ELSA ITALY

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Introduction

In the last 50 years, Italy has experienced a relevant transformation, starting from an emigrant nation (according to the last statistics from the Ministry of the Interior, there are more than 4.636.647 Italians still living abroad) to become an immigrant destination.
From 1970 until now, migrant citizens with regular residence permits in Italy have increased, with a rate of growth that looks almost unstoppable: at the beginning of 2017, there were more than 5,047,028 foreign nationals resident in Italy.
This numbers, added to the illegal immigrants whose numbers are difficult to define, outline a complex situation, characterized by immigrant flows from almost 200 different countries, especially Central Eastern Europe (Albania, Romania and Ukraine), Northern Africa (Morocco), China and the Indian subcontinent (Pakistan, India, and Sri Lanka).
This historically important phenomenon requires in-depth analysis in order to evaluate the effectiveness of the Italian legislation and intervention policies, and to find concrete solutions to help immigrants settling in our country.

1. How is the right to asylum regulated in national law? Give a description of the national regulations governing asylum; What is the procedure for granting asylum and who is responsible?

1.1. Description of the national legislation regulating asylum

The right to asylum in Italy is expressly codified by art. 10 par. 3 of the Italian Constitution, stating that "the foreign citizen who is prevented in his own country from the effective assertion of the democratic rights guaranteed by the Italian Constitution, has the right of asylum in the Italian Republic, under the conditions set by the law".
The main pieces of legislation, implementing EU secondary legislation on asylum, are the Legislative Decree (LD) n. 251 of the 19th November of 2007,[2029] concerning the "Implementation of Directive 2004/83/EC on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as person who otherwise need

[2029] Legislative Decree n. 251 (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 [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] as modified by the Legislative Decree n. 18 (Implementation of the Directive 2011/95/UE on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as person who otherwise need international protection and the content of the protection granted) 2014 [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.

international protection and the content of the protection granted" (Qualification Decree) and the LD n. 25 of the 28th of January of 2008, concerning the "Implementation of the Directive 2005/85/EC on minimum standards for procedures for granting and withdrawing refugee status" [2030] (Procedure Decree).

Three different categories of protection are provided for by the Italian legislation: the refugee status, the subsidiary protection and the humanitarian protection.

According to the LD n. 251/07, referring directly to the European Directive 2004/83/EC, a refugee is a "third country national who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it", [2031] while beneficiary of subsidiary protection is considered a "third country national or stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined by this decree, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country".[2032]

The third category of protection is a residual one. Indeed, a permit of stay for humanitarian reasons, lasting 2 years, can be granted when the applicant does not satisfy the conditions for obtaining asylum or subsidiary protection.[2033] In fact, when the Territorial Commission does not recognize the conditions for international protection, indicates "serious reasons of humanitarian nature" and forwards the asylum seeker's documentation to the Questura that will grant a humanitarian permit of stay.[2034]

The Italian legislation also defines specific causes of exclusion of the recognition of the refugee status. This is the case, inter alia, of the foreigner who has already been recognized as a refugee in another country; who has committed a crime against peace, a war crime, a crime against

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[2030] LD n. 25 (Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status) 2008 [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] as modified by the Law n. 46 of the 13th of April of 2017.

[2031] Art. 2 LD n. 251/07.

[2032] *Ibidem.*

[2033] Art. 5 par. 6 of the Consolidated Immigration Act – Legislative Decree n. 286 of the 25th of July 1998, (Testo unico sull'immigrazione) makes possible to release a residence permit in a situation in which this is justified by "*serious reasons, in particular of humanitarian nature or arising from constitutional or international obligations of the Italian State*". This protection granted to citizens of a third country who are found in objective and serious personal conditions that do not allow their removal from Italy. In order to obtain a humanitarian stay permit, a request has to be forwarded to the Questura who will examine the applicant's personal and specific situation.

[2034] Art. 32 LD 25/08 par. 3. On this point see also Rosa Raffaelli, '*Background Information for the LIBE Delegation on Migration and Asylum in Italy*' (European Parliament, In-Depth Analysis For The Libe Committee 2017) <http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/583136/IPOL_IDA(2017)583136_EN.pdf>, accessed 15 July 2017.

humanity; or a serious crime outside Italy, even for political reasons, prior to his/her admission to Italy as a refugee.[2035]

The Italian legal system defines a single procedure for determining whether an applicant is entitled to the refugee status or to the subsidiary protection.

The authorities that are entrusted with examining the applications for the different types of protection are the Territorial Commissions for the Recognition of International Protection (CTRPI[2036] or "territorial commissions") and the Sub Commissions, administrative bodies within the Ministry of Home affairs, specialized in asylum matters and located on the entire national territory.[2037]

Each of the 20 Territorial Commissions is composed of 4 members: two representatives of the Ministry of Home affairs, one of whom is a senior police officer, a representative of the Municipality (or Province or Region), and a representative of the UNHCR.[2038]

Due to the high numbers of migrants and asylum seekers that have arrived in Italy from the sea in the last 4 years, the Italian Government has created the "Hotspot system", in order to implement the new approach launched by the European Agenda for migration in 2015.[2039]

According to the European Commission, hotspot centres are sections of external borders characterized by specific and disproportionate migratory pressure, consisting of mixed migratory flows, including asylum seekers and economic migrants.[2040] These centres, set up only in two Member States, Italy and Greece,[2041] provide first assistance, processing and identification of

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[2035] Art. 10 and 12 LD 251/07 and art. 29 LD 25/08. Other options of exclusion are established for whom coming from a state other than his/her own that has adhered to the Refugee Convention, and in which he/she has resided for a period of time, excluding the time necessary for his/her transit from that territory to the Italian border, for who has been declared guilty of acts contrary to the purposes and principles of the UN, has been convicted in Italy for a crime established in the Code of Criminal Procedure. According to the art. 12, can't obtain the refugee status also who is considered dangerous for the security of the state. Refugee status is also denied based on an individual evaluation when the legal grounds to claim such status are not met, there are well-founded reasons to believe that the foreigner constitutes a danger to the security of the state, or the foreigner constitutes a danger to public order and safety, after being convicted of certain crimes established in the Code of Criminal Procedure.

[2036] Commissioni territoriali per il riconoscimento della protezione internazionale. Home Affairs Ministry 'Distribution of Territorial Commission for the Recognition of the International Protection and Related' (3rd of October of 2016) <http://www.interno.gov.it/sites/default/files/allegati/commissioni_e_sezioni_decreto_costitutivo_situazione_aggiornata_al_3.10.2016.pdf> accessed 19 July 2017.

[2037] Article 4.2-bis LD 25/2008, as amended by Article 5(1)(a)(3) Decree-Law 119/2014.

[2038] Article 4.3 LD 25/2008.

[2039] The European Commission - Agenda on Migration, adopted in May 2015, stating: "[*T*]*he Commission will set up a new 'Hotspot' approach, where the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants... Those claiming asylum will be immediately channeled into an asylum procedure… For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants…*".

[2040] The European Commission 'The Hotspot Approach to Managing Exceptional Migratory Flows' (2015) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf > accessed 19 July 2017. See also Statewatch, *Explanatory note on the "Hotspot approach"* (2015) < http://www.statewatch.org/news/2015/jul/eu-com-hotsposts.pdf > accessed on 6 July 2017.

[2041] The "hotspot approach" has been implemented in Italy since 2015; the first facilities were opened in Lampedusa. In January 2016, the CIE (centre of identification and expulsion) of Trapani and the reception centre of Pozzallo (CPSA) were converted in hotspots. Finally, in March 2016 hotspot facilities were set up in Taranto. Two other centers, Porto Empedocle and Augusta are still not operating. However, according to the revised roadmap submitted to the European Commission on 31 March 2016, an additional hotspot will be opened soon.

migrants and asylum seekers that have usually arrived after search and rescue operations.[2042] Afterwards, migrants are transferred to other centres.[2043]

1.2. Procedure for granting asylum and allocation of responsibility

National legislation in Italy does not specifically regulate the hotspots; currently only a "standard operating procedures"[2044] (SOPs), drafted by the ministry of Home affairs (and hence not ranking as law) lays down the applicable procedures in the hotspots.[2045]

In these centres, migrants are asked whether they intend to apply for asylum; in case of a positive answer, they are relocated in shelter centres set up on the entire national territory.[2046]

According to the LD 142/2015, the asylum procedure starts when an asylum seeker submits his/her request (through the "C3" form – "*verbale delle dichiarazioni degli stranieri che chiedono in Italia il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra del 28 luglio 1951"*) at the Border Police office or at the provincial Police station within the territory (Questura).[2047]

Then, the application and all the supporting documentation is sent to one of the 20 Territorial Commissions operating on the Italian territory.

However, in practice, asylum seekers usually have the possibility to fill the C3 form only after their arrival in the shelters; from here, these forms are forwarded to the competent Questura.

