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THE MULTILEVEL ASYLUM SYSTEM POLICIES:
THE ANALYSIS OF THE NORTH AFRICA EMERGENCY
MANAGEMENT IN PADUA AND VENICE

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INTRODUCTION

During the last fifteen years the phenomenon of asylum seekers and refugees had an increasing importance on the European area. This fact gave start to a process which is not yet concluded aimed to the uniformity of different national laws. Member States of the European Union were asked to prepare a regulatory system containing minimum common standard and shared procedures. Adherence to this path occurred in different forms and ways between State and State, entering in some cases in an already structured and existing system. The same migrations, however, are characterized by different cultural, historical and political dynamics, leading to different approaches and responses.

The goal of this thesis is to give a multilevel analysis of the asylum system policies and to bring a concrete example of management interventions in favor of the asylum seekers through a field research.

The thesis is divided in two parts: the first part analyzes in a multilevel perspective the asylum seeker and refugee's law and legislation starting from the international level until the Italian legislation. The second part describes the refugee acceptance in Italy and analyzes the *North Africa Emergency* management in Padua and a Venice.

The first chapter describes the two historical phases of asylum in the International law, from the First World War to the formulation of the Geneva Convention on the Status of Refugees. The first phase is directly related to the post-war period of the Great War and resulting in the creation of the League of Nations, characterized by the proliferation of the international organizations in support of refugees (Nansen International Office for Refugee, Office of the High Commissioner for Refugees, the Intergovernmental Committee for Refugees). The second phase starts with the inauguration and the establishment of the United Nations Organization, led to the creation of the different agencies operating within in a single institution: the United Nations High Commissioner for Refugees, more commonly known by its acronym, UNHCR. During the second phase, in 1951 it was finally adopted the Geneva Convention on the Status of Refugees, the first legal instrument devoted exclusively to the subject. The first chapter highlights also the main elements of the Convention and the Protocol related to the Status of Refugees, adopted in 1967 to address the main shortcomings of the Convention.

The second chapter continues with the reconstruction of the European Union law and the refugee protection. First, it is important to trace the gradual expansion of the European Union competence in this field, starting from the Schengen Convention until the recent Treaty of Lisbon. Under this initiative and the ensuing Tampere Program (1999-2004), negotiations started on the creation of a Common European Asylum System (CEAS), divided into two phases. The first, from 1999 to 2005, saw the adoption of different legislation tools aimed to harmonize the legal frameworks of the Member States and to implement the policies based on the common standards. The EU guidelines have as their object the asylum seekers reception, the qualifications and procedures for the recognition of the International Protection. The second phase, still in progress, is focused instead on the evaluation of the results, their strengthening and the final establishment of a common scheme.

After defined the legal framework of the phenomenon, the third chapter offers a reconstruction of the Italian immigration law starting from the late eighties until the current situation. In this part it is described the evolution of the immigration and asylum seekers law during the last twenty years and the transposition of EU police headquarters from the Italian government. The chapter gives also a description of the different Identification and Detention Centers present in the Italian territory, which in most of the cases goes against the human rights.

Finally, the last chapter illustrates the *North Africa Emergency* management in Padua and Venice. This part is based on a report that tries to understand how the *North Africa Emergency* was managed during these two years and which were the feedbacks and the results that the municipality and the *Managing Institutions* involved in the refugee reception at the closure of the emergency at the end of March 2013. The report gives a general overview of the emergency and its goal is housing insertion once the reception period is finished. The report was done based on different interviews made to the responsible of the local authorities (Immigration Sector), the leaders of reception facilities (Chairman of the *Managing Institution*) and the social operators. This report was edited with the collaboration and the support of the Prof. Dalla Zuanna and is part of a research promoted by Anci (Associazione Italiana Comuni Italiani) in collaboration with the University of Padua.

CHAPTER 1

ASYLUM IN THE INTERNATIONAL AND IN THE EUROPEAN UNION LAW

In this first part of the thesis I will attempt to reconstruct the historical and legal stages, from the First World War, that led to the creation of the current International Protection system of refugee.

This step is necessary to understand the general framework within which the European Union law on asylum was developed, legal reference of which EU members must adhere to.

1.1 The history of refugee protection: first part

The refugees issue and the right of asylum are inevitably linked to humanitarian crises. This is how it is presented today and how it appeared, with distinct profiles and characteristics, more than sixty years ago.

The concept of asylum¹, although it was present in many ancient societies, as well as in the Jewish and in the Muslim one, it acquires a legal and international relevance only after the tragic events that took place during the twentieth century.

In particular, with the end of the First World War and with the signing of the Peace Treaties, negotiated during the Paris Conference in 1919, where the map of Europe appeared drastically changed. The criterion of a '*nationality clearly identifiable*' supported by then the President of the United States of America Thomas Wilson in his 14 points and adopted for the *ex-novo* creation of the new state formations on the ashes of the nineteenth century great empires, it revealed a failure. To some national ethnic-groups, such as Armenians or Kurds, was not guaranteed, *de facto*, an independent geographical arrangement, and they remain divided between the neighboring countries, with dramatic humanitarian consequences. It was at this particular historical juncture, characterized by the presence of millions of refugees and displaced persons due to the

¹ For further information of the origin and history of the concept of asylum see Hein,C., *Rifugiati. Vent'anni di storia del diritto d'asilo in Italia*, Donzelli Editore, Roma, 2010.

conflict and to its geopolitical repercussions, that get started the first phase of the international support for the refugees. In 1921 it was created the League of Nations, the *High Commissioner for Refugees*, led by the scientist, naturalist and Norwegian diplomatic Fridtjof Nansen (Nobel Peace Prize in 1922).

The activities of the Commissioner, between the two World Wars, were focused mainly on the promotion and the coordination of actions focused on the repatriation and the assistance of certain groups of people. The concept of refugee had not yet had a 'geographically and nationally large' size, since it was related to the definition of certain 'national groups'. Therefore, only individuals belonging to and linked to a given nationality could receive assistance and support.

In this period were established also other specific international bodies instruments for the refugee protection including the *Nansen International Office for Refugees*, created by the League of Nations of the High Commissioner in 1930, in order to provide a more stable platform for the coordination of the support activities for the refugees, the *Office of High Commissioner for Refugees from Germany*, established by the League of Nations in 1936 to provide the resettlement opportunities in Europe for the Jews coming from Nazi Germany. Finally the *Intergovernmental Panel on Refugees*, created at the initiative of U.S. President Franklin D. Roosevelt in 1938 to support those who want to escape from the territories occupied by Germany.

The functions and responsibilities of the *Nansen International Office the Refugees* and the *Office of High Commissioner for Refugees from Germany* on 1 January 1939 were merged in a single body. The *High Commissioner of the League of Nations* based in London, stopped working, together with the decline of the League of Nations on 31 December 1946.

The years of World War II and the following were characterized by a series of movements of people fleeing from their countries of origin: the number of THE refugees and displaced persons is estimated at about 20 million of individuals, accompanied by an equally high number of people who, following the changes caused by the war, were no longer able to live in their country of origin and decided to go and search for a new lease on life².

² Between 1944 and 1946, Europe was characterized by a series of cross-flow of populations escaped from Germany of the Third Reich and were gradually replaced by millions of people from Poland and Czechoslovakia. Cfr. G.Ferrari, *La Convenzione sullo Status dei rifugiati. Aspetti storici*, p.17.

The international community tried to face this dramatic situation with the establishment in 1943 of *UNRRA - United Nations Relief and Rehabilitation*, an international organization, guided by U.S. designed to address the first phase of the humanitarian emergency, which worked mainly in Europe from 1944 to the end of 1947. *UNRRA* was replaced in 1947 by *IRO - International Refugee Organization* who worked substantially with the repatriation of the displaced persons coming from the communist bloc countries and their resettlement in the new host countries. The *IRO*³ ceased its activities in 1951, due to financial and organizational issues.

Outside the genuinely European frame, two organizations worked in support of the refugees: *UNRWA - United Nations Relief and Work Agency for Palestine Refugee in the Near East*, established in 1949 to face the enormous number of Palestinian refugees that followed the creation of the State Israel, the *UNKRA - United Nations Reconstruction Agency*, active between 1950 and 1961⁴.

1.1.1 The history of refugee protection: second part

It was in the general context of the war, characterized by a succession of international organizations with limited and not exhaustive terms that began to take shape with increasing urgency the need to create an international legal instrument to govern the matter.

A few years after the signing of the Charter of San Francisco, in 1945, by which was enshrined the birth of the United Nations (UN), the General Assembly gave a mandate to the Economic and Social Council (ECOSOC), to consider, on the one hand, to create a new refugee organization that would concentrate all its functions that before distributed among various agencies and, on the other hand, to create a specific legal

³ The IRO, in the years of its activity, ran activities for the resettlement of more than a million refugees in third countries and coordinated the repatriation of more than 73,000 people. But when, in 1951, the organization ceased its activity, the refugees awaiting resettlement was entrusted to the Intergovernmental Committee for European Migration (ICEM), established in Brussels in the same years and in 1989 became the current International Organization for Migration (IOM).

⁴ United Nations Korean Reconstruction Agency (UNKRA), economic-rehabilitation program (1950–58) established to aid South Korea in recovering from the disruption caused by the 1945 partition creating the two Korean republics. In addition to problems of economic reconstruction, much attention was concentrated on the problem of refugees who were displaced by World War II and those who were made homeless by the ensuing Korean War. Thirty-four UN member states and five nonmember states contributed \$148,500,000 to the UNKRA program, which was terminated on July 1, 195

instrument about this. The second phase of the international action in favor of the refugees was beginning.

At the end of the first mandate of the *IRO*, on 14 December 1950 the General Assembly of the United Nations established the United Nations High Commissioner for Refugees - UNHCR, which began to operate on 1 January 1951, in conjunction with the adoption of the Geneva Convention, which will be discussed forward⁵. The mandate of the High Commissioner for Refugees, originally limited to a three-year program was subsequently renewed periodically, up to become permanent from 2003.

One of the main innovative features of the new institution was the definition of the UNHCR competence in universal terms. If the previous organizations, with partial exception of the *IRO*, had defined refugees in terms of well-defined national groups, the statute of the High Commissioner, in art. 6 (B)⁶ untied the possibility to receive support from nationality affiliation of the asylum seeker. UNHCR's mandate was also conceived from the beginning as apolitical and humanitarian, to prevent disputes between States could have an impact on the protection of refugees.

A few months later, on 28 July 1951 the United Nations Conference of Plenipotentiaries on the Refugees Status and Stateless Persons adopted in Geneva what would have been considered, and is still defined as the *Magna Charta* of the refugees: the Geneva Convention on the Status of Refugees. The adoption of the Convention, after the right of asylum was inserted between the fundamental rights contained in the Universal Declaration of Human Rights⁷ of 1948, 'was an attempt - unique in the history of the international legislation aid for refugees - to establish a refugee rights code which covers all the basic aspects of life and guaranteed to refugees – as minimum - a treatment similar to that of the foreigners who did not enjoy particular privilege'⁸.

⁵ The art .35 of the Geneva Convention makes explicit the relationship between the UNHCR and the Convention itself, requiring to the states to cooperate with the UN High Commissioner for Refugees in the exercise of its functions and to facilitate its duty of supervising on the application for the provisions of the Convention, and it also provides information about the status of refugees, the internal rules of application of the Convention and any applicable law, order or other decision on the matter.

⁶The Art. 6 (B) of the Statute of the High Commissioner for Refugees says: *Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.*

⁷ Article 14 of the Universal Declaration of Human Rights states: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'.

⁸ Ferrari, G., *La Convenzione sullo Status dei rifugiati*. Aspetti storici, p.3, in

It should not be forgotten that in the following years were adopted two additional instruments for the refugee protection: in 1969 the African Unity Organization - OAU, adopted the Convention that regulates certain aspects of the problem of refugees in Africa, and in 1984, following the deep crisis in Central America, was drafted the Cartagena Declaration. Both these international instruments, which only the first is mandatory, extend the definition of the refugee contained in the Geneva Convention, by including also, respectively, *'those who, because of external aggression, occupation, foreign domination or events seriously disturbing public order in whole or in part of the country of origin or nationality, is compelled to abandon their habitual residence to seek refuge in another place outside the country of origin or citizenship'*, and *'persons who have fled their country because their lives, their safety and their freedom were threatened by a generalized violence, foreign aggression, internal conflicts, a massive violation of human rights or other circumstances which have seriously disturbed the public order'*.

Here, however, this thesis will not focus on a more detailed analysis of these international instruments, being today the Geneva Convention an international landmark of legal excellence.

1.1.2 *The Geneva Convention*

The Geneva Convention is the international legal instrument of reference for the refugee's protection, containing a general definition of the term *'refugee'*, which provides a universal range. This definition contained in article 1 of the Convention, is applied to *'any member founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'*.

A key in this definition is the concept of "well-founded fear of being persecuted, which replaces the method of "categories" for the definition of the refugees, experienced

during the years between the two World Wars. This concept contains two elements: a *subjective one*, linked to the individual and to the specific situation of the individual who asks to be recognized as a refugee on the basis of the fear of being persecuted, or a fear that must, however, be unavoidably supported by the presence of the *objective* element referring to a factual situation objectively identifiable⁹. It is a personal protection, on the basis of a directly and specifically persecution for the individual. It's interesting to note that regarding to the determination of the refugee status, there is no a universal definition of '*persecution*' in the international law. Rightly or wrongly, the absence of an accurate term definition in the Geneva Convention would indicate the willingness to make the concept 'undefined' in view of possible future developments.

Regarding the reasons of persecution (race, religion, nationality, membership of a particular social group or political opinion), contained in the art. 1, with the evolution of the international law of human rights in the following years and the adoption of the Convention, they have been interpreted in a progressively more elastic way, with the extension of the persecution definition also in some serious and repeated violations of human rights. In fact, the evaluation of the subjective element previously described can lead to a persecutory also activities which in itself would not be deemed such according to a strict interpretation of the Convention¹⁰, but that are in the examination of the individual case.

It should not be forgotten that always the art. 1 establishes as a *conditio sine qua non* to apply for the refugee status, the person must be materially outside the borders of the country¹¹ of origin. Are therefore excluded the internally displaced persons (IDPs), civilians forced to flee from war or persecution, but who have not crossed an international border.

The Convention does not mention the specific issue of granting the asylum, not making it mandatory for the states to admit into their territory asylum seekers and refugees and not dealing with the determination of the specific issue of the refugee status. Such

⁹ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, p.8.

¹⁰ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, p.10.

¹¹ In case it is not possible in any way determine the nationality, the applicant is considered to be stateless. At this point you will make more reference to the country of nationality, but to the country of habitual residence. The stateless asylum seeker, in order to be recognized as a refugee, must be outside the borders of that country.

procedures, in fact, are remittances for the individual Contracting States, a circumstance that has led to the presence of a considerable heterogeneity in the practices of the States. Art.31 and 32 of the Convention establish the obligation of States to comply the prohibition on punishing of the entry or the illegal residence of the refugees, limiting the movement only to the extent necessary, and providing for their expulsion only for national reasons or for the security or public order.

1.1.3 *The principle of non refoulement*

The states must also comply with one of the fundamental principles of international rules on refugees: the principle of *non-refoulement*, and the states cannot make reserve. The *non refoulement* principle forms the fundamental protection safeguard in the international refugee law. EU Member States are bound to respect the principle of *non refoulement*, which encompasses *non refoulement* to persecution, based on article 33¹² of the 1951 Convention, and also *non refoulement* to torture or cruel, inhuman or degrading treatment or punishment. Crucially, the provisions surrounding *non refoulement* do not amount to a legal right to admission. However, as ¹³Goodwin-Gill argues, ‘it would scarcely be consonant with considerations of good faith for a State to seek to avoid the principle of *non refoulement* by declining to make a determination of status’. This view has also been articulated by the UNHCR Executive Committee, which describes *non refoulement* to entail ‘access to fair and efficient procedures for determining status and protection needs’. This has profound implications for the EU’s use of non-arrival policies, such as visa requirements and carrier sanctions, as well as for its practice of interdiction

As *non refoulement* extends to the territory over which the state has jurisdiction, the obligation inevitably extends to all the entry points, such as border posts and transit zones. Article 33 of the Refugee Convention dictates that once refugees have entered a State’s territory, they must not be returned to persecution. The legal basis for the *non refoulement* principle extends beyond the Refugee Convention to international human

¹² ‘No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’.

¹³ Goodwin-Gill and McAdam, *The Refugee in International Law*, Oxford, 2007.

rights and humanitarian law. It is supported by international obligations contained in the body of international humanitarian and human rights law, which provides significant safeguards against expulsion or extradition.

Article 3 of the UN's Convention against Torture (CAT) precludes the return of a person to a country where there are substantial grounds for believing that he would be subject to torture or cruel, inhuman or degrading treatment or punishment. In contrast to the Refugee Convention, which allows for certain exceptions, relating to 'national security' and 'public order,' Article 3 of the CAT provides absolute protection from *refoulement*. In support of this, Articles 7 and 2 of the International Covenant on Civil and Political Rights demand that States uphold the rights contained in this Covenant to anyone in their jurisdiction and territory, which includes refugees.

The European Convention on Human Rights and Fundamental Freedoms ECHR is also a significant source of safeguards against *refoulement*. Article 3 of the ECHR provides that 'No one shall be subjected to torture or inhuman or degrading treatment or punishment'. This means that any return of an individual from within Europe to a country where he would face a substantial risk of suffering torture, inhuman or degrading treatment or punishment would breach the State's international human rights law obligations. The European Court of Human Rights is entitled to interpret the protection obligations of Council of Europe Member States under the European Convention on Human Rights. The Court has repeatedly reaffirmed the absolute nature of Article 3, even in light of recent terrorist threats. The ECHR has thus been a very effective instrument for protecting refugees from *refoulement*.

The *refoulement* jurisprudence, of the European Court of Human Rights has strong implications for the policies of the CEAS, and on several occasions has ruled against EU practice. For example, in *Soering*¹⁴ the ECHR held that extradition was prohibited, where an individual faced a real risk of being subject to torture or inhuman and degrading treatment or punishment in the receiving state, as the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards *practical* and *effective*.

More recently, the European Court of Human Rights has again stressed the unconditional nature of *non refoulement*, and has established the principle that a State

¹⁴ *Soering v United Kingdom*, (Application No 14038/88). European Court of Human Rights. (1989). <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b6fec>

wishing to deport an individual on the grounds of having committed a serious criminal offence or constituting a threat to national security must first make an independent evaluation of the circumstances that the individual would face in the country of return. The inadmissibility decision demonstrates that removing an individual to an intermediary country, which is also a Contracting State, does not alter the state's obligation to ensure that an applicant is not expelled and then exposed to a treatment contrary to Art 3 ECHR. Instead, the removing State incurs a further duty to ensure that the receiving State does not compromise the right of protection. Thus, the protection of the individual is reinforced. The EU's use of safe third country mechanisms is not consistent with this obligation to ensure that its actions do not expose an individual to *refoulement*.

1.2 Asylum in the European Union law

All EU Member States have ratified the Geneva Convention related to the Refugees status and its additional Protocol of 1967. But, as previously mentioned, these tools do not provide clear and precise indications regarding the procedures to be followed for the determination of the refugee status. Each state, therefore, has a national law, developing its own practices and customs, and this has led in Europe to the profoundly heterogeneous asylum procedure.

Since the nineties, with the exponential increase of people flow in search of International Protection, it began to manifest with increasingly urgent a need for European countries to launch a progressive harmonization process for the legislation on asylum, with a view to create a common regulatory system based on a set of shared principles.

So, in 1999, the heads of the State and the European Countries Government, announced the establishment of the Common European Asylum System (CEAS), divided into two phases. The first, from 1999 to 2005, had the aim to harmonize Member States' legal frameworks on the basis of the common minimum standards. It saw the adoption of several legislative instruments for the harmonization of common standards on asylum, including the Directive on reception conditions for asylum seekers in 2003, the Directive on the procedures for granting the refugee status or subsidiary protection in

2004, the Directive on procedures granting and withdrawing refugee status in 2005, and finally the so-called '*Dublin Regulation*', which fixes the rules for determining which member State is responsible for an asylum application examination. In 2003 it was also established the European Fund for Refugees, for the definition of common management systems, control and financial evaluation of the asylum issues in Europe.

The second phase began from 2007, the year of the elaboration of the so-called '*Green Book*' on the future common European Asylum System, result of the consultation process between the relevant stakeholders interested in the structure development of the Common European Asylum System, including government and non-governmental organizations. The aim was to evaluate the existing tools and to propose possible options to launch successfully in this second phase.

In 2008 the European Commission adopted the Strategic Plan on Asylum, to ensure the accessibility of the asylum instrument to anyone who needs, and to establish a common procedure for the asylum application and a uniform status, which was followed by the Stockholm Programme that established the EU objectives for the years 2010-2014.

Before analyzing in more detail the stages and the results obtained during these two phases, however, appears necessary to contextualize the important developments (legislative, organizational and political) that occurred since the eighties in Europe. Until 1997, the competence between the Member States in asylum issues was characterized by intergovernmental cooperation. The entry into force of the Amsterdam Treaty on 1 May 1999 marked a new stage in asylum and immigration matters. It provides for the establishment of an 'area of freedom, security and justice' and gives the EU institutions new powers to develop legislation on immigration and asylum matters. For the first time it has become possible to talk meaningfully of a European asylum policy and a European migration policy.

It was only with the Treaty of Amsterdam that asylum became an EU competence.

Do not dwell on this process would affect the understanding of the real dimensions and profound implications of the long journey that the establishment of the Common European Asylum System has brought.

1.2.1 The creation of the Schengen area

The first step towards the creation of a closer cooperation in asylum issues in Europe was the establishment of the Schengen¹⁵ area, through the Schengen Agreement in 1985 and the subsequent Convention, signed on 19 June 1990 and entry into force five years later. The main innovations introduced by the Convention were the abolition of the internal borders between the signatory States and the creation of a single external border, with the harmonization of the entry conditions and the concessions for short stay visas. To ensure the security within the Schengen area, the Convention provided the strengthening of the cooperation between the police headquarters and the judicial authorities of the various countries and the creation of a Schengen information system (SIS) to make effective and efficacious the controls (the so-called ‘*compensatory measures*’).

Although the Convention did not provided the establishment of a common politics in asylum issues, although but it provided to define the standards for the identification of the *only State responsible* for the examination for the asylum applications, as contained in the articles 28 to 38. The *Only* to prevent the submission by the applicant for ‘multiple’ asylum applications in search of the national legislation more favorable; *responsible* to identify the State that must take the responsibility for the examination of the application as the one with the greatest responsibility for the entry of the asylum seeker in the Schengen space.

The main objective was to deal with the very common situation to the time of its writing, whereby a large number of asylum seekers were reaching Europe, submitting applications for asylum in various countries in order to increase the chances of acceptance of the application (a phenomenon known with the term ‘*asylum shopping*’). At the same time, sought to combat a spread of ‘*cases in orbit*’, rejected asylum seekers from one airport to the other, finding no country willing to examine the application.

¹⁵ The States signatory to the 1985 Agreement and the 1990 Convention were originally Belgium, France, Luxembourg, Germany and the Netherlands, to which were added then most of the European countries. The Schengen Area currently consists of 26 states, including 4 which are not members of the European Union (EU). Two of the non-EU members, Iceland and Norway, are part of the Nordic Passport Union and are officially classified as states associated with the Schengen activities of the EU. Switzerland was subsequently allowed to participate in the same manner in 2008. Liechtenstein joined the Schengen Area on 19 December 2011. De facto, the Schengen Area also includes three European micro-states, Monaco, San Marino and the Vatican City, that maintain open or semi-open borders with other Schengen member countries. Two EU members – Ireland and the United Kingdom – have negotiated opt-outs from Schengen and continue to operate the Common Travel Area systematic border controls with other EU member states.

According to the Convention the responsible for the examination of the asylum application is detectable in the State through which the asylum seeker introduced him in the EU territory or in that State that issued to the applicant a visa or a permit of stay. The State is also obliged to reaccept the asylum seeker, in case in the meantime he had moved to another country.

