April 2013:** Crotone. 18 migrants were disembarked.
- **10 May 2013:** Lampedusa. 181 migrants were rescued from a boat adrift. Two newborns were also on board.
- **20 May 2013:** Rome. The 2013 Programme of the European Integration Fund was approved. Italy was allocated 37 million Euro.
- **28 May 2013:** Mineo. The migrants hosted in the CARA protested against the tardiness of the procedures for granting residence permits and recognizing political refugee status.
- **3 June 2013:** Cosenza. Migrants reported against the managers to the Prosecuting Office because of the way the North African Emergency had been dealt with.

- **4 June 2013:** Malta. A Memorandum of Understanding for the cooperation between Italy and the European Asylum Support Office was signed in Malta.
- **14 June 2013:** Rome. Asylum seekers that cannot be accommodated in reception facilities are on the rise.
- **16 June 2013:** Lampedusa. Seven migrants allegedly drowned in the Canal of Sicily whilst they were holding to a cage for raising tuna fish that was being hauled by a Tunisian fishing motorboat.
- **22 July 2013:** Siracusa. 200 individuals were disembarked, including women and children.
- **29 July 2013:** Crotone. A 17-metre fishing boat having 102 migrants of Syrian nationality on board, including two women, a 4-year-old girl and other children, was intercepted by the Finance Police off the Calabrian coast on the Ionian sea.
- **30 July 2013:** Reggio Calabria. Thirty-six migrants, including 13 children and 4 women, were located on the 106 national highway close to the town of Bianco. They said they had reached the Calabrian coast on board a boat.
- **29 August 2013:** Trapani. Disembarkations of migrants continue ceaselessly. A woman gave birth during the crossing.
- **4 September 2013:** Off Siracusa, a woman from Syria died in attempting to reach the Sicilian coast. The family donated her organs.
- **9 September 2013:** Sweden. The Government offers a residence permit to all Syrian refugees.
- **10 September 2013:** Rome. Pope Francis visited the Astalli reception centre for refugees.
- **17 September 2013:** Pian del Lago, Caltanissetta. 400 asylum seekers hosted in the CARA of Pian del Lago in Caltanissetta protested because of the waiting time prior to being heard by the Committee.
- **23 September 2013:** Lampedusa. A 22-year-old Syrian woman died whilst crossing the Canal of Sicily. Her corpse was found on board a boat carrying 424 migrants.

- **26 September 2013:** Lampedusa. A Syrian woman gave birth to a child immediately after her disembarkation; there is no hospital on the island.
- **27 September 2013:** Canal of Sicily. Over 1,800 migrants were rescued in several operations coordinated in Rome by the Operational Control Room of the Headquarters of Harbour Managers.
- **2 October 2013:** Otranto. Forty-five migrants were disembarked safely on the Apulian coast.
- **3 October 2013:** A boat with over 500 migrants was shipwrecked. The casualties and the missing total 366.
- **8 October 2013:** Lampedusa. The migrants disembarked on the island refused fingerprinting for identification purposes.
- **9 October 2013:** Lampedusa. A rebellion flared up in the reception centre.
- **14 October 2013:** Mediterranean Sea. The “Safe Sea” humanitarian mission started.
- **21 October 2013:** Agrigento. The State funerals of the victims of Lampedusa shipwreck were celebrated.
- **21 October 2013:** Rome. The Chair of the Senate Committee for the protection and promotion of human rights, Luigi Manconi, and the Mayor of Lampedusa, Giusi Nicolini, submitted a “humanitarian admission” plan to the Head of State and the Prime Minister in order to increase the safety of sea-borne migrants.
- **22 October 2013:** Mineo. There were some disturbances among the migrants hosted by the Reception Centre for asylum seekers. Some of them had reportedly left the centre and hurled stones against the patrol car of the Caltagirone police destroying its windshield.
- **25 October 2013:** Canal of Sicily. 800 migrants were rescued thanks to the “Mare Nostrum” operation.
- **30 October 2013:** Lampedusa. 225 migrants were rescued in two separate interventions by the coastguard.
- **14 November 2013:** Rome. Medici per i diritti umani (MEDU

- Physicians for human rights) presented *Porti insicuri, Rapporto sulle riammissioni dai porti italiani alla Grecia e sulle violazioni dei diritti fondamentali dei migranti*. (Insecure harbours – Report on push-backs from Italian harbours to Greece and the violations of migrants’ fundamental rights)
- **17 November 2013**: Mineo. Some refugees hosted at the CARA in Mineo took part for the first time in the soccer pro league; they are from different countries: Somalia, Gambia, Mali, Nigeria.
- **28 November 2013**: Lampedusa. An interview to Domenico Colapinto was published in Corriere della Sera; Mr. Colapinto stopped fishing after trying to rescue migrants during the 3 October 2013 shipwreck.
- **1 December 2013**: Rosarno. A thirty-one-year old man from Liberia froze to death during the harvesting of oranges.
- **10 December 2013**: Lampedusa. Over 1,000 migrants were rescued by ships from the Military Navy and the Coastguard as part of the “Mare Nostrum” operation.
- **11 December 2013**: The Ministry of the Interior communicated that in 2013 “About 42 thousand migrants were disembarked on the coasts of our country.”
- **16 December 2013**: Lampedusa. 275 migrants mostly from Eritrea, Syria, Ethiopia and Tunisia were rescued by the San Marco ship of the Military Navy.
- **18 December 2013**: Lampedusa. Footage shot in the Reception Centre of Lampedusa was published, showing asylum seekers naked in a queue waiting in the cold to get washed by a jet pump. This was said to be a practice followed for disinfecting migrants.
- **21 December 2013**: Some migrants detained in the Identification and Expulsion Centre of Ponte Galeria sewed their lips to protest against the living conditions inside the centre.

## Recommendations

- 1) Creating a consolidated text of asylum-related legislation that should not be limited to the transposition of European directives as it should also envisage implementation of Article 10(3) of the Constitution.
- 2) Drafting legislation that can prevent violation of the non-refoulement principle starting from the rescue of sea-borne migrants and the subsequent initial information services on borders.
- 3) Reconsidering geographical distribution, membership, and the training of the Territorial Committees tasked with granting international protection.
- 4) Reforming the reception system by including support to refugees in the phases following recognition of refugee status among the essential deliverables and tasks.
- 5) Devising specific provisions to support, via appropriate measures, the integration of beneficiaries of international protection so as to afford all of them the right to a minimum reception period by way of occupational and housing assistance.
- 6) Allocating adequate resources to ensure the actual increase in the accommodation capacity of the SPRAR (Protection System for Asylum-Seekers).
- 7) Modifying the assistance-oriented approach to reception systems and policies applying to displaced persons and asylum seekers and shifting to a method geared towards their recognition as individuals holding rights.