[2042] Elisa Maimone, 'The EU «hotspot approach» and the relocation procedures to the (Italian) test: implementation, shortcomings and critical remarks, (2016) ISSN 2531-4009, Working Papers on European Migration Law N. 3, < http://immigrazione.jus.unipi.it/wp-content/uploads/2016/09/Maimone-Hotspots-and-relocation-Working-Paper-3-2016.pdf > accessed 5 July 2017. Beatrice Gornati, 'Le nuove forme di trattenimento dello straniero irregolare in Italia: dall''evoluzione' dei CIE all'introduzione dei c.d. "hotspot"' [2016] Dir. um. dir. int., 2, 490.

[2043] All migrants arriving irregularly in Italy are registered under category 2 (illegal entry into national territory "EU IT2"). In a second phase, those who have expressed their intention to seek for international protection, are fingerprinted and registered under category 1 (request for international protection) and transferred to the regional centers. In contrast, migrants registered and identified under CAT 2 who do not intend to apply for international protection will be transferred to Centres of Identification and Expulsion (CIE) to be returned to their countries of origin (see p. 13, *Standard Operating Procedures (Sops) Applicable to Italian Hotspots*). The return procedure faces numerous problems due to the fact that only in case of readmission agreements in force between Italy or the EU and third countries the return procedure will be completed. According to the data of the Home Affairs Ministry, in 2015 only 2.746 migrants out of 5.242 transferred in the CIE have been effectively returned (representing 52% of the total). On this problematic issue, see Chiara Favilli, 'L'attuazione in Italia della direttiva rimpatri: dall'inerzia all'urgenza con scarsa cooperazione' [2011] Riv. dir. internaz., 341.

[2044] Home affairs Ministry 'Standard Operating Procedures (Sops) Applicable to Italy, an Hotspots' <http://www.libertacivilliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf> accessed 8 July 2017. Carmela Leone, 'La disciplina degli hotspot nel nuovo art. 10 ter del d.lgs. 286/98: un'occasione mancata', (2017) 2, Diritto Immigrazione e Cittadinanza <https://www.dirittoimmigrazionecittadinanza.it/saggi/73-la-disciplina-degli-hotspot-nel-nuovo-art-10-ter-del-d-lgs-286-98-un-occasione-mancata/file > accessed 13 July 2017.

[2045] Even the newly enacted law n. 46/2017, modifying the art. 10ter d. lgs. 286/98, simply refers to the hotspot centres without providing further details on the organization and functioning of these centres.

[2046] LD n. 142 (Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection) 2015 [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] as modified by the Law n. 46 of the 13th of April of 2017.

[2047] Article 6.1 LD 25/2008. The police officers are not designated to directly examine the application; rather they ask questions to the applicant to verify the Italian jurisdiction on the examination of his/her asylum request according to the Dublin III Regulation (European Parliament and Council Regulation (Eu) 604/2013 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 [2013], art. 3).

According to the LD 142/2015, which sets the framework of the so-called "regular procedure", the Territorial Commission should interview the applicant within 30 days after receiving the application and decide on his request in the following three working days.[2048]
Nevertheless, due to the high numbers of requests, such a time limit is almost never respected.[2049]
During the personal interview, which is not public, the asylum seeker has the opportunity to disclose exhaustively all the elements supporting his/her asylum request.
In all the phases concerning the presentation and examination of an asylum request, including the interview, the applicant, when necessary, receives the assistance of an interpreter in his/her own language or in a language he/she understands. Moreover, the LD 142/2015 specifies that, where necessary, the documents produced by the applicant shall be translated.
As a result of a reform enacted in August 2014,[2050] the interview before the Territorial Commission is carried out by one member only, which should be of the same sex as the applicant. At the end of this procedure, the interviewer presents the case to all the other members which will take a common decision. The decision must be taken with a majority of 3 members; in case of 2:2, the President's vote prevails.
After the interview in front of the Commission, five different decisions can be taken: 1. the granting of refugee status and the release of a 5-year renewable residence permit; 2. the granting of subsidiary protection, implying the release of a 5-year renewable residence permit; 3. the adoption of a recommendation to the Police to issue a 2-year residence permit on humanitarian grounds; 4. the rejection of the asylum application; 5. the rejection of the application as manifestly unfounded. Should the application be accepted, the file with all the documents is sent to the head of the police.[2051] In case the application is rejected, the applicant may introduce an appeal before the competent ordinary Court in order to obtain a review of the Territorial

[2048] According to the Article 28 LD 25/2008, as amended by LD 142/2015, a fast procedure is possible in particular situations, such as 1) where the application is likely to be well-founded; 2) where the applicant is vulnerable, in particular, unaccompanied minors or in need of special procedural guarantees; 3) when the application is made by the applicant placed in an administrative detention centre; 4) if the applicant comes from one of the countries identified by the CNDA that allow the omission of the personal interview when considering that there are sufficient grounds available to recognise subsidiary protection. The LD 142/2015 also introduced an accelerated procedure for applicants placed in CIE. Should the Questura receive the application, it is obliged to immediately send the necessary documentation to the CTRPI that within 7 days of the receipt of the documentation takes steps for the personal hearing. The decision is taken within the following 2 days. These time limits are doubled in the other three cases where the procedure is applicable: (1) the application is manifestly unfounded; (2) the applicant has introduced a subsequent application for international protection; (3) when the applicant has lodged his/her application after being stopped for avoiding or attempting to avoid border controls or after being stopped for irregular stay, merely in order to delay or frustrate the adoption or the enforcement of an earlier expulsion or rejection at the border order (Article 28-bis LD 25/2008, as inserted by LD 142/2015).
[2049] In case that the CTRPI is unable to take a decision within the time limit or needs to acquire new elements, the examination procedure may last six months. The CTRPI may also extend the time limit in specific cases. The asylum procedure may last for a maximum period of 18 months.
[2050] Decree Law n. 119 ([…] for assuring the functionality of the Ministry of Interior (Article 5 to 7) 2014 [Disposizioni urgenti in materia di contrasto a fenomeni di illegalità e violenza in occasione di manifestazioni sportive, di riconoscimento della protezione internazionale, nonché per assicurare la funzionalità del Ministero dell'interno].
[2051] According to the art. 13 of the LD 25/08, the refugee status can be revoked when, following its recognition, it is demonstrated that the recognition was based on facts and/or circumstances presented erroneously, or by the voluntary omission of other facts and/or circumstances, or based on a documentation proved as false. The refugee status can be revoked also in the cases defined by the art. 10 and 12 of the LD 25/08.

Commission's decision.[2052] The appeal must be lodged by a lawyer within 30 days from the notification of the concerned decision.[2053]

The recently adopted Law n. 46 of the 13th of April of 2017[2054] has thoroughly reformed the procedure of appeal, introducing 14 new Specialized Sections on '*migration law, international protection and free movement of EU citizens'*. According to the new procedure, the case is discussed before of a judicial panel in an *en banc* session.[2055] The judges will decide on the applicant's case only by consulting the videotaped interview carried out by the Territorial Commission; only in exceptional cases, oral hearings are allowed.

The judicial panel can either reject the appeal or grant international or humanitarian protection to the applicant; the decision must be taken within 4 months from the submission of appeal.

The Law of 13th of April 2017 has introduced another important change: it has eliminated the possibility to lodge an appeal against the decision of the ordinary court. Such a decision can be appealed only before the Court of Cassation within 30 days.[2056] Furthermore, the new Law has also established that the request for suspensive effect must be decided by the judge who rejected the appeal. The new piece of legislation has been criticized for several reasons.[2057]

In case the request for asylum is rejected, according with the European legislation,[2058] the asylum seeker will be considered illegally staying on the Italian territory and he/she will be asked to go back to their countries of origin or to a country of transit in accordance with Community or bilateral readmission agreements. The asylum seeker may also decide to move to a different third-country in which he or she will be accepted.[2059]

[2052] Art. 35 and art. 35bis LD 25/08 as modified by the L. 46/2017.

[2053] Applicants under the accelerated procedure have only 15 days to lodge an appeal. This appeal does not have suspensive effect.

[2054] Law n. 46 (Introducing urgent provisions to speed up proceedings relating to international protection and for the fight against illegal immigration) 2017 [Recante disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché' per il contrasto dell'immigrazione illegale]. On this point, Chiara Favilli, 'Editoriale n. 2/2017' (2017) 2/2017 Diritto Immigrazione e Cittadinanza < https://www.dirittoimmigrazionecittadinanza.it/19-fascicolo-n-2-2017/editoriale/28-editoriale >, accessed 13/07/2017.

[2055] Art. 35bis c. 1 LD 25/08 as modified by the L. 46/2017.

[2056] Ibid.

