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Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices

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The photo for the cover image was taken by Dany Carnassale during fieldwork in August 2020. It pictures a map hanging in the waiting room at the NGO **NAGA**, where waiting migrants use their fingers to descibe their migration routes causing the colour of the map to fade into white spots.

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Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices

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EXECUTIVE SUMMARY

This research report has been published as part of the EU Horizon 2020 research project (www.vulner.eu). The VULNER research project is an international research initiative, the objective of which is to reach a more profound understanding of the experiences of vulnerabilities of migrants applying for asylum and other humanitarian protection statuses, and how they could best be addressed. It therefore makes use of a twofold analysis, which contrasts the study of existing protection mechanisms for vulnerable migrants (such as minors and victims of human trafficking) with the experiences of migrants on the ground.

This research report presents some of the intermediate research results of the VULNER project based on the first phase of the project. This phase consisted of **mapping out the vulnerability assessment mechanisms developed by state authorities in Italy**, including how they are implemented on the ground through the practices of the public servants in charge.

The following research questions are addressed: What do the relevant domestic legislation, case law, policy documents, and administrative guidelines reveal about how 'vulnerabilities' are being assessed and addressed in the countries under study? Do the relevant state and/or aid agencies have a legal duty to assess migrants' vulnerabilities, and if yes, using which procedures, when and how? Following which legal and bureaucratic criteria? How do decision makers (street-level bureaucrats) understand and perceive the 'vulnerabilities' of the migrants they meet on a daily basis? How do they address these 'vulnerabilities' through their everyday practices? What is their stance on existing legal requirements towards 'vulnerable' migrants? What loopholes do they identify?

Sources and data collected

The research for this report was carried out **between February and October 2020** and relied on the analysis of the relevant legal and policy framework and case law in the field of migration and asylum, as well as in-depth interviews with key stakeholders.

The report explores how vulnerability is included in **asylum procedures as well as in other procedures to obtain a residence permit on humanitarian grounds**, the applicant's situation of vulnerability being a key element considered in granting this form of protection. It is worth noting that, although humanitarian protection was abolished following the Decree Law 113/2018, this form of protection is still being granted to those who applied before the entry into force of the decree Law in 5 October 2018.

The l**egal documents under analysis** include relevant legislation regarding asylum and migration, but also that concerning particular groups, such as victims of trafficking, victims of gender-based violence, and minors, for whom specific protection provisions are foreseen. The report also examines the administrative guidelines and other tools relevant to vulnerability assessments, such as COI (Country of Origin Information), paying specific attention to victims of trafficking, and claims based on mental health problems, sexual orientation, gender identity/expression and sex characteristics (SOGIESC).

With regards to the **fieldwork**, we conducted forty-four interviews with key actors working in the field of migration and asylum in Italy. Participants to this research included twenty decision makers (one member of the National Commission for the Right of Asylum (CNDA), twelve members/presidents of TCs, six civil tribunal judges, one judge of the Court of Cassation); nineteen lawyers and legal advisors (ten lawyers,

nine legal advisors working in NGOs); twelve members of international organizations (UNHCR, EASO, IOM); three other institutional actors; three experts/consultants. Institutional and legal actors involved in the research have been selected taking into account the relevance of their role, expertise, or territory in which they work. The interviewees varied in age and profession, and lived in different regions of Italy.

Key findings

As with the EU CEAS instruments, **in Italian asylum and immigration legislation, the definition of vulnerability is not provided per se, but a list of groups considered vulnerable is set out** (see Art. 17 of Legislative Decree 142/2015). The **same approach can be found in national legislation on trafficking** (Decree Law 24/2014). By classifying vulnerabilities into discrete groups, this framing risks overshadowing the contextual dimension of vulnerability.

Guidelines and policy documents produced in recent years by key international organizations working on migration and asylum (UNHCR and IOM) refer to a broad definition of the notion of vulnerability that acknowledges the interaction of situational and individual vulnerabilities. Furthermore, national judicial and administrative decision makers, such as Territorial Commissions (TCs), **have paid more attention to the interplay between personal and contextual factors contributing to situations of vulnerability**.

However, as the participants to this research stressed, **a gendered, sexualized and culturalized conception of vulnerable people/groups is still dominant** amongst national institutional actors. This leads not only to those who do not fit into these categories being excluded from protection, but also results in significant aspects of the person's situations of vulnerability not being taken into account.

According to several lawyers and NGOs members interviewed, credibility as regards experiences and personal characteristics that contribute to migrants' situations of vulnerability is often assessed by competent authorities through **a stereotyped and standardized approach, looking at fragments of the persons' story in isolation** without conducting an overall, integrated assessment of the different factors at stake.

Although institutional tools, such as COI or guidelines, constitute useful instruments in assessing the situations of vulnerability, a number of interviewees criticized the way some of these are used, highlighting that dominant interpretations and paradigms risk downplaying certain vulnerabilities. Others stressed that guidelines need to be frequently updated.

Many participants highlighted how **vulnerabilities are produced and/or exacerbated by the country of arrival's institutional and social context** (e.g. inadequate reception system or the lack of non-exploitative working opportunities), including during the asylum procedure (e.g. bureaucratic obstacles and invasive requests in administrative and judicial settings).

Finally we underline how, in contrast with restrictive national legislative and political reforms in the field of migration and asylum, in recent years there have been **important case law developments in Italy on the matter of international protection, and humanitarian protection** in particular. This case law refers to a **broad definition of the notion of vulnerability**, paying special attention to its contextual/situational dimension.

SINTESI DELLA RICERCA

Questo rapporto di ricerca è stato pubblicato come parte del progetto di ricerca dell'Unione Europea (UE) Horizon 2020 (www.vulner.eu). Il progetto di ricercar VULNER è un'iniziativa di ricercar internazionale il cui obiettivo è raggiungere una conoscenza più approfondita delle esperienze di vulnerabilità dei/delle migranti richiedenti asilo e altre forme di protezione internazionale, e come queste possano essere affrontate nel modo migliore. Il progetto si avvale, quindi, di una duplice analisi che confronta lo studio dei meccanismi di protezione dei migranti vulnerabili (come minori e vittime di tratta) esistenti con quella che è la loro esperienza sul campo.

Questo report presenta alcuni risultati preliminari del progetto VULNER basati sulla prima fase della ricerca. L'obiettivo è di fornire una **mappatura dei meccanismi di valutazione della vulnerabilità sviluppati dalle autorità statali in Italia**, compreso il modo in cui questi sono implementati da diversi attori istituzionali attraverso prassi specifiche.

Le domande che hanno guidato questa prima fase di ricerca del progetto VULNER sono le seguenti: cosa rivelano le legislazioni nazionali, la giurisprudenza, i documenti di policy e le linee guida amministrative in materia di asilo e migrazione sui modi in cui sono valutate e affrontate, nei paesi oggetto di studio, le 'vulnerabilità'? Gli stati e/o le organizzazioni umanitarie competenti hanno il dovere legale di valutare le vulnerabilità delle persone migranti? Se sì, quali procedure dovrebbe essere utilizzate, quando e come? Secondo quali criteri legali e burocratici? In che modo gli attori decisionali competenti (*street-level bureaucracy*) percepiscono e comprendono le 'vulnerabilità' delle persone migranti che incontrano quotidianamente? Come affrontano queste 'vulnerabilità' attraverso le loro pratiche quotidiane? Qual è il loro orientamento sui requisiti legali esistenti per il riconoscimento delle persone migranti 'vulnerabili'? Quali lacune identificano?

Fonti e dati raccolti

La ricerca per questo rapporto sul caso di studio italiano è stata condotta tra **febbraio e ottobre 2020** e si è basata sull'analisi dell'attuale quadro normativo e di policy e della giurisprudenza in tema di immigrazione e asilo, nonché su interviste in profondità con vari attori e attrici istituzionali.

Il report illustra i modi in cui la nozione di vulnerabilità viene impiegata s**ia nella procedura di asilo sia nelle procedure relative al rilascio di un permesso di soggiorno per motivi umanitari**, in quanto la situazione di vulnerabilità della persona richiedente è uno degli elementi chiave nella valutazione dei requisiti per l'ottenimento della protezione umanitaria. Benché questa forma di protezione sia stata abrogata a seguito del Decreto Legge 113/2018, essa è ancora applicabile alle domande di protezione presentate prima dell'entrata in vigore del decreto legge (5 ottobre 2018).

Il nostro studio prende in esame non solo il **quadro normativo in materia di asilo e migrazione**, ma anche quello riguardante particolari gruppi di persone per i quali sono previste specifiche misure di protezione, come vittime di tratta, vittime di violenza di genere e soggetti di minore età. Inoltre, il rapporto analizza le linee guida amministrative e altri strumenti, tra cui le COI (*Country of Origin Information*), rilevanti per la valutazione delle vulnerabilità, prestando particolare attenzione alle vittime di tratta, ai problemi di salute mentale e alle richieste di protezione basate sull'orientamento sessuale, sull'identità/espressione di genere e sulle caratteristiche sessuali (*SOGIESC*).

Per quanto riguarda il **lavoro sul campo**, abbiamo condotto quarantaquattro interviste con diversi attori e attrici chiave che operano nell'ambito dell'immigrazione e dell'asilo in Italia. Nel complesso questa ricerca ha coinvolto venti decisori (un membro del Commissione Nazionale per il diritto di Asilo, dodici membri/presidenti delle Commissioni Territoriali, sei giudici di Tribunali Civili, un giudice di Cassazione); diciannove figure di area legale tra avvocati/e ed operatori/trici legali (dieci avvocati/e, nove operatori/trici legali che lavorano in ONG); dodici componenti/rappresentanti di organizzazioni internazionali (UNHCR, EASO, OIM); altri tre attori/trici istituzionali; e infine tre esperte/i e consulenti. Le persone coinvolte e intervistate in questa ricerca sono state selezionate tenendo conto della rilevanza del loro ruolo, delle loro competenze o del territorio in cui operano. Esse variano per età e professione, e vivono in diverse regioni d'Italia.

Risultati principali

Analogamente agli strumenti legislative UE del CEAS, **la normativa italiana in materia di asilo e migrazione non contiene una definizione di vulnerabilità, ma individua un elenco di gruppi considerati vulnerabili** (cfr. Art. 17 D.Lgs. 142/2015). **Lo stesso approccio è riscontrabile nella normativa nazionale sulla tratta** (D.Lgs 24/2014). Tuttavia, classificando le vulnerabilità in gruppi discreti, questo quadro normativo rischia di non tener conto della dimensione contestuale della vulnerabilità.

Le linee guida e i documenti politici prodotti in anni recenti dalle principali organizzazioni internazionali che lavorano nel campo delle migrazioni e dell'asilo (UNHCR e OIM), fanno riferimento ad una definizione ampia della nozione di vulnerabilità che riconosce l'interazione tra vulnerabilità situazionali e individuali. Inoltre, negli ultimi anni in Italia i decisori giudiziari e amministrativi, come le Commissioni Territoriali (CTs), hanno prestato **una maggiore attenzione al complesso di fattori personali e di contesto che concorrono a produrre situazioni di vulnerabilità**.

Tuttavia, come le/i partecipanti a questa ricerca hanno sottolineato, tra le figure istituzionali nazionali è ancora dominante **una concezione genderizzata, sessualizzata e culturalizzata di persona/gruppo vulnerabile**. Ciò porta non solo a escludere da forme di protezione coloro che non rientrano in queste categorie, ma anche a trascurare aspetti significativi della situazione di vulnerabilità della persona interessata.

Secondo molti/e avvocati/e e personale di ONG intervistati/e, la credibilità delle storie e delle caratteristiche personali che contribuiscono alle situazioni di vulnerabilità dei/delle migranti viene spesso valutata dalle autorità competenti attraverso **un approccio stereotipato e standardizzato, che considera solo alcuni frammenti dei vissuti delle persone**, senza effettuare un'analisi complessiva ed integrata dei diversi fattori in gioco.

Sebbene gli strumenti istituzionali, come le COI o le linee guida, siano utili per valutare le situazioni di vulnerabilità, diversi partecipanti hanno criticato il modo in cui alcuni di questi strumenti sono utilizzati, evidenziando che le interpretazioni dominanti rischiano di non riconoscere alcune vulnerabilità. Altri hanno sottolineato che le linee guida dovrebbero essere aggiornate frequentemente.

Molti/e partecipanti hanno evidenziato come **le vulnerabilità siano prodotte e/o esacerbate sia dal contesto istituzionale e sociale del paese di arrivo** (sistema di accoglienza inadeguato o mancanza di alternative di lavoro non sfruttato) sia dalla procedura di asilo (ostacoli burocratici e richieste invasive e umilianti in sede amministrativa e giudiziale).

Infine, la ricerca sottolinea come, in contrapposizione alle recenti riforme legislative e politiche restrittive nel campo delle migrazioni e dell'asilo, negli ultimi anni in Italia **vi siano stati importanti sviluppi giurisprudenziali in materia di protezione internazionale, ed in particolare di protezione umanitaria**. Questo filone giurisprudenziale fa riferimento ad un **significato ampio della nozione di vulnerabilità**, prestando particolare attenzione alla sua dimensione contestuale/situazionale.

ABBREVIATIONS

ASGI Association for Legal Studies on Immigration
C3 Form Form that protection seekers fill in at the local police headquarter when they ask for asylum
CAS Extraordinary reception centres
CEAS Common European Asylum System
CNDA / NC National Commission for the Right of Asylum
COI Country-of-origin information
CoO Country of origin
CPR Permanent Centres for Repatriation of Undocumented Migrants
CPSA First Aid and Reception Centres
EASO European Asylum Support Office
ECHR European Convention of Human Rights
ECtHR European Court of Human Rights
EUMS European Union Military Staff
FGM Female genital mutilation/modification
IOM International Organization for Migrations
LD Legislative Decree
LGBTI Lesbian, gay, bisexual, transgender, intersex
MoI Ministry of the Interior
MRCC Maritime Rescue Coordination Centre
R.G. Case Number
SAI System of Reception and Integration
SAR Search and Rescue operation
SCO Safe country of origin
SGBV Sexual and gender-based violence
SIPROIMI Protection System for International Protection Appointees and Unaccompanied Minors
SOGIESC Sexual orientation, gender identity/expression and sex characteristics
SPRAR (former) Protection System for Asylum Seekers and Refugees
TC Territorial commission (administrative authority for the recognition of international protection)
TIP Trafficking in persons
UAM Unaccompanied minors
UNHCR United Nations High Commissioner for Refugees

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INTRODUCTION

Sabrina Marchetti and Letizia Palumbo

This study is part of a broader project entitled 'Vulnerabilities Under the Global Protection Regime: How Does the Law Assess, Address, Shape and Produce the Vulnerabilities of Protection Seekers?' (VULNER) (Call H2020-SC6-MIGRATION-2019), which is aimed at exploring existing practices and legal protection mechanisms in Europe (Belgium, Germany, Italy and Norway), North America (Canada), the Middle East (Lebanon) and Africa (Uganda and South Africa), by identifying protection gaps and best practices, and discussing the overall power dynamics at play.

By focusing on the Italian context, this report aims at investigating how the law assesses, addresses, shapes and produces vulnerabilities within the national asylum and protection system. In particular, the report seeks to address the following research questions:

1) How are the 'vulnerabilities' of protection seekers conceptualized in the national legal and policy framework?
2) What are the national legal, policy, and administrative tools, procedures and (in)formal practices in place to assess and address the specific needs of vulnerable protection seekers?

In this study, we use the term 'protection seekers' to refer to people seeking protection, regardless of their final legal status obtained (protection or rejection). In line with the conceptual framework that guides the VULNER project, this category is conceived to also include migrants seeking protection, but who do not necessarily fit the definition and requirements for applying for international protection.

The research for this report was carried out between February 2020 and October 2020 and is based on qualitative research methods that rely on the analysis of legal documents, as well as interviews with various institutional and legal actors and limited ethnographic observations.[1]

Over recent years, Italy has become one of the – if not the key – points of entry into the European Union via sea migration. In 2014, the number of sea arrivals to Italy through the Mediterranean Sea (called the Central Med Route) was almost four times that of the previous year. For three consecutive years, 2014 to 2016, sea migration flows remained continuously high, more than 150 000 per year (UNHCR 2016) until the decline during the summer 2017.

The high number of arrivals of asylum seekers during the so-called refugee crisis has to be connected to the closure of nearly all possible legal entry channels for third-country nationals in Italy and in Europe, especially channels related to migration for work reasons. This has made it increasingly difficult for migrants to cross borders in authorized ways. Therefore, since 2011, when almost all legal entry channels were closed, many migrants, including refugees, have had no choice other than to follow increasingly dangerous routes, such as the Mediterranean Sea and Balkan routes, seeing the 'asylum seeking' channel

1 Unfortunately, the Covid-19 pandemic affected the possibility to carry out proper fieldwork. Consequently, the collection of data has been centred more on in-depth interviews. For additional information on methodology, see Section 1.2 below.

as their only possible strategy (Pastore and Henry 2016; Ciabarri 2020).[2] Moreover, as the data tellingly reveals, since 2011 there has been no 'crisis' in quantitative terms, as the total number of migrants entering Italy has stabilized, if not decreased (Colucci 2018). In the same period, especially since 2014, over 20 000 people have lost their lives in the Mediterranean while trying to reach Europe.[3]

The drop in sea arrivals since 2017 (from 119 247 asylum seekers in 2017 to 23 400 in 2018 and 11 439 in 2019) (Campomori and Ambrosini 2020), reflected different political actions undertaken to curb irregular migration flows, in particular the increased cooperation between Italy – and the EU – with Libyan authorities,[4] and a repressive approach toward the humanitarian organizations and NGOs rescuing dinghies in high seas.

It is worth noting that, despite a decrease in the number of sea arrivals from 2017 onward, the yearly number of decisions for asylum claims has remained quite high in Italy. The total of asylum claims examined annually between 2016 and 2019 was around 90 000 (apart from a drop in 2017 to a total of 81 527).[5]

During those same years, there has been a notable increase in the denial rates of asylum claims, which stayed around 60 per cent during 2016 and 2017, and started to rise in 2018 to reach 80 per cent of cases rejected in 2019. Various factors could explain this change in the trend of levels of acceptance, but certainly the abrogation of humanitarian protection in 2018 with Decree Law 113/2018 (the so-called Security Decree, converted into Law 132/2018) has a significant impact in this regard. Humanitarian protection had been the most commonly used type of protection, with an approval rate of between 21 per cent and 25 per cent (for the years 2016 to 2018), as compared with an approval rate of around 5–8 per cent for refugee status.[6]

The year 2019 was further marked by restrictive reforms and policy orientations in the management of sea arrivals of asylum claims and other migrants, such as the closure of harbours to NGO-steered boats with migrants on board, and indirect pushbacks to Libya. And, over the course of 2020, the Covid-19 pandemic has also been a source of additional measures that affect the protection and access to the right of asylum for newcomers.

2 Despite this scenario, a minority of protection seekers have found refuge in Italy through the so-called 'humanitarian corridors', that consist in resettlement programmes (especially from Lebanon and more recently from Libya). These programmes have been organized mainly by the Sant'Egidio community, in collaboration with Federation of Evangelical Churches and the Waldensian Table and with the formal agreement of the Italian government. More information is available at: https://www.humanitariancorridor.org/en/homepage/.

3 See https://missingmigrants.iom.int.

4 In February 2017, there was the *Memorandum of understanding on cooperation in the field of development, combating illegal immigration, trafficking in human beings, smuggling and strengthening border security between the State of Libya and the Italian Republic*. On this topic see: European Commission 2017. Recently, this memorandum was renewed, giving rise to a lot of criticism both from the side of legal experts and social scientists.

5 For further information: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-del-lasilo

6 Idem.

It is against this background that this report has explored how the conditions of vulnerability of protection seekers – including asylum seekers and migrants aiming for other forms of protection – have been addressed and understood by relevant institutional, legal and social actors working in the field of asylum and migration (decision makers, international organizations, legal actors and NGOs). The study has focused mainly on the analysis of the relevant national legal framework and related policies, but also on domestic case law and the experiences of various institutional and legal actors dealing with the implementation and transposition of legal concepts into specific procedures and concrete practices.

Considering the complexity of the topic, vulnerability may emerge (or not) and may be identified (or not) in different instances, within different instruments and with different timings. The big picture is that while some procedures are conceived to facilitate the identification of vulnerabilities, others can create further obstacles in their identification, support and assessment. Consequently, there are challenges and shortcomings related to legal and policy frameworks that may have a dramatic impact on migrants generally and more specifically on the vulnerabilities of protection seekers (a topic that will be better addressed through the fieldwork planned in the second and third year of the VULNER project).

The research highlights the various orientations and interpretations emerged in the support and assessment of the vulnerabilities of protection seekers, and shows how situations of vulnerability may be produced, fostered or invisibilized by relevant legislation and policies in the field of migration and asylum. In so doing, the report explores inconsistencies and gaps existing between the legal and policy frameworks, their implementation and social (and local) practices.

Outline of the Report. This report is structured in five sections. Section 1 provides some key lines of the conceptual framework that guides our research and the critical approach we adopted in exploring the notion of vulnerability. Furthermore, this section illustrates the methodology adopted in this research.

Section 2 offers an overview of the Italian asylum system, the relevant recent reforms and the asylum procedures, underlining the main changes to the asylum system, the political drivers behind these changes, and their implications for asylum seekers and other migrants in situations of vulnerability.

Section 3 explores how vulnerability is included in the Italian legal framework, covering not only the legal framework regarding asylum, but also that concerning particular groups of people, such as victims of trafficking, victims of gender-based violence and minors, for whom specific protection provisions are foreseen. The section also explores the administrative guidelines and other tools relevant for the consideration of vulnerability, paying specific attention to victims of trafficking, mental health problems and sexual orientation, gender identity/expression and sex characteristics (SOGIESC)-based claims.

Section 4 illustrates and discusses the research findings collected through a total of forty-four in-depth interviews with experts (scholars, representatives of international organizations), institutional actors (decision makers working in the administrative and judicial phase, representatives of local governments) and legal actors (lawyers and legal operators working in NGOs). Moreover, we analysed a total of 149 relevant rulings and decisions by civil tribunals and the Court of Cassation concerning appeals by protection seekers. This section highlights the concrete realities of understanding and using the notion of vulnerability in the work of key actors involved directly or indirectly in the asylum process and relevant

protection regimes, revealing the discrepancies between the letter of the law and its transposition into practice. Section 4 also includes some reflections about challenges and further steps to implement procedures aiming at identifying, sustaining and providing protection to people experiencing situations of vulnerability.

Section 5 provides concluding remarks, summarising the main findings and emphasizing the protection gaps and relevant good practices that have been experimented with at the national or local level, and that will be further analysed in the second VULNER research report.

1. SCOPE OF THE STUDY AND METHODOLOGY

Dany Carnassale and Letizia Palumbo[7]

The approach used in the VULNER project is to explore the notion of vulnerability, the way it is conceptualized in the national legal and policy framework, and in its transpositions into practice, through the experiences of workers and practitioners as well as the experiences of asylum seekers, refugees and other migrants. Hence, we do not work on the basis of a fixed and strict pre-determined definition of vulnerability. Nevertheless, we do draw upon a conceptual framework that guides our research and the critical approach we adopted in exploring this notion. This section explains the key lines of this conceptual framework without seeking to give a definite definition. Furthermore, this section illustrates the methodology adopted in this research.

1.1. Theoretical framework

The concept of vulnerability is contentious and has been debated in various disciplines and work areas such as health, ethics, and criminology, and researchers ranging from feminist scholars to those within the human rights field. Although the linkages between human rights and vulnerability are a contested terrain (Peroni and Timmer 2013), the legal concept of vulnerability seeks to ensure that everyone access their rights on equal footing, and without opposing the universal character of human rights. Some critics find the concept of vulnerability to be vague, ambiguous (Betts 2009), elastic and multi-purposed (Cole 2016). Like any other social category, its definition is socially and politically determined, and will vary over time and across jurisdictions (Bartkowiak-Théron, Asquith and Roberts 2017). Further, as stated by many interviewees in this research, the way vulnerability has mainly been translated at the legal level, that is, on a group basis, is a simplification and, as with any process of simplification, it has inherent limitations.

One key contention is that the notion bears **the risk of perpetuating stigmatization**. Labelling people as 'belonging to vulnerable groups' may reinforce marginalization and be disempowering (Mustaniemi-Laakso et al. 2016). Vulnerability is viewed in negative terms such as lack of capacities and is associated with victimization; it conveys a passive representation and absence of agency. When defined as a group-based, fixed attribute, vulnerability tends to be seen as static or fixed, and as something inherent to members of a certain group, with the risk of favouring essentialist and deterministic views.

Some scholars, notably Fineman (Fineman 2008), have proposed a universal approach to vulnerability, seeking to overcome the idea of vulnerable and passive versus non-vulnerable and active. In that perspective, vulnerability is constitutive and a common trait of human beings. We are in some ways, and in certain contexts, vulnerable to a certain extent. Hence, the situation, the interaction, and the (unequal) position of power of the actors with whom we interact will all have an impact on vulnerabilities. There are different levels of resilience – capacities – to mitigate vulnerability, which are shaped by multi-layered factors and depend on access to assets and resources.

7 This section is the result of a common reflection of the two authors. However, Dany Carnassale drafted sections 1.2.3 and 1.2.4 while Letizia Palumbo drafted sections 1.1, 1.2, 1.2.1 and 1.2.2.

Other theorists, such as Judith Butler, have also highlighted the idea of vulnerability as a condition of shared humanity. In particular, according to Butler, the 'body is constitutively social and interdependent', and it is this corporeal vulnerability that makes human life precarious. In this view, vulnerability and dependency are therefore intertwined (Bulter 2004). While stressing that precariousness is an ontological condition of human life, Butler also highlights that individuals are not all affected by it to the same degree.

Complementary to this understanding of vulnerability is the acknowledgement of **context-specific dimension of vulnerabilities**. Vulnerability is always related to people's positions in society and in power relations. From this standpoint, vulnerability does not exclude or oppose agency: instead, it recognizes the elements of agency and, in particular, the ways in which people act (or try to act), negotiate and make their choice within a framework of economic, social, affective and power relationships.[8] Further, vulnerability may be seen as occurring along a continuum: the same person may occupy different places on the spectrum of vulnerabilities at different times during their lives.

By proposing a taxonomy of different sources of vulnerability, scholars Mackenzie, Rogers and Dodds (Mackenzie et al. 2014) talk about 'situational vulnerability', stressing how vulnerability can be produced and/or fostered by personal, social, political, economic or environmental situations of persons or social groups, including abusive interpersonal and social relationships and sociopolitical oppression or injustice. The category of situational vulnerability highlights 'the ways that inequality of power, dependency, capacity, or need render some agents vulnerable to harm or exploitation by others' (Mackenzie et al. 2014, 6).

Vulnerability is therefore contextual and shaped by the interaction of multiple factors, from individual attributes (for example age, disabilities) to institutional, political, economic, social and relational factors. From this perspective, vulnerability is strongly related to the theory of intersectionality, introduced and developed by feminist scholars such as Kimberlé Crenshaw, to understand and investigate the structural and dynamic consequences of the interaction between multiple forms of discrimination and subordination on the basis of gender, race, nationality, social class, sexual orientation and other grounds (Crenshaw 1989; see also Atrey 2020).

In the context of migration, vulnerabilities emerge at different moments of the journey, in the country of origin, in transit and after arrival. Migration-related vulnerabilities are illustrative of how circumstances generate vulnerabilities and may intersect with and amplify pre-existing vulnerabilities (for example, sickness and disability). Hence, in this report the terms **'migrants in situations of vulnerability'** will be preferred to 'vulnerable migrants'.

In legal terms, this theoretical framework seems to be reflected in the definition of position provided by the **EU Directive 2011/36 on preventing and combating trafficking in human beings** (Palumbo and Sciurba 2018). By incorporating in the text the definition of the position of vulnerability contained in the Interpretative Note in the *travaux préparatoires* to the 2000 UN Palermo Protocol (UNODC 2006), the directive defines the position of vulnerability as 'a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved' (Art. 2(2)). Rather than limiting vulnerability to the person's inherent characteristics, this definition, despite its vagueness, stresses the importance of

8 On the concept of agency see Giddens 1990 and De Pretis 2005.

taking into account the circumstantial and structural factors that render a person vulnerable to forms of abuse and exploitation, and leave them without any concrete and real alternative. This situation does not entail a lack of agency of the person involved, even if in extreme situations the range of possible choices is so limited as to sometimes lead to the acceptance of the exploitation itself as a lesser evil (Giammarinaro and Palumbo 2020). However, in this context, the person continues to respond to, grapple with or try to struggle against power relations, seeking to negotiate between personal needs and desires, external influences and contingent events.

This situational conception of vulnerability can be found in the landmark decision of the European Court of Human Rights (ECtHR) *Chowdury and Others v Greece* of 2017[9] concerning the case of undocumented migrant workers from Bangladesh who worked on a strawberry farm in Greece in conditions of severe exploitation. In this ruling, the judges of Strasbourg paid specific attention to different factors – in particular the condition as 'irregular migrants without resources and at risk of being arrested, detained and deported' (para 95) – producing a situation of vulnerability that exposes migrant workers to exploitation.

In a few cases, the ECtHR has recognized the effect of structures and conditions (such as detention) on the vulnerability of asylum seekers (Timmer 2013, 158–60, Mustaniemi-Laakso et al. 2016, 10–11). In particular, in its landmark decision *M.S.S. v Belgium and Greece* of 2011 concerning Belgium's expulsion of an Afghan asylum seeker to Greece by applying the EU Dublin Regulation, the ECtHR recognized vulnerability as a condition produced by the specific and contingent situation of asylum seekers, and not as a fixed attribute (Timmer 2013; Rigo 2019). In this approach, vulnerability may be the result of a series of past and present experiences and circumstances in which institutional authorities can bear varying degrees of responsibility. However, while this decision constitutes a valuable step forwards, its orientation was not followed, for instance, by the European legislator when, in 2013, it revised the EU Reception Directive and the EU Procedures Directive.

In general, with regard to the **EU asylum framework,** vulnerability is still defined in a group-based approach and does not account for the role of institutions and structures (including migration policies) as fostering vulnerabilities (Mustaniemi-Laakso et al. 2016, 13). In the same vein, within such a prism, the situational aspects of vulnerabilities may not be at the centre of the consideration.

The new Pact on Migration, adopted in September 2020, pays special attention to the needs of vulnerable people. For instance, the Pact introduces a pre-entry screening mechanism, "applicable to all third-country nationals who are present at the external border without fulfilling the entry conditions or after disembarkation, following a search and rescue operation".[10] This mechanism also includes a "vulnerability check" aimed at quickly identifying migrants who are in need of immediate care, in a vulnerable situation, are victims of torture, or have special reception or procedural needs. However, as has been noted, this system tends to refer to and address only the most visible forms of vulnerability, following a group-based approach to vulnerability and overlooking its context-specific dimension (Marchegiani 2020).

9 ECtHR, *Chowdury and Others v. Greece*, Judgment of 30 March 2017, no. 21884/15.
10 European Commission, Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending regulation (EC) no 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, Com (2020) 612 final.

In Italy, as will be further discussed in this report, there have been interesting and insightful developments at the conceptual-legal level, through some decisions of civil tribunals and the Court of Cassation, of the notion of vulnerability, especially in the context of humanitarian protection. These decisions significantly provide a broad conception of vulnerability that takes into account the interplay between different factors contributing to situations of vulnerability linked to human rights violations.

As for soft-law guidelines and policy documents, key international organizations working in the field of migration and asylum – the UNHCR and IOM – have adopted in their guidelines or frameworks, definitions of vulnerability in line with these recent conceptual developments, acknowledging the interaction of situational and individual vulnerabilities (UNHCR 2017). They also recognize the potential negative outcomes of using the frame of vulnerability, and the importance of making sure that the agency and resilience of the person are not denied or diminished in the process.

Beyond these conceptual developments on vulnerability, the gains and advancements in practice are limited. Bearing in mind that the process of determining who is vulnerable is shaped by political priorities, and that migration is a highly political domain, there is an inherent tension between the political will to protect the more vulnerable (at least as displayed in political statements) and the policy objective of curbing irregular migration – seeing, for instance, migrants arriving by sea as a threat to the national community that must be stopped at any cost – which, in turn, produces and exacerbates situations of vulnerability.

1.2. Methodology and data collection approach

As highlighted in the introduction, by focusing on the Italian context, this report aims at investigating how the law assesses, addresses, shapes and produces vulnerabilities within the national asylum and protection system.

The research for this report was carried out between February 2020 and October 2020 and is based on qualitative research methods that rely on desk research and semi-structured interviews with relevant legal and institutional actors.

The desk research has a twofold objective. First, it seeks to map the legal and policy frameworks, examining how vulnerability is defined in the norms, policies and jurisprudential developments on this subject. Second, it analyses case law as means to study the application of the law, investigating how the notion of vulnerability is taken into consideration (or not) into the determination of various forms of protection. On the other hand, data collected through semi-structured interviews aims at exploring opinions, experiences and practices adopted by institutional and legal actors working in the support or assessment of protection claims. The main goal is to highlight common practices and trends, but also specific challenges and territorial particularities concerning the complex topic of vulnerability when it is transposed from the legal framework into practice.

1.2.1 Analysis of legal and policy documents and case law

The objective of the desk research is to review and analyze the legal and policy frameworks regarding the notion of vulnerability in the field of asylum and immigration. The documentation reviewed includes the relevant national laws, policy documents, administrative guidelines, as well as NGO reports and other grey literature and academic literature. The material was identified on the basis of a mapping exercise of the overall sets of laws in Italy that concern asylum and immigration, and the selection of the pieces and elements that were relevant and associated with the notion of vulnerability. The same applies for the selection of the administrative tools and other guidelines.

In addition to laws, legislative decrees, and decree laws[11], the legal documents under analysis also include ministerial circulars, internal communications from the Ministry of the Interior (MoI) that provide further indications or greater precision concerning the application of the laws. The review also emphasizes recent reforms and the evolution of the asylum system (2017-2020).

The analysis of relevant case law is based on a focused selection of relevant decisions by civil tribunals and the Court of Cassation (149 decisions in total) concerning, respectively, appeals by protection seekers against the decisions of Territorial Commissions (TCs), and appeals against civil tribunal decisions denying them international or humanitarian protection.

The selection was made by focusing on themes that are relevant to the topic of vulnerability, taking into account the list of vulnerable groups as listed in national legislation (LD 142/2015, Art. 17), and on the basis of information and suggestions provided by the participants in the research.

These themes include: trafficking and sexual exploitation; female genital mutilation; forced marriage; labour exploitation; debt bondage and slavery; SOGIESC-based based claims;[12] health-related issues; minors and unaccompanied minors; human rights violation, torture and sexual violence in the countries of transit; and social integration. This latter issue has been selected considering the attention paid by the Court of Cassation and the civil tribunals to social integration as a relevant reason for determining a condition of vulnerability and granting humanitarian protection.

In selecting the decisions, we focused on those rulings that entitled asylum seekers to international or humanitarian protection. We made this choice to highlight and enhance the innovative and broad orientation followed by some decisions of some civil tribunals and the Court of Cassation with regard to the understanding of the real complexity of protection seekers' experiences and their situations of vulnerability. Some of these rulings go beyond a conception of decontextualized categories of vulnerable per-

11 Decree Law is a provisionally Regulatory Act that requires the enactment of a legislative act in order to have definitive force. This process is described as 'implementation by law' or 'conversion into law' (*conversione in legge*), and it is possible for the Decree Law to undergo amendments in the process of enactment of the law (AIDA 2019, 6).

12 In this report we use the label SOGIESC (sexual orientation, gender identity/expression and sex characteristics) when we talk about asylum applications, and we use LGBTI (lesbian, gay, bisexual, transgender, intersex) when we talk about applicants' identities. These two acronyms are commonly used alternatively in several documents adopted by international organizations. However, the first appears more inclusive for two main reasons: 1) it includes people who not necessarily self-identify as LGBTI, but who prefer other words for defining their genders and sexualities, 2) it includes those who are defined in such ways by relevant institutional or social actors in their country of origin, regardless of how they define their gender and sexuality.

sons, and adopt an approach that takes into account the different structural elements that contribute to producing and exacerbating situations of vulnerability. From this perspective, these decisions constitute a valuable step forwards, which may significantly affect the way relevant legislation on migration and asylum is implemented.

This analysis includes decisions of civil tribunals and the Court of Cassation on granting humanitarian protection, because this protection is still being granted for those who applied before the entry into force (5 October 2018) of the Security Decree (Decree Law 113/2018), which abolished it. The non-retroactivity of Security Decree was confirmed by a judgment of the Court of Cassation in 2019[13], meaning that those asylum applications lodged before the adoption of the Security Decree and still pending are assessed by the judges on the basis of the existing legislation at the time of submitting the application.

Furthermore, humanitarian protection is relevant in this analysis, not only because it has been used widely, but also in view of the fact that the situation of vulnerability is a crucial element considered in granting this type of protection.

In Italy, as is the case in other countries, the courts do not have a central online repository with rulings that are publicly available. Therefore, we collected a number of these decisions with the help of some of the participants in the research who shared with us some relevant cases, after having been anonymized. At the same time, we selected among the cases that were made publicly available on some organizations' websites. This was done through desk research of small databases of cases developed by legal clinics and by associations such as Melting Pot, ASGI and Magistratura Democratica.[14]

1.2.2 Fieldwork and semi-structured interviews

Findings related to the fieldwork were collected through qualitative semi-structured interviews between June 2020 and mid-October 2020. It is important to stress the timeline, because, as highlighted above, this research did not have the chance to include reflections on the recent Lamorgese Decree, having important implications both for the procedure and reception of protection seekers. Hence, interviews contain many references to the period between 2017 and 2020, in which the new humanitarian protection had not yet been adopted.

We conducted forty-four interviews with institutional and legal actors working in the field of migration and asylum in Italy. In addition, we had informal conversations with key-informants and gatekeepers at the beginning and toward the end of the research. The number of interviewees (fourty-eight) is higher than the number of interviews (forty-four), because two interviews involved more than one participant at the suggestion of the invited participant.

Participants included various institutional and legal actors: twenty decision makers (one member of the CNDA, twelve members/presidents of TC, six judges of civil tribunals, one judge of the Court of Cassation); nineteen lawyers and legal advisors (ten lawyers, nine legal advisors working in NGOs); twelve members of international organizations (UNHCR, EASO, IOM); three other institutional actors; three experts/consultants.

13 Court of Cassation, Decision of 19 February 2019, no. 4890.
14 See: https://www.asgi.it; https://www.dirittoimmigrazionecittadinanza.it; https://www.meltingpot.org.

Considering biographical and professional profiles, interviewees vary in age, role/profession/expertise, and live in various regions of Italy. We had a good geographic coverage and in some cases we were able to include more than one participant of the same territory in order to collect experiences looking at vulnerabilities from different standpoints (decision maker, legal actor, NGO) (see Appendix III).

Methodologically, we started recruiting participants with regional or national visibility, then we identified new potential interviewees through the snowball sampling method in order to gain access to participants with specific expertise on issues that we intended to cover more precisely.

Taking into account the various institutional and professional roles, while some participants were available to openly share their views and experiences, others had to balance this consideration with their institutional roles. Various institutional actors did not reply to our invitation,[15] while others had specific requests (for instance to read the transcripts, not to reveal the territoriality where they are based, and so on). In view of VUNLER's ethics strategy, we took into account both general and specific requests from institutions and participants.

Decision makers working in TC were recruited thanks to the facilitation of UNHCR, in line with its historical role in the Italian asylum system, and also thanks to negotiation with the National Commission for the Right of Asylum (CNDA). Although this could be considered a bias, it is important to remark that the CNDA would have had to authorize their participation anyway, which would otherwise be difficult to include.

Another limitation was the impossibility to recruit members of the police workforce/headquarters. We decided to be totally transparent with this institution, emphasizing aspects like confidentiality, anonymity and an adapted version of the interview. Unfortunately, these attempts did not work and we were not able to include the important experiences of officials that frequently encounter protection seekers in vulnerable situations.

The average time for each interview was ninety minutes, ranging from a minimum of forty-five minutes and a maximum of 180 minutes. Some interviews were divided into two parts because the participants were keen to share their experience and knowledge.

The possibility to carry out proper fieldwork was compromised by Covid-19 restrictions that affected the chance to travel and make appointments with legal and institutional actors in the places where they usually work. However, we decided to transform the negative effect of the Covid-19 pandemic into an opportunity: including interviewees living in a wider range of regions and towns.

15 Among them, a famous institution involved in humanitarian management resettlement to Italy. This topic did not emerge in interviews either, probably because of the low percentage of beneficiaries of resettlement programmes in comparison with other countries involved in the VULNER project.

Participants were free to decide how to participate: in person, online or via phone. Considering the pandemic, most interviewees opted for online interviews, others for a phone call and only a minority (approximately 10 per cent) accepted an interview in their office. All the participants allowed for the interviews to be recorded, after having received information and assurance in advance about security and confidentiality specified by the research project and summarized in the consent form (see Appendix III). Then, interviews were fully transcribed and hand-coded following a list of relevant themes that emerged during the interviews (see Section 4.2).