1.2.2 *The Dublin Convention*

Chapter VII of the Schengen Convention, despite constituted the first step towards the definition of common criteria for the assumption of the asylum applications however, it was not a sufficient tool to address the question. For this reason, on 15 July 1990 the Convention determining the State responsible for the examination of an asylum application presented in one of the Member States, which came into force on 1 October 1997, was signed in Dublin hereinafter called the '*Dublin Convention*'.

The Dublin Convention has a very similar content to that of the Schengen Convention but it defines more clearly the criteria attributed to a State the oblige to examine the asylum application, introducing a 'better defined, more binding for States and more guarantee for the asylum seekers'¹⁶. These include the family ties, so for this reason it is competent to examine the application the State in which he has been recognized as a refugee, and resides there regularly a member of the asylum seeker family. Other criteria is the possession of a valid permit of stay, (art. 5, Co. 1) or possession of a valid visa (Article 5, Co. 2), for which is responsible the State that issued these documents, the irregular entrance, that identify the State in which the applicant entered illegally as the State responsible for the acceptance of the application (Article 6), the entrance without a visa, so in most States in respect of which the applicant is exempted from the visa requirement, is competent the last one in which it was presented the application (Article 7), and finally, if it is not possible to designate the competent State based on the above criteria, the examination of the application is the responsibility of the first country of the Member States in which it was presented the application (art.8).

¹⁶ Benedetti, Ezio, *Il Diritto di asilo e la protezione dei rifugiati nell'ordinamento comunitario dopo l'entrata in vigore del Trattato di Lisbona*, Cedam, 2010, p.138.

Each State has also the power, in a general way, to examine an asylum application, even if it is not its responsibility under the Convention (art. 3, Co. 4), driven in particular by humanitarian reasons, family or cultural, prior consent of the asylum seeker (Article 9). The Dublin Convention provides also the establishment in each country of an administrative authority responsible for matters relating the implementation of the Convention.

1.2.3 From the Treaty of Maastricht to the Treaty of Amsterdam

It was only with the entry into force of the Treaty on the European Union that asylum issues, non-existent in the CEE Treaty in force since 1958, was incorporated within the overall complex EU context. The Treaty of Maastricht signed in 7 February 1992 gives to the Member States the competence in the asylum issues by the Title VI (artt.K1 - K. 9 TEU), bringing it within the so-called 'third pillar' on the 'Cooperation in the fields of Justice and Internal Affairs'. An important but at the same time disappointing step was for those who wished them to be attributed to the Community expertise in this matter, thereby leading to the intergovernmental approach, which instead provides for unanimity in the decision-making process, thus removing the European Parliament and the Commission any power of initiative.

Asylum policy, a subject of intergovernmental cooperation between the Member States, is defined as a '*matter of common interests*' about which the Council may adopt joint positions and joint actions and promote each cooperation contributing for the European Union objectives achievement. The Treaty of Maastricht, therefore, while maintaining the Intergovernmental cooperation size between the Member States on asylum issues, places it at the same time in new institutional dimension, in the view of the gradual overcoming as the characters more strongly internationalist possessed.

Only with the Treaty of Amsterdam, signed on 2 October 1997 and entered into force on 1 May, 1999 that the asylum issues will take a EU size, moving gradually from the '*third pilaster*' to the '*first pilaster*' together with the civil and judicial cooperation. It was a first step towards the creation of a supranational policy on immigration and asylum. A step which proved however to be partial since in continuity with the Schengen Convention came into force in 1995, Denmark, Ireland and the United

Kingdom maintained the right not to take the measures contained in Title IV dedicated to immigration and asylum.

The transition from the third to the first pilaster was to establish an asylum procedure harmonized between the EU countries, stating the obligation to prepare within five years of a common European policy for the *'creation of a new area without internal frontiers'* with the objective *'to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons in conjunction with appropriate measures with regard to external border controls, asylum, immigration and the prevention of crime and the fight against it'* (art. Modified B).

The subject of asylum issues is regulated by the article 63 of Title IV – 'Visas, Immigration and other policies related to the free movement of people of the Treaty, and it refers not only to the matter of refugees under of the 1951 Geneva Convention, but also to the displaced under the 'temporary protection', with characteristics that do not fit into the rigid requirements of the Geneva Convention. The article 63 also introduces the criterion of *burden-sharing* or the burden sharing between the Member States in managing the asylum seekers reception. The measures provided by the art. 63 concern in four fields: the criteria and the mechanisms to establish the State responsible to examine the applications for asylum, the minimum standards for asylum seekers reception, the minimum standards for the granting the refugee status and the minimum standards on the procedures for granting or withdrawing the refugee status.

The Treaty of Amsterdam is also accompanied by a Protocol on the Schengen Acquis integration in EU legislation and a Protocol on asylum providing that European Union Member States, considered safe countries, consider asylum applications presented by European Union citizens mostly inadmissible. This document was adopted following the submission of an application by some members of a Basque separatist organization (Euskadi Ta Askatasuna - ETA) that were trying to escape to Spanish justice on terrorism charges. It seems important to note that, if the Protocol on the refugees status of 1967 abolished time and place reserves, the Protocol on asylum for citizens of the European Union Member States reintroduces, in fact, a geographical limit to the right on asylum application, raising questions about the compatibility with the Geneva Convention.

Despite the innovation elements introduced by the Treaty of Amsterdam, the Intergovernmental system legacies remained. In particular the Council continued to hold

the control over the decisions on immigration and asylum issues, and continued to persist the method for unanimity decision-making process in this matter for the five years of ‘transition’ before the establishment of the common policy on asylum.

1.3 Towards a Single Asylum Space?

The negotiations for the creation of The Common European Asylum System (CEAS) started under the initiative of the Tampere¹⁷ Programme 1999 - 2004. The first phase of the CEAS was completed in 2006 under the Hague Programme (2004-2009). The system includes three directives and one regulation. These instruments are currently under review and the European Commission has proposed improvements and modifications in four ‘recast proposals’ agreed in 2012. The treatment of asylum seekers and the final outcome of asylum applications vary dramatically throughout the EU¹⁸. The lack of cohesion within the EU’s asylum space has led the ECRE to describe it as an ‘asylum lottery’¹⁹. This is irreconcilable with the ‘one chance only principle’, on which the allocation of asylum seekers in the EU’s asylum system is premised. The distribution of asylum seekers amongst the Member States is also highly unequal and certain Member States incur disproportionately high asylum costs²⁰. The excessive asylum burden incurred by some Member States significantly impairs their capacity to provide effective protection. This wholly undermines the notion of a ‘single asylum space’. Ultimately, the viability of the EU’s common asylum system hinges on the development of a comprehensive intra-EU burden sharing system, which takes into account the varying reception capacities of individual Member States and ensures that humanitarian obligations are equally distributed throughout the Union.

¹⁷ In October 1999 the Tampere Programme was the first programme adopted by the European Council striving for an area of freedom, security and justice. It laid the groundwork for common immigration and asylum policies and established some common rules, for example for family migrants and access to long-term residence. It also established the first phase of the Common European Asylum System (CEAS), which is composed of four main legal instruments that cover reception conditions, asylum procedures, qualifications on status and which Member State is responsible for examining an asylum application (the Dublin Regulation) .

¹⁸ UNHCR, “Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Key Findings and Recommendations,” March 2010.

¹⁹ ECRE, “Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered,” 31 March 2008. www.ecre.org/.../Sharing%20Responsibility_Dublin%20ReconsideredEXSUM.pdf.

²⁰ Thielemann, Williams and Boswell, “What System of burden-sharing between Member States for the reception of asylum seekers, European Parliament, Brussels, Belgium, 2010.

1.3.1 *The Hague Programme*

During the European Council on 4 and 5 November 2005, was adopted the Hague Programme²¹, which aims to define the objectives of the European Union in the next five years (2005-2010), given the imminent start of the second phase of the process of creating a Common European Asylum System. The European Council invited the Commission to present an action plan²² that would gather the specific measures to be taken and the timetable for their implementation.

Among the priorities set out in this document include the strengthening of the fundamental rights and citizenship, the fight against terrorism, the definition of a balanced policy on the management of the migration through the cooperation with third countries, the management of the external borders of the Union, the creation of a common asylum procedure, the enhancement of the integration policies for the immigrants community and the creation of a genuine justice European area . It was also reaffirmed the principle of *burden-sharing*, the sharing responsibilities between the Member States - especially financial ones - in immigration and asylum policies.

1.3.2 *The legislation in the first stage of the Common European Asylum System*

With the development of the Hague Programme ended the first phase of the process for the establishment of the Common European²³ Asylum System (Common European Asylum System-CEAS). During this first phase, in addition to the important developments described so far in 2000 and the establishment of the European Fund for Refugees, were approved some specific legal instruments to harmonize Member States legislation on the matter, which are characterized as the first four elements of the Common European Asylum System:

²¹ Communication from the Commission to the Council and the European Parliament of 10 May 2005 - The Hague Programme: Ten priorities for the next five years. Partnership for European renewal in the field of freedom, security and justice .

²² Action Plan of the Council and the Commission on the Hague Programme on strengthening freedom, security and justice in the European Union.

²³ Decision 2000/596/EC. The European Union established the European Refugee Fund to group in a single instrument the measures concerning integration and those concerning reception and voluntary repatriation in the event of a massive influx of refugees and displaced persons. The Fund, which was set up for a period of five years (2000-04), has been extended for the period 2005-2010.

Directive 2001/55/CE, on the minimum standards for the temporary protection. The Directive²⁴ aims to establish an exceptional and temporary protection, applicable in cases of mass influx of displaced persons of the duration of one year with a possible extension of six months to six months, for a maximum period of one year, if persists the conditions that led to the granting of the temporary protection. The benefit granted such protection does not affect the recognition of the refugee status and it guarantees the right to work and to education (art. 12), housing (art. 13) and extends the right for family reunification, as well as to their spouses and children, including those with any other family members (Article 15).

It should be noted, however, that the granting of the temporary protection is subject to the adoption of a decision by the Council on a proposal from the Commission about the existence of a mass influx of displaced persons (Article 5), in response to the Member States requests regarding this.

Regulation (EC) 343/2003, called Dublin II Regulation²⁵, which replaces and supplements the provisions of the Dublin Convention. The Regulation, applied in all European Union countries, including Norway and Iceland, is with the EURODAC Regulation the so-called '*Dublin System*'.

The Dublin II Regulation main objective is to identify as quickly as possible and on the objective and hierarchical criteria bases - that reflect those contained in the Dublin Convention - the State responsible for an asylum application examination, as well as fixing reasonable time for the completion of this procedure.

Directive 2003/9/CE49, (Directive reception) on minimum standards for the asylum seekers reception in Member States, aims to ensure a decent living standard for the asylum seekers, and to limit the secondary movements within the Union offering equal treatment conditions in different Member States. The scope of the Directive is limited to third-country citizens and stateless persons who apply for asylum at the border or in the territory of a Member State (Article 3.1), excluding all those that requires a different

²⁴ EC Directive 2001/55 of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, in OJEC n ° L 212/12 of 7.8.2001.

²⁵ Regulation (EC) n.343/2003 of the Council of 18.02.2003 laying down the criteria and mechanisms for determining the Member State responsible examining an asylum application lodged in one of the Member States.

protection from asylum (Article 3.2 and 3.3) 50. This obliges the Member States to provide asylum seekers about the benefits and obligations they must comply relating to reception conditions (Article 5) within 15 days. Asylum seekers are given the right of free movement in the territory of the hosting Member State or in the area assigned by the State, but also provides the possibility of confinement in certain place for legal reasons or of public order (art. 7). The EU Directive specifically rules about the material reception conditions, including housing and health care, ensuring that the asylum seekers not to be in poverty state, this because of the difficulties for the asylum seekers to support themselves because they are not allowed to work for the first 12 months.

Directive 2005/85/CE54 (Procedures Directive) on minimum standards for the procedures in the Member States for granting and withdrawing the refugee status, aims to ensure that all asylum applications can be processed on a consistent basis in all EU countries. The Directive stipulates that there is no time limits for the submission of the application and recognizes the right of an applicant to remain in the territory of the Member State during the examination of the application. A recent research of the UNHCR has shown that the application of the Directive in the Member States is often quite heterogeneous with unequal treatment and that, in some cases, protection needs are not identified adequately exposing the International Protection applicants into risks and injustices.

1.3.3 The Green book and the Strategic Plan on Asylum

With the adoption of the four directives described in the first stage of long way towards the creation of the Common European Asylum System could be considered closed. The second phase began in 6 June 2007 when the Commission presented the Green Book on the common future of the asylum issues. The Green Book was characterized as an instrument to launch a broad consultation among all the stakeholders to outline what the future regime would have to assume.

If the goal of the first stage was the harmonization of the Member States legislations on the basis of common standards, in the second phase the aim is to reach a higher level and a greater equality treatment in EU countries, with a greater cooperation and sharing

efforts between the Member States. Not only legislations harmonization, but also the procedures to overcome the problems that arose in previous years specifically in relation to this issue.

Based on what emerges from the consultation in June 2008, the Commission developed a Strategic Plan on asylum that had to define the actions to be taken to complete the creation of the Common European Asylum System, considering the adoption of the Treaty of Lisbon, signed on 13 December 2007 and entered into force on 1 December 2009. The Strategic Plan, noting first, the areas identified so far in the Common European Asylum System, in which stood out the divergent results between the different European countries in more and more tools of, subsidiary or temporary protection, to the detriment of that guaranteed by the Geneva Convention, fixing new and more ambitious targets for the following years. Targets related in particular to the improvement of the instruments adopted so far (the four directives previously analyzed), to be pursued according to the coherence criteria with other policies affecting International Protection and with attention to gender issues and vulnerable groups needs. Only a few months later, under the French Presidency of the EU, the Commission approved the European Pact on Immigration and on asylum, a crucial document for the EU entry into a new phase. As pointed out by Benedetti, in fact, ‘for the first time an official document of the EU says clearly that the objective of zero immigration in Europe is not only unrealistic but also dangerous’. The agreement established new goals in five crucial areas: the organization of legal migration in accordance with the actual reception capacity of individual Member States, the fight against illegal immigration with the repatriation of irregular immigrants, strengthening border controls, construction of Europe’s asylum and the strengthening of partnerships with countries of origin.

1.3.4 The Treaty of Lisbon

The potential for the asylum *acquis* to be reconciled with the protection norms of the Refugee Convention has been significantly enhanced by the recent ratification of the

Treaty of Lisbon²⁶, which has elevated the Charter of Fundamental Rights of the European Union²⁷ to EU primary law. The Charter of Fundamental Rights voices a clear commitment to fundamental principles essential to the fair treatment of refugees and asylum seekers²⁸. Under the Charter, asylum is an autonomous concept, which means it must be interpreted in accordance with the fundamental rights protected by the Union. Article 18 therefore ‘applies in all areas of activity of the EU and its Member States that fall under the Union’s law’²⁹. This means that compliance with the Charter is now a requirement for the validity and legality of the Union’s secondary legislation³⁰. Article 18 of the Charter provides:

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees in accordance with the Treaty establishing the European Community.

However, Goodwin-Gill contends that this ‘right to asylum’ does not add anything in terms of Member States’ duties, as it merely consolidates asylum rights already in existence, and thus remains limited a procedural right to apply for asylum, rather than constituting a substantive right to obtain it³¹. Nonetheless, the fact that Article 18 of the Charter of Fundamental Rights can now be invoked directly has significantly strengthened the legal guarantees for asylum seekers in the EU. This has vast potential to open up legal arguments in EU asylum policy, particularly in relation to refugees’ access to asylum procedures and protection in the EU.

The Treaty of Lisbon also provides for significant improvements to the legislative content of the *acquis*; the ‘minimum standards,’ which underpin the legislative content

²⁶ The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, entered into force 1 December 2009, OJ 2007/C 306/01.

²⁷ European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01), accessed 20 July 2010, <http://www.unhcr.org/refworld/docid/3ae6b3b70.html>.

²⁸ Nicholson, “Challenges to Forging a Common European Asylum System in Line With International Obligations, Netherlands, 2006.

²⁹ Marià-Teresa Gill-Baso, “The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union’s Law,” *Refugee Survey Quarterly* 72(3)(2008), 52.

³⁰ Gill-Baso, “The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union’s Law, 2008.

³¹ Goodwin-Gill and McAdam, *The Refugee in International Law*, Oxford, 2007.

of the *acquis* are to be replaced by an advanced level of harmonisation encompassing ‘common procedures for the granting or withdrawing of uniform status’. The accompanying changes to the legislative process may also enhance protection standards as the European Court of Justice (ECJ) will now play a role in developing EU asylum law and can now rule directly on its legality. The prospective impact of the ECJ’s role is, as yet, unclear; the ECJ cites the Refugee Convention as the cornerstone of the international legal regime for the protection of refugees, but has also expressed support for some of the elements of the Qualification Directive, which are not based in the Refugee Convention.

CHAPTER 2

ASYLUM LEGISLATION IN ITALY

For years, Italy was not an asylum country. In the following years of the World War Second, Italy took on the role as a transit country. It is estimated that between the end of World War II and the fall of the Berlin Wall the number of the refugees resettled from Italy into other countries hovers around 220,000. Only after the war, between 1945 and 1952, in Italy arrived about 120,000 refugees, most of which subsequently were transferred into other countries, including the United States, Canada, Australia and New Zealand, which supposed that Italy had not the means to deal with such a large a number of refugees. In fact, this *resettlement* process was functional to the political objectives of the Cold War: anti-communist countries had an interest in reserving a good reception to refugees, which in most cases were fleeing from Eastern Europe regimes and were therefore considered to be opponents of communism.

Beyond being a transit country since 19th century Italy was characterized as an emigration country. Until the late 80s of last the century, million Italian citizens left the country in search of fate.

Initially overseas countries, especially Argentina and the United States for high number of presence, were the favorite destination for Italian immigrants. Only since the '50s emigration routes underwent a change, and a growing number of Italians opted for closer destinations, including Switzerland and Germany, where there were higher wages and better work conditions.

Starting from the 60s the Italian migration underwent an initial decline, coinciding with the economic boom of the country and the slowing demographic growth, until to be finally exhausted at end of the 80s, this was the direction inversion that led Italy to become a country of immigration.

This is the reason why migration flows in entrance, which took start since the '60s, were not perceived neither by the population nor the political class. Circumstance certainly facilitated by the scarcity of statistical data about those years.

It was only from the historical world events that occurred during the 1989 and 1990 that it began to become aware of the changing process which had transformed Italy from the historic country of emigration to an immigration country.

One of the events that led to this change and to the public opinion attentions was the assassination of the South African refugee Jerry Masslo in Caserta in July 1989. The murder, to which was given an ample space in the newspapers of the time, had a great impact on the population feelings, and it constituted a kind of watershed in the perception of racism and the presence of Extra European Union immigrants in Italy. The civil society was mobilized and it began the rise of the first anti-racist associations for the immigrants' rights. In October 1989 it was organized a big demonstration for the granting of a permit of stay for immigrants and refugees.

These events served as a driving force for the launch of a new season including the legislative one: a few months after the murder, in fact, the then Deputy Prime Minister Claudio Martelli decided that it was finally time to regulate this matter. On 28 February, 1990 was approved the so-called *Martelli law* laying down rules '*Urgent norms political asylum issues, entry and residence of nationals and stateless persons already present in the territory of the state*'³².

Before to analyze the evolution of the Italian legislation on asylum issues, it should be noted that the basis of the right of asylum, as provided in a wide³³ form, is already present in the Italian Constitution, art. 10, between the 12 fundamental principles of the Republic. Article 10, paragraph 3 states that: '*A foreigner who, in his own country, is forbidden the effective exercise of democratic freedoms guaranteed by Italian Constitution, has the right of asylum in the territory of Italian Republic according to conditions stated by the law*', but putting to the legislator discretion the discipline of the foreign legal status condition.

The Constitution, therefore, as evidenced by Cassese³⁴, provided a subsequent intervention of the legislator to regulate the matter. The intervention proved to be

³² Law of 28 February 1990 n. 39 which converts the Decree Law of 30 December 1989, 416 of laying 'Rules urgent political asylum, entry and stay of third country nationals and regularization of third country nationals and stateless persons in the territory of the State'.

³³ The reasons for the wide scope of the right of asylum contained in Article 10 is to be found in time history when the Italian Constitution was drawn up. The intention of the constituents who had personally experienced political and racial persecution, was to give a broad recognition of the right of asylum in every respect. It should be emphasized, in the final analysis that the right of asylum under Article 10 of the Constitution and the legislation on refugees refer to different content. The category of refugees under the Geneva Convention is in fact smaller than that of those entitled to asylum, because it provides for its recognition objective and subjective conditions specific, not provided for the right of asylum in general. Refugees are therefore a "subset of categories that are part of all the foreigners who should have the right to asylum in Italian territory according to Article 10 paragraph 3 of the Constitution "[Nascimbene, Bruno (ed.), *Law of foreign Cedam*, Padua 2004, p.1158].

³⁴ Cassese, Antonio, *Commento all'art.10 della Costituzione*, in Branca (a cura di), *Commentario della Costituzione. Principi fondamentali*, art.1-12, Bologna-Roma, 1975.

limited and incomplete, if we think that Italy, still nowadays, is the only EU country without an organic discipline on asylum issues.

2.1 The evolution of Italian legislation

2.1.1 From Martelli law to Bossi – Fini law

It was thanks to the *Martelli* law that the presence of a number of foreign workers was finally recognized at the political level such as it was necessary the regulation of the matter. The law introduced the concept of the annual immigration programming, based on the principle of the so-called *regulated flow* - to define a maximum number of entrance based on the actual possibility of absorption - a principle that was repeatedly used in the later years.

Until the issuing of the *Martelli* law in February 1990, Italy had maintained the land reserve on purpose at the time of the 1951 Geneva Convention ratification, so in Italy can take the refugee status only the individuals coming from European countries. This limitation gave rise to two categories of refugees: *de jure* refugees - or under the Convention - and those *de facto* under UNHCR mandate. *De facto* refugees were in fact treated differently than *de jure* refugees, having the right to a temporary stay without the possibility of work and social assistance, with a view to their subsequent resettlement in other countries.

To cope with this situation, the Italian Government had repeatedly provided exceptions to the geographical limitation rule granting asylum between 1973 and 1988 to groups of refugees coming from Chile, Afghanistan and Kurd. The *Martelli* law dedicated to the asylum issues only the art. 1, in which were set the procedures for the refugee *status* recognition. During this process the article 1 provided the releasing of a permit of stay pending the request definition, regardless the regular or irregular position of the migrant. Referring exclusively to the category of refugees under the Geneva Convention. Were still excluded then all foreigners who could not be considered refugees because they were not victims of individual persecution, but that could not return to their countries of origin. This gap becomes evident when new migration flows began to knock insistently at the Italy's gate. Since the 1990, in fact, different waves of refugees arrived in the country. This was the case of the Somali refugees, that reached

Italy after the dictator Siad Barre deposition in 1991, or again, the Serbs and Bosnians refugees fleeing the Yugoslav conflict. In these cases, according to the government, being missed the specific element of individual persecution it was not possible to recognize to these people the refugee status.

To cope with this difficult situation, in the Italian ordinance were introduced some temporary protection figures by a 'late and largely improvised discipline with inhomogeneous forms'³⁵.

Therefore were issued a series of *ad hoc* decrees of emergency nature, which did nothing but delayed the crucial moment in which it would finally addressed the issue with a more consistent and responsible form.

The *Martelli* law, far from regulating the organic asylum issue, was then characterized as the first attempt to cope with the question, notwithstanding the provisions contained in it were transitional, pending for a more specific legislation on the subject.

Legislation that delayed eight years to be mandated.

Realizing the amplitude that migration phenomenon was assuming in 1998 the Prodi government tried to regulate in a more complete way the matter providing the. *Turco-Napolitano* law³⁶ (from the name of the Minister of Social Solidarity Livia Turco and the Minister of the Interior Giorgio Napolitano), later merged into *Consolidation Act provision governing the immigration discipline and the norms on the legal status of the foreign*³⁷.

The Consolidation Act provision changed some of the rules of the *Martelli* law on immigration issue, but kept intact the content of the art. 1 on the legal condition of the refugees status, in fact it did not resolved the complex question to distinguish between refugees and right for asylum holders.