[2057] Maria Mitola, 'La sospensione dell'efficacia esecutiva delle ordinanze in materia di protezione internazionale a seguito della proposizione dell'appello' (2017) 2/2017 Diritto Immigrazione e Cittadinanza <https://www.dirittoimmigrazionecittadinanza.it/commenti/86-la-sospensione-dell-efficacia-esecutiva-delle-ordinanze-in-materia-di-protezione-internazionale-a-seguito-della-proposizione-dell-appello/file> accessed 13 July 2017. The new law raises numerous doubts of illegitimacy due to several factors: the lack of an effective appeal, the residual possibility for the judge to directly interview the applicant, the new procedure of notification, the small numbers of Specialised Sections working on these procedures. On this point, ASGI, 'Il D.L. 13/2017: le principali ragioni di illegittimità' (ASGI, 7 March 2017), <https://www.asgi.it/wp-content/uploads/2017/03/2017_ASGI_dl13-17-analisi.pdf> accessed 13 July 2017; Antonello Cosentino, 'L'Anm della Cassazione sul D. l. n.13/2017, in materia di protezione internazionale e di contrasto dell'immigrazione illegale', (2017) Questione giustizia, < http://www.questionegiustizia.it/stampa.php?id=1249> accessed 21 July 2017; Vittorio Gaeta, 'La riforma della protezione internazionale: una prima lettura', (2017) Questione giustizia, <http://www.questionegiustizia.it/stampa.php?id=1231> accessed 21 July 2017.

[2058] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

[2059] Art. 10-20. LD 286/98 as modified by the L. 46/2017. See also Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008, art. 3.

In particular, asylum seekers who got rejected have the obligation to leave Italy after the notification of the decision,[2060] otherwise they can be punished according to art. 162 of the Italian criminal code.[2061] Both the judges and the administrative authority, the Prefetto, which represents the Minister of Internal Affairs, can release a removal order against the national of a non-EU country illegally staying in Italy.[2062] The person which is concerned with the removal order is not allowed to enter on the Italian territory within 3 years after its release.

2. How does your national law regulate immigration from EU member states and non-EU states?

The Italian Constitution recognizes a specific *status* of foreigner in article 10, although it does not give a definition of it. Widely, foreigner means every non-Italian citizen, but a distinction must be made between those who came from other EU Member states, on one side, and non-EU citizens and stateless person, on the other. These two categories enjoy different treatments and, when the Constitution generally refers to foreigners, only the second category should be taken into account.[2063]

2.1. Immigration from EU member States

Entry and stay of EU-citizens are fully covered by EU legislation, [2064] implemented at the national level by the Legislative Decree n. 30/2007 (as modified by Legislative Decree n. 32/2008) "on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU and EEA member states".[2065] It provides EU citizens with a more favourable treatment for entry and stay, compared to third-country nationals; the only common rules for both categories concern the exit from the State, and namely the expulsion measures set forth by the decree 286/1998. Restriction on the right of free movement or residence can be imposed only for reasons of public policy, public security or public health.
EU citizens have the right of residence in Italy for a period of up to three months without any conditions or formalities other than the requirement to hold a valid travel document. For periods longer than three months, they can report their presence to a police office; otherwise, they must be able to prove that they have not stayed in Italy for longer than three months, and, in case they cannot provide any evidence of their entry, they will be deemed to have stayed for a longer period.

[2060] Art. 32 c. 4 LD 25/08.
[2061] Art. 10bis c.5 LD 286/98.
[2062] Under the art. 19 LD 286/98, hypothesis of exception to this procedure are made for people found in a position of especial vulnerability as children, pregnant women, or whoever could face any sort of discrimination based on the race, ethnicity, sex, languages, citizenship, religion, personal or political opinion, personal or social conditions.
[2063] Legislative Decree n. 286/1998, art. 1.
[2064] Article 21 TFEU and Directive 2004/38/CE.
[2065] Legislative Decree n. 30/2007 (Implementation of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) as modified by Legislative Decree n. 32/2008.

EU-citizens who wish to stay in Italy for a period exceeding three months are only required to register with the local *Anagrafe* (Register Office). Permits issued to them may be recognized to their family members as well, even when the latter are not EU citizens.

2.2. Immigration from non-EU member States

The main piece of legislation regulating the entry, stay and exit of non-EU citizens and stateless persons in Italy is the Legislative Decree ("LD") n. 286/1998 (*Consolidated Code on immigration)* as implemented by the Presidential Decree n. 334/2004. Nationals of EU member states, except as provided for in the implementing rules of Community framework,[2066] fall outside the scope *ratione personae* of the concerned LD. Hence, the conditions for their entry, stay and removal are laid down by different sources of law.

The first part of the Code (Title I) determines the requirements for the legal entry and the stay in Italy. These rules, based on a system of visas and permits, were enacted for two different purposes: on one hand, to control and manage migration flows and, on the other, to favour the entry of specific categories of immigrants.[2067]

Article 4 of the LD regulates the admission of third country nationals[2068] and the procedures to obtain the appropriate entry visa, which depend on the reason and the duration of the stay. Visas for staying longer than three months are issued by the diplomatic representation of Italy in the country of origin (or of residence) of the third-country national. Short-term Schengen visas (valid for a period of up to three months) may be issued by diplomatic representations of the country of origin, in case Italy has concluded a specific agreement with this country. Third country nationals who are not in possession of a visa shall be refused entry to the territory of Italy.

Visa applications must be accompanied by a valid travel document together with the supporting documents required by the type of the requested visas.[2069] Applications should state the purpose of the visit as well as the means of transport and support during the stay. The entry on the Italian territory is refused if the third country national may be considered a threat to the public order or public security of Italy (or of other countries with which Italy has concluded agreements for the abolition of checks at internal borders and for the free movement of people), if he is subject to a prohibition of entry following expulsion, or if he has been condemned for the commission of certain crimes.[2070] The entry ban operates automatically, *i.e.* without any discretion of the

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[2066] Consolidated Code, article 1, paragraph 2, as amended by D.L. n. 122/2008. *E.g.,* in matters of removal, can be applied the rules of article 13 concerning the administrative expulsion. Contrary, see Supreme Court of Cassation, Case n. 439 [2000], *Riv. pen. 2001, 181*, which excludes the applicability to EU-citizens of the judicial expulsion as an alternative sanction to detention *ex*-art. 16, as the application of the Text to nationals from EU member states "only can occur in case of more favourable treatment."

[2067] For example, academic researchers. E. Zanrosso, *Diritto dell'Immigrazione. Manuale pratico in materia di ingresso e condizione degli stranieri in Italia,* Edizioni Giuridiche Simone, 2016.

[2068] Along with the "Schengen borders code".

[2069] Inter-ministerial decree n. 850 of 11 May 2011 defines 21 types of entry visas, along with the requirements and conditions for obtaining them: adoption, business, medical treatment, diplomatic, sports competition, invitation, independent work, subordinate work, mission, family reasons, religious reasons, re-entry, elective residence, research, study, airport transit, transit, transport, tourism, working holiday, volunteer work.

[2070] Third country nationals who are condemned according to article 380 par. 1 and 2 of the criminal procedure code or for crimes such as drug-related or sexual crimes, smuggling of human beings or recruiting of persons for prostitution or minors for illegal activities. See for more details Art. 4, par. 3.

competent authorities,[2071] when a third country national commits peremptory offences. A higher threshold is applied to expel a third country national representing a threat to the public order and security, if this person enters the territory for family reunification.[2072]

Once they have legally entered Italy, foreigners who stay for visit, business, tourism or study for periods not exceeding three months are not required to apply for a residence permit; instead, they must report their presence in the country to the border authorities[2073] and obtain a Schengen stamp on their travel document on the day of arrival, as an equivalent of the declaration of presence.

Conversely, foreigners who aim to stay for a period exceeding three months must apply for a residence permit[2074] within eight days of arrival, on pain of administrative exclusion *ex* art. 13, par. 2 of the Code. After an agreement between the Ministry of the Interior and the Italian Post Office, the applications for the issuance and renewal of some types of residence permits are today forwarded to the authorized post offices by the "*Sportello Amico*", using a special *kit (*consisting of an envelope which contains two forms and a list of instruction); in all other cases, the applications must be submitted to the "Questura", the central police station set up in every Italian province.

Articles 5 and 4 of the Code are strictly related: the residence permit is issued for the period of time and for the purpose indicated in the visa; the reasons for the denial of issuance or renewal of the residence permits are the same as for the issuance of the visa.[2075] Regardless of the reasons of immigration, the applicant must provide, in addition to a valid travel document, proof of financial self-sufficiency, adequate shelter and valid health insurance.[2076] Condition for the issuance of the permit is also the subscription of an agreement of integration ("*accordo d'integrazione")*, aimed at achieving specific integration goals during the stay period.[2077]

According to the length of the stay, there are different types of residence permits: up to nine months for seasonal work; up to one year for subordinate work with a temporary contract, for study or vocational training; up to two years for self-employed work, for subordinate permanent work and for family reunion.