In the majority of cases, interviews usually covered some recurring topics, but required some adjustments due to the professional profile, time allowed, and relevance of specific questions. They also left room for specific questions related to the role, profession, expertise, position and regional location of the interviewee. Generally, the interview tried to take into account the guideline proposed by the Max Planck Institute for Social Anthropology (Halle, Germany) in order to cover the majority of issues at the core of this research project and allow potential comparisons between national contexts. Broadly, interviews touched on the following issues: references to vulnerabilities in norms/policies/practices; recognized vs. less recognized vs. intersecting vulnerabilities; inter-institutional dialogue; tools for supporting and assessing vulnerabilities; implicit and explicit challenges in dealing with protection seekers in vulnerable situations/positions/conditions (examples based on emblematic cases and concrete experiences); the impact of recent legislative change on procedure and reception; its shortcomings for institutions/professions/protection seekers; existing contradictions, inconsistencies and gaps between norms and social/local realities; practices of resistance and resilience; and recommendations.

However, semi-structured interviews left room for going deeper into some issues that spontaneously emerged during the interview, sometimes related to a specific professional expertise or territory. Other times, observations and additional documents provided by some participants created the conditions for understanding more effectively some aspects mentioned during the interviews. In the few cases in which participants were authorized to carry out the interviews in person, some notes were taken before and after the interview and included references to the place in which protection seekers are received, and other relevant issues.

1.2.3. Ethics

Our team did not experience specific problems in organizing the research, taking into consideration the VULNER Ethics Strategy. In particular, short-term and long-term data protection was assured during all the phases of the research. Guarantees were given to the participants before the interview both with oral and written information. The importance of repeating technical aspects was also useful for preventing potential misunderstandings related to recording and the use of interviews for scientific purposes (including dissemination).

We took into consideration both the general ethics strategy related to Horizon2020 programs and specific requirements requested by our institution and national laws regulating scientific research projects.

The spread of the Covid-19 pandemic complicated the possibility of carrying out fieldwork because of the lockdown, re-directing our programme of data collection more to semi-structured interviews than ethnographic observations. Despite this limitation, we prioritized the ethics aspect of respecting national laws regulating the management of the pandemic (including working remotely, and using personal safety equipment in case of meeting in public/private spaces), and specific internal regulations of institutions involved in the research and the safety of both researchers and interviewees.

No problems related to crimes emerged during the research, and no information provided by researchers and interviewees endangered any participants. Participants chose different types of anonymity from the options listed on the consent form. The case law examples, both those shared by participants and those obtained from online databases were anonymised before using this data.

2. OVERVIEW OF THE ASYLUM SYSTEM IN ITALY

Letizia Palumbo and Alexandra Ricard-Guay[16]

This section provides an overview of the Italian asylum system, the main recent reforms, and the asylum procedures. In the first part, we will briefly present the different types of protection and the recent reforms and changes that were brought to the asylum system in Italy, as it is crucial in order to grasp the constant evolution of the asylum system, the political drivers behind it, and their implications for vulnerable asylum seekers and other migrants. The second part provides a brief description of the asylum procedures in Italy.

2.1. Development of the Asylum Framework in Italy

2.1.1. Types of protection

The Italian international protection regime comprises two types of international protection: refugee status and subsidiary protection. There was also, until 2018, a residual form of national protection called humanitarian protection, which was established by Legislative Decree 286/1998 (Art. 5(6)), 'Consolidated Act of Provisions Concerning Immigration and the Condition of Third Country Nationals' (hereafter 'Consolidated Act on Immigration'). Humanitarian protection applied to people who are non-eligible for refugee status or subsidiary protection, but could not be expelled from the country because of 'serious reasons of humanitarian nature, or resulting from constitutional or international obligations of the state'.

According to the Court of Cassation, through these three forms of protection there was a full and complete implementation of Article 10(3) of the Constitution, which provides that a foreigner 'who is prevented in her/his country from the effective exercise of the democratic freedoms guaranteed by the Italian Constitution, has the right of asylum in the territory of the Republic, according to the conditions established by law'.[17]

The prerequisites for the recognition of **refugee status and subsidiary protection** and their respective contents are regulated by Legislative Decree 18/2014, which transposed the EU Directive 2011/95 (Qualification Directive),[18] and by Legislative Decree 251/2007 ('Qualification Decree') and Legislative Decree 25/2008 ('Procedure Decree') with their successive amendments. The reception system is governed by Legislative Decree 142/2015, entitled 'Implementation of Directive 2013/33/EU on standards for the re-

16 This section is the result of a common reflection of the two authors. However, Letizia Palumbo drafted sections 2.1.1 and 2.1.2 while Alexandra Ricard-Guay drafted sections 2.1.3, 2.2 and 2.2.1.

17 As stated in a decision by the Supreme Court, the constitutional right to asylum is broader than refugee status (Decision no. 4674/1997). Furthermore, while the constitutional right to asylum has not been transposed into a specific law – in other words there is no legislation that defines its content – the Supreme Court (Decisions no. 4674/1997 and no. 907/1999) has established that it is a perfect subjective right and as such it can be requested directly from an ordinary judge (Servizio Centrale & ASGI 2019, 7).

18 Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

ception of asylum applicants and Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection', which also makes amendments to the Procedure Decree. The latter has been further amended by Legislative Decree 47/2017 (named the 'Zampa law'), which regulates specifically unaccompanied minors, and more recent reforms described below.

The residence permit for both refugee status and subsidiary protection is for five years, renewable upon the fact that the conditions are still met. These two forms of protection guarantee access to a very wide range of rights.

Humanitarian protection was for a duration of two years, renewable and with the possibility to convert it to a work permit. It also entitled to work or study. A wide jurisprudence progressively clarified the interpretation and the scope of humanitarian protection. As such, the Supreme Court has reiterated in the sentence of 23 February 2018, no. 4455, that the definition of 'serious humanitarian reasons' shall not be pre-defined by the legislator but shall remain an open list (see also Court of Cassation, Decision 26566/2013) and that humanitarian protection responds to needs emerging from **current situations of vulnerability** as a 'consequence of the repatriation'.

Humanitarian protection was abrogated by Decree Law 113/2018 (formally implemented by Law 132/2018), the so-called Security Decree or Salvini Decree, and replaced by 'special' protection permits for which certain categories have been established.[19] In October 2020, the Italian government issued a new Decree Law 130/2020 on migration and international protection, which was converted into Law 173/2020 by the Parliament on 18 December 2020, and introduced significant provisions, in particular a form of special protection similar to the former humanitarian one.

2.1.2. Latest reforms and new measures

In this section, we will briefly present the recent reforms and changes that were introduced into the asylum system in Italy in recent years, as it is crucial in order to grasping the constant evolution of the asylum system, the political drivers behind it, and their implications in terms of identifying and addressing asylum seekers and other migrants in conditions of vulnerability. Many of the recent changes were undertaken in response to the so-called refugee crisis that Italy has experienced from 2014 onward.

In 2017, Decree Law 13/2017 (converted into Law 46/2017 of 13 April 2017), known as Minniti-Orlando Decree, brought many changes regarding the administrative and judicial system of proceedings for international protection. The decree contains urgent provisions for accelerating international protection procedures and addressing irregular immigration. In particular, one of the main controversial measures introduced by this Decree is the abolition of the second level of appeal for rejected asylum claims (there are two remaining levels of appeal, the first instance and the Supreme Court). The decree also established in ordinary tribunals new specialized sections on immigration, international protection, and free circulation of EU citizens. It is also this law that introduced the provisions regarding identification procedures (that is, fingerprinting) in hotspots. Further new measures concern the facilitation and increase of deportation, and the expansion of the current number of pre-removal centres, the number of which had been reduced significantly in the past.

19 Although humanitarian protection is no longer part of the protection regime, it is still being granted to those protection seekers who applied before the entry into force of the Security Decree, if their claim was still pending and/or in appeal. Indeed, the retroactivity of the law has been confirmed by the Decision 4890/2019 of the Court of Cassation.

Only a year after these changes, the aforementioned Security Decree has carried new and even more drastic ones. In particular, as mentioned above, this decree abrogated humanitarian protection, which was one of the most widely granted forms of protection for migrants arriving in Italy, leading to a substantial change to the asylum system. This protection has been replaced with the residence permits for 'special cases', which de facto were already provided for under the Consolidated Act on Immigration (Legislative Decree 286/1998) and that may be issued to victims of violence or severe exploitation (idem, Art. 18), victims of domestic violence (idem, Article 18-bis) and victims of labour exploitation (idem, Art. 22 (12)). There are also new permits for certain categories, that is, people that performed acts of particular civil value (idem, Art. 42-bis), people in need of medical care (idem, Art. 19 (2d-bis)), and people who cannot return to their countries due to 'exceptional natural disasters' (idem, Art. 20-bis). Furthermore, the decree provided for a special-protection permit implementing the non-refoulment principle in the case of victims of torture and persecution (idem, Art. 19 (1 and 1.1)).

The change is important, as the use of this type of protection no longer provides cover for the wide spectrum of situations of vulnerability, and to assess individual complex situations. Many of the new permits last one year, and cannot be converted into a residence permit for work reasons, leaving migrants in a condition of precarity. As discussed in Section 4, the abrogation of humanitarian protection has led to an increase in rejections of asylum claims for migrants arriving in Italy.

Another important component of the reform brings a drastic change to the reception system. In particular, the Security Decree excluded asylum seekers from the decentralized state reception system SPRAR (*Sistema di Protezione per Richiedenti Asilo e Rifugiati*), renamed SIPROIMI (*Sistema di protezione per titolari di protezione internazionale e per i minori stranieri non accompagnati*), which provides services aiming at supporting and facilitating migrants' social and labour inclusion. Asylum seekers have therefore been crammed into emergency reception centres known as CAS (*Centri di Accoglienza Straordinaria*), many of which lack adequate structures and are often overcrowded and do not provide effective inclusion programmes. Furthermore, many of these centres are located in isolated rural areas and have become a pool of cheap and easily exploitable migrant farmworkers (Corrado et al. 2018).

The Security Decree also prevented asylum seekers from enrolling at municipal registry offices, meaning that they no longer had the possibility to get a residence address, with the risk of excluding them from health and social services and rights (Campesi 2019).

The decree also introduced the concept of 'safe country of origin' (SCO) into Italian national legislation. In particular, it provided that the Ministry of Foreign Affairs, in agreement with the Ministries of the Interior and of Justice, based on information from different sources,[20] to adopt by decree a list of safe countries of origin, which must be periodically updated and of which the European Commission must be notified. A list of fourteen SCO was adopted by decree on 4 October 2019, including Albania, Algeria, Bosnia-Herzegovina, Cabo Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

20 Namely the National Commission on Asylum Right (CNDA – *Comisione Nazionale del Diritto d'Asilo*), EU MS, EASO, UNHCR, the Council of Europe and other international organizations.

Claims from applicants of these countries can be rejected as manifestly unfounded if applicants have not proven that the country was not safe in relation to their situations. As discussed in Section 4, the establishment of a list of safe countries of origin leads to differential treatments according to the nationalities (AIDA 2019).

As described below, the Security Decree also introduced provisions in the field of detention and accelerated procedure, resulting in significant compression of the rights of migrants and asylum seekers, especially affecting those in conditions of vulnerability.

Broadly speaking, the multiplication and introduction of new grounds for accelerated procedures (see Section 2.2.1) has contributed to further restricting the possibility of even accessing the right to asylum. More and more categories are excluded, for those coming from a safe country of origin, or constrained to an accelerated procedure, which does not confer the same level of time and resources to prepare and make their case.

In 2019 the Government issued Decree Law 53/2019, known as the Follow-up Security Decree or Security Decree bis, implemented by Law 77/2019, and which, in particular, toughened sanctions on NGO ships seeking to bring migrants rescued in the Mediterranean to Italy. NGOs were accused of being a 'pull factor' attracting irregular migrants to Italy. The decree states that the Interior Minister 'may restrict or prohibit the entry, transit or docking of ships in Italian territorial waters for reasons of order and security'. Immediately after the entry into force of this decree, the Minister of the Interior made extensive use of these powers.

In February 2020, despite the opposition of numerous associations, including ASGI and the call of the Council of Europe Commissioner for Human Rights (ASGI 2020), the Memorandum of Understanding between Italy and Libya was renewed. According to the new agreement Italy undertakes to continue to financially support, with training courses and equipment, the so-called Libyan coast guard, for search and rescue (SAR) activities at sea and in the desert, and for the prevention of and fight against irregular immigration. The resulting effects of Italy's indirect pushback to Libya and the consequences on people suffering inhuman and cruel treatment are now being examined by ECtHR in the case *S.S. and others v. Italy*.[21]

The set of measures and changes introduced by these reforms (in particular, the policy of 'closed ports' and pushbacks to Libya) converge in creating an irregular status for asylum seekers and other migrants, by also generating and fostering vulnerabilities, or worsening existing ones. Not only more migrants will end up without any form of protection, but the safety and support net of those newly arrived has been significantly reduced as well.

21 This case concerns a rescue operation of the Sea Watch ship hindered in November 2017 by the Libyan coastguard through a patrol boat donated by Italy and with the coordination of the Italian MRCC. ECtHR, *S.S. and Others v. Italy*, application no. 21660/18.

In October 2020, the Italian government issued the already mentioned Decree Law 130/2020, known as the Lamorgese Decree, which partially revised the so-called Security Decrees. In particular, this decree introduced a new residence permit for 'special protection', similar to former humanitarian protection, granted to migrants in situations of serious reasons 'resulting from constitutional or international obligations of the Italian state'. The protection will last for two years. In addition, some residence permits, including those for special protection and natural disasters, can now be converted into residence permits for work reasons.

The Lamorgese Decree has also reversed the ban on enrolment of asylum seekers at municipal registry offices and prescribes the issuing of identity documents valid for three years to applicants. It is worth noting that the Constitutional Court intervened on this point in July 2020, stating that the rule prohibiting the registration of asylum seekers was unconstitutional (Decision 186/2020).

The decree has also restored the decentralized state reception system (now renamed *Sistema di Accoglienza e Integrazione* (SAI)) as the priority system to which, in addition to unaccompanied minors and beneficiaries of international protection, asylum seekers have access. Furthermore, the system provides for first-level services for asylum seekers, including health, social and psychological assistance, linguistic-cultural mediation, Italian language courses, and legal guidance services.

Lastly, the Lamorgese Decree has also introduced significant changes in the asylum procedure, amending the Procedure Decree (LD 25/2008), providing, for instance, that unaccompanied foreign minors and applicants with special needs (such as minors, the disabled, the elderly) are excluded from accelerated procedures. Moreover, the Decree established that in the case of applicants with special needs, the legislation concerning manifestly unfounded claims does not apply. With regard to detention of foreigners, the new law reduces the maximum length of stay in the CPR to ninety days, in line with provisions of the EU Procedures Directive and Reception Directive. However, it provides for deferred arrest of asylum seekers who have committed flagrant offences at the time or because of their detention in a CPR or reception centre.[22]

2.1.3. Covid-19 changes

As part of the general measures of containment of the Covid-19 pandemic, Decree Law 19 of March 2020 (named 'Cura Italia') provides that asylum seekers, international protection holders and other migrants are allowed to remain in the reception structure where they are hosted – whether first reception, SIPROIMI or CAS – until the end of the emergency even if the conditions allowing their stay in the structure have ceased. Unaccompanied minors who turn eighteen can also stay in the structure hosting them until the end of the emergency. Applicants for international protection and holders of humanitarian protection subjected to the quarantine period with active surveillance or home-based with active surveillance can be hosted (at the prefect's disposal) in the SIPROIMI facilities, ordinarily intended only for holders of

22 For more information see https://temi.camera.it/leg18/provvedimento/d-l-130-2020-disposizioni-urgenti-in-materia-di-immigrazione-e-sicurezza.html

refugee status or subsidiary protection and unaccompanied minors. Another measure provides for the extension of validity of residence permits until the end of August 2020; it extends the terms for the conversion of residence permits from study to subordinate work and from seasonal work to non-seasonal subordinate work.[23]

A drastic measure was also taken with Ministerial Decree 150 of 7 April 2020, stating that Italian ports will remain closed for SAR operations carried out by foreign ships outside the Italian SAR zone during the Covid-19 emergency. By doing so, it has closed the country to disembarkation of boats carrying asylum seekers and other migrants, with potential multiple violations of international, maritime and human rights law (Giammarinaro and Palumbo 2020; Sciurba 2021).

In connection with this restrictive policy aimed at closing the ports on grounds of public health, the government decided that newly arrived migrants by sea are required to remain in quarantine on board ferries moored offshore in several ports in the south of the country, so-called quarantine vessels (Decree of 12 April of the Head of the Civil Protection Department). However, as some Italian NGOs reported, even asylum seekers who were already in CAS were sent to observe a quarantine period on boats once they were tested positive (Tomasetta 2020). While these actions have been justified as 'public health safety measures', in fact they prevent people from the effective possibility of seeking asylum. Several NGOs have reported that many thousands of people, in situations of vulnerability because they do not have a defined status and come from migratory paths marked by violence and abuse, are confined on these vessels, which are not accessible to civil society actors and institutions responsible for the protection of rights. Reports reveal that the practice of deferred rejections has increased significantly, especially with regard to migrants held on quarantine vessels, with the consequence of increasing situations of vulnerability (Sciurba 2021).

Finally, as part of Decree Law 34 of 19 May 2020 (called the Relaunch Decree) issued by the government for the country economic recovery, a scheme to formalize 'irregular employment relationships' was introduced. The scheme only applied to the agri-food, care and domestic work sectors, and aimed to cover all those doing undeclared work, be they undocumented foreign workers, Italian citizens, EU migrants or regular non-EU migrants.

Given the Italian government's hesitant and restrictive approach to migration, this regularization can be considered a step forward. However, from the beginning it has been clear that significant inadequacies would affect its impact (Palumbo 2020). Indeed, in addition to not covering other sectors such as logistics and construction that have high rates of undeclared work, the conditions established by the scheme left out numerous migrants and asylum seekers in situations of irregularity and precariousness, including many of those affected by the Security Decrees. While the number of accepted applications is not yet known or estimated, the regularization seems to have had a limited impact with regard to the specific sectors covered by the scheme (IDOS 2020, 133).

23 The information on the different measures taken in the context of COVID-19 was collected from government sources (https://temi.camera.it/leg18/temi/emergenza-da-covid-19-le-misure-in-materia-di-immigrazione.html#collapseListGroup0) as well as in the AIDA report (2019).

The Relaunch Decree further extends the derogation to the changes introduced by Law 132/2018 and provides as an extraordinary and temporary measure that asylum seekers can be hosted in the SIPROIMI, which are only accessible to international protection holders. This exceptional measure shall last for a maximum of six months after the end of the emergency.

2.2. Key Steps of the Asylum Procedure in Italy

It is important to note that the asylum procedures analysed in this report refer to procedures before the entrance into force of the Lamorgese Decree in October 2020. Therefore, this section does not take into account of the recent changes introduced by this decree.

There is a two-step process to initiate the asylum claim procedure: the communication of the intention to apply for asylum – which can be done orally – and the formal registration of the claim by submitting the C3 Form. The asylum claim (the intention of registering a claim) can be done either to the border police or to the local immigration office of the police headquarters (*Questura*). Importantly, in the application form there is now an annexe where it is possible to identify vulnerabilities (point 16).

Once the application is lodged, a permit of stay for asylum seekers can be issued, which is valid for six months and is renewable. The asylum seeker will then be notified by the TC of the interview date. In practice, this procedure takes months. This creates a situation of limbo which increases the condition of vulnerability of asylum seekers, including psychological repercussions (Sciurba 2018).

The composition and functioning of the TCs have recently been reformed by Legislative Decree 220/2017. The TCs, in essence administrative entities, are the competent authorities to examine asylum claims and take the first-instance decision. It is a decentralized system, under central coordination of the CNDA. There are currently twenty TCs[24] and the law foresees the creation of up to thirty sub-commissions. The TCs are established by the prefectures (local government offices) in coordination with the MoI, Department for Civil Liberties and Immigration. The TCs are composed of a president of prefectural career (appointed by decree by the MoI), a technical expert in international protection and human rights nominated by UNHCR, and administrative officials with investigative duties (Procedure Decree (4)(3-bis), amended by LD 220/2017). The administrative officials are appointed by public tender and competition, and must be highly qualified. A minimum of four administrative officials are appointed. One of them, preferably of the same sex, conducts the interview with the asylum seeker and proposes a decision for the deliberations of the TC. When specific specialized competencies are required (such as interviewing a minor or a victim of trafficking), the official conducting the interview is selected according to his/her specialization (see Section 4.2.2).

These changes are aimed at improving the professionalization and specialization of the members of the TCs, a necessary step as previously, there had been no requirement for members of the TCs could to have expertise in matters of asylum and immigration, apart from the UNHCR representative. Before these changes, all the members of TCs (the president - who has prefectural rank - a representative of UNHCR, a member of the police and someone from a local agency) were responsible for conducting interviews, which led to inconsistencies in both the approach and the results. After the public competition in spring of 2018, the new highly qualified administrative officials received a specialized training of approximately

24 Ministry of Interior, Quaderno statistico per gli anni 1990-2018, available in Italian at: http://bit.ly/2u3FlR5.

five weeks organised by CNDA, UNHCR and EASO, after which, upon entering the TC, they were guided for two weeks by the TC's UNHCR representative. After this period they effectively replaced the former members in conducting the interviews. According to the new procedure, the administrative official who conducts the interview reports the case to the other members of the TC participating in the assessment procedure (president, UNHCR representative).

Training courses on specific issues are frequently provided to TCs, and are usually based on EASO and UNHCR materials or may be the result of collaboration with other institutional or civil society actors (including anti-trafficking organisations and associations with relevant expertise).

The CNDA does not only have a coordinating role, but can issue guidelines and internal orientation notes to the TCs, under the guidance of the MoI. This political dimension undermines the independence of the TCs in their general orientations.

2.2.1. Types of procedure

The main types of procedure are the **regular procedure**, the **border procedure** and the prioritized and **accelerated procedure**. In addition, the Security Decree created the **immediate procedure**, which applies for applicants who are the subjects of criminal proceedings or have been convicted for a crime of particular gravity that leads to their exclusion from international protection.[25] Upon communication of such instances by the police authority, the TC conducts the immediate interview and makes its decision. In the **regular procedure**, the TC should interview the asylum seeker within thirty days and make its decision within three working days. Some extensions are foreseen. However, in reality, the delays are much longer, given the high number of asylum claims lodged in recent years.

The **border procedure** was introduced by the Security Decree. The relevant areas are not defined in the decree, but a list of cities, border and transit zones is provided by ministerial decree (MoI 2019). The border procedure foresees that the entire claim can be processed at the border in an accelerated manner. It applies when applicants make an application at the designated border or transit zones if they were apprehended in trying to evade border controls, and/or when the applicants come from a SCO.

Accelerated procedures are used in cases of applications considered unfounded, applications submitted in detention and with the sole intention to delay or prevent the issuance or the execution of a decision on expulsion or refoulement. As mentioned above, it includes border applications, for asylum seekers who had been stopped for eluding or tried to elude the border controls. Furthermore, accelerated procedures have different timeframes for the TC decisions depending on the situation. A five-day procedure applies when the applicant comes from a SCO or makes a subsequent application[26] (*domanda reiterata*) without new elements. A nine-day procedure is foreseen for applicants in hotspots, pre-repa-

25 If the application is denied, the asylum seeker has the obligation leave the country, with the exemption of those who are considered 'not removable' as established in Article 19 of the Consolidated Act on Immigration, and if special protection has been granted. Hence, the suspensive effect is not granted systematically. In addition, if it is decided to apply the immediate procedure during an appeal procedure, any suspensive effect that was granted prior to that is cancelled. This type of derogation to the right to remain on the territory appears to be contrary to the recast of the EU Procedure Directive 2013/32/EU.

26 As affirmed in Art. 2 of Directive 2013/32/EU, 'a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn their application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Art. 28 (1) of Directive 2013/32/EU'.

triation detention facilities (the CPR) or first reception centres, as well as the border procedure. And an eighteen-day procedure ensues if the application is manifestly unfounded or is made after the applicant has been apprehended for irregular stay as a means to delay a removal order (AIDA 2019). The TCs can decide to take longer (up to eighteen months) to make their decision, with the exception of a six-month limit for those in CPRs, hotspots or first reception centres.

The decisions of TC's can lead to various possible outcomes. The TC can grant refugee status or subsidiary protection. If the person does not conform to the criteria of these two forms of international protection, but there are nevertheless reasons why the person cannot be expelled and refouled, the TC can recommend that the police headquarters (*Questura*) issue a residence permit for special protection, which is granted to persons who, according to the law, cannot be expelled or refouled (see Section 3). Claims may be rejected as being either 'unfounded' or 'manifestly unfounded'.[27] An application can also be rejected on the basis that an internal protection alternative is available in the country of origin.

Asylum seekers can appeal the first instance decision within thirty days at a civil tribunal (located in the same place as the TC) (Procedure Decree, Art. 35 (1 and 1-bis)); the appeal must be submitted by a lawyer. The time limit to appeal in cases of accelerated procedure ranges from fifteen to thirty days[28] (idem (28-bis)). Specialized sections within the civil tribunals were established by the Minniti-Orlando Decree (converted into Law 46/2017) and are responsible for cases related to immigration, asylum and the free movement of EU citizens.

The reform undertaken with the Security Decree brought novelties regarding the grounds for inadmissibility of an application. Article 29 of the Procedure Decree already established two grounds of inadmissibility of an application for international protection: 1) when the applicant already has refugee status still in force from another state party to the 1951 Refugee Convention and 2) in case of a subsequent application, meaning if an application without new elements is submitted after having received a negative decision from the TC. Another ground for inadmissibility has been introduced by the Security Decree, that of a subsequent application while having an immediate removal order in phase of execution, as it is considered to be presented 'for the sole purpose of delaying or preventing execution of the provision itself' (Law Decree 113 Art. 9 (b), introducing the Art. 29-bis to the Procedure Decree). In case of appeal against a decision of inadmissibility, there is no suspensive effect being applied, meaning that the applicant has the obligation to leave the country, even if the appeal's decision is pending.

In addition to these different procedures, there is also the **Dublin procedure** (Dublin Regulation 604/2013).[29] Within the MoI, there is the so-called Dublin Unit, which deals with 'Dublin cases' and cooperates with their counterparts in Europe. All asylum seekers are photographed and fingerprinted by police authorities that store their fingerprints in Eurodac (the European Dactyloscopy database). In case of a match on Eurodac during the fingerprinting procedure, the police authorities contact the Dublin Unit (AIDA 2019). If another EU member state is considered responsible for the asylum procedure, the application is terminated (Art. 30(1) Procedure Decree) and the Dublin Unit issues a decision that is transmitted to the applicant through the police headquarter (*Questura*), which arranges the transfer to that

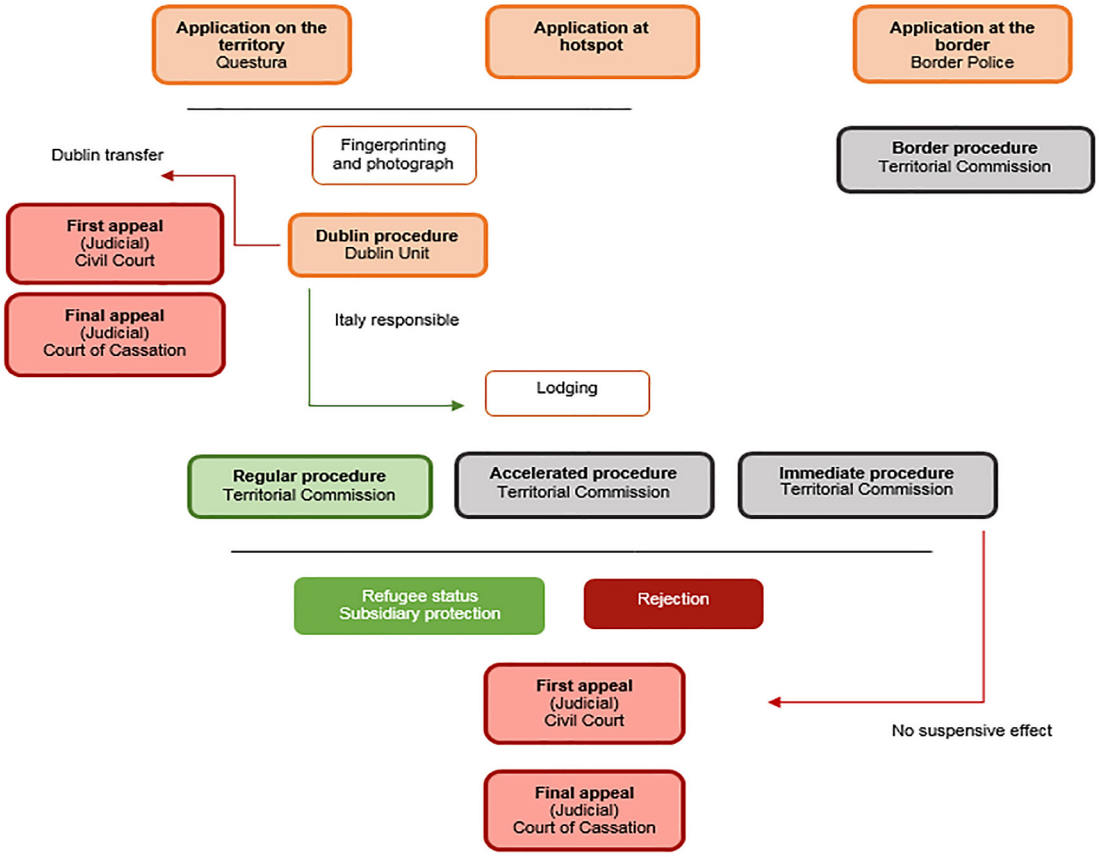
27 For a full list of the reasons for being considered manifestly unfounded, see AIDA 2019, 37.
28 For a full list of the time limits, see AIDA 2019, 71.
29 Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person.

member State. As the AIDA report highlights, so far there are no reports of cases where the Dublin Unit has requested individual guarantees before transferring a person to another member state, even in cases of persons in **situations of vulnerability** (AIDA 2019, 51). For instance, this study reports two cases where the Dublin Unit decided to transfer people in conditions of vulnerability (health-related issues and being pregnant) without having received any information or guarantees on reception conditions in the destination country. Both the persons involved in these cases have appealed the transfer decisions. Indeed, asylum seekers may appeal the transfer decision before the civil tribunals within thirty days of the notification of the transfer (Art. 3(3-ter) Procedure Decree, as amended by Art. 6 Orlando-Minniti Decree (Decree Law 13/2017).

The opposite is the case when migrants reach the EU via Italy and then travel onwards to another member state. In that case, representatives of the two Dublin Units involved arrange the transfer back to Italy on the basis of available documents (where it is also possible to mention potential vulnerabilities). According to MoI circular of 14 January 2019, **Dublin returnees** who had already lodged an asylum application before leaving Italy should be transferred by the competent prefecture from the airport of arrival to the province where they made the application. In cases where no prior asylum application had been lodged, Dublin returnees should be accommodated in the province of the airport of arrival. The family unit principle should always be guaranteed. According to the reform introduced by the Security Decree, Dublin returnees who are asylum seekers, including vulnerable cases, no longer have access to the SIPROIMI system (AIDA 2019, 56).

Returns to Italy are very common, due to the fact that Italy is one of the countries of first arrival in the EU. Over the past two years, during which arrivals via the Central Mediterranean Route dramatically decreased, a considerable number of migrants were sent back to Italy by other EU countries (like Germany and France), with a proportionately higher percentage compared to the whole number of arrivals in 2018 and 2019 (AIDA 2019). For instance, as data reveal, while only 1 200 migrants reached Italy from Libya in the first seven months of 2019, in 2018 Germany alone sent 2 292 asylum seekers back to Italy (Villa 2019).

Overview of the asylum procedure before the entrance into force of the Lamorgese Decree



Source: AIDA 2019, 17–18

List of authorities intervening in each stage of the asylum procedure

Stage of the procedure	Competent authority	Competent authority (in Italian)
Application ◊ At the border ◊ On Italian territory	 Border Police Immigration Office, Police	 Polizia di Frontiera Ufficio Immigrazione, Questura
Dublin	Dublin Unit, Ministry of the Interior	Unità Dublino, Ministero dell'Interno
Refugee status determination	Territorial Commissions for the Recognition of International Protection	Commissioni Territoriali per il Riconoscimento della Protezione Internazionale
Appeal	Civil Tribunal	Tribunale Civile
Onward appeal	Court of Cassation	Corte di Cassazione
Subsequent Application	Territorial Commissions for the Recognition of International Protection	Commissioni Territoriali per il Riconoscimento della Protezione Internazionale

Source: AIDA 2019, 17–18

3. NATIONAL PROVISIONS AND SAFEGUARD MEASURES CONCERNING ASYLUM SEEKERS AND OTHER MIGRANTS IN SITUATIONS OF VULNERABILITY

Dany Carnassale, Letizia Palumbo and Alexandra Ricard-Guay[30]

The Italian asylum legal and policy framework follows the EU framework regarding the inclusion of provisions for asylum seekers considered vulnerable and/or with special needs, as well as the definition of the groups considered vulnerable. In this section, we review what is included in the legal and normative framework in Italy before turning to administrative guidelines and other tools relevant for the consideration of vulnerability. We cover not only the legal framework regarding asylum, but also that concerning particular groups for whom specific protection provisions and safeguards are foreseen (regardless of their migration status).

3.1. Vulnerability within the Italian asylum legal framework

Italy has transposed the EU instruments regulating migration and asylum, the Common European Asylum System (CEAS), into its national legislation, including the safeguards and provisions that make reference to 'vulnerability' or 'special needs' with the following documents: the Directive on Reception Conditions (2013/33/EU), the Directive on Asylum Procedures (2013/32/EU), the Qualification Directive (2011/95/EU), and the Returns Directive (2008/115/EC). The recasting of the instruments of the EU asylum system has strengthened the inclusion of specific guarantees for those asylum seekers who are more vulnerable than others (AIDA 2017). However, the approach to vulnerability in the European asylum system is fragmented. Reference to this notion is done in diverse instruments without a consistent view. Different terms are used – such as 'vulnerable', 'with special needs', 'in need of procedural guarantees' – creating confusion or at least imprecision (AIDA 2017, 14). The Italian framework reflects this diversity in terminology, for instance some civil tribunals and TCs use also synonyms like 'fragile' and 'disadvantaged' protection seekers.

The Reception Conditions Directive (2013/33/EU) provides a non-exhaustive list of vulnerable persons, including:

> *minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Art. 21).*

The directive also introduces a separate concept, that of 'applicant with special reception needs', which is defined as vulnerable persons (Art. 2(k)), which means that 'any person with special reception needs is a fortiori a vulnerable person' (AIDA 2017). In other words, both terms appear to be used interchangeably. The EU Asylum Procedures Directive (2013/32/EU) refers to this list (Art. 21 Directive 2013/33/EU) without providing further definitional insights. Another notion is included, that of 'applicant in need of procedur-

30 This section is the result of a common reflection of the three authors. Alexandra Ricard-Guay drafted sections 3.1, 3.1.1 to 3.1.7, 3.2.3, 3.3, 3.3.1, 3.3.2 and 3.3.4; Letizia Palumbo drafted sections 3.2.1 and 3.2.2; Dany Carnassale drafted section 3.3.3.

al guarantees', defined as 'an applicant whose ability to benefit from the rights [provided by the directive] is limited due to individual circumstances' (Art. 31). In both directives, further guarantees or special considerations are foreseen for a sub-category, those whose needs stem from torture, rape or other seriousforms of psychological, physical or sexual violence,[31] as well as minors and unaccompanied minors (UAM).

In general terms, the special guarantees for those deemed vulnerable foreseen in the EU framework concern the asylum procedure (prioritized process of claims and exemption from accelerated or border procedures), special consideration in the context of detention and of returns, and special consideration and appropriate assistance in the context of the reception. Hence, the safeguards are quite limited and narrow. In the following section, we will see how the Italian legal and policy framework follows or is different from the EU framework.

3.1.1. Who is considered vulnerable?

Similar to the EU CEAS instruments, in the Italian legislation related to asylum and migration the definition of vulnerability is not provided per se, but a list of groups considered vulnerable is established. Indeed, a legal definition of vulnerability is lacking. Legislative Decree 142/2015 (known as the Reception Decree), which constitutes the transposition of the EU Reception Directive and the EU Procedures Directive, follows, in Article 17, the list established at the EU level, but in a broader way as it also includes violence related to sexual orientation or gender identity,[32] which are absent from the EU Reception Directive.

Prior to that, Qualification Decree (Decree Law 251/2007) amended by Legislative Decree 18/2014, which corresponds to the transposition of the EU Qualification Directive, also included a list, but fewer groups were covered (for instance, it did not include the victims of trafficking, unaccompanied minors, and people with mental health disorders). Hence, the list has evolved to reflect the expansion of categories considered vulnerable as new sensitive issues arise, according to the evolving migration context.

In the Reception Decree, the terms used cover both asylum seekers with special needs and those in conditions of vulnerability. As such, Article 2 refers to 'applicants with special reception needs', meaning those 'who need special forms of assistance in obtaining reception measures'; and such applicants fall into the list of vulnerable categories as indicated in Article 17.

Reflecting the EU framework, the main guarantees for the asylum seekers considered vulnerable are to do with asylum procedures; there is also special consideration for special needs in the context of reception, and some additional special consideration or safeguards in the context of detention and of returns or expulsion.

31 In the case of asylum procedures, this sub-category may be exempted from accelerated deportation procedures (including at borders), Art. 31(8).
32 The list provided in Article 17 of the Reception Directive includes: 'minors, unaccompanied minors, the disabled, the elderly, pregnant women, single parents with minor children, victims of human trafficking, people suffering from serious illnesses or mental disorders, people for whom it has been established that they have suffered torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, the victims of genital mutilation'.

3.1.2. Vulnerability and international protection

The fact of being identified and recognized as vulnerable according to the group listed in the law does not confer particular facilitation in getting international protection. Nevertheless, there are some possibilities. For example, Article 7 of the Qualification Decree (251/2007) defines acts of persecution. These include acts of physical or psychological violence, including sexual violence and acts specifically directed against a sexual gender or against children. Therefore, some vulnerable categories or groups are included as potential victims of persecution acts, understood that these acts are serious enough to constitute human rights violations.[33]

Further, Article 3 of the same decree, which addresses the examination of the facts and circumstances, stipulates that the examination shall take into consideration the individual situation, in particular the social condition, sex and age, in order to assess if, on the basis of the personal circumstances of the asylum seekers, the acts to which they have been or could be exposed correspond to persecution or serious harm. Thus, again, some categories of vulnerability receive special consideration in the examination of the claims.[34]

Additionally, there are some categories of vulnerabilities (or vulnerable groups) that are considered partial or full grounds for refugee status or subsidiary protection, namely the victims of trafficking and those who suffer discrimination and persecution because of their SOGIESC. Article 8 (1d) of the Qualification Decree stipulates that the sexual orientation, according to the national context, can be considered a common characteristic of a particular social group and therefore be grounds for persecution. For victims of trafficking, the experience of trafficking and the risks of reprisals from traffickers, or the risk of re-trafficking once returned to the country of origin are considered to amount to a well-founded fear of persecution, in relation to one of the convention's grounds. In this case the victim of TIP would be considered to belong to a particular social group. The 2006 UNHCR 'Guidelines on the application of the Refugees Convention to trafficked persons', review how and when victims of trafficking can fall under the refugee definition and hence be eligible to the refugee status, provided that all the elements contained in the definition are met.

In both cases, refugee status is granted if and when the acts of discrimination or violence against them amount to persecution, and they are deemed to belong to a particular social group, which normally comprises persons of similar background, habits or social status – according to the interpretation guidelines of the UNHCR (UNHCR 1992, par. 77).[35]

For other types of vulnerability, it is not excluded that their specific situation or condition be part of the consideration for granting international protection, but this jurisprudence is evolving. The section on case law analysis will elucidate some of the elements and arguments that have been used in a few key cases. For example, the fact of having a disease in a country without medical treatment and being the target of discrimination on the basis of such disease, can become ground for a refugee status. Or, in cases

33 Qualification Decree (LD) 251/2007 Art. 7 (1).
34 Qualification Decree (LD) 251/2007 Art. 3 (3c).
35 According to the UNHCR's definition, a particular social group is 'a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights' (UNCHR 2002a).

of violence against women, so gender-based, in a country where state protection is absent or insufficient and the local context is highly discriminatory, in certain cases, being a woman can be considered as pertaining to a social group, and give access to refugee status, according to the 2002 UNCHR guidelines (UNHCR 2002a).

3.1.3. Key safeguards and procedural guarantees

There are two key special procedural guarantees foreseen for those considered vulnerable. First, for those with 'particular needs', support personnel can be admitted during their individual interview with the TCs to provide the necessary assistance (Procedure Decree, Art. 13(2)). However, there is no specification as to the type of personnel and assistance allowed (AIDA 2019, 77). More information about the motives and context in which such support may be called on are provided in the 'Guidelines for programmes of intervention for assistance and treatment of mental disorders of holders of refugee status and subsidiary protection status, who have suffered torture, rape or other serious forms of psychological, physical or sexual violence', published in 2017 (hereafter Ministry of Health's Guidelines).