The Consolidated Act provided a *distinction* between immigrants and refugees, ensuring to refugees a very favorable treatment (prohibition of refoulement or deportation in that countries where they might be subject of persecution, principle of non-refoulement - art. 19.1 and possibility of issuing and not revoking a permit of stay if they experience humanitarian reasons - art. 5.6; inapplicability of the rules on refusal in case are applied asylum rules - art. 10.4, etc.)

³⁵ Nascimbene, Bruno, *Il diritto degli stranieri*, Cedam, Padova, 2004.

³⁶ Law n.40 del 6.03.1998, in *GURI n.59 del 12.03.1998* – suppl. ord. n.40.

³⁷ D.lgs 25 luglio 1998 n.286, in *GURI n.191 del 18.08.1998* – suppl. Ord. N.139, the provisions of which were implemented with the D.P.R. 394/1999, in *GURI n.258 del 3.11.1999*.

In addition, an exceptional discipline in case of mass exodus was contained in the article 20 which entailed the issuance of a permit of stay for temporary protection issued by a Decree of the President of the Council of Ministers in which had to be provided for measures *ad hoc*³⁸. To this type of protection was added the ‘humanitarian protection’ contained in the article 5, paragraph 6 and in the article 19 of Legislative Decree 286 of 1998, for which it was expected the prohibition of expulsion or return of a foreigner ‘to a state where it can be persecuted for reasons of race, sex, language, nationality, religion, political opinion or conditions personal or social, or might risk being sent to another State which is not protected from persecution’. In these cases the issuance of a permit of stay for humanitarian reasons was provided.

Another article for the purposes of the present work is art. 40 of Legislative Decree n. 286 of 1998, which provided the establishment by the regions, in collaboration with provinces, municipalities and voluntary associations, different reception centers for ‘*legal foreign residents for other reasons and not tourism, who are temporarily unable to provide for their housing and subsistence needs*’. This was the first recognition of an active role of the local governments in managing the reception and the immigrant’s integration that would have led to the creation of a ‘division system of powers and competences on refugee issues between State, regions, provinces and municipalities’³⁹.

The centers provided by this article are not the temporary for stay and assistance centers (the so-called CPTA), which were established pursuant by the article 14 of the Decree. In some specific cases article 14 provided the detention for the foreign: for the impediment of the expulsion by escorting the foreigner to the border, to rescue the migrant for investigations about his identity or nationality, the travel documents acquisition or the unavailability of cars or other means of appropriate transport. The detention could not in any case exceed thirty days. Reference to this type of centers can be found in the following law of 30 July 2002⁴⁰, the *Bossi-Fini* law (named after the Minister for Institutional Reforms and Devolution Umberto Bossi and the then Deputy Prime Minister Gianfranco Fini), carried out by two decrees of the President of the Republic (the n. 303 of 16 September 2004 – *Regulation concerning the procedures for*

³⁸ The provisions of art. 20 were later taken and specify more clearly with Legislative Decree n.85 of 07/04/2003 implementing the EC Directive on minimum standards for the n.55/2001 giving temporary protection.

³⁹ Benedetti, Ezio, *op.cit.*, p.235-236.

⁴⁰ Law 189 of 30 July 2002 entitled "Changes in the legislation on immigration and asylum", in Gazette 199 of 26 agosto2002.

the recognition of refugee status, and the n. 334 18 October 2004 - *Regulation amending and supplementing the Decree of President of the Republic on 31 August 1999, 394, on immigration issues*), a subject of a large controversy in the recent years.

The enactment of the law was certainly influenced by the political climate that arose in the West countries in the aftermath of the terrorist attacks of the 11 September in the United States. The question of the other, the different and the immigrant generally, took a more negative value, full of prejudice and fear.

An inevitable consequence was the exploitation of the issues related to migration from the different political forces. So this law, that could have been a step towards the creation of an overall asylum rights discipline, instead constituted another missed opportunity in this sense, and in order to adapt the subjective scope of the guaranteed right at legislative level to that expected from the Constituent⁴¹.

Even the *Bossi-Fini* law maintained the formal distinction between asylum seekers and immigrants, leaving in force the art. 1 of the Law no. 39, 1990 and continuing to limit its scope to the refugee category, excluding other types of asylum seeker. Unlike the *Martelli* law, however, the *Bossi-Fini* law identifies the procedures for the refugee status recognition starting from the subjective condition of the asylum seeker, assimilating always more the asylum seeker as an irregular immigrant, subjecting him to treatments that imply criminalization processes. So the art. 32 introduced the detention institution of the asylum seekers in special centers, even if at the same time established the principle for which the asylum seeker cannot be held solely for the purpose of the asylum application examination. As noted by Nascimbene, in fact, the large number of hypotheses that justify the detention under art. 32, 'will make the detention of the asylum seeker already not exceptional, but quite common'⁴². The law distinguishes between cases in which the treatment is optional to those in which is mandatory. There are three cases that allow the optional detention of asylum seekers for the time strictly necessary to the definition of its application: to verify his identity or nationality, if he is not in possession of valid documents or in case he had submitted false documents, to verify the elements on which is based the application for asylum, if they are not readily available; in case there is a recognition process of the right to be admitted in the territory of the State.

⁴¹ Bonetti, P., *Il diritto d'asilo. Profili generali e costituzionali*, in Nascimbene, B., *op.cit.*, pp.1135-1188

⁴² Nascimbene, Bruno, *op.cit.*, p.1173

Added to this are the cases for which the detention is compulsory: in cases of illegal residence of the asylum seeker⁴³ and in cases the asylum seeker was recipient to a refoulement expulsion or a refoulement before the asylum application presentation.

In all these situations the law provides that asylum seekers have to be held in newly established structures, called Identification Centers - CID⁴⁴. The only exception is made for asylum seekers already recipient to an expulsion action or refoulement before the submission of demand, which are held in the Temporary Stay and Assistance Centers - CPTA, under *Turco –Napolitano* law.

However, as observed by Benedetti, the implementing regulation n. 303/2004 actually appears to equalize the two types of detention, since ‘the investigation phase of the application for the refugee status recognition must take place for all applicants in detention condition, except in cases where the superintendent arbitrarily decides to issue a permit of stay for asylum seeking’. Therefore it is not only the procedure for the refugee status recognition varies depending on the subjective condition of the asylum seeker, but also the type of treatment given in the centers. In principle it is possible to get out from the centers from 8 a.m. to 8 p.m., but this rule is not applied to asylum seekers that were taken away from the border or have tried to do it or have been found staying in irregular condition and for the asylum seeker without a valid identity document, who can leave the Centre only with the permission of an official prefectural limited to cases where there are ‘relevant and proven personal reasons of health or family or for reasons relating to the examination of the application for the recognition of the refugee status’. As noted by the Council of State, these forecasts severely limit the freedom of the individual and appear clearly contrary to the article 13 of the Constitution⁴⁵.

⁴³ Paragraph .32 provides that ‘the detention is always prepared, following the submission of an application for asylum submitted by a foreigner who has been arrested for evading or attempting to evade border control or immediately thereafter, or, to illegal residents’.

⁴⁴ The D.P.R 303/2004 .5 article reads as follows: ‘There are established seven centers of identification in the provinces identified by the Minister of the Interior (generally coinciding with the premises of the territorial commissions), and if the need arises, the Ministry of the Interior, may, even temporarily, the establishment of new centers or the closing of existing’.

⁴⁵ Article 13 of the Italian Constitution states: ‘Personal liberty is inviolable. It is not allowed any form of detention, inspection or personal search nor any other restriction of personal liberty, except by the judicial reasons and only in the cases and manner provided by law. In exceptional cases of necessity and urgency, strictly defined by law, the authority of Public Safety may adopt temporary measures that must be reported within forty-eight hours to the judicial authorities and, if not ratified by them in the next forty-eight hours, they are revoked and become null and void’.

Among the innovations introduced by the *Bossi-Fini* law stands the decentralization of the competent bodies to examine the asylum application. The central Commission established by *Martelli* law - transformed into the National Commission for the asylum⁴⁶ Rights - is joint to the Territorial Commissions for the recognition of the refugee status, presided by an officer from the prefectural and made by an officer of the State Police headquarters, a representative of the territorial body and a representative of UNHCR. The Number of these commissions, first was seven according to Presidential Decree 303/2004, and then has been increased to ten with a Decree of the Ministry of the Interior in 2008⁴⁷. The commissions, set up at the Prefecture – territorial Government Offices are located in various cities throughout the peninsula, each of them with a ‘competence to know the applications presented’ in different regions. The cities⁴⁸ identified are: Gorizia, Milan, Turin, Rome, Foggia, Bari, Crotone, Trapani and Siracusa.

The Commissions may decide upon three different areas: the recognition of the refugee status, the rejection of the application or on request of the superintendent to issue a permit of stay for humanitarian reasons. With the explicit provision of this case in fact are the Commissions that have the power to rule not only about the types of ‘Refugee’ in the strict sense, but also about all them who need humanitarian protection.

Another innovation introduced by the law is the establishment of a simplified procedure (Art. 32) - in addition to the ordinary one - for the recognition of the refugee status, to be applied in the two cases involving the compulsory detention: in the case of persons detained for eluding or attempting to elude the border control, immediately or after, in a irregular – staying position or in the case of persons who, at the time of the asylum

⁴⁶ The National Commission for the right to asylum shall be headed by a prefect and is made by a manager on duty at the Presidency of the Council of Ministers, an official of the diplomatic service, an official from the Prefect with the Department for civil liberties and immigration and an executive of the Department of Public Safety. It 'also the possibility to delegate a representative of the UNHCR in Italy to attend the meetings of the Commission with advisory powers.

⁴⁷ DM 6 March 2008 entitled "Identification of territorial commissions for the recognition of International Protection (referred to in Article 4 of the Legislative Decree 28 January 2008, 25 in relation to the recognition of refugee status."

⁴⁸ The different areas of competence of each Territorial Commission are set out as follows: Gorizia (Friuli-Venezia Giulia competence, Veneto and Trentino-Alto Adige), Milan (responsibility for the Lombardy Region), Turin (responsibility for Valle d'Aosta, Piedmont, Liguria and Emilia-Romagna), Rome (for competence Lazio, Abruzzo, Sardinia, Tuscany, Marche and Umbria), (Campania and Molise jurisdiction), Foggia (competence of the provinces of Foggia, Barletta, Andria and Trani), Bari (competence of the provinces of Bari, Lecce and Taranto), Crotone (Calabria and Basilicata), Trapani (responsibility for the provinces of Agrigento, Trapani, Palermo, Messina and Enna), and finally Syracuse (competence of the Provinces of Siracusa, Ragusa, Caltanissetta, Catania). By Ministerial Decree of 6 October 2008 the territorial jurisdiction of the Commission of Rome was changed. Following this decree jurisdiction for applications in Abruzzo and Marche passed to the Commission of Caserta.

application, were already recipients of an expulsion action or refoulement⁴⁹. The two procedures differ mainly in terms of duration. In the first case the maximum period for the completion of the entire procedure may not exceed twenty⁵⁰ days, while in the second case the deadline is wider, with the scheduling of the audition within thirty days after the application receipt. Although the intent of this provision was to streamline the practices for the examination of the applications, in most of the cases cannot be applied as expected in due time because of the complexity of the situations to be considered, that makes very unrealistic the assumption that it is possible for the Commissions to acquire in a few days verification elements for the inquest phase.

The two procedures differ also in terms of the type of permit of stay issued. If during the execution of the procedure, the superintendent issue a permit of stay valid until the completion of the recognition procedure, in case there is ongoing the simplified procedure the asylum seeker will receive a certificate that certifies the applicant the refugee status inside the center. Such certificate shall not legalize the presence of the applicant in the State. Only at the end of the simplified procedure if it has not been completed, it is provided a quarterly permit of stay - renewable up at the end of the procedure - which, however, does not provide the possibility of access to any form of financial assistance for the asylum seeker.

It should be recalled that the *Bossi-Fini* law abolish article 1 Co. 7 of the *Martelli* law which provided the possibility to grant the first aid contribution for a period not exceeding the 45 days to the asylum seekers without means of subsistence or accommodation in Italy. At the same time however, was introduced and institutionalized the organized reception system for asylum seekers not affected by

⁴⁹ In the first case the commissioner territorial jurisdiction, upon receipt of the application for the recognition of the refugee status, orders the detention of the foreigners in one of the centers for identification and within two days of receiving it provides for the transmission of the documents to the Commission territorial jurisdiction which within 15 days, of the hearing shall take its decision within three days . In the second case, however, the superintendent of the territorial jurisdiction orders the detention of foreigners in one of the detention centers and, if the detention is already under way and asks the court with a single judge to extend the period of detention for a further period of 30 days for the completion of the procedure simplified. Within two days of receipt of the court shall forward the documents to the Commission which must provide the competent territorial hearing within 15 days and take a decision within three days.

⁵⁰ Paragraph. 32 - art.1 provides that upon receipt of a request for recognition of refugee status, the commissioner responsible for the place where the request was submitted orders the detention of foreigners interested in one of the centers of identification referred to in Article 1-bis, paragraph 3. Within two days of receipt of the application, the commissioner responsible for transmission send the necessary documentation to the Territorial Commission for the recognition of refugee status which, within fifteen days from the date of receipt of the documentation, provides the hearing. The decision must be and taken within the next three days.

detention orders, named Protection system for asylum seekers and refugees – SPRAR (Article 1 - e). SPRAR consists in a local authorities network that perform integrated reception projects, which is not limited to the room and board distribution, but is focused also in accompaniment, information and a personalized socio-economic integration courses. This System is supported by Central service, also introduced by *Bossi-Fini* law, whose coordination is entrusted to ANCI (Associazione Nazionale Comuni Italiani), responsible for the monitoring of the asylum seekers and refugees presence in the country, information dissemination on the interventions, technical assistance to the local authorities and preparation or repatriation programs, in agreement with the Ministry of the Interior. The activities and actions promoted by SPRAR and the Central services are financed by the national fund for asylum policies and services, also established by the *Bossi-Fini* law (art. 1 - f).

While the *Bossi-Fini* law introduced some novelty assessed also positively from UNHCR⁵¹, among which the decentralization of the asylum procedure and the introduction of humanitarian status, there are also some critics, which are mainly focused on the innovations introduced in the immigration field. Regarding the specific asylum issues, it is inevitable to notice that the normative does not exceed the gaps left by the previous legislation, with particular reference to access asylum seekers procedure to submit their application. In fact, some doubts arise about the incompatibility with certain provisions of the procedure Directives (Dir. 85/2005) and Reception Conditions Directive (Dir. 9/2003). In the first case, the information warranties of the asylum seeker, legal orientation and appropriate training of the responsible personnel to examine the applications do not seem to be satisfied. The reception Directive on the free movement of the asylum seeker, in fact rejected by the introduction of different assumptions that justify their detention. In addition, with the rapid progressing provided by the simplified procedure, the refugees and the humanitarian protection holders have a relatively short time to integrate into a new reality. This situation highlights the need to introduce an integration organic policy that meet the growing problems of social inclusion and accommodation.

Finally, the non-introduction in the law of the appeal with suspension effect that would allow asylum seekers to remain in Italy until the end of the procedure widely supported

⁵¹ Cfr. UNHCR, *Procedura d'asilo: Bossi-Fini primo bilancio*, UNHCR, 22 aprile 2006, in <http://www.unhcr.it/news/dir/26/view/248/procedura-dasilo-bossi-fini-primo-bilancio-unhcr-24800.html>

by UNHCR, in fact raises serious doubts about the protection standard of the asylum seekers rights in Italy.

2.1.2 *The transposition of EU directives into the Italian law*

An important step for the creation of a regulatory system in the asylum issue in Italy is in the implementation of EU legislation. Besides the already mentioned ‘Dublin II Regulation’ in 2003, which was directly applicable in Italy, it was not necessary to issue a delivery act, referencing to D. Law 7 April 2003 Decree n. 85, implementing Directive 2001/55/EC the ‘*Minimum standards for giving temporary protection in the event of mass⁵² influx of displaced persons*⁵³. This decree fixes the term of temporary protection to one year, extendable up to another year. The Directive provides also that the temporary⁵⁴ protection does not preclude the possibility to apply for the refugee status recognition (Article 7). With this Directive, art. 2 have introduced into Italian Judicial System some classical figures of the asylum law, including, in addition the ‘temporary protection’, the notion ‘displaced person’ and ‘mass influx’. The second decree of adoption is the Decree Law of 30 May 2005 n. 140, implementing the Directive 2003/9/EC on ‘*Minimum standards for the reception of asylum seekers*’. This legislation body is significant because it adds to the discipline of the *Bossi-Fini* law the regulation of the reception phase of the asylum seekers. This decree provides that asylum seekers without sufficient subsistence resources be housed in structures that ensure the protection of life and where possible the protection of their family and the possibility to communicate with their relatives, the lawyers and the representatives of UNHCR. It provides also that, if the asylum application is not taken within six months

⁵²“Mass influx” means arrival in the territory of the European Union of a considerable number of displaced persons, from a particular country or a particular geographical area, whether their arrival is the spontaneous or aided, for example, through an evacuation program.

⁵³ The term "displaced person" means a third-country national or stateless person who has forcibly abandoned its country or region of origin or have been evacuated, in particular in response to international organizations, and for whom return in a safe or stable appears momentarily impossible depending upon the circumstances of that country, even within the application of Article 1A of the Geneva Convention, and in particular persons who have fled areas of armed conflict or endemic violence, or persons who are subject to serious risk of systemic or generalized violations of human rights are or have been victims of such violations.

⁵⁴“Temporary protection” means the procedure of exceptional character to provide, in cases of mass influx or imminent mass influx of displaced persons from countries outside the European Union who can not return to their country of origin, immediate protection and temporary displaced persons, in particular if there is a risk that the asylum system will be unable to process this influx.

of the application submission and the delay cannot be attributed to the asylum seeker, the permit⁵⁵ of stay may be renewed for six months, with the possibility for the applicant to carry out work activities until the end of the recognition procedure, (continuing to use the reception conditions but contributing for the expenses).

Significant changes and additions to all the national norms have been introduced following the implementation of EU Directives 2004/83/EC - *qualifications Directive* - and 2005/85/EC - *procedures Directive*. With the implementation of the first, implemented by Legislative Decree 19 November 2007 n. 251 '*Rules on minimum third-country nationals or stateless persons as refugees or as persons who otherwise need International Protection* ', it becomes operating a recognition criteria system for the recognition of the various elements of persecution⁵⁶, with the introduction of common definitions of '*internal security*' and '*persecution*', including reasons of persecution⁵⁷ and the membership of a particular social group.

The main innovation of this Directive, as stated above, was the insertion of the subsidiary protection, it consists in the introduction of the subsidiary protection beside of the already present temporary protection and humanitarian protection (Chapter IV Leg. November 19, 2007 n. 251).

⁵⁵ It should be noted that in any case such a residence permit, in accordance with art.11 of Legislative Decree 140 of May 30, 2005, can not be converted into a residence permit for work purposes.

⁵⁶ Acts of persecution under Article 7 of Legislative Decree 251 of 2007, a) acts of physical or mental violence, including sexual violence, b) legal, administrative, police headquarters and judiciary for their discriminatory nature or implemented in a discriminatory manner; c) prosecution or punishment, which is disproportionate or discriminatory; d) denial of access to legal remedies and consequent disproportionate or discriminatory punishment; e) prosecution or punishment for refusal to serve military in a conflict, where this could lead to the commission of the crimes or acts falling under the exclusion clauses in Article 10, paragraph 2 f) acts specifically directed against one gender or child.

⁵⁷ As for the reasons of persecution, are identified in Article 8 of the Legislative Decree no. 251 of 2007 as follows: a) "race" refers, in particular to considerations of color, descent, or to 'membership of a particular ethnic group b) "religion" includes, in particular, the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community, other religious acts or expressions of faith, as well as forms of personal or communal conduct based on or mandated by any religious belief; c) "nationality" does not refer exclusively citizenship or lack of citizenship, but designating, in particular, membership of a group characterized by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State; d) "particular social group" is made up of members who share an innate characteristic, or a common, that can not be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, or what has a distinct identity in the country of origin, because it is perceived as being different by the surrounding society. Depending on the situation in the country of origin, a particular social group may be identified by reference to a common characteristic of sexual orientation provided that such does not include acts of criminal law within the meaning of Italian law, e) "political opinion" refers, in particular, to the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 5 and to their policies or their methods, regardless of whether the applicant has translated that opinion, thought or belief into action.

Regarding the implementation of the procedures Directive with the D. L of 8 January 2008 n. 25, it was applied immediately in the Italian Juridical System, grafted into an already existing system in which are continuing to be applied the provisions of the Presidential Decree of 16 September 2004 n. 303, until the adoption of the new regulation provided by the art. 38 of D.L no. 25/2008. This decree introduces the suspense effect of the appeal, except in those cases where the application is rejected⁵⁸ as manifestly unfounded. The asylum seeker is then allowed to remain in the territory of the State for the sole purpose of the procedure up to the decision of the territorial Commission.

The art. 20 of the Decree established asylum seekers centers, the so called CARA, where are hosted asylum⁵⁹ seekers in some specific cases. Asylum seeker can exit from the center during the day or for a long period, with the approval of the prefect and only for relevant or personal reasons related to the examination of the application. The detention is ordered in the Temporary stay and assistance centers (CPTA) for asylum seekers that are in the conditions provided by the Article 1, paragraph F, of the Geneva Convention⁶⁰, which have been affected by sentences in Italy specific crimes⁶¹ or which are subject to a deportation order, unless the cases provided by the art. 20 comma 2 letter d)⁶².

⁵⁸ The rejection of an application for ‘manifestly unfounded’, introduced by Legislative Decree 159 of 2008, under Article 1, paragraph f) ‘when it is the blatant lack of grounds provided for by Legislative Decree 251 of 2007, or when it appears that the application was submitted for the sole purpose of delaying or preventing the execution of an expulsion or refoulement’.

⁵⁹ The cases referred to the residence of the applicant are as follows: when you need to verify or determine his identity or nationality, if the same is not in possession of the travel documents or identity, or on arrival in the territory of the State has submitted forged or falsified documents results, when application was made after he was stopped for having evaded or attempted to evade border controls or soon after, when he made the request after being arrested. It was also planned to welcome in CARA asylum-seekers at the time of submission of the application, were already recipients of an expulsion or refoulement. This hypothesis, however, was repealed by Article 1, paragraph d) of Legislative Decree 159 of October 3, 2008.

⁶⁰ Asylum seekers to whom there is a serious reason to suspect that they have committed a crime against peace, a war crime against humanity or a serious non-political crime outside the host country, or that they have been guilty of acts contrary to the purposes and principles of the United Nations.

⁶¹ The asylum seeker must have been convicted of any of the crimes set out in Article 380, paragraphs 1 and 2 of the Code of Criminal Procedure, or for crimes related to drugs, sexual freedom, aiding and abetting illegal immigration to Italy and clandestine emigration from Italy to other Member, or crimes involving the recruitment of persons for the prostitution or exploitation of the prostitution of minors for illegal activities.

⁶² Article. 20, paragraph 2 letter d states: ‘The applicant is housed in a center for asylum seekers in the following cases: d) when presenting the question being already subject to an expulsion decision taken pursuant to Article 13, paragraph 2, a) and b) of Legislative Decree 25 July 1998, n. 286, or a refusal of entry under Article 10 of Legislative Decree 25 July 1998, n. 286, even if already held in one of the centers referred to in Article 14 of that decree ‘.

It should be noted, finally, as based on this decree, that are both less cleavage of the process of applications examination for International Protection "Ordinary procedure" and "simplified procedure" (is maintained only the ordinary procedure), and the cases of inadmissibility of the application for International Protection provided by the *Martelli* law⁶³.