Under the need to achieve the unification of European procedures, the Legislative Decree n. 3/2007 introduced the EC Long-Term Residence Permit[2078] (previously called Residence Card) for a third-country national and his family members. This permit is addressed to foreigners in possession of a residence permit, that have been legally residing in Italy for a period of at least 5 years, and that have a minimum income equivalent to the amount of the social security benefit. The issuance of this permit is subordinated to the passing of an Italian language test, as prepared

[2071] Administrative Regional Court of Lazio, Roma, 2nd Division, order 18 March 2015, n. 4309.
The constitutionality of this provision was confirmed by the Italian Constitutional Court, Case n. 148 [2008].
[2072] Code, art. 4, par. 3 referring to article 29 on family reunification; Legislative Decree n. 5/2007. See Italian Constitutional Court, Case n. 202 [2013].
[2073] Law n. 68/2007 on Short stay.
[2074] Law n. 94/2009 (*i.e. Bossi-Fini)* still makes it a crime to enter or stay in Italy illegally: foreign nationals caught staying in Italy without permission commit the offence of illegal immigration.
[2075] Art. 5, p. 5 and art. 4, p.3.
[2076] Decree 394/1999, art. 9(3), 9(4).
[2077] Legislative Decree 286/1998, art. 4-*bis.*
[2078] *ibid*, art. 9.

by the Minister of the Interior in concert with the Minister of Education. It is valid for an indefinite period and works as personal identification document for 5 years.The Long-Term Residence Permit cannot be granted to a foreigner who is a threat to State security or public order, and cannot be requested by holders of a permit for study, professional training, temporary protection, humanitarian reasons, or asylum when the related status has not been recognised yet. It provides the acquisition of resident *status,* which ensures civil rights of any Italian citizen, on the condition of reciprocity. The EC permit has the same effect when issued by another member State,[2079] also for highly qualified foreign workers holding a EU Blue Card.[2080]

In case of irregular stay, specific procedures for expulsion and manners of removal of the migrant are applied. The application of these measures is strictly based on the rule of law,[2081] as they affect the constitutional right of personal freedom.[2082] Articles 13 and 14 of the Code set up the administrative expulsion procedure. The Minister of Interior or the Prefect are entitled to enforce the measure for reasons of public order or state security or, on a case-by-case basis, when the migrant commits some specific violations. Article 15 and 16, instead, regulate, the judicial expulsion. Expulsion is generally carried out by accompanying the foreigner to the borders. The foreigner who is willing to voluntarily leave the country may be admitted to assisted repatriation programs, within the limits of the financial resources ofthe "return fund" (*Fondo Rimpatri)* established by the Minister of Interior, and in cooperation with international organizations, local authorities and other associations.[2083]

If immediate expulsion is temporary impossible, the foreigner can be detained in so-called "Permanence Centers for Repatriation", for the time that is strictly necessary to overcome the impediment.[2084]

Moreover, special rules are applicable to certain categories of migrants who could be classified as especially vulnerable and requiring an extra protection. They are listed in the Chapter III of the Code.[2085] According to these provisions, foreigners who may be subject to persecution for reasons of race, nationality, religion or political opinions, victims of trafficking or exploitation, minors, pregnant women (or six months after childbirth), can not be expelled.

[2079] *ibid* art. 9-*bis*, introduced by d.l. 3/2007.
[2080] *ibid* art. 9-*ter*.
[2081] Italian Constitutional Court, Case 148[2008].
[2082] *Ibid,* Case 105[2001].
[2083] Code, art. 14-*bis* and art. 14-*ter*.
[2084] This point has been subject to recent changes introduced by Law n. 46/2017 (*Decreto Minniti- Orlando).* Purpose of these new centers (before, called "Centers for identification and expulsion", *CIE)* should be not reception, but repatriation. However, several doubts of constitutionality have been raised in reason of the violation of personal freedom and about the "failed model of the administrative detention system itself – an inhuman, expensive and ultimately useless system, since about half of those who are processed through the centers are not actually repatriated". G. Savio, *I trattenimenti nei CIE alla prova delle giurisdizioni nazionale ed europea: poteri del giudice della convalida e condizioni per la proroga del trttenimento,* in "Diritto, immigrazione e cittadinanza", 2/2014.
[2085] Articles 18, 18-*bis* and 19.

3. Is there a ministry, government agency or other public authority specifically dealing with migrants? If so, please provide a description of the framework this authority works under.

In Italy, the coordination of migration policy principally falls under the jurisdiction of the Ministry of Interior and it is assigned to the *Dipartimento per le Libertà civili e l'immigrazione* (Department of Civil Liberties and Immigration) and the *Dipartimento della Pubblica Sicurezza* (Department of Public Security).

Within the Department for Civil Liberties and Immigration, attributions and functions are divided between the *Direzione Centrale dei Servizi Civili per l'Immigrazione e l'Asilo* (Central Directorate of Civil Services for Immigration and Asylum), the *Direzione Centrale per I Diritti Civili, la Cittadinanza e le Minoranze* (Central Directorate for Civil Rights, Citizenship and Minorities), the *Direzione Centrale per le Politiche dell'Immigrazione e dell'Asilo* (Central Directorate for Immigration and Asylum Policies) and the *Commissione Nazionale per il Diritto d'Asilo* (National Commission for the Right to Asylum).[2086]

This organisational set-up is provided for by Article 5 of the Presidential Decree no. 398/2001, as amended by Article 2 of the Presidential Decree no. 210/2009.

The **Central Directorate of Civil Services for Immigration and Asylum** has jurisdiction over the reception of migrants, from the first assistance to the so-called "integrated projects". It manages the initial reception through the *CDAs- Centri di Accoglienza* (Center for First Assistance of Migrants), where immigrants are identified, and the *CARAs- Centri di Accoglienza per Richiedenti Asilo* (Center for First Assistance of Asylum Seekers), where migrants have access to asylum procedures. The next step is represented by the *SPRAR- Sistema di Protezione per Richiedenti Asilo e Rifugiati* (Protection System for Asylum Seekers and Refugees), provided for by the law n.189/2002, that consists in a network of infrastructures in which a large number of supporting activities, aimed at reaching the so-called "integrated reception", are carried out: distribution of food and/or garments, Italian language courses, legal and social advice etc. The SPRAR, as well as the CDAs and the CARAs, although under the supervision of the Central Directorate, are conducted by associations, cooperatives and NGOs[2087] which have been selected as contractors through a public tender launched at local level by the territorial administrations.

The **Central Directorate for Immigration and Asylum Policies**, instead, beyond taking numerous initiatives in order to provide migrants effective assimilation in the social fabric, performs functions of analysis and monitoring of integration policies. The so-called Turco-Napolitano law (law n. 40/1998, Art. 3.2) in order to strengthen the efficiency of this analysis, has established the *Consigli Territoriali per l'Immigrazione* (Territorial Councils for Immigration), advisory bodies which operate at decentralized level aiming to the promotion of integration initiatives. Chaired by the Prefect, they are composed by representatives of the State (namely,

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[2086] Ministero dell'Interno, *'Dipartimento per le libertà civili e l'immigrazione'* (Department of Civil Liberties and Immigration), <http://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-liberta-civili-e-limmigrazione> accessed 3 July 2017 [Italian]

[2087] Ministero dell'Interno, *'La rete SPRAR'* (Protection System for Asylum Seekers and Refugees) <http://www.sprar.it/> accessed 5 July 2017[Italian].

from prefectures and police headquarters), representatives of local administrations, representatives of employers' organisations and of non EU-workers' organisations, as well as exponents of associations dealing with immigrants' assistance and of associations of immigrants. According to the implementation decree[2088] of the aforementioned law, "at least two representatives of the most representative associations of immigrants locally operating" should take part to the Council; due to the vagueness of the provision's formulation, however, those are discretionally chosen by local authorities and often paradoxically devoid of an effective representativeness. Moreover, as provided for in the law n.203/1994 (Chapter B), bodies with the same advisory nature and representative purpose could be discretionally established by regions and local administrations, such as the *Consulte Comunali* (Municipal Consultative Bodies) and the *Consigliere Straniero Aggiunto* (Extra Foreign Advisor).[2089]

The **Central Directorate for Civil Rights, Citizenship and Minorities** is responsible for the recognition of the Italian citizenship and the statelessness status. According to the law n.94/2009, Art. 9.1.E, for refugees and stateless persons the procedure at stake is less burdensome.

Last but not least, within the Department of Civil Liberties and Immigration, an essential and chief role is played by the **National Commission for the Right of Asylum**. Chaired by the Prefect, it is made up with two representatives of the Ministry of the Interior (one from the Department of Public Security and one from the Department of Civil Liberties and Immigration), a representative of the Ministry of Foreign Affairs, a representative of the Presidency of the Council of Ministers and UNHCR representatives. As provided for by the legislative decree no.25/2008, Art. 5, the National Commission holds refresher courses for the members of each commission, collects data and statistics over migration and is even responsible for the revocation and cessation of international protection. The National Commission also holds a key position in the exchange of information over migration with the European Commission or public authorities of other countries. Moreover, it coordinates and gives guidance to the *Commissioni Territoriali per il Riconoscimento della Protezione Internazionale* (**Territorial Commissions for the Recognition of International Protection**), pointing to the harmonisation of their activities, e.g. drafting and communicating Country of Origin Information or guidelines reports.[2090] The Territorial Commissions are the only bodies in charge for the asylum procedure and the recognition of international protection. Due to the impressive rise of asylum applications during the last years, even the number of the operating Commissions has increased: nowadays there are 20 of them, as against 10 before the decree of the Ministry of the Interior of the 11.10.2014. The same Decree has also established 20 Sections which came up beside the Commissions (with the same functions of these last), and which are now 28. The Territorial Commission is composed of four members: a functionary of the Prefecture, a functionary of the Polizia di Stato, a representative of the ANCI (National Confederation of

[2088] Presidential Decree n. 394/1999 [D.P.R. 31 agosto 1999, n.394].
[2089] Claudia Mantovan, '*Immigrazione e cittadinanza: auto-organizzazione e partecipazione dei migranti in Italia*' 69-70.
[2090] Ministero dell'Interno, *'Commissione Nazionale per il Diritto d'Asilo'* (National Commission for the Right of Asylum) <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/commissione-nazionale-diritto-asilo> accessed 6 July 2017[Italian].