Second, the people identified as belonging to vulnerable categories are admitted to the prioritized procedure (Procedure Decree, Art. 28 (1)(b)). In cases where the TC is informed about an applicant being vulnerable, they have to make an appointment for a personal interview as soon as possible.

In order for the applicant to benefit from the prioritized procedure, the TCs must be notified about the condition or situation of vulnerability of the asylum seeker, or identify this vulnerability themselves. For example, the TCs can be informed by the local police who identify the vulnerable situation; the situation of vulnerability can also be identified by workers of the reception facility or by the TC itself on the basis of the asylum claim. When the identification is done by the reception's staff, the manager of the reception facility has to inform the Prefecture for the eventual access to the prioritized procedure (Reception Decree Article 17(7)). When a medical-legal report is necessary to confirm the situation or condition of vulnerability, it can be provided by a specialized NGO, reception workers or directly by health services. The president of the TC makes the decisions regarding the attribution of prioritized procedures.

There are other types of safeguards related to the procedure. For example, it is foreseen in the Procedure Decree (25 /2008) that those who conduct the interviews be trained 'in order to ensure that they have the competence necessary for the interview to take place with due attention to personal or general context in which the question arises, including the cultural origin or vulnerability of the applicant' (Art. 15(1)). In other words, the law foresees that the members of the TCs receive a specific training concerning vulnerabilities of asylum seekers. As mentioned in the previous section, the CNDA is responsible for training members of the TC as well as the interpreters working with them. The European Asylum Support Office (EASO)[36] has provided support to the CNDA and TCs.

36 EASO is a European agency activated for the implementation of asylum procedures across Europe and in line with its communitarian directives and regulations. EASO's staff is active in supporting national contexts experiencing problems in the management of migration flows and providing technical support to professionals working in these institutions.

In addition, the Procedure Decree stipulates that, if the examination of the claim necessitates this, the TCs can consult experts on particular aspects, such as issues related to health, culture, religion, gender and minors (Procedure Decree (8)(3-bis), amended by Reception Decree (142/2015)). And the TC can, with the consent of the asylum seeker, asks for medical examinations to ascertain the impact of persecution or serious damage suffered, making reference to the Guidelines developed by the Ministry of Health as foreseen in Article 27 of the Procedure Decree.

However, there is no provision in the legislation exempting people considered vulnerable from accelerated procedures (AIDA 2019, 68). With the new border procedure introduced with the Security Decree, an exemption for vulnerable people was introduced by a ministerial circular. A first ministerial circular from the MoI issued on 16 October 2019 clarified the guidelines for the application of the accelerated procedure at the border.[37] It pertains to applications at the border or transit zones,[38] when the application is done after having been intercepted for evading or trying to evade border control. In that perspective, it does not apply to those rescued at sea through SAR operations, or those who spontaneously make an application at the border and transit zones without having been intercepted by the police. The MoI's circular of 18 October 2019[39] provides further precision, exempting unaccompanied minors and vulnerable people to whom 'specific procedures should be guaranteed' from the accelerated procedure at the border or transit zones.

3.1.4. Identification and assessment

Individual assessment is crucial to identify vulnerability, even if such assessment can be difficult and at times problematic. The EU framework prescribes a state's obligation to detect vulnerability within a reasonable period once the application procedure has started, as well as the obligation to ensure identification during the entire process.

Despite this requirement, Italy does not have a specific legal provision describing a formal assessment mechanism or procedure for the identification of and screening for vulnerable conditions (AIDA 2019). Identification of vulnerabilities can occur, of course, at any moment during the asylum procedure, from disembarkation or at any point of entry in the country, through interactions with local authorities, workers in the reception facilities, NGOs, international organizations, during interviews with lawyers, during medical screenings, or during the hearing with the TC. Hence, many actors can be called upon to identify the existence of conditions or situations of vulnerabilities.

There are, however, many gaps in early detection. **Visible vulnerabilities** – such as pregnant women, disabilities and injuries resulting from extreme violence or torture – will most likely be identified upon disembarkation, whereas other less visible vulnerabilities may become apparent or be disclosed at a later stage (AIDA 2017, 31). Even age is not always that easy to determine, hence while some unaccompanied minors will immediately be identified, others – either because they claim to be adults despite appearing young, or many others who are close to turning eighteen – may require an age assessment.

37 Ministry of the Interior Department of Civil Liberties and Immigration, Circular 8560, 16 October 2019, implementation of the accelerated procedure ruled by Article 28-bis Procedure Decree.
38 The border and transit zones are identified in the Ministry of the Interior Decree, 5 August 2019, on the identification of border or transit areas for the implementation of the accelerated procedure for the examination of international protection applications.
39 MoI Circular 0138656.

In order to ascertain the existence of vulnerabilities, some documentation – such as a medical report or a DNA test to prove a parental relation – may be required, depending on the type of vulnerability, for the purpose of special procedure guarantees. Different sets of guidelines for distinct vulnerable groups do include some indications concerning their identification, such as for **victims of torture** and severe forms of violence (the Health Ministry's Guidelines), or for victims of trafficking (see below, Sections 3.3.1 and 3.3.2). The 2017 Health Ministry's Guidelines assigns great importance to the multidisciplinary approach, from identification to rehabilitation. In that perspective, close work between the local health services and any other actors in contact with the asylum seeker is important. The guidelines also describe at length the procedure and use of the medical examination to support the recognition of past experience of torture or other forms of severe violence. We will discuss this point further in the following section regarding reception.

As for **victims of trafficking**, the UNHCR in association with the CNDA developed (and in 2017 adopted) some specific guidelines for identifying victims of trafficking among applicants for international protection and referral procedures (CNDA and UNHCR 2017), which are intended for the TCs (hereafter the 'Trafficking Guidelines'). As stipulated in the law (Reception Decree §1 (17)(2)), identified victims of trafficking shall be referred to the specific assistance and social integration programme for victims of trafficking (Consolidated Act on immigration, Art.18).

Concerning **unaccompanied minors**, there are specific measures to be taken for their age assessment.[40] When there are well-founded doubts regarding the declared age (in the absence of proper identity documents), a non-invasive age assessment shall be carried out at any stage of the procedure (Procedure Decree 25/2008 Art.19 (2)). The Public Prosecutor's Office at the juvenile court can order a social-medical examination to ascertain the age (Zampa Law 47/2017 Art. 5 (4)). Both the minor and his/her legal guardian shall be informed, with the assistance of a cultural mediator, in a language that he/she understands and according to his/her level of maturity and of alphabetization, of the examination and its results (Reception Decree (LD 142/2015) Art. 19 (5)). This law foresees that the age assessment be done through a multidisciplinary approach and team of professionals – in presence of the cultural mediator – and with the least invasive methods possible (idem Art. 19(6))– in respect to the principle of the best interest of the child. In the meantime, and if doubts persist after the age assessment has been conducted, it is the assumption of childhood that prevails (idem Art. 19 (8)).

NGOs and inter-governmental organizations also played – and still do to some extent – an important role in identifying vulnerabilities. In the zones of disembarkation and hotspots, in addition to Italian authorities, until 2019 the EASO, UNHCR and IOM took part in the early detection of migrants in vulnerable situations. In December 2016, EASO and Italy signed a Special Operating Plan establishing and reinforcing the areas of technical and operational assistance, including support with the identification of and assistance to vulnerable applicants. The UNHCR, IOM and EASO have developed tools to facilitate and guide the identification of vulnerability, risk to harm and special needs (UNHCR and IDC 2016; Galos *et al*. 2017). Other projects and initiatives from different NGOs also operate through outreach initiatives in the zones near disembarkation or close to the borders in order to provide legal information to asylum seekers and other migrants, who are at times outside of the reception system (in informal settlements).

40 The age assessment procedure is the object of (or is governed by) several provisions in the law, Article 19 of the Procedure Decree, Article 19 of the Reception Decree, and Article 5 of the Zampa Law.

3.1.5. Detention, returns, expulsion and deportation

Regarding the **detention of asylum seekers and other migrants** in the course of the asylum procedure, very limited exemptions apply for vulnerable categories. As foreseen in the Reception Decree (142/2015 Art. 7), it is prohibited to detain asylum seekers whose health conditions are incompatible with detention. In addition, the decree specifies that there should be periodic verification – as part of the guaranteed social and health services of the detention centres – in order to identify any vulnerable conditions that require particular assistance measures. However, it gives no further details or specifications regarding the type of intervention or specific assistance that should be provided.

While the EU Return Directive allows for the detention (pending a deportation order) of unaccompanied minors, this is prohibited in Italian law. However, it has been reported of cases of unaccompanied minors detained in the CPRs and in hotspots (AIDA 2019). Furthermore, the deportation of unaccompanied minors is prohibited by Italian law.

Concerning the protection from expulsion, there are safeguard measures for the different vulnerable groups – as identified in the law. As stipulated in the amended Article 19 of the Consolidated Act on Immigration, the expulsion of people with disabilities, the elderly, minors, members of single-parent families with children, or victims of serious psychological, physical or sexual violence shall take place using methods compatible with individual and personal situations, duly ascertained (Art. 19 (2-bis)). This provision differs from the full protection from deportation that benefits unaccompanied minors and pregnant women.

3.1.6. Other specific types of protection

Pregnant women, while not benefiting from a distinct legislative framework of protection, nevertheless are subject to additional protection measures. They can benefit from the prioritized procedure, and are protected during their pregnancy and for six months after birth, from deportation (Consolidated Act on Immigration (19)(2d)). In addition, when in an irregular condition, pregnant women not only have access to the public health care system for essential care or emergencies, like any other undocumented migrant, but the law guarantees the social protection of pregnancy and maternity,[41] with treatment equal to that of Italian citizens (Consolidated Act on Immigration (35)(3a)).

Undocumented migrants have access to the public health care system for essential care, emergencies, chronic diseases and accidents (idem (35)(3)). In addition, it is worth noting that the Italian government has periodically adopted schemes to regularize undocumented migrants on its territory, at times limited to certain labour migrants, meaning within specific sectors, and following specific criteria. As mentioned above, the most recent regularization programme was undertaken in the context of the Covid-19 pandemic. While not designed as a protection measure, but rather as a means to respond to the presence of high numbers of irregular migrants in Italy, mainly due to the lack of an effective entry system for foreign workers (Chiaramonte 2020), it nevertheless constitutes a pathway to regularization, and hence a more stable life.

41 Pursuant to Laws 405/1975, 194/1978, Ministerial Decree of Ministry of Health of 6 March 1995.

3.1.7. Reception: specific assistance

With regard to **reception**, Article 17 of the Reception Decree is dedicated to applicants with special needs, and hence considered vulnerable (both terms are used interchangeably). In general terms, this provision indicates that the reception measures foreseen in the decree must take into consideration the 'specific situation' of those who fall under the list of vulnerable people.

Article 17 provides general guarantees that apply to the different parts of the reception system. Indeed, it stipulates that special services be provided in first reception centres to those with special needs, in collaboration with local health services, and that these services should guarantee special assistance and adequate psychological support. The same goes for the second reception system applicants with special needs should be provided with appropriate special services. These special services should guarantee both an initial assessment and a periodic verification of the existence of conditions of vulnerability. Also, when possible, those with special needs are accommodated in reception facilities where relatives are already hosted.

Article 17 also mentions special guarantees for two specific groups, as not all categories of those considered vulnerable require the same type of assistance. Those who have suffered as a result of rape, other types of severe violence or torture are granted access to appropriate medical and psychological care and assistance, according to specific guidelines. In that regard, the Ministry of Health has been mandated to develop guidelines for the design of specific programme of assistance in these situations, and health professionals accordingly receive specific training (Qualification Decree Article 27 (1-bis)). In addition, the Reception Decree specifies (Art. 17 (2)) that those identified as victims of trafficking be referred to a specific programme (called the Single Programme for Identification, Assistance and Social Integration under Article 18 (3-bis) of the Consolidated Act on Immigration).

Regarding **unaccompanied minors**, Article 19 of the Reception Decree is exclusively concerned with the specific safeguards for this particular group. The set of protection and safeguard measures for UAMs have been progressively strengthened over the years and comprise various provisions of different pieces of legislation. In 2017, Law 47/2017 concerning provisions for the protection of foreign unaccompanied minors (known as the Zampa Law) was adopted. We will discuss in more detail the protection framework for UAMs in the following section, including aspects related to reception.

At the administrative level, the government, local NGOs and international organizations have different guidelines and tools, as well as distinct legal and policy frameworks with specific measures or provisions for different groups (that is, victims of human trafficking and unaccompanied minors).

3.2. Additional provisions for particular groups

In addition to provisions concerning vulnerable international protection seekers within the asylum legal framework, there are also distinct sets of legal provisions that concern specific groups included in the list of categories of vulnerabilities which provide specific protection measures also applicable in the context of asylum. These specific groups among those deemed vulnerable – namely unaccompanied minors, victims of trafficking and victims of gender violence – have additional sets of protection safeguards and measures foreseen in the law. In fact, in Italy, the protection regimes for these groups are quite developed. This section focuses on these groups.

3.2.1. Victims of human trafficking and exploitation

The Italian legal framework in the field of trafficking in persons and severe exploitation has evolved over the years in light of international and European commitments. Provisions concerning victims of trafficking were introduced into national legislation in 1998 through Article 18 of the Consolidated Act on Immigration. In 2003, Law 228/2003 on 'Measures against trafficking in human beings' amended the Criminal Code[42] in line with the 2000 UN Trafficking 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children'. In 2014, Directive 2011/36/EU on trafficking was transposed into national law through Legislative Decree 24/2014, which, inter alia, amended the provisions of the Criminal Code regarding the crime of 'trafficking in persons' (Article 601) and the crime of 'slavery' (Article 600) in accordance the definition of TIP provided by the directive.

Italian legislation concerning the assistance and protection of victims of severe exploitation and trafficking has been recognized as something of a milestone on both the European and international level, especially with reference to Article 18 of the Consolidated Act on Immigration. This article provides victims of violence and severe exploitation (also applicable in case of trafficking) with a long-term programme of assistance and social integration, as well as with a residence permit. It applies to EU and non-EU citizens in situations of violence or severe exploitation, and whose safety is considered at risk, as a consequence of attempts to escape from a situation of exploitation, or because of the statements made during preliminary investigation or in the course of court proceedings.[43] The danger for the victim's safety must be concrete. The risk to safety in the country of origin must also be considered, including toward the victim's relatives in case of repatriation.[44]

The residence permit provided by Article 18 – previously called 'social protection permit', now entitled 'residence permit for special cases' following the amendments introduced by the Security Decree 113/2018 – has a duration of six months and may be renewed for one year or a longer period (for example, the time necessary to complete criminal proceedings against perpetrators).[45] It is also convertible into a residence permit for education or work. The issuing of this residence permit is conditional on the person's participation in the programme of assistance and social integration.

42 In particular, the provisions of the Criminal Code concerning 'Placing or holding a person in condition of slavery or servitude' (Article 600), 'Trafficking in persons' (Article 601) and 'Purchase and sale of slaves' (Article 602).
43 Article 18 (1) reads: 'Whenever police operations, investigations or court proceedings involving any of the offences set out in article 3 of Law 20 February 1958 no. 75 [on countering exploitation through prostitution], or those set out in Article 380 of the Code of Criminal Procedure [inter alia, 600, 601, 603 bis and 629 CC], or whenever the social services of a local administration, in the performance of their social assistance work, identify situations of abuse or severe exploitation of a foreign citizen, and whenever the safety of the foreign citizen is seen to be endangered as a consequence of attempts to escape from a criminal organization which engages in one of the afore-cited offences, or as a consequence of statements made during preliminary investigations or in the course of court proceedings, the chief of police, acting on the proposal of the Public Prosecutor, or with the favourable opinion of the same Public Prosecutor, may grant a special residence permit enabling the foreign citizen to escape from the situation of abuse perpetrated by the criminal organization and to participate in a social assistance and integration programme.'
44 The consideration of dangers in the country of origin has been clarified by the circular of the Ministry of the Interior, no. 300 of 4 August 2000.
45 Moreover, if the person has a work relationship (a contract) at the moment the permit expires, it can be renewed for the duration of the contract, or if indeterminate, for two years.

The most innovative aspect of Article 18 is that it foresees two paths through which the residence permit can be issued: the 'judicial path' and the 'social path'.[46] The judicial path is conditional on the cooperation of the victims with law enforcement or judicial authorities in the framework of criminal proceedings. According to this path, the residence permit can be issued by the *Questore* (the provinical head of the police headquarters), on a proposal or with the approval of a public prosecutor. The social path does not require the victims' cooperation with relevant authorities in the framework of criminal proceedings. In this case, the issuance of the residence permit by the *Questore* is requested by NGOs or public social services that have identified a victim of violence or serious exploitation. Significantly, in both the paths, the issuance of a residence permit it is not dependent on the outcome of criminal proceedings (Giammarinaro 2014).[47]

The assistance and social integration programmes established by Article 18 provide victims with support and services aimed at their social and labour inclusion, and is implemented through projects throughout Italy by authorized organizations, that can be either local public social services or associations, or private entities.

However, despite the innovative approach of Article 18, its implementation has often been inadequate and arbitrary throughout the country. In particular, the 'social path' is rarely applied. Therefore, the granting of an Article 18 residence permit has been made de facto conditional on a victim's cooperation in criminal proceedings. Furthermore, the issuance of the residence permits often takes a long time and there are problems with their renewal (GRETA 2018). This long waiting period risks becoming an 'empty' and frustrating period for migrants, increasing their condition of vulnerability (Palumbo 2016). Lastly, it is difficult for victims to obtain compensation.

It is worth underlining that Legislative Decree 24/2014, transposing EU Directive 2011/36 on TIP, provided for the adoption of a national anti-trafficking action plan and for the setting up of a single programme for assisting victims of TIP and exploitation.[48] It also added provisions concerning the compensation of victims of TIP. However, Decree 24/2014 presented several limitations. For instance, it has not included the principle of the irrelevance of the consent of the victim of TIP to the intended exploitation, and it has not implemented some important provisions, including that regarding the non-punishment of victims of TIP for their involvement in unlawful activities (GRETA 2018). Additionally, the decree has not incorporated the definition of 'position of vulnerability' contained in the EU Directive, and refers instead to 'vulnerable people', classifying them into discrete groups in line with the categories commonly connected to vulnerability, and accordingly overlooking the situational conception of vulnerability reflected in the definition provided by the directive.

With regard to labour exploitation, Law 199/2016 on combating undeclared work and labour exploitation in agriculture amended Article 603-bis of the Criminal Code, targeting both abusive gang-masters and employers who take advantage of workers' state of need. This provision applies to both EU and non-EU workers. Law 199/2016 establishes that victims of labour exploitation can have access to Article 18

46 See Art. 27 of Presidential Decree 349/99.
47 See on this Consiglio di Stato, Sez. VI, Decision of 10 October 2006, no. 6023.
48 This single programme has replaced the previous dual assistance approach based on short term and long-term projects, under respectively Article 13 of Law 228/2003 and Article 18 of the Consolidated Act on Immigration. Therefore, the two types of projects related to these two provisions were merged into a 'Single programme for the emergence, assistance and social integration of victims of trafficking and exploitation'. As a result, organisations implementing programmes for assisting victims of TIP and exploitation do not have to apply separately for funding of 'Article 13' and 'Article 18' projects.

of the Consolidated Act on immigration. However, a recent study, which reviewed 240 proceedings of the offence under Article 603-bis of the Criminal Code, showed that only in one of these has Article 18 been applied, meaning that it is still very rare for the residence permit and social assistance programme foreseen in this provision to be granted to victims of labour exploitation (Santoro and Stoppiani 2020).

Lastly, pursuant to Article 22 (12-quater) of the Consolidated Act on Immigration, which was introduced through Legislative Decree 109/2012,[49] a residence permit can be granted to undocumented migrant workers who have been subjected to aggravated forms of labour exploitation as foreseen in Article 603-bis (para 3) of the Criminal Code (that is, at least three persons are concerned, or at least one of the workers concerned is younger than sixteen years old, or the person is exposed to serious dangers related to the characteristics of work or the working conditions). This residence permit[50] can be issued by the provincial head of the police headquarters (*Questore*), in response to a proposal or with the approval of a public prosecutor, on the condition that the person concerned submits a complaint and cooperates in criminal proceedings against the abusive employer. Therefore, the issuance of an Article 22 residence permit is dependent on victims cooperating with relevant authorities. The residence permit has a duration of six months and may be renewed for one year or longer depending on the length of the criminal proceedings. As NGOs reported, the possibility to issue this residence permit is not well known to prosecutors and is rarely applied.

Asylum and victims of trafficking. In recent years, the focus at both EU and national levels has been on strengthening the link between the international protection system and that dedicated to victims of trafficking, in order to enhance the convergence or the collaboration between the two systems.

As described above, victims of TIP are included in the list of groups considered vulnerable among asylum seekers in the Reception Decree (Article 17). The same decree provides that those identified as victims of trafficking be referred to the programme of assistance and social integration under Article 18 of the Consolidated Act on Immigration. This means that victims of TIP can benefit from the Article 18 programme of assistance while not excluding their right to claim international protection (CNDA and UNHCR, 2017). Reciprocally, the above-mentioned Legislative Decree 24/2014, implementing the EU Directive 2011/36 on trafficking, also introduced relevant provisions. The decree contains the safeguard clause (Art. 1 (2)), which precludes that the implementation of its provisions affects the rights, obligations and responsibilities of the state under international law, including the 1951 Refugee Convention (in implementation of the provisions of the EU Directive on trafficking, recital 10). It also provides that those identified as victims of TIP shall receive adequate information in a language that they understand about their rights concerning international protection (Art. 10 (2)).

Furthermore, Article 10 of the Legislative Decree 24/2014 provides for better coordination between the administrative authorities in the field of international protection and those dealing with the protection of victims of TIP. There should be coordination between the two sectors in order to determine mechanisms of referral, if necessary, between the two protection systems.

49 LD 109/2012 has transposed into national law Directive 2009/52/EC concerning penalties for employers exploiting irregular third-country nationals.
50 Following the amendments introduced by the Security Decree the residence permit under Article 22 of the Consolidate Act on Immigration has been also entitled the 'residence permit for special cases'.

In terms of protection measures and procedural guarantees, as highlighted in Section 3.1, for identified victims of TIP among asylum seekers the prioritized procedure applies, given that they are among the groups considered vulnerable. Also, Article 10 (3) of Legislative Decree 24/2014 amended Article 32 of the Procedure Decree (Legislative Decree 25/2008), stipulating that the TCs should inform the *Questura* if during the assessment of the claim, there are reasons to believe that the applicant has been a victim of trafficking or slavery (Art. 32 (3-bis)). This provision strengthened the coordination and the link between the asylum system and the protection system for victims of TIP. However, this provision is still scarcely applied, partly due to the lack of clear indications on the way it should be implemented (Nicodemi 2020, 723).

As a means to increase the convergence between these two systems, the above-mentioned Guidelines for the Identification of Victims of Trafficking and Referral have been developed, and are used by the TCs during the asylum procedure. We will discuss these guidelines in the following section. In the same perspective, the National Plan on Trafficking and Exploitation has established a National Mechanism of Referral providing recommendations and specific measures also aimed at coordinating the systems of protection concerning asylum seekers and victims of trafficking.[51]

Lastly, it is worth underlining that, according to the Security Decree, the holders of residence permits under Article 18 (as well as those holders of the residence permit under Article 18-bis (see Section 3.2.2) and above-mentioned Article 22(12-quater) of the Consolidated Act on Immigration) have access to the SIPROIMI reception system.

3.2.2. Victims of gender-based violence

Building on the model of Article 18 of the Consolidated Act on Immigration, a residence permit for victims of gender-based violence was provided through Article 18-bis of same act, which was introduced by Law 119 of 15 October 2013. Article 18-bis implemented the provision set forth in Article 59 (para 1) of the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention.

Article 18-bis applies where law-enforcement authorities or social services ascertain a situation of violence against a foreign national,[52] and there is a concrete and current danger to the safety of the victims, as a consequence of attempts to escape from that situation of violence, or as a consequence of statements made during preliminary investigations or in the course of court proceedings. The residence permit is valid for one year and can be renewed if the dangerous conditions that caused it to be issued persist.

51 For more information see http://www.pariopportunita.gov.it/materiale/piano-dazione-contro-la-tratta-e-il-grave-sfruttamento/

52 In particular the provision refers to the offences under Articles 572, 582, 583, 583-bis, 605, 609-bis, 612-bis of the Criminal Code or under Article 380 of Code of Criminal Procedure.

Unlike Article 18 of the Consolidated Act on Immigration, which also provides the social path for victims of violence and serious exploitation, Article 18-bis provides that the residence permit can be issued only in the presence of pending criminal proceedings, whether they were initiated ex officio or following a complaint by the victim. This residence permit is issued by the Questore, who can make the decision after receiving a request either from an anti-violence centre or social services, but always with the approval of the judicial authority involved in the criminal proceedings.

In 2018, the Parliamentary Commission of Inquiry on Feminicide revealed that since its introduction in 2013, a total of 111 permits under Article 18bis were issued, with an average of thirty per year. This data confirms both the fact that this permit encounters several obstacles in its implementation and that it is not widely known among law operators not specialized in this field (Boiano et al. 2020).

The fact that the residence permit under Article 18-bis can be obtained only in the presence of open criminal proceedings represents one of the main limits of this measure. Indeed, undocumented migrant women often refrain from turning to the police when they endure situations of gender-based violence, fearing that contacting the authorities may lead to the initiation of an expulsion procedure against them (Boiano et al. 2020).

Furthermore, the existence of an incumbent risk for the woman's safety is often difficult to prove, especially in cases of psychological or economic violence, which the authorities often fail to recognize as 'qualifying [as] high-risk situations' (GREVIO 2020, 78). This significantly limits the implementation of Article 18-bis.

Moreover, the credibility of migrant women is often called into question precisely because they are applying for a residence permit under Article 18-bis. The Court of Cassation has recently ruled in this regard, in its Decision 16498 of 1 March 2017, accepting the appeal presented by an undocumented Albanian woman, who was the victim of serious maltreatment by her husband. In particular, the judge for the preliminary hearing held that the credibility of the woman had been undermined by her application for a residence permit under Article 18-bis, after her decision to report the abuse to the police, and accordingly the judge decided not to continue the criminal proceedings. The Court of Cassation reversed this decision, highlighting the flawed logic of the judge's interpretation of the woman's behaviour as she applied for the residence permit after having reported the crimes against her (see Boiano et al. 2020, 677).

Gender-based violence and international protection. The guidelines developed in 2002 by UNHCR have supported an interpretation of the grounds for the recognition of the refugee status that takes into account the specificities of women's experience in the cultural and social contexts in which they are embedded, considering that the relationship between woman and men is 'based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another' (UNHCR 2002a, para 3). According to the guidelines 'women', in some cultural and social contexts, can be considered as a particular social group, pursuant to the list of reasons for persecution provided for by the Geneva Convention:

> *Sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently than men. Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries. Equally, this definition would encompass homosexuals, transsexuals, or transvestites (para 30).*

The 2011 Istanbul Convention moves in this direction, affirming that state parties must take

> *the necessary legislative or other measures to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection (Art. 60).*

As mentioned above, the Qualification Directive, revised in 2011, does not refer specifically to women as a particular social group, but instead stresses the need to consider gender and gender identities in order to define the membership to determined social group. Furthermore, the Qualification Directive, with regard to the acts of persecution (Art. 9), mentions sexual violence and the **acts specifically directed against a sexual gender** or against children. The same expressions can be found in Qualification Decree 251/2007 (Article 7) amended by Legislative Decree 18/2014 implementing the revised Qualification Directive.

Recently the Court of Cassation, by referring to Article 60 of the Istanbul Convention, recognized the right to **international protection for victims of gender-based violence**, who can be granted either refugee status or subsidiary protection, in accordance with the provisions of international and European legislation (Genovese 2018). In particular, in a judgment of November 2017,[53] the court ruled in favour of granting refugee status to a woman forced to leave her country of origin to avoid traditional practices that require widows to marry the brother of their deceased husbands. The court expressly refers to the broad notion of violence against women and domestic violence provided by Article 3 of the Istanbul Convention[54], as well as to the identification of the woman as belonging to a specific social group. With regard to this second aspect, the decision ruled that the applicant was the victim of direct and personal persecution because of the membership to a social group (that is, being a woman) in the form of acts specifically directed against a gender.

This jurisprudential orientation constitutes a significant support for women's access to international protection and an important step forward for the adoption of a gender perspective in the understanding and implementation of international protection legislation. This is particularly important if one considers that most migrant women seeking protection achieved such protection under the abrogated humanitarian residence permit. Therefore, the abrogation of this protection may have serious consequences for women asylum seekers who are victims of gender-based violence (GREVIO 2020, 82).

53 Court of Cassation, Decision of 24 November 2017, no. 28152.

54 According to Article 3 of the Istanbul Convention: '"violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'; '"domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim'.

Lastly, it is worth mentioning that no comprehensive guidelines (similar to those for the identification of victims of TIP that are seeking asylum) have been issued for survivors of gender-based violence, including sexual violence (GREVIO 2020, 81).

3.2.3. Minors and unaccompanied minors

In Italy, foreign minors have the right to education and health care, and the right to access employment from the age of sixteen years (and once educational obligations have been fulfilled). The best interests of the child – a core principle of the Convention of the Rights of the Child – should thus also be the cornerstone of the protection regime of minors and unaccompanied minors within the asylum system; furthermore, there should be no discrimination based on nationality. In accordance with this principle, the national law stipulates that migrant children are entitled to the same rights as children who are Italian or EU citizens, because of their particular situation of vulnerability (Zampa law 47/2017 (1)).

This section focuses on the protection for unaccompanied minors (UAMs),[55] who benefit from additional protection measures. The rights of unaccompanied foreign minors and the procedures affecting them are governed by different sets of provisions, first of all by the above-mentioned 2017 Zampa law, which is entirely dedicated to UAMs,[56] but also by the legislation regarding minors in general and by specific provisions to be found within the national immigration and asylum legal framework. These provisions concern different aspects of the reception and asylum process: from identification, age-assessment, the type of reception and interventions provided, to additional guarantees during the asylum process (such as a personal hearing).

Concerning **asylum procedures**, UAMs can access the prioritized procedure. In addition, by law, unaccompanied minors are protected from deportation. Indeed, the Zampa law strictly prohibits the refoulement of UAMs at the border, as well as their return if this could cause them harm.[57] The non-refoulement of minors was already included in the Immigration Law (Consolidated Act on Immigration (19) (2) or law 40/1998 (17)), but it was more limited in scope and depended on the assessment of individual circumstances.

For UAMs, the assistance of a legal guardian is guaranteed at every stage of the asylum procedure (Procedure Decree (LD 25/2008) Art. 19 (2), in accordance with Art. 26 (5)). It is a legal obligation to report the presence of a minor to the competent authorities, namely the public prosecutor of the Juvenile Tribunal. The Zampa law seeks to increase the capacity of providing guardianship, by promoting the use of trained volunteers. Undeniably, with the significant number of UAMs arriving in Italy between 2014 and 2017, the system of protection was put under pressure and its many shortcomings were amplified. The Zampa law also extended the use of cultural mediators within service provision and assistance to UAMs. In fact, a UAM is accompanied by a legal guardian and a cultural mediator at the key stages of the asylum process, from identification (through fingerprinting), age-assessment if necessary, to the hearing with the TC. In addition to the existing provisions regarding the reception system for UAMs, the law also seeks to encourage and expand foster care and host families for unaccompanied children.

55 Unaccompanied foreign minor (UAM) means a 'minor without Italian citizenship or of the European Union who is for any reason in the territory of the state or who is otherwise subject to Italian jurisdiction, without assistance and representation from the parents or other adults legally responsible for him/her under the laws in force in the Italian legal system' (Zampa law (2)(1)).
56 UNICEF has described the Zampa law as 'historic' and 'a model for … other European countries' (UNICEF 2017).
57 Article 19 of Consolidated Act on Immigration, amended by law 47/2017 (3) which introduced paragraph 1-bis.

Protection measures for UAMs are not limited to those who claim asylum but extend to **non-asylum seekers**. For example, UAMs are entitled to a specific type of residence permit for the underaged (which can be converted to a work visa when they turn eighteen), to be assigned a guardian and access to the reception system (regardless of their legal status). In addition, the possibility of family reunification and family tracing, if in their best interest, must also be provided (Reception Decree, (LD 142/2015) Art. 18 (1–2)).

The Zampa law also seeks the harmonization of the **age-assessment procedures** in a child-sensitive manner. The age-assessment shall be done by a multi-disciplinary team using the least invasive methods possible. A well-founded doubt about the declared age can be reported by, for example, the staff of the reception centre or of public services in contact with the minor. Unfortunately, it has been reported that despite this provision, procedures are still not standardized across Italy, and multidisciplinary teams have not been set up everywhere (AIDA 2019, 76).

Concerning the **reception**, UAMs are hosted in dedicated reception facilities (Reception Decree Art. 19; Zampa law Art. 4). They shall first be hosted in governmental reception facilities for immediate protection and only for the time strictly necessary for their identification and, where necessary, age assessment, and for a maximum of thirty days.[58] The law also foresees that during their stay in first reception, UAMs shall receive adequate legal information and be informed about their rights, both as a minor and concerning access to international protection. Moreover, a meeting with a psychologist is foreseen, in the presence of a cultural mediator in order to ascertain their personal situation and their migratory experience.

In case there is no availability in the government-run first reception centres, minors are accommodated in centres opened and managed by the local municipalities or CAS for minors opened by the prefectures, but this should be a last resort and temporary. As stipulated in a ministerial circular from the MoI (27 December 2018), minors hosted in both (government-run) first-line reception centres,59 and CAS should be transferred to the SIPROIMI, in application of the changes brought to the reception system by the Security Decree.

After the first month, UAMs gain access to the second-line reception system, the SIPROIMI, regardless of their legal status. In addition, it is provided that UAMs who turn eighteen years old can remain in the SIPROIMI programme until the decision for international protection (Security Decree (12)(5-bis)), and if they are granted international protection, they can remain for the entire time foreseen for the beneficiaries.60 On that topic, the aforementioned circular from the MoI of 27 December 2018, provided important clarification regarding the reception of UAMs and new adults within SIPROIMI as stipulated in the Security Decree (among others at Article 12, par. 5-bis). Those who just turned eighteen, and who are entrusted to social services by the Juvenile Court pursuant to Article 13 of the Zampa law (called 'administrative continuation', *prosieguo amministrativo*), are also entitled to be hosted in SIPROIMI projects until the age of twenty-one. And this is regardless of the type of residence permit they have been granted, for example it is also valid for holders of humanitarian protection or those who have requested the conver-

58 The Zampa law has not only reduced the time to be hosted in the first-line reception to thirty days but has also set the maximum delay for the identification of the child at ten days.
59 The closure of such centres was foreseen in two phases, a first one in March 2019, and the final one in June 2020.
60 In order for new adults to be hosted in SIPROIMI, some criteria has to be fulfilled, for example, the individual has to have already been hosted in a SIPROIMI prior to reaching eighteen years of age, and if there is a decision of administrative continuation from a juvenile court. To help the reception workers to understand what rule applies, some guidelines have been developed by ASGI and InterSos (2019).

sion of the residence permit for minors into a permit for study or work or who are awaiting employment, at the age of eighteen, pursuant to Article of the 32 Consolidated Act on Immigration. As stipulated in the Zampa law, the reception staff must possess appropriate, specific and updated training in order to work with minors.

Finally, Article 17 of the Zampa law concerns **unaccompanied minors who are victims of TIP**, stipulating that specific programmes of assistance should be established. In that regard, all the measures provided for by Article 18 of the Consolidated Act on Immigration shall apply, both regarding the residence permit and access to assistance and social integration programmes. By virtue of the provisions of Article 4 of Legislative Decree 24/2014, unaccompanied minors who are victims of TIP must be adequately informed about their rights, including regarding access to the procedure for claiming international protection.

Regarding age assessment, when there are well-founded doubts about the age of a victim of TIP, until the age determination is completed, the victim is considered minor in order to facilitate immediate access to assistance, support and protection. Furthermore, Article 4 of Legislative Decree 24/2014 specifies that the procedure of age determination shall be done through a multidisciplinary approach and by specialized personnel, and with respect to any cultural or ethnic specificities.

Despite the apparent strong legal framework protecting UAMs, there are some shortcomings, which we will discuss further in the analysis of the interviews. Nevertheless, we can already mention here that the abrogation of humanitarian protection bears the risk to negatively affect UAMs' access to protection, especially for those who have turned eighteen. Indeed, prior to this reform, most UAMs claiming asylum received humanitarian protection (ASGI & InterSOS, 2018, 3).61 If still minor at the time of the decision, the UAM can apply for a visa for underaged (*permesso soggiorno minore età*), but if he/she has turned eighteen in the meantime, they are no longer entitled to this type of visa and may end up without any form of protection (idem). In fact, among young adults, those who have turned eighteen form a particular sub-group who face additional vulnerabilities.

3.3. Guidelines and other tools: guidance for specific groups

As we have seen in the last section, the law foresees some (limited) provisions in the field of reception for those considered vulnerable (or with special needs). Also, there is no indication in the law regarding specific measures in reception to respond to specific needs. Partly in response to this lack, guidelines have been developed for certain groups: mechanisms of referrals or other tools to further tailor the intervention (from identification to support). Indeed, there are no standard measures for all deemed vulnerable, as there are important differences between the different groups considered vulnerable. Single parents might need some specific housing facilities for families but might not require psychological support. While not conferring new rights, these tools provide guidance for practices with particular groups considered vulnerable and/or establish standard procedure.

61 As an illustration, for the first six months of 2018, 74 per cent of the TC's decisions for applications made by UAMs resulted in granting humanitarian protection (ASGI & InterSOS, 2018, 3).

3.3.1. Guidelines regarding victims of trafficking

As mentioned above, in 2017, the UNHCR in association with the CNDA developed the guidelines for the identification of victims of trafficking among international protection seekers and referral procedures (CNDA and UNHCR 2017). These guidelines are for the use of TCs. However, this does not mean that they cannot be used and expanded to other ambits and actors –a process that is currently occurring (Nicodemi 2020).

The guidelines regarding victims of trafficking provide some standard operating procedures for the TCs comprising the entire asylum process, including identification, preparation of the interview with the potential victim of trafficking, conducting and context of the interview, referral to specialized organizations, collaboration with the latter, and the decision process. Of course, these are adapted according to the situation of each individual.

According to the standard operating procedures, the identification of victims of TIP takes place in two stages: preliminary and formal identification. The TC is in a position to identify potential victims through the examination of the claim, and especially during the interview, when indicators[62] emerge and lead to the reasonably belief that the applicant is a potential victim of trafficking or at risk of becoming one (CNDA and UNHCR, 2017). In case of such a preliminary identification, the **referral mechanism** contained in the guidelines recommend that the TC informs the person of his or her rights and proposes the possibility of meeting with a specialized organization and have an interview with the qualified staff (along with a cultural mediator). With their consent, the TC can then contact the organization[63] and report the situation of trafficking. By doing so, the asylum proceedings may be suspended in order to allow the necessary number of interviews with the organizations.[64]

The formal identification can only be done by qualified personnel, especially specialized assistance entities, meaning the organizations, public or private, that are accredited and registered for providing assistance to victims of trafficking pursuant to Article 18 of the Consolidated Act on Immigration. For both types of identification there are some guidelines, including a list of indicators.

The guidelines acknowledge that building trust in order to facilitate the disclosure can take time, meaning that more than one interview with the NGO (and with the TC) may be necessary. If the person consents and wishes, they can start the programmes of assistance and of social integration, and if necessary be referred to a protected shelter.

The interruption of the asylum procedure can be between one and three months, depending on the situation. After conducting interviews with the presumed victim, if the person consents, the specialized organization sends a report of the interview to the TC. This report can provide useful information for the evaluation of the claim of international protection, not only regarding the specific elements of the experience or the risk of trafficking, but also any other vulnerabilities that may emerge (trauma, health problems, and so on); information concerning fears and risks of reprisal as a result to a return in the coun-

62 The guidelines include a list of indicators both for preliminary and formal identification of victims of trafficking.
63 The referral is done towards local anti-trafficking organizations active on the territory of the TC (when there is no current anti-trafficking project on the territory, the TC can refer to the national Green Line 'Numero Verde Nazionale').
64 Even when the person does not agree to meet with the anti-trafficking organization, the TC may suspend the asylum procedure when it is deemed that such interruption could aloe a reflection period and further facilitate a disclosure.

try of origin is particularly relevant. Moreover, the anti-trafficking organizations can also report and refer victims of trafficking who could be eligible for international protection to the TC. As stressed above, the two protection procedures can take place in parallel, meaning that a person who has been identified and assisted as a victim of TIP can obtain international protection.

Importantly, as outlined in the guidelines, if a person identified as a victim of trafficking does not wish to adhere to the Article 18 assistance programme, this should not constitute an element of consideration in the evaluation of the asylum claim, or be used as grounds for denial. And vice versa, adhesion to the programme should not preclude access to international protection (see also Giammarinaro 2018).

