

Input by civil society to the 2021 EASO Asylum Report

Dear Colleagues,

The production of the

Instructions

Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- ✓ New developments and improvements in 2020 and new or remaining challenges; and
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2020.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments

Contributions by topic

ITALY- Joint Submission VIS, Comitato per la promozione e protezione dei diritti umani, Don Bosco 2000, Salesiani per il Sociale and Forum per Cambiare l'Ordine delle Cose

- 1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)**

Access procedures to requesting international protection for those who do not arrive through sea landings are not at all homogeneous throughout the national territory and differ between the different immigration offices. Critical common features: the request of requirements for access, e.g. documentation certifying the domicile such as rental contract, transfer of building, registry registration or possession of identification documents of the country of origin such as passport. In many cases, once the obstacle of access to the procedure is overcome, time elapsing between manifestation of will and formalization of application can exceed 10 weeks, resulting in the impossibility of accessing the reception procedure contextually to the manifestation of will.

In relation to access to the procedure during disembarkation, along the most controlled border of the Mediterranean, immediate repatriation operations continue, violating the right to information on the possibility of requesting international protection. In 2020, out of 26,600 arrivals in Italy, 11,000 concerned citizens of Tunisian nationality, whose fate was repatriation. This is an aspect of the externalization of borders in Northern Europe in which Italy, pursuing only internal policy objectives, continues to disregard respect for the human rights of migrants arriving in Tunisia where even in that case migrants find obstacles due to strengthening of the maritime border control system. There are rumours about 10 million euros for 2020 forwarded to the Tunisian authorities.

Italian Eastern border: pushbacks are reported at the border between Italy and Slovenia with a "chain effect" sending migrants and asylum seekers back to Bosnia and Herzegovina and with the risk of violence and abuse for them. According to official data (1)¹ released in September 2020, during the year the refoulements from Italy to Slovenia, based on the 1996 bilateral agreement, were increased by Italy four times more, reaching 962 from January to the end of September 2020, compared to 250 for the same period of the previous year. The trend appears to be confirmed by the data released recently by networks and CSOs, which report 1,240 rejections between 1 January and 15 November 2020(2)². Furthermore, the non-respect of the protection measures provided for by Law no. 47 (Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati-Provisions regarding the protection measures for unaccompanied foreign minors) appears to be alarming. Rejections involving these minors have been justified and strengthened following the issue of two directives on age assessment evaluation of unaccompanied minors (UAMs), sent by the Public Prosecutor of the Juvenile Court of Trieste to the Italian border police, giving the police great discretion. Migrants intercepted at the border who declare themselves minors and for whom the Italian police has no doubt about their adult age are considered adults, without adequate checks and controls, thus violating the rules contained in the Protocollo dell'accertamento dell'età (Age Assessment Protocol)(3)³.

Italian North-Western border: the situation of migrants attempting to cross the north-western Alpine border to France remains extremely critical. From January to September, more people were "bounced back" to Italy by the French border police compared to the same period in 2019(4)⁴. They are mostly Tunisian citizens (1,510), followed by those coming from Afghanistan (1,250), Pakistan (1,095), Morocco (960), Sudan (935), Algeria (930), Nigeria (680), Ivory Coast (595) and Mali (530); many come from the Balkan route. As already reported by Medici per i Diritti Umani (MEDU) in November, the flow of migrants is considerable and, in most cases, entire families also with noticeably young children (from July to December about 390 minors arrived in France, the youngest was only 14 days old)(5)⁵.

2. Access to information and legal assistance (including counselling and representation)

As already highlighted in relation to access to the procedure during disembarkation, along the most controlled border of the Mediterranean, immediate repatriation operations continue, violating the right to information on the possibility of requesting international protection and this happens especially regarding migrants arriving from Northern Africa and third countries considered "safe" with which repatriation agreements are in place.

However, some Italian CSOs actively operate in this field, as is the case of Don Bosco 2000 implementing a legal protection service through in its staff as part of its reception projects in Sicily: for beneficiaries of the reception projects and non-citizens in the territory. This includes photo-registration and asylum request, preparation of the territorial commission hearing and appeal against the rejection of the protection request. In addition, also a program of "circular migration" as a development cooperation specific project is implemented which accompanies the return to the countries of origin of the young people, when they request to, through the creation of income-

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www.camera.it/leg18/1079?idLegislatura=18&tipologia=indag&sottotipologia=c30_migranti&anno=2020&mese=09&giorno=24&idCommissione=30&numero=0026&file=indice_stenografico

²Network RiVolti ai Balcani, La rotta balcanica. I migranti senza diritti nel cuore dell'Europa, gennaio 2021, <https://www.articolo21.org/2021/01/la-rotta-balcanica-i-migranti-senza-diritti-nel-cuore-delleuropa/>

³<https://www.salesianiperilsociale.it/le-pratiche-di-respingimento-dellitalia-alla-frontiera-con-la-slovenia-violano-la-legge-zampa-sulla-protezione-dei-minori-non-accompagnati/> and https://www.minori.gov.it/sites/default/files/protocollo_identificazione_msna.pdf.