2.1.3 The changes introduced by the 'security package'

In 2008, following the meeting of the Council of Ministers held in Naples on 21 of May were adopted a series of measures on security matter, baptized with the name of 'security package'. Among these one in particular refers to asylum right: it is the Legislative Decree of 3 October 2008 n. 159 on 'Modifications and additions to the Legislative Decree of 28 January 2008 n. 25, implementation of procedures Directive. This Decree, composed of a single article, reaffirms the responsibility of the territorial Commissions to examine the asylum applications, but it provides a closer link with the Ministry of the Interior, which, besides being the responsible institution to elect the Commissions may, in emergency situations, elect a representative of the local authority, a fact that seems to weaken the judging commission. The decree provides also that the Prefect may establish a residence place or a geographical area within which the asylum seekers may move, in contrast with the Directive 2003/9/EC which provides the free movement for asylum seekers. As pointed out by the associations world, the limitation of the free movement, unless having an inefficient management of the reception system at the CARA, hinders SPRAR efficiency, which works by finding reception place for asylum seekers who have applied in a place where, for various reasons he was not able to find accommodation.

The security package, in addition to the letters d) and e) of the art. 1, provides the mandatory detention in the temporary stay and assistance centers of all the asylum

⁶³ Article 4 of *Martelli* law says 'It is not allowed to enter the territory of the State of the alien wishes to apply for recognition of refugee status when, by objective criteria by the border police headquarters, that the applicant: a) has already been recognized as a refugee in another country, b) comes from a state other than his own, which has acceded to the Geneva Convention, in which he spent a period of residence shall not be regarded that the time required for the transit of its territory up to the Italian border, c) in the circumstances set out in Article 1, paragraph F, of the Geneva Convention; d) has been convicted in Italy for one of the crimes provided for in Article 380, paragraphs 1 and 2 of the Code of Criminal Procedure or is dangerous to the security of the State, or he is to belong to mafia-type associations or groups involved in drug trafficking or terrorist organizations.

seekers recipients of a deportation order. As previously noted, already the Legislative Decree no. 25/2008 provided for the retention of the asylum seekers in the CPTA, but only in some duly circumscribe cases, in order to ensure a fair balance between the demands of the State to protect the security of its citizens and the right of asylum seekers to have access to the procedure. With the changes introduced by the security package is therefore expanded the discretion of the public authority about the modality how to access to the procedure, since the choice between the adoptions of decisions to reject or to expel, is entrusted by the competent authority.

Also the changes introduced in the judicial protection field against the rejection decision of the asylum application appears greatly restrictive and unjustified. The Legislative Decree in question operates a 'step back' from the progress made with the Directive procedures implementation: it is reinserted the provision that allows the immediate expulsion of the asylum seeker in case of application rejection. This prediction, which generated serious worries also from UNHCR, constitutes the violation of fundamental principles of law, and art. 13 of the European Convention for the protection of Human Rights and fundamental Freedoms, which enshrines the right to an effective appeal. This restrictive provision is mildly attenuated by the possibility of the asylum seekers to stay on the Italian territory for 'serious personal or health reasons', prior prefectural authorization, which however does not appear to be an affective measure of safeguard, since are not defined the criteria for recognizing 'serious reasons'.

It should be remembered, finally, that the security package introduces also the so-called 'illegal immigration crime', which provides a fine from 5000 to 10000 euro for the foreign who enters illegally in the territory of the State. The provision in question requires that the condition of clandestineness becomes an aggravating if the immigrant resulted involved in another process. This crime punishes the subjective condition of the irregular foreign, regardless if he has caused harm to the others.

In conclusion it is worth to notice that the provisions contained in the package security, from a general analysis which includes also the provisions which do not have an impact on the asylum seekers condition, contribute to create a disinclined reception and integration climate with fundamentally restrictive character. Although the law does not specifically affect the immigration issue, some aspects of this, related to the novelty introduced in this matter, have been the subject of extensive advertising, focusing on the

link between immigration and security. This has had a major impact on the public opinion in the anti - immigrant direction.

Regarding to this Grazia Naletto noticed that ‘the initiative to intervene on the legal status of the foreigners with provisions related to the security and public order matter is a choice by the strong symbolic value: allowing to transmit immediately to the public opinion the message that identifies the source of the widespread social insecurity with the immigrants presence’⁶⁴. It is not a coincidence that with the security package the temporary stay and assistance centers may be renamed ‘in all law provisions and regulations’ identification and expulsion centers (CIE) and that maximum stay period inside them is elongated to six months. An additional signal to define clearly the approach adopted in Italy to manage migration policies.

2.1.4 The push – back policy

With the signing of the Friendship Treaty, Partnership and Cooperation between Italy and Libya signed in Benghazi on 30 August 2008, it was reached the culmination of the efforts to combat illegal immigration in Italy. The Treaty, in fact, strongly desired by the Minister of the Interior Roberto Maroni to meet the massive migration waves of Africans coming from Libya, was the last agreement signed by Italy with Libya.

The first, signed in Rome on 13 December 2000 by the Amato⁶⁵ Government, provided the exchange of information on illegal migration flows between the two countries, as well as mutual assistance and cooperation in the fight against illegal immigration. Subsequently, in 2007, was signed in Tripoli by the Prodi government a further agreement, the ‘*Protocol for cooperation between Italy and Libya to face illegal immigration*’, which included the launch of patrols in Libyan waters to reject intercepted migrants at the sea to the departure ports and the channeling of funds for the construction of two detention fields in Kufrah and in Gharyan.

⁶⁴ Naletto, Grazia, *La legittimazione normativa delle discriminazioni e del razzismo*, in *Rapporto sul razzismo in Italia*, a cura di G.Naletto, Manifestolibri, Roma, 2009, p.91.

⁶⁵ "Agreement between the Italian Republic and the Great Socialist Libyan Arab Jamahiriya for their cooperation in combating terrorism, organized crime, illegal trafficking of drugs and psychotropic substances and illegal immigration", in OJ 111 of 15 May 2,003.

The Partnership and Cooperation Treaty⁶⁶ of 2008 provides the strengthening of the patrols carried out by mixed teams with patrol boats provided by Italy, as well as a remote sensing system at Libya land borders, entrusted to Italian companies, which does not involve the Italian police headquarters displacement.

Since the entry into force of this Treaty, in March 2009, the joint efforts for interception and refoulement to the Libyan coast of boats full of migrants operated by the Italian police headquarters and the political context of the Libyan authorities to prevent departures from their coast, made it very difficult for thousands of people to reach Europe through the Sicily canal. A situation which, as we can imagine, makes impossible for these people to apply for International Protection.

There are various elements that concern the international Community regarding this.

A first consideration should be made about the violation of the of non-refoulement principle, which is a binding obligation in the international law of human rights and international refugee law. It should be remembered in this connection that the indirect send back of an asylum seeker to a third country which could then send the person to the feared persecution Country constitutes the violation of the non-refoulement principle . In this case, both countries are to be considered responsible. If we think that Libya is not a partner of the Geneva Convention on the Refugees Status of 1951 and there is not a formal mechanism for the recognition of this status, the concerns about the fate of migrants in the Libyan areas grow strongly. As noted by Human Rights Watch, the concept of International Protection expressed by the Libyan leader Muammar Gaddafi in his first visit to Italy was disturbing. Gaddafi⁶⁷ in fact argued that the issue of asylum seekers is *'a widespread lie'* and that *'Africans live in the desert, forests without having any identity, let alone politics. They believe that the North has all the wealth, the money, so they try to get (...) million people are attracted by Europe, and trying to get here. Do we really think that millions of people are asylum seekers? It is one thing that really makes laugh'*. Libya does not give any guarantee for migrants, including possible asylum seekers, they will not then be sent back in those countries where they fear persecution.

⁶⁶ Ronzitti, Natalino, *Il Trattato Italia-Libia di amicizia, partenariato e cooperazione*, 2009, in www.iai.it/pdf/Oss_Transatlantico/108.pdf

⁶⁷ Human Rights Watch, *Scacciati e schiacciati. L'Italia e il respingimento di migranti e richiedenti asilo, la Libia e il maltrattamento di migranti e richiedenti asilo*, 2009, in www.hrw.org/sites/default/files/reports/italy0909itweb.

A second aspect to consider is the composition of rejected migrants. Most of them are not Libyans but they come from the south countries in the land borders of Libya, among who a significant number would have the requisitions⁶⁸ for International Protection. In 2008, about 75% of the migrants that reached the Italian coast in the mixed flows context has applied for asylum and to 50% of them were granted a form of International Protection⁶⁹. If we also consider that in 2008 came by sea 36,951 people, about 24,000 have applied for asylum, we can assume that in 2009, without the push-back policy, an equivalent number have sought for refuge in Italy.

In 2009, in fact, following the implementation of these measures, it is been a drastic fall in asylum applications lodged related to the previous year, certifiable around 40%. Since May 2009, the landings fell by 90% compared to 2008, despite the situation in the countries of origin of asylum seekers was not improved. Even those who were not beneficiaries of International Protection, in any case, should enjoy the fundamental rights and are entitled to be treated with dignity. It is this last aspect to cause many doubts. The detention conditions of the migrants sent back to Libya, in fact, was complaint by numerous ONGs⁷⁰, failing the formal assurances of the Libyan government about the treatment and real opportunities for UNHCR⁷¹ to reach them. The Italian state finally is not present in Libya to monitor the fate of the rejected migrants and the respect of the human rights.

With the current developments of the political situation in Libya, the Italian Government in February 2011 was forced to suspend the treaty, with the consequent recovery landings of the migrants in Lampedusa. On 17 June 2011, however, was signed a new agreement between the Italian Government and the Libyan transitional

⁶⁸ According to data provided by Human Rights Watch the rate of acceptance of asylum applications in 2008 stood 49 percent in Italy and 52.5 percent in Malta, for all nationalities. Trapani, includes Lampedusa, where landed most of the boats coming from Libya during January –August 2008.

⁶⁹ Caritas Migrantes, *Dossier statistico Immigrazione*, 2010.

⁷⁰ See in this regard the complaints to the European Commission, the Council of Europe and the UN Committee for Human Rights on the grave breaches of the national, EU and international perpetrated against refoulement of migrants to Libya, of which are signatories, among others, the Italian Council for refugees, the ARCI, ASGI, the democratic Jurists, the Jesuit refugee Service and the Community of Sant'Egidio.

⁷¹ Rights Watch writes: 'the conditions of detention were poor. The detention centers are overcrowded and dirty, the food is inadequate and health care is virtually non-existent. There is almost no communication with the authorities and it is impossible even to contemplate challenging their detention in court. The contact with the defense lawyer was limited , as well as information on the reasons or length of detention. The treatment ranges from negligent to brutal guards, and corruption is endemic. Migrants may be held for a period of time ranging from a few weeks up to 20 years "in Human Rights Watch, *Pushed Back, and Pushed. Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, September 2009, www.hrw.org

Committee. Such agreement raises serious doubts of legitimacy, on the one hand because it was not made public and on the other, because, of being a political agreement it cannot be concluded in a simplified form but it must be submitted in advance to the Chambers to approve the authorization law for the ratification⁷². From what reported by the Legal Studies Association on Immigration, it seems that the agreement contains a clause which states that ‘the parties will proceed to mutual assistance and cooperation in the fight against illegal immigration, including the repatriation of illegal immigrants’. Being Libya at the moment subjected to military operations, the agreement would violate both the International Convention civilians protection during international conflicts, both non-refoulement principle, and finally, the prohibition of any form of expulsion can expose people to life risks, security and freedom or however, involves a form of torture or inhuman or degrading under the European Convention on Human Rights.

2.2 The procedure for the recognition of International Protection

2.2.1 The preliminary phase

The first step for the recognition of International Protection, the refugee status or the subsidiary protection status, is the presentation of the application⁷³ at the border police headquarters upon at the entry moment into the country, or in any other time, at the territorial police headquarters jurisdiction on the basis of the dwelling place of stay. The asylum seeker is required to submit, ‘*together with the application or at least as soon as available all the elements and the documentation needed to substantiate the same application*’. It is important to emphasize from the outset that the application for International Protection cannot be rejected on the sole ground that it was not presented promptly, as there are not time limits for its presentation (Article 8 paragraph 1 of Legislative Decree n.25). The asylum seeker is also granted the permission to remain in the territory of the State, for the sole purpose of the procedure, until the decision of the Territorial Commission.

⁷² www.asgi.it

⁷³ This application is the so called Model C3, by the ‘*Minutes of statements of foreign demand in Italy for recognition of refugee status to under the Geneva Convention of 28 July 1951*’.

Police headquarters must first verify the identity of the asylum seeker, through the identity and travel papers presented. If after such checks the asylum seeker is fully identified, the police headquarters collect the application and shall, within two days, send all the documentation the Territorial Commission. This application will be examined, however, only when the Italian State will result to be the competent examination, based on the opinion expressed by Dublin Unit, established within the Ministry of the Interior and head to verify the competence of Italy in this, on the basis of the 'Dublin II Regulations'. If by investigation carried out by the Dublin Unit results that the State competent to examine the application is another one, it is invited to consider the asylum seeker, who will be transferred there. The process will then be declared extinguished by the Territorial Commission. Against this decision, the asylum seeker may appeal within 60 days from the date of the communication of the Dublin Unit decision.

Once done the verification phase, the police headquarters, within three days after the application submission, issue to the asylum seeker - fully identified and resulted able for the procedure - a special permit of stay *ad interim*⁷⁴ (to be issued within twenty days of the application submission). In the event that after six months from the demand presentation and for reasons not attributable to the asylum seeker, the Territorial Commission does not take a decision, the permit of stay is renewed for other six months and the asylum seeker is granted the right to pursue work activities until the end of the recognition process.

2.2.2 Reception and stay

If it is necessary to verify or to determine the nationality or the identity of the asylum seeker⁷⁵, in case of illegal stay and in specific cases that lead to the adoption of an

⁷⁴ This special permit is not granted interim if the applicant: a) should be extradited to another State by a virtue of the obligations provided by European arrest warrant, b) should be given to a Court or the International Criminal Court, c) should be placed on a different EU Member State responsible for the examination of the request for International Protection.

⁷⁵ In cases in which: a) he is not in possession of the travel documents or identity, b) has presented false or forged documents results c) has submitted its application after being arrested for evading or attempting to evade border control d) has submitted its application after being arrested in illegal residents. In cases a) and b) the reception is designed for a maximum period of 20 days; in other cases the host is prepared for a maximum period of 35 days.

expulsion⁷⁶ measure, the superintendent provides for the acceptance of the asylum seeker in asylum seekers centers - CARA. It is expected that applicants can leave the centers only during⁷⁷ the day. It is not coincidence that Gioiosa refers to the reception in CARA such as '*euphemistic hospitality*', being limited their personal freedom. It is necessary to point out regarding this that there is no rule that requires the superintendent to justify the provision that obliges to stay at CARA, or the applicant's right to challenge it, nor, finally, no judicial validation for the detention. The situation is different in the identification and expulsion centers - CIE. The detention⁷⁸ is willing if the refugees are subject to the expulsion or refoulement, except the reception in CARA or in some other specific cases. It is however necessary the validation by the ordinary court of the competent territorial jurisdiction within 48 hours following the adoption measure. The detention duration, which grew⁷⁹ steadily over the last years, was recently tripled from 6 months to 18 with the approval of the Decree of the Council of Ministers of 16 June 2011.

In both cases – of reception in the CARA or detention in the CIE – to the asylum seeker it is issued a named certificate that certifies the quality as a refugee status, which places the asylum seeker in a state of '*legal suspension*' medical nature and jurisdictional rights that would result from the issuance of a valid⁸⁰ permit of stay. The permit of stay is issued only after the expiry reception period, which is valid for three months and

⁷⁶ The applicant, in accordance with Art.20 paragraph 2 letters d) will be hosted in DEAR when he presented the question being already subject to an expulsion decision taken pursuant to Art. 13, paragraph 2, letter a) and b) of Legislative Decree of 25 July 1998 '*The expulsion is ordered by the prefect when the stranger: a. Has entered the state by evading border controls and has not been rejected under Article 10. b. is held in the territory State without applying for the residence permit within the prescribed period, unless the delay is due to force majeure or when the residence permit has been revoked or canceled, or has expired for more than sixty days and has not been applied for renewal*'), or a decision to refuse entry in accordance with Article 10 of Legislative Decree 25 July 1998,n. 286.

⁷⁷ It should be noted that the unauthorized removal from the center is not equivalent to the waiver of the application, which is in any case determined by the Territorial Commission based on the documentation in its possession.

⁷⁸ Detention shall be ordered in refugee camps for asylum seekers who are in the conditions provided for in Article 1, paragraph F, of the Geneva Convention, which have been affected by sentences in Italy for any of the crimes set out in Article 380, paragraphs 1 and 2 of the Code of Criminal Procedure, or for crimes related to drugs, sexual freedom, aiding and abetting illegal immigration to Italy and clandestine emigration from Italy to other Member, or crimes involving the recruitment of people for prostitution or the exploitation of the prostitution of minors for illegal activities

⁷⁹ Article 14 of the Legislative Decree no. N.286/1998 provided for the detention for a period of thirty days, extendable for another thirty in detention centers and assistance, then renamed Cie. The security package has amended this provision by providing that the maximum period of detention could reach six months.

⁸⁰Codini, E., D'Orico, M., Gioiosa, M., Franco Agneli, 2010. In this regard, it is worth remembering that the asylum seekers who are issued with the certificate name are entitled to medical assistance and emergency care but are not entitled to full health consequent registration in the National Health Service. This right is their guaranty only after obtaining the residence permit.

renewable until the decision of the question. This permit of stay does not enable to work.

2.2.3 The examination of the application and the audition

As already mentioned, the Legislative Decree n. 25 of 2008, implementing the *Directive procedures*, eliminates the distinction between ordinary and simplified procedure, provided by the *Bossi-Fini* law. It abolishes also the provision that the border authority and the superintendent had to verify the acceptance clauses for the International Protection application. With the Legislative Decree no. 25/2008, the competent authorities exclusively for the examination of applications are the Territorial Commissions for the International Protection recognition which are the only institutions that can rule on its inadmissibility. This inadmissibility, disciplined by the art.29 is configured in case the asylum seeker has already been recognized as a refugee by a signatory state of the Geneva Convention and can still avail him for protection or when the seeker has resubmitted the application after that the Commission has taken a decision, without providing new evidence. In this case, the seeker is obliged to leave the country. The same is expected in the case of the withdrawal of the application by the seeker.

It is given priority to the examination of applications which seem to be clearly based, that have been submitted by applicants falling within the vulnerability⁸¹ categories or for whom is arranged the reception or the detention.

During the procedure the asylum seeker and the lawyer that assist him legal advice are entitled to access to all administrative acts relating to the procedure.

The examination of the application should include evaluation of some elements, coded art. 3 of Legislative Decree n. 251 of 2007. Specifically, the Commission must take into account all the facts about the country of origin of the asylum seeker to the decision time, of the statements and the documents presented by the asylum seeker, the personal and specific circumstances of applications of the asylum seeker, in particular social status, gender and age in order to assess whether it can be on risk of persecution or

⁸¹Indicated in art. 8 of Legislative Decree n.140/2005, or ‘children, the disabled, the elderly, pregnant women, single parents with minor children, the people for whom it was established that they suffered torture, rapes and other serious forms of psychological, physical or sexual violence’.

serious harm. The examination must consider also all the activities of the asylum seeker after he left the country of origin, which may have exposed to persecution or to a serious harm. It is important to note that it is possible to submit an application for International Protection for events that happen after the asylum seeker departure from his country of origin (Art. 4 Legislative Decree 251/2007). As we can imagine the fact that applicant has already been subject to persecution or serious harm is an element that strengthens significantly the reliability and validity of the request. Finally, if it is not possible for the applicant to substantiate appropriate aspects of his application, the Commission may consider it truthful, if the applicant shall demonstrate that he has made every reasonable effort to find the evidence, if there is a valid reason to justify the absence of the evidence and if the applicant's statements seem to be consistent and non-contradictory.

Should also be stressed that all the information provided by the asylum seeker are compared with the reports prepared by the National Commission on the data provided by UNHCR, the Ministry of Foreign Affairs or acquired by Commission. The information must be constantly updated and must be made available to the territorial Commissions and to the judicial bodies responsible on any appeal in case of negative decisions.

The next step in the path for International Protection recognition consists in the audition, which is an interview by non-public character that is useful to confirm the asylum seeker personal data and to have more information about the trip and the reasons that led him to leave his country of origin and cannot go back⁸². The Commission, within thirty days of the application receipt, arranges the audition and the competent territorial police headquarters shall give written notice to the asylum seeker. The Commission may suspend or postpone the audition if it needs to acquire other documentation, in case in which the applicant is able to sustain it for health reasons, or if there are communication problems with the translator. The Commission may also decide to omit the audition if it believes to have sufficient reason to grant the application or if the applicant is in an inability or incapacity state, certified, to do a personal interview.

⁸² Sprar, Guida pratica per i richiedenti protezione internazionale, p.16, [inwww.interno.it/mininterno/export/sites/.../0104_SPRAR_Vademecum.pdf](http://www.interno.it/mininterno/export/sites/.../0104_SPRAR_Vademecum.pdf)

What emerges at the audition is reported in a verbal document which must be approved, signed and delivered to the applicant at the end of the audition.

Within three days, the Commission is required to take a decision.

If the Commission fails to take a decision within this period, must inform the applicant and the police headquarters authority for the delay.

2.2.4 The decisive phase and appeals

As provided for by Legislative Decree no. 251/2007, the examination of the application must be on the individual basis.

The examination of the application by the Commission is likely to result positive with the consequent acceptance of the application. In this case the Commission may recognize the refugee status or, alternatively, the subsidiary protection, depending on whether it meets all the relevant assumptions. In cases the application for International Protection is not accepted, if there are serious humanitarian reasons, the Commission may send the acts to the superintendent in order to issue a permit of stay for humanitarian reasons. The examination of the application may, however, fail. It is rejected when:

- a) There are not all the conditions for the recognition of the International Protection (established by Legislative Decree 251/2007).
- b) There is a recourse on the cases of the termination or exclusion of the International Protection⁸³.

⁸³ Article 9 of the Legislative Decree no. 251/2007 reads as follows: ‘An alien who ceases to be a refugee if a) has voluntarily availed himself of the protection of the country of his nationality; b) having lost his nationality, he has regained voluntary c) acquired Italian citizenship or other citizenship and enjoys the protection of the country of which he acquired citizenship d) has voluntarily re-established in the country which he left or where he did not return for fear of persecution, and) can no longer waive the protection of the country of which he is citizenship, because it no longer fulfills the circumstances that led to the recognition of refugee status; f) being a stateless person, to be able to return to the country in which he had the home usual, because failed the circumstances that led to the recognition of refugee status. 2. For the purposes of paragraphs e) and f) of paragraph 1, the change of circumstances must have a non-temporary nature and that would eliminate the well-founded fear of persecution, and there must be no serious humanitarian reasons preventing the return to the country of origin. 3. The termination is declared on the basis of an individual assessment of personal circumstances. ‘The article 10 reads instead: ‘1. the alien is excluded from refugee status if it falls within the scope of Article D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations High Commissioner of the different Nations High Commissioner for Refugees. When such protection or assistance has ceased for

- c) The applicant comes from a safe country and has not alleged serious reasons (serious discrimination and repression behaviors that do not constitute an offense to the Italian legal system) such as justify application
- d) The request is manifestly unfounded

The rejection order shall be notified in written document and must contain the reasons of fact and law of the rejection of the application, as well as information regarding the appeal. The rejection of the application, so such as the withdrawal or the declaration of inadmissibility of the application, causes the immediate activation of the expulsion procedure for the foreign. Such prediction was introduced by the security package (Article 1 of the Legislative Decree letter g. 159/2008) amending art. 32, paragraph 4 of Legislative Decree n. 25/2008, which provided for the expulsion only after the time for the appeal presentation, had elapsed. In the case of subjects accepted or retained the expulsion takes place with the accompaniment to the border, while in the case of holders of permit of stay *ad interim* for asylum application, it is ordered to leave the territory of the State within 15 days.

The appeal procedure is divided in three levels.