Finally, the guidelines also recommend clarifying the standard procedures and formalizing the referral mechanism between the TC and the different anti-trafficking organizations on its territory of competence through a Memorandum of Understanding (for which a model if provided).[65] At the time of writing, a new and updated version of the UNHCR and CNDA guidelines has been adopted.

There are additional safeguard measures when the **potential victims are minors** or suspected of being underaged. Concerning the personal hearing of a minor by the TC, the TC should follow the EASO guidelines (EASO 2019). An important aspect is to ensure that the TC member conducting the interview has specific training or experience with minors. The role of the legal guardian is also important as he/she will do the referral to the anti-trafficking organization. If it proves necessary to conduct an age assessment, the interview is immediately suspended. The age assessment shall follow the measures foreseen in the law for minors identified as victims of trafficking. In case there are still doubts about the age, the person shall be considered a minor as stipulated in the law (LD 25/2008 (19)(2) and LD 24/2014 (4)). If the age assessment confirms that the person is underage, then the TC must notify of the public prosecutor at the juvenile court and the tutelary judge.

3.3.2. Guidelines concerning mental health problems

Another important tool is the above-mentioned guidelines published by the Ministry of Health in 2017 (Ministry of Health 2017). These guidelines do not refer or apply to all the persons who correspond to the definition of vulnerable groups, but only those who have suffered torture, rape or other serious forms of violence. As the title indicates, these guidelines are for protection holders only – either with refugee status or of subsidiary protection. However, in 2017 a circular from CNDA[66] clarified that it is also applicable to asylum seekers (SIPROIMI/SPRAR 2019, 14).

The development of these guidelines was first foreseen in Legislative Decree 18/2014, with the objective of establishing appropriate and consistent measures (interventions) across Italy through the identification, support and treatment of people with mental health conditions, while seeking convergence between the reception system and the social and health care system. The Reception Decree (LD 142/2015) reiterates the role of the guidelines to provide indications for identification and support, but also for the certification of victims of torture.

65 The agreement is made with the private or public entities that are registered and accredited to be on the list of qualified anti-trafficking organizations funded by the dedicated programme from the Department for Equal Opportunities at the Presidency of the Council of Ministers. Other organizations that work with migrants and whose staff have been duly trained for interventions with victims of trafficking can also be part of the referral mechanism (CNDA and UNHCR 2017, 45).
66 19 May 2017, no. 0004039.

The guidelines give indications regarding the possibility for the protection seeker to be accompanied during the interview with the TC. As we saw earlier, while the law guarantees this possibility, it gives no indication of the procedure. These guidelines recommend that such support may be needed when a victim of torture or severe violence, given their emotional fragility, has difficulties in narrating their experiences. In such cases the presence of another person is recommended – this could be a doctor, a worker from the reception centre where the applicant resides, or another professional with whom the applicant has a trust relationship. For victims of torture, who might have a risk of incongruity in their narration, the support of a professional during the interview is recommended.

The guidelines foreground the certification process and its requirements, as well as the cultural mediation. Furthermore, the guidelines indicate what should be included in the medical certificate, and as we will further discuss in the analysis of findings, the medical certificate is an important tool to 'prove' vulnerability for the purpose of the asylum process and the determination process. It may be requested by the TCs or the judge of the civil tribunals. The guidelines also cover the overall pathway of rehabilitation.

3.3.3. SOGIESC

The complex topic of SOGIESC has gradually become a legitimate subject in the framework of human rights and the right to international protection. One of the turning points was the promotion of a 'soft' legal tool: the Yogyakarta Principles (2007). Then, from 2012, a concrete further step has been the adoption of UNHCR Guideline 9 on sexual orientation and gender identity (SOGI). At the national level, UNHCR promoted these guidelines especially within TCs, but also through training initiatives across the country, whose beneficiaries also included judges of civil tribunals, legal advisors and other professionals working in the field of asylum and immigration. Currently, these guidelines are a common reference point among decision makers (TC and civil tribunals), regardless of their more extensive or restrictive interpretation.

The main contribution of these tools has been to legitimate the inclusion of SOGIESC issues in the light of the applicant belonging to a 'particular group', whether because of a potential individual or common characteristic or as the result of an external social perception that may provoke persecutions (para 44–48). In the 2012 UNHCR guidelines these two interpretative criteria are called 'protected characteristics' and 'social perception', revealing the alternative use of an innate-based or social construct-based understanding of SOGIESC (Carnassale 2020).

In addition, these guidelines are a reminder that SOGIESC is frequently linked to the matter of credibility, because ordinary assessment procedures relying on 'evidence' are not applicable in these issues. Consequently, the narrative provided during the hearing represents the main reference. The advice provided in the UNHCR guidelines is to explore SOGIESC and how it can be connected to self-identification, childhood, the level of self-awareness/acceptance and in relation to family relations, romantic and sexual experiences, relations with the community and religion (para 60). The guidelines suggest asking open questions related to this intimate issue, creating a safe space for the applicant.

Since 2012 the Court of Cassation[67] recognized that the very existence of a criminalizing law that can potentially endanger protection seekers presenting SOGIESC-based claims can be considered an objective discrimination because it exposes them de facto to engaging in 'illegal' practices and lifestyles, creating obstacles in the fulfilment of the fundamental right to have a safe life and to the freedom to express their

67 Court of Cassation, Decision of 20 September 2012, no. 15981; Court of Cassation, Decision of 5 March 2015, no. 4522.

gender/sexuality. This decision created the condition for accepting SOGIESC-based asylum claims for those people coming from countries in which the simple existence of criminalizing laws can potentially harm them. In a historic step, the Italian decision makers also granted asylum or other forms of protection to people from countries in which there are no specific laws criminalizing homo-, bi- or transsexuality (at the EU level, and in the perspective of international organizations, this is considered a good practice).

In 2017 the Yogyakarta Principles were updated to reflect an increased sensitivity and enlarge existing tools, resulting in a tendency to also refer to gender expression and sex characteristics (like in the case of intersex people) and talking about SOGIESC and not only SOGI.[68]

However, with regard to the Italian context, it is worth underlining the impact of the list of thirteen 'safe countries of origin' introduced by the Security Decree, which could potentially and automatically produce rejection of asylum claims also in cases motivated by SOGIESC reasons, because they include accelerated procedures for protection claimants coming from these countries (see Section 2.1.).[69]

EU Procedure Directive 32/2013 refers explicitly to SOGIESC during the interview when this information becomes apparent, when the interviewer is expected to avoid judgmental attitudes and opinions. Over the past two years from August 2018, the 250 new administrative officials who began to work in TC received a five-week training course that also included references to SOGIESC. Although this implementation aimed to increase the sensitivity of institutional actors involved in the assessment, some restrictive interpretations have been documented.

Historically, Italian decision makers seem not to have relied excessively on medical and psychological reports to assess the narratives of LGBTI protection seekers.[70] Similarly, decision makers did not commonly use the so-called 'discretion argument' and 'internal flight alternative' in order to reject applications based on SOGIESC reasons (a common practice in other EU countries). As the case law analysis highlights, the Court of Cassation[71] states that it is not important whether a person identifies or is simply perceived as an LGBTI individual by the authorities. Similarly, not having developed romantic relationships, but only sexual experiences should not be seen with prejudice.

In relation to the reception system, it is worth noting that in the Reception Directive, sexual orientation and gender identity are mentioned in relation to episodes of psychological, physical or sexual (Art. 17, Directive 142/2015). However, it does not provide specific safe reception centres ad hoc for these protection seekers (barring a few exceptions[72]), as has been proposed by NGOs, associations and international organizations (UNHCR).[73] Lawyers and legal practitioners working in NGOs, reception centres or as

68 See http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf
69 However, UNHCR and other organizations (ASGI, Arcigay, etc.) stressed the point that despite a country being considered relatively safe, this situation may not be applicable to LGBTI individuals.
70 Conversely, a famous EU decision in 2018 condemned Hungary for using this professional certificates to reject SOGIESC-based asylum application. Further information at: https://www.courthousenews.com/wp-content/uploads/2018/01/eu-psych-test.pdf.
71 Court of Cassation, Decision of 24 October 2018, no. 26969; Court of Cassation, Decision of 17 May 2019, no. 13448.
72 A remarkable exception is the reception centre managed by MIT and CIDAS in the area of Bologna (Italy), that hosts specifically trans asylum seekers and refugees. Other exceptions are some small reception centres in few towns of Italy hosting mainly gay refugees and applicants, that can be considered *de facto* arrangements instead of *ad hoc* reception centres established by the law.
73 A recent socio-legal comparative research (SOGICA) analysed how SOGIESC-based claims are adjudicated in Italy.

professionals have attended training courses – organized by both international organizations (UNHCR) and NGOs – aimed at fostering access to information (awareness) and specific tools (UNHCR and EASO guidelines, case law, and so on) that contributed to early identification during reception and sustaining support and preparation for the hearing.

3.3.4. Final observations

As some participants to this study have rightly noted, when one is interested in looking into the practices and implementation realities of complex subject such as vulnerability, it is important to look beyond the official guidelines and tools that are endorsed by the government and seek to standardize practices across the country. It is vital to look at the local level, as there are numerous local initiatives, networks of actors or projects that respond to specific needs of specific groups, either through tailored and distinct pathways of services or through a mainstream approach (by using general public services). In these sections we decided to focus mainly on specific guidelines pertaining to a limited number of issues. While it is beyond the scope of this research report, it is nevertheless important to note that the absence of guidelines for a given group does not mean that nothing is being done for them. It is necessary to look beyond the guidelines.

4. VULNERABILITY IN PRACTICE: CASE-LAW AND BUREAUCRATIC PRACTICES

Dany Carnassale and Letizia Palumbo[74]

In this section, we present and discuss the research findings collected through the semi-structured interviews with fifty-seven participants, as well as the analysis of relevant decisions by civil tribunals and the Court of Cassation (149 rulings in total) concerning appeals by protection seekers against the decisions of TCs or civil tribunals denying them international or humanitarian protection. The research findings – supported by the analysis of relevant literature and policy and legal documents – provide insights and closer views of how the legal framework is implemented, and what the main challenges and opportunities in its application are.

Drawing on an overview of relevant case law, we investigate how the notion of vulnerability is understood by judicial authorities in assessing the conditions for granting international protection, or humanitarian protection, and what the main pitfalls and difficulties are. In doing so, we highlight different interpretations of this notion by key actors, including the approach of TCs. In this overview special attention has been dedicated to decisions concerning international protection for victims of trafficking, considering the growing body of case law developed on this matter in recent years.

Through the voices of the main actors directly or indirectly involved in the asylum process, we discuss some of the key issues that emerged in the case law overview and highlight the concrete realities of understanding and using the concept of vulnerability in the work of key actors with asylum seekers, disclosing the discrepancies between the letter of the law and its transposition into practice.

4.1. Vulnerability in Relevant National Case Law

The analysis of relevant case law was done by focusing on themes relevant to the topic of vulnerability, taking into account the list of vulnerable groups as listed in the national legislation (Reception Decree, Art. 17), and on the basis of the information and suggestions provided by the participants in the research.

These themes include: trafficking and sexual exploitation; FGM; forced marriage; labour exploitation, debt bondage and slavery; SOGIESC; health-related issues; minors; human rights violation, torture and sexual violence in the countries of transit; and social integration.

As mentioned in the discussion of methodology (Section 1.2), we focused on those rulings that entitled asylum seekers to international or humanitarian protection. We made this choice to highlight and enhance the innovative and broad orientation followed by some decisions of some civil tribunals and the Court of Cassation with regard to the understanding of the real complexity of protection seekers' experiences and their situations of vulnerability.

74 This section is the result of a common reflection of the three authors. Letizia Palumbo drafted sections 4.1 and 4.1.1 to 4.1.9, while Dany Carnassale drafted sections 4.2, 4.2.1 to 4.2.5, 4.3 and 4.3.1 to 4.3.3.

This analysis includes decisions of civil tribunals and the Court of Cassation on granting humanitarian protection, because this protection is still being granted for those who applied before the entry into force (5 October 2018) of the Security Decree (Decree Law 113/2018), which abolished it. As higlighted in the Methodology Section, the non-retroactivity of Security Decree was confirmed by a judgment of the Court of Cassation in 2019,[75] meaning that those asylum applications lodged before the adoption of the Security Decree and still pending are assessed by the judges on the basis of the existing legislation at the time of submitting the application.

Furthermore, it is of great relevance to include humanitarian protection in this analysis, not only because it has been used widely, but also in view of the fact that the situation of vulnerability is a key element considered in granting this form of protection. As already mentioned, case law of the Court of Cassation has consistently specified that the 'serious reasons of humanitarian nature' necessary for granting humanitarian protection, constitute an open list.[76] What they all share is 'the aim of protecting situations of vulnerability that are current or ascertained, with a prognostic assessment, as a consequence of the repatriation of the foreigner, in the presence of a need that can be qualified as humanitarian', that is, concerning constitutionally and internationally protected fundamental human rights.[77]

Therefore, as described below, the grounds for obtaining humanitarian protection have been relatively open and could be adjusted to situations concerning a deprivation of fundamental human rights, such as the inability of the country of origin to protect the right to health of applicants affected by serious conditions, or the family situation of applicant interpreted in the light of Article 8 of the ECHR. The social integration reached by the applicants during their stay in Italy has been considered a relevant reason for determining a condition of vulnerability and granting humanitarian protection.

4.1.1. Trafficking and sexual exploitation

As outlined above, in the phase of transposition of the EU Directives in the field of both asylum and trafficking, Italy has paid attention to the need to harmonize national legal and policy frameworks on asylum and trafficking, by introducing provisions that expressly include victims of trafficking among asylum seekers with specific needs, and by establishing specific instruments and measures to coordinate the respective systems of protection and assistance (Nicodemi 2017).

As mentioned in Section 3.1.2, the 2006 UNCHR guidelines on international protection (UNCHR 2006, 37–39) clarified the elements necessary for the victims or potential victims of trafficking to fall within the definition of a refugee established by the Geneva Convention (Art.1 A(2)), and therefore to be entitled to international protection. In particular, victims and potential victims of trafficking may 'qualify as refugees where it can be demonstrated that they fear being persecuted for reasons of their membership of **a particular social group**' (para 37), sharing a common characteristic 'that is innate, unchangeable or otherwise fundamental to identity, conscience or the exercise of one's human rights' (para 37). Among these characteristics, according to the 2006 UNCHR guidelines, being a woman in social and cultural contexts without effective institutional protection, can be a factor producing and fostering vulnerability. In line with the 2002 UNCHR 'Guidelines on Gender-Related Persecution', the 2006 UNCHR guidelines emphasize that women may constitute a particular social group as they are defined 'innate and immutable

75 Court of Cassation, Decision of 19 February 2019, no. 4890.
76 Court of Cassation, Decision no. 26566/2013.
77 Court of Cassation, Decision of 23 February 2018, no. 4455, para 4.4.

characteristics and frequently treated differently to men'. Moreover, according to the 2006 UNCHR guidelines, former victims of trafficking could also be considered as constituting a social group based on the 'unchangeable, common and historic characteristic of having being trafficked' (para 39). Likewise, as affirmed in the 2002 UNCHR Guidelines, **trafficking in human beings framed as gender- based violence** can be recognized as a form of persecution.

Building on this interpretation of the Geneva Convention provided by relevant UNCHR guidelines, over recent years, there has been a growing body of decisions by civil tribunals and the Court of Cassation concerning the entitlement to international protection of victims of trafficking and persons at risks of being trafficked (i.e. potential victims of trafficking). Although judicial authorities have increasing paid attention to cases of trafficking for labour exploitation, most of the national case law on international protection and trafficking concerns cases of women victims of sexual exploitation. As described below, judges usually view cases of asylum seekers who are victims of labour exploitation and debt bondage amounting to situations of trafficking, as cases of slavery.

This national case law on trafficking and asylum contains significant insights regarding the elements – and in particular of the condition of vulnerability – considered for entitlement to international protection, highlighting the complex interconnection between relevant legal systems (Santoro 2018). Within this relevant case law it is worth mentioning a decision of March 2017 of the Tribunal of Salerno (Campania),[78] which granted the status of refugee to a Nigerian woman victim of trafficking and addressed some key issues that can be found in relevant decisions of other tribunals examined for this research. The TC decided not to accept the woman's request for international or humanitarian protection, considering her account unreliable. However, according to the Tribunal of Salerno, the TC focused on the details of the story relating to sexual abuse, without taking into account the part of her narrative concerning the link between trafficking and exploitation, and the context of gender-based discrimination and violence that constitutes its substratum.

From this perspective, the Tribunal of Salerno argued that in the applicant's account there emerged a 'series of elements typical of this type of recruitment' and in particular of the modus operandi used by criminal organizations recruiting and exploiting Nigerian women.[79] Furthermore, in her narrative there were elements typical of the profiles of victims of trafficking, including a 'triggering experience in childhood, for example being orphaned, which led them to be deprived of the support of family or community … [and] com[ing] from large, poor, unemployed or underemployed families who are facing economic difficulties'.[80]

By referring to the 2006 UNHCR guidelines, the Tribunal of Salerno highlighted that the applicant had already suffered persecutory acts and therefore she could suffer further ones, resulting in further retaliation by the organization of traffickers in the event of her return to her homeland. Furthermore, on the one hand, the Tribunal of Salerno highlighted the **condition of vulnerability** of the applicant resulting from belonging, **as a woman, to a 'particular social group'**. On the other, the tribunal also took into account the **social, cultural and legal factors** that contributed to producing or fostering this condition and did not prevent dynamics of abuse and exploitation, including the social and political situation in the countries of origin. In particular, according to the judges, the applicant's situation of vulnerability was

78 Tribunal of Salerno, Decision of 14 March 2017, no. 4862.
79 Idem, 6.
80 Idem, 6.

increased by the condition of abandonment in which she found herself in Nigeria, 'where she was victim of serious abuse since childhood and social exclusion after fleeing from her family'.[81] Moreover, although the Nigerian regulatory and institutional framework provides for forms of protection in favour of victims of trafficking, 'these measures, given the incidence and extent of the phenomenon in the country, cannot be ensured with certainty and effectiveness'.[82]

The approach adopted by the Tribunal of Salerno is in line with the approach proposed by the **Court of Cassation,** arguing that in the adoption of a perspective attentive to gender-related issues, the 'judge of international protection cannot be limited to evaluating the reasons that prompted the foreigner to leave the country of origin, having, on the contrary, to carry out an examination of the facts presented also in the light of the general socio-political conditions of that country'.[83]

Such a perspective, attentive to the context specific dimension of vulnerability, can also be found in other relevant decisions by different tribunals.[84] In particular, by taking into account the gender dimension, the Tribunal of Rome, in several decisions granting international protection to Nigerian women victims or potential victims of trafficking, has paid attention to the factors that contribute to create women's situations of vulnerability, including economic difficulties, limited access to education, limited job opportunities, and discrimination and structural gender violence suffered in Nigeria in the absence of effective institutional responses and measures. For instance, in a decision of May 2018, the Tribunal of Rome,[85] in line with the 2002 UNHCR guidelines (UNCHR 2002a) and the 2011 Istanbul Convention on gender violence, considered trafficking as **acts of gender-based violence against** women which must duly be taken into account as prerequisites for international protection (see also Rigo 2018). This view is also in line with the above-mentioned Decision 28152/2017 of the Court of Cassation[86] (see Section 3.2.2) and has been confirmed by other tribunals.[87]

Therefore, over recent years many civil tribunals have given special attention to the interplay between multiple factors – including gender dynamics, age, level of education, social and family contexts and institutional aspects – that produce the situation of vulnerability of women asylum seekers who have been victims of trafficking. However, it should be noted that none of the examined decisions refer to the definition of 'position of vulnerability' contained in the EU Directive 2011/36 on trafficking, which – as underlined in the introduction of this report – incorporates a situational and context-specific dimension of vulnerability. At the same time, the absence of decisions by civil tribunals granting international protection to victims of trafficking for labour exploitation, reveals that there is still a gendered conception of victims of trafficking as women, mainly from Nigeria and Ivory Coast, and exploited in sexual activities.

The referral mechanism and the key role of anti-trafficking NGOs. Many of the examined decisions of civil tribunals[88] appreciably highlighted the difficulties that victims of trafficking may have in the reconstruction of their past. As the Tribunal of Bologna recently noted in a decision of October 2020, 'the difficulty and reluctance to narrate some aspects of their experience can plausibly be justified precisely

81 Idem, 8.
82 Idem, 8.
83 Court of Cassation, no. 15192/2015.
84 For instance, Tribunal of Messina, Decision of 23 February 2018, no. 3963.
85 Tribunal of Rome, Decree of 3 May 2018, no. 6335.
86 Court of Cassation, Decision of 24 November 2017, no. 28152; Court of Cassation, Decision of 17 May 2017, no. 12333.
87 See, for instance, Tribunal of Bologna, Decree of 17 July 2019, no. 3272.
88 Including, for instance, Tribunal of Trento, Decree of 17 January 2019, no. 97; Tribunal of Bari, Decree of 10 November 2018, no. 8130.

because of the fear of exposing themselves to judgment and of the evident discomfort in recalling situations and events of profound physical and psychological suffering'.[89] In this regard, it is worth underlining the good practice of the Tribunal of Rome not to proceed to a new court hearing where serious indicators of trafficking emerge on the basis of the documentary evidence, in order to protect the person, avoiding a situation where she/he has to recount a traumatic past experience (Boiano et al. 2020).

In some judgments the Tribunals have significantly emphasized the relevance of the work carried out by anti-trafficking NGOs – before or during the judicial phase through the **system of referral** (see Section 3.3.1) – aimed at helping the applicant to reconstruct relevant steps and events of her history, detecting the elements of a case of trafficking, and in particular the **situation of vulnerability** of the victim that often remain concealed during the hearing with the TC. It is worth mentioning in this regard an important decision of November 2018 of the Tribunal of Bari granting the status of refugee to a young Nigerian woman victim of trafficking for sexual exploitation.[90] More specifically, during the administrative phase of the asylum procedure, the woman was referred by the TC to a specialized anti-trafficking organization, in accordance with the guidelines on victims of trafficking drafted by CNDA and UNHCR described above (Section 3.3.1). However, although the organization had identified serious indicators of trafficking in the woman's account, the TC, after hearing the woman again, denied her any form of protection, pointing out a discrepancy between what was reported during the first administrative hearing and what was reported during the second administrative hearing. By reversing the judgment of the TC, the Tribunal of Bari highlighted the credibility and coherence of the narrative of the person, pointing out that the applicant made statements in line with domestic and international sources on the trafficking of Nigerian women. According to the Tribunal of Bari, 'precisely because of her condition of extreme vulnerability and the serious episodes of violence and aggression suffered', the woman made every reasonable effort to accurately relate the story, answering precisely the questions addressed to her.[91] As the tribunal argued, the **discrepancies between the narratives** reported before the TC and the further inconsistencies in the history reported to the anti-trafficking NGO 'do not invalidate an overall reconstruction of the story in terms of trafficking'.[92] Moreover, these discrepancies are likely the result of the sense of trust that the applicant acquired through the support of the anti-trafficking NGO (see Belluccio and Minniti 2018).[93]

As the Court of Cassation pointed out in regard to the assessment of credibility, both the judge and the TC must pay attention not so much or not only to the subjective credibility of the asylum seeker, but to ascertaining the existence of the condition of persecution, and of danger in the country of origin on the basis of external and objective information, on which then the history of the asylum seeker and, accordingly, her/his credibility must be considered.[94]

By adopting this approach, the Tribunal of Bari pointed out that in the examined case it was possible to clearly detect indicators of trafficking, such as the psychological subjection of the woman to a network linked to prostitution. Furthermore, according to the tribunal, what the woman said was in line with 'the condition of the Nigerian women who throughout the country are the victims of violence, rape and abuse that the Nigerian state does not eradicate and, in some ways, legitimates with its legislation'.[95]

89 Tribunal of Bologna, Decree of 7 October 2020, no. 6505, 13.
90 Tribunal of Bari, Decree of 10 November 2018, no. 8130.
91 Idem, 3.
92 Idem, 3.
93 Similar conclusions were reached in the Tribunal of Trento, Decree of 17 January 2019, no. 97.
94 Court of Cassation, Decision of 23 December 2010, no. 26056.
95 Tribunal of Bari, Decree of 10 November 2018, no. 8130, 6.

Many Tribunals highlight in their decisions the complexity of cases of trafficking, in which it is not only difficult to ascertain with certainty that the applicant has been a victim of trafficking, but at times this condition is even expressly denied by the applicants themselves, at least in the initial stages.[96] In this case, the orientation of some Tribunals is to pay attention to the condition of vulnerability of the victims and to assess if there are some elements that might be linked to situations of trafficking.[97]

For instance, the Tribunal of Rome has, in several decisions, granted subsidiary protection to Nigerian women as **potential victims of trafficking**. In the decision of 9 February 2017, for example, the judge argued that 'despite the reticence with which the woman described the relationship of hospitality thanks to which she managed to reach Italian territory', there were some elements that might be connected to cases of trafficking and accordingly there was a high likelihood of danger, in the event of her return home, of falling victim to trafficking again.[98]

It is worth noting that where the mechanism of referral between the TCs and anti-trafficking NGOs is not effectively implemented, there can be cases in which suspected victims of trafficking appear before the civil tribunals in the context of an appeal against the administrative decision of first instance, without having yet received adequate information regarding their rights and the possibility of taking advantage of a specific protection path. In this regard, it is relevant to mention a decision of the Tribunal of Florence of 14 December 2017.[99] In particular, the judge argued that the applicant was deprived of the right to a period of reflection in accordance with relevant EU legal instruments (such as the EU Directive 2011/36 on trafficking), because, despite the fact that the TC recognized the existence of serious indicators of trafficking, they did not provide the woman with the possibility of a meeting with an anti-trafficking organization in accordance with the 2016 CNDA and UNHCR guidelines. Therefore, the judge of the Tribunal of Florence decided to provide her with this information, indicating the system of assistance and support for victims of trafficking in Tuscany. However, the woman expressly denied being a victim of trafficking. According to the judge, the absence of a phase of contact between the woman and the anti-trafficking system makes 'the applicant's denial of being trafficked insignificant'. Therefore, the judge argued that 'a decision cannot be reached without a concrete attempt to help the alleged victim of trafficking'[100] in compliance with Directive 2011/36/EU, and they decided to suspend the proceedings and to send the files to the head of police headquarters as the state body in charge of issuing the residence permit for victims of trafficking and exploitation under Article 18 of Legislative Decree 268/2018.

This decision has the significant merit of disclosing the inadequate implementation of the referral mechanisms by a TC, and the role that tribunals can play with regard to the referral mechanisms. However, as has been noted, the decision of the Tribunal of Florence to suspend the proceedings while waiting for a decision by the local head of police headquarters, could have the indirect effect of burdening the implementation of the right to international protection with all the issues relating to the restrictive application of Art 18 of the Consolidated Act on Immigration (see Section 3 above) (Giammarinaro 2018). Moreover, it leads to the risk of subordinating the entitlement to international protection to the person's participation in the assistance and social integration programme under Article 18, while these two paths must be

96 See Tribunal of Milan, Decision of 20 November 2019, R.G. no. 46545/2018.
97 See Tribunal of Bologna, Decree of 18 January 2019, no. 340.
98 Tribunal of Rome, Decision of 9 February 2018, R.G. no. 62180/2017.
99 Tribunal of Florence, Decision of 14 December 2017, R.G. no. 2314/2017.
100 Idem, 12.

considered distinct and autonomous (Giammarinaro 2018). In order to avoid this risk, specific protocols between anti-trafficking organizations and civil tribunals should be created, as already has been done in some regions. This would entail that, in the case of inadequate implementation of the referral mechanism, a tribunal can refer directly to organizations assisting victims of trafficking, if it considers that there are well-founded reasons to believe that the person has been trafficked.

4.1.2. Female genital mutilation and forced marriage

As highlighted above (Section 3.2.2), in 2017 two important decisions of the Court of Cassation, referring to Article 60 of the 2011 Convention of Istanbul, affirmed the right to international protection for the victims of gender based-violence, who can be granted the status of refugee or subsidiary protection. This view was confirmed in a recent judgment of the Court of Cassation[101] that notably stressed that for the purposes of gender persecution, **acts of domestic violence** (including forced marriage), even if carried out by non-state authorities, **amount to persecution** (according to Art. 7 of Qualification Decree 251/2017) if the state authorities do not oppose them or do not guarantee protection because they are viewed as local customary rules.

In line with this orientation, over recent years a significant body of case law has developed, considering practices such as female genital mutilation (FGM) or forced marriage as forms of gender-based persecution - the victims of which are entitled to international protection.

Within the case law concerning FGM, it is worth mentioning a recent decision of the Tribunal of Rome that, in line with relevant decisions of other civil tribunals[102] and by consolidating the approach adopted in its previous decisions in this field, [103] granted the status of refugee to a woman who fled Nigeria to escape the genital mutilation that her family wanted to impose on her. The TC denied international protection, arguing that the woman's narrative was vague and did not appear credible. By not sharing the assessment of the TC, the judge drew attention to the interplay of elements underlining the woman's situation of vulnerability that made her narrative credible and coherent. These elements included the rural context of origin, the family and social pressures on the woman, and the social consequences in case of refusal, with particular reference to the impossibility of getting married and the consequent social isolation. The tribunal also focused on the seriousness of the practice of genital mutilation – widespread in Nigeria – considered a cause of a permanent and irreversible functional limitation. By referring to the 2009 UNHCR *Guidance Note on Refugee Claims relating to Female Genital Mutilation* and the 2012 European Parliament resolution on ending FGM (2012/2684(RSP), the judge highlighted that FGM constitutes an act of persecution for reasons of belonging to a specific social group, and is already in itself a prerequisite for the recognition of refugee status under Article 2 and subsequent articles of Qualification Decree 251/2007.

101 Court of Cassation, Decision of 09 March 2020, no. 6573.
102 In particular, Tribunal of Cagliari, Decree of 3 April 2013, R.G. 8192/2012; Court of Appeal of Catania, Decision of 27 November 2012.
103 Tribunal of Rome, Decision of 18 March 2019, R.G. 24684/2018.

It is worth noting that in many judgments of civil tribunals, a fear of persecution on FGM-related grounds is often viewed in connection with the risk of other forms of gender-based persecution, including human trafficking for sexual exploitation or forced marriage. This approach should be connected to a jurisprudential trend of adopting an **intersectional perspective** to assess the condition of vulnerability of asylum seekers. Such a perspective is aimed at assessing the intersection of diverse forms of discrimination regarding the person concerned, and their relevance with respect to the conditions for the various forms of protection.

In line with this perspective, some tribunals[104] have considered and assessed jointly persecution on FGM-related grounds and the risk of persecution due to the fact of being a victim of trafficking or of forced marriage, by taking into account the gender identity and related issues of the person concerned (Rigo 2018). For instance, in a recent decision, the Tribunal of Bologna granted the status of refugee to a Nigerian woman victim of trafficking also subjected to FGM, as the applicant was victim of 'personal and direct persecution for belonging to a social group' (that is, as a woman), in the form of 'acts specifically directed against a gender'.[105]

Similarly, and in line with this approach, the Tribunal of Milan**,** in a decision of 28 January 2019,[106] granted the status of refugee to a young woman from Ivory Coast who was victim of FGM, forced marriage and trafficking, by stressing **the link between these forms of gender-based violence**. By paying attention to the interplay of diverse factors that contribute to fostering a situation of vulnerability, the judge also significantly underlined how the migratory path of the applicant was marked by forms of exploitation and violence that were 'specifically characterized by her being a woman in conditions of particular vulnerability'.[107] More specifically, the judge argued that the particular condition of vulnerability of the woman was strongly related to her condition as 'a marginalized woman for having made choices that are not in line with family decisions and not in line with those her community of origin believed to be her "duty" as a daughter, that is, to accept the arranged marriage from the family'.[108] This condition was exploited by the traffickers in Libya who sold her and forced her to work as a domestic worker, and also subjected her to sexual violence until she became pregnant, thus ceasing to be useful to her abusers and – for this – being '"thrown out" and forced to face a journey in such precarious conditions that they led to the early termination of pregnancy'.[109] The Tribunal of Milan stressed how her repatriation would mean putting the woman back in a condition liable to expose her to further violence and abuse.[110]

4.1.3. Exploitation, debt bondage and slavery

Over recent years, there has been a consistent development of case law granting international or humanitarian protection to victims of exploitation and slavery.[111] In assessing the conditions for entitlement to these forms of protection, the judges have paid special attention to the diverse factors creating and fostering the applicants' condition of vulnerability to exploitation. It is worth noting that while in some cas-

104 Including the Tribunal of Rome (Tribunal of Rome, Decree of 3 May 2018, no. 6328), the Tribunal of Bologna (Tribunal of Bologna, Decree of 3 February 2020, no. 698).
105 Tribunal of Bologna, Decree of 7 October 2020, no. 6505, 18.
106 Tribunal of Milan, Decision of 28 January 2019.
107 Idem, 4.
108 Idem, 22.
109 Idem, 22.
110 A similar argument can be found in Tribunal of Catanzaro, Decision of 13 June 2018, R.G. no. 4434/2017.
111 See, for instance, Tribunal of Genoa, Decision of 04 September 2019, R.G. no. 5851/2018; Tribunal of Bari, Decree of 12 September 2019, no. 4342; Tribunal of Florence, Decree of 01 March 2019, R.G. no. 13115/2016.

es, involving for instance debt bondage and the abuse of a position of vulnerability, there are elements characterizing situations of trafficking, none of the examined decisions refer to trafficking, but instead they refer to labour exploitation or slavery. This reveals, as stressed above, that in Italy there is still a tendency to view trafficking as a phenomenon mainly involving women and related to sexual exploitation, although landmark court decisions in other countries[112] and relevant international documents (such as the 2020 GRETA *Guidance note on the entitlement of victims of trafficking to international protection*) have stressed that the risk of being exploited through trafficking for labour exploitation can also provide the foundation for claims to asylum (GRETA 2020, 9).

Among relevant decisions by Italian civil tribunals is a decision of May 2019 of the Tribunal of Milan that granted subsidiary protection to an asylum seeker from Bangladesh risking, in case of repatriation to his country, being subjected to inhuman and degrading treatments by a usurer, as a result of the failure to repay a debt.[113] By considering the applicant's narrative and declaration credible, the Tribunal of Milan carefully examined issues related to the identification of the agent of persecution, the risk of being imprisoned and tortured for debt, the possible repercussions on the applicant's family, as well as the impossibility of receiving protection from the Bangladeshi authorities. In this regard, according to the judge, the decision of the applicant not to turn to the authorities can be justified by the **condition of vulnerability and fragility** in which he found himself, given his young age, a lack of support from family members and his precarious economic situations, which placed him in the condition of being unable to meet the debt incurred. Furthermore, the tribunal emphasized how widespread the phenomenon is in Bangladesh, especially in rural areas, of forms of exploitation similar to slavery, linked to situations of indebtedness and what is called bonded labour or debt bondage.[114] In this regard, the judge significantly referred to the definition of this phenomenon provided by the 1957 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,* that is to say

> *the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined' (Art. 1(a)).*

By paying attention to the factors fostering the applicant's vulnerability, the judge argued that his precarious situation and the impossibility, in case of return to Bangladesh, to get out of the current condition of insolvency, could determine for him the concrete possibility of being subjected to exploitation and subjection by an exploitative creditor. This risk, for the judges, justifies the entitlement to subsidiary protection.

In a decision of March 2020,[115] the Court of Cassation accepted an appeal brought by a citizen of Pakistan who fled his country of origin because he was forced from an early age to work for the owners of the land where his father worked, dropping out of the school. He was afraid, in case of repatriation, of being tracked down by the same people and being forced to work all his life to repay a debt contracted by his

112 See, for instance, the case *SHD v TAN* (2017) UKUT PA/04075/2017 concerning a trafficked Vietnamese man in the UK who was exploited in the production of cannabis and was granted asylum due to the fear of being re-trafficked upon repatriation to Vietnam. The court considered as relevant factors for assessment a lack of family support, lack of education and outstanding debt.
113 Tribunal of Milan, Decision of 5 May 2019.
114 Idem, 10.
115 Court of Cassation, Decision of 11 March 2020, no. 6879.

father on his behalf. Significantly, by reversing the decision of the Tribunal of Lecce, the Court of Cassation highlighted that the story narrated by the applicant – who was deprived of the right to study and forced by a private persecution agent, from an early age, to work on the land where his father worked – could be qualified as enslavement and could, therefore, be framed in the form of international protection. In particular, the court stressed that the Tribunal of Lecce had not adequately assessed **the individual situation and personal circumstances** of the applicant (in particular the social, sex- and age-related conditions), violating the relevant legal framework concerning international protection (especially Art. 3 of LD 251/2007). The court underlined that persecution, relevant for the entitlement to refugee status, may also perpetrated by non-state actors. This requires the judge to concretely assess if the state of origin is able to offer effective protection to the person concerned.

Lastly, it is relevant to mention a decision of December 2019[116] of the Tribunal of Bologna that, after excluding the conditions for international protection, granted humanitarian protection to a Bangladeshi citizen who arrived in Italy in 2016 to escape the persecution perpetrated by a powerful family from his village, and who was also a victim of labour exploitation in Italy, where threats were directed against his family of origin, and where eventually he was forcibly dismissed. Notably, by referring to relevant decisions of the Court of Cassation (in particular, Decision 4455/2018 described below), the Tribunal of Bologna argued that the **situations of vulnerability** that can justify the granting of humanitarian protection constitute an '**open catalogue'**, not necessarily built on the grounds of persecution or on the danger of serious damage to life and physical safety which are typical instead of subsidiary protection. More specifically, in line with an approach of balanced reasoning attentive to the **context-specific dimension of vulnerability**, the tribunal made a careful assessment of the private and family life of the applicant in Italy to be compared to both the living situation he had been in before leaving his country, and to the situation to which he would be exposed as a consequence of repatriation, in the light of the protection granted for the right to family life and private life in accordance with Article 8 of the ECHR.

In making this assessment, it is significant that the tribunal paid attention to the forms of **labour exploitation suffered by the applicant in Italy**, highlighting his situation of vulnerability. Indeed, the judge stressed the fact that the applicant was involved as an offended party in criminal proceedings in relation to the crime of labour exploitation and illegal gang-mastering under Article 603-bis of the Criminal Code (see Section 3.2.1). The tribunal highlighted that the applicant worked without receiving any payment, in unsafe conditions and subject to constant threats and intimidation, up to being forced to sign a blank document that then entailed his resignation. Because of these exploitative and precarious working conditions, the applicant had some health problems. Moreover, following his forced resignation, the applicant received some threats and expressed concern about the possible repercussions of these threats on his family members in Bangladesh. By considering the current situation of the applicant in Italy – where he had achieved an adequate level of integration – and his specific condition of vulnerability, the tribunal recognized the serious humanitarian reasons that require postponement of an immediate return home, and also considered the 'clear limitation to the exercise of rights, such as the right to work and study,'[117] and therefore entitled the applicant to humanitarian protection.

116 Tribunal of Bologna, Decree of 31 December 2019, no. 6616.
117 Idem, 8.

The Tribunal noted that, while the situation of exploitation suffered was such as to justify the issuing for a residence permit according to Article 22 (para 12-quater) of the Consolidated Act on Immigration,[118] the judge decided to grant humanitarian protection, underlining that there was 'a need for immediate protection, since risks to safety in the event of repatriation cannot be excluded'.[119] However, it should be pointed out that the tribunal did not make any reference to Article 18 of the Consolidated Act on Immigration, that – as illustrated above – apart from a residence permit, also provides victims of trafficking and exploitation access to a programme of social and labour inclusion. This confirms, once again, has this provision is still rarely considered in the context of labour exploitation.

4.1.4. SOGIESC claims

In recent years, in Italy – similarly to other European countries – a growing body of relevant case law has been developed and consolidated (including decisions of tribunals and the Court of Cassation) concerning the entitlement to international protection of asylum seekers who risk being persecuted because of their SOGIESC.

In particular, since 2012, with the above-mentioned judgment of the Court of Cassation 15981,[120] there has been a consistent case law recognizing that the criminal sanction of homosexuality is in itself a 'general condition of deprivation of the fundamental right to freely live one's sexual and sentimental life', which greatly compromises their personal freedom and places them in an objective situation of danger, such as to justify the granting of international protection. In line with 2012 UNCHR guidelines, relevant judgments of civil tribunals and the Court of Cassation affirm that the applicants do not need to prove that the authorities were aware of their sexual orientation and/or their gender identity before they left their countries of origin, nor is it necessary to investigate what their actual sexual orientation is, as 'the way the concerned person was perceived in the country of origin and its suitability to become a source of persecution is sufficient'.[121] The key element to assess international protection application based on SOGIESC claims is the credibility of their narrative, where fear of persecution is connected to a specific social group: 'sexual orientation and/or gender identity are considered as innate and immutable characteristics or as characteristics so fundamental to human dignity that the person should not be compelled to forsake them' (UNCHR 2012, 10).

Therefore, in many rulings concerning SOGIESC-based asylum claims examined for this research, the judges pay special attention to the situation of vulnerability of the applicants, taking into account their individual situation and their social and family or community context of origin. In this regard, it is worth mentioning that some tribunals have emphasized in their decisions the **role of LGBTQI organizations** in supporting applicants in considering their situations of vulnerability and developing and consolidating their narrative and credibility.[122] Furthermore, some judges explicitly follow the indications provided in the 2012 UNHCR guidelines concerning the elements to consider in the assessment of SOGIESC-based applications.