⁴ <https://www.ilfattoquotidiano.it/2020/10/29/migranti-respingimenti-a-ventimiglia-in-aumento-nonostante-il-lockdown-in-9-mesi-rimandate-indietro-12-045-persone/5984854/>

⁵ <https://mediciperidirittiumani.org/category/report-it/>

generating activities within the communities of origin as an alternative opportunity to forced migration(6)⁶.

3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)

Changes made by the D.L. 130/2020 converted by law no. 173/2020:

- the legislative change introduced by the D.L. n. 130/2020 (art. 2, par. 1, letter 0a) provides that territorial commissions for the recognition of international protection "arrange the hearing of the interested party, where possible, using the human, instrumental and financial resources available under current legislation, also through remote audio-visual links, in compliance with the confidentiality requirements of data concerning the identity and declarations of the applicant ". To date, it does not appear that this provision has been applied by the territorial commissions, as there is no circular from the Commissione Nazionale per il diritto di asilo (National Commission for the right to asylum) in this regard.

In this area also the Italian CSOs play a fundamental role; for example, again Don Bosco 2000 implements intercultural mediation and interpretation services within the reception projects active in Sicily. However, it is not easy to find locally operators speaking some languages such as Bengali and Urdu(7)⁷.

4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)

This is remarkably interesting topic even if it concerns internal migration within Europe and a small part of European asylum seekers; a new theme we have seen growing over the past two years and concerning asylum seekers arrived in Europe in 2015 and 2016, during the period of crisis of the entry flow and before the eastern route was closed by the two blocks in Turkey and Greece.

Dozens of migrants from Palestine, the majority from Iraq, and Afghanistan and Pakistan, who had applied the procedure in Northern Europe countries, flocked to Italy between 2017 and 2019 after their procedures were rejected, to avoid the real risk of repatriation. For example, if in 2017 for 675 applications for protection submitted by Iraqi citizens, Denmark accepted only 50, equaling 7% of the total, in the same period, Italy out of 1410 applications recognized a form of protection for 1270, which is 90%(8)⁸. The same year, according to Eurostat data, 75 Iraqi citizens were deported from Denmark, compared to the 5 from Italy(9)⁹. Unfortunately, the deterrence policies implemented by Denmark are sadly famous(10)¹⁰ and involve asylum seekers from other countries in conditions of extreme instability and widespread violence, such as Somalia (recognition rate of 7% against 90% in Italy) and Afghanistan (15-20% against 90%). As can see in relation to the nationalities covered by the

⁶ <https://www.donbosco2000.org/>

⁷ <https://www.donbosco2000.org/>

⁸ Eurostat, Asylum and Managed Migration Statistics,

https://ec.europa.eu/eurostat/databrowser/view/MIGR_ASYDCFSTA__custom_281243/default/table?lang=en

⁹ Eurostat, Enforcement of Immigration

legislation, https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIRTN__custom_285919/default/table?lang=en

¹⁰ The local DK, 2015, Denmark publishes anti-refugee ad campaign <https://www.thelocal.dk/20150907/denmarks-anti-refugee-ad-published-in-foreign-papers> ; Meltingpot, 2016, La confisca dei beni dei migranti è legge in Danimarca <https://www.meltingpot.org/La-confisca-dei-beni-dei-migranti-e-legge-in-Danimarca.html#.X8StZGhKhPY> ;The New York Times, 2017, Old, ill and ordered deported from Denmark to Afghanistan, <https://www.nytimes.com/2017/04/22/world/europe/old-ill-and-ordered-deported-from-denmark-to-afghanistan.html>; InfoMigrants, 2017, Asylum seekers stranded in Danish deportation center, <https://www.infomigrants.net/en/post/5990/asylum-seekers-stranded-in-danish-deportation-center>

research, carried out above all by Pensare Migrante(11)¹¹, in Italy the overall recognition rate exceeds 80% while the repatriation rate exceeds 95%.

To carry out the transfers towards the competent European countries pursuant to Reg Dublin III, Italy often violates the information procedures, applies the maximum time limit of 18 months, configuring the concept of unavailability without the procedural guarantees provided. In the case of a positive judicial sentence for the Italian jurisdiction, the Ministry blocks the procedures of competence for more than 6 months even when it does not proceed with the appeal to the Cassation.

The other serious critical issue is the failure to apply the "single system"(12)¹² in the assessment, protection, and disclosure procedures which, as we have seen, are different among the Member States.

5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

In practice, the immigration offices in charge of acknowledging the protection applications that fall within the cases indicated, hinder assessment practices due to a structural lack of information in relation, for example, to new elements for a second instance and in relation to the new legal requirements(13)¹³.

6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

Changes made by the D.L. 130/2020 converted by law no. 173/2020:

- Reinstatement of integration measures for asylum seekers even in the first reception, eliminated by D.L. n. 113/2020: material reception services, health assistance, social and psychological assistance, linguistic-cultural mediation, administration of Italian language courses and legal and territorial guidance services (Art.4, par. 1, letter a);
- Restoration of asylum seekers reception in the second reception and integration system (formerly SPRAR, formerly SIPROIMI) now renamed SAI, excluded by D.L. 113/2018. However, SAI integration measures are differentiated for applicants and holders of international protection: applicants do not have access to job orientation and vocational training measures (Art. 4, par. 3, letter c)).
- Integration paths are foreseen after the second reception, to be included in the national integration plan for holders of international protection, at least stimulating reshaping, if not issuing of a new national integration plan (art. 5).
- Registry registration for asylum seekers has been restored (Art. 3, par. 2, letter a)), which D.L. 113/2020 had eliminated with a provision already declared unconstitutional with sentence of the Constitutional Court n. 186 of 2020.