Local Authorities) and a representative of the UNHCR. A feature that strongly characterizes the Italian asylum procedure is the ascription of a decisional role (above the consultative one covered in the National Commission) to the representatives of the UNHCR. Within the Ministry of the Interior, as mentioned before, even the **Department of Public Security** deals with migration issues: the *Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere* (Central Directorate for Immigration and Border Police) promotes preventive actions and various measures to tackle irregular immigration.[2091] **Other Ministries** play a secondary but complementary role in those fields related to immigration which fall under their responsibilities. The Ministry of Foreign Affairs, and in particular the *Direzione Genarale per gli Italiani all'Estero e le Politiche Migratorie* (General Directorate for Italians Abroad and Migration Policies) has jurisdiction over visa requests and juridical administrative issues regarding foreign citizens and/or asylum seekers or refugees (V and VI Office).[2092]

For the sake of a coherent framework, which could be jeopardized by the overlap of responsibilities between Ministries, the Consolidation Act on Immigration (Legislative Decree no. 286/1998, article 2-bis, as modified by Law no. 189/2002, Art. 2.1) provides for **the Coordination and Monitoring Committee**, led by the President or vice-President of the Council of Ministers and constituted by other relevant Ministers designated *cas par cas* depending on the issues under debate. The Committee is supported by the Technical Working Group, which plans the subjects of the Committee's future undertakings, in order to examine migration-related questions and elaborate potential responses in terms of national strategies, and which synchronizes the attitudes of all the governmental bodies involved.

The whole organisational set-up of the Italian migration governance is based on chronic interconnections between central governmental entities and peripheral ones (e.g. regions, provinces, municipalities) and is inspired by the principle of administrative decentralization (Title V of the Italian Constitution). Other subjects actively involved in this systems are private entities (e.g. non-profits and co-ops) as well as international organisations (e.g. UNHCR representatives in the Territorial Commissions).

In order to have a complete overview of the organisational arrangements, it is fundamental to underline the role of the European Union Commission. First of all, it has allocated the Asylum, Migration and Integration Fund (AMIF) to support national migration policies during the period 2014-2020. Secondly, it controls that the Italian national migration policy is aligned with the principles of the EU migration law.[2093] A control of function is also attributed to the Garante della Protezione della Libertà Personale (Authority for the Protection of Personal Freedom) in relation with the respect of fundamental rights during the removal and deportation procedures as

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[2091] Ministero dell'Interno, *'Dipartimento della Pubblica Sicurezza'* (Department of Public Security) <http://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza> accessed 6 July 2017 [Italian]

[2092] Ministero degli Affari Esteri e della Cooperazione Internazionale, '*Direzione Genarale per gli Italiani all'Estero e le Politiche Migratorie'* (General Directorate for Italians Abroad and Migration Policies) <http://www.esteri.it/mae/it/ministero/struttura/dgitalianiestero/> accessed 6 July 2017[Italian].

[2093] Ministero dell'Interno, Fondo Asilo Migrazione e Integrazione - FAMI (Asylum, Migration and Integration Fund – AMIF) <http://www.interno.gov.it/it/temi/immigrazione-e-asilo/fondi-europei/fondo-asilo-migrazione-e-integrazione-fami> accessed 20 September 2017

well as during the migrants' detention in *Centri di Permanenza per Rimpatri* (Immigration Removal Centre). Lastly, an *ex post* control over the running of the administrative machine may be represented by the judicial review, in case of denial of international protection or citizenship.

4. What are the recent statistics regarding migrants (i.e. asylum-seekers, immigrants, transitmigrants, trends in migratory flows) in your country?

2016 has been a year of record highs for Italy, for what concerns asylum seeking. As it is possible to notice in Figure 3, the number of applications for asylum procedures has exceeded 123.000 in the last year, with an increment of 47% compared to 2015. Comparing Figures 1 and 2, it is evident a rise of applications took place yet in 2015, with an increment of 32% compared to 2014. During the 2014-2016 period, about 270.000 asylum applications have been filed, whereas in the previous 13 years the total number of submitted applications has been of about 365.000. Table 1 and Figure 4 analyze trends of asylum applications over the last years, starting from 1990: the graphic demonstrates a quasi-constant trend of applications during the first decade, never exceeding 2000 applications per year, with important but sporadic peaks in 1991, with 28.400 applications, and during the 1998-2000 period, when about 82.000 submissions in total were presented. Since 2000, asylum seekers have never been less than 10.000 per year, but they followed a fluctuating and not steady trend, reaching new record highs in 2008 (31.723 requests of asylum) and in 2011 (37.350). However, it is after 2014 that asylum seeking has reached a farfetched climax, with a continuous rise of numbers. Available statistics show that, until June 2017, 72.744 applications have been submitted, with an average of 12.124 requests per month. The sea arrivals until the 17th July of 2017, however, amounted to a larger number: 93,213 – see Figure 7. Examining Figures 1, 2 and 3, it is noteworthy that, over the last three years, males have been the vast majority of asylum seekers, women representing only the 10-15% of all the applicants. Furthermore, over 50% of the applicants are Africans, followed by Asians (about 25-30%). Taking nationality into consideration, most of the applicants were recorded as Nigerians (about 22%): 10.040 in 2014, 18.174 in 2015 (+81% compared to the previous year) and 27.289 in 2016 (+50% compared to 2015). Pakistan, Gambia and Senegal followed Nigeria in terms of number of asylum seekers, both in 2015 and in 2016. A remarkable number of applications has been filed also by Eritreans, with an impressive increment of 925% from 2015 to 2016 (729 Eritrean applicants in 2015, compared to 7472 in 2016). In 2015 and 2016, asylum has been granted to about 40% of all the applicants, which have been 71.117 in 2015 and 91.102 in 2016: 5% of them have been recognized as refugees, 14% have received subsidiary protection, while 22% have been granted humanitarian protection. In 2014, when 36.270 asylum seekers were interviewed, only 40% of the applications were denied (-20% compared with the last two years).[2094] Sea arrivals statistics mainly reflect the trends of asylum seeking exposed before. In

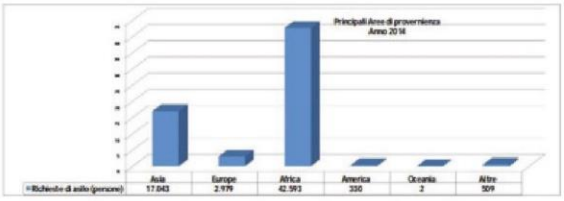
[2094] Ministero dell'Interno, *'Dipartimento per le libertà civili e l'immigrazione'* (Department of Civil Liberties and Immigration, file attached: *Riepilogo anno 2015-2016* and *Riepilogo anno 2014-2015*), <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/i-numeri-dellasilo >

2017 most of the sea arrivals are coming from Nigeria (17,8%), and Bangladesh (10,4%). The majority of sea influxes concerns men, while women and children represent a slight minority (20%). As said before, until July 2017, 93,213 immigrants disembarked on Italian coasts: Italy is facing 9 times the sea arrivals of Greece (10,250) and 14 times those of Spain (6,524). The region most involved region is Sicily, in which more than half of immigrants arriving in Europe land (56,115), followed by Calabria (21,382) – see Figure 7. Concerning immigrants residing in Italy, some interesting data are shown in Figure 5: in 2015 and 2016, they were almost 5 million, and they now represent 8,2/8,3% of the whole population residing on the Italian territory. Most of them have been recorded as Romanians, Albanians and Moroccans. These data are similar to those collected in 2014: over the last three years, the number of foreigners residing in Italy has slightly increased of about 1% each year. Despite this, a noteworthy difference can still be noticed when comparing these statistics to those of 2012, when immigrants were only 4 million and represented the 6,8% of the whole population on the Italian territory. Italy, on 1 January 2016, is classified as the third country of the European Union with the largest number of non-nationals living within its territory. Moreover, in 2015, 178.000 non-nationals acquired the Italian citizenship: Italy is the first EU country in terms of residents granted citizenship – see Figure 6. In 2015, in Italy there were 280.1 thousand immigrants: only 26% of them came from an EU Member State of previous residence and over 206 thousand immigrants came from non-EU countries – see table 2.