118 See Section 3.2.1
119 Tribunal of Bologna, Decree of 31 December 2019, no. 6616, 8.
120 Court of Cassation, Decision of 20 September 2012, no. 15981. See also Court of Cassation, Decision of 5 March 2015, no. 4522.
121 Court of Appeal of Trieste, Decision of 25 July 2019, no. 541, 7.
122 For instance, Tribunal of Turin, Decree of 09 November 2018, no. 5658.

Within recent case law on SOGIESC-based asylum claims, a significant decision is that of the Tribunal of Bologna of July 2017[123] granting the status of refugee to a young Nigerian man who had fled his country of origin following the discovery by the police and members of his community of his sexual orientation. The tribunal highlighted that the reason for entitlement to the status of refugee based on sexual orientation should be traced back to 'membership of a special social group', that is a group that may be persecuted on account of their sexual orientation and/or gender identity. In light of these considerations, and by referring to relevant decisions of other tribunals, the judge in Bologna underlined that the criminalization of homosexuality is 'in itself a limitation to the exercise of a human right, without the need for the judge to have the burden of verifying that the criminal provision is applied in practice in the applicant's country'.[124] By paying attention to the interplay of legal, cultural and social factors at stake and contributing to the person's condition of vulnerability and accordingly to the risk of persecution, the judge also highlighted that in Nigeria, alongside legal criminalization, there is a **social criminalization** as LGBTI persons are 'heavily marginalized and subjected to profound prejudices in all places of civil life'.[125] On the basis of these considerations, the judge argued that for the purpose of assessing the risks to which a homosexual person would be exposed in the event of a return to Nigeria, given the aforementioned forms of criminalization, what is relevant is not the intrinsic homosexual or heterosexual nature, but rather the manifestation and perception of a homosexual act by society or state authorities.[126]

A particularly relevant decision with regard to assessment of credibility is that of the Tribunal of Turin of March 2017[127] that granted the status of refugee to a man who fled Gambia due to persecution related to his sexual orientation. By paying attention to the difficulties linked to the applicant's stuttering, his condition of psychological distress, and to the parts of his narrative concerning the violence and abuse he had suffered, the judge highlighted that the history of the applicant was very clear with regard to his 'involvement in a sexual relationship that was certainly not the result of free choice, nor of an acquired awareness of his own gender identity'.[128] In this perspective, by criticizing the TC's assessment, the tribunal stressed that the story that emerged from the narrative of the applicant was of a young man who since adolescence had been a victim of homosexual abuse from which he was unable to escape and that, at a certain point, became known to people capable of blackmailing him and having him arrested. Therefore, as the tribunal argued, the fact that the applicant had been attributed, in the community of origin, the status of homosexual was an element 'in itself sufficient' to make us believe that the applicant, in the event of repatriation, risked suffering persecutory acts, precisely due to this condition. The judge, thus, pointed out that 'it is not necessary, in the present case, to assess whether, in practice, the applicant can actually be considered homosexual'.[129] Indeed, being recognizable as homosexual in a country such as Gambia where homosexuality constitutes a serious crime, constitutes a condition that exposes the person concerned to suffer persecutory acts.

123 Tribunal of Bologna, Decision of 15 July 2017, R.G. no. 12024/2016.
124 Idem, 4.
125 Idem, 6.
126 Idem, 6.
127 Tribunal of Turin, Decision of 14 March 2017, R.G. no. 27595/2016.
128 Idem 5.
129 Idem 6.

This approach is in accordance with the orientation of the Court of Cassation in this matter. In particular, when called to decide on an appeal brought by a Gambian citizen accused of being homosexual by state authorities of his country, the Court of Cassation, in a recent decision,[130] underlined that, for the purpose of assessing the conditions for entitlement to international protection, it is not relevant whether the applicant's homosexuality and the accusations against him were true. What had to be ascertained is whether these accusations were real, that is, if they were 'effectively addressed to the concerned person in his country'. The mere existence of these accusations, according to the Court of Cassation, makes the risk of persecution or serious damage real, in relation to the possible consequences according to foreign law.[131]

In an earlier judgment,[132] by accepting an appeal lodged by a homosexual citizen of the Ivory Coast who was denied international protection on the grounds that homosexuality is not considered a crime in that country and there were no general security problems, the Court of Cassation had already clarified that the absence of rules that directly or indirectly prohibit consensual relations between persons of the same sex is not, in itself, decisive for the purpose of excluding international protection. The Court of Cassation emphasized that it is necessary to ascertain whether

> *the state, in this situation […] cannot or does not want to offer adequate protection to the homosexual person […] and therefore if, considering the concrete situation of the applicant and his particular personal condition, he may suffer, due to his sexual orientation […], a serious and individual threat to his life.*[133]

The Court of Cassation concluded by stressing that the local court had neglected to assess the condition of vulnerability of the applicant, in light of the particular personal situation and the concrete danger that, in the event of repatriation, he may suffer degrading treatment and be deprived of human rights, as a consequence of his homosexual condition.

It is worth noting that out of a total of thirty seven decisions on SOGIESC-based claims examined for this research, the vast majority involve men, and only two concern respectively a young transgender applicant from Colombia[134] and a lesbian woman from Nigeria.[135] In both cases the applicants were victims of trafficking for sexual exploitation and risked being persecuted because of their SOGIESC. In both cases, the judge granted the status of refugee and significantly – by adopting an approach in line with an intersectional perspective – paid attention to the sexual and gendered forms of discrimination suffered by the concerned person, the accumulation of factors fostering vulnerability and the connected abuses experienced by the concerned person. In particular, in the case concerning a lesbian woman from Nigeria, the Court of Appeal of Bologna highlighted that the issue related to her sexual orientation had been the main reason that led her leaving Nigeria, falling in the hands of 'unscrupulous people who, taking advantage of the situation of vulnerability, helped her reach Europe where they initiated her into prostitution'.[136]

130 Court of Cassation, Decision of 6 February 2018, no. 2875.
131 See also Court of Cassation, Decision of 31 October 2019, no. 28197.
132 Court of Cassation, Decision of 23 April 2019, no. 11176.
133 Idem, 6-7.
134 Tribunal of Rome, Decree of 20 June 2019, R.G. no. 57723/2018.
135 Court of Appeal of Bologna, Decision of 21 May 2018, no. 1338.
136 Idem, 6.

4.1.5. Social integration

As already highlighted, the grounds for obtaining humanitarian protection have been relatively open and could be adjusted to other situations entailing a deprivation of basic human rights. As described in this section, the level of social integration reached by the applicants during their stay in Italy, combined with the deprivation of fundamental rights in the country of origin, has also been considered by some civil tribunals and the Court of Cassation, as a relevant reason for determining a situation of vulnerability and granting humanitarian protection.

Within this case law it is worth mentioning a decision of February 2018[137] of the Tribunal of Florence granting humanitarian protection to an asylum seeker from Nigeria who claimed to have been threatened by a religious sect in retaliation for the death of a member caused by his father's reaction to yet another criminal attack. After ruling out the existence of the conditions for both political refuge (none of the persecution factors being present) and subsidiary protection (because of lack of proof of the current risk of serious individual harm, and fear being deemed improbable), the tribunal examined the conditions for the entitlement to humanitarian protection.

In line with the main orientation of the **Court of Cassation** on humanitarian protection, the Tribunal of Florence pointed out that rights protected under humanitarian protection are not inferior, as regards their fundamental nature, to those relating to greater forms of protection. What is different is the source of the threats. Indeed, as the judge argued, the fundamental rights of human persons (in accordance with Art. 10(3) of the Italian Constitution) deserve 'such protection as to prevent the state from exercising the power of repatriation of the foreigner',[138] even if the sources of the threat are different from those typical of international protection, having to cover situations that are unexpected and unpredictable.

From this perspective, the Tribunal of Florence considered a **broad conception of vulnerability** defined as 'exposure to the risk of serious sacrifice of human rights for reasons other than those typified by the protection of supranational legal source'.[139] Thus, the judge goes beyond the narrow list of vulnerable subjects contained in current legislation (Art. 17 of LD 142/2015), to arrive at a broad definition of vulnerability corresponding to the subjective condition of those who need protection in relation to fundamental rights (Flamini and Zorzella 2018). From this perspective, according to the judge, the socio-economic condition of origin plays a key role in assessing the applicant's vulnerability: poverty, illiteracy or young age are 'not the reasons for the entitlement to humanitarian protection. But these, like other human conditions, can reveal the condition of vulnerability in a given context'.[140] In the light of this, the judge stressed, it is necessary to assess from what and under what conditions the applicant has fled the country and what he would find in case of forced return 'from the point of view of the possibility of exercising the essential core of his rights as a person'.[141] In the case under examination, the tribunal granted the applicant humanitarian protection, considering the interplay between factors, such as the lack of family ties in Nigeria and the social uprooting and marginalization, where he would find himself pushed into a social

137 Tribunal of Florence, Decision of 19 February 2018, R.G. no. 14046/2016.
138 Idem, 12.
139 Idem, 14.
140 Idem, 14.
141 Idem, 14.

context characterized by strong criminal violence and serious insecurity. The Tribunal of Florence, thus, referred to a broad understanding of vulnerability, taking into account the socio-economic situation of the applicant in the country of origin, and, in some way, anticipated the approach that the Court of Cassation proposed in judgment 4455/2018 of 23 February 2018.

With this landmark decision (no. 4455/2018), the Court Cassation affirmed significant principles concerning the conditions and the nature of humanitarian protection with respect to international protection (Favilli 2018). The court ruled on the appeal of the MoI against a decision of the Court of Appeal of Bari, which had recognized that a Gambian citizen had the right to be issued a residence permit for humanitarian reasons, considering the social integration of the applicant and the exposure to a situation of particular vulnerability that would have resulted from his repatriation to Gambia, given the serious compromise of human rights in that country. The MoI, on the one hand, contested the sufficiency of social integration in Italy, while on the other it argued that the compromise of human rights in the country of origin should be supported by the link to a specific individual risk for the applicant.

The Court of Cassation accepted the appeal of the MoI. However, it decided so neither because the degree of social integration achieved in Italy was irrelevant, nor referring to the need to individualize the risk, but because of the lack, in the decision of the Court of Appeal of Bari, of an argumentative structure and individualized investigation which, according to the Court of Cassation, must be present in order to recognize vulnerability in the specific case. In particular, the Court of Cassation affirmed the need for a **concrete comparative assessment** between the current condition of the applicant and the risk of human rights violation in the event of his repatriation, assessing if there is any 'effective and unbridgeable disproportion between the two contexts' in terms of enjoyment of fundamental rights.

More specifically, the court argued that the social inclusion of the applicant in Italy constitutes one of the reasons that can contribute to determine a situation of personal vulnerability that needs to be protected through granting a residence permit, in order to prevent the person from the risk of becoming involved again, as a consequence of repatriation, in a social or political context that would significantly infringe on his/her fundamental rights. In this sense, the court refers to Article 2 of the constitution, namely the right to a dignified life, and Article 8 of the ECHR, understood as the right to respect for family life and to private life, with consequent attention to effective integration of the person in the social community of the country of arrival. From this perspective, according to the court, it is necessary to also consider the objective situation of the applicant's country of origin related to the personal condition that has led to his/her departure, so as to 'ascertain the personal condition of actual deprivation of human rights that justified the leaving'.

The Court clarified that the condition of **vulnerability** may also be due to the violation of fundamental subsistence rights (Rigo 2019), in particular to

> *the lack of minimum conditions to lead an existence in which the ability to meet the inescapable needs and necessity of personal life is not radically compromised, such as those strictly connected to one's livelihood and the achievement of minimum standards for a dignified existence.*[142]

142 Court of Cassation, Decision of 23 February 2018, no. 4455, 8.

Therefore, **a situation of vulnerability** may not derive solely from 'a situation of political and social instability that exposes to a situation of danger for personal safety', but may be the 'consequence of serious exposure to the violation of the right to health', or it can be

> *consequential to a very serious political-economic situation with effects of radical impoverishment regarding the lack of basic necessities, not only of a contingent nature, or even deriving from a geo-political situation that does not offer any guarantee with respect to basic living conditions within the country of origin (drought, famine, permanent poverty conditions).*[143]

All these reasons – social integration combined with the deprivation of fundamental rights, conditions of extreme poverty, environmental or health-related reasons – can constitute the grounds for granting humanitarian protection, but need to be assessed concretely, as it is not enough to demonstrate the existence of better living conditions in the host country. As the court highlighted, what is necessary is a **comparative assessment** to verify if the person who asked for humanitarian protection has moved away from 'a condition of effective vulnerability, in terms of the specific violation or impediment to the exercise of inalienable human rights',[144] to which she/he would be exposed again if the need for protection is not recognized and she/he is thus returned to the country of origin. Only from this perspective, is it possible, and indeed necessary, to assess as relevant factors of the situation of vulnerability the 'effectiveness of social and work integration' and/or the relevance of 'personal and family ties on the basis of their duration over time and stability'.[145]

Therefore, by paying attention to the concrete and context-specific dimension of vulnerability and by highlighting the relevance of social integration for determining a situation of vulnerability and granting humanitarian protection, the court argued that it is necessary to assess case by case the current subjective condition of the applicant and the risk of violation of their human rights in the event of repatriation, evaluating whether there is an '**effective and unbridgeable disproportion** between the two contexts of life in the enjoyment of fundamental rights which are an indispensable prerequisite for a dignified life' according to Article 2 of the Constitution and Article 8 of the ECHR.[146]

4.1.6. Health-related issues

As has emerged from interviews and been confirmed by analysis of case law, another relevant theme related to the situation of vulnerability of asylum seekers is that of health-related conditions, including physical and psychological or mental illness and the inability to gain access to adequate care in the country of origin. Among the ten relevant decisions of civil tribunals examined for this report, while some granted the status of refugee on the basis of the health condition of the concerned persons, others, by referring to applications submitted before the adoption of the Security Decree, provided asylum seekers with humanitarian protection due to ascertained serious health conditions.

143 Idem, 9.
144 Idem, 9–10.
145 Idem, 10.
146 Idem, 10. Similar arguments and conclusions can be found in the Court of Cassation, Decision of 31 August 2018, no. 21452.

Among these decisions granting international protection, a relevant example is a recent decision of the Tribunal of Milan of February 2020[147] granting the status of refugee to a man from Mali suffering from severe epilepsy. By examining relevant international reports on the social and political context in Mali, the judge highlighted that in Mali people suffering from epilepsy are discriminated against and stigmatized because they are perceived as victims of witchcraft. This results in isolation and stigmatization as well as the inability to receive adequate treatment to limit the negative effects of the disease. According to the tribunal, therefore, people suffering from epilepsy can be considered as belonging to a particular social group distinct from that of the remaining population, who shuns them, considering the condition contagious. This situation – the judge argued – has a strong impact on the concrete living conditions of people with epilepsy in Mali and bars their access to health and welfare services, and prevents them from working and exercising civil and political rights, and from 'leading a life respectful of fundamental human rights'.

Significantly, the Tribunal of Milan underlined that, in the assessment of the persecutory nature of the act, all the physical, psychological, personal, social and economic conditions of the individual must be adequately taken into account. While not all unequal treatment or discriminatory behaviours can amount to a level of gravity that is considered persecutory, they can however be qualified as such if – as in the case in question – added together they amount to a violation of fundamental human rights and correspond to one of the specific reasons provided for in the 1951 Geneva Convention.

Another relevant ruling is a recent decision of March 2019[148] of the Tribunal of Bologna that granted humanitarian protection to an asylum seeker from Chad due to his ascertained serious health conditions and given the lack of family ties in his country of origin, which is also characterized by serious poverty. The tribunal reversed the decision of the TC according to which the right to humanitarian protection cannot be recognized for the simple fact that the foreigner is in a condition of poor health, requiring instead that this condition is the effect of the serious violation of human rights suffered by the applicant in the country of origin, and certified in accordance with relevant guidelines. Challenging this view, the tribunal ascertained the condition of **significant psychological pathology** of the applicant and linked this to a serious violation of human rights suffered in his country of origin and to his **migratory path** to reach Italy, arguing that 'moreover, the medical reports themselves ascribe the main causes of the disturbances to migratory events in a broad sense'.[149] Furthermore, building on relevant judgments of the Court of Cassation on comparative assessment in the recognition of humanitarian protection (in particular judgment 4455/2018 described above in Section 4.1.5), the judge considered the **situation of vulnerability** of the applicant through comparing the applicant's lack of links in the country of origin and the high level of **social integration** reached in Italy. More specifically, the judge argued that a return to the country of origin, on the one hand, would not allow him to face and treat the psychological pathologies that he was suffering; on the other, it would cause him serious damage in general living conditions, considering the total absence of links for the applicant within country of origin and the high level of integration achieved instead in Italy.

147 Tribunal of Milan, Decision of 5 February 2020, R.G. no. 7729/2019.
148 Tribunal of Bologna, Decision of 28 March 2019, R.G. no. 2266/2018.
149 Idem, 4.

In line with this perspective, the Court of Cassation, in a recent decision[150] pointed out, in accordance with its previous case law, that humanitarian protection finds legitimacy in the **condition of subjective vulnerability of the applicant, including due to health reasons,** and highlighted the difference between humanitarian protection granted for health reasons and the residence permit for medical treatment under Article 36 of the Consolidated Act on Immigration. More specifically, the court underlined that for the purposes of recognizing the right to a residence permit for humanitarian reasons, 'the vulnerability of the applicant may also be the consequence of serious exposure to damage to the right to health adequately reported and demonstrated'.[151] According to the court, this fundamental right cannot find protection only in the national provision establishing entry and stay for medical treatment (Art. 36 of Consolidated Act on Immigration). Indeed, the rationale for humanitarian protection remains 'that of not exposing foreign citizens to the risk of living conditions that do not respect the minimum core of human rights that integrate their dignity, such as the fundamental right to health, where the aforementioned conditions are met'. At the same time, its intention is to place foreign citizens 'in a position to integrate themselves into the host country, also through carrying out a work activity'.[152] By contrast, as the court underlined, the residence permit for medical treatment under Article 36 of the Consolidated Act on Immigration can be issued only through a specific entry visa and the payment of medical expenses by the interested party, and it does not allow the person to register with National Health services or even to work in Italy,[153] as the permit has a duration equal to the presumed duration of the therapeutic treatment.

In line with this orientation, the Court of Cassation, in a recent decision of March 2020,[154] upheld the appeal lodged by a Nigerian asylum seeker, to whom the Tribunal of Ancona denied entitlement to any form of protection, including humanitarian protection, while considering his story credible. The court rejected the appeal in the part concerning international protection, confirming in this respect the decision of the Tribunal of Ancona, while accepting instead the appeal as regards humanitarian protection. Building on its consolidated case law in the field of humanitarian protection, the court argued that the Tribunal of Ancona carried out an 'atomistic and fragmentary assessment' of the elements of the case without considering them 'as a whole and jointly' and accordingly pointed out that the applicant's **psychological fragility** could be protected by issuing a permit for medical treatment. This approach, according to the court, is not correct because 'the combination of single circumstances, each of which may separately be considered insufficient to determine a condition of vulnerability, may well determine this when they accumulate and interact', in accordance with a criterion of judicial reasoning expressed in the case law of the Court of Cassation in other relevant decisions concerning varied fields.[155]

Therefore, in line with an **intersectional perspective**, the court highlighted the principle according to which, in order to recognize a residence permit of humanitarian protection, the judge must assess the existence of situations of vulnerability of the foreigner deriving from the risk of being brought back – as a consequence of repatriation – to a social, political and environmental context capable of bringing about

150 Court of Cassation, Decision of 4 February 2020, no. 2558.
151 Idem, para 6.
152 Idem, para 6.
153 With exception of particular cases under Article 31 of the Consolidated Act on Immigration.
154 Court of Cassation, Decision of 30 March 2020, no. 7599.
155 Idem, 9.

a significant and effective compromise of his inviolable rights. In doing so, the judge must consider the factual elements 'globally and as a unit'.[156] This means considering not only that these elements accumulate, but also how they **interact** and in this way contribute to produce and foster a condition of vulnerability.

4.1.7. Minors and unaccompanied minors

Over recent years, an important body of case law has developed (including decisions of civil tribunals and the Court of Cassation) concerning entitlement to humanitarian protection of asylum seekers who were **minors** when they left their country of origin and arrived in Italy. This case law highlights how the element of minor age, and related special protection needs, play a key role in considering the situation of vulnerability of an applicant and, accordingly, in assessing the conditions for the entitlement to humanitarian protection.

Within these relevant decisions is a recent and important judgment of the **Court of Cassation**: Decision 11743/2020 of 17 June 2020, which recognized the relevance of minor age with regard to humanitarian protection. The Court of Cassation partially accepted the appeal lodged against the decision of 20 February 2019 of the Tribunal of Milan, which denied any forms of protection to a minor who had escaped Bangladesh to avoid threats from family members of two young men who were arrested on the complaint of the applicant's father for raping and killing a younger sister, and against whom the applicant testified. The Court of Cassation agreed with the Tribunal of Milan with respect to the absence, in this specific case, of the conditions for the entitlement to refugee status or subsidiary protection. However, the Court of Cassation partially upheld the third reason of the appeal concerning humanitarian protection.

More specifically, building on its previous case law,[157] the Court of Cassation emphasized that the application of humanitarian protection requires an individual assessment – to be conducted case by case – of the **social and labour integration** reached by the applicant in Italy compared to the personal situation in which they had found themselves before leaving the country of origin and to which they would find themselves exposed again as a result of repatriation, 'in a such way as to bring out any **personal situations of vulnerability, linked to the violation of fundamental rights**'.[158] Among these situations of vulnerability, according to the court, it is undoubtedly necessary to include the **minor age** of the applicant, considering the particular protection enjoyed by minor migrants in the Italian legal framework. This aspect, as the court stressed, had not been considered by the Tribunal of Milan, which instead limited itself to deeming as an insufficient condition the applicant's social and labour integration, and to noting the absence of reasons to prevent his reintegration in the country of origin, given his wide family network. In doing so, as the court argued, the Tribunal of Milan neglected to assess the age of the applicant at the time of his entry in Italy, the vicissitudes he went through on the long **journey** from the country of origin, the traumatic experiences that he possibly lived, the relations created in Italy, and the particular **needs related to his age and training**.

Moreover, by referring to the relevant ECtHR case law,[159] the court highlighted that the Tribunal also failed to verify whether the applicant was in the position of an **unaccompanied minor**, which

156 Idem, 10.
157 In particular, Court of Cassation, Decision of 13 November 2019, no. 29459. Court of Cassation, Decision of 7 February 2019, no. 3681.
158 Court of Cassation, Decision of 17 June 2020, no. 11743 para 4.1.
159 ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Judgment of 12 October 2006, no. 13178/03.

constitutes in itself a condition of 'extreme vulnerability', to be considered prevalent with respect to the status of an irregular residing foreigner in the territory of the state, having regard to the absence of adult family members able to take care of him/her and the consequent obligation of the state to adopt all the necessary positive measures, whose non-fulfilment constitutes a violation of Article 3 of the ECHR.[160]

4.1.8. Human rights violations and sexual violence in Libya

This section provides an overview of some decisions of tribunals and the Court of Cassation on cases of asylum seekers who were victims of violence and human rights violations in countries of transit, such as Libya. Most of these decisions concern the entitlement to humanitarian protection, arguing that violence, sexual violence and fundamental rights violations suffered by the protection seekers in Libya shall be considered among the factors contributing to determine their situation of vulnerability.

In particular, it is worth mentioning a recent decision of the Tribunal of Rome[161] that granted humanitarian protection to an asylum seeker from Nigeria arguing that the **torture and inhumane and degrading treatments suffered in Libya**, during the migratory path, made him a subject in a **condition of vulnerability 'that is not compatible with repatriation**'. The Tribunal of Rome did not entitle the applicant to international protection, given the private nature of the persecuting agent (to be identified within the community to which he belonged), and because the applicant did not provide credible elements to support the impossibility of obtaining protection from state authorities.

In line with this perspective, the Court of Cassation issued important judgments that highlight an approach attentive to the violence and human rights violations in the countries of transit, especially in Libya, and in particular to the **sexual abuse and violence** suffered by women asylum seekers in Libya, by paying attention to the specific situation of vulnerability of migrant women and the forms of gender-based discrimination and violence they experience.

Among these judgments, it is important to mention a recent judgment of the Court of Cassation (13096/2019), which examined the appeal of a woman asylum seeker from Nigeria against the sentence of the Court of Appeal of Naples, which denied her entitlement not only to international protection due to the lack of credibility of her declarations, but also to humanitarian protection due to the non-existence of a condition of vulnerability. It is worth noting that the woman built her asylum application on the threats perpetrated against her by an animist religious minority and the sexual violence she had suffered in Libya. The Court of Cassation considered the appeal not admissible in the part relating to international protection, in line with the Court of Appeal of Naples. However, the Court of Cassation upheld the appeal in the part relating to humanitarian protection, arguing that the Court of Appeal of Naples failed to assess both the social integration of the applicant, in Italy for ten years, and the **sexual violence** she had suffered in Libya. Indeed, building on its previous case law (in particular Decision 4455/2018), the court argued that social and labour integration of the applicant in Italy is not relevant as an 'exclusive factor' but 'as a circumstance that can contribute to determining a situation of personal vulnerability'.[162] In the specific case, according to the Court, no assessment had been made by the judge of the sexual violence

160 Court of Cassation, Decision of 17 June 2020, no. 11743 para 4.1.
161 Decision Tribunal of Rome of 31 July 2019.
162 Court of Cassation, Decision of 15 May 2019, no. 13096, 13.

the applicant had suffered in Libya, that is 'potentially suitable, where assessed, as an element of generating a **strong degree of trauma** in the person, to affect the aforementioned vulnerability and thus be an obstacle to a return to the country of origin (in this case, Nigeria)'.[163] Significantly, the court recognized that the **sexual violence** suffered in a transit country can constitute an element of comparison for the assessment of subjective vulnerability, such as to **make repatriation a risk of violation of human rights**.

These arguments and conclusions were confirmed by the court in the subsequent Decision 29603/2019[164], which upheld the appeal of a Nigerian woman asylum seeker, to whom the Tribunal of Brescia denied any form of protection due to the lack of credibility of her declaration, considering it contradictory and unlikely, and as she had not expressed any fear towards her friend 'who he had sold her'. By referring and building on its previous decisions (including the above-mentioned Decision 13096/2019), the Court of Cassation affirmed that the violence the applicant had suffered in Libya is a circumstance that must be assessed for the reconstruction of the personal story and accordingly for the credibility of her narrative and her condition of vulnerability, at least in order to grant humanitarian protection. However, according to the court, a form of international protection cannot be excluded a priori if, concretely, in the human experience at the basis of the asylum application it appears that the crossing and stay in a transit country (such as Libya) and the **inhuman and degrading treatments and the violence suffered** play a significant role 'within the essential nucleus of the request for international protection, which is what must be examined in the two phases of the procedure'.[165]

On the basis of these considerations, the court reversed the decision of the Tribunal of Brescia, which while not doubting that the applicant had been 'sold' for sexual exploitation, did not, however, appear 'to have given any weight to this fact', having failed to ascertain whether the sale had been carried out in Nigeria or Libya, despite the notorious frequency with which Nigerian women are involved in trafficking and sexual exploitation in both these countries. Furthermore, the tribunal had not even considered that victims of trafficking seldom report the violence suffered for fear of retaliation and that, therefore, 'the applicant for the same reason could have declared that she had no fear with regard to the experience lived in Libya'.[166] According to the court, as a result of this erroneous examination of the application, the judge of the Tribunal of Brescia not only focused on secondary elements of the declarations, but failed to activate those investigative powers – including unofficial powers – which characterize judgment on international protection.

In line with this orientation, the Court of Cassation, in Judgment 1104/2020, quashed a decision of the Tribunal of Milan, which had not recognized any form of protection (including the humanitarian protection) for a woman asylum seeker from Nigeria who reported having suffered sexual violence in Nigeria and being segregated and forced into prostitution in Libya. In particular, the court censured the decision of the Tribunal of Milan in the part in which the judge denied humanitarian protection without carrying out a comparative assessment between the applicant's current condition of integration in Italy and her exposure to the risk of violation of fundamental rights if she were to return to Nigeria, according to

163 Idem 13.
164 Court of Cassation, Decision of 14 November 2019, no. 29603.
165 Idem para 4(d). See on this also Court of Cassation, Decision of 20 November 2018, no. 29875.
166 Court of Cassation, Decision of 14 November 2019, no. 29603, para 8.

the parameters identified by the Court of Cassation case law.[167] As the court clarified, in the case of humanitarian protection, this comparison, unlike the assessment that must be carried out for international protection, does not need to take into account the place where the violence was committed, if this has resulted in a situation of personal vulnerability.

Significantly, with regard to the judgment of comparison, the Court of Cassation highlighted the principle of '**attenuated comparison**', which imposes a 'particular balance' between the subjective condition of the asylum seeker and the objective situation of the country of possible repatriation. According to this principle the more a 'situation of particular vulnerability or exceptional vulnerability' is ascertained in court, the more the judge is allowed to assess with less rigour the objective situation of the country of return. In this sense, by placing at the centre the protection of the fundamental rights of the concerned person, the court argued that, once the credibility of the applicant's narrative has been ascertained, the judges should ask themselves whether a woman who has suffered so much can endure still more violence and suffering such as the abandonment of the host country, for the achievement of which she had paid the highest price. Therefore, a particular situation of vulnerability requires, according to the Court, an **attenuated** comparative assessment of the objective element consisting in the living conditions that the applicant would presumably experience in the country of origin.[168]

4.1.9. Final observations

In the light of this overview of some relevant decisions of civil tribunals and the Court of Cassation on the matter of international and humanitarian protection, it is possible to highlight a tendency by some judicial authorities to adopt a **broad conception** of vulnerability that takes into account the interplay between different factors contributing to situations of vulnerability linked to human rights violations. This seems to be in contrast with a restrictive approach adopted by some TCs.

As this overview has underlined, over recent years there has been a significant development of case law concerning, for instance, international protection for victims of trafficking. This case law contains significant insights with regard to the understanding of the elements – and in particular the concept of vulnerability – considered for entitlement to international protection, highlighting the complex interconnection between relevant legal systems concerning asylum seekers and victims of trafficking (see Santoro 2018). In this regard, of particular interest are those decisions of tribunals in which victims of trafficking have been entitled to international protection following a correct referral procedure carried out during the appeal, or where a person has been identified as a victim or potential victim of trafficking by the judicial authority even in the absence of explicit declarations by the applicant, and therefore only on the basis of an assessment of detected trafficking indicators.

Moreover, some of these decisions, by highlighting the difficulties that protection seekers may have in the **reconstruction of their experience and situation of vulnerability**, have stressed the sense of trust that the applicants may acquire through the support of anti-trafficking NGOs during the referral mechanism. From this perspective, as some rulings have highlighted, the discrepancies between the history reported before the TC and that narrative reported before the judge constitute the result of a path, developed thanks to the help of an anti-trafficking organization, aimed at detecting a situation of trafficking. For this reason these discrepancies cannot invalidate the assessment of credibility of the applicant.

167 Court of Cassation, Decision of 23 February 2018, no. 4455.
168 Court of Cassation, Decision of 20 January 2020, no. 1104, 9-10.

Of particular relevance, too, is the adoption by the Court of Cassation and some tribunals of an approach that is in line with a **gender** and **intersectional perspective**. For instance, as the decisions on FGM show, a fear of persecution on FGM-related grounds has often been viewed in connection with the risk of other gender-based persecution, including human trafficking for sexual exploitation or forced marriage. This approach reveals an understanding of the structural consequences of the interactions between multiple forms of discrimination and subordination. Notably, as highlighted in the rulings concerning forced marriage, the Court of Cassation, in a recent judgment of 9 March 2020, stressed that for the purposes of gender persecution, acts of domestic violence, though they are carried out by non-state authorities, amount to persecution if the state authorities do not oppose them or do not guarantee protection, as they are viewed as local customary rules.

However, as clearly emerged in this overview, gendered, sexualized and culturalized conceptions of some categories are still dominant paradigms (Pinelli 2019). For instance, victims of trafficking generally tend to be viewed as women victims of sexual exploitation, referring to similar models of violence and abuse, and overlooking cases of trafficking for labour exploitation, involving women, men and trans people. Similar limits might be highlighted in relation to sexual orientation or gender identity-based asylum claims. Indeed, most of the examined decisions in this field concerned homosexual men, with few cases regarding, for instance, lesbian and trans asylum seekers.

This overview has also underlined how some decisions of civil tribunals and the Court of Cassation in the matter of humanitarian protection provide interesting and insightful developments **of the notion of vulnerability at the conceptual-legal level**. For instance, by paying attention to the concrete dimension of vulnerability, landmark Decision 4455 of 2018 of the Court of Cassation highlighted the need for a concrete comparative assessment between the current condition of the protection seeker and the risk of human rights violation in the event of their repatriation, assessing whether there is an 'effective and unbridgeable disproportion' between the two life contexts in the enjoyment of fundamental rights. According to this approach, therefore, fundamental human rights and their protection, in Italy and in the country of origin, constitute the essential parameters that need to be considered for the recognition of humanitarian protection, whose ascertainment requires the application of a comparative 'prognostic' judgment.

From this perspective, as some decisions of the Court of Cassation and some civil tribunals in the context of humanitarian protection have made clear, the elements of comparison for the assessment of subjective vulnerability can be various, including social integration, labour exploitation and the age of applicants, as well as sexual violence suffered in a transit country. The attention is then on a **broad and inclusive understanding of vulnerability** corresponding to the subjective condition of those who need protection in relation to fundamental rights, including, for instance, fundamental subsistence rights.

Many of the issues which have emerged from this overview will be addressed below in Section 4.2, where through the voices of the participants in this research, we discuss what the concrete realities are of using the notion of vulnerability in the work of key actors with asylum seekers, underlining the gap between law and practice.

4.2. Vulnerability between legal concepts and social realities

In this section, we provide an overview of the main findings that emerged from the fieldwork, and more precisely from the interviews with institutional and legal actors dealing with protection seekers.

4.2.1. Exploring the concept of vulnerability and its applicability

The interviews conducted reveal that the concept of vulnerability assumes different meanings. In line with some of the rulings discussed in Section 4.1, vulnerability is frequently understood as a flexible concept and open catalogue that can be deployed in various circumstances, extending the borders of what the law officially recognizes as 'vulnerable individuals and groups' (see Section 3). Some participants expressed criticism towards a narrow interpretation of vulnerability, expressing a preference for talking about 'conditions, positions and situations of vulnerability' (EXP02). This periphrasis may include various forms of vulnerability: ontological, situational, context-based, and the product of an institutional path (Marchetti and Pinelli 2017; Pinelli 2019; Fanlo Cortés and Ferrari 2020; Furia and Zullo 2020; Sciurba 2020).

Several participants underlined that all the protection seekers are vulnerable, especially looking at their travel trajectories, the violence that may have undergone in transit and host countries, and the precariousness of their status.

In everyday practice of support or assessment, the question seems to be 'who is more vulnerable', and what category of vulnerability the person fits in (Zetter 2007). These aspects also emerge in looking at how the category of vulnerability is framed and used by institutional and legal actors. While lawyers frequently refer to vulnerability especially when they ask for humanitarian protection (LAW02, LAW04), judges sometimes complain about a narrowed use of the concept proposed by lawyers (JUS06). On the side of administrative authorities, this legal category seems to be less used by TCs (in motivating either recognition or rejection) and it may at times be ignored or overlooked by police headquarters (LAW10), creating the conditions for a recognition only at a later stage of the procedure (civil tribunal, the Court of Cassation).

Other interviewees are sceptical about the concept, because vulnerability may be temporary instead of *sine die*; consequently it can have a potential stigmatizing effect, 'like a scarlet letter for the individual', said one interviewee (NGO08).

Many interviewees highlighted inconsistency and variability of decisions regarding similar situations in which vulnerability plays a relevant role. They stressed that various claims may receive different outcomes depending on the place where the judgement takes place, socio-legal orientations and interpretation, and institutional actors' sensibilities.

Despite TCs and civil tribunals having frequently stressed that the decision process is predominantly characterized by common and shared views, the Court of Cassation has overturned many decisions exactly because sometimes a specific TC or tribunal may give the impression of producing decisions in series or habitually overlooking some relevant aspects (JUS05).

According to some participants, former TC members (working until August 2018, before being replaced by new administrative officials employed through Law 46/2017) were not trained adequately (apart from UNHCR representatives); this was also apparent in the terminology deployed in their assessments (LAW06).

The implementation of norms largely depends on the institutional and legal actors the applicant interacts with (LAW01). Administrative and judicial authorities have a wide margin of interpretation and liberty of position (LAW04). Implementation may be extemporary, fragmented and sometimes contradictory, especially considering the role of circulars regulating practices at the level of police headquarters and the TC, usually unknown to people confronted with bureaucracy (LAW02).

Several participants mentioned that the most evident problems experienced by asylum seekers are with local police headquarters (NGO04), not only in lodging the asylum application, but also in obtaining an alternative form of protection while in the charge of this institution ('special protection' or 'special cases'). Participants working in anti-trafficking organizations remarked on the practice of discouraging victims of trafficking and exploitation from taking the 'social path' established by Article 18 of the Consolidating Act of Immigration (NGO07, NGO08).

Another common trend is that the **elasticity of the legal definition of vulnerability** may be the best option to cover the range of complex situations and enable individual-based rather than group-based assessment. This aspect is surprising when considering that most of the implementation efforts by international organizations and the government are concentrated on standardizing policies and homogenizing practices. But in fact, adaptability of the notion is useful for legal applications in the case of humanitarian protection (LAW02), because in such cases the existence of situations of vulnerability may play a key role (see Section 4.1).

Because the boundaries of humanitarian protection are not strictly defined, this form of protection historically had the potential for considering intersecting vulnerabilities – aspects that are not explicitly addressed by international protection. As highlighted in Section 4.1, recent jurisprudence has stressed the importance of making a global assessment of personal and social conditions in the country of origin (poverty, education, labour conditions, torture, and so on), of the process of inclusion within the new context, and of the risks of compromising the exercise of fundamental human rights in case of repatriation (JUS04).

However, one of the most evident drawbacks in these situations is to consider humanitarian protection as a protection for supporting complex situations, but simultaneously preventing recognition criteria from being extended in order to include people who do not fit international protection parameters. Consequently, belonging to a specific social group – explicitly mentioned in the domestic legislation – continues to reproduce the logic of placing specific individuals in specific categories with the stamp of 'vulnerable' (NGO7).

Many interviews highlighted the tension between the legal approach to vulnerability and the right to international protection, stressing how the recognition of vulnerability and that of international protection do not always coincide. Some participants underlined that one of the risks of adopting a perspective attentive to vulnerability is that of resulting in a 'charitable' and almost 'paternalistic' approach. To characterize someone as vulnerable may imply an **inferiorization**. On the contrary, the international

protection approach always remarks that we are talking about rights, not favours (LAW03). Looking at the references to vulnerability within the legislation, in its concrete implementation there is the risk of stereotyping, especially for specific categories of protection seekers, (re)victimizing and (re)vulnerabilizing them (LAW16).

As noted in case law, this situation is particularly evident in the topic of trafficking, where the very label or category 'victims of human trafficking' reinforces the inferiorization of protection seekers and is not able to capture many other relevant aspects of the individual. However, it is possible to appreciate different interpretations, including when indicators of trafficking are considered sufficient for recognizing a form of protection, even in cases where a person does not identify as a victim and does not collaborate with the authorities (see Section 4.1).

More generally, this extensive interpretation of vulnerability is frequently linked by participants with references to Article 10 (3) of the Italian Constitution, as the highest authority to be appealed for protection. However, one participant warned against both a forced ideological use of the vulnerability concept, and the opposite attitude of criticizing and dismissing it, because both risk endangering protection seekers' rights and avoid the implementation of this useful category (LAW06).

Reflections on the group-based approach and negative impact of categorization. The group-based approach to vulnerability, which follows the EU approach (AIDA 2017), has been widely problematized by legal scholars and social scientists, even though some recognize the importance of at least having vulnerability included in the legal framework (for instance at the Art. 17 of Reception Decree 142/2015).

According to many participants, group-based definition has pros and cons. On the one hand, it identifies situations of vulnerability' (EXP02) and helps to recognize the applicant's specific needs (IORG03). On the other hand, it expresses its limitations and shortcomings when a person does not fit strictly into the categories or when more than one category is applicable (IORG06). Many interviewees said that categorization itself is a process of simplification that has inherent side effects (LAW01).

Criticism about listing vulnerable groups has been expressed by NGOs and lawyers, but also by some decision makers (TCs and Tribunals). Certain forms of protection have been given to some protection seekers simply relying on their nationalities or countries of origin. This is another way in which the group-based approach proves deficient (Zetter 2007).