Going a little more in detail, D.L. 21 October 2020, n. 130 (containing, inter alia, urgent provisions on migration, international protection), converted into law, with amendments, by art. 1 par.1 of law 18

¹¹ <https://pensaremigrazione.org/non-siamo-pacchi-lettera-dai-dublinati/>

¹² <https://www.intersezionale.com/2020/12/24/il-sistema-europeo-comune-dasilo-un-fallimento-che-leuropa-che-non-vuole-vedere/>

¹³ <https://www.percambiarelordinedellecose.eu/category/advocacy/>

December 2020 n. 173, replacing the previous legislation which had completely dismantled the reception system, creating more discomfort and exclusion.

The new legislation provides for, among other things:

- establishment of the "Sistema di accoglienza e integrazione (Reception and Integration System)" – SAI(14)¹⁴ which has been designed with the intention of implementing, unlike the previous SIPROIMI, ad hoc integration paths including education, vocational training courses, orientation, and labour market inclusion paths, thus providing training and work opportunities, not only to refugees or to those in the phase of their legal position stabilization. SAI integration measures have been however differentiated for those requesting and those holders of the international protection: the first are excluded from labour market orientation measures and vocational training (art. 4, par. 3, lett. c)). It should be remembered that the previous decree (D.L. 113 of 2018) had reduced the possibility of starting such paths, depriving applicants of protection, who were left in a condition of deadlock in terms of regulations and reception in suitable structures. Therefore, the inclusion into the structures of the new circuit is broadened, in addition to holders of international protection and UAMs, to applicants for international protection, to holders of different categories of residence permits provided for by the TU immigrazione(15)¹⁵ (Immigration Consolidated Act) and to newly major age individuals entrusted to social services.

SAI is divided into two levels of performance:

- *First level:* concerns the essential services all asylum seekers can access without distinction such as material reception, health and psychological assistance, legal support, linguistic-cultural mediation, Italian second language courses;
- *Second level:* aimed at those recognized as international protection holders and special protection beneficiaries, where they find strengthened orientation to job training, integration mechanisms and widespread inclusion, especially in supporting integration into the social, economic, cultural and political environment of the host country;
- Registration at the Registry Office: registration at the registry of the resident population has been foreseen for the international protection applicant who has been issued the residence permit for asylum request or the certificate/ "receipt certifying" the presentation of the international protection request. International protection applicants who have obtained registration in the registry are issued an identity card, valid for three years, limited to the Italian national territory. In the last two years, the impossibility of registering at the registry had led to significant obstacles for asylum seekers to access health and social assistance, work, and training opportunities (job grants and internships), and the possibility of starting a real own integration project.

COVID 19 Health Emergency Management

In July the "Indicazioni operative ad interim per la gestione di strutture con persone a elevata fragilità e marginalità socio-sanitaria nel quadro dell'epidemia di COVID-19"(Interim operational guidelines for the management of structures with people with high fragility and socio-health marginalization in the context of the COVID-19 pandemic) (16)¹⁶were issued by

¹⁴ It replaces the Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati-SIPROIMI (Protection system for holders of international protection and unaccompanied foreign minors), previously SPRAR.

¹⁵ D.L., testo coordinato, 25/07/1998 n° 286, G.U. 18/08/1998, see <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&atto.articolo.numero=0&qId=b4ac8256-ce86-4641-b465-ef76595692d0&tabID=0.942327553488677&title=lbl.dettaglioAtto>

¹⁶ http://www.salute.gov.it/imgs/C_17_pubblicazioni_2942_allegato.pdf

the INM (Istituto Nazionale per la promozione della salute delle popolazioni Migranti e per il contrasto delle malattie della Povertà - National Institute for the promotion of the migrant populations health and fight against poverty diseases).

From October 2020, the problem connected with the use of ships used for the health surveillance of people rescued at sea or independently disembarked in Italy emerged, among which the presence of minors had been reported. Although the issue of the minors has exceeded, the use of quarantine vessels to ensure the period of health surveillance of disembarked migrants has remained active, in violation of the prohibition of discrimination⁽¹⁷⁾¹⁷.

Here too Italian CSOs play a fundamental role for example, in support of the Italian population and migrants, the project U.S. PUBLIC DIPLOMACY SALESIAN EMERGENCY AND RECOVERY RESPONSE PROJECT TO COVID-19 IN ITALY is in force promoted by USAID, in partnership, among others, with VIS, Salesiani per il Sociale, and the support of Don Bosco 2000 for Sicily, as an emergency response to situations of vulnerability (also caused or intensified by COVID 19)⁽¹⁸⁾¹⁸.