FIGURE 1

Asylum applications in 2014 (Italy)
Source: Commissione Nazionale per il Diritto d'Asilo – Ministero dell'Interno (National Commission for the Right of Asylum – Ministry of Interior)

Richieste di asilo (persone)	
Area geografica	N.
Asia	17.043
Europe	2.979
Africa	42.593
America	330
Oceania	2
Altre	509
Totale	63.456



Domande di asilo (Mod. C3)	
Area geografica	N.
Asia	16.634
Europe	2.314
Africa	41.964
America	288
Oceania	2
Altri	509
Totale	61.711

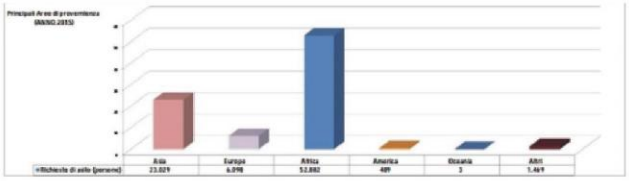
Richieste di asilo (persone)	
Sesso	N.
Maschio	58.703
Femmina	4.753
Totale	63.456

Principali Paesi di Origine					
Nigeria	10.040	Somalia	797	Sudan	219
Mali	9.692	Iraq	784	Togo	203
Gambia	8.477	Egitto	659	Palestina	195
Pakistan	7.064	Siria	502	Camerun	187
Senegal	4.615	Tunisia	480	Altri	3.280
Bangladesh	4.511	Eritrea	474		
Afghanistan	2.994	Guinea-Bissau	410		
Ghana	2.161	Turchia	403		
Ukraine	1.933	Iran	376		
Costa d'Avorio	1.485	Marocco	308		
Guinea	923	Burkina Faso	284	Totale	63.456

FIGURE 2

Asylum applications in 2015 (Italy)
Source: Commissione Nazionale per il Diritto d'Asilo – Ministero dell'Interno (National Commission for the Right of Asylum – Ministry of Interior)

Richieste di asilo (persone)		
Area geografica	N.	%
Asia	23.029	27%
Europe	6.098	7%
Africa	52.882	63%
America	489	1%
Oceania	3	0%
Altri	1.469	2%
Totale	83.970	



Richieste di asilo (persone)		
Sesso	N.	%
Maschio	74.280	88%
Femmina	9.690	12%
Totale	83.970	

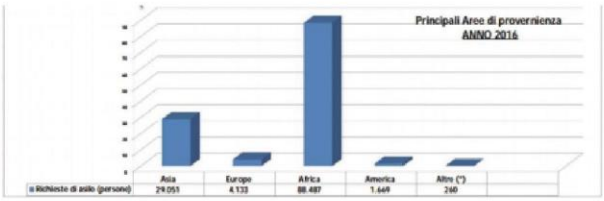
Richieste di asilo (persone)		
Fasce d'età	N.	%
0 - 13	3.058	4%
14 - 17	4.233	5%
18 - 34	68.206	81%
35 - 64	8.401	10%
65 - oltre	72	0%
Totale	83.970	

Principali Paesi di Origine								
Nigeria	18.174	22%	Somalia	747	1%	Camerun	335	0%
Pakistan	10.403	12%	Eritrea	729	1%	Tunisia	305	0%
Gambia	8.022	10%	Guinea - Bissau	682	1%	Togo	299	0%
Senegal	6.386	8%	Marocco	604	1%	Turchia	276	0%
Bangladesh	6.056	7%	Egitto	589	1%	Altri	5.198	6%
Mali	5.455	6%	Iraq	527	1%			
Ucraina	4.653	6%	Siria	497	1%			
Afghanistan	3.975	5%	Albania	424	1%			
Ghana	3.697	4%	Burkina Faso	412	0%			
Costa D'Avorio	3.115	4%	Cina	358	0%			
Guinea	1.704	2%	Kosovo	348	0%	Totale	83.970	100%

FIGURE 3

Asylum applications in 2016 (Italy)
Source: Commissione Nazionale per il Diritto d'Asilo – Ministero dell'Interno (National Commission for the Right of Asylum – Ministry of Interior)

Richieste di asilo (persone)		
Area geografica	N.	%
Asia	29.051	24%
Europe	4.133	3%
Africa	88.487	72%
America	1.669	1%
Altre (*)	260	0%
Totale	123.600	



Richieste di asilo (persone)		
Sesso	N.	%
Maschio	105.006	85%
Femmina	18.594	15%
Totale	123.600	

Richieste di asilo (persone)		
Fasce d'età	N.	%
0 - 13	5.228	4%
14 - 17	6.328	5%
18 - 34	99.066	80%
35 - 64	12.888	10%
65 - oltre	90	0%
Totale	123.600	

Principali Paesi di Origine								
Nigeria	27.289	22%	Ucraina	2.628	2%	Togo	658	1%
Pakistan	13.660	11%	Somalia	2.404	2%	Sierra Leone	618	1%
Gambia	9.040	7%	Camerun	1.987	2%	India	555	0%
Senegal	7.723	6%	Siria	1.590	1%	Sudan	503	0%
Eritrea	7.472	6%	Marocco	1.556	1%	Altri	5.402	4%
Costa D'Avorio	7.459	6%	Iraq	1.538	1%			
Bangladesh	6.818	6%	El Salvador	1.087	1%			
Mali	6.438	5%	Cina	871	1%			
Guinea	6.057	5%	Burkina Faso	850	1%			
Ghana	5.018	4%	Egitto	787	1%			
Afghanistan	2.852	2%	Guinea - Bissau	740	1%	Totale	123.600	100%

FIGURE
4

Asylum applications per year (Italy)
Source: National Commission for the Right of Asylum – Ministry of the Interior)

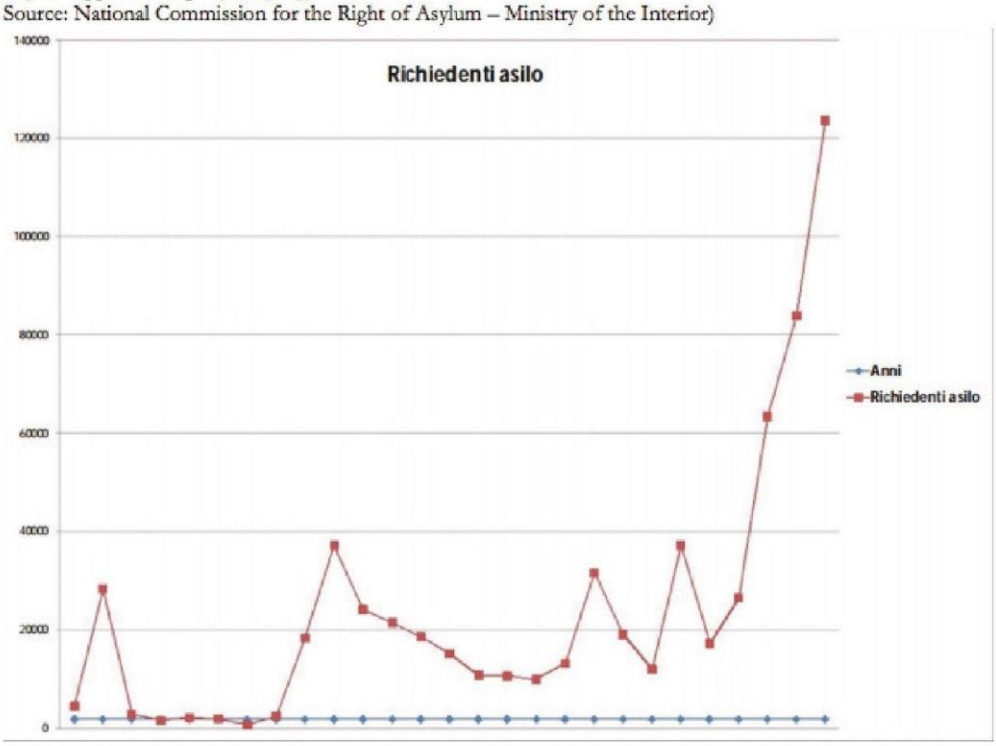
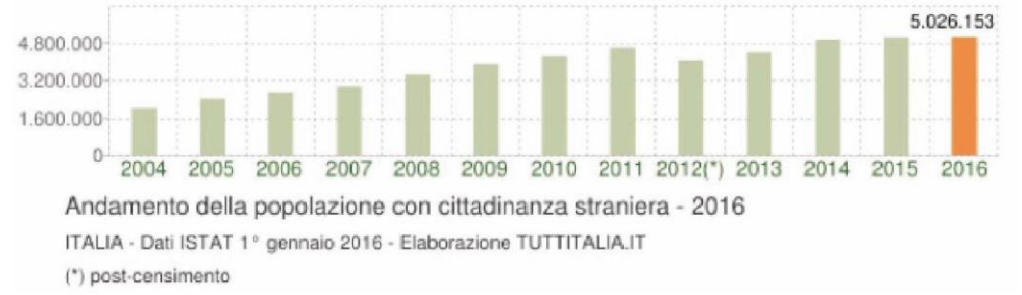
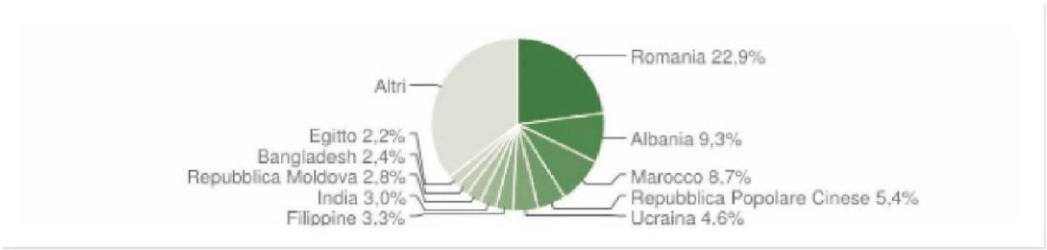
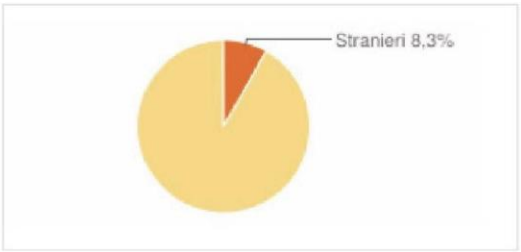