One example is offered by unaccompanied minors. While these individuals are considered **vulnerable *per se***, single young men are not (LAW01). However, while some protection seekers arrive in Italy before they reach the age of eighteen, others arrive just a few days or months over this legal age, but may have left their country of origin when they were younger than eighteen years. In these cases, the practice of some decision makers is to consider these applicants as 'older minors', to distinguish these cases from minors who arrived in Italy before age eighteen and from those who arrived as adults (LAW02, JUS01). These complex situations create problems in supporting, assessing and protecting their applications, because specific safeguards and guarantees vary in strict connection with the age parameter and have consequences both for the procedure and the reception. This discourse is also relevant, as some partici-

pants pointed out, in the past some minors had declared that they were over eighteen, while some over eighteen had declared themselves be minors. These practices were related to access to privileged procedures and attempts to escape some restrictive controls (LAW02, LAW09) and remind us of the importance to consider legal paths in relation to social practices and realities.

Another implication is that some issues are not included in what the legislation considers 'vulnerable groups or individuals', for instance those who had incurred a debt bondage and had been exposed to slavery and exploitative conditions (JUS04), or LGBTI individuals (GVT10). In fact, one participant defined vulnerability as 'an objective fact that allows access (or not) to some categories' (NGO08).

Another problematic aspect of categorization manifests once alternative paths and forms of protection are available for protection seekers. Once again, it is the case of unaccompanied minors and people who experienced trafficking for sexual or labour exploitation. In the latter instance, the so-called social path under Article 18 of the Consolidated Act on Immigration is scarcely implemented, especially in cases of labour exploitation. Accordingly, many victims of TIP are required to cooperate with relevant authorities in criminal proceedings in order to be granted the residence permit under Article 18. As for minors, the special visa for unaccompanied minors (independent of whether they are an asylum seeker) is a frequently-overlooked possibility, exposing minors to a procedure (asylum) with a higher rate of rejection, especially considering the period between 2018 and 2020 (LAW02).

As we will see in Section 4.2.2, some judges noted that historically, TCs neglect to consider several situations of vulnerability, in fact they motivate the rejection by talking about credibility, but are unable to provide reasons for their failure to recommend humanitarian protection (JUS04).

Types of vulnerability and their legal recognition. During the interviews, participants spoke about which vulnerabilities are more and which are less recognized in the Italian procedures. Some spontaneously distinguished between 'visible' or 'objective' vulnerabilities and 'less visible' and 'subjective' vulnerabilities. In the first groups they usually put unaccompanied minors, pregnant women, elderly and disable people, and individuals with serious and documented health problems. This first group also includes those entitled to receive subsidiary protection (especially people coming from situations of civil war, like Syria).

According to many participants, unaccompanied minors usually received a high rate of humanitarian protection, especially because of their level of social inclusion in the Italian context (usually higher in comparison to people presenting other kinds of claims).

From the specific angle of the Dublin Unit (GVT04), people who are easier to recognize and re-locate are those whose vulnerabilities are known in advance from looking at documents sent by the other country involved in the Dublin procedure (for instance, vulnerabilities related to age, gender and health conditions). In these cases, the Dublin Unit contacts the local government authority in order to find a place that suits the needs of the protection seeker.

In other cases, it was not possible to recognizing some claims related to specific vulnerabilities simply because, during the waiting period for the appeal, the applicants intentionally decided to move abroad or elsewhere (for job-seeking or other purposes), so they are absent from the hearing. Consequently, they receive a negative response by default. Another common case of lack or legal recognition is when applicants left a reception centre, lost contact with lawyers and was unable to provide any more 'evidence' of their process of social inclusion within Italian society (JUS07).

Many interviewees considered that minors and victims of TIP have been the largest 'vulnerable groups' passing through the Italian asylum system, even though each local context has its own specificities and flows (JUS07). Other claims frequently quoted are mental or physical health issues (sometimes because of violence and torture suffered during their migration path to Italy). Elderly people and individuals with body disabilities have been reported less frequently, given the hazardous nature of the journeys via the sea or land. There are divergent opinions about the frequency of sexual and gender-based violence and SOGIESC-based claims, even though some participants declared that these applications are very common (LAW03).

Conversely, interviewees working in the TC are less likely to distinguish between 'frequent' and 'less frequent' typologies of claims. After all, their role foresees that they assess all the asylum applications submitted in Italy. Conversely, some judges argued that the 'most vulnerable' or those with 'objective and visible vulnerabilities' are less likely to be encountered by civil tribunals, because it is hoped that they have already received a form of protection during the administrative phase (JUS04, JUS06). Of course, many participants remarked that in such cases it is necessary to consider the turning point represented by the Security Decree.

More generally, defining '**overlooked vulnerabilities**' is also a matter of experience, perspective and role of those involved in the process, as well as of migration flows. Consequently, applicants coming from 'uncommon' countries of origin and proposing 'unusual' narratives may receive a negative response from decision makers simply because their trajectories and narratives seem difficult to understand and fit to their expectations and criteria.

The topic of legal recognition is linked to that of 'uncommon' or 'overlooked' vulnerabilities in another sense too. There could be both positive and negative approaches toward protection seekers with 'less visible vulnerabilities'. For instance, protection seekers who have undergone violence, detention and torture in transit countries (mainly in Libya) (IORG05, NGO06) or at the border (mainly in the Balkans) are not legally recognized and sometimes do not even have access to the procedure (NGO06) because decision makers usually say that their case cannot be set in the framework of international protection, despite its being a common experience for many protection seekers (LAW01, LAW02, LAW09, LAW10).

Something similar happens to victims of domestic violence. In some interviews and in the case law analysis diverse attitudes of TCs and tribunals in evaluating these cases emerged: while some decision makers granted international protection, others opted for humanitarian protection.

About the situation of single parents with children there are diverse opinions and experiences, depending of the gender of the applicant. While one participant said that women with children are sometimes not recognized at all, others said that they usually receive humanitarian protection at least during the jurisdictional phase (JUS06). By contrast, single fathers with very young children seem to be commonly

overlooked in comparison to women who are in a similar situation (LAW10). Beyond parenthood, the situations of young adult men and their potential vulnerabilities are frequently overlooked, because they are not part of any of the categories considered 'vulnerable', but they may actually face many vulnerabilities and the problem remains to make find a suitable category for them (LAW01).

The topic of labour exploitation seems not to receive much attention. In fact, it is a position of vulnerability that can manifest even after having obtained a form of protection (IORG05). However, as Section 4.1 showed, over recent years some civil tribunals have paid attention to the topic of labour exploitation and debt bondage, especially for granting humanitarian protection and in considering the risks in case of repatriation. Similarly, protection seekers coming from poor families and places affected by natural disasters are not commonly acknowledged as vulnerable subjects, especially before the introduction of a specific alternative and temporary form of protection.

Double-edge effect and co-presence of multiple vulnerabilities. Regardless of being more or less legally recognized, vulnerabilities are frequently sources for stereotypes. For instance, women can easily be associated with potential victims of trafficking, but overlooked in other aspects, especially when they have atypical stories of migration or refuse to identify as 'victims' or are demonstrably 'not collaborative' (NGO02, LAW03). An example was given by one interviewee:

> *Maybe trafficking is recognized more than other vulnerabilities, but it is never addressed in the particular situations of the single person. The maximum they can do when the past is sufficiently evident is 'Okay, Nigerian, she lived this, trafficking' […] the TC doesn't pause on any other potential vulnerabilities that may emerge* (LAW10).

As clearly expressed in some interviews, trafficking is an issue that cuts across a range of issues and includes people experiencing various situations, conditions and positionalities (Serughetti 2017, 2020): some are young, others are parents of young children, many have been victims of psychological, physical and sexual abuse, other have experienced psychological stress and forced marriage (NGO07, NGO08). Then, when they present an appeal, they usually face various attitudes ranging from international protection (both refugee status and subsidiary protection) to humanitarian protection to rejection (JUS07). However, the case law analysis highlights that there is still a tendency from judicial authorities to associate trafficking for sexual exploitation mainly with women (especially from Nigeria). On the other hand, institutional actors are now more aware that other forms of trafficking exist, involving different aspects (in terms of gender, age, nationality and so on) and forms of exploitation (NGO06, EXP01).

There are also many stereotypes associated with SOGIESC-based asylum claims. As the overview of the case law indicates, most of the examined decisions in this field concerned 'gay men' ('homosexuals' in judges' words), with limited cases concerning lesbian, bisexual, trans and intersex asylum seekers.

Many interviewees remarked that the presence of multiple aspects or elements of vulnerability is very common (LAW01, JUS02). For instance, in the case of FGM, as highlighted in the case law overview, some civil tribunals considered this claim a form of gender-based persecution (Rigo 2018) that frequently also involves elements of trafficking, forced marriage and many other factors (rural origins, social and family pressure, revenge in case of refusal and risks of isolation in case of return).

Despite this innovative approach adopted by some civil tribunals (see Section 4.1), the prevailing orientation continues to be the use a mono-factoral approach, instead of a perspective that may consider intersecting and cumulative factors that contribute to the vulnerability of a person and their decision to flee and seek protection (LAW06). Therefore, considering this negative scenario, one interviewee concluded that 'the problem is that a holistic approach is interesting, but it is not implemented. It does not exist yet in the minds of TCs, judges and lawyers' (LAW06). These considerations are useful for introducing the topic of when and how vulnerabilities can be identified, supported and assessed.

4.2.2. Identify vulnerabilities: challenges in relation to time, space and credibility

When we talk about the identification of vulnerabilities, many aspects must be considered in relation to both time and space, because vulnerabilities may be identified at various moments and places.

First, *at disembarkation*, *at the border* or *in the hotspot*: usually in this phase only the more visible vulnerabilities are identified. According to some participants, early identification is difficult most of the time, because of lack of time, specialized professionals and resources (IORG04, IORG05, IORG11), but also considering the situation and the specificities of these contexts. In this phase, those who manifest the intention to ask for asylum are separated from those who declare other reasons (Sciurba 2017). Then, they are subjected to pre-identification measures and health screenings in overcrowded spaces, characterized by a lack of privacy and restrictive attitudes that minimize the disclosure of situations and conditions of vulnerabilities, apart from those particularly evident and urgent (for instance pregnant women, people with health problems) that are considered not compatible with living conditions prevailing in these contexts.[169]

Second, *at the police headquarters*: this phase is not easy for the emergence of vulnerabilities either, despite it officially corresponding to the moment when the applicant lodges the asylum procedure, filling in the so-called C3 Form. In addition, if this has not yet been done, the applicant is fingerprinted and their information is associated with a Vestanet Code, and this data is uploaded to the Eurodac database. In theory, a specific part of the C3 Form offers the chance to signal specific vulnerabilities (Point 16), where the applicant or the official can add this information. In reality, many participants (NGO04, LAW06, LAW09) said that the very presence of police officials, some with restrictive or unwelcoming attitudes, can have a vulnerabilizing effect (this is why many people may avoid reporting their main reasons for seeking protection). People living with serious health problems and disabilities could directly be identified at this stage, avoiding an unnecessary meeting with the TC. However, a lack of information or communication gaps (frequently related to cultural misunderstandings) may have a role in confirming an assembly which official procedure would deem nonessential or unnecessary. On the other hand, applicants presenting claims with very intimate information (SGBV, SOGIESC, and so on) frequently do not manifest these aspects in front of police officials (that sometimes may remind them of the violent and restrictive attitudes of their counterparts in their country of origin or transit countries).

Third, *at the initial phase of reception*: for this phase (corresponding to the so-called second-line reception), 2018 was the turning point because – as highlighted in Section 2.1 – the Security Decree reconfigured the conditions of access to reception centres for protection seekers.

169 For further info, see 'In Limine' Project promoted by ASGI: https://www.asgi.it/wp-content/uploads/2019/02/2018-Lampedusa_scenari-_di_frontiera_versione-corretta.pdf

It is worth recalling that between 2002 and 2018, SPRAR reception centres hosted and assisted protection seekers and refugees with specific facilities and qualified staff, in order to support their social inclusion. The implementation of the EU Reception Directive through the Reception Decree (LD 142/2015) introduced specific guarantees also for 'vulnerable groups or individuals' mentioned in Article 17. In addition, the decree established that SPRAR has to be considered the 'ordinary' system of reception managed by collaboration between central government and local authorities in order to overcome an emergency-based approach that characterized the years after the so called 'North-African emergency' (MoI 2015; Marchetti 2016). At the same time, the decree (Art.11) established the possibility of creating and funding, via local prefectures, temporary and extraordinary reception centres (CAS) in order to host protection seekers and refugees who could not benefit from SPRAR reception centres. While some CAS have been set up in remote places, others have had to host large numbers of people, dramatically reducing the chance of being assisted by the staff (sometimes with a reduced expertise in comparison to those working in SPRAR). Unfortunately, due to the considerable arrivals of migrants between 2015 and 2018, the CAS became reception centres hosting around 80 per cent of protection seekers that arrived in Italy, becoming de facto the 'ordinary', durable and structural system of managing migration flows and asylum (Ricard-Guay 2019; Ferrero 2019). As many interviewees confirmed, this double path, with different standards, created important inequalities and disparities among protection seekers who were randomly assigned to a CAS or a SPRAR/SIPROIMI.[170]

Many interviewees have emphasized the importance of reception to identify vulnerabilities as early as possible directly in reception centres (both SPRAR/SIPROIMI and CAS), and that social workers should use appropriate instruments for this task (IORG03, IORG04).[171] However, in their opinion this ability depends on how well trained the staff is and the type of facility the person ends up in (if they live in a big reception centre, without any support service and in the middle of nowhere, then vulnerabilities can hardly be identified).

In 2018, the Security Decree limited access to SIPROIMI to protection seekers who have obtained international protection or a 'special cases' visa, and to unaccompanied minors, excluding all other asylum seekers. Many participants stressed that they noticed the effect of the new tender specifications for reception centres that dramatically cut per diem per hosted person funds from approximately €35 to €26 or €21 (depending of the type of reception centre and the numbers of people hosted). As it is possible to imagine, CAS began to guarantee only basic needs (lodging, food and health) instead of proper assistance (legal aid, psychological support, Italian language courses, activities aiming at social and labour inclusion) that from then on were provided only in SIPROIMI. Many interviewees remarked that this implies a reduction of professionals and social workers and an increase of turnover; on while also creating more precariousness, marginalization and isolation among protection seekers (Campesi 2019; Ciabarri 2020). Consequently, most interviewees stated that the Security Decree rendered identification of vulnerabilities even more difficult, if not impossible (In Migrazione 2018).

170 Over time some SPRAR/SIPROIMI have been specifically tailored for hosting and assisting people with vulnerabilities (people living with disabilities or health problems), while others have been adapted to specific needs of unaccompanied minors, single-parent families and pregnant women (Atlante Sprar 2018).

171 Over the years, the government developed and implemented some handbooks for the staff working in SPRAR/SIPROIMI reception centres, including information about how to intervene and deal with specific situations and conditions of vulnerability (Atlante SPRAR 2018).

Identification of vulnerabilities by NGOs and lawyers. Considering the defunding and inequalities outlined above, a number of legal actors reported that some vulnerabilities only emerged in private meetings in their offices or in supporting organizations. Talking about some protection seekers with mental health problems, one lawyer said:

> *Their vulnerability does not emerge, because there is no interest in letting it emerge. Commonly, there is not the competence to let it emerge, apart from when it is striking. A person in mental distress like schizophrenia, yes, but situations like depression and post-traumatic stress disorder are rarely recognized for what they are or represent* (LAW2).

These experiences are frequently described as challenging, because it takes time to establish a trustful relationship with clients (LAW05). Certain issues are particularly complex and protection seeker may neglect to mention useful information. For instance, some applicants may think that a detail that is irrelevant to the asylum application is important, while a completely overlooked aspect of their story may reveal crucial elements for a successful recognition (LAW05). As noted in Section 4.1, these aspects are relevant for explaining why some applicants failed to reveal some information, and for justifying real or supposed contradictions (LAW05).

In fact, several lawyers mentioned that one of the main challenges is preparing the applicant to adapt their very intimate and sometimes painful story to the formats, scripts and criteria put into play by administrative and jurisdictional decision makers. This adaptation has been reported as frequently frustrating for both the lawyer and the claimant (LAW06) because of the content of the story, problems of communication, mutual mistrust or embarrassment, and so on. Moreover, it is important to remember that decision makers' attitudes and expectations may seem opaque and unpredictable (NGO02).

Identification of vulnerabilities by decision makers. Most decision makers stressed the importance of creating a setting that can potentially facilitate applicants' expression. Some expressed awareness of the potential drawbacks of invasive questions, because many people prefer to forget the traumatic experiences they have undergone (GVT03). It is more common for vulnerabilities to emerge during the interview than that these elements are communicated in advance (apart from potentially 'predictable' vulnerabilities (on the basis of nationality, gender or age) that are usually reported on the C3 Form) (GVT12). Many members of TCs underlined the importance of preparing the interview and working with an interviewer and an interpreter of the same sex as the applicant. All declared that it is a common practice to assign certain claims to interviewers who have undergone specialist training on specific issues (GVT03, GVT07). Particular skills may sometimes reduce imbalances of power and status and lower barriers to communication (GVT10), at least in the perceptions and expectations of some TCs. All these practices are considered beneficial in identifying unforeseen vulnerabilities.

A common practice reported by TCs is the interruption of the interview if the applicant unexpectedly declares to be a minor. In such cases, the procedure requires the presence of a legal representative for the minor and in the subsequent hearing, questions must be adapted to the age of the applicant (JUS07). Another common practice deployed by all the TCs involved in this research is the implementation of the referral mechanism discussed in Section 3.2 once indicators of trafficking seem evident (GVT03). In case

of doubt, they prefer to suspend the decision and recall the applicant, even two or three times, and in the meantime wait for the feedback of the anti-trafficking organization. Some interviewees underlined that the accuracy of the decision should not be compromised by the pressure for an expediency (GVT11, GVT14).

Because of the wide range of claims, some interviewees noted their awareness that every applicant has their own personality and even when some stories are similar, there can be a detail that may positively or negatively determine a decision (GVT06; GVT11). To not consider these aspects is an error. According to many interviewees, the most challenging interviews are those with victims of trafficking (either for sexual or labour exploitation), people with mental health issues and those presenting SOGIESC-based claims. These cases are presented as a real struggle (GVT06), because of the importance of adapting the list of questions (GVT08), and more generally because these applicants may show additional mistrust or unforeseen emotional reactions.

A judge stressed the importance of the hearing, because it can make a real difference in identifying vulnerabilities, or the failure to do so. However, as one participant correctly pointed out, while applicants who had passing through Libya seldom talk about torture, what emerges from country-of-origin information (COI) is certainly exhaustive (JUS04). In this observation, the judge expresses awareness not to consider a lack of information as a source of non-credibility. Something similar applies to people involved in trafficking or those who had experienced trauma (including sexual and domestic violence). In such cases, protection seekers may be afraid to talk, they may simply want to forget what they have undergone, while others may even prefer to live in exploitative conditions for a limited time to avoid disclosure (JUS06).

What does good identification look like? A number of interviewees expressed criticism towards some practices related to the *identification of vulnerabilities* or those who are considered vulnerable individuals, like sending potential victims of trafficking with unusual or controversial stories to anti-trafficking organizations that are frequently overloaded. It could happen that, during a long wait, the protection seeker may not properly understand the difference between the NGO and the TC (NGO07; LAW09). Some TCs (GVT12, GVT14) and civil tribunals have looked explicitly at ways in which discrepancies, concealment and refusal to collaborate may be considered in relation to the risks in case of repatriation, including re-trafficking (see Section 4.1).

The main problem in the identification of complex and intersecting vulnerabilities is that the timeline of the subjectivation processes and alternative modes of self-identification may not fit with institutional measures and procedural times (Pinelli 2017; 2019). Another common reported experience is that identifying, recognizing and talking about a vulnerability is a matter of trust and social reliance (NGO07).

Many interviewees underlined that dealing with vulnerabilities also means managing emotions. In fact, institutional and legal actors involved in the assessment and/or support of protection seekers may be deeply emotionally involved, either because they may consider the topics close to their own sensibilities, or simply because the stories they are listening to are very dramatic (GVT11). As the literature makes clear (Veglio 2019), the risk of burnout in this field is high and frequently overlooked. Some TCs reported that once an interviewer is emotionally involved in the decision, it is common practice for the president of the TC to recall the applicant and propose a different interviewer (GVT03; GVT11), of course after having received the explicit consent of the applicant.

The burden of credibility. Assessing credibility is a struggle for all the institutional and legal actors involved in the procedure (Sorgoni 2017; 2019). While decision makers are necessarily expected to assess credibility, other legal actors (NGOs, lawyers) may be more aware of how the system itself may shape vulnerabilities. Understanding the situation and the context is very important for assessing the coherence and credibility of the narratives. Some participants underlined that communication involves translation and requires overcoming one's stereotypes or cultural bias in order to avoid misunderstandings (LAW01, JUS03).

One judge of the Court of Cassation complained that some motivations provided by both the TC and civil tribunals tend to be stereotyped and standardized (JUS05). Credibility cannot be assessed by looking at isolated parts of the story, but should involve an overall, integrated assessment. In addition, this judge stressed that three sentences of the ECtHR emphasized the need to deploy the 'doubt option' in some cases (JUS05). It seems that for individuals in situations and positions of vulnerability the space of application of this criterion can be expanded enormously. For instance, having gaps or unclear descriptions is absolutely in line with mental health problems, traumatic events (GVT15) or shyness related to revealing particular intimate issues.

However, because making decisions involves a dialogue with colleagues, various TCs mentioned that different views on credibility and protection can sometimes generate debate during the decision process. While many presidents of TCs stressed that in the majority of cases the decision is unanimous, some admitted that UNHCR representatives sometimes express different positions, especially related to some nationalities of alleged 'economic migrants' and regarding the clause of exclusion due to crimes and violations of human rights (Art.12 and Art.16) (GVT11). Many judges (JUS04) said that debates among colleagues are useful and enriching (JUS04). In this sense, the creation of 'specialized sections on migration issues' within the civil tribunals is positively evaluated in comparison to a former situation in which they found themselves alone in the decision-making process (JUS04). However, as already discussed in Section 4.1, various orientations may emerge in different tribunals, interpreting some narratives, topics and claims more restrictively or extensively.

Workers in NGOs emphasized that two different versions of a story of trafficking do not a signal of lack of credibility, but are rather an element that may potentially confirm that the person has been involved in trafficking or experienced traumatic events (NGO08). In fact, reports produced by anti-trafficking organizations and other NGOs are not black-and-white (GVT15); this means that there are not elements that certify with certainty that a person is involved in trafficking, but at the same time it is not possible to state the opposite.

Other challenging claims are related to SOGIESC. On these issues, some decision makers said that while there are some 'manifestly unfounded claims', others who encountered 'realistic episodes' (deductively recognized by non-verbal communication) request additional questions to assess the way in which the responses are provided (GVT06).

Challenge or failure to identify vulnerabilities. Some TC members claim to have a good attitude in recognizing 'real stories' and situations in need of protection, especially implementing CNDA and UNHCR guidelines and using COI (GVT06). However, understanding narratives, identifying vulnerabilities and proceeding with a good credibility assessment is not so easy. Not identifying vulnerabilities has a

domino effect, given that vulnerabilities that remain unidentified usually worsen in conditions that do not provide support, and hence also render access to the right of asylum even more difficult. In fact, one interviewee remarked that behind each success, there are hundreds or thousands of people that remain unrecognized in the shadows of procedures and reception (NGO02).

Other issues described as particularly troublesome and potentially overlooked concern unaccompanied minors and single parents with young children (especially at police headquarters, in which some informal discriminatory practices have been attested by various participants) (LAW10).

As already mentioned in Paragraph 4.2.1, some vulnerabilities are not covered by international protection or are poorly documented, while there are also many vulnerabilities that interact with each other and thus structure the way in which the applicant faces institutional actors and the asylum procedure.

Some interviewees confirmed what the literature says when they remarked that protection seekers may formally have a legal status (refugee, subsidiary protection, humanitarian protection, other forms of protection), but this does not correspond either to a better and safe life, or to social inclusion in the new context (Marchetti 2016; Marchetti and Pinelli 2017, Ciabarri 2020).

Various legal actors noticed that many protection seekers who have been in Italy for three to four years and have received various negative responses are frustrated to have to continuously talk about their vulnerabilities to various institutional and legal actors (LAW05). This experience is common for those renewing humanitarian protection, those submitting an appellate asylum application and for those presenting an appeal to reverse a lower form of protection and get international protection. These cases show that short-term visas and periodic checks for renewing them may have a vulnerabilizing effect.

Protection seekers identifying weak aspects of the system. Living in a situation or condition of vulnerability does not necessarily mean being unable to understand the institutional logic, its contradictions and the breaches left by institutional actors who implement the procedures (Fabini et al. 2019). Some strategies are at times defined by the mass media as 'abuses of the asylum system' (Griffiths 2012). However, while some interviewees share and incorporate this restrictive view, others problematize this vision and approach. In other words we can distinguish between two groups: one accepting the existence of 'abuses of the system of protection' and another rejecting this view, problematizing this perspective.

In the first group, we can put several decision makers (both TC members and judges). In those cases, confronting narratives with COI and asking additional questions are considered useful for understanding if the story is a 'real' or not (GVT06). Many decision makers said that SOGIESC-based asylum claims are a clear example where COI may facilitate the understanding of the truth or falseness of a narrative. In these claims, the credibility assessment is done following different scripts and analysis. Unusual or too-similar narratives that seem 'stereotyped' or 'standardized' are more likely to be considered 'not credible'. One president of TC referred to some applicants as 'supposedly vulnerable' (GVT05), while another used the term 'pseudo-vulnerable' in talking about an applicant presenting an asylum claims based on health issues (GVT06). One judge spoke about so-called 'invented' and 'sold' stories, saying that sometimes they are simply the result of unreliable advice received from various social actors (compatriots, refugees, law-

yers, friends, and so on). Other participants argued that to distinguish 'real' stories from 'invented' is difficult. Despite some claims being considered more effective than others, it is the responsibility of decision makers to let vulnerabilities and 'real stories' emerge. Talking about standardized stories and stories that are 'not credible', JUS04 added:

> *The problem is to examine the story without prejudice every time, because even if it is a story you have already heard, this doesn't mean that in that case it's not true. […] This doesn't mean that a person doesn't have the right to obtain a form of protection. I strongly believe that if they tell the real story (family conditions, migratory path, etc.) they would obtain the humanitarian protection. So I don't want to call these claims 'fake', because in this country it is the only way to gain access (to a regular status) […]. If there is a vulnerability, it is also our responsibility as judge to cooperate and understand the real story of the applicant* (JUS04).

As already discussed in Section 4.1, the Court of Cassation (Decision 28435/2017) has underlined the obligations for the judge to gain access to recent, updated and reliable COI for the assessment of credibility, vulnerability and potential risks in case of repatriation (JUS05).

According to other interviewees, there are applicants relying on 'fake' stories simply because there are no other regular channels available in Italy to obtain a regular permit of stay, apart from the request for international protection. In fact, some participants said that it is not correct to consider such behaviours and narratives in terms of 'abuse' (LAW06), because the 'trade of stories' should be linked with the rigidity of criteria commonly mobilized by former members of TCs (in role until August 2018), whose consistent reaction has been to consider all similar applications as 'false', 'non-credible' and 'stereotyped' (LAW05; NGO09; LAW09).

Other participants (not only lawyers and NGOs, but also some judges and TCs) rejected the idea (and the terminology) of 'abusing' the system. Looking at some narratives and behaviours, they notice the agency and the practice of resistance enacted by protection seekers who – despite the individual-based request of protection – are in networks and strategically behave according to advantages and disadvantages they are confronted with. These supposed unbelievable stories may also be considered as strategies that people unconsciously reproduce in order to navigate the perceived inconsistency and injustice of the system (NGO02), especially considering that the new context does not offer any other opportunities and recent legislative reforms have progressively eroded fundamental rights (NGO09). One participant, from a different perspective, justified these phenomena, saying: 'It is a question of navigating working with the framework that exists, it is not an abuse, so you work around the categories that are imposed by the framework' (LAW30).

Finally, some participants stated that it is not the job of either the lawyer, or the decision maker to decide whether a narrative is true or false, because the assessment should be done mainly in relation to the situation in the country of origin (LAW03). This reasoning is similar to that proposed for humanitarian protection, in which it was possible to reduce the importance given to credibility and coherence (see Section 4.1).

Our focus of this section has been on the challenges and the complex realities related to identification of vulnerabilities and credibility assessment. In the next paragraph, we turn our attention to the tools that institutional and legal actors commonly use in supporting or assessing asylum requests.

4.2.3. Reflections on tools and documents

Tools and documents range from institutional documents produced by international organizations and NGOs (COI, guidelines, and so on) to additional documents produced by public or private institutions, by professionals working in collaboration with reception centres (lawyers and psychologists) or even documents produced autonomously by the protection seeker.

Guidelines and their reception; training. In general terms, guidelines about specific issues and vulnerabilities (such as trafficking, gender, health, SOGIESC and age.) or related to specific countries of origin are considered a constant reference for many decision makers and other professionals dealing with protection seekers with specific needs (LAW06). Many interviewees have recognized the positive impact of using UNHCR, IOM and EASO guidelines in their everyday work. Another important aspect frequently mentioned has been the training provided to professionals working in reception centres (CAS, SIPROIMI) and decision makers (TC, civil tribunals).

In the past years, UNHCR organized seminars and training courses in which theory and practice were frequently combined. The geographic coverage of these initiatives has been remarkable, with the specific goal to foster capacity-building and establishing collaborations between local institutions and civil society actors (IORG03, IORG04, IORG09).

Additionally, EASO staff have collaborated with various institutions since the increase of the workload due to the so-called refugee crisis, generating a big delay in dealing with and assessing applications. EASO members have been involved at various stages of the procedure. In hotspots they have been mobilized to implement what is framed as 'early identification of vulnerable people' and offered support to other professionals involved in these operations. Similarly, their collaboration with local police headquarters has been deployed to improve the C3 Form and create training courses for policemen/women (IORG11, IORG12). Some participants pointed out that EASO involvement in TCs has recently ended, but it had concerned two main activities: 1) a close collaboration with the CNDA for the training of new members of the TC and the monitoring of their practices, and 2) supporting the staff in the preparation of files and updating COI (IORG12). More recently, their engagement has been transferred to civil tribunals, where they work in support of 'specialized sections' in order to reduce their workload and mitigate delays.

Many participants stressed that apart from these important improvements, other problems related to dealing with vulnerabilities remain to be solved. For instance, some interviewees expressed criticism in the ways in which COI are conceived and used. Others stressed the importance of extending the training for interpreters throughout the procedure. The main attested problems seem to be with interpreters at the level of civil tribunals, because they are addressed directly by protection seekers and lack competence. These aspects are especially relevant considering the intimate and private content of what is to be translated. A lack of previous familiarity and competence can create problems in the protection seeker's expression or misunderstandings that go beyond language barriers, because they are related to power and social dynamics.

Another relevant issue is how guidelines are concretely used and implemented by those who are not decision makers (lawyers, NGOs, and so on). For instance, in the opinion of some anti-trafficking organizations, the indicators presented in the guidelines can be helpful, but it is important to frequently update these tools, otherwise they will to lag behind a phenomenon that is actually continuously evolving (NGO08). Moreover, for a long time these guidelines overlooked the trafficking of men (for instance related to begging), the experiences of trafficked women from countries other than Nigeria (NGO07) and the possibility that sexual exploitation may involve boys and young men (NGO06).

The ambiguous role of personal documentation. Documents produced and used in the framework of international protection are considered and assessed with some ambiguity in relation to factors like personal and professional background. Generally, decision makers prioritize coherence (credibility) of narratives, while the role of documents is subordinated (Sorgoni 2019). Not surprisingly, the first document that the TCs commonly evaluate is the C3 Form. This document does not report information related to vulnerabilities (apart from those evident, visible and documented at Point 16), but they can give an overall idea of the applicant, sometimes they can be a useful indication, while at other times may be a pitfall. At the same time, local police headquarters may signal potential criminal proceedings associated with the applicant (GVT12).

Here, we propose some reflections on which additional documents are more useful and which ones are more problematic, which are considered reliable and which are perceived as fake or falsified, revealing the different understanding of the role of these documents.

For instance, the importance of medical reports in attesting vulnerabilities has been raised by many interviewees. However, their use is not unproblematic or even neutral. Some participants stated that medical certificates have become 'sanctified' (LAW01) and are frequently considered the most effective tool to support and give 'evidence' to vulnerability (NGO02). However, medical certificates can present great challenges (Taliani 2019).

First of all, they are not that easy to obtain. Moreover, not every institution/organization providing such documents is attributed the same value. In general terms, medical certificates coming public and qualified institutions are appreciated and considered reliable, while those produced by family doctors or staff working in collaboration with reception centres and NGOs are considered biased (LAW05). Something similar can be said for psychological certificates (NGO03; NGO09).

In these cases, there are at least three main challenges: 1) the economic differences between a medical or psychological exam done privately or with a professional working in the public sector, 2) the geographic differences related to the chance to gain access to a service or a doctor (IORG04), 3) time differences, because public institutions (even though they can be less expensive than private ones) may have long waiting lists that frequently cannot meet the demand of institutional procedures related to asylum (LAW05). Generally, the more structured the institution is, the more the certification is taken into consideration (IORG11); however, some participants complain that various institutions (police headquarters, tribunals, and so on) may assign different values to documents produced by specific public health institutions (LAW10), creating additional problems for protection seekers and legal actors who want to substantiate an asylum application.

What is completely overlooked in the realm of mental health, is the subjective and cultural meaning attributed to a disease or an illness, because these interpretations are impossible to objectively assess through the tools of Western psychology (NGO02) and the parameters established by legal frameworks (NGO03).

Useful or useless documentation? In the logic of some decision makers, the best documentation is authentic, potentially legalized at the embassy and preferably translated (LAW05). These documents can be certificates of birth or marriage, or other documents that certify that the protection seeker comes from the country or region that they claim (JUS07). As noted by several participants, the criteria for assessing such documents are similar to those used to assess credibility (JUS04). Unfortunately, opportunities to gain access to original documents are very uncommon, because in some countries this information may not even be recorded. Furthermore, some decision makers express doubt when they see documents that are not original, but copies (JUS07). Other useful documents for decision makers are the reports produced by anti-trafficking organizations or diagnoses written by psychologists (GVT09, NGO03).

In the past years, some protection seekers presented a written story to the TC or the civil tribunal. These documents aimed to facilitate the understanding of their situation and substantiate their application. However, according to some decision makers, this practice gradually has decreased for two reasons: 1) the information given in the documents could be the source of a rejection if the applicant contradicted himself/herself during the interview, 2) it has at times been considered an interference of the decision maker's role and autonomy.

Other documents commonly used are related to the applicant's new context (Italy), among them evidence of employment, training courses and internships, as well as certification of Italian language proficiency (GVT06). Those documents were frequently used in the past, because if a person was considered to belong to a vulnerable group, such evidence of integration could have a positive impact in granting humanitarian protection (JUS07). Unfortunately, even though they are still accepted by TCs, they lose their use when humanitarian protection has been abrogated (between 2018 and 2020). They are, however, confirmed to be still useful in case of appeal (see Section 4.1). Despite the legislative change, some protection seekers have continued to present these documents at the TC, demonstrating the long duration of a practice and the social dimension behind what is usually considered a simple written document.

Falsified and 'fake' documents. Much emphasis has been put on some controversial documents commonly used to give evidence to what is reported by the protection seeker. Many decision makers reported their experiences with applicants of specific nationalities (especially Pakistani, Bengalese, Nigerian) that produced some documents (police reports, articles excerpted from newspapers, and so on) with the intention to corroborate what they say. Unfortunately, whether these documents are authentic or falsified, TCs frequently indicated that they have prejudices against these kinds of documents, because in the past many protection seekers admitted that some documents were fake (GVT11) or simply affirmed something very different from the content of these documents (falsified) (GVT08). In other cases, not being able to explain how they got the documents has been interpreted negatively (GVT13). In addition, whether the applicant proposing the document comes from the 'blacklist' mentioned above or from a 'safe country' may complicate their credibility (JUS07).

4.2.4. Critical aspects of the legislative changes and their impact on vulnerability

In this paragraph, the focus is on some of the most relevant aspects that have recently been modified by the legislative reforms adopted in Italy between 2017 and 2020, especially those introduced by the so-called Minniti-Orlando Decree (LD 13/2017) and Salvini's Security Decrees (LD 113/2018 and LD 59/2019), before the recent approval of the Lamorgese Decree (Law Decree 130/2020 converted into law in December 2020). We briefly describe their impact in the perceptions and the experiences of institutional and legal actors dealing with protection seekers experiencing vulnerability, outlining the main challenges and gaps in the current legal framework and showing how vulnerabilities can be shaped by the asylum and migration regime.

Main impacts of reforms (2017–2020). All participants in the research were asked about the impact of the recent reforms on the way vulnerability is taken into consideration within the asylum system. Many quoted the exclusion of access to the right to asylum one of the most evident results. The new measures affected access to legal information and the preparation of the case, creating additional problems to TCs and civil tribunals who increasingly experienced hearings with unprepared applicants (JUS02). One participant remarked that exclusionary practices (LAW08), an aspect also well documented in the literature (Campesi 2017; Fabini et al. 2019; Ciabarri 2020; Della Puppa and Sanò 2020).

Impact on the reception system. Many participants remarked that legislative changes created additional problems in identifying and dealing with vulnerabilities (especially in CAS and for those living outside of reception centres).

Several participants remarked that depriving asylum seekers of support services (legal aid, psychological support, Italian courses, internships), renders it difficult (if not impossible) to identify migrants in condition of vulnerabilities. On the one hand, this can exacerbate psychological problems that may endanger the social workers of reception centres (LAW12). On the other hand, it can impede interactions and social inclusion within the local community. In addition, several organizations managing reception centres have incurred debts or even been bankrupted. Consequently, they cut personnel and services (LAW06), with relevant implications for protection seekers in conditions and situations of vulnerability.

Generally, the management of the reception system has been clearly centred on the reduction of costs (LAW02). The overall picture is deeply negative, especially considering protection seekers whose vulnerabilities have been either increased or invisibilized by the new scheme that changed the organization of reception centres (NGO07). At the moment, some reception centres rely increasingly on local volunteer-based associations. Of course, this creates differences between regions and inhomogeneous and non-standardized practices of support. Consequently, some areas seem to be able to sustain protection seekers, while others have been abandoned completely (LAW10). This demonstrates a clear failure to seriously take into account the interests of protection seekers, especially the most fragile (LAW10).

Abrogation of humanitarian protection and the creation of alternative forms of protection. Another event with a major impact frequently quoted by participants has been the abrogation of humanitarian protection between 2018 and 2020, given that this type of protection was meant to cover those vulnerable situations/ that do not fit the criteria of international protection. In these cases, in the past TCs limited their role to informing the applicant about the possibility to directly request alternative types of protection at the local police headquarters (GVT05). These alternative measures are mainly considered

negatively: 'special cases' lack elasticity and re-produce the categorizational logic already discussed in Section 4.2.1 when we spoke about the limitations of putting people in boxes. These alternatives are not a means to stabilize the situation, because they are temporary and short-term, subjecting migrants to an exhausting regime of periodic re-assessment that may exacerbate precariousness (JUS02, LAW10).

Impact of the impossibility of registering at the General Registry Office. Some participants (NGO06) called attention to the impossibility of registering at the General Registry Office, which is another evident impact of the Security Decree. It affected not only access to local services, outside the reception structure, but it also had consequences for job and housing contracts. No less important, this change had also an impact on the type of registration with the health system, because some institutions and offices may continue to require a long-term residence permit (LAW05). Further investigation is required of what happened in the period between the impossibility of registering at the General Registry Office and the period in which some mayors and tribunals (Ancona, Florence, Bologna) anticipated the decision taken by the Constitutional Court (Decision 186/2020) to authorize the registration of asylum seekers (subsequently confirmed by the Lamorgese Decree).

Challenges related to the access to the procedure. One participant underlined that when a protection seeker goes to the police headquarters, there is no obligation to grant an alternative type of protection (NGO02). For claims based on health issues, it can happen that the police headquarters requires documentation, which may then be considered unsatisfactory (LAW02; LAW10; NGO04). One interviewee said: 'People with psychological problems (sometimes in connection with or as a consequence of torture) usually don't receive a visa for 'medical treatment' from police headquarters, even if they have documents that confirm their problems' (LAW10). In fact, one participant reported the following case :

> *A client had a twenty-page document, but in the police headquarters they replied, "No, sorry, we don't give visa for 'medical treatment' for those having psychological problems." I was there and I replied 'I didn't know that they were different illnesses', but of course I received these considerations orally, not written* (LAW10).

Additional problems to gain access to the procedure also affect those who apply for protection as undocumented people (for instance in CPR, in hotspots or at the border), those who present a *sur place* request and those who are considered 'Dublinated' (AIDA 2019). From some interviews, it emerged that the vulnerabilities of these protection seekers are overlooked (GVT06). Especially in these cases, the existence of circulars and their impact on the concrete implementation of some practices remain unknown and undecypherable by lawyers, NGOs and other workers involved in the support of protection seekers' rights (LAW05). Unfortunately, some informal practices are not documented, but used daily (NGO02; NGO04; LAW10). Other interviewees spoke about the flattening of asylum procedures, while they ought to be more individualized. Standardization and generalizations seem to be the result of the categorizational approach described in the paragraph 4.2.1.