In institutionally understood reception processes, the processes of protagonism of migrants are very underestimated in the elaboration of the migratory project. This leads to confusion in beneficiaries and poor activation of resilience paths, starting from the relationship with the social context and correct orientation towards services, up to the construction of one's own path of life in autonomy. In relation to the housing emergency, many of the migrants present on the Italian territory, while working, are unable to access the rigid, unstable, and stale housing market. COVID has worsened the situation. In fact, we know that the migrant is in a positional disadvantage on a material and symbolic level within the housing market, which is enclosed, for a significant share, in housing solutions within the most dilapidated housing sector and in the most degraded areas of the main metropolitan areas⁽¹⁹⁾¹⁹. In a certain number of cases, to which is associated a condition of overcrowding and poor supply of services which amplifies discomfort, especially in this dramatic period of forced enclosure. The empirical evidence from ORIM⁽²⁰⁾²⁰ surveys and from national data⁽²¹⁾²¹ show how most households of non-citizens find accommodation in the private rental market and, a minimum, in the public one. We can imagine what scenario will arise if the economic recovery is not relatively rapid and the Government's action (local and central) is not effective in intervening with adequate and coordinated tools. Housing integration can be a process that can be solved autonomously, according to the exclusive market rules, but it will need more direct support from the State action in its different junctions to initiate policies aimed at expanding, or relaunching, the offer in moderate rents leasing and alternative housing supply measures (e.g. social housing). The challenge is also related to not exacerbating potential conflicts between these fringes of migrant and indigenous fragility with help and containment strategies that are not characterized by procedural ambiguity and definition of the subjects involved⁽²²⁾²².

7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

Only a few changes have been added in the D.L. 130:

- it is possible to refer to the Report of then National Ombudsman for the rights of persons

¹⁷ <http://www.vita.it/it/article/2020/12/21/150-organizzazioni-chiedono-lo-stop-del-sistema-navi-quarantena/157808/>

¹⁸ Project UsAid - VIS Salesiani per il Sociale APS e Cnos Fap - Salesiani per il Sociale, <https://www.volint.it/usaaid>

¹⁹ Alietti, Agustoni, 2018; Petrillo2018; Tosi, 2017

²⁰ <https://www.orimregionelombardia.it/aree-di-interesse/>

²¹ http://www.lavoro.gov.it/archivio-doc-pregressi/AreaSociale/Immigrazione/rapportofinale_def_DisagioAbitativo.pdf

²² <https://www.ismu.org/tag/migrazioni/>

detained or deprived of their liberty(23)²³.

²³ <https://www.garantenazionaleprivatiliberta.it/gnpl/>

8. **Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management - including backlog management) Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)** The timing for the conclusion of a judicial proceeding exceeds the limit of reasonable duration⁽²⁴⁾²⁴, forcing applicants into a limbo of waiting and precarious stay.
9. **Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**
10. **Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)**

Changes made by the D.L. 130/2020 converted by law no. 173/2020:

- Currently, as for international protection holders, international protection applicants, new special protection holders and UAMs (as it was during the SPRAR days), reception in SAI is also provided for holders of various special permits, if they do not access specifically dedicated protection systems as particularly vulnerable persons, such as victims of trafficking and domestic violence, for medical treatment, for natural disaster, particular labour exploitation, for acts of particular civil value, foreigners entrusted to social services up to the age of twenty-one. The applicant falling into these vulnerable categories, because of the specific needs of vulnerability, is transferred to SAI structures as a priority (art. 4).
- Regarding referral mechanism for victims of trafficking, the new UNHCR guidelines for the Territorial Commissions for the recognition of international protection have been published⁽²⁵⁾²⁵.

Unaccompanied Foreign Minors Legislation Developments

With the signature of an agreement in a Conferenza Unificata (Unified Conference) on proposal of the Ministry of Health, the *Protocollo multidisciplinare per la determinazione dell'età dei minori stranieri non accompagnati* (multidisciplinary protocol for determining the age of unaccompanied foreign minors) was approved on 9 July 2020 (26)²⁶: it established an appropriate procedure at national level to assess the age of UAMs, carried out by a multidisciplinary team at request of the competent judicial authority, in compliance with the best interests of the child, if serious doubts about the declared age of the minor remain and the age cannot be ascertained by the identification documents or other procedures provided for in accordance with art. 5 of Law no. 47 of 2017.

Challenges

The full and uniform implementation of law no. 47 of 2017 throughout the national territory is hoped. In particular, the following appears still to be issued: the decree amending the provisions of the d.P.R. n. 394 of 1999 (Rilascio dei permessi di soggiorno e conversione degli stessi al raggiungimento della

²⁴ Art. 111, par. 2, Cost. which says «The law [...] ensures a reasonable time [for the trial]» and art. 6, par. 1, ECHR «... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...»

²⁵ https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali_identificazione-vittime-di-tratta.pdf

²⁶ <http://www.statoregioni.it/media/2751/p3-cu-atto-rep-n-73-9lug2020.pdf>

maggior età - Issue of residence permits and conversion of the same upon reaching the age of majority), the decree amending the D.P.C.M. n. 535 of 1999 (duties of the Committee for foreign minors) and the decree related to the procedures for carrying out the first interview by the staff of the reception facility. The decree of the Ministry of Interior, in agreement with the Ministry of Economy and Finance, for the implementation of the 2020 budget law (law n.160 of 2019) concerning the increase of the fund for the reception of UAMs for interventions in favor of the guardians of UAMs also appears still to be issued. It is hoped that greater attention is paid to support voluntary UAMs guardians, to the transition to the adult age of such minors and greater collaboration between the institutional bodies for an effective promotion of the practice of foster care⁽²⁷⁾²⁷.