FIGURE
5

Immigrants residing in Italy: 2016
Source: ISTAT (Italy's National Statistics Institute) data, elaborated by tuttitalia.it







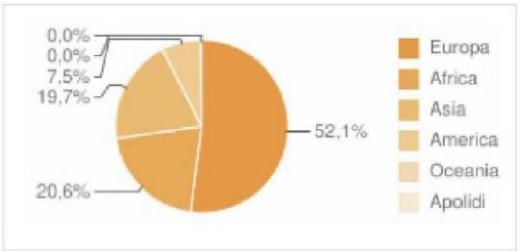


FIGURE 6
+ Five main EU-28 Member States granting citizenship

Source: Eurostat

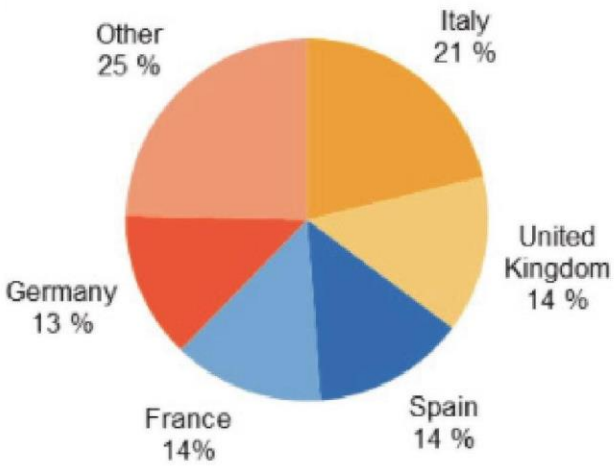
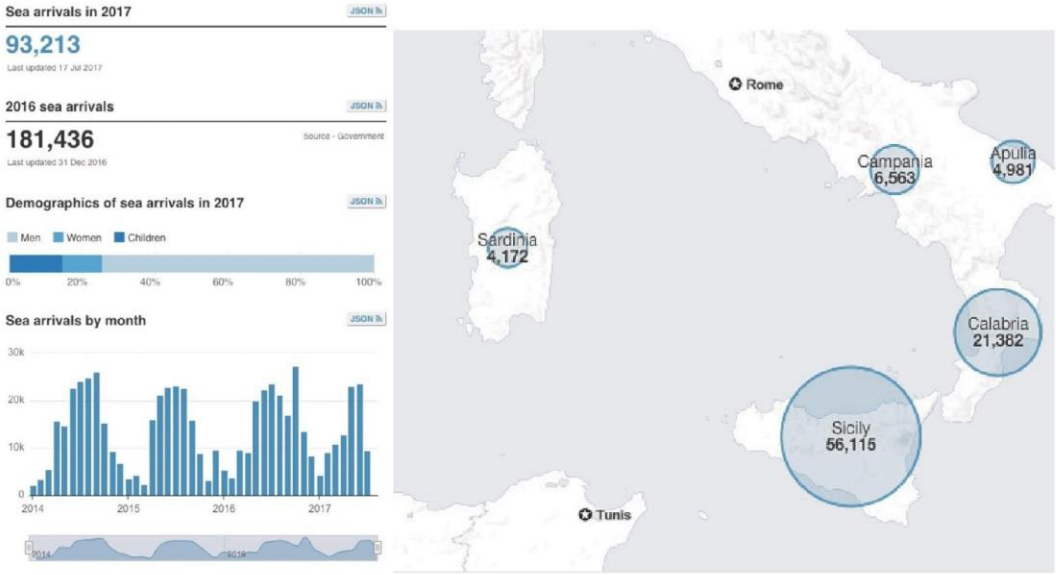


FIGURE 7
+ Source: Refugees Operational Data Portal by UNHCR



Most common nationalities of sea arrivals in 2017

.CSV .JSON

Country of origin	Source	Data date	Population	
Nigeria		30 Jun 2017	17.8%	14,118
Bangladesh		30 Jun 2017	10.4%	8,241
Guinea		30 Jun 2017	9.8%	7,759
Côte d'Ivoire		30 Jun 2017	9.3%	7,354
Gambia		30 Jun 2017	6.2%	4,920
Senegal		30 Jun 2017	6.1%	4,834
Mali		30 Jun 2017	6.0%	4,789
Eritrea		30 Jun 2017	5.7%	4,536
Morocco		30 Jun 2017	5.1%	4,082
Sudan		30 Jun 2017	5.0%	3,979
Ghana		30 Jun 2017	3.6%	2,857
Pakistan		30 Jun 2017	2.8%	2,242
Somalia		30 Jun 2017	2.6%	2,103
Cameroon		30 Jun 2017	2.1%	1,667
Syrian Arab Rep.		30 Jun 2017	2.0%	1,601
Iraq		30 Jun 2017	1.4%	1,075
Sierra Leone		30 Jun 2017	1.2%	927
Algeria		30 Jun 2017	0.9%	730
Tunisia		30 Jun 2017	0.7%	580
Ethiopia		30 Jun 2017	0.7%	565
Egypt		30 Jun 2017	0.5%	415

TABLE 1

Asylum applications per year (Italy)
Source: National Commission for the Right of Asylum – Ministry of the Interior)

Richieste di asilo (persone)	
Anni	Richiedenti asilo
1990	4.573
1991	28.400
1992	2.970
1993	1.736
1994	2.259
1995	2.039
1996	844
1997	2.595
1998	18.496
1999	37.318
2000	24.296
2001	21.575
2002	18.754
2003	15.274
2004	10.869
2005	10.704
2006	10.026
2007	13.310
2008	31.723
2009	19.090
2010	12.121
2011	37.350
2012	17.352
2013	26.620
2014	63.456
2015	83.970
2016	123.600
Totale	641.320
Fonte Vestanet C3	

TABLE 2

Source Eurostat

	Total immigrants	From an EU Member State of previous residence		From a non-member country of previous residence		From an unknown country of previous residence	
	(thousands)	(thousands)	(%)	(thousands)	(%)	(thousands)	(%)
Belgium	146.6	76.2	52.0	70.0	47.7	0.5	0.3
Bulgaria	25.2	7.1	28.1	18.1	71.7	0.1	0.3
Czech Republic	29.6	15.4	52.1	14.2	47.9	0.0	0.0
Denmark	78.5	33.0	42.1	44.9	57.2	0.5	0.7
Germany	1 543.8	513.2	33.2	1 015.6	65.8	15.0	1.0
Estonia	15.4	10.2	66.3	4.5	29.1	0.7	4.6
Ireland	76.9	38.7	50.3	38.2	49.7	0.0	0.0
Greece	64.4	43.0	66.7	21.5	33.3	0.0	0.0
Spain	342.1	119.4	34.9	222.7	65.1	0.0	0.0
France	363.9	133.4	36.6	230.5	63.4	0.0	0.0
Croatia	11.7	4.4	37.4	7.2	61.9	0.1	0.6
Italy	280.1	73.8	26.3	206.3	73.7	0.0	0.0
Cyprus	15.2	8.3	54.7	6.9	45.3	0.0	0.0
Latvia	9.5	4.9	51.4	4.6	48.6	0.0	0.0
Lithuania	22.1	15.4	69.4	6.7	30.4	0.0	0.2
Luxembourg	23.8	21.7	91.2	2.1	8.8	0.0	0.0
Hungary	58.3	30.5	52.3	27.7	47.5	0.1	0.2
Malta	12.8	6.3	49.5	6.5	50.5	0.0	0.0
Netherlands	166.9	78.0	46.7	87.6	52.5	1.3	0.8
Austria	166.3	71.1	42.7	90.1	54.2	5.1	3.1
Poland	218.1	102.9	47.2	115.2	52.8	0.0	0.0
Portugal	29.9	16.5	55.3	13.3	44.6	0.0	0.1
Romania	132.8	93.7	70.6	28.6	21.6	10.4	7.9
Slovenia	15.4	4.4	28.4	11.0	71.6	0.0	0.0
Slovakia	7.0	5.6	79.9	1.4	20.1	0.0	0.0
Finland	28.7	13.1	45.6	15.1	52.6	0.5	1.9
Sweden	134.2	38.1	28.4	92.7	69.0	3.5	2.6
United Kingdom	631.5	295.3	46.8	336.2	53.2	0.0	0.0
Iceland	5.6	4.1	72.5	1.5	26.3	0.1	1.2
Liechtenstein	0.7	0.2	34.2	0.4	65.4	0.0	0.3
Norway	60.8	31.8	52.2	29.0	47.8	0.0	0.0
Switzerland	153.6	100.9	65.7	48.4	31.5	4.3	2.8