Reflections on specific aspects of the reforms: abrogation of the second appeal. According to an influential participant (JUS05), while the abrogation of a second appeal established by the so-called Minniti-Orlando Decree (LD 13/2017) is not officially unconstitutional, it has, however, added a responsibility to judges of 'specialized sections' (JUS05). However, the prevailing opinions on this issue are negative, because an important percentage of the success of the appeal is related to the hearing. Consequently, the abrogation of the second appeal and the practice of entrusting the management of the appeal to hon-

orary judges is detrimental to the fundamental right of being assessed by a judge with specialist expertise on the matter of asylum (LAW10). Some participants said that this abrogation creates second-class citizens (NGO08). The intention of Legislative Decree 13/2017 was to reduce the waiting time for asylum seekers (LAW05), but the idea to implement videorecordings at the hearing with TCs to avoid re-convocation by the civil tribunal remains a controversial measure that has as yet not been applied.

Re-composition of TCs and the creation of 'specialized sections' within civil tribunals. Many representatives of the TC appreciated the arrival of new administrative officials entitled to conduct interviews and EASO members temporarily acting as supporting staff (GVT01). Institutional actors with other roles (judges, NGOs, lawyers), too, demonstrated a predominantly positive view. TC members described this change as beneficial to the quality of the decision, to the preparation of the interview, but also to the level of discussion during internal meetings. Moreover, the entry of new administrative officials also allowed them to develop better communication with representatives of reception centres and police headquarters, which in the past had not always been possible due to lack of time and the heavy workload (GVT06). They have since been able to partially or completely reduce the backlog. On the side of civil tribunals, judges appreciated the collaboration with EASO staff and the creation of specialized sections (JUS02, JUS03, JUS04). However, one lawyer said that the existence of these sections does not mean that judges are specialized, because they are still in training and intercultural competence is still absent (LAW02).

Prioritized and accelerated procedures. Officially, people in positions or conditions of vulnerability are not subjected to accelerated procedures (GVT01), but unfortunately this does not always happen. Some participants reported discretional practices in CPR, detention centres, at the border, at police headquarters and so on. By contrast, some protection seekers living with 'visible' vulnerabilities could get access to prioritized paths or avoid the interview under particular circumstances (for instance in case of severe health problems) (GVT15); however, even this good practice is sometimes overlooked.

Participants frequently expressed criticism of accelerated procedures, because individuals in situations of vulnerability need time to explain their condition and express their needs to people involved in the procedure. It is a matter of trust and familiarity (NGO02), which requires time (LAW06). This reflection also emerged clearly in the opinions described in Section 4.1.

One judge said that in cases where the administrative phase has been too fast, applicants have more time to legitimate their asylum request and document their vulnerability during the appeal (JUS04). The same judge said about accelered procedures:

> *(they) mean that either the asylum seeker does not arrive in front of the judge or the actual vulnerabilities of the asylum seeker cannot be brought to light or they arrive before the judge completely unprepared and therefore it becomes more difficult to bring out the vulnerabilities. This system has certainly made it more difficult to protect the rights of these people* (JUS04).

However, the insertion of this new path moves the identification of vulnerabilities from the early reception phase to the interview with TC (NGO08). A side effect of accelerated procedure (especially if we consider appellate applicants or people coming from SCO) is that these applications are more frequently considered to be submitted by alleged 'economic migrants' (JUS07). In these cases, people are less prepared for the hearing and they usually report narratives that do not fit international protection criteria. Consequently, the applicants are usually perceived as 'economic migrants'. The very abrogation of humanitarian protection between the end of 2018 and that of 2020 contributed to these restrictive attitudes.

Subsequent applications for asylum. Most interviewees are critical of this specific path. The increase in subsequent applications is a partial consequence of the reduced preparation for the hearing by the TC or civil tribunal, as well as of the abrogation of the second appeal, because several applicants cannot economically afford an appeal to the Court of Cassation (NGO07). It seems that most of these applications receive a negative response, because they are usually considered 'manifestly unfounded' (LAW05). This happens by default to those that do not provide 'new additional evidence' to their applications and do not manifest during the interview a 'well-founded fear of persecution' in case of repatriation. By contrast, some people do satisfy the requirements for having a meeting the TC, but some prejudices can also be reproduced in such moments. In fact, this is frequently considered a strategy used by people who wish to extend their stay in Italy (GVT13), even though some TCs admitted that some of the applications from before 2010 may have been be rejected because of a reduced attention to vulnerabilities then, in comparison with now (GVT11).

Another reported problem is that Article 9 (b) of the Security Decree (LD 113/2018) (introducing a change to Article 29-bis of the Procedure Decree (LD 25/2008)) established that the applicant cannot benefit of the suspensive effect. This means that the applicant can potentially be deported in the period of waiting for the response to their application. Two participants laconically remarked that it is not reassuring that in Italy the implementation of repatriation is very inefficient (NGO08; JUS07). For this reason, it is not surprising that many undocumented people whose appellate applications have been rejected subsequently decide to move to other EU countries, put an end to a regular path and hence abandon legality (NGO08). These problems are also related to the impossibility to convert some 'weak' types of protection into other types of permission (LAW10).

List of 'safe countries of origin' (SCO). Officially, applicants coming from a country included on the list of SCO (adopted on 4 October 2019) have to fill in a special form at the police headquarters, which also considers potential vulnerabilities. However, as reported by one interviewee, they are frequently invited to fill in the standard form instead (GVT08). One of the main challenges related to this procedure is the inversion of the evidence requirement. The application has to include additional elements that may, unfortunately, be difficult to provide most of the time (JUS07). Other participants remarked that the official guidelines related to each country on this list (LAW05) has been elaborated by the CNDA, overlooking other information from other sources (for instance ethnographic reports) (LAW06). Other participants are slightly less critical, saying that such a list was necessary in Italy (especially considering that other EU countries already had it), but recognizing that the countries on the list reflect a specific political view (JUS06). However, the majority of participants remained mainly critical of this list, noting that it is part of a wider EU plan to push procedures to the EU borders as much as possible (NGO08) and to reduce the rate of permission granted (De Genova 2017; Tazzioli 2018) .

Critical debate in times of legislative change: challenges and shortcomings. Some interviewees (NGO06, LAW03), while acknowledging the damage of the abrogation of humanitarian protection, nevertheless expressed critical opinions about the use of humanitarian protection as had been done before. This aspect frequently emerged from lawyers and NGOs, but also from some TCs (GVT13).

As we have seen in paragraph 4.2.1, many participants recognized that humanitarian protection made it possible to give protection to more people who did not fit to the criteria associated with international protection. However, resorting to humanitarian protection too quickly or too frequently has the effect of discrediting this form of protection and disregarding the potential of international protection (NGO06, LAW10).

One participant suggested that the idea to create typologies that replaced humanitarian protection might be related to the goal of reducing inconsistencies of decisions of civil tribunals, but the problem remains: it excludes those who do not fit to these categories (JUS06). Consequently, alternative forms of protection are considered weak forms of a de facto dismantled humanitarian protection.

Many participants stressed the importance of not confining the consideration of vulnerability to humanitarian protection. In fact, there are some 'grey vulnerabilities' (LAW05) that do not receive attention or risk passing unnoticed (JUS04). These problems have been clearly highlighted in Section 4.1: some civil tribunals remarked on the importance of exploring further aspects that could potentially be considered in the framework of international protection and not only in terms of humanitarian protection (that is, domestic and SGBV, SOGIESC, labour exploitation).

In fact, one interviewee (LAW01) remarked that humanitarian protection includes persons with very diverse profiles. Consequently, instead of talking about abuse of asylum by 'bogus applicants' (Griffiths 2012), we should recognize that the system itself has helped to create abuse of this form of protection (GVT13). Many applicants did not submit an appeal for the recognition of humanitarian protection (instead of the international protection) because they were unaware of this right, or simply because they were tired (NGO02). So, while the rate of recognition of international protection has increased slightly in the past two years, it is important to remember that the rate of rejections has also risen consistently (NGO02).

An important shortcoming in the procedure is that there remain very few protection options to address people's needs after the abrogation of humanitarian protection. Some situations of vulnerability are no longer covered. For instance, a minor applying for asylum in Italy after 5 October 2018 cannot receive humanitarian protection. A worrisome hidden, and growing, effect is the progressive consideration of the majority of protection seekers as 'economic migrants' only because they arrived after the abrogation of humanitarian protection, and this protection no longer exists (JUS07), increasing suspicions about the sincerity of protection seekers' eligibility.

The diversity of practices, realities and experiences all over Italy is a characteristic that has an impact on the way vulnerabilities are dealt with, such as the implementation of the legal framework. The big challenge in Italy continues to be to ensure harmonization across regional diversities (IORG03, IORG04, IORG11). The availability of specialized resources heavily depends on local availability (JUS03). The image of 'leopard spots' has been used in some interviews, especially with regard to service provision and the presence (or absence) of appropriate resources in a given territory (LAW05).

One participant (IORG11) proposed the example of trafficking in comparison with mental health provisions. In every region there are anti-trafficking entities that work in networks. In the case of mental health, there are some regions where professional support is scarce (even for the population in general), while in other regions an expertise in ethnopsychiatry has developed (NGO03). It is striking that some TCs have started to establish protocols with local health institutions for assistance in the assessment of some health-related issues (including that caused by torture).

Vulnerabilities fostered by institutional inadequacies. Many interviewees have highlighted how vulnerabilities may be fostered, created or worsened by the context (reception conditions, lack of work, the black market) and during the procedure (mistreatments in institutional settings).

Some participants highlighted that many protection seekers are also excluded by the procedure or develop vulnerabilities because of institutional violence and abandonment. It is clear, considering the problem of delays in taking decisions, that the system can foster existing or '**silent' vulnerabilities** (Pinelli 2017, Beneduce 2015). Broadly, this means that people are left outside of the collective community, with limited options of integration for three to four years, and because they cannot go to another country, they are trapped in this situation (LAW03).

One judge remarked that illiterate or less educated protection seekers may have a higher risk than others of being subjected to people involved in systems of exploitation (JUS04). Another interviewee said that anyone can become vulnerable, even those who start the journey sane and not vulnerable, especially considering the living conditions they may experience in CAS (NGO02) and more generally after a period spent in reception.

Vulnerability can (un)intentionally be created both in the case of recognition and rejection, because even a person obtaining protection can be vulnerabilized if it is is not explored whether they need further support (LAW10). The existence of big reception centres continues to be a factor that may discourage the identification of vulnerabilities (NGO02), because these places can foster existing vulnerabilities or create brand-new ones. Some participants (NGO02, LAW10) even use the metaphor of 'parking lots' for describing such centres, and 'detention centres' for hotspots and CPR. Experiences of isolation and vulnerability may be linked with marginalization and a lack of regularization that exposes protection seekers to further risks of undergoing violence (NGO07). Participants highlighted that such places can foster illegal trade and create the conditions for the further development of exploitative markets (NGO02, LAW06).

Considering the present situation, one important aspect to consider is related to the evolution of the Covid-19 pandemic (Della Puppa and Sanò 2020). This is a problem generally for protection seekers, but especially for those living in precarious situations and contexts (including those who are in CPR, detention centres, those who are 'Dublinated' or those who live in informal settlements or in the rural areas) (LAW05). The pandemic is also a problem for those who are awaiting appeal, because judges may opt for a decision without the hearing in order to conform to exceptional governmental measures.

In conclusion, the protection system (both for temporary reception and the assessment procedure) seems to work at different speeds: too fast for some, too slow for others. Other participants said that there is a contradiction in the huge socio-economic investment of resources for asylum seekers and refugees, resulting in a low rate of official protection and recognition and consequently in a potential path toward exploitation and marginalization (JUS07).

4.2.5. Final observations

In this section we outlined what vulnerability means for institutional and legal actors and which vulnerabilities are more recognized in the Italian asylum system. Many reflections discussed and challenged the group-based approach, providing examples of its shortcomings and people who are excluded. This part highlighted that some situations of vulnerability are multifaceted and not properly addressed by the legal concepts and tools commonly deployed.

Our attention has been centred on the various times and spaces in which situations of vulnerability may emerge (or fail to) and may be identified (or not). We showed that the main problem in the support and assessment of vulnerability may be linked with that of credibility. Various orientations and interpretations emerged, especially regarding the ways through which institutional and legal actors cope with the lacks and inconsistencies of the asylum system.

We also focused on the main tools that institutional and legal actors commonly deploy in sustaining or assessing the vulnerabilities of protection seekers. These tools may include guidelines, COI, and additional documentation produced by protection seekers, public institutions and professionals. We briefly discussed the value and meaning of these documents.
We concluded addressing the implementation of practices in a time of normative and legislative change. This part offered a critical analysis of some key aspects that characterized the legislative reforms approved in the past three years. We showed that while some procedures facilitate the emergence of vulnerabilities, others can create further obstacles to their emergence, support and assessment.

4.3. Challenges and innovation in the making

This report ends with a section in which we shed light on some innovative and unusual practices that some participants are currently implementing. They are experience-based, and we propose that they be considered as alternatives for a better implementation of the procedures concerning people and groups in situations of vulnerability. Below, we report the main reflections from institutional and legal actors in a time of a legislative re-organization between 2017 and 2020, before the approval of the Lamorgese Decree. Therefore, it is important to remark that the Lamorgese Decree may potentially open the findings collected during the past months and discussed throughout this report to re-examination.

4.3.1. Suggestions from the institutional and legal actors

Training remains the main future requirement by identified many interviewees. Judges, interpreters and cultural mediators need more training (JUS03), but so do police headquarters and managers of big reception centres in order to facilitate the identification and handling of vulnerabilities (GVT01).

However, training and tools cannot replace the need for other professionals (cultural mediators and anthropologists) establishing a real multi-disciplinary approach, beyond that currently used. In fact, there are many challenges in using some tools and dealing with people of various nationalities and presenting a wide range of claims. Some interviewees underlined that it is important for institutional actors to learn

more about cultures in order to situate people, documents and narratives in relation to specific contexts (LAW05, JUS04). Consequently, collaborations with ethnopsychologists and anthropologists are considered particularly urgent for understanding vulnerabilities, also related to body language and other socio-cultural implications connected to vulnerabilities.

Other participants noted that institutionalized and bureaucratized practices risk overlooking the importance of critical thinking and the creative use of tools, blinding practitioners to phenomena that change very fast (LAW02). This view is also expressed by international organizations working in the field of trafficking (IORG08), where the experience of collaboration with anti-trafficking organizations taught them to take into account the feedback received by NGOs and to avoid a-critical implementation of guidelines (NGO07).

Implementation requires monitoring. In fact, some past measures were first experimented with in specific institutions (police headquarters, TC, civil tribunals). Then, after checking how the tools were used and what critical feedback was received, they were implemented at a national level (GVT01, IORG11, IORG12, IORG09). Many interviewees expressed satisfaction with the collaborations that were established in local territories for referral mechanisms (NGO08).

Further efforts should be made to organize training courses for an early identification of and better assistance with vulnerabilities (LAW02, NGO02, LAW05, IORG03). These courses can be beneficial to those working in support (reception centres, NGOs, lawyers) in order to implement sensitivity around vulnerabilities (in this field, universities may also have an important role) (LAW06).

4.3.2. Current developments and attempts

Some decision makers and legal actors considered it crucially important to improve organizational wellness, starting with avoiding or reducing the risks of burnout (GVT05). When people are under pressure and have short-term contracts there is the risk of seeing numbers instead of individuals. Renewed attention to these aspects would also be beneficial in creating a good setting and dealing more properly with protection seekers (NGO02).

Others underlined the need to foster inter-institutional dialogues with the specific aim to facilitate harmonization and standardization of the assessment procedures concerning vulnerabilities (GVT06). For instance, TCs may collaborate more with civil tribunals and police headquarters in looking at how to address some complex vulnerabilities. TCs can improve the referral to local institutions, associations and services once they notice that a person is not aware of specific information and opportunities. They can establish collaborations with specialized services, working through networks and protocols and even signalling some protection seekers living in vulnerable conditions to highly specialized and qualified reception centres (GVT09, GVT11). Considering the impact of the reforms of the past few years, some participants (IORG05, IORG11) stressed the importance of working more effectively through a multi-level approach. For instance, asylum and anti-trafficking systems rely on the work of different institutions, so there is an evident need for better dialogue (IORG05).

Considering the problems in **identifying vulnerabilities**, some TCs remarked on the importance of adapting the procedures for those following an accelerated procedure, turning it into an ordinary procedure should they notice during the interview that the protection seeker reveals one or more vulnerabilities (GVT05, GVT10). Another piece of advice is to accept some subsequent applications if they were submitted by people suspected of being involved in trafficking (GVT09), especially considering both the reduced level of preparation for the hearing that many protection seekers were able to achieve in the past two years and the sensitivity of such issues.

Following the model of the referral mechanisms for trafficking, there is now the development of similar guidelines in cases of SGBV (IORG03, IORG09). Hence, by 'replicating' the logic while adjusting the practice, the trafficking guidelines are serving as a model to develop a similar mechanism in cases of gender and sexual violence (IORG08).

Some TCs are trying to create some internal tools and guidelines on specific issues and countries that they hope can in the future also be used by their colleagues working in other TCs (GVT03, GVT10). Some TCs and civil tribunals even experimented with training on very specific issues (like for instance FGM and SOGIESC) in collaboration with local associations and professionals (GVT12; LAW06; IORG10).

4.3.3. Further observations

Some final remarks range from a very pragmatic and focused view to more macro-observations that go beyond the role of national institutions, instead demanding a change or further investments at the EU level.

One concrete proposal is to implement referral mechanisms at the national level, given the disparity of experiences at regional level and the existence of overlooked topics and vulnerabilities (IORG11). This is a view shared among the participants, especially considering the impoverishment that affected the field of reception in the past two years (GVT10). These levels require more funds and investments for identifying and supporting people in conditions and situations of vulnerability at the early stage (GVT11), otherwise the burden of dealing with vulnerabilities is simply postponed from the early to subsequent phases.

Another frequently mentioned proposal is to continue working in networks. One participant said that to combat trafficking it is important to start collaboration beyond the local and national level, because trafficking is a transnational phenomenon that changes frequently. Consequently, it is important to face these challenges through international collaborations beyond restrictive and criminalizing measures (NGO08).

Some stressed the importance of having trained and qualified cultural mediators from the beginning of the procedure in order to identify vulnerabilities (GVT08). Others underlined that applications coming from women and who may have experienced traumatic events should only be interviewed and assessed by women (JUS05). Another participant called for the possibility to request consultancy of experts and witnesses (for instance medical doctors and anthropologists), following the British model (LAW09) (Good 2007; Gill and Good 2019).

Many underlined the importance of providing *full and accessible legal information*, so crucial to access the right to asylum (JUS01), because this constitutes guarantees and safeguards even before the asylum claim and procedure is started (JUS01). On this issue, it is vital to continue training and assistance to police headquarters, that now have increased responsibilities for granting forms of protection other than international protection (GVT09).

Some participants asked that the TCs not repeat requests for elements that have already been certified, otherwise there is a **re-traumatization and a reinforcement of vulnerability** (NGO03, NGO6). In fact, interviews that take too long and repeated interviews is a double-edged sword for people who have experienced traumatic events (LAW03). These reflections are reminders that the psychological implications of vulnerabilities are frequently overlooked and should be considered more in the future (GVT12).

One interviewee reminded us that there is a need to host some applicants in protected places, while others should be better encouraged and mentored in order to facilitate their process of social inclusion and contribution to the host society (NGO02).

Other observations are more related to the Italian government and the EU. Some participants said that the system of notification through the post office does not work and needs to be further refined (GVT05). Another interviewee suggested that the judicial litigation should be followed more closely (GVT13) and that more work be done to inform each TC (GVT13).

Many call for greater assistance in order to decrease the pressure that Italian institutions have experienced in the recent years (JUS07). It is important to sustain those working in the field of migration, and not only economically. In some institutions the size of the required workforce is underestimated in proportion to the large numbers of applications that they have to evaluate (for instance tribunals now are experiencing the major backlog).

One participant said that there is a need for clearer norms for the protection of situations not covered by international protection (JUS07) and addressing vulnerabilities that are not predictable ex ante (JUS07). Another proposal is to facilitate the conversion of some typologies of protection in order to decrease the pressure, the workload and the delays of the TCs and civil tribunals (LAW10).

The importance of coordination at the EU level was mentioned by a participant of the Dublin Unit (GTV04) who remarked that Italy has been particularly affected in the governance of migration flows (GVT04). In this sense, another participant suggested that relocation programmes and other projects of international cooperation should be better implemented within the EU countries (GVT14).

5. MAIN RESULTS AND CONCLUDING REMARKS

Sabrina Marchetti and Letizia Palumbo

Vulnerability is both a popular and a complex category. For this reason, how it is understood and assessed may vary according to the professional background of the institutional or legal actor dealing with it. Moreover, there may also be various orientations within each institutional role. In this report we investigated how the situations of vulnerability of protection seekers – including asylum seekers and migrants seeking for other forms of protection – have been addressed and understood by relevant institutional and legal actors working in the field of asylum and migration. The study has relied on the analysis of the relevant legal framework and related policies and case law, as well as in-depth interviews with key stakeholders. In so doing, the research has unveiled inconsistencies and gaps existing between the legal and policy frameworks, its implementation and social and local practices.

In relation to the conceptual framework guiding our research, as illustrated in Section 1 of this report, we have opted to use the term '**migrants in situations of vulnerability**', instead of 'vulnerable migrants', to avoid reducing vulnerability to ontological characteristics, and to highlight instead its context-specific dimension (see Mackenzie et al. 2016). This is intended to draw attention to the interplay between different and various factors (such as the personal, gender, social, political, economic or environmental situations of persons or social groups) that can produce and/or foster situations of vulnerability. Within such a prism, vulnerability does not exclude or oppose an individual's agency. But, instead, it recognizes the elements of agency and, in particular, the ways in which persons act (or try to), negotiate and make their choice within a framework of economic, social, affective and power relationships.

With the exception of EU Directive 2011/36 on trafficking, which – as highlighted in this report – contains an important definition of 'position of vulnerability' reflecting a situational conception of vulnerability, this perspective does not seem to be incorporated into other relevant legislative texts, at both European and national levels. Indeed, with regard to the EU asylum framework, vulnerability is still defined in a **group-based approach**, in which the situational aspects of vulnerability seem to be overlooked. While the ECtHR, in particular in its landmark decision *M.S.S. v Belgium and Greece* of 2011, has recognized **vulnerability as a condition determined by the specific and contingent situation** of the asylum seekers, and not as fixed attributes (Timmer 2013; Rigo 2019), this innovative orientation was not be followed by the European legislator when, in 2013, it revised the EU Reception Directive and the EU Procedures Directive.

As underlined in Section 3 of this study, similarly to the EU CEAS instruments, in the Italian legislation related to asylum and migration, the definition of vulnerability is not provided per se, but a list of groups considered vulnerable is established. Indeed, Legislative Decree 142/2015 (the Reception Decree) – which transposed the EU Reception Directive and the EU Procedures Directive – includes in Article 17 a list of 'vulnerable persons' (including, for instance, minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking and persons with serious illnesses).

The same approach can be found in the Decree Law 24/2014, transposing into national legislation the EU Directive 2011/36 on trafficking. This decree, instead of incorporating the important definition of 'position of vulnerability' provided by the directive, refers to 'vulnerable people', classifying them into discrete groups in line with the categories commonly connected to vulnerability. Once again, this framing overlooks the situational understanding of vulnerability, neglecting how economic, legal, social, gendered and racial elements simultaneously interact to create and foster situations of vulnerability.

As for guidelines and policy documents produced by key international organizations working in the field of migration and asylum (UNHCR and IOM), over recent years they have adopted definitions of vulnerability acknowledging the interaction of situational and individual vulnerabilities (UNHCR 2017). There is a tendency to use the terms 'people with special/specific needs' instead of that of vulnerability. However, as the research participants stressed, this alternative phrasing does not prevent the complexities of vulnerabilities from being overlooked.

Broadly speaking, as emerged from interviews we conducted for this research, today the limits of a definitory approach that overlooks the situational aspects of vulnerability are particularly evident. Indeed, restrictive legislative and political reforms in the field of migration and asylum, introduced in Italy over recent years, converged to **produce situations of vulnerability**, or exacerbating the existing ones, by leading migrants, including refugees, to follow dangerous routes, such as the Mediterranean Sea and Balkan routes, within dangerous migratory paths marked by abuse and violence, and by leaving those who eventually arrive in Italy, in a condition of **precariousness and uncertainty**, fostering their exposure to **dynamics of exploitation.**

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As the report underlined, one of the main reforms introduced by the 2018 Security Decree, was the **abrogation of humanitarian protection**, which has been replaced with a series of residence permits for 'special cases'. These have typified, once again, vulnerabilities in specific categories, such as victims of trafficking, persons fleeing a natural disaster, and so on. Many interviewees said that these forms of protection cannot replace the elasticity of humanitarian protection.

As some participants in this research stressed, humanitarian protection was abrogated precisely because it covered a wide spectrum of situations of vulnerability, taking into account the interplay between different factors contributing to situations of vulnerability linked to human rights violations.

In this regard, the analysis of the case law in Section 4 highlights that over recent years there have been interesting and insightful developments at the **conceptual-legal level** through some decisions of civil tribunals and the Court of Cassation on the notion of vulnerability in the context of this form of protection. For instance, the landmark Decision 4455/2018 of the Court of Cassation highlighted that it is necessary to assess case by case the current subjective condition of the applicant and the risk of violation of their human rights in the event of repatriation, evaluating whether there is an 'effective and unbridgeable disproportion' between the two contexts of life in the enjoyment of fundamental rights. From this perspective, the Court argued that a situation of vulnerability can also be due to a very serious political-economic situation in the country of origin, which results in a violation of fundamental subsistence rights. Accordingly, the social integration of the applicant in Italy is relevant as a circumstance that can contribute to determining a situation of personal vulnerability.

In line with this argument, the Court of Cassation has highlighted other elements, such as that of minor age or sexual violence suffered in a transit country, that play a key role in considering the situation of vulnerability of an applicant and, accordingly, to assess the conditions for granting humanitarian protection.

As the analysis of case law showed, even on the matter of international protection some judicial authorities have adopted a **broad conception of vulnerability with respect to specific issues**, by taking into account the interplay between different factors contributing to situations of vulnerability linked to human rights violations. Such an orientation is in contrast with the restrictive approach adopted by some TCs, especially in the former composition of the TCs before the entrance of new administrative officials (until August 2018).[171]

Of particular relevance are those decisions of civil tribunals, examined in Section 4, in which victims of trafficking have been entitled to international protection following a referral procedure carried out – with the help of anti-trafficking NGOs – during the appeal; or where a person has been identified as a victim or potential victim of trafficking by the judicial authority even in the absence of explicit declarations by the applicant, and therefore only on the basis of an assessment of detected trafficking indicators. Some of these decisions have recognized the difficulties that protection seekers may have in the reconstruction of their experience and situation of vulnerability, and have stressed the sentiment of trust that the applicants may acquire through the support of anti-trafficking NGOs during the referral mechanism. Significantly, some rulings have pointed out that the discrepancies between the narrative reported before the TCs and that reported before the judge constitute the result of a path aimed at detecting a situation of trafficking. This point has also been highlighted by many interviewees.

In some of the examined decisions, judicial authorities have paid attention to the gender dimension. For example, in some rulings granting international protection to women victims of trafficking or FGM, the judges argued – in line with the 2002 UNHCR guidelines – that the applicant's situation of vulnerability resulted from belonging, as a woman, to a 'particular social group'. At the same time, they focused on the social, cultural and legal factors that contribute to producing or fostering vulnerability, including the social and political situation in the countries of origin. In many of the examined decisions, the judges have defined trafficking or FGM as acts specifically directed against a gender. Within this perspective, the gender category does not seem to be used to convey an essentialist and deterministic view of women's vulnerability. Instead, the gender dimension seems to be used as a lens from which to read and assess legal provisions and the context-specific aspects of vulnerability of the applicant. The attention, therefore, is on the structural gender-based inequalities and discriminations.

With regard to this approach attentive to a gendered situational vulnerability, it is worth underlining the adoption by some judges of an approach that is **in line with an intersectional perspective**, which is aimed at assessing the intersection of diverse forms of discrimination regarding the person concerned. For example, in some decisions of civil tribunals, a fear of persecution on FGM-related grounds is viewed in connection with the risk of other gender-based persecution, including human trafficking for sexual exploitation or forced marriage. This approach reveals an understanding of the structural consequences of the interactions between multiple forms of discrimination and subordination.

171 See https://www.interno.gov.it/it/notizie/250-nuovi-funzionari-commissioni-territoriali-asilo.

However, despite these advanced perspectives followed by some decisions of some civil tribunals and the Court of Cassation, **gendered, sexualized and culturalized conceptions** of some categories are still dominant paradigms (Fassin and Kobelinsky 2012; Gill and Good 2017; Pinelli 2019). For example, victims of trafficking generally tend to be viewed as women victims of sexual exploitation, referring to similar models of violence and abuse, and overlooking cases of trafficking for labour exploitation, involving women, men and trans people. Similar observations might be stressed in relation to SOGIESC-based asylum claims. As many participants in this research argued, this approach – which perpetuates and spreads stereotypes and stigmatization – can also be found in the practices of other key institutional and non-institutional actors.

This limited approach is also related to the risks linked to the group-based approach to vulnerability, that is, the categorization of vulnerable groups. Indeed, as some participants – such as lawyers and NGOS – have highlighted, a group-based approach may result in trapping people in the category of 'vulnerable', such as victims of trafficking. In turn, this may lead not only to the exclusion of those people who do not fit into these boxes, but also to overlook significant aspects of the situation of vulnerability of the concerned person. These aspects are not grasped because they are not considered relevant with respect to a dominant and static idea of a determined vulnerable group.

The same risks, for instance, can occur during the referral mechanisms between TCs and anti-trafficking NGOs. Indeed, as some participants have stressed, even in this system, there is a tendency to refer to a specific conception of victims of trafficking, viewed as women, mainly from Nigeria and Ivory Coast, and victims of sexual exploitation. Also, many participants highlighted there are important issues that are still overlooked or rarely addressed by institutional authorities, such as, for example, psychological or mental illness.

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In this report, we have also focused on the role and impact of some tools in addressing and assessing the situations of vulnerability of protection seekers. These may include **institutional tools such as COI or guidelines** produced by institutional actors and international organizations (UNHCR, EASO, IOM), as well as additional documentation provided by protection seekers and professionals. Generally, guidelines concerning specific issues and vulnerabilities (such as trafficking, gender, health, SOGIESC, age) or related to specific countries of origin are considered useful instruments by many decision makers and other professionals dealing with protection seekers. For instance, some members of TCs highlighted the importance of guidelines, such as CNDA and UNHCR guidelines, and COI in recognising 'real stories' and situations in need of protection.

However, some interviewees criticized the way some of these tools, such as COI, are conceived and used, highlighting that dominant interpretations and paradigms risk downplaying some situations of vulnerability. Others stressed that guidelines need to be frequently updated, otherwise they risk to overlook the complex developments of relevant phenomena.

Significantly, many interviewees emphasized how, while over recent years there has been increasing institutional attention on the issue of **early identification of vulnerabilities**, the many legal changes brought to the asylum procedures have gone in the opposite direction, significantly limiting the right to asylum and access to it. More and more migrants in situations of vulnerability have been excluded – such

as those coming from 'safe countries of origin' – or have been constrained to an accelerated procedure, which does not confer the same level of time and resources to prepare and make their case. On the other hand, those protection seekers who arrived in Italy before the reforms to the asylum procedures have been subjected to an exhausting process which can last years.

The findings of this report have underscored how **asylum procedures, with respect to their approach and duration,** play a crucial role in fostering and amplifying situations of vulnerability. Many participants underlined that the standardization of procedures, which is also the result of the adoption of a group-based approach to vulnerability, leads decision makers to not consider the specificities of individual experiences – and, accordingly, the situational dimension of vulnerability – contrary to the legal obligation to do so. Many interviewees criticized the accelerated procedures, underlining that individuals in situations of vulnerability need time for expressing their needs and conditions; revealing and talking about aspects of vulnerability is also a matter of trust.

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In this regard, it is worth noting that many participants emphasized the importance of referral mechanisms, for example, in the case of victims of trafficking. They also underlined the need to strengthen **training activities for relevant actors** – including TC members, judges, interpreters, cultural mediators, police staff and professionals working in reception centres – in order to consolidate their ability to understand and address situations of vulnerability.

Many participants showed greater awareness of the limits of a single-factor approach to vulnerability and stressed the need to use a **multi-factor perspective**. They underline the importance of imagining new tools to deal with intersecting vulnerabilities, considering personal and socio-political dimensions. In this sense, many argued for the importance of cooperating with other professionals – including cultural mediators, anthropologists and ethnopsychologists – in order to strengthen an approach that takes into account of the various and conflicting experiences of protection seekers, addresses their diverse needs, and avoids the risk of perpetuating stigmatization. However, despite this awareness, such an **approach attentive to differences**, and, accordingly to the complex interaction between multiple forms of discrimination and subordination, is far from being effectively implemented even in the most advanced procedures of support and assessment.

Other participants underlined the need to foster the **cooperation and dialogue between the various institutional and non-institutional actors** involved in the identification and assessment of the situations of vulnerability of protection seekers. For instance, TCs may collaborate more with civil tribunals and police headquarters in looking at how to address some complex vulnerabilities. TCs can improve the referral to local institutions, associations and services once they notice that a person is not aware of specific information and opportunities. Civil tribunals can also establish and/or consolidate forms of cooperation – for instance through protocols – with local associations and services, such as anti-trafficking organizations, to implement referral mechanisms.

Lastly, this research underlines how important it is to take into account the impact of reforms in a time of significant and structural changes. In particular, during the writing this study, the Italian government issued the so-called 'Lamorgese Decree', converted into law in December 2020, which partially revised the so-called 'Security Decrees', such as by introducing a new residence permit for 'special protection' similar to former humanitarian protection. We will explore the impact of the Lamorgese Decree in our second VULNER research report, which will investigate the legal and policy framework and implementing practices taking into account the experiences of the protection seekers and professionals working in reception centres.

The **current pandemic has sharply exacerbated structural inequalities** that characterize the socioeconomic system of many countries, including Italy, with a disproportionate impact on people most affected by social exclusion and discrimination. At the same time, as Section 2 of this report pointed out, some emergency measures adopted to address the Covid-19 crisis – such as the creation of quarantine vessels – build on and foster inequalities, by exposing migrants, especially those in situations of vulnerability, to further forms of discrimination and fundamental rights violations. For instance, as many NGOs and activists have reported, the so-called 'quarantine vessels' constitute spaces of separation and invisibility, where thousands of migrants in situations of vulnerability are de facto confined.[172] Being inaccessible to civil society actors and institutions responsible for the protection of rights, these vessels can become spaces where migrants may be prevented from effectively claiming their rights and seeking protection.

Simultaneously, at the time of writing, greater concern has been raised about **the Balkan route**. While illegal pushbacks by Italy, Slovenia and Croatia to Bosnia are nothing new, they have intensified with the increase in arrivals of migrants at the end of the first wave of the Covid-19 pandemic.[173] Thousands of migrants looking for protection, have been prevented from crossing onto EU soil and have been confined to Bosnia, on the Croatian border. These migrants are currently living in inhumane conditions, stuck in the snow and among frozen rivers. They are denied their fundamental rights, including the right to international protection, while the EU seems to betray, step by step, all the values – humanity, solidarity, human rights and protection – on which it was founded.

172 See https://www.meltingpot.org/Stop-alle-navi-quarantena-l-appello-di-oltre-150.html#.YBlCKy2h1Zo
173 See https://drc.ngo/media/iflfn2jz/border_monitoring_monthly_snapshot_november2020_final.pdf

ANNEX

Alice Buonaguidi

Appendix I: Main legislative acts relevant to asylum procedures, international protection, reception and detention

Abbreviation	Original Title (in Italian)	English Title	Year	Link to full text
Consolidated Act on Immigration	Decreto Legislativo 25 luglio 1998, no. 286 'Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero'	Legislative Decree 286, 25 July 1998 'Consolidated act on provisions concerning the immigration regulations and foreign national conditions norms'	1998	http://bit.ly/1PYQbyL
Qualification Decree	Decreto Legislativo 19 novembre 2007, no. 251 'Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta'	Legislative Decree 251, 19 November 2007 'Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted'	2007	http://bit.ly/1FOscKM
Procedure Decree	Decreto Legislativo 28 gennaio 2008, no. 25 'Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato'	Legislative Decree 25, 28 January 2008 'Implementation of Directive 2005/85/EC on minimum standards on procedures in member states for granting and withdrawing refugee status'	2008	http://bit.ly/1PYQjOW
Legislative Decree 150/2011	Decreto Legislativo 1 settembre 2011, no. 15 'Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell'articolo 54 della legge 18 Giugno 2009, no. 69'	Legislative Decree 150, 1 September 2011 'Additional provisions to the Code of Civil Procedure concerning the reduction and simplification of cognition civil proceedings, under Article 54 of Law 18 June 2009, no. 69'	2011	http://bit.ly/2jXfdog

Abbreviation	Original Title (in Italian)	English Title	Year	Link to full text
Legislative Decree 18/2014	Decreto Legislativo 21 febbraio 2014, no. 18 'Attuazione della direttiva 2011/95/UE recante norme sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale, su uno status uniforme per i rifugiati o per le persone aventi titolo a beneficiare della protezione sussidiaria, nonché sul contenuto della protezione riconosciuta'	Legislative Decree 18, 21 February 2014 'Implementation of Directive 2011/95/UE on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted'	2014	http://bit.ly/1I0ioRw
Legislative Decree 24/2014	Decreto Legislativo 4 marzo 2014, no. 24 'Prevenzione e repressione della tratta di esseri umani e protezione delle vittime', in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime'	Legislative Decree 24, 4 March 2014 'Prevention and repression of trafficking in persons and protection of the victims', implementing Directive 2011/36/EU'	2014	http://bit.ly/1Fl2OsN
Reception Decree	Decreto Legislativo 18 agosto 2015, no. 142 'Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale'	Legislative Decree 142, 18 August 2015 'Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection'	2015	http://bit.ly/1Mn6i1M
Minniti-Orlando Decree	Decreto Legge 17 febbraio 2017, no. 13, convertito in Legge 13 aprile 2017, no. 46	Decree Law 13, 17 February 2017, implemented by Law 46, 13 April 2017	2017	https://bit.ly/2ItXe3Y
Legislative Decree 220/2017	Decreto Legislativo 22 dicembre 2017, no. 220	Legislative Decree no. 220, 22 December 2017	2017	http://bit.ly/2CJXJ3s
Zampa Law	Legge di 7 aprile 2017, no. 47 'Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati'	Law 47, 7 April 2017, 'Provisions on the protection of foreign unaccompanied minors'	2017	http://bit.ly/2sYgFd8
Security Decree	Decreto Legge 4 ottobre 2018, no. 113, convertito in Legge 1 dicembre 2018, no. 132	Decree Law 113, 4 October 2018, implemented by Law 132, 1 December 2018	2018	https://bit.ly/2G8Bh7W

Abbreviation	Original Title (in Italian)	English Title	Year	Link to full text
Security Decree bis	Decreto Legge 14 giugno 2019, no. 56, convertito in Legge 8 agosto 2019, no. 77	Decree Law 56, 14 June 2019, implemented by Law 77, 8 August 2019	2019	https://bit.ly/2MvF8CQ
Relaunch Decree	Decreto Legge 19 maggio 2020, no. 34, convertito in Legge 17 luglio 2020, no. 77	Decree Law 34, 19 May 2020, implemented by Law 77, 17 July 2020	2020	https://bit.ly/2MKD4qz
Lamorgese Decree	Decreto Legge 21 ottobre 2020, no. 130, convertito in Legge 18 dicembre 2020, no. 173	Decree Law 130, 21 October 2020, implemented by Law 173, 18 December 2020	2020	https://bit.ly/2M8CzGU

Our elaboration from AIDA 2019.

Appendix II - Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.