Also, regarding the establishment of inter-institutional networks for the reception of UAMs the Italian CSOs play a pivotal role. For example, among the good practices aimed at fully implementing Law no. 47 of 2017, the elaboration of a protocol for taking charge of the UAM must be highlighted, the result of the activities of a working group created at request of the organization Defense for Children International - Italy (DCI), with the endorsement of the Juvenile Court of Genoa and the Juvenile Prosecutor's Office, between DCI and the Municipality of Genoa (December 2020)⁽²⁸⁾²⁸.

11. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

Changes made by the D.L. 130/2020 converted by law no. 173/2020:

- Art. 19 of D.L. no. 286/1998 (hereinafter TUI) was amended by Art. 1, par. 1, lett. e) of the D.L. n. 130/2020 in a way to provide for the issue of a permit for special protection, lasting two years, renewable and convertible into a permit for work reasons, giving access to basic social assistance services and health care.

The residence permit for special protection can be issued in one of the cases illustrated below.

- Hypothesis contemplating the risk of persecution within the meaning of the definition of refugee given by the Geneva Convention and the related prohibition of refoulement, which occurs when the non-citizen cannot be rejected, expelled or extradited to a State where there is the risk of being subjected to persecution for reasons of race, sex, sexual orientation, gender identity, language, citizenship, religion, political opinion, personal or social conditions, or to another State in which he/she is not protected from persecution⁽²⁹⁾²⁹. Note that an amendment to D.L. no. 130, approved at the time of the conversion, introduced sexual orientation and gender identity among the reasons for persecution, in accordance with the principles of soft law developed by UNHCR⁽³⁰⁾³⁰ and as required by D.L. no. 251/2007 in accordance with Directive 2011/95/EU⁽³¹⁾³¹.
- Another hypothesis: when the non-citizen cannot be rejected, expelled, or extradited to a State where there are reasonable grounds to believe that he/she risks being subjected to torture or inhuman or degrading treatment, where the latter have been included in addition to the already existing risk of torture, in compliance with the absolute obligation to observe

²⁷ https://www.cespi.it/sites/default/files/osservatori/allegati/rapportomsna_in_italia_2020_def.pdf

²⁸ <http://www.defenceforchildren.it/>

²⁹ Art. 19, par.1, TUI.

³⁰ UNHCR, *Linee guida in materia di protezione internazionale n. 9*, in https://www.unhcr.it/wp-content/uploads/2016/01/Linee_guida_SOGI_ITA2012.final_.pdf

³¹ Art. 8, par.1, lett.d), dlgs n. 251/2007 and art. 10 Dir. 2011/95/UE.

the principle of non-refoulement, as interpreted by the consolidated jurisprudence of the Court of Strasbourg⁽³²⁾³².

- Case in which the "constitutional or international obligations of the Italian State" occur, which par. 1.1. of art. 19 TUI refers to, referring to the provision of the revised art. 5, par. 6, which identifies them as reasons impeding the refusal of the issue or renewal or revocation of a residence permit. The link between constitutional or international obligations and the issue of a residence permit for special protection was also introduced by an amendment, during the conversion, of fundamental importance⁽³³⁾³³. It is precisely this link, in fact, that introduces a mechanism that establishes a procedure for issuing a residence permit for cases in which repatriation cannot be ordered by virtue of the aforementioned obligations of the Italian State⁽³⁴⁾³⁴.
- Finally, the hypothesis representing the most important novelty of the new special protection: the prohibition of expulsion or refoulement of the non-citizen to a State "if there are justified reasons to believe that the expulsion from the national territory involves a violation of the right to respect for his/her private and family life"⁽³⁵⁾³⁵, unless it is necessary for national security, public order, and safety as well as health protection reasons. The criteria for assessing the risk of violation consist in nature and effectiveness of the family ties of the interested party, in his/her effective social integration in Italy, in the duration of his/her stay in the national territory as well as in the existence of family, cultural or social ties with his/her country of origin, corresponding to the criteria already identified over time by the jurisprudence of legitimacy⁽³⁶⁾³⁶.

This legislative provision corresponds to the need to translate into national legislation the consolidated jurisprudence of Strasbourg about repatriation of foreigners and application of Art. 8 of the ECHR which protects the right to private and family life⁽³⁷⁾³⁷, to which consequently there is a consolidated jurisprudence of legitimacy in the field of humanitarian protection⁽³⁸⁾³⁸.

Such provision must be read in accordance with the provisions of the TUI⁽³⁹⁾³⁹ regarding the assessment to be carried out in the adoption of a measure of refusal, revocation or denial of renewal of the residence permit against a non-citizen who has exercised the right to reunification or of the reunited family member, within which family ties and the length of stay of the interested party in Italy must be taken into account, a provision extended by the Constitutional Court to any non-citizen with family ties in the territory regardless of the type of residence permit and whether or not he/she has exercised his/her right to

³² That is, absolute prohibition of refoulement, expulsion or extradition, as sanctioned by the interpretation of Art. 3 of the ECHR - which prohibits torture and inhuman and degrading treatment - by the jurisprudence of the European Court of Human Rights, which defined it "a fundamental principle of democratic societies" starting from the case *Soreing v. United Kingdom*, rec. 14038/88. This prohibition does not provide for exceptions or derogations, not even in serious circumstances such as the fight against terrorism or organized crime, since it does not consider any national security, public order and safety or health protection reason.