5. How have the decisions by the European Court of Human Rights concerning migrants been implemented at national level?

Italy was found to breach the provisions of the European Convention on Human Rights (ECHR) or of its protocols for the treatment reserved to migrants in several important judgments delivered by the European Court of Human Rights (ECtHR). This chapter focuses on the implementation of these judgments at national level. The ECHR leaves to the State the possibility to choose the instruments and the procedures to implement its decisions. In the Italian legislative system, the duty to conform to the ECtHR's decisions can be found in Article 117 of the Constitution. Formally, the competence to monitor the implementation of the decisions is recognised to the Parliament by the Article 5 §3 let. a *bis* of Law n. 400 of 1988,[2095] as amended by Law n. 12 of 2006.[2096] This provision does not touch the competence of the Government to choose how and when to implement them. Moreover, anyway, there is no national provision which establishes a procedure to be followed in these cases. This leads to the adoption of several different acts, often expression of the executive power, chosen time by time in relation to the exigencies of the situation.

Any High Contracting Party of the Convention has the duty to implement only the judgments in which it appeared as respondent before the ECtHR, but this does not mean that national law and courts are not influenced also by the others. Due to space constraints, the latter profile will be only briefly addressed before concentrating on the most relevant decisions against Italy.

A recent case decided by the Italian Court of Cassation and that clearly explains the influences of the ECHR's judgements is judgment n. 38041/2017.[2097] The court of Cassation changed the decision of the lower court of expelling an individual who was seriously invalid and who proved that his home country did not have any legislative framework to protect people with disability. The Court of Cassation decided "*in the light of the principles stated by the ECtHR and the Constitutional Court*". The decision was taken only a few months after the ECtHR's case *Paposhvili v. Belgium*[2098] where the Strasbourg judges affirmed that applicability of Article 3 (Prohibition of Torture) of the ECHR to such cases. This is a recent example of how a decision of the ECtHR, even if not directly referred to a certain State, can produce effects in the territories of all the High Contracting Parties of the Charter.

Moving to the main object of this paper, namely the implementation of the judgments in which Italy appeared as respondent, the oldest case is *Saadi v. Italy,*[2099] where the Court found a potential violation of Article 3 of the ECHR, as a result of Mr. Saadi's possible deportation to Tunisia.

[2095] Law n. 400 (Regulation of the Activity of the Government and Organisation of the Presidency of the Council of Ministers) 1998 [Disciplina dell'Attività di Governo e Ordinamento della Presidenza del Consiglio dei Ministri].

[2096] Law n. 12 (Provisions on the Execution of the Judgments of the European Court of Human Rights) 2006 [Disposizioni in Materia di Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo].

[2097] Judgment 38041/17 [2017] Court of Cassation <http://www.altalex.com/~/media/Altalex/allegati/2017/allegati-free/cassazione%2038041_2017%20pdf.pdf> accessed 21 September 2017 [Italian].

[2098] *Paposhvili v. Belgium*, App. n. 41738/10 (ECtHR 13 December 2016).

[2099] *Saadi v. Italy,* App. No. 37201/06 (ECtHR, 28 February 2008).

The findings of the ECtHR led the Italian Court of Cassation to deliver an order[2100] stating that judicial authorities (including *Giudici di pace* (justices of the peace)), as far as expulsion orders are concerned, should assess the concrete risks that an irregular migrant would face in his or her country of origin before an expulsion order can be executed. Furthermore, on May 28 2010, the Ministry of Justice sent a circular[2101] to all the domestic Courts of Appeal stressing the need to comply with the ECtHR's interim measures and reaffirming that an evaluation should be made on whether there are "impediments" to expulsion, such as the risk of a violation of rights under Article 3 of the Convention in the country of destination. Regarding the individual measures adopted by the Court, Italy complied with them lifting all the expulsion orders against the applicants and duly paying the sum established as just satisfaction.

The second relevant case is *Hirsi Jamaa and others v. Italy.*[2102] The case concerned the return to Libya of 11 Somalian and 13 Eritrean intercepted at sea, without any assessment of their individual situation. The Court condemned the State for the violation of Article 3 of the Convention, both for the potential ill-treatment that they could have suffered in Libya and for the subsequent risk of ill-treatment in Eritrea and Somalia if they were to be further deported in those countries. The Court also found a breach of Article 4 for of Protocol n. 4 (prohibition of collective expulsion of alien) and of Article 13 of the ECHR (right to an effective remedy), in conjunction with Article 4 of Protocol n. 4. As far as the execution of this judgment is concerned, it is important to note that the bilateral agreement with Libya, of 2009, which was at the basis of the return of the migrants to Libya, was suspended in 2011 due to the change of the Libyan regime. Italy also provided to the ECtHR assurances that the guarantees contained in national laws and regulations concerning the treatment of asylum seekers were properly applied.[2103] In particular, Italy reaffirmed that refugees and asylum seekers would be granted access to all the relevant domestic procedures in all circumstances, including during military and coast guard operations. Furthermore, the Government informed the Court that the naval units had received the order to disembark all the migrants intercepted at sea in Italy. There, they would be able to file an application for asylum or international protection before the Territorial Commissions. Italy also informed the Court of the adoption of the Legislative Decree n. 142 of 2015[2104] which implemented the Directive 2013/32/EU (on common procedures for granting and withdrawing international protection), and the Directive 2013/33/EU (laying down standards for the reception of applicants for international protection). The decree sets up the

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[2100] Presidenza del Consiglio dei Ministri '*Relazione al Parlamento Anno 2009 - L'Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo nei Confronti dello Stato Italiano – Legge 9 Gennaio 2006*', (2009) 50 <http://presidenza.governo.it/CONTENZIOSO/contenzioso_europeo/relazione_annuale/relazione_2009.pdf > accessed 13 July 2017 [Italian].

[2101] Presidenza del Consiglio dei Ministri '*Relazione al Parlamento Anno 2012 - L'Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo nei Confronti dello Stato Italiano – Legge 9 Gennaio 2006*', (2012) 61 <http://presidenza.governo.it/CONTENZIOSO/comunicazione/allegati/PCM_Relazione_2011.pdf> accessed 09 July 2017 [Italian].

[2102] *Hirsi Jamaa and others v. Italy* App. No. 27765/09 (ECtHR, 23 February 2012).

[2103] Italy, '*1265 réunion (20-22 septembre 2016) (DH) - Bilan d'action consolidé révisé (13/07/2016) - Communication de l'Italie concernant l'affaire Hirsi Jamaa et autres contre Italie (Requête n° 27765/09)*' (13 July 2016) <http://hudoc.exec.coe.int/eng?i=DH-DD(2016)785-revF> accesed 13 July 2017 [French].

[2104] Legislative Decree n. 142 (Implementation of Directive n. 2013/33/EU and of Directive 2013/32/EU) 2015 [Attuazione della Direttiva 2013/33/UE e della Direttiva 2013/32/UE].

procedures to be followed when a migrant arrives in Italy and includes the possibility to immediately lodge an asylum application which will be evaluated on an individual basis. In principle, this legal background safeguards against expulsions carried out without any individual assessment of the situation of the migrant. For what concerns the individual measures adopted, Italy clarified that the whereabouts of the 9 applicants are unknown, tried to find them contacting the Libyan authorities without success and deposited in an account at their disposal the sum granted as just satisfaction.

The next case, *Dhahbi v. Italy,*[2105] concerns an application from migrants lawfully resident in Italy. The ECtHR found in this case a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life). The victim was a Tunisian national whose application for a family allowance, provided by Section 65 of Law n. 448 of 1998,[2106] had been rejected. As a consequence of the judgment, Italy amended that provision bringing its legislation in line with the Court's requirements. Article 2 §2 of Decree n. 337 of 2001[2107] and Article 13 §1 of Law n. 97 of 2013[2108] recognised access to the allowance, respectively, to European citizens and to non-Europeans who reside in the country for a long-term period. Also in this case