Abbreviation	Original Title (in Italian)	English Title	Year	Link to full text
PD 394/1999	Decreto del Presidente della Repubblica, no. 394, 31 agosto 1999, 'Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero.'	Presidential Decree 394, 31 August 1999, 'Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms.'	1999	http://bit.ly/1M33qIX
MoI Circular 300/2000	Ministero dell'Interno – Dipartimento della Pubblica Sicurezza, Circolare no. 300, 02 dicembre 2000, 'Decreto del D.P.C.M. 08 febbraio 2000, Programmazione dei flussi di ingresso dei lavoratori extracomunitari nel territorio dello Stato per l'anno 2000 - Art. 39 comma 7 del D.P.R. 394 /1999. Quesito Permesso di soggiorno per 'motivi di giustizia.'	Ministry of the Interior – Department of Public Safety, Circular 300, 2 December 2000, 'Decree of the P.C.M., 8 February 2000, Programming of entry flows of non-EU workers into the territory of the state for the year 2000 - Art. 39 paragraph 7 of Presidential Decree 394/1999. Residence permit for 'reasons of justice.'	2000	https://bit.ly/2L5e5xP
MoI Circular 22146/2018	Ministero dell'Interno – Dipartimento per le Libertà Civili e l'Immigrazione, Circolare no. 22146, 27 dicembre 2018, 'D.L. 04 ottobre 2018, no. 113, convertito con modificazioni, con la legge 1° dicembre 2018 no. 132, Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata'. Profili applicativi.'	Ministry of the Interior – Department of Civil Liberties and Immigration, Circular 22146, 27 December 2018, 'Decree Law 4 October 2018, no. 113, implemented with modifications by Law 132/2018, Urgent provisions on international protection and immigration, public security, as well as measures for the functionality of the Ministry of Interior and the organization and functioning of the National Agency for the administration and destination of assets seized and confiscated from organized crime'. Application profiles.'	2018	http://bit.ly/2T0Ws04
MoI Circular 1/2019	Ministero dell'Interno, Circolare no. 1, 2 gennaio 2019, 'Decreto Legge 113/2018, convertito con modificazioni dalla legge 132/2018, profili applicativi.'	Ministry of the Interior, Circular 1, 2 January 2019, 'Decree Law 113/2018 implemented by Law 132/2018, applicable profiles.'	2019	https://bit.ly/2P7G5OZ

Abbreviation	Original Title (in Italian)	English Title	Year	Link to full text
MoI Circular 8560/2019	Ministero dell'Interno – Dipartimento per le Libertà Civili e l'Immigrazione, Circolare no. 8560, 16 ottobre 2019, 'Attuazione delle Procedure Accelerate ex art. 28-bis del d.lgs. 28 gennaio 2008, no. 25.'	Ministry of the Interior – Department of Civil Liberties and Immigration, Circular 8560, 16 October 2019, 'Implementation of the Accelerated Procedure Ruled by Art. 28-bis LD 28 January 2008, no. 25.'	2019	https://bit.ly/3tdHIhp
MoI Circular 198656/2019	Ministero dell'Interno – Dipartimento della Pubblica Sicurezza, Circolare no. 138656, 18 ottobre 2019, 'Attuazione delle procedure accelerate ex art. 28-bis del d.lgs. 28 gennaio 2008, no. 25.'	Ministry of the Interior – Department of Public Safety, Circular 138656, 18 October 2019, 'Implementation of the Accelerated Procedure Ruled by art. 28-bis LD 28 January 2008, no. 25.'	2019	https://bit.ly/2NNihDf
Civil Protection Decree 1287/2020	Decreto del Capo Dipartimento della Protezione Civile, no. 1287, 12 aprile 2020, 'Nomina del soggetto attuatore per le attività emergenziali connesse all'assistenza e alla sorveglianza sanitaria dei migranti soccorsi in mare ovvero giunti sul territorio nazionale a seguito di sbarchi autonomi nell'ambito dell'emergenza relativa al rischio sanitario connesso all'insorgenza di patologie derivanti da agenti virali trasmissibili.'	Decree of the Department Head of the Civil Protection no. 1287, 12 April 2020, 'Appointment of the implementing body for the emergency activities related to the assistance and health surveillance of migrants rescued at sea or that autonomously arrived via sea on the national territory in the context of the emergency relating to the health risk connected to the onset of pathologies deriving from transmissible viruses.'	2020	https://bit.ly/3aiYP98

Our elaboration from AIDA 2019.

Appendix III: List of Participants

All interviews have been recorded and fully transcribed with the exception of NGO01, EXP01, IORG01, IORG02, IORG12 and GVT16.

INTERVIEW CODE	PROFESSION / ROLE	DATE
NGO01	NGO Staff member	10/06/2020
EXP01	Scholar	24/06/2020
IORG01	UNHCR Officer	22/07/2020 + 16/09/2020
IORG02	UNHCR Officer	29/07/2020 + 29/09/2020
LAW01	Lawyer	06/07/2020
LAW02	Lawyer	10/07/2020
EXP02	Scholar	13/07/2020
JUS01	Judge	14/07/2020
EXP03	Scholar	16/07/2020
JUS02	Judge	22/07/2020
NGO02	NGO Staff member	24/07/2020
LAW03	Lawyer	24/07/2020
JUS03	Judge	27/07/2020
LAW04	Lawyer	28/07/2020
NGO03	NGO Staff member	28/07/2020
LAW05	Lawyer	29/07/2020 + 10/07/2020
IORG03	UNHCR Officer	30/07/2020
NGO04	NGO Staff member	10/08/2020 + 16/09/2020
JUS04	Judge	12/08/2020
LAW06	Lawyer	03/09/2020
IORG04	UNHCR Officer	07/09/2020
JUS05	Judge	10/09/2020
NGO06	NGO Staff member	15/09/2020
GVT01	CNDA Officer	15/09/2020
LAW07	Lawyer	16/09/2020
JUS06	Judge	21/09/2020
GVT02	*Servizio Centrale* Officer	21/09/2020
LAW08	Lawyer	22/09/2020
IORG05	IOM Officer	22/09/2020
IORG06	UNHCR Officer	23/09/2020
IORG07	UNHCR Officer	23/09/2020
NGO07	NGO Staff member	24/09/2020 + 02/10/2020
NGO08	NGO Staff member	24/09/2020 + 02/10/2020

JUS07	Judge	24/09/2020
IORG08	UNHCR Officer	25/09/2020
IORG09	UNHCR Officer	25/09/2020
IORG10	UNHCR Officer	25/09/2020
NGO09	NGO Staff member	29/09/2020
IORG11	EASO Officer	30/09/2020
GVT03	Territorial Commission President	05/10/2020
GVT04	Dublin Unit Officer	06/10/2020
GVT05	Territorial Commission President	07/10/2020
GVT06	Territorial Commission President	08/10/2020
GVT07	Territorial Commission President	08/10/2020
GVT08	Territorial Commission Officer	08/10/2020
GVT09	Territorial Commission Officer	08/10/2020
GVT10	Territorial Commission Officer	08/10/2020
LAW09	Lawyer	09/10/2020
GVT11	Territorial Commission Officer	09/10/2020
LAW10	Lawyer	09/10/2020
GVT12	Territorial Commission Officer	12/10/2020
GVT13	Territorial Commission President	13/10/2020
GVT14	Territorial Commission President	13/10/2020
GVT15	Territorial Commission Officer	14/10/2020
IORG12	EASO Officer	15/10/2020
GVT16	Territorial Commission President	08/10/2020
GVT17	Police Gatekeeper	21/08/2020 + 15/09/2020

Bibliography

AIDA (2017) *Country Report: Italy (Update 2017)*. AIDA (Asylum Information Database).

AIDA (2019) *Country Report: Italy (Update 2019)*. AIDA (Asylum Information Database).

ASGI (2020) 'Il Governo Italiano Deve Sospendere Ogni Cooperazione con la Guardia Costiera Libica'. *ASGI*, 31 January. Available from: https://www.asgi.it/allontamento-espulsione/il-governo-italiano-deve-sospendere-ogni-cooperazione-con-la-guardia-costiera-libica/

ASGI and InterSOS (2018) *Quali Percorsi per i Minori Non Accompagnati in Seguito all'Abrogazione del Permesso per Motivi Umanitari? Scheda per i Tutori e gli Operatori che Seguono Minori Non Accompagnati*. Available from: https://www.asgi.it/wp-content/uploads/2018/12/Scheda-Percorsi-dei-MSNA-in-seguito-allabrogazione-del-permesso-per-motivi-umanitari.pdf

Atrey, S. (2020) *Intersectionality and Comparative Antidiscrimination Law: The Tale of Two Citadels*. Brill | Nijhoff.

Bartkowiak-Théron, I., Asquith, N.L. and Roberts, K.A. (2017) 'Vulnerability as a Contemporary Challenge for Policing'. In N.L. Asquith, I. Bartkowiak-Théron and K.A. Roberts (eds) *Policing Encounters with Vulnerability*, Springer, pp 1-24.

Belluccio, D. and Minniti, L. (2019) 'La Tutela Processuale delle Donne Vittime di Tratta'. In *Questione Giustizia*, *Rubrica Diritti Senza Confini*. Available from: http:// questionegiustizia.it/articolo/la-tutela-processuale-delle-donne-vittime-di-tratta_12-02-2019.php

Beneduce, R. (2015) 'The Moral Economy of Lying. Subjectcraft, Narrative Capital, and Uncertainty in the Politics of Asylum'. *Medical Anthropology*, 34(6): 551-571.

Betts, A. (2009) 'Soft Law and the Protection of Vulnerable Migrants'. *Georgetown Immigration Law Journal*, 24: 533-552.

Boiano, I. and Cecchini, C.L. (2020) 'Le Frontiere del Diritto: gli artt. 18 e 18 bis TU 286/98 in una Prospettiva di Genere e Femminista'. In M. Giovannetti and N. Zorzella (eds) (2020) *Ius Migrandi, Trent'Anni di Politiche e Legislazione sull'Immigrazione in Italia*, Milano: Franco Angeli, pp 662-685.

Butler, J. (2004) *Precarious Life: The Powers of Mourning and Violence*. London: Verso.

Campesi, G. (2017) 'Chiedere Asilo in Tempo di Crisi: Accoglienza, Confinamento e Detenzione ai Margini d'Europa'. In C. Marchetti and B. Pinelli (eds) *Confini d'Europa. Modelli di Controllo e Inclusioni Informali*, Milano: Raffaello Cortina.

Campesi, G. (2019) *Il Divieto di Iscrizione Anagrafica È un Tassello Decisivo della Strategia che Mira a Rendere Impossibile la Vita ai Richiedenti Asilo. È il Confinamento Umanitario*. Il Mulino.

Campomori, F. and Ambrosini, M. (2020) 'Multilevel Governance in Trouble: The Implementation of Asylum Seekers' Reception in Italy as a Battleground'. *Comparative Migration Studies*, 8(22).

Carnassale, D. (2020) 'Prospettive di Ricerca Sociale sulle Domande di Protezione Internazionale per Motivi Riguardanti l'Orientamento Sessuale e l'Identità di Genere'. In I. Fanlo Cortés and D. Ferrari (eds.) *I Soggetti Vulnerabili nei Processi Migratori. La Protezione Internazionale tra Teoria e Prassi*, Torino: Giappichelli.

Chiaramonte, W. (2020) 'L'Ingresso per Lavoro: L'Irrazionalità del Sistema e le Sue Conseguenze al Tempo delle Fake News e della Retorica Nazionalista'. In M. Giovannetti and N. Zorzella (eds) *Ius Migrandi, Trent'Anni di Politiche e Legislazione sull'Immigrazione in Italia*, Milano: Franco Angeli, pp. 229-250.

Ciabarri, L. (2020) *L'Imbroglio Mediterraneo. Le Migrazioni Via Mare e le Politiche della Frontiera*. Milano: Raffaello Cortina.

Cole, A. (2016) 'All of Us Are Vulnerable, but Some Are More Vulnerable than Others: The Political Ambiguity of Vulnerability Studies, an Ambivalent Critique'. *Critical Horizons*, 17(2): 260-277.

Colucci, M. (2018) *Storia dell'Immigrazione Straniera in Italia. Dal 1945 ai Nostri Giorni*. Carocci Editore.

Corrado, A., Caruso, F.S., Lo Cascio, M., Nori, M., Palumbo, L. and Triandafyllidou, A. (2018) *Is Italian Agriculture a "Pull Factor" for Irregular Migration – And, if so, Why?*. Open Society European Policy Institute.

Crenshaw, K. (1989) 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics'. *University of Chicago Legal Forum,* 1989(8).

De Genova, N. (eds) (2017) *The Borders of "Europe": Autonomy of Migration, Tactics of Bordering*. Duke University Press.

De Pretis, S. (2005) 'Tra "Agency" e Differenze. Percorsi del Femminismo Postcoloniale'. In *Studi Culturali*, 2: 259-290.

Della Puppa, F. and Sanò, G. (eds) (2020) 'Attraverso i Confini dell'Accoglienza. Traiettorie Sociali, Condizioni Materiali e Strategie di Fronteggiamento di Richiedenti Asilo e Rifugiati in Italia'. *Studi Emigrazione (special issue)*, 57(220).

European Commission (2017) 'EU Trust Fund for Africa Adopt €46 million Programme to Support Integrated Migration and Border Management in Libya'. *Press Release*, Brussels.

Fabini, G., Firouzi Tabar, O. and Vianello, F. (eds) (2019) *Lungo i Confini dell'Accoglienza. Migranti e Territori tra Resistenze e Dispositivi di Controllo*. Roma: Manifestolibri.

Fanlo Cortés, I. and Ferrari, D. (eds) (2020) *I Soggetti Vulnerabili nei Processi Migratori. La Protezione Internazionale tra Teoria e Prassi*. Torino: Giappichelli.

Fassin, D. and Kobelinsky, C. (2012) 'Comment on Juge l'Asile. L'Institution comme Agent Moral'. *Revue Française de Sociologie*, 53(4): 657-688.

Favilli, C. (2018) 'La Protezione Umanitaria per Motivi di Integrazione Sociale. Prime Riflessioni a Margine della Sentenza della Corte di Cassazione n. 4455/2018'. In *Questione Giustizia*. Available from: https://www.questionegiustizia.it/articolo/la-protezione-umanitaria-per-motivi-di-integrazion_14-03-2018.php

Ferrero, M. (2019) 'La Vulnerabilità degli Immigrati nel Sistema di Accoglienza Extra-Ordinem dei Richiedenti Asilo'. In F. Perrocco (eds) *Tortura e Migrazioni*, Edizioni Ca' Foscari.

Fineman Albertson, M. (2008) 'The Vulnerable Subject: Anchoring Equality in the Human Condition'. *Yale JL & Feminism*, 20, 1.

Flamini, M. and Zorzella, N. (2018) 'Asilo e Protezione Internazionale'. *Diritto, Immigrazione e Cittadinanza*, 2018(2): 27-58. Available from: https://www.dirittoimmigrazionecittadinanza.it/allegati/fascicoli-rivista-in-pdf/639-2018-2-pdf/file

Furia, A. and Zullo, S. (2020) *La Vulnerabilità Come Metodo. Percorsi di Ricerca tra Pensiero Politico, Diritto e Etica*. Roma: Carocci.

Galos, E., Bartolini, L., Cook, H. and Grant, N. (2017) *Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes*. Geneva: International Organization for Migration (IOM).

Genovese, D. (2018) 'Violenza di Genere e Protezione Internazionale. Note a Margine di un Recente Orientamento della Corte di Cassazione'. In *Questione Giustizia*, 05 February 2018, Available from: https://www.questionegiustizia.it/articolo/violenza-di-genere-e-protezione-internazionale-not_05-02-2018.php

Giammarinaro, M.G. (2014) 'Verso una Strategia Contro la Tratta e lo Sfruttamento'. In E. Nocifora (eds) *Quasi Schiavi: Paraschiavismo e Super-Sfruttamento nel Mercato del Lavoro del XXI Secolo*, Ravenna.

Giammarinaro, M.G. (2018) 'L'Individuazione Precoce delle Vulnerabilità alla Tratta nel Contesto dei Flussi Migratori Misti'. In *Questione Giustizia*, 2/2018. Available from: http://questionegiustizia.it/rivista/2018/2/l-individuazione-precoce-dellevulnerabilita-allatratta-nelcontesto-deiflussi-migratori-misti_539.php

Giammarinaro, M.G. and Palumbo, L. (2020) 'Codiv-19 and Inequalities'. *Migration Policy Practice*, 10(2): 21-26.

Giddens, A. (1990) *La Costituzione della Società. Lineamenti di Teoria della Strutturazione*. Milano: Edizioni di Comunità.

Gill, N. and Good, A. (2019) *Asylum Determination in Europe: Ethnographic Perspectives*. London: Palgrave Macmillan.

Good, A. (2007) *Anthropology and Expertise in the Asylum Courts*. London: Routledge.

GRETA (2018) *Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by Italy. Second Evaluation Round*. Available from: https://rm.coe.int/greta-2018-28-fgr-ita/168091f627

GREVIO (2020) *GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) ITALY*. Available from: https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e

Griffiths, M. (2012) "Vile Liars and Truth Distorters': Truth, Trust and the Asylum System'. *Anthropology Today*, *28*(4): 8-12.

IDOS - Centro Studi e Ricerche (2020) *Dossier Statistico Immigrazione 2020*. Roma.

In Migrazione SCS (2018) *I° Rapporto 2018/2019 "Straordinaria Accoglienza". Ricerca su "I Centri di Accoglienza Straordinaria Dedicati a Richiedenti Protezione Internazionale Attivati dalle Prefetture sul Territorio Nazionale"*. Available from: https://www.inmigrazione.it/it/dossier/straordinaria-accoglienza

Mackenzie, C., Rogers, W. and Dodds, S. (2014) 'Introduction: What Is Vulnerability and Why Does It Matter for Moral Theory?'. In C. Mackenzie, W. Rogers and S. Dodds (eds) *Vulnerability. New Essays in Ethics and Feminists Philosophy*, Oxford: Oxford University Press, pp 1-29.

Marchegiani, M. (2020), *Il nuovo patto sulla migrazione e l'asilo sotto il prisma della nozione di vulnerabilità,* ADiM Blog, Analisi & Opinioni, Available from: https://www.adimblog.com/wp-content/uploads/2020/11/ADiM-Blog-Novembre-2020-Analisi-Opinioni-M.-Marchegiani_DEF.pdf

Marchetti, C. (2016) 'Le Sfide dell'Accoglienza. Passato e Presente dei Sistemi Istituzionali di Accoglienza per Richiedenti Asilo e Rifugiati in Italia'. *Meridiana*, 86: 121-143.

Marchetti, C. and Pinelli, B. (eds) (2017) *Confini d'Europa. Modelli di Controllo e Inclusioni Informali*. Milano: Raffaello Cortina.

Mustaniemi-Laakso, M., Heikkilä, M., Del Gaudio, E., Konstantis, S., Nagore Casas, M., Morondo, D., Hegde, V.G. and Finlay, G. (2016) *The Protection of Vulnerable Individuals in the Context of EU Policies on Border Checks, Asylum and Immigration. Project Frame*. European Commission. Available from: https://goo.gl/RpAhMp

Nicodemi, F. (2020) 'Il Sistema Anti-Tratta Italiano Compie Venti Anni. L'Evoluzione delle Misure Legislative e di Assistenza per le Vittime e le Interconnessioni con il Sistema della Protezione Internazionale'. In M. Giovannetti and N. Zorzella (eds) *Ius Migrandi, Trent'anni di Politiche e Legislazione sull'Immigrazione in Italia*, Milano: Franco Angeli, pp 703-728.

Palumbo, L. (2016) *Trafficking and Labour Exploitation in Domestic Work and the Agricultural Sector in Italy*. Research project report, Florence: European University Institute.

Palumbo, L. (2020) 'The Italian Plan for Regularisation: Real Progress for Migrants' Rights?'. *MPC Blog*. Available from: https://blogs.eui.eu/migrationpolicycentre/italian-plan-regularisation-real-progress-migrants-rights/

Palumbo, L. and Sciurba, A. (2018) *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU: The Need for a Human Rights and Gender Based Approach*. Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs.

Pastore, F. and Henry, G. (2016) 'Explaining the Crisis of the European Migration and Asylum Regime'. *The International Spectator*, 51(1): 44-57.

Peroni, L. and Timmer, A. (2013) 'Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law'. *International Journal of Constitutional Law*, 11(4): 1056-1085.

Pinelli, B. (2017) 'Borders, Politics and Subjects. Introductory Notes on Refugee Research in Europe'. *Etnografia e Ricerca Qualitativa*, 2017(1): 5-24.

Pinelli, B. (2019) *Migranti e Rifugiate. Antropologia, Genere e Politica*. Milano: Raffaello Cortina.

Ricard-Guay, A. (2019) *Rethinking the Economics and the Governance of Reception of Refugees, Asylum Seekers and Other Migrants: The Case of Italy*. Paper No. RSCAS 2019/51, Robert Schuman Centre for Advanced Studies Research.

Rigo, E. (2018) 'La Protezione Internazionale alla Prova del Genere: Elementi di Analisi e Problematiche Aperte'. In *Questione Giustizia*, 2/2018. Available from: https://www.questionegiustizia.it/rivista/articolo/la-protezione-internazionale-alla-prova-del-genere-elementi-di-analisi-e-problematiche-aperte_538.php

Rigo, E. (2019) 'La Vulnerabilità nella Pratica del Diritto d'Asilo: Una Categoria di Genere?'. *Ethics & Politics*, 21(3): 343-360.

Santoro, E. (2018) 'Asilo e Tratta: Il Tango delle Protezioni'. In *Questione Giustizia*. Available from: https://www.questionegiustizia.it/rivista/articolo/asilo-e-tratta-il-tango-delle-protezioni_540.php

Santoro, E. and Stoppiani, C. (2020) 'Luci e Ombre della Legge 199/2016. Cosa Cambiare?'. In Osservatorio Placido Rizzotto and Flai-Cgil (eds.) *Agromafie e Caporalato. Quinto Rapporto*, pp 129-148.

Sciurba, A. (2017) 'Categorizing Migrants by Undermining the Right to Asylum. The Implementation of the "Hotspot Approach" in Sicily'. *Etnografia e Ricerca Qualitativa*, 2017(1): 97-120.

Sciurba, A. (2018) 'Ai Confini dei Diritti. Richiedenti Asilo tra Normativa e Prassi, dall'Hotspot alla Decisione della Commissione Territoriale'. In *Questione Giustizia*. Available from: https://www.questionegiustizia.it/data/rivista/articoli/516/qg_2018-2_13.pdf

Sciurba, A. (2020) 'Vulnerabilità Posizionale e Intersezionale. I Minori Migranti Soli Come Caso Paradigmatico'. In I. Fanlo Cortés and D. Ferrari (eds.) *I Soggetti Vulnerabili nei Processi Migratori. La Protezione Internazionale tra Teoria e Prassi*, Torino: Giappichelli.

Sciurba, A. (2021) 'Diritti Individuali vs. Scopi Collettivi? I Provvedimenti Italiani in Materia di Immigrazione al Tempo della Pandemia'. *Diritto & Questioni Pubbliche 2020*, 20(20): 213-228.

Serughetti, G. (2017) 'Richiedenti Asilo e Vittime di Tratta. Le Donne fra Vulnerabilità e Resilienza'. In C. Marchetti and B. Pinelli (eds.) *Confini d'Europa. Modelli di Controllo e Inclusioni Informali*, Milano: Raffaello Cortina.

Serughetti, G. (2020) 'Donne Vulnerabili, Soggetti Resilienti: Le Vittime di Tratta Richiedenti Asilo, tra Bisogni di Protezione e Domande di Riconoscimento'. In I. Fanlo Cortés and D. Ferrari (eds) *I Soggetti Vulnerabili nei Processi Migratori. La Protezione Internazionale tra Teoria e Prassi*, Torino: Giappichelli.

Servizio Centrale and ASGI (2019) *La Tutela della Protezione Internazionale e Altre Forme di Protezione. Manuale Giuridico per l'Operatore. Versione Aggiornata Luglio 2019*. Servizio Centrale, SIPROIMI/Ministry of Interior, ANCI and ASGI.

SIPROIMI/SPRAR (2019) *Rapporto Annuale SPRAR/SIPROIMI 2018. Sistema di Protezione per Titolari di Protezione Internazionale e per Minori Stranieri non Accompagnati. Atlante Sprar/Siproimi 2018*. SIPROIMI/Ministry of Interior and Cittalia.

Sorgoni, B. (2017) 'What Do We Talk About When We Talk About Credibility? Refugee Appeals in Italy'. In N. Gill and A. Good (eds) *Asylum Determination in Europe: Ethnographic Perspectives*, London: Palgrave Macmillan.

Sorgoni, B. (2019) 'The Location of Truth: Bodies and Voices in the Italian Asylum Procedure'. *PoLar*, 42(1): 161-176.

Taliani, S. (2019) *Il Tempo della Disobbedienza. Per un'Antropologia della Parentela nella Migrazione*. Verona: Ombre Corte.

Tazzioli, M. (2018) 'The Temporal Borders of Asylum. Temporality of Control in the EU Border Regime'. *Political Geography*, 64: 13-22.

Tomasetta, L. (2020) '"Io, ghanese in Italia da 7 anni, preso di notte e costretto a fare la quarantena Covid su una nave"'. *TPI*, 12 October. Available from: https://www.tpi.it/cronaca/migranti-positivi-covid-cas-na-vi-quarantena-20201012680399/ [Accessed 23 December 2020]

UNHCR (2017) '*Migrants in Vulnerable Situations' UNHCR's Perspective*. Available from: http://www.refworld.org/docid/596787174.html

UNICEF (2017) 'UNICEF Hails New Italian Law to Protect Unaccompanied Refugee and Migrant Children as Model for Europe'. *UNICEF's News Note*. Available from: www.unicef.org/media/media_95485.html

UNODC (2006) *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*. United Nations. Available from: https://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf

Veglio, M. (2017) 'Uomini Tradotti. Prove di Dialogo con Richiedenti Asilo'. *Diritto, Immigrazione e Cittadinanza,* Fasc. 2/2017. Available from: https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-2017-n-2/72-uomini-tradotti-prove-di-dialogo-con-richiedenti-asilo

Villa, M. (2019) 'Italy Receives More Asylum Seekers from Germany than from Libya'. *ISPI Online*, 25 July. Available from: https://www.ispionline.it/it/pubblicazione/italy-receives-more-asylum-seekers-germany-libya-23587 [Accessed 14 December 2019]

Zetter, R. (2007) 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization'. *Journal of Refugee Studies*, 20(2): 172-192.

1. List of Guidelines

1.1. International Guidelines

GRETA (2020) *Guidance Note on the Entitlement of Victims of Trafficking, and Persons at Risk of Being Trafficked, to International Protection*. Available from: https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44

UNHCR (1992) *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Reissued in 2019*. Geneva: UNHCR. Available from: https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html

UNHCR (2002a) *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. Available from: https://www.unhcr.org/3d58ddef4.pdf

UNHCR (2002b) *Guidelines on International Protection No. 2: "Membership of a Particular Social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. Available from: https://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html

UNHCR (2006) *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked*. Available from: https://www.refworld.org/docid/443679fa4.html

UNHCR (2009) *Guidance Note on Refugee Claims Relating to Female Genital Mutilation*. Available from: https://www.refworld.org/pdfid/4a0c28492.pdf

UNHCR (2012) *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. Available from: https://www.unhcr.org/publications/legal/509136ca9/unhcr-guidelines-international-protection-9-claims-refugee-status-based.htm

UNHCR and IDC (2016) *Vulnerability Screening Tool - Identifying and Addressing Vulnerability: A Tool for Asylum and Migration Systems*. Available from: https://www.unhcr.org/protection/detention/57fe30b14/unhcr-idc-vulnerability-screening-tool-identifying-addressing-vulnerability.html

1.2. Italian Guidelines

EASO (2019) *Guida Pratica sull'Interesse Superiore del Minore nelle Procedure di Asilo*. Available from: https://www.easo.europa.eu/sites/default/files/Practical_Guide_on_the_Best_Interests_of_the_Child_IT.pdf

Ministry of Health (2017) *Linee Guida per la Programmazione degli Interventi di Assistenza e Riabilitazione Nonché per il Trattamento dei Disturbi Psichici dei Titolari dello Status di Rifugiato e dello Status di Protezione Sussidiaria che Hanno Subito Torture, Stupri o Altre Forme Gravi di Violenza Psicologica, Fisica o Sessuale*. Available from: http://www.salute.gov.it/portale/documentazione/p6_2_2_1.jsp?lingua=italiano&id=2599

National Commission for the Right of Asylum and UNHCR (2017) *L'Identificazione delle Vittime di Tratta tra i Richiedenti Protezione Internazionale e Procedure di Referral. Linee Guida per le Commissioni Territoriali per il riconoscimento della Protezione Internazionale*. Available from: https://www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazione-vittime-di-tratta.pdf

2. List of Case law

2.1. Judgments of the European Court of Human Rights (ECtHR)

1. ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Judgment of 12 October 2006, no. 13178/03.
2. ECtHR, *M.S.S. v. Belgium and Greece*, Judgment of 21 January 2011, no. 30696/09.
3. ECtHR, *Hirsi Jamaa and Others v. Italy*, Judgment of 23 February 2012, no. 27765/09.
4. ECtHR, *Abdullahi Elmi and Aweys Abubaka v. Malta*, Judgment of 22 November 2016, nos. 25794/13 and 28151/13.
5. ECtHR, *Chowdury and Others v. Greece*, Judgment of 30 March 2017, no. 21884/15.

2.2. Decisions of Italian Civil Tribunals and Court of Cassation

TRAFFICKING FOR SEXUAL EXPLOITATION

1. Tribunal of Bari, Decree of 13 July 2020, no. 4853.
2. Tribunal of Bari, Decision of 8 October 2018, R.G. no. 8027/2017.
3. Tribunal of Bari, Decree of 10 November 2018, no. 8130.
4. Tribunal of Bologna, Decree of 18 January 2019, no. 340.
5. Tribunal of Bologna, Decree of 17 July 2019, no. 3272.
6. Tribunal of Bologna, Decree of 7 October 2020, no. 6505.
7. Tribunal of Cagliari, Decision of 6 June 2013, R.G. no. 7778/2012.

8. Tribunal of Florence, Decision of 14 December 2017, R.G. no. 2314/2017.
9. Tribunal of Florence, Decision of 24 January 2019, R.G. no. 14361/2016.
10. Tribunal of Florence, Decree of 8 July 2019, no. 4861.
11. Tribunal of Genoa, Decree of 10 January 2020, no. 96.
12. Tribunal of Messina, Decision of 23 February 2018, no. 3963.
13. Tribunal of Milan, Decision of 20 November 2019, R.G. no. 46545/2018.
14. Tribunal of Palermo, Decision of 25 July 2018, R.G. no. 2882/2018.
15. Tribunal of Rome, Decision of 9 February 2018, R.G. no. 62180/2017.
16. Tribunal of Rome, Decision of 30 March 2018, R.G. no. 1681/2016.
17. Tribunal of Rome, Decree of 3 May 2018, no. 6335.
18. Tribunal of Rome, Decree of 4 May 2018, no. 6378.
19. Tribunal of Rome, Decree of 7 May 2018, no. 6404.
20. Tribunal of Rome, Decree of 9 May 2018, no. 6542.
21. Tribunal of Rome, Decree of 11 May 2018, no. 6699.
22. Tribunal of Rome, Decree of 22 May 2018, no. 7310.
23. Tribunal of Rome, Decree of 23 May 2018, no. 7397.
24. Tribunal of Rome, Decision of 17 June 2019, R.G. no. 37692/2016.
25. Tribunal of Rome, Decision of 10 July 2019, R.G. no. 54578/2018.
26. Tribunal of Rome, Decision of 5 September 2019, R.G. no. 64831/2018.
27. Tribunal of Rome, Decision of 27 September 2019, R.G. no. 70459/2018.
28. Tribunal of Salerno, Decision of 14 March 2017, no. 4862.
29. Tribunal of Trento, Decree of 17 January 2019, no. 97.
30. Tribunal of Trento, Decree of 28 February 2019, no. 338.
31. Tribunal of Trento, Decree of 20 March 2019, no. 499.
32. Tribunal of Venice, Decree of 28 February 2019, no. 1681.

SLAVERY, LABOUR DEBTS, EXPLOITATION

33. Court of Cassation, Decision of 11 December 2018, no. 32044.
34. Court of Cassation, Decision of 19 December 2018, no. 32774.
35. Court of Cassation, Decision of 11 March 2020, no. 6879.
36. Tribunal of Bari, Decree of 12 September 2019, no. 4342.
37. Tribunal of Bologna, Decree of 31 December 2019, no. 6616.
38. Tribunal of Florence, Decree of 01 March 2019, R.G. no. 13115/2016.
39. Tribunal of Genoa, Decision of 04 September 2019, R.G. no. 5851/2018.
40. Tribunal of Genoa, Decision of 11 February 2020, R.G. no. 8563/2018.
41. Tribunal of Milan, Decree of 5 May 2019.
42. Tribunal of Milan, Decree of 22 May 2019, R.G. no. 39238/2018.
43. Tribunal of Venice, Decision of 03 April 2017, R.G. no. 4167/2016.

SOGIESC

44. Court of Appeal of Bologna, Decision of 21 May 2018, no. 1338.
45. Court of Appeal of Trieste, Decision of 25 July 2019, no. 541.
46. Court of Cassation, Decision of 20 September 2012, no. 15981.
47. Court of Cassation, Decision of 5 March 2015, no. 4522.
48. Court of Cassation, Decision of 6 February 2018, no. 2875.

49. Court of Cassation, Decision of 24 October 2018, no. 26969.
50. Court of Cassation, Decision of 23 April 2019, no. 11176.
51. Court of Cassation, Decision of 17 May 2019, no. 13448.
52. Court of Cassation, Decision of 14 October 2019, no. 25892.
53. Court of Cassation, Decision of 31 October 2019, no. 28197.
54. Tribunal of Bologna, Decision of 15 July 2017, R.G. no. 12024/2016.
55. Tribunal of Bologna, Decree of 28 March 2019, no. 1586.
56. Tribunal of Brescia, Decision of 27 November 2019, R.G. no. 12565/2018.
57. Tribunal of Catania, Decision of 4 March 2010, R.G. no. 1081/2010.
58. Tribunal of Florence, Decision of 31 January 2017, R.G. no. 4636/2016.
59. Tribunal of Florence, Decision of 10 February 2017, R.G. no. 3548/2016.
60. Tribunal of Florence, Decision of 13 February 2017, R.G. no. 1049/2016.
61. Tribunal of Florence, Decision of 22 February 2017, R.G. no. 13169/2015.
62. Tribunal of Florence, Decision of 2 March 2017, R.G. no. 849/2015.
63. Tribunal of Florence, Decision of 5 April 2017, R.G. no. 17666/2015.
64. Tribunal of Florence, Decision of 5 April 2017, R.G. no. 18170/2015.
65. Tribunal of Florence, Decision of 11 October 2017, R.G. no. 12933/2016.
66. Tribunal of Florence, Decision of 18 December 2017, R.G. no. 1610/2017.
67. Tribunal of Florence, Decision of 5 February 2018, R.G. no. 14084/2016.
68. Tribunal of Florence, Decision of 7 March 2018, R.G. no. 14179/2016.
69. Tribunal of Florence, Decision of 10 July 2018, R.G. no. 9752/2016.
70. Tribunal of Florence, Decision of 6 September 2018, R.G. no. 3149/2017.
71. Tribunal of Florence, Decision of 4 March 2020, R.G. no. 10690/2018.
72. Tribunal of Genoa, Decision of 3 October 2018, R.G. no. 1112 /2018.
73. Tribunal of Milan, Decision of 4 May 2017, R.G. no. 54242/2016.
74. Tribunal of Milan, Decision of 4 July 2018, R.G. no. 1711/2018.
75. Tribunal of Milan, Decision of 1 July 2019, R.G. no. 40045/2018.
76. Tribunal of Milan, Decision of 6 May 2020, R.G. no. 6840/2019.
77. Tribunal of Rome, Decree of 9 May 2018, no. 6542.
78. Tribunal of Rome, Decree of 20 June 2019, R.G. no. 57723/2018.
79. Tribunal of Trieste, Decision of 17 August 2009, R.G. no. 304/2009.
80. Tribunal of Turin, Decision of 14 March 2017, R.G. no. 27595/2016.
81. Tribunal of Turin, Decree of 9 November 2018, no. 5658.

GENDER-BASED VIOLENCE

82. Court of Cassation, Decision of 24 November 2017, no. 28152.
83. Tribunal of Genoa, Decision of 2 May 2018, R.G. no. 14343/2017.
84. Tribunal of Milan, Decision of 12 December 2017, R.G. no. 12743/2017.
85. Tribunal of Rome, Decree of 4 January 2019, no. 2322.
86. Tribunal of Venice, Decree of 28 February 2019, no. 1681.

DOMESTIC VIOLENCE

87. Court of Cassation, Decision of 17 May 2017, no. 12333.
88. Court of Cassation, Decision of 09 March 2020, no. 6573.
89. Tribunal of Catanzaro, Decision of 13 June 2018, R.G. no. 4434/2017.
90. Tribunal of Rome, Decision of 06 March 2019, R.G. no. 46450/2018.

91. Tribunal of Trento, Decree of 05 June 2019, no. 1125.

FEMALE GENITAL MUTILATION

92. Court of Appeal of Catania, Decision of 27 November 2012.
93. Tribunal of Bologna, Decree of 4 May 2018, no. 1111.
94. Tribunal of Bologna, Decree of 3 February 2020, no. 698.
95. Tribunal of Cagliari, Decree of 3 April 2013, R.G. 8192/2012
96. Tribunal of Rome, Decree of 3 May 2018, no. 6328.
97. Tribunal of Rome, Decision of 18 March 2019, R.G. no. 24684/2018.
98. Tribunal of Rome, Decision of 8 May 2019, R.G. no. 3314/2018.
99. Tribunal of Rome, Decision of 27 September 2019, R.G. no. 69480/2018.

FORCED MARRIAGE

100. Tribunal of Bologna, Decree of 14 September 2017, no. 8507.
101. Tribunal of Bologna, Decision of 3 October 2017, R.G. no. 1166/2016.
102. Tribunal of Milan, Decision of 28 January 2019.
103. Tribunal of Milan, Decision of 4 February 2019.

HEALTH

104. Court of Cassation, Decision of 4 February 2020, no. 2558.
105. Court of Cassation, Decision of 30 March 2020, no. 7599.
106. Honorary Judge, Decree of 3 July 2020, R.G. no. 77846/2019.
107. Tribunal of Bari, Decision of 17 July 2017, R.G. no. 1900/2017.
108. Tribunal of Bologna, Decision of 28 March 2019, R.G. no. 2266/2018.
109. Tribunal of Milan, Decision of 3 July 2019, R.G. no. 50610/2017.
110. Tribunal of Milan, Decision of 5 February 2020, R.G. no. 7729/2019.
111. Tribunal of Milan, Decision of 29 April 2020, R.G. no. 37299/2018.
112. Tribunal of Milan, Decree of 21 September 2020, no. 6681.
113. Tribunal of Naples, Decision of 25 June 2020, R.G. no. 23602/2018.

POVERTY AND SOCIAL INTEGRATION

114. Court of Appeal of Bari, Decision of 15 December 2016, no. 1238.
115. Court of Appeal of Milan, Decision of 28 March 2019, no. 1411.
116. Court of Cassation, Decision of 27 November 2013, no. 25665.
117. Court of Cassation, Decision of 7 July 2014, no. 15466.
118. Court of Cassation, Decision of 9 October 2017, no. 23604.
119. Court of Cassation, Decision of 23 October 2017, no. 25075.
120. Court of Cassation, Decision of 23 November 2017, no. 28015.
121. Court of Cassation, Decision of 5 February 2018, no. 2767.
122. Court of Cassation, Decision of 23 February 2018, no. 4455.
123. Court of Cassation, Decision of 31 August 2018, no. 21452.
124. Court of Cassation, Decision of 24 September 2019, no. 23757.
125. Tribunal of Bologna, Decision of 12 April 2018.
126. Tribunal of Bologna, Decision of 28 July 2018, R.G. no. 14681/2016.
127. Tribunal of Florence, Decision of 21 December 2017, R.G. no. 13881/2016.

128. Tribunal of Florence, Decision of 19 February 2018, R.G. no. 14046/2016.
129. Tribunal of Florence, Decision of 5 December 2018, R.G. no. 5725/2018.
130. Tribunal of Trieste, Decision of 22 December 2017, R.G. no. 686/2017.

MINORS AND UNACCOMPANIED MINORS

131. Court of Cassation, Decision of 17 June 2020, no. 11743.
132. Tribunal of Catania, Decision of 4 November 2016, R.G. no. 1881/2016.
133. Tribunal of Catania, Decree of 10 November 2016, R.G. no. 9675/2016.
134. Tribunal of Milan, Decision of 17 January 2018, R.G. no. 41677/2017.
135. Tribunal of Milan, Decision of 16 September 2020, R.G. no. 10342/2019.
136. Tribunal of Venice, Decision of 21 June 2018, R.G. no. 4395/2017.

HUMAN RIGHTS VIOLATIONS AND SEXUAL VIOLENCE IN TRANSIT COUNTRIES

137. Court of Cassation, Decision of 6 February 2018, no. 2861.
138. Court of Cassation, Decision of 20 November 2018, no. 29875.
139. Court of Cassation, Decision of 15 May 2019, no. 13096.
140. Court of Cassation, Decision of 14 November 2019, no. 29603.
141. Court of Cassation, Decision of 20 January 2020, no. 1104.
142. Court of Cassation, Decision of 4 February 2020, no. 2455.
143. Court of Cassation, Decision of 7 February 2020, no. 2960.
144. Tribunal of Catania, Decision of 26 April 2017, R.G. no. 9275/2012.
145. Tribunal of Florence, Decision of 19 June 2019, R.G. no. 2414/2018.
146. Tribunal of Genoa, Decision of 6 December 2017, R.G. no. 10172//2017.
147. Tribunal of Rome, Decision of 21 February 2019, R.G. no. 4920/2019.
148. Tribunal of Rome, Decision of 31 July 2019, R.G. no. 82608/2018.
149. Tribunal of Rome, Decision of 28 November 2019, no. 22917.

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