The applicant may first make an appeal to the court which is based in the capital of the district court of appeal in which the territorial Commission seats (Article 35 paragraph 1 Leg. 25/2008), submitting the application within 30 days after the notification of the decision (in cases of detention that term is halved⁸⁴ to 15 days). It is expected that the appeal may be taken even if it has not been recognized the refugee status but only the subsidiary protection. Article 35 of Legislative Decree no. 25/2008 provides that in case of an appeal against the rejecting decision of the application for the refugee status recognition or to a person who has been granted the subsidiary protection, the

any reason, without that the position of these foreigners being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, they have full access to forms of protection provided for in this Decree. 2. The alien is also excluded from being a refugee where there are serious reasons for considering that: a) he has committed a crime against peace, a war crime or a crime against humanity, as defined by the tools International related to such crimes; The severity of the offense is also evaluated taking into account the penalty by Italian law for the offense is not less than the minimum four years or maximum of ten years, c) he has been guilty of acts contrary to the purposes and principles of the United Nations, as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations. 3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts therein'.

effectiveness of the contested measure is suspended. In other cases the suspensive⁸⁵ effect is not applied unless there are ‘serious grounded reasons’, according to which the asylum seeker may apply to the court, together with the presentation of the appeal, to grant the suspension of the expulsion.

Five days after the appeal deposition, the court schedules the audition in the council chambers and communicates to applicant and to the public prosecutor or, alternatively, to the national or to the Territorial Commission, which can intervene with a representative. Within three months, the court, after hearing and assumed all the evidence needed, decide on the dismissal of the action the recognition as a refugee or as a person who is entrusted with the subsidiary protection.

In case of rejection of the application, the applicant then has the option to call the court of appeal within ten days of the notification of the judgment. The complaint in Court of Appeal, however, does not suspend the effects of the judgment.

Against the decision of the court of appeals, finally, can be presented appeal in the Court of Cassation, within thirty days of judgment notification.

2.2.5 The content of International Protection

As mentioned before, the International Protection statuses provided by the Italian jurisdiction are two: that of the refugees and that of a person still in need of International Protection, and worthy of subsidiary protection (Legislative Decree n. 251 of 19 November 2007). These two statuses, despite having some common characteristics, differ in many aspects. In generally speaking, as noted by Codini, they ‘*place the beneficiary in a position between the Italian citizen and that of non – EU citizenship*’. There is then a third status, not comparable in terms of rights to the other two and therefore did not fall within the International Protection status: The ‘humanitarian protection’, granted on the basis of the art. 32 paragraph 3 of Legislative Decree n. 25 of 2008. It should be noted from the outset that the *ratio* of the Legislative

⁸⁵ Where the appeal relates to a decision declaring inadmissible the application for recognition of refugee status or subsidiary protection in the event of rejection of the application as manifestly unfounded, as a result of removal of the applicant from CARA without just cause, in cases of rejection of the application submitted for the sole purpose of delaying or preventing the execution of an expulsion or refoulement and in cases of recurrent already recipients of an expulsion or refoulement.

Decree 251/2007 is the maintenance of the family unit of the International Protection holders, it is ordered that the families who have not individually the right for the International Protection status have the same rights recognized to the family that has the status art.22.

To analyze the content of the protection granted is necessary to refer first to the permit of stay issued. Pursuant to the art. 23 of Legislative Decree 251/2007, to the refugee status holders is issued a five-year and renewable permit of stay, while the subsidiary protection holders is granted a permit of stay for subsidiary protection, valid for three years and renewable after the verification of the conditions that allowed the recognition of this protection.

Regarding the holders of the third type of protection, they receive a permit of stay for humanitarian reasons, which duration depends on the persistence of the causes that led to its adoption, with the possibility of renewal as long as those conditions remain (Article 5, paragraph 6 and art. 19 Legislative Decree no. 286 of 1998).

In all the three cases the permit of stay allows to carry out working activities. It is important to note, however, that the International Protection holders are treated much better than other foreign workers, as they *'have the right to enjoy the same treatment as Italian citizen'* (Article 25D.lgs 251/2007). Refugee status holder is also granted the possibility to have access to public employment, in the manner and limits for European Union citizens.

Regarding also the access to education, the International Protection holders are entitled to access to the general education system and for further training, to the extent and in the manner prescribed for the foreign residents, or with substantial equality of conditions compared to Italian students, except the adoption of measures to encourage the achievement of qualifications in primary and secondary school. For minor beneficiaries of International Protection is provided the access to studies "of all levels, in the manner prescribed for the Italian citizen "(Article 26D.lgs 251/2007).

Refugee status holder or subsidiary protection status, on health and social care, are also entitled to the same treatment accorded for Italian citizens. They can also move freely within national territory and to refugee status holder is also released valid travel document of five years, renewable and for travel outside the country. The Subsidiary protection holders may be issued a travel document if there are ground reasons and it is

not possible to apply for a passport to the diplomatic and consular authorities of the country of origin.

The mentioned Decree, art. 29, also refers to the integration measures and to the housing access, taking the provisions contained in *Martelli* law (Law no. 39 of 28 February 1990), art. 5 of Legislative Decree 140/2005 and art. 40 of Legislative Decree 286/1998. It is finally provided assistance in the case of voluntary repatriation of International Protection holders.

2.2.6 Termination and withdrawal of the International Protection status

In conclusion, a reference is to be made about the absence of the International Protection status an hypothesis once again regulated by Legislative Decree 251/2007. Considering that the International Protection may be revoked, there are two specific cases that cause this situation⁸⁶: the *expiration* or *revocation*. The conditions of these two applications hanger slightly depending on whether the International Protection consists in the refugee status or subsidiary protection.

Generally it may be noted that the cessation of the refugee status or the subsidiary protection is arranged if the circumstances which led to the recognition of such status, provided such change is not because of temporary nature, and to ensure that refugees and beneficiaries of subsidiary protection will not be persecution or have serious harm, and where there are no serious reasons of humanitarian character preventing them from returning to the country of origin. For the determination of the specific cases that determine the termination of the refugee status must make reference to art. 9: this occurs when the refugee acquires the Italian citizenship (or other citizenship and then enjoy the protection of the country that awarded it to him), as the refugee status '*By its nature inherent for the foreign*' and when has voluntarily re-established in the country in which he was afraid of being persecuted. The decision on termination is the result of an evaluation of the National Commission on the basis the personal and specific circumstances. Regarding the revocation of the refugee and the subsidiary protection

⁸⁶ There is actually a third option, provided article 34 of Legislative Decree 25/2008, which states: "The express waiver to refugee status or subsidiary protection entity admitted to determine the loss of the same status."

status, it is taken on an individual basis, provided by the National Commission, when the conditions for the denial⁸⁷ of status and when, after recognition of such status, it is established that they have been determined exclusively on the basis of the facts presented incorrectly or omitted, or if used a false documents.

As per art. 35 of Legislative Decree 25/2008, even if the decision to termination or revocation of refugee status and subsidiary protection it is possible to make an appeal ‘to the competent court in relation to the Territorial Commission that issued the warrant, which has granted the status of which has been the cessation or the revocation’.

⁸⁷ The conditions for the denial of refugee status are contained in Article 12 of Legislative Decree 251/2007 which states: "On the basis of an individual assessment, refugee status is not recognized when: a) in accordance with the provisions of Articles 3, 4, 5 and 6 are not fulfilled the conditions laid down in articles 7 and 8, or existence of the grounds for exclusion laid down in Article 10 b) there are reasonable grounds to believe that the alien is a danger to the safety State c) the alien is a danger to public order and public safety, having been convicted by final judgment of the offenses referred to in Article 407, paragraph 2, letter a) of the Code of Criminal Procedure. ‘The conditions for exclusion from subsidiary protection instead contained art. 16, which reads: ‘The status of subsidiary protection is not possible when there are reasonable grounds for believing that the alien: a) has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments of such crimes; b) has, in the country or abroad, a serious crime. The severity of the offense is also evaluated taking into account the penalty, not less than the minimum four years or a maximum of ten years, under Italian law for the offense; c) has been guilty of acts contrary to the purposes and principles of the UN, as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations d) constitutes a danger to national security or to the order and public safety. Paragraph 1 shall also apply to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

CHAPTER 3

REFUGEE ACCEPTANCE IN ITALY

Until the end of the 80s in Italy the public opinion had not yet become aware of the significant presence of the immigrants and, among these, of refugees, a category to which were referred by the generic term 'refugee'. The concept of refugee was mostly unknown to the general public. Unlike other European countries, including Germany, France and Great Britain, characterized by large flows of asylum seekers since the early eighties, Italy had been hitherto mostly outside of major migration.

With the changes that happened in the international arena between 1989 and 1990 Italy also had to be aware of the situation and to face the problem.

It was at this delicate historic moment on 22 February 1990 that was born in Italy, the first institution in charge of the protection of the asylum seekers and refugees rights, the Italian Refugee Council - CIR. The CIR objective was to coordinate and to support the work in the field, which up to that time was carried out by civil society organizations and volunteering.

In 1992 CIR became partner of the ECRE, the European Council for Refugees and Exiles, established in 1974 by various confederations of European organizations dedicated to the protection of asylum seekers and refugees, acquiring a international dimension that over the years has been characterized as an important stimulus to undertake campaigns and lobbying for the improvement of the procedures and the content of International Protection in Italy. The activities of the CIR, yet operating, over the years have been focused on the access to protection, through assistance at the border, legal and social assistance for asylum seekers and International Protection holders, as well as through support for refugees community and unaccompanied minors. In the absence of a specific and unified legislation on asylum, the preparation reception projects in favor of migrants and asylum seekers in the nineties was carried out mostly by third sector organizations at local level, without coordination or planning activities. We will have to wait until 1999 for the first institutional project, supported by the European Union and managed by the Ministry of Interior and by CIR. The project, called Common Action, aimed to create a real network of services for asylum seekers coming from Kosovo, through the involvement of various organizations of the third

sector, including ACLI (Associazioni Cristiane Lavoratori Italiani), Caritas, CISL (Confederazione Italiana Sindacato Lavoratori), UIL (Unione Italiana del Lavoro) and FCEI (Federazione delle chiese evangeliche in Italia).

The Common Action, which in 2000⁸⁸ was extended also to all other nationalities of asylum seekers present in the Italian territory, was configured as the first attempt to create an integrated system in favor of asylum seekers and refugee reception. This will be the forerunner of the National Asylum Program (PNA) established in July 2001 by the Ministry of the Interior, UNHCR and ANCI (Associazione Nazionale Comuni Italiani) in order to create the material conditions for the implementation of the European Directive 596 of 28 September 2000, established by the European Fund for Refugees. The PNA had three main objectives: the creation of a reception network services for asylum seekers, for the beneficiaries holding a permit of stay for humanitarian reasons and for temporary protection holders, the promotion of specific measures of integration of refugees or humanitarian entrants, the arrangement of paths of voluntary repatriation, to be implemented in collaboration with the International Organization for Migration (OIM). The persons responsible for the effective delivery of reception services and integration were identified in the municipalities, coordinated by ANCI, being the PNA logic oriented to the capillarity and decentralization. The municipalities were also entrusted the coordination of the stakeholders, public and private, mobilized on the territory for the refugees and asylum seekers reception.

Regarding to the first objective of the PNA (the reception, the projects launched, as well as providing room and board) must also ensure information activities on the asylum procedure, assistance on how to have access to social services, as well as literacy courses, with particular attention for the vulnerable groups. The integration measures provide orientation services to the labor market, vocational training, working grant and accommodation contributions. Finally, the measures for the assisted voluntary repatriation were entrusted to the International Organization for Migration (IOM), through an agreement in 2001 with the Ministry of the Interior.

Despite the difficulties encountered in these years, especially in relation to found disbursement mode, very slow and bureaucratic, with consequent delays in financing the projects, the PNA experience can be considered positive. The success of the PNA

⁸⁸ Caponio, Tiziana, , *Dal Programma nazionale asilo al Sistema di protezione per richiedenti asilo e rifugiati (2011-2004). Bilancio di una esperienza di governo territoriale dei flussi migratori*, Centro Studi di Politica Internazionale- Cespi, ottobre 2004, in www.cespi.it

has been recognized with the establishment in 2002 of the SPRAR (Sistema di protezione per richiedenti asilo e rifugiati), whose organizational and institutional reflects that of the PNA.

3.1 The articulation of the acceptance system

The protection system for asylum seekers and refugees (SPRAR) is only one of the reception forms provided by the Italian legal system. If we analyze the reception system in its entirety, we will note its great variety and heterogeneity: in addition to the shelters established under SPRAR, in fact, there are also the government receptions or the detention centers to which it has been referred several times in this work.

The diversification of the reception centers is concretely founded under many respects: regarding the nature of the managing body (institutional or private capital), the objectives to be reached (first or second reception), the type of approach (helpful or planning) for the nature of the placement (detention or reception), for structural characteristics (collective center or individual apartments), for the type the services provided and then depending on the receptive capacity.

If the government centers should fulfill the function of providing a first reception for asylum seekers and International Protection, the other types have different objectives related to the second reception and the integration.

3.1.1 The first phase of acceptance: the government centers

As it has been noted during the discussion of the previous chapters, the birth and the functioning of the government centers in charge for the reception or detention of migrants (including International Protection seekers) is not provided within a unitary legislation but it is covered in a number of fragmented provisions, which over the years have been integrated with each other for the creation of today's system. These centers have been established over the years as measures for *first reception* for asylum seekers and migrants, a very delicate process that should be characterized as a support measure for the beneficiaries in the 'emergency phase' with a view to their subsequent social integration in the hosting country. These centers are divided into four different types:

first aid and reception centers (CPSA), reception centers (CDA), asylum seekers centers (CARA) and finally identification and expulsion centers (CIE).

First aid and acceptance centers (CPSA) were established with Interministerial Decree of 16 February 2006 to give a first temporary assistance to intercepted migrants rescued at sea, before sending them, at the other government centers. Although the decree does not indicate the actual effective permanence modalities, timing normally is quite short, and the retention is on average of 48 hours. The best known CPSA is that of Lampedusa.

The acceptance centers (CDA) was established by Law no. 563 of 29 December 1995 - the so-called Apulia law - an emergency norm situation that involves the creation of centers to meet the primary care needs for migrant groups who are without means of support and are waiting for the identification or possibly expulsion. The reception in these centers does not provide a time limit, being established that the first aid operations should be carried out in “necessary time “to allow the adoption of the measures. Even the discipline of stay in the centers, the reception measures and the migrant rights are not defined by law.

The acceptance centers for asylum seekers (CARA), established by Legislative Decree n. 25 of 2008, represent the evolution of the Identification Centers (CID) and provide for the reception of asylum seekers in case it is needed to determine or verify their identity or if they are already recipients of a measure of expulsion before the submission of the application (adopted because they are taken away from the border control, if where they were kept in the State without having applied for a permit of stay or if allowed to has expired or has been canceled or revoked). The CARA currently⁸⁹ Operating are 98, to which must be added the structures of the Board of Directors of Bari and Syracuse that are used temporarily as CARA.

The Identification and Expulsion Centers (CIE), are ex Temporary Stay and Assistance Centers (CPTA) statutory by the *Turco-Napolitano* law, renamed with the

⁸⁹ According to data provided by the Ministry of the Interior the CARA currently operating are located in the following cities: Caltanissetta, Contrada Pian del Lago - 96 seats, Crotona, location Sant'Anna - 256 seats, Foggia, Borgo Mezzanone - 198 seats, Gorizia, Gradisca d'Isonzo - 138 seats, Trapani, Salina Grande - 310 seats; Trapani Mazara del Vallo - 100 seats (CDA + CARA), Trapani Valderice - 200 seats (CDA + CARA), Trapani Marsala - 114 seats (CDA + CARA); Trapani Castelvetrano - 121 seats (CDA + CARA)

security package (Decree-Law no. 92 of 2008). It is provided the detention in these centers for those asylum seekers who are already recipients of a deportation order before the submission of the application (except the detention case in CARA), for a maximum period of 180 days. Since this is a form of limitation of personal freedom of asylum seeker it is not possible to leave the center and it is necessary the validation of the detention by the judge of peace. Although the applicants may be assisted or held in all the four types of structure, the only centers which may be considered as part of the reception system is the CARA, despite there is no lack of critical elements.

One element of concern regards the timing of welcome. The law provides that the applicant must be hosted in the center for the time strictly necessary and, in any case, for the period which may not exceed 35 days, corresponding to the time required by law to recognize the status. In reality, the actual timing of stay appear be decidedly longer. As noted⁹⁰ by Carlini in fact, the stay in the centers in many cases reaches the duration of one year, with an estimated average of about 4 months. These delays are to be charged on the one hand to the fact that the procedure for the recognition of the International Protection status have longer times than those provided by the legislature and, on the other hand the difficulty to insert the asylum seekers in secondary reception, as a consequence of the scarcity of their accommodation capacities. The CARA have been transformed from places where housing asylum seekers exclusively for the duration of the procedure, in places where the refugees remain also after the recognition of status.

A second thing to be noticed is about the choice of the space devoted to these structures. The CARA in fact are structures of large⁹¹ dimensions, which in most cases were previously used for other purposes (ex industrial buildings, airports, former salt, former barracks). They are located in remote areas and isolated from the rest of the area, surrounded by fences, for which, from a structurally point of view, "the containment function often appears predominant compared to that reception". Some of them are made by prefabricated container or appear unable to provide dignified reception conditions.

It should be noted also that in many cases there is an overlap between CARA and CDA, although, to the different roles they play, the population in the two types of centers

⁹⁰ Carlini, Valeria, *La protezione sociale di richiedenti asilo e rifugiati*, in Hein, C., op., cit., p.231.

⁹¹ Consider that the CARA Crotona is the largest in Europe, with a capacity of 1200 seats. The decision to use large buildings arises from the need to host a large number of asylum seekers.

should be distinguished (asylum seekers in CARA, migrants awaiting for deportation or identification CDA).

Figure 1: the CARA of Crotona



Another element to consider is the capacity of these centers, in the light of the huge number of migrants and asylum seekers landed in 2008 on the Italian coast. This has resulted in an alarming overcrowding of the centers⁹² of the South Italy, with inevitable repercussions on the quality of services offered. With the drastic decreased of landings from April 2009 following the Treaty of Friendship between Italy and Libya, the living conditions in the centers had improved, with larger living space and more humane standards of treatment.

Following the ‘bread revolution’ in Tunisia in January 2011 and to the subsequent rebellion movement that broke out in North Africa new waves of refugees poured on the Italian coast, in a so huge number to force the government to declare in 12 February a humanitarian emergency state until 31 December 2011⁹³, noting the inadequacy of the reception or detention of structures for migrants. The humanitarian emergency activates the mechanism provided by the law on the civil protection, possible in cases of ‘natural disasters, catastrophes or other events, both in intensity and extent, have to be tackled with extraordinary powers and means’⁹⁴.

On this issue was the comment of dr. Fulvio Vassallo Palaeologus who in an article pointed out that the recovery in arrivals migrants is ‘irrefutable proof of the

⁹² An example is given from the center of St. Anne in Crotona in which, in peak times, there were up to 1900 admissions, although the maximum capacity were 1200 seats.

⁹³ D.P.C.M. del 12.02.2011 in *G.U. n. 42 del 21.02.2011*

⁹⁴ Law of 24 February 1992, 225 in ordinary supplement OJ March 17, 64

externalization policies failure of border controls with which Italy has proposed Europe as a mediator, even with the worst African dictators, to block migrants, and among them many potential asylum seekers before they could reach our shores'⁹⁵. It denounces the state of what is called reception of migrants held in detention centers in inhumane conditions, and affected by more frequent escape attempts and acts of self-harm. To address the emergency landings, on 5 April 2011 the government resorted re-institution of temporary protection, issuing a decree precisely 'humanitarian measures for temporary protection' for the benefit of the North Africa citizens that have arrived in Italy since the 1st January and the date of issue of the some Decree. This decree provides for the issuance of a permit of stay for a period of six months, issued by the police headquarters with emergency procedures, free upon request of the interested parties. It is ordered that the temporary protection preclude the possibility of subsequent demand of International Protection. However, as regards the situation of applicants for International Protection, they have the opportunity to apply for temporary protection, but they have to surrender the request for protection internationally. The decree also states that the assistance measures are established in consultation with the regions concerned.

On 6 April 2011 was therefore signed an agreement between the State, the Regions and local authorities, followed by the implementing document called 'Plan for the reception of migrants', in which it was required the intervention of the system National Civil Protection to plan and manage the reception of both refugees and migrants arrived from 1 January to April 5 developed countries for the North Africa countries. It provides for the distribution of migrants at the first aid structures identified and implemented throughout the country. The Plan aims, as well as measures to ensure basic health care, to provide assistance to migrants, following the criterion of equal distribution across the nation. It was therefore created a kind of 'parallel system' to use the words of the SPRAR the referent the City of Venice, dr. Ivan Carlot, constituted by reception centers set up to deal with the emergency in the various regions Italy. The government in fact, instead of exploiting the resources and expertise consolidated through years of experience of project network SPRAR, preferred establish a further system which,

⁹⁵ Paleologo, Fulvio Vassallo, Fuga dalla Tunisia- Le responsabilità del governo italiano. Dietro l'emergenza umanitaria ancora violazioni dello stato di diritto, in http://www.asgi.it/public/parser_download/save/1_fuga_dalla_tunisia_le_responsabilita_del_governo_italiano_fulvio_vassallo.pdf

besides being more costly, is not able to offer the quality standards provided by SPRAR services.

3.1.2 *The second phase of reception: the SPRAR*

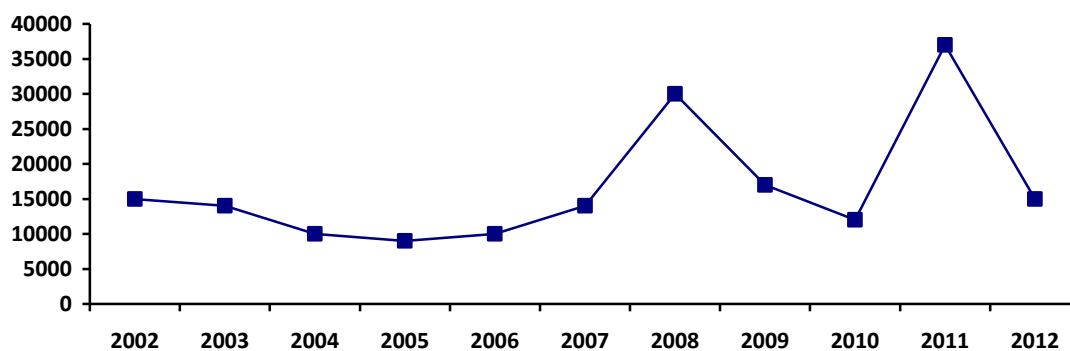
As mentioned above, the *Bossi-Fini* law, collecting the legacy of the National Asylum Programme - PNA, established the current system protection for asylum-seekers and refugees SPRAR, which is the circuit secondary care service. It is characterized as a decentralized system for the provision of services for the reception of International Protection, refugees and humanitarian entrants, for construction of multi-level governance in which different actors at central, local and international cooperate to define strategies and processing steps. Under the provisions of the Bossi-Fini art. 32 *sexies*, is recognized with the role played by the ANCI within the PNA, providing the entrust to the ‘Central Service information, promotion, counseling, monitoring and technical support’. This is configured as the operational body SPRAR, in charge of the rationalization and optimization of the protection system, and the coordination at the national level, of the various territorial receptions. The Article. 32 *sexies* provides that the Central Service should monitor the presence on the territory of asylum seekers and refugees; create a database of interventions and facilitate the dissemination of the information on such interventions, provide technical assistance to local authorities and promote and implement the return programs through the International Organization for Migration - IOM, in cooperation with the Ministry of Foreign Affairs. For the implementation of these activities art. 2 provides for the establishment, at the Ministry of the Interior, the National Fund for Asylum Policies and Services asylum, funded by the Italian Government, by allocations from the European Refugees Fund, as well as any contributions and gifts made by ‘Individuals, institutions or organizations, including international and other European Union bodies’.

SPRAR is a network constituted by the local authorities, as institutions project managers, and third sector organizations, as *Implementing Party*, who access voluntarily to the National Fund for Asylum Policies and asylum services, providing what is called integrated reception, which is not limited to interventions based materials (such as the predisposition room and board), but it includes also the promotion of the services

provision, the acquisition of tools for self-reliance of the beneficiaries, in order to trigger empowerment processes. These are among the health and social care services, multicultural activities, mediation and educational placement of minors, guidance and legal information and services for housing, for training and job placement.