³³ The amendment signed by several parliamentarians was strongly supported by the Italian network GREI250 (<http://www.grei250.it/sezione3.html>) e dall' ASGI (<https://www.asgi.it/wp-content/uploads/2020/11/valutazioni-ed-emendamenti-ASGI-al-d.l.-n.-130-2030-4-11-2020-fin-1.pdf>), as one of the main proposals for upgrading the d.l.130/2020.

³⁴ For the considerations on the text of the d.l. 130/2020 before the conversion regarding the lack of a mechanism that would establish a procedure for issuing a residence permit for cases in which the repatriation following the refusal or revocation of the residence permit could not be ordered by virtue of the aforementioned obligations of the Italian State, see G. Conti, *La protezione umanitaria e il nuovo Sistema di accoglienza e integrazione nel d.l. n. 130/2020*, in riv. Federalismi.it, Focus Human Rights, 28 dicembre 2020, https://www.federalismi.it/focus/index_focus.cfm?FOCUS_ID=127&focus=humanrights

³⁵ Art. 19, par. 1.1., TUI

³⁶ C. Cassazione sent. 4455/2018

³⁷ V. *ex plurimis*: Sent. Rodrigues da Silva e Hoogkamer c/Olanda, del 31.1.2006, ric. 50435/99, parr. 38-39; Sent. Uner c/ Olanda del 18.10.06, ric. 46410/99, parr. 56-59; Sent. C.G. e altri c/ Bulgaria del 24.4.2008, ric. 1365/07, parr. 55-57 e 62. In confirmation of this consolidated jurisprudential orientation see Sent. Narjis c/Italia del 14.01.2019, Ric. n. 57433/15.

³⁸ V. *ex plurimis*, Cass. Sez. Unite Civ. n. 29459/29019; Cass. Civ. 11110/ 2019; Cass. Civ. 12082/2019; Cass. Civ. n. 17072/2018; Cass. Civ. n. 4455/2018.

³⁹ Art. 5, par.5, TUI.

reunification(40)⁴⁰. The same evaluation criteria are envisaged for the adoption of the prefectorial expulsion order of the irregular non-citizen(41)⁴¹.

Having said this, the importance of the provision introduced by the D.L. no. 130/2020 lies in having regulated the case that the jurisprudence had identified and recognized as protection for "social and work integration" regarding the old residence permit for humanitarian reasons, starting precisely from the protection offered by art. 8 of the European Convention and from the relevant Strasbourg jurisprudence.

However, what makes the changes particularly interesting in terms of the possibility of a *ad personam* regularization is the introduction of par. 1.2. in Art. 19 of the TUI, which not only provides that the Territorial Commission, when the conditions impeding repatriation provided for in pars. 1 and 1.1 of art. 19 illustrated above, sends the documents to the Questore(42)⁴² for the issue of a residence permit for special protection. It also provides that, where the same requirements are met, "in the event that an application for the issue of a residence permit is presented" it is the Questore, after consulting with the Territorial Commission, to issue the residence permit for special protection. This means that the non-citizen irregularly present on the national territory can apply directly to the Questore when he/she is able to assert his/her right to private and family life, applying for a residence permit for special protection due to the risk of violation of Art. 8 of the European Convention(43)⁴³, without having to apply for a residence permit for another reason or an application for international protection.

It should be noted that even the regime of the old humanitarian protection, before the repeal occurred, provided for the possibility of issuing the residence permit by the Questore, but with a regulation (and not a law) (44)⁴⁴, however, largely disappplied in favour of the passage always and in any case for the international protection procedure(45)⁴⁵.

The above stated, the current special protection is built again as an "open catalogue", exactly as the "old" humanitarian protection was, allowing the reader to include in this protection the most diverse situations falling under the so-called "Constitutional asylum", referred to in Art. 10, par. 3, of the Constitution(46)⁴⁶, which offers a much wider coverage than the international protection guaranteed by the EU legislation(47)⁴⁷ as neither the *fumus persecutionis* nor the danger of serious harm to life or safety are its indefectible requirements. Similarly, to the old humanitarian protection, the new special protection is therefore characterized by its "expansion potential that is neither predetermined nor predeterminable"(48)⁴⁸.

The D.L. n. 130/2020 (Art. 1, par. 1, letter b)) has also made it possible to convert some types of extraordinary and temporary residence permits into residence permits for work reasons. The conversion was planned for the residence permits for the new special protection, medical treatment, calamities, assistance to minors, religious reasons, waiting for citizenship et alia.

⁴⁰ C. Costituzionale, sent. n. 202/2013

⁴¹ Art. 13, par. 2 bis, TUI.

⁴² Official of the Ministry of the Interior in charge of police services in the provincial capitals.

⁴³ In general, when in any of the aforementioned cases preventing repatriation, the Questore can issue the permit for special protection, after consulting the Territorial Commission.

⁴⁴ This interpretation of the law is confirmed in the dossier of 28.10.2020 of the Chamber of Deputies on the draft conversion law A.C. 2727, in the dossier with studies of the Senate on the draft law for the conversion to A.S.2040 of 11.12.2020 and what is indicated in the Relazione n. 4 della Corte di Cassazione Ufficio del massimario e del Ruolo of 20.11.2020.

⁴⁵ Art. 11, par. 1, lett.c) ter of D.p.r. n. 394/1999, before it was repealed by the d.l. 113/2018, pursuant to which the residence permit for humanitarian reasons was issued following the opinion of the territorial commissions for the recognition of the refugee status or acquisition from the interested party of documentation concerning the reasons for the request relating to objective and serious personal situations that do not allow the removal of the non-natioanl from the national territory.

⁴⁶ Art. 10, par.3, of the Constitution says: "The foreigner, who is prevented in his country from the effective exercise of the democratic freedoms guaranteed by the Italian Constitution, has the right of asylum in the territory of the Republic, according to the conditions established by law."

⁴⁷ International protection under Directive 2011/95/EU is divided into refugee status and subsidiary protection.

⁴⁸ M. Acierio, *Il diritto del cittadino straniero alla protezione internazionale: condizione attuale e prospettive future*, in *Immigrazione, asilo e cittadinanza*, op.cit., pag.79.

12. Return of former applicants for international protection

13. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

14. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

15. National jurisprudence on international protection in 2020 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))

16. Other important developments in 2020

References and sources

17. Please provide links to references and sources and/or upload the related material in PDF format

Notes	Text
1	www.camera.it/leg18/1079?idLegislatura=18&tipologia=indag&sottotipologia=c30_migranti&anno=2020&mese=09&giorno=24&idCommissione=30&numero=0026&file=indice_stenografico
2	Network RiVolti ai Balcani, La rotta balcanica. I migranti senza diritti nel cuore dell'Europa, gennaio 2021, https://www.articolo21.org/2021/01/la-rotta-balcanica-i-migranti-senza-diritti-nel-cuore-delleuropa/
3	https://www.salesianiperilsociale.it/le-pratiche-di-respingimento-dellitalia-alla-frontiera-con-la-slovenia-violano-la-legge-zampa-sulla-protezione-dei-minori-non-accompagnati/ and https://www.minori.gov.it/sites/default/files/protocollo_identificazione_msna.pdf .
4	¹ https://www.ilfattoquotidiano.it/2020/10/29/migranti-respingimenti-a-ventimiglia-in-aumento-nonostante-il-lockdown-in-9-mesi-rimandate-indietro-12-045-persone/5984854/
5	https://mediciperidirittiumani.org/category/report-it/
6	https://www.donbosco2000.org/
7	https://www.donbosco2000.org/
8	Eurostat, Asylum and Managed Migration Statistics, https://ec.europa.eu/eurostat/databrowser/view/MIGR_ASYDCFSTA__custom_281243/default/table?lang=en
9	Eurostat, Enforcement of Immigration legislation, https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIRTN__custom_285919/default/table?lang=en
10	The local DK, 2015, Denmark publishes anti-refugee ad camapaign https://www.thelocal.dk/20150907/denmarks-anti-refugee-ads-published-in-foreign-papers ; Meltingpot, 2016, La confisca dei beni dei migranti è legge in Danimarca https://www.meltingpot.org/La-confisca-dei-beni-dei-migranti-e-legge-in-Danimarca.html#.X8StZGhKhPY ;The New York Times, 2017, Old, ill and ordered deported from Denmark to Afghanistan, https://www.nytimes.com/2017/04/22/world/europe/old-ill-and-ordered-deported-from-denmark-to-afghanistan.html ; InfoMigrants, 2017, Asylum seekers stranded in Danish deportation center, https://www.infomigrants.net/en/post/5990/asylum-seekers-stranded-in-danish-deportation-center
11	https://pensaremigrante.org/non-siamo-pacchi-lettera-dai-dublinati/
12	https://www.intersezionale.com/2020/12/24/il-sistema-europeo-comune-dasilo-un-fallimento-che-leuropa-che-non-vuole-vedere/
13	https://www.percambiarelordinedellecose.eu/category/advocacy/