During these 10 years the SPRAR network actors involved in territorial projects has gradually extended. If in 2003 the territorial local owner's projects were 50, in 2011 reached the number 158 including 128 local bodies. The distribution territory has increased over the years: while in 2003 the regions with the highest number of Common members of the SPRAR network were Puglia, Tuscany, Lombardy, Emilia- Romagna, Piedmont and Sicily, in 2011 the regions with least one center SPRAR reach almost all (except the Valle d'Aosta region). The year 2010, was called as the 'black year of Asylum'⁹⁶, it has a dramatic fall in asylum protection application in Italy. If in 2008 it was over 31,000 people in 2009, the questions are almost half (17,603 or -42.3% compared to 2008) to drop significantly in the past year. In 2011, the application for International Protection increased by 208,1%, as more than 58 thousand refugees most of them coming from the North Africa countries due to riots and internal civil war against the regime. In 2012 the applications for International Protection were 15,000.

Figure 1. Trend of International Protection applications lodged with the Territorial Commissions, 2002 - 2012



Source: elaborazione Cittalia su dati Ministero dell'Interno

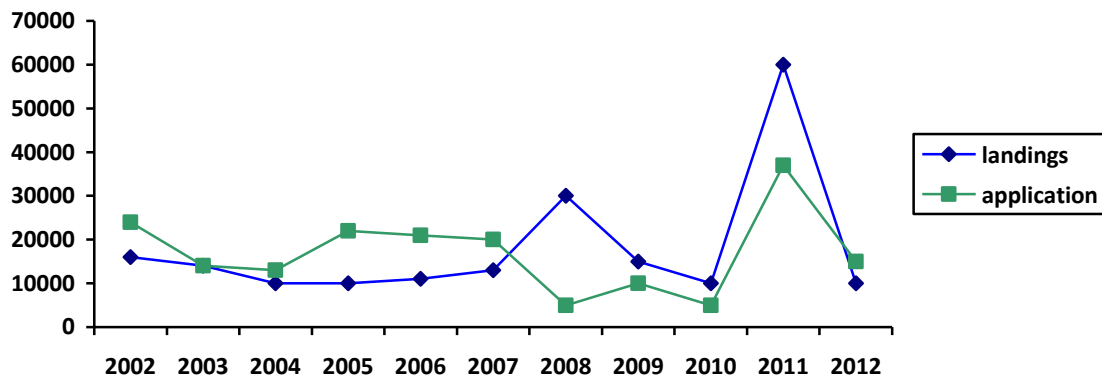
⁹⁶ Centro Astalli, *Rapporto Annuale 2011. Attività e servizi del Centro Astalli*, Roma, 2011.

If in 2008, among the 44 industrialized countries, Italy was the fifth country in ‘recipient’ of asylum seekers in 2010 it became fourteenth. This change is due to the ratification of the ‘Treaty of Friendship, Partnership and Cooperation Agreement’ with Libya approved by the Parliament in February 2009, which led to the intensification of border controls in order to combat illegal immigration, leading to a significant reduction in arrivals by sea and consequently instances of International Protection.

As we can see in the graph and in the table below, in 2011 there is an increase of landings and of International Protection application because thousands of refugees were coming from North African countries due the war and to the internal riots. Also in the 2008-2010 periods, in 2008 there is an increase of immigrants who landed matched by an increase of International Protection applications while in 2010 there was a decrease of both immigrants’ arrival and International Protection applications. In particular, if between 2007 and 2008 there was an increase in immigrants landed on the Italian coast by 83% there was an increase also in requests for asylum by 118%. Between 2008 and 2009, a decrease of 74% of immigrants landing on the Italian coast, was accompanied by a decrease of over 42% in asylum applications.

The same trend was finally detected in the last year, where a 54% decrease in arrivals by sea was accompanied by a decrease of 31% of the instances from the previous year.

Figure 1. Trend of International Protection applications lodged with the Territorial Commissions, 2002 - 2012



Source: elaborazione Cittalia su dati Ministero dell'Interno

n 2011⁹⁷, were registered 37,350 asylum applications (+208, 1%) while in 2012 both landing and application decrease.

| Table 1 - Arrivals on the Italian coast and International Protection applications, 2007-2012. | | | | |
|---|----------------|----------------------|-----------------------------------|----------------------|
| Year | Arrival by sea | Change previous year | Instances of protection presented | Change previous year |
| 2007 | 20.165 | -8,4% | 14.053 | 35,8% |
| 2008 | 36.951 | +83,2% | 30.492 | +117% |
| 2009 | 9.573 | -74,1% | 17.603 | -42,3% |
| 2010 | 4.406 | -54% | 12.121 | 31,1% |
| 2011 | 60.656 | +1376,66% | 37.350 | +308,1% |
| 2012 | 7.849 | -772,78% | 15.715 | -237,67% |

Source: elaborazione Cittalia su dati Ministero dell'Interno

The increase of the applications was due in to what was called the *North Africa Emergency*, with large migration flows followed the movements toward independence movements born within-the Arab Spring. Africa is the continent from which provided the largest number of the applications (76.4%) in 2010 was- not significantly lower (35.3%).The top ten countries of origin of foreign nationals who submitted the applications for asylum belong to two continents: Africa, and Asia. Nigerian citizens submitted the highest number of applications (7,030) followed by the Tunisians (4,805) and Ghanaians (3,402).

In 2010, most of the people who have applied for protection came from Africa (4,284), Europe (4,018) and Asia (3,560). In particular, applications for asylum lodged by citizens coming from the former Yugoslavia or Kurds from Iraq and Turkey who came to Italy by sea or by land across the border between Italy and Slovenia, as well as the last year in the three previous year's most instances have been advanced by people fleeing from Africa and Asia mainly using the paths that connect the sub-Sahara to Mediterranean. In particular, people fleeing conflict or persecution and arrived in Italy to apply for International Protection in 2010 came mainly, in descending order, from the

⁹⁷ UNHCR, Statistical annual report global trends 2011, June 2012.

former Yugoslavia (2,249), Nigeria (1,632), Pakistan (1,115), Turkey, Afghanistan, Iraq, Ghana, Iran, Ivory Coast and Bangladesh.

Compared to the 2008/2009 period significantly decreased the demands made by migrants fleeing the Horn of Africa and Bangladesh, while on the contrary increased, as we can see in the chart below, those of the citizens of the former Yugoslavia. In fact there are still thousands of people who have never been able to return to the places from which they were forced to flee because of the war and who still live in war conditions as the refugees scattered in the countries of the former Yugoslavia.

3.1.3 Access to SPRAR: characteristics and material conditions hospitality

The first step for access to the network SPRAR of asylum seekers, refugees, holders of subsidiary protection and humanitarian protection consists of a report of the case in the database of the Central Service through sending a fax. The message can be done by different actors: local authorities belonging to the network SPRAR or that manages local projects, protection associations, prefectures and police headquarters. Reports may also come directly from the Identification Centers - CIE or centers welcome asylum seekers - CARA. The reports must also contain the residence permit or the certificate name of the individual concerned, a social report on the situation of each potential beneficiary and the reference of the person to contact at the moment when it is detected that the hospitality solution for the person reported. The evaluation of requests for reception occurs in the light of some parameters that should allow find the answer that best suits the needs of beneficiaries: the date of the request, the specific condition of applicant, the presence of vulnerable situations, the type of residence permit, the place from which the signal.

The Central Service, after identifying the places available, starts the steps to contact the beneficiary and the entity that provides the project welcome, and to organize the transfer of the beneficiary at the place of acceptance. The timing of entry varies depending on availability of places and the number of requests received, but in any case, priority is given to reports from the prefectures, which receive a response within two days of receipt.

As reported⁹⁸ in our Report SPRAR for the year 2010, significant and majority can be considered the number of complaints from the CARA and the other governmental centers, well 1275 came from these centers⁹⁹, while the signals coming from the prefectures and local authorities, associations and NGOs amounted to 1,060 and 600 respectively (see Table 2)

| Table 2 - Beneficiaries received reported by Cara, 2010 | | | | | |
|--|-------------------|---------------------|--------------|----------------------|--------------|
| CARA | Single man | Single woman | Units | Single parent | Total |
| Bari Palese | 119 | 13 | 87 | 40 | 253 |
| Gradisca D'isonzo | 127 | 6 | 64 | 26 | 223 |
| Sant'angelo di Brolo | 104 | 9 | 43 | 0 | 156 |
| Salina Grande | 49 | 23 | 28 | 30 | 130 |
| Sant'Anna | 60 | 2 | 60 | 8 | 130 |
| Pian dal Lago | 66 | 19 | 19 | 8 | 112 |
| Castelnuovo di Porto | 30 | 17 | 26 | 25 | 95 |
| Marsala | 43 | 11 | 0 | 8 | 62 |
| Borgomezzazone | 30 | 15 | 4 | 8 | 57 |
| Restinco Brindisi | 40 | 0 | 0 | 0 | 40 |
| Siracusa | 0 | 2 | 3 | 6 | 11 |
| Total | 668 | 117 | 331 | 159 | 1275 |

At the end of September 2011¹⁰⁰ SPRAR welcomed 4,865 people, mostly males (76.0%), mainly from Afghanistan (13.7%), Somalia (13.1%), Eritrea (10.8%), Nigeria (7.6%) and Pakistan (5.9%). Among the beneficiaries, those who have received subsidiary protection are the majority (34% of total) than holders of humanitarian protection (16%) as compared to the component of refugees (20%), while applicants for International Protection are the 30% of welcome.

⁹⁸ SPRAR, Rapporto annuale del Sistema di protezione per richiedenti asilo e rifugiati, anno 2010/2011.

⁹⁹ It should be noted that the 2009 data are influenced by emergency landings in 2008, the year in which they were set up some temporary government structures], many of which were then closed (center of Martina Franca in Taranto, Follonica - Gr, Ragusa and the Cenacle Dominican Solarino-Sr). Following the closure of these canters people who lived there were moved into shelters SPRAR network, the total number of 209 people.

¹⁰⁰ SPRAR, Rapporto annuale del Sistema di protezione per richiedenti asilo e rifugiati, anno 2010/2011.

The local projects in the SPRAR network different types of shelters, so that beneficiaries can be housed in apartments, and community centers of medium and large dimensions. The first housing solution is one that provides more autonomy to users of the service, as the need for operator intervention is external and management is assigned directly to the beneficiaries. The collective centers of small size provide the management of structure while the activities are entrusted to the social operators that are always present in the centers during the day. The centers of medium and large size, finally, include the presence of operators even during nighttime and are characterized by being the solution that, among the three, ensures less autonomy and participation. In all cases in the entering moment in the reception facilities it must be signed the so called the "host contract" between the user and the project areas in which are set out mutual commitments and the time of reception.

With regard to the distribution of food, there are several solutions that can be taken by individual local projects: apart from the case of accommodation in apartments, where for most he meal preparation is managed in complete autonomy by the beneficiaries, in the case of collective centers can be used the distribution of food stamp pre-paid, direct distribution of food, or the organization of a canteen service managed by the beneficiaries.

3.1.4 The time of reception

Under the provisions of the Legislative Decree n. 140 of 2005, the State has the obligation to provide the reception to the asylum seeker if it is in need until the definition of recognition procedure.

The time spent inside SPRAR vary by situation of the individual beneficiary. If the beneficiary has entered the network SPRAR by the applicant and to be recognized for International Protection, can be accepted for a period not exceeding six months from the date of notification of measure. The period of six months applies to beneficiaries who enter the SPRAR network having already the refugee status, protection subsidiary or humanitarian protection. If, however, the applicant is denied protection and recourse, is entitled to remain in the reception only for the period in which he is not allowed to work

or if the physical conditions that prevent him to work (Article 5, paragraph 7 of Legislative Decree 140/2005).

In the case of beneficiaries "ordinary", not belonging to the categories vulnerable, there is the possibility of the extension under exceptional circumstances and duly motivated authorization of the Ministry of the Interior through the Central Service for a further six months (to nine in the case of families who are in conditions of objective difficulty). For categories and vulnerable children, however, there are additional exceptions because of their ability to participate.

3.1.5 The services offered by SPRAR

The services offered within the SPRAR network are grouped into nine broad categories: health care, social assistance, multicultural activities, educational placement of the child, linguistic and cultural mediation, guidance and legal information, addressing their housing, job placement and services training. Among the measures of social assistance are included also the activities Italian language course and literacy, while the activities of linguistic and cultural mediation affect different areas with which beneficiaries face, including the housing, work, social etc.

The social support measures constitute the highest percentage among the services provided (21.6%), followed by the activity of linguistic and cultural mediation and health care (both amounted to 19.6%). This is indicative of because it allows us to understand that, based on the needs of the beneficiaries of SPRAR network, services must in many cases be directed to the taking base load, with knowledge of the Italian territory activities and services present.

The ability of health and social care services, as determined by a search for the same service center, being influenced by the decentralization character of the SPRAR model, is rather heterogeneous. Local authorities are part of the network SPRAR fact, although they are bound to comply with the formal requirements defined by law and to prepare their own project by referring to the capacity and resources on their territory. This element, if from a side provides greater flexibility and "grip" of the projects to the contexts in which are implemented, from the other does not allow o ensure uniformity

of organizational standards and interaction with the social services in the various territories.

3.1.6 Exiting from SPRAR

As you can imagine the system of protection for asylum seekers and Refugees has as a priority objective the start of pathways to self- in different local contexts, both socially and economically, itself as the ultimate integration of beneficiaries. It is well from the start emphasized that in this work we will investigate the specifics of the issue of the integration of beneficiaries of the network SPRAR, as the issue of integration would require a treatise in itself, since this concept is not uniquely defined, but rather interpreted in different ways.

In 2011, the people who came out were SPRAR 2,999, 37% of which for those who are called 'reasons of integration'. The Service Central in this category identifies users who have found a living arrangement and / or a job at the time of the accommodation SPRAR, whether inside or outside the territory of the host. If the 30% has left the protection system for autonomous choice, 28% had completed welcome to the terms set by SPRAR, 4% was removed by serious reasons, while only 1% decided to take advantage of the return voluntary¹⁰¹.

Important factor which influences the path of integration, economic and territorial integration of the beneficiaries of the network SPRAR, is the characteristics of the local context of reception. From the data contained in the 2011/2012 SPRAR report the majority (43%) of the beneficiaries that went out of the project for integration and that remain in the territory of their host project and are able to achieve both of housing a job, because of the greater extension of the network and the contacts with the "local" welcome projects. The municipalities of small to medium size (from 5,001 to 40,000 inhabitants), offer better chance of addressing their housing and employment, with a percentage of 66%, followed by small towns (up to 5,000 residents - 53.8%), from those medium to large (from 40,001 to 250,000 inhabitants. - 50%), and from major cities (over 250,000 to 40.6%). It is clear that in local smaller contexts thanks to a storyline

¹⁰¹ SPRAR, *Rapporto annuale del Sistema di protezione per richiedenti asilo e rifugiati*, anno 2010/2011, p.39.

relational thicker and to a better knowledge of the area, is easier to find accommodation and work. In the final analysis it is necessary to detect the hosting projects in northern Italy showing a percentage of economic inclusion and territorial higher than those in the central and southern Italy. If the percentage of users who found a solution and housing work output SPRAR projects in northern Italy stood at 52.7%, for those in the center down to 46.2%, amounting to 43.2% for those in the south Italy.

3.1.7 The financing system

As mentioned earlier the local reception projects, part of the network SPRAR are financed by the National Fund for Policies and Services (Fnpsa), established in 2002 by the *Bossi-Fini* law, can be accessed within the limits of available resources, "the local authorities, including possibly associated, their unions or associations that provide services for the reception of applicants for International Protection and their family members, protection of refugees, holders of subsidiary protection and, in the alternative, the humanitarian foreign beneficiaries of protection. "Until 2007, the Fund, managed by the Ministry of the Interior, included funding from the European Fund for refugees, for a total of 17,500,000 €. For the period 2008-2013 instead was decided to allocate the funds of the European Fund for Refugees actions complementary, supplementary and intensifying respect to the host activities institutional framework SPRAR, with a total funding of 21,016,926.30 euro. The budget of the National Fund for 2011 amounts to € 35,102,807.39 to finance 3,000 seats allocated as follows: € 26,654,606.35 for the "ordinary" € 6,234,384.00 for the category "Vulnerable," 1,476,017.39 for the category "mental illness."

The guidelines, criteria and procedures for submission of applications for financing of local projects are contained in the Decree of 28 November, subsequently confirmed by Legislative Decree 140/2005, which introduced the distinction between classification categories for projects aimed at "ordinary" and rankings for the vulnerable categories. The information contained in the Decree of 28 November 2005, were subsequently updated with the Decree of 27 June 2007, by the Decree of 22 July 2008 and, finally, with the Ministerial Decree of 5 August 2010. According to the information contained in this decree the funds generated by the National Fund must comply with the maximum

80% of the total contribution cost of the services offered. It is a co-financing with the resources allocated by local authorities. From the announcement of July 2010, the duration of the projects is funded over three years, providing an important breath programming implementation of the operations of the medium and period. In the category of services are included even those to be activated in CDA or CARA, if they are present and operating in the territory of competence, subject to authorization by the Prefect to the local actuator the project. These services include the teaching of the Italian language, the activities entertainment, information, legal guidance, psycho-social support and information on voluntary return programs.

To access the Fund, local authorities are required to submit an application contribution, with effect from 1 June and not later than 1 July of the previous year of the annularity for which contribution is requested. In the Region responsible for the area is given the task of giving the project a score from 0 to 2 points that will affect, in the next step, the formation of general classification. This score is awarded on the basis of an assessment of the consistency of the project with respect to regional planning and its connection with networks of local and regional services. Generally, it is allowed only one application for each local authority, even when presented in the form with or as a consortium. It is expected, however, that can be accepted a second and a third question, respecting the limit, if they are aimed at the provision of services for respectively vulnerable groups or category of claimants and protection international with mental health or psychological and requiring assistance health, social and home care, specialist and prolonged.

Each application shall be accompanied by the financial plan, punishment the inadmissibility of the application.

CHAPTER 4

THE OUTBREAK OF THE UPRISING IN NORTH AFRICA AND THE NORTH AFRICA EMERGENCY MANAGEMENT IN ITALY

In this part I will try to carry out an initial assessment of the *North Africa Emergency* management, two years after that the wave occurred. I will insert this very specific research within this project for three reasons.

Firstly, because it is a question numerically relevant and easily identifiable in time and space: it is therefore possible to use it as a paradigmatic example of the approach used in Italy in these years to the problem of integration of the people immigrated "by force" in our country.

Secondly, the *North Africa Emergency* has seen in the frontline the Municipalities, who had to interact – at various levels - with the regions, the Police headquarters, the Prefectures, the Ministry of the Interior, Protezione Civile and *Managing Institutions*. The analysis of the *North Africa Emergency* management allows then to think more globally on the system of skills, with particular emphasis on the role of municipalities.

Finally, the study of the housing solutions adopted in the course of two years and the future prospects allows to reason on the house, one of the essential elements of the integration. Before going into detail with the *North Africa Emergency* management in Padua and Venice I will make a brief summary of the Gaddafi regime, Libya in the international community and the reasons that led the outbreak of the revolt on February 2011.

In the last sixty years of relationship between Italy and the independent Libya it seems that the story has been repeated more than once. What links the two states is not only a common past, but also steady business relations that have stood the political opposition. Libya played a crucial role for Italy in energy policy also because of its geographical proximity allowing easy access to resources. The Italian government has always looked to Libya, the one of Idris Senussi as that of Mu'ammar Gaddafi for its stabilizing role in the region, in relation to the risk of a Soviet expansion in the Mediterranean and in relation to the risk of a violent Islamic fundamentalism in which secularism of the Libyan regime was perceived as a natural staunch opponent. Italian politics has been taken as an example of a common foreign unable to break free from interference and to

safeguard its national interest before during the Senussi regime and also Gaddafi regime. Italy has therefore had to act in a limited possibility to get free for a range of political instability reasons, the membership of the Atlantic Alliance and especially the energy dependence¹⁰². Historically, the sector of the Middle East has had imposed limits by the U.S. policy, supported by Israel and opposed by the country that aimed to use the oil weapon to achieve political and economic objectives. With Libya lead for most of the seventy eighty years Italy has not had a chance of action. The Libyan civil war and the intervention of NATO affected the bilateral relations Rome-Tripoli. The relations between Libya and Italy have had swings between moments of friction and those of collaboration. Libya is an interest for Italian foreign policy. The recent political and economic crisis of 2011 that has hit Italy has shown the importance of Libya to the Italian government¹⁰³. Tripoli is the first supplier of oil and the third of natural gas. From February 2011, the Italian government had to deal with the import ban lasted several months, while supporting the humanitarian crisis that has pushed Libyan and Tunisian thousands of people to immigrate to Italy.

4.1 The Gaddafi policy

The politics of Gaddafi have gone through different periods with alternating phases going from pan-Arabism to pan-Africanism¹⁰⁴. The leader has always been focused on his objectives: the protection of national conflicts and his position in the country, in the African continent and in the world. Its policy in Africa can be divided into two phases. One that goes from his arrival to power in 1969 until the end of the eighties. During this period, the pan-Arabism focused on the Arab countries to the Maghreb and Mashreq, in sub-Saharan Africa and in the failed Chad and Uganda. The second phase ranging from the eighties until his death in 20 October 2011. During his regime Gaddafi supported not only liberation movements, such as the African National Congress in South African apartheid struggle, but also brutal regimes and dictatorships like that of Robert Mugabe in Zimbabwe, Charles Taylor in Liberia. Libya became a global network of warlords supported by the Gaddafi regime and in turn Gaddafi was supported by them. In the Sahel region Gaddafi had forged alliances with the Tuareg who remained beside him

¹⁰² F.Cresti e M.Cricco *Storia della Libia contemporanea*, Carocci, Roma 2012.

¹⁰³ F.Cresti e M.Cricco, *Gheddafi, I volti del potere*, Carocci, Roma, 2011.

¹⁰⁴ Karim, M and Varelli,A: *Libia. Fine o rinascita di una nazione?*, Donzelli editore, Roma, 2012.

during the conflict of 2011. Their return to Chad, Mali and Niger could cause problems for unstable governments of these countries and we cannot exclude the possibility that some of them will join the al-Qa'ida in the Islamic Maghereb, where radical Islam has already stirred up by the poor economic conditions. The regime of Idriss Deby in Chad depended from the relations with Gaddafi, but the Libyan authorities in 2012 didn't want to have any relationship. The new Libyan government has no interest even for agricultural development¹⁰⁵ programs in Mali funded by Gaddafi. The return of a high number of emigrants of about two hundred thousand people living in Libya is likely to create serious problems to a country such as Mali or Niger, under too a great strain that can cause other social tensions.

Gaddafi had promised to the African Union leaders that he would set aside \$ 90 billion for the success of his project of the United States of Africa, so the African Union has been waiting months to recognize the National Transitional Council (NTC) as the legitimate government of Libya. These resources will have to be replaced. China, Russia, and Turkey seem destined to play the role of main players in the Africa of tomorrow. If tomorrow not distinctly Western forces will be in power in Libya, they will want to reaffirm their position on the continent and the independence from a western neocolonialism that seems already begun. In this case, the oil resources will be still there at the disposal of the new masters of Libya, ready to be used with new alliances in the African continent.

4.1.1 Libya in the International community

The role of the international community has been essential during the preceding and the following weeks of the revolt against the regime of Mu'ammar Gaddafi. The intense activities conducted by France, United Kingdom and the United States in Libya were essential. The position of the European states and the U.S. reflects the alternation of the relationship between Libya and other nations during times of tension and periods of dialogue.