14	It replaces the Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati-SIPROIMI (Protection system for holders of international protection and unaccompanied foreign minors), previously SPRAR.
15	D.L., testo coordinato, 25/07/1998 n° 286, G.U. 18/08/1998, see https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&atto.articolo.numero=0&qId=b4ac8256-ce86-4641-b465-ef76595692d0&tabID=0.942327553488677&title=lbl.dettaglioAtto
16	http://www.salute.gov.it/imgs/C_17_pubblicazioni_2942_allegato.pdf
17	http://www.vita.it/it/article/2020/12/21/150-organizzazioni-chiedono-lo-stop-del-sistema-navi-quarantena/157808/
18	Project UsAid - VIS Salesiani per il Sociale APS e Cnos Fap - Salesiani per il Sociale , https://www.volint.it/usaid
19	Alietti, Agustoni, 2018; Petrillo2018; Tosi, 2017
20	https://www.orimregionelombardia.it/aree-di-interesse/
21	http://www.lavoro.gov.it/archivio-doc-pregressi/AreaSociale_Immigrazione/rapportofinale_def_DisagioAbitativo.pdf
22	https://www.ismu.org/tag/migrazioni/
23	https://www.garantenazionaleprivatiliberta.it/gnpl/
24	Art. 111, par. 2, Cost. which says «The law [...] ensures a reasonable time [for the trial]» and art. 6, par. 1, ECHR «... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...»
25	https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali_identificazione-vittime-di-tratta.pdf
26	http://www.statoregioni.it/media/2751/p3-cu-atto-rep-n-73-9lug2020.pdf
27	https://www.cespi.it/sites/default/files/osservatori/allegati/rapportomsna_in_italia_2020_def.pdf
28	http://www.defenceforchildren.it/
29	Art. 19, par.1, TUI.
30	UNHCR, <i>Linee guida in materia di protezione internazionale n. 9</i> , in https://www.unhcr.it/wp-content/uploads/2016/01/Linee_guida_SOGI_ITA2012.final_.pdf
31	Art. 8, par.1, lett.d), dlgs n. 251/2007 and art. 10 Dir. 2011/95/UE.
32	That is, absolute prohibition of refoulement, expulsion or extradition, as sanctioned by the interpretation of Art. 3 of the ECHR - which prohibits torture and inhuman and degrading treatment - by the jurisprudence of the European Court of Human Rights, which defined it " a fundamental principle of democratic societies "starting from the case <i>Soreing v. United Kingdom</i> , rec. 14038/88. This prohibition does not provide for exceptions or derogations, not even in serious circumstances such as the fight against terrorism or organized crime, since it does not consider any national security, public order and safety or health protection reason.
33	The amendment signed by several parliamentarians was strongly supported by the Italian network GREI250 (http://www.grei250.it/sezione3.html) e dall' ASGI (https://www.asgi.it/wp-content/uploads/2020/11/valutazioni-ed-emendamenti-ASGI-al-d.l.-n.-130-2030-4-11-2020-fin-1.pdf), as one of the main proposal for upgrading the d.l.130/2020.
34	For the considerations on the text of the d.l. 130/2020 before the conversion regarding the lack of a mechanism that would establish a procedure for issuing a residence permit for cases in which the repatriation following the refusal or revocation of the residence permit could not be ordered by virtue of the aforementioned obligations of the Italian State, see G. Conti, <i>La protezione umanitaria e il nuovo Sistema di accoglienza e integrazione nel d.l. n. 130/2020</i> , in riv. Federalismi.it, Focus Human Rights, 28 dicembre 2020, https://www.federalismi.it/focus/index_focus.cfm?FOCUS_ID=127&focus=humanrights
35	Art. 19, par. 1.1., TUI
36	C. Cassazione sent. 4455/2018
37	<i>V. ex plurimis</i> : Sent. Rodrigues da Silva e Hoogkamer c/Olanda, del 31.1.2006, ric. 50435/99, parr. 38-39; Sent. Uner c/ Olanda del 18.10.06, ric. 46410/99, parr. 56-59; Sent. C.G. e altri c/ Bulgaria del 24.4.2008, ric. 1365/07, parr. 55-57 e 62. In confirmation of this consolidated jurisprudential orientation see Sent. Narjis c/Italia del 14.01.2019, Ric. n. 57433/15.
38	<i>V. ex plurimis</i> , Cass. Sez. Unite Civ. n. 29459/29019; Cass. Civ. 11110/ 2019; Cass. Civ. 12082/2019; Cass. Civ. n. 17072/2018; Cass. Civ. n. 4455/2018.
39	Art. 5, par.5, TUI.
40	C. Costituzionale, sent. n. 202/2013
41	Art. 13, par. 2 bis, TUI.
42	Official of the Ministry of the Interior in charge of police services in the provincial capitals.
43	¹ In general, when in any of the aforementioned cases preventing repatriation, the Questore can issue the permit for special protection, after consulting the Territorial Commission.
44	This interpretation of the law is confirmed in the dossier of 28.10.2020 of the Chamber of Deputies on the draft conversion law A.C. 2727, in the dossier with studies of the Senate on the draft law for the conversion to A.S.2040 of 11.12.2020 and what is indicated in the Relazione n. 4 della Corte di Cassazione Ufficio del massimario e del Ruolo of 20.11.2020.
45	Art. 11, par. 1, lett.c) ter of D.p.r. n. 394/1999, before it was repealed by the d.l. 113/2018, pursuant to which the residence permit for humanitarian reasons was issued following the opinion of the territorial commissions for the recognition of the refugee status or acquisition from the interested party of documentation concerning the reasons for the request relating to objective and serious personal situations that do not allow the removal of the non-natioanl from the national territory.
46	Art. 10, par.3, of the Constitution says: "The foreigner, who is prevented in his country from the effective exercise of the democratic freedoms guaranteed by the Italian Constitution, has the right of asylum in the territory of the Republic, according to the conditions established by law."
47	International protection under Directive 2011/95/EU is divided into refugee status and subsidiary protection.

18. Feedback or suggestions about the process or format for submissions to the EASO Asylum Report

Contact details

- 1) **Name of Organisation:** **VIS** inputs in joint submission with Comitato per la promozione e protezione dei diritti umani, Don Bosco 2000, Salesiani per il Sociale, Forum per Cambiare l'Ordine delle Cose

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