In 2009, the Western states began to show a certain impatience with Gaddafi. In September of the same year during the UN General Assembly he made a speech of 96

¹⁰⁵ Gaddafi UN Speech Libyan Leader Chucks Charter, Slams Security Council, in the Huffington Post, 23 September 2009.

minutes versus 15 granted causing embarrassment and confrontation among those present. Gaddafi focused his speech on five main points. First, the need to open an investigation into the Iraq war because it violated the Charter of the United Nations. Second, to find a solution to the Israeli-Palestinian crisis, the creation of a single Arab state. Third to change the rules of the UN Security Council, calling it "the terror council'. Fourth, to review the mechanisms put in place by the United Nations, which since World War II were not able to stop wars between nations. Finally, he called for the reform of the UN Charter to include the needs and input of the nations in the developing world. This did not prevent nor the election of Libya in 2010 in the Council for Human Rights of the United Nations neither the construction of the two summit of the Arab League in a conference between the EU and African countries to Libya.

4.1.2 The outbreak of the revolt

In February 2011, the protests begun first for the regime of Bena Ali in Tunisia and then for that of Hosni Mubarak in Egypt and it was expected that the Gaddafi regime could fall victim to a popular protest. In fact, in the wake of events in Tunisia and Egypt, the anger and frustration of the young Libyans erupted in Benghazi on 15 February 2011, when during a peaceful demonstrations in the streets, was arrested a young lawyer, Fathi Tirbil Salwa. The regime responded with force firing the crowd and injuring dozens of people. From that day, hundreds of demonstrators started demanding the end of the dictatorship in the cities of Bayda and Zintan giving kelp to the police headquarters and to the national apparatus¹⁰⁶. At the same time there were demonstrations in Tripoli to support the regime¹⁰⁷ in response to the demonstrations announced the release of 110 members of the Libyan Islamic Fighting Group after those of the previous year¹⁰⁸. The iron fist against protesters demanding to the government a job, a house and respect for basic human rights made think that would be resolved as the riots in 2006 when the riots in Benghazi, following the publication of the Danish cartoons of the Prophet Mohammed, had turned into a rebellion against the regime.

It did not go well, and on 17 February 2011 miles of protesters took to the streets again to protest the Gaddafi regime. The unrest was causing tragic deaths in many cities.

¹⁰⁶ Map of the Rebellion in Libya, Day by Day, in 'The New York Times' online.

¹⁰⁷Libyan state media silent on protests, BBC, 17 February 2011.

¹⁰⁸ Libya to free 110 Islamist militants from jail, Reuters, 16 February 2011.

Between 17 and 20 February the revolt spreads in the East in the city of Misrata, near Tripoli. On 18 February, the protesters in Bayda occupy a military air base, killing 50 African mercenaries of the regime. On 20 February in Derna the rebels set fire to a police headquarters station where other supporters of the regime are executed while the police headquarters left the city¹⁰⁹. The army refused to fire on the crowd and joined the demonstrators in Benghazi held several barracks, while small protests started in Tripoli. In this way starts the armed revolt against the forty year regime of Mu'ammār Gaddafi. The rebel advance seems unstoppable, but soon the initial inaction of perhaps loyalist turns into a fierce repression against civilians that will motivate the armed intervention of Western forces.

The initial statement of 19 February 2011 of the Prime Minister Silvio Berlusconi on the riots in Libya: "We are concerned about all that is happening, throughout the region, the situation is evolving and so we don't want to disturb anyone"¹¹⁰ aroused considerable controversy. How can Italy, which imports 25% of the country's oil and 10% of natural gas and has projects of billions of euro in that country for infrastructure and security, remain to look in such an important moment for the economic and national policy?

After two months, in 4 April, Italy, in the words of Foreign Minister Franco Frattini, has recognized the government of the rebels in Benghazi as the sole political party but not as the legitimate government of Libya¹¹¹, a choice which places the late Italy fourth after France, Britain and the United States in the post-Gaddafi seems to have begun.

The outbreak of the riots and the internal civil war against the Gaddafi regime in February 2011 forced the immigrants coming from North and South Africa and living in Libya to flee back in their country of origin or to escape by boat in Italy. During February – April 2011 tens of thousands of refugees fleeing from the war in Libya landed at Lampedusa Island by boat. Some of the boats made it to the shores on their own, others were intercepted by the coastguard and their passengers were taken off. At the time the Italian Government decided to distribute the refugees equally at national level and to establish the reception Plan called *North Africa Emergency*.

¹⁰⁹ Map of the Rebellion in Libya, Day by Day, in 'The New York Times' online.

¹¹⁰ Berlusconi preoccupato. "Ma non voglio disturbare Gheddafi", Rai NEWS 24, 19 February 2011.

¹¹¹ L'ira della Ue contro la Farnesina, 'Non può difendere un dittatore' in la Repubblica, 22 February 2011.

4.2 The North Africa Emergency Management in Padua and Venice

4.2.1 Normative aspects of the North Africa Emergency Management

On 12 February 2011 in Italy it was declared the state of humanitarian emergency due to the exceptional influx of citizens coming from North Africa. The wave of immigration that affected Italy was brought by the situation of conflicts in Libya and the unruliness and rebellions that in 2011 affected most part of the Arab world (especially in Tunisia and Egypt).

To cope with the complex problems of the emergency were signed two agreements between the Government, the Regions and Local Authorities, Joint Conference: the first in 30 March 2011¹¹² and the next one, which integrates the previous one, on 6 April 2011. According to the contents of the first agreement, it was necessary to distribute the refugees¹¹³ equally among all the regions (except Abruzzo region). The April agreement added to the first agreement the provision of the reception Plan for the refugee reception managed by the Protezione Civile Nazionale (National Civil Protection) with the support of the Protezione Civile Regionale (Regional Civil Protection).

By Order of the President of the Council of Ministers no. 3933 of 13 April 2011, in concurring with the Regions and the UPI representatives (Unione delle Province d'Italia) and ANCI - (Associazione Nazionale Comuni Italiani), the emergency management is entrusted to the Protezione Civile Nazionale and to its *deputy commissioner* the Head of the Department, Franco Gabrielli, who prepares **the national plan for the distribution on the territory**.

The Plan provided to grant assistance up to a maximum of 50 000 migrants throughout the national territory, in order to ensure to the refugees the initial reception and to provide the health care¹¹⁴. The Plan had three objectives: to guarantee the first reception, to ensure an equitable distribution on the Italian territory and to provide assistance in the regional areas.

¹¹² http://www.lavoro.gov.it/NR/rdonlyres/B366A6FD-81D3-4003-910768DF476147B8/0/OPCM_3933_13_4_2011_NordAfrica.pdf

¹¹³ Generic term for those who leave their country due to external events (wars, invasions, riots, natural disasters).

¹¹⁴ The distribution of the area was carried out on the basis of data on the resident population in Italy taken from ISTAT census 2010.

In turn, the regions in accordance with the *deputy commissioner* assigned the regional coordination to the *Implementing Party*, with the task of finding accommodation facilities, coordinate refugee placement and to stipulate the necessary agreements with the *Managing Institutions*.

Beyond the facilities that had been working in refugee reception and can therefore rely on some experience, the *Implementing Party* decided to sign different agreement also with the hotels, cottages and bed and breakfast facilities. The amount allocated to the *Managing Institutions* depends on the type of convention, for the reception facilities was set at € 46.00 per day for each guest assisted and the lump sum of € 8 per person per day for each place made available, for the hotel facilities the amount was set at 38 euro per day per guest assisted and € 8 per person per day for every place made available¹¹⁵.

With a circular issued in October 2011, by the *Deputy Commissioner* Franco Gabrielli, sent to all the regional *Implementing Parties* and to all the members of the Coordination Committee, it was informed that the *Implementing Party* will provide assistance to the migrants until the end of the ongoing humanitarian emergency in the country for, both those who in the meantime had obtained a permit of stay and for those whom the Territorial Commission¹¹⁶ rejected the application of International Protection¹¹⁷.

With the DPCM (Decree of the President of the Council of Ministers) of 6 October 2011 the *North Africa Emergency* reception was extended until 31 December 2012. At the end of 31 December 2012, it was open a subsequent phase in which the Ministry of the Interior, to avoid an uncomfortable situation that might also have an impact on the public order, has not imposed the automatic exit from the host system, providing limited services exclusively to food and accommodation (up to a maximum of €. 35.00 per person per day). The expiration of the last phase of reception was postponed to 28 February 2013.

A few days before the writing of these notes, through the Circular number 1424 of 18 February 2013, the Ministry of the Interior declares the closure of *North Africa*

¹¹⁵ For more information: <http://www.prefettura.it/venezia/contenuti/471584.htm>

¹¹⁶ The Commission, after hearing the applicant personally, will determine by recognizing the International Protection or the other protection typologies status or subsidiary protection or humanitarian grounds pursuant to art. 5, paragraph 6 Legislative Decree. 286/98 or rejecting the application.

¹¹⁷ In case the application is rejected, the applicant may lodge an appeal of International Protection to Ordinary Court having territorial jurisdiction within 30 days of notification of the Territorial Commission. Upon receipt of a notification of the rejection by the Territorial Commission, the competent police headquarters withdraw the permit of stay, but the applicant has the right to stay in the country up to the commencement of the action.

Reception after the last meeting held at the National Coordination Table with ANCI, UPI and the President of the Conference of the Regions and Autonomous Provinces where it was agreed on the issue of the travel document and the severance pay of € 500 for each refugee.

4.2.2 Emergency management in the Veneto Region

The Italian regions have faced the *North Africa Emergency* management in a different way, acquiring their own organization.

With the decree of the *Deputy Commissioner* no. 2573 of 20 May 2011, the **Prefect of Venice** was named *Implementing Party* for the activities required for the identification, implementation and management of the reception in the Veneto Region.

For the Veneto Region the initially National Plan provided the reception of 4,270 refugees. Based on the data collected by the Prefecture of Venice attendance recorded on 19 December 2012 in Venice were 1,069 refugees. As stated the objectives of the Plan, in Veneto was necessary to ensure the initial reception, the equitable geographical distribution and to provide the health care.

The reception included food and accommodation, a daily pocket money of € 2.50 (the amount was handed over to the guest at the beginning of the following month) healthcare, legal guidance - on legal regulations on migration and International Protection, Italian language course, cultural-linguistic mediation, vocational training for employment.

The *Implementing Party* interacted with the mayors of the municipalities to identify the structures dedicated for the reception signed, two types of agreement, one with the hotel and the other with accommodation facilities.

After the nationwide deadline for 31 December 2012, the Prefecture of Venice had to reformulate the conventions and to negotiate with *Managing Institutions* a fee of €. 30.00, having failed all the other services previously performed.

During the month of January 2013 some *Managing Institutions* continued to provide the same services without having received any communication from the prefectures of reference on the new convention. The new Convention of the Prefecture of Padua, with the new conditions and the services to be provided was received by the *Managing*

Institutions only on 31 January 2013, a month after that the *Managing Institutions* had already provided the service. This new agreement did not offer a range of services provided by the previous one, such as the costs of the legal and documentary deemed to have ended on 31 December 2012. The *Managing Institutions* who were not able to complete the bureaucratic process for guests by 31 December 2012, for delay in the Territorial Commission and in the police headquarters of reference, faced those costs during the month of January 2013. Expenses that would most likely will be not recognized to them.

4.2.3 Methodology

To achieve this research have been carried out different interviews with different subjects considered strategic in the emergency management. The interviews were conducted in the cities of Padua and Venice, in order to carry out an initial comparison of the emergency management in two different cities. Were interviewed the heads of the local authorities of the immigration, heads of the reception facilities and the operators who have actively contributed to the creation and the management of the operations. In total, were interviewed seven people between Padua and Venice. The questionnaire responses were structured to highlight the point of view of the different actors involved in the *North Africa Emergency* management, relations between the different authorities, housing insertion of the beneficiaries and their interventions designed to the upcoming release of the project. The interviews lasted approximately 25 minutes and were conducted in the months of January and February 2013 using a voice recorder. In the following pages is reported a summary of the opinions obtained from the interviews, regarding the general management of the emergency, the relationship with local authorities and the housing inclusion in the cities of Padua and Venice.

4.3 Padua: Overall management of the emergency

In Padua, the *North Africa Emergency* was managed in different ways. Some facilities made use of an existing model, the SPRAR¹¹⁸, national system for the reception of asylum seekers and refugees. Other refugees were received in diverse types of reception facilities such as apartments, big facilities and hotels. From the respondents opinion the emergency management was deeply affected by the lack of a **control group** to coordinate at national and regional level, which starting from the beginning should have managed and be at the forefront of the guidelines that should have been shared and carried out by the actors involved. Those that have experienced the greatest impact were the *Managing Institutions*.

Notwithstanding the occurrence of an emergency situation, which therefore could have not been planned and controlled with proper timing, it was felt by the reception facilities a lack of initial training. The reference institutions, in this case the Prefecture of Venice, should have become promoter of initial training, especially with regard to the management of the regulatory and bureaucratic procedure for the request of the International Protection¹¹⁹.

The reception facilities that have been working closely with the public institutions had a clearer guidance and used existing and consolidated models, while the others who worked in the emergency management had to adapt and find quick solutions. In particular, the facilities that had no previous experience in refugee's management found themselves in a spot with the operators handling all the paperwork for the application of the International Protection, and in some cases the application forms were filled out mistakenly.

In the initial phase it was necessary to devote ample space to the cultural mediators activities and to explain to the refugees the situation in which they found themselves

¹¹⁸ The system of protection for asylum seekers and refugees (SPRAR) established by Law n. 189/2002, is the network of local authorities - for the realization of projects of integrated reception – access, within the limits of available resources, the National Fund for Asylum Policies and Services . Interventions that local and third sector organizations implement collaborative result in a series of actions to ensure the shelter individual and socio-cultural integration support, providing not only food and lodging, but accompanying measures and legal counselling, health, social and linguistic. SPRAR is characterized by the temporary nature of its method, which, according to the guidelines, develops within six months, with possibility of extension in case it has not been achieved the goal of autonomy for socio-economic territorial integration.

¹¹⁹ Applicant for International Protection is the person who, outside his country of origin, presents in another application for the recognition of International Protection. The applicant remains that, until the competent authority (in Italy the Territorial Commissions for the recognition of International Protection) does not decide on the same question of protection.

and the need to deal with the bureaucratic procedures for the application of International Protection. For some guests there were no reasons needed to benefit from the International Protection: they were workers coming from the North Africa countries, who worked and lived in Libya and that fled at the time of the war, but that would have no impediment to return to their country of origin.

Most of the *Managing Institutions* have broadly respected the services required by the agreement signed with the prefecture of reference and this has ensured a degree of uniformity in the services provided, although some types of services and interventions were different when the guests were host in reception facilities or hotels.

With the experience gained by the *Managing Institutions* over the months, the opinion of the people interviewed converges on the idea that better results could have been achieved with a long-term project, which goes beyond the initial reception, and that would provide real tools of inclusion and integration. The duration of the emergency would have allowed building interventions of professional qualification of the beneficiaries and other actions in order to make the refugees more self-sufficient and also integrated with the end of the emergency.

For many *Managing Institutions* the termination of the *North Africa Emergency*, was that of the recognition of one of the protection status - Humanitarian Protection¹²⁰, Subsidiary Protection¹²¹ or International Protection. The *Managing Institutions* that were familiar in migration issues management create a personal project for each guest, bringing him to more autonomy and therefore to a greater integration.

4. 3.1 *The Municipality of Padua as a Managing Institution*

Starting from spring 2011 until the final closure of the *North Africa Emergency* at national level on 31 March 2013, the Municipality of Padua participated and was

¹²⁰ In the event that the Territorial Commission, while not accepting the application for International Protection, believes there may be compelling reasons of a humanitarian nature, provides for the transmission of documents, the request for protection to the superintendent responsible for any issuance of a residence permit for humanitarian protection (Article 5, paragraph 6 of the Legislative Decree n. 286/1998).

¹²¹ Subsidiary protection is another form of International Protection. Who owns it - although not possessing the requirements for the recognition of refugee status - is protected because, if returned to his country of origin, would face the risk of suffering serious harm. This definition is stated in Article. 2, letter. g) of Legislative Decree no. 251/2007.

directly involved in emergency management providing 20 beds. It had the role of *Managing Institution* signing a direct convention with the Prefecture of Venice.

The service management was entrusted to the cooperatives and associations of the territory who had a prior experience in refugee's reception and at the same time ran on behalf of the Municipality, with the SPRAR reception. The housing solution used was a model due to the type of management and services provided by SPRAR and the refugees were accepted in apartments for 5-6 people.

According to the Municipality of Padua the cooperatives have respected and provided the services agreed in the Convention. The refugees coming from Libya were afforded the same opportunities and conditions as the SPRAR system: assistance and legal support, health care, social inclusion, job placement and Italian language courses following the same procedures of SPRAR. Throughout the duration of the reception the refugees were accompanied by professionals with experience in refugee reception and in social insertion.

The Municipality of Padua organized regular and continuous Italian language courses in the awareness of the crucial role of language to facilitate the employment and social integration of the guests. For those people who had reached certain knowledge of the Italian language it was possible to start an internships in some local companies. Some of these internships were converted into employment contracts after a six-month period.

Regarding the housing insertion with the end of the emergency situation, the Municipality tried to find and to propose solutions to the refugees in some temporary reception facilities and associations present in the territory. It was not possible to find apartments because most of the refugees did not have a job and the owners of the apartments asked for guarantees, for the rent and for the payment of the utilities, expenses that the guests were not able to afford. On 31 March 2013, the refugees left the apartments of the reception with a contribution of severance pay of one thousand and two hundred euro (500 euro specified in the circular of the Ministry of the Interior euro to which were added 700 EUR provided by the Social Services Department). The contribution was important for those who already had a plan for the future, but did not solve the problem for a good part of them who are still in the area.

4.3.2 Communication between the institutions

During all the emergency management, all the stakeholders involved in the territory - the Police headquarters, the municipality and the *Managing Institutions* - collaborated actively and fruitfully, each of them performing the roles assigned by the Prefecture of Venice. The relationship between the institutions was positive, but in some cases there was a lack of communication and information sharing between the *Managing Institutions*. The lack of communication created challenges especially for the reception facilities that had no previous experience with the refugees. The bureaucratic practices that affected each guest were numerous and complex, with a further problem arising from the information received from the institutions were sometimes contradictory or at least inconclusive or simplifying respect the issues to be dealt.

The *North Africa Emergency* affected considerably the police headquarters of Padua, as all guests of the province submitted their application for the International Protection in the offices of Padua. The police headquarters had also to manage the relationship with the Territorial Commission and ensure that the refugees complete correctly all the necessary bureaucratic practices (required permit of stay, issuance of the travel document, etc.). In addition, the time horizon was not defined, postponed every three months, contributed to prolong uncertainty.

Even in this case we stress the absence of a **control group** able to direct and coordinate all interventions.

One aspect that contributed to create a situation of uncertainty, and an uncomfortable situation among the *Managing Institutions* and the refugees, were the doubts and the hesitations on the possibility of issuing or not the identity card for refugees¹²². The doubts have arisen from the fear that the applicant for International Protection registers himself at the registry office and then leaves the Italian territory, without removing his residence. In fact, to revoke the residence it is necessary that the holder of the *Managing Institutions* at the register office removes the residence of the beneficial blotted out of the project. The removing of the residence is important for statistical data collection of the registry office in order to know the foreign residence present in the city.

As mentioned by the majority of the interviewed the excessive bureaucracy and fluctuating that affected the North Africa Emergency, created a not positive and

¹²² Based D.Lgs.25 July 1998, no. 286 applicants for International Protection can register in the register office.

cooperative climate within the refugees, taking a lot of time and energy for the definition of individual projects of integration and social inclusion.

The refugees experienced their situation as a limbo, in a constant waiting that was over 6 months in the case of the response of the Territorial Commission¹²³, or for the convocation of the hearing, or the application outcome¹²⁴.

The possibility that the refugees could work or not was controversial during the emergency: in the first months it was not possible for the beneficiaries to work because of the type of the permit of stay, it allows it only at a later time¹²⁵.

Most of the reception facilities were in a difficult situation in the management of the activities as the beneficiaries lost the faith in them. Also the period of the closure of the state of emergency throughout the national territory, which occurred between the months of December 2012 and January 2013, generated a deep uncertainty among *Managing Institutions* and in the guests. The indications that the reception facilities received from the *Implementing Party* reported that, starting from 1 January 2013, there would no longer be the funding provided by the initial convention. The last agreement signed between *Managing Institutions* and the Prefecture of reference arrived in 31 January 2013, one month after the end of the emergency at the national level. In the meantime, the facilities continued to provide the services, unaware of what was going to happen and without being able to have clear guidelines.

4.3.3 Housing insertion

In Padua the refugees were received in different types of structures: apartments, big facilities and hotels. Each solution has different costs and different were also the types of intervention that can be made with and for the beneficiaries. According to the

¹²³ The law provides that the Territorial Commission must provide the hearing of the applicant within 30 days of the transmission of the C3 model by the Police headquarters and the decision is then taken within the next 3 days.

¹²⁴ Following the emergency situation on the North Africa were established some additional sections both within the original Commissions (Milan, Bari and Trapani (from Gorizia Verona, Florence from Rome - currently undergoing training).

¹²⁵ The asylum seeker has the right to work where the decision on the asylum application is not taken within six months after the application and the delay is not attributable to the applicant. In this case, the residence permit for 'asylum' is renewed for 6 months and allows him to perform a job until the end of the procedure. The residence permit for "asylum" cannot be converted into a residence permit for work purposes (Legislative Decree 140/2005).

Managing Institutions the reception in the apartment was the best solution, also because it allowed refugees to have a first contact, in this case housing, with the Italian reality and then facilitated the integration in the city. Several refugees were accommodated in hotels, however, without giving them the basic tools on how to move independently in the territory, and without favoring their integration. The refugees hosted in Padua in February 2013 were about 160.

The *Managing Institutions* who choose to receive the refugees in apartments reported that this choice had also negative consequences for both the residents and for the guests. Some of the residents, especially those of the apartments adjacent to the apartments of refugees, have repeatedly expressed complaints about the behavior of the guests (especially loud noises during the night, high movement of people and non-compliance with hygiene rules of the condominium). Inside the apartment, however there were several difficult situations related to the onset of misunderstandings and difficulties in the cohabitation of people of different nationality and therefore with deep cultural, religious and linguistic diversity. Difficulties have arisen also in relation to the management of the common areas in the apartment and the (sometimes) non-compliance with the rules provided by the *Managing Institution*.

From 1 January 2013 the Ministry of the Interior declared the end of state of emergency on the entire national territory entrusting the **ordinary management** to the Prefects who succeeded in the management¹²⁶. The housing insertion for the refugees once concluded the emergency response, began to be predominant starting from October 2012. At that time the conclusion of the emergency was 31 December 2012 and it was unthinkable to "send out" the beneficiaries from the hosting projects.

The risk was to leave thousands of people on the street during the winter months, this was the reason why it was moved from the emergency management to an **ordinary management** that would allow at least the satisfaction of the housing issue. With the latest circular of the Ministry of the Interior the refugee reception ended on 28 February 2013.

In Padua there was no a local coordination to address the housing issue of the refugees in the time of the way out of the reception facilities. Different meetings were held with the *Managing Institutions* during the transition period from the emergency management to the ordinary one. Despite the Municipality of Padua has proposed several times to the

¹²⁶http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/2012_12_28_Fine_fase_emergenza_nord_Africa.html

Prefecture to define an action plan regarding this, the proposal was not considered by the *Implementing Party*. The interviewed about the housing issue complain about a lack of long term vision and the absence of a **control group** for a coordinated and uniform management of the territory during this delicate passage. The solutions arrived with obvious lag behind the onset of the problems, creating problems to the *Managing Institutions* involved.

The interviews show how housing insertion is fundamental, it should come after the work inclusion, as it is hard to think for a housing solution without having solved before the problem of work.

At the moment of the interview the operators were in difficulty to respect the right strategy to follow. Initially, the Social Services Department of the municipality of Padua in collaboration with the organizations managers arranged a severance payment of € 700 for each guest¹²⁷. The last circular of the Ministry of the Interior instead provided a severance payment of € 500, and added to the 700 already provided by the municipality. This contribution was an invaluable aid to those who have already completed a project (job placement, departure to other cities or other European countries), but it did not solve the question for the future of most of the refugees who will remain in the country. The Circular does not provide any type of housing insertion or other type, so that from 1 March 2013 the territory and the Social Services of individual cities will face the problem again. This choice shows a lack of attention compared to what will happen in the near future, when about thirteen thousand people will be catapulted into Italian territory without a plan and without perspective. There was enough time to think for a better solution, **for an insertion solution and not only for a way - out – solution.**

¹²⁷ According to the commissioner of Social Services Fabio Verlato, spokesman of the management bodies of the province of Padua are two alternatives: take of the working experience through special scholarships funded in part by the City, in part by Caritas, or use the severance pay of € 700 for reaching a community from which to start a new path. Source: <http://mattinopadova.gelocal.it/cronaca/2013/02/01/news/profughi-borsa-lavoro-o-buonuscita-1.6455047>

4.4 Venice: Overall management of the emergency

In the city of Venice, the *North Africa Emergency* was handled by the Prefecture of Venice, as the *Implementing Party* of the Veneto Region¹²⁸. The Veneto Region participated in the emergency management at an early stage, after it delegated the responsibility to the Prefecture of Venice. Of the 1,727 refugees assigned to the Region of Veneto, the share of the province of Venice was 371 units.

The City of Venice has an extensive experience in the reception of refugees¹²⁹, and the city has always been hit by a strong immigration of refugees and asylum seekers by sea¹³⁰ and by land. In this town the *North Africa Emergency* was added to an already complex situation and in great numbers.

From the opinion of the respondents it was a lack of communication between the Prefecture of Venice and the Municipality of Venice in the identification of the *Managing Institutions* suitable for the reception of the refugees. This gap created management problems in the medium - long term. The Prefecture, in relation to the Municipality covers different roles and functions and it does not have the right knowledge of the territory, associations or structures that have been working in the reception of refugees.

In the initial phase of the emergency, after the task of Protezione Civile, the Prefecture has sought to find expeditious solutions. The Prefecture signed agreements for the management of hospitality with the SPRAR *Managing Institutions* but also with new *Managing Institutions* such as shelters, cooperatives and associations. The Prefecture searched for a quick solution without a careful selection of the operators (according to some of the respondents), without considering the impact of shelters or that the apartments would have had in the city. In doing so, the choices made in a hurry initially and the need induced by an emergency situation may have been valid and acceptable in the short term, but they were not designed to be durable and effective for two years.

From the *Managing Institutions* point of view initially, being an emergency situation, it was thought a swift solution which provided a host of 10-40 in large refugee shelters. This type of reception had to be decentralized in smaller structures (apartments) and with a smaller number of people to allow the *Managing Institution* to build integration

¹²⁸ Decree of the Delegated Commissioner n.2573 of 20 May 2011.

¹²⁹ 95 asylum seekers are housed in structures SPRAR.

¹³⁰ At the Venice airport arrive each year 400-500 asylum seekers.

projects, though some of these structures were active until March 2013. The ideal solution after the first reception, according to some managers of the *Managing Institutions* interviewed managers, who have opted for this solution, was the accommodation of 4-5 persons in apartment in order to allow the operators to build an individual future project for each guest. In addition, the *Managing Institutions* reported some problems arising in the management of a large number of people even with the presence of professional social operators. The *Managing Institutions*, that were already managing the facilities on behalf of the SPRAR system lined the parameters of SPRAR to hospitality of the *North Africa Emergency* refugee and sought immediately to put into use the resources of the territory which were already available, the inclusion of refugees in Italian language courses, the activation of individual projects, job placement, so try to build an individual integration project focused on the autonomy.

Instead, some of the new *Managing Institutions* did not a previously have direct experience in the reception of refugees, and therefore did not have a proven model to apply, had difficulties especially at the beginning: in the reception of refugees, the definition of an employment project in the management of the documentation and bureaucratic procedures for the request of International Protection. The difficulties were greater for those structures that before the *North Africa the Emergency* offered partial services, such as the administration of the meal or accommodation at night, and did not have qualified personnel to handle this particular host.

So, these *Managing Institutions*, which were confirmed until the expiry of the *North Africa Emergency* on 31 December 2012 and thereafter until February 28, 2013, not having the experience and tools necessary were not able to build individual integration and inclusion projects for the people received. With the 1424 circular of 18 February 2013, the Ministry of the Interior declared the closure at the national level of North Africa acceptance providing a severance payment of € 500, but these people were still not able to move around the country not having acquired during these two years, a sufficient degree of autonomy.

4.4.1 The role of support of the Municipality of Venice to the Managing Institutions

The Municipality of Venice was not involved directly in the *North Africa Emergency* management. In Venice, as in Padua, *North Africa Emergency* was handled by the Prefecture of Venice that was the *Implementing Party* for the Veneto Region until 31 December 2012. The lack of the direct participation of the Municipality of Venice and the lack of communication between the Prefecture and the Municipality of Venice especially in the initial period and identification of *Managing Institutions* and suitable facilities for the refugees, created different management difficulties in the medium - long period. The Municipality played an important role in supporting the various *Managing Institutions* and associations involved by organizing a meeting every two months. It provided also training for the operators involved, following several incidents of incorrect completion of forms for the submission of the application of International Protection. As emerged from the interviews, if the Municipality of Venice would have been directly involved in the *North Africa Emergency* management there would have been better possibilities of social inclusion, job placement and housing insertion for the refugees. The Municipality, as a local authority, has a deep knowledge of the institutions, associations and social cooperatives present in the territory.

4.4.2 Communication between the institutions

As we have already pointed out, the Prefecture of Venice was the *Implementing Party* for the Veneto Region, the institution that interacted directly with the *Managing Institutions* to manage the *North Africa Emergency*. The Municipality of Venice was not involved directly and there were no refugees hosted directly by the Municipality of Venice.

The Municipality, as we have already pointed out, had a central role in coordinating and supporting the various *Managing Institutions* and associations involved by organizing periodic meetings and training for the staff responsible of the *Managing Institutions*.

Respondents reported some confusion regarding the management of the legal issues, such as the issue of the permit of stay and the identity card. Issues related to the release of these documents had negatively affected the relationship between the refugees and

the *Managing Institutions*, and delayed the possibility of intervening with projects of job placement. Bringing some specific cases reported in the interviews, some guests received in the reception facilities in June 2011 had to wait for the recognition of International Protection, and until November 2012 were still waiting. During these two years (April 2011 –March 2013) the refugees had a permit of stay renewable every three months, which excluded the possibility of their job placement, social inclusion and housing insertion. Regarding the ID card, some municipalities, such as Portogruaro and Chioggia, issued the document, while the Municipality of Venice decided to grant only the domicile. In addition to the unfair treatment of refugees, the issues of the card created difficulties in understanding for the refugees (but also for the social operators) if the ID card was necessary or not to obtain the permit of stay and to find a job.

Now, at the writing time of the thesis the refugees of *North Africa Emergency* in Venice area are 280 non-EU citizens from various backgrounds, with a different legal position¹³¹. In particular, 13 of them gained recognition of refugee status, 36 obtained the subsidiary protection and 170 make an appeal to the Tribunal against the rejection of the application by the Territorial Commission. Finally, 231 foreigners obtained by the Police headquarters a permit of stay for humanitarian reasons which allow them to work in Italy and to move freely in any area of the Schengen area.

4.4.3 Housing insertion

Even in Venice the refugees were accepted in different types of facilities: apartments, great structures and hotels. In the city, according to the point of views of *Managing Institutions* interviewed, the reception in the apartment was the best solution, because it allows the refugees to establish a first contact, in this case housing with the Italian reality thus facilitating the integration in the city. The accommodation was carried out in two types of apartments: apartments for families, and apartments for 3-4 individuals.

The Prefecture of Venice on 31 December 2012 called the Venetian reception facilities to renew the agreement until 28 February 2013, the end of reception. The daily rate provided for each guest was lowered from 46 euro to 30 euro in ordinary management

¹³¹ The data declared on the thesis are referred to the communication present on the homepage of the prefecture of Venice in February 2013.

(as in Padua). The new agreement provides for amendments to the Prefecture of Venice on the personnel involved in the projects, board and lodging and reduction of the pocket money. Some *Managing Institutions* decided not to change the conditions and the services offered being the refugees in a delicate moment and next to the exit from the facilities, especially for the vulnerable categories. Other *Managing Institutions* instead decreased progressively the services as provided by the new agreement.

In view of the conclusion of the emergency most of the *Managing Institutions* involved begin to seek temporary solutions and to accompany the guests at this delicate moment. From September 2012 some local *Managing Institutions* implemented specific way out projects and housing insertion of the guests present in their projects, despite the end of the emergency was scheduled for 31 December 2012. Different FAI funds were allocated to help guests in addressing their housing insertion¹³². The FAI funds, give a contribution up to a maximum of € 2,000 for a single person and a contribution of € 3,000 for a family of two components to be used for the payment of the rent. If the family was larger you can get up to 4,000 euro. This contribution was also valid for guests of the *North Africa Emergency*. The procedure to follow was that the person concerned to leave the project where he was host, find the adequate house for himself or his family and apply in the Municipality. The municipality shall pay monthly the amount of the contribution payable until exhaustion of the total amount.

For the vulnerable groups (victims of torture, unaccompanied minors, pregnant women, single parent families) had been submitted requests to allow these people to be included into the SPRAR system, but the request was not accepted for the lack of places

¹³² The final beneficiaries of the Fund for Integration of Accompaniment (FAI) are entitled to the International Protection (refugees and holders of subsidiary protection), applicants for international protection permit of stay which allows the work , as well as holders of humanitarian protection : - hosted in one of the local projects of the Protection System for Asylum Seekers and Refugees (SPRAR); - By the services and out from one of the local projects SPRAR the previous twelve months the start of the intervention program FAI, but still in need of the measures that could stabilize the path of socio-economic integration; - Outdoor reception SPRAR, but referring to the services of the municipalities or acceding to it Any assistance projects carried out by so-called management bodies. These beneficiaries must require targeted support as part of the shares subject to these guidelines, in order to facilitate their integration process in the national territory, as well as the output from SPRAR assistance measures and services in the area. The shares are admitted to the contribution related to services and benefits aimed at providing economic and social integration of the ultimate beneficiaries through five areas of intervention: a) home b) working c) school d) health and. leisure and Culture. Are admitted to contribute all actions whose end result is the autonomy of the housing beneficiaries.

In this sense, may, for example, be funded housing subsidies to help the beneficiaries in the payment of the deposit and / or some of the rent monthly buildings, if the same are the regular nominee of the lease. Also eligible: contributions for the purchase of furnishings that make it possible to complete in a more decent and functional properties regularly leased to beneficiaries; collaborations with agencies estate or industry associations that are specifically aimed at facilitating access to housing beneficiaries.

available. SPRAR reception facilities provide a severance payment of € 250 per capita to be paid at the time of release of the beneficiary of the project. This sum is functional to bear the cost of any travel to other destinations, accommodation and meals for the immediate period after the exit. The tendency is to seek uniform solutions, even to stem the ongoing situations of unrest and protest in the last period has affected the refugees. Some *Managing Institutions* will seek to build specific projects for families and the most vulnerable groups, for which probably will be involved Social Services of the City of Venice.

With the latest circular of the Ministry the reception of refugees ended on 28 February 2013. The circular provides for a severance payment of € 500 and there is no indication of what will happen next.

4.5 Concluding remarks

According to the respondents the *North Africa Emergency* management at the national level presented several critical issues. The first cause could be attributed to the assignment of the emergency management to the Protezione Civile. As we know, the Protezione Civile is involved in events of man-made disasters or natural catastrophe, possibly acting to stem the emergency. By its nature, therefore, the Protezione Civile does not have the tools and skills needed to cope with the dynamics triggered by the *North Africa Emergency*. Its intervention was providential during the first three months managing the reception, but in the next step the distribution of refugees all over the country, the responsibility of emergency management should have gone to the Regions and to the Municipalities. They have a better knowledge of the area and of the local operators that normally deal with the reception of refugees.

Another important issue was the late granting of the permit of stay. Initially, the government issued temporary residence permits of six months for the refugees arrived in Italy by April 5, 2011, while all those who arrived after that date were ‘forced’ to apply for International Protection.

They were workers coming from the African continent that worked and lived in Libya and at the time of the war fled in Italy but that would have no impediment to return to their country of origin. In addition, the legal position of the applicant International

Protection has different special feature like: within the first six months they are not entitled to work, rebuild personal history, and the bureaucracy to deal with, the Police headquarters and the Territorial Commission, which is rather complex. Moreover, in case of rejection of the application of International Protection, the applicant should submit an appeal against the outcome of the Territorial Commission (within 30 days of notification of the outcome). This has had a significant impact on the applicants and the staff that provided legal support, the Police headquarters, and the Local Commissions that have been invaded by thousands of applications. Some of the respondents suggested as reasonable and faster solution to manage the emergency similar to other emergent situations, in which, through a Decree of the President of the Council of Ministers that take note of the extraordinary result of releasing a permit of stay for humanitarian reasons of six months or one year¹³³. In the opinion of the respondents the fact that it was not issued a permit of stay from the beginning as a mistake, because this put the refugees in limbo of constant expectations and not allowed to build a project of job placement and housing insertion. To comply with a situation of widespread uncertainty on 31 October 2012 near the end of the emergency, the Ministry of the Interior asked the police headquarters to issue a permit of stay for humanitarian reasons to all the refugees who received the rejection of the application International Protection more than 70% of total.

The non-optimal management of the emergency at national level had a negative impact also in regional management. The Veneto Region participated in the emergency management at an early stage, after delegating responsibility to the Prefecture of Venice. From 1 January 2013 the Ministry of the Interior declared the end of the state of emergency on the entire national territory entrusting the management of the Prefects who succeeded him in the management. In fact, not much has changed in the transition from emergency management to the ordinary one, most of the *Managing Institutions* tried to keep the same services offered to the guests as it was a particularly delicate moment for them. The new conventions with the Prefecture of reference saw a sharp decline in per capita daily availability (from 46 to 30 euro per day).

¹³³ It could use the same procedures that were used for the emergency Kosovo. On 26 May 1999 the Decree of the President of the Council of Ministers on measures of temporary protection in the territory of the State in favour of people from war zones in the Balkans. Refugees were granted a residence permit for reasons of temporary protection with validity limited to the national territory and lasted until 31 December 1999. The same residence, extended to the study and work, could possibly be extended, after the first deadline for a subsequent semester, in the case was continuing state of emergency.

The housing of refugees has not been fair throughout the national, regional and local level. The refugees were accepted in different types of facilities: apartments, great structures cottages and hotels. According to the *Managing Institutions* the reception in the apartment was the best solution, because it allowed the refugees to have a first contact, in this case housing, with the Italian and facilitating integration in the city. Who has had the opportunity of being accepted in an apartment from the beginning maybe today will be more integrated as the one that for two years lived in large facilities with other 30-40 people.

Some *Managing Institutions*, both in Venice and in Padua, starting from September 2012 have set out specific projects and address housing insertion for the guests hosted in their projects, despite the end of the emergency was scheduled for 31 December 2012. For the majority of guests in both cities the exit from the facilities has been prevented by the fact that the refugees were still waiting the response from the Territorial Commission. Some *Managing Institutions* dealt with vulnerable groups (victims of torture, unaccompanied minors, pregnant women, single parent families) for which the housing insertion should be facilitated by the inclusion within the SPRAR, but despite the request of the *Managing Institutions* was not possible to insert these people in SPRAR system because there were not available places.

The proposed solutions on the exit of the beneficiaries from the reception facilities, both in Padua and Venice, as reflected in the opinions of the respondents were not yet clear. The proposals made by various *Managing Institution* were different and sometimes conflicting. A severance payment or a contribution to rent an apartment for the months after exit from the facilities. This confirm the lack of clarity that has characterized the *North Africa Emergency* management, at various stages in the recent months. At the expense was mainly the guest, ranging from economic unthinkable demands and strong signs of protest, and the social operators and the *Managing Institutions* that have lived through the whole story and often did not receive the communication within a reasonable time. The circular number 1424 of 18 February 2013, in which the Ministry of the Interior declared the closure of hospitality for refugees coming from North Africa. In the last meeting of the National Coordination Table with ANCI, UPI and President of the Conference of the Regions and Autonomous Provinces it was agreed to issue a travel document for refugees and a severance payment of € 500 per head. This choice shows a lack of attention compared to what will happen in the near future, when

twenty thousand people will be catapulted into the Italian territory without a plan and without prospects. There was all the time necessary to think for a better solution, a solution of insertion and not of exit.

Finally, considering the various types of exit and housing insertion used by both SPRAR and *Managing Institutions* who took part in the reception of the *North Africa Emergency*, we can conclude that the overall results have been generally positive. Most of the people that came out of these projects have been inserted in an apartment, someone has changed city or went in other EU countries, mostly with relatives. This suggests that maybe this type of management has not actually prepared the guest autonomy, independence, housing insertion and integration. The housing insertion is one of the most important aspects of a host project but which cannot be considered concluded with the release of the host, if he missed all the information necessary and essential to prepare the beneficiary exit, making him autonomous and integrated.

CONCLUSIONS

The main objective of this thesis is to give a multilevel analysis of the asylum system policies and to show the result of the research about the *North Africa Emergency* management in the cities of Padua and Venice. The different levels and the relationships between the actors involved (local and supra-local) is always to bearing in mind in local development processes. Sometimes is difficult for the lower levels (local) to accept an international or an EU law on these issues when everything has to be managed locally. Legislation The dissertation aim is to better understand the actual refugee protection starting from an analysis of the right of asylum in the International and European Union legislation.

For this reason, the *first level* of the analysis describes the origin of the asylum concept and its legislation evolution, the historical context and legal right of asylum that led to the creation of the current International Protection System of refugees. The Convention on Refuges of 1951 provides an important principle of the international law, the principle of non-refoulement, which concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened. The Geneva Convention, despite its universal scope, contains two elements that restrict the scope and raise doubts about its adaptability to change over the years. The first element is related to two limitations contained therein, a temporal and geographical, which required that the status of refugee could be recognized only to those who had suffered persecution as a result of events occurring before 1 January 1951, and occurred exclusively in Europe. The rising of new situations that still raised the issue of refugees led the international community to the approval in 1967 of the New York Protocol, which eliminated these restrictions. A second element was the exclusion of these forms of protection for another category of people: the internally displaced persons - IDPs, due to the condition set out in the Convention, where applying for the refugee status it was required to be materially outside the national borders of one's mother country. Nowadays the Geneva Convention and the New York Protocol are characterized as the international instruments of reference for the International Protection of refugees. The *second level* is focused on the European Union legislation on asylum.

The asylum issue has been included in the EU context only after the entry into force of the Treaty of Maastricht in 1992. Until 1997, however, the powers of the States in this area have been characterized by Intergovernmental Cooperation. It will be only with the subsequent ratification of the Treaty of Amsterdam that the matter of asylum acquires an EU dimension. The Treaty was also accompanied by a Protocol which introduced the concept of *safe state*: the European countries, considering each other safe, undertook to consider inadmissible the applications submitted by citizens of the European Union. Thus was reintroduced a geographical limitation to the application of the right of asylum. While the humanitarian issues pushed for the adoption of common standards and minimum conditions of reception, however, it lingered a reluctance of Member States to the transfer of their sovereignty in this area.

Despite this element, during this first phase important legislation was approved, such as the Directive on temporary protection and the Directives in terms of reception, procedures and qualifications. In 2007, with the presentation of the Green Paper on the future Common Asylum, started the second phase of the European Union, whose aim was not only the harmonization of legislation on asylum, but also the procedures for the achievement of higher levels of treatment of asylum seekers among the European Union countries. After that, the Policy Plan on Asylum was launched, which defined the actions to be taken for the completion of the Common European Asylum System, also in the light of the adoption of the Lisbon Treaty. The aim was to address the critical areas identified in the previous phase to overcome the main problematic and improve the tools until then prepared. To establish common policies and regulations in the field of asylum within the European Union over the years it was given a great importance of this issue, being a phenomenon that, even at a quantitative level, has experienced a gradual expansion over time. The difficulties in the actual implementation of this project, however, reveal the sensitivity of the matter with respect to which the Member States are reluctant to transfer sovereignty. The reluctance can be explained by the historical moment in which many political games are played on the card of national immigration policy, mainly in terms of flow management.

The *third* level is focused on the Italian legislation on asylum.

The first legislative measure in Italy was the *Martelli* law, adopted in February 1990 in order to have the urgent norms regarding, after the killing of an African refugee in Caserta. The right to asylum, however, was already present in article 10 of the Italian

Constitution, counted among the twelve fundamental principles of the Republic. In the intention of the Constituent Assembly there should have been a subsequent intervention of the legislator to regulate the matter.

In 1998 the *Turco-Napolitano* law provided more detailed measure which, far from being characterized as comprehensive legislation, introduced still more specific provisions for the protection of asylum seekers.

The legislation enacted in Italy with the *Bossi-Fini* law security package, on one hand institutionalized the system for the reception of asylum seekers, and on the other hand introduced a number of provisions of a restrictive nature, which in many cases provide for the retention, narrowing de facto the system of protection laid down by the previous legislation. Example of the general trend of the country was the start of the push-back policy that prevented migrants, and among them, the asylum seekers, the very possibility of reach Italian shores and submit the application for protection.

According to the provisions by the Legislation, the Italian plan host is characterized as dual system, consisting of two stages: the first host and the second reception. The first reception is physically delivered within government centers, the CARA structures most often dilapidated and isolated, in which the asylum seekers are ‘housed’ with uncertain timing and often in overcrowded conditions. The second reception is made by the Protection System for Asylum Seekers and Refugees (SPRAR), implemented by the local authorities and the third sector associations. It offers basic services, promotes projects for the social and occupational integration of the beneficiaries. The network of the actors involved in the SPRAR local projects over the years has gradually expanded, and with it also the distribution of projects in the area. Consequently, also the number of places available has grown.

With the recent developments that have affected the Mediterranean Area, in February 2011 a large amount of refugees coming from North Africa landed in Lampedusa Island. These migrants arrived in Italy induced by the conflict in Libya and the present turmoil and rebellions that affected most part of the Arab world (especially in Tunisia and Egypt). The 12 February 2011 in all the national territory was declared the state of humanitarian emergency due to the exceptional influx of citizens coming from North Africa. The government, although established a network of hospitality, prepared by the Protezione Civile (Department of Civil Protection). The thesis examines the *North Africa Emergency* through different interviews made to the key actors involved in its

management. The analysis on the field has made possible to assess which are the rights proclaimed by the International and national law and which are the concrete protections regarding this particular category. The appraisal of the research was not fully positive. As described in the report from which inspired the fourth and the final chapter, the management of this emergency showed some difficulties in the system which are reproduced here briefly.

The first reason could be attributed to the assignment of the Government to the Protezione Civile emergency management. Providential was its intervention in the first 2-3 months to manage the reception, but in the following steps that included the distribution of refugees all over the country, the responsibility of managing the emergency should have gone to the Regions and Municipalities, which have a better knowledge of the area and the local operators that normally deal with the reception of refugees. Another important matter was the late granting of the permit of stay. Initially, the government issued temporary permit of stay of six months for the refugees arrived in Italy by 5 April 2011, while all those who arrived after that date were obliged to apply for International Protection.

A controversial issue and emphasized by all respondents was to force the refugees coming from Libya to apply for International Protection. They were workers from the countries of North Africa who have been working and living in Libya at the time of the war, then fled, but that did not have actual impediments to return to their country of origin. Some of the respondents suggested as a solution a faster and reasonable management similar to other emergency situations, in which, through a Decree of the President of the Council of Ministers would take note of the extraordinary result of releasing a residence permit on humanitarian grounds of six months or a year. In the opinion of the respondents not issuing a permit from the beginning was a mistake, they experience the situation like having been put in the limbo of constant expectations as one is not allowed to build a project, job placement and housing. To comply with a situation of widespread uncertainty on 31 October 2012, near the end of the emergency, the Home Office has asked the police headquarters to issue a residence permit on humanitarian grounds to all refugees who had received the rejection of the International Protection application (more than 70% of total): almost considered as a device for integrating the recognition of a formal status, but unfortunately a person who gets a permit of stay by definition cannot be integrated in the society if he doesn't know the

language and there weren't and job and housing insertion, in this case the reception and integration process cannot be considered a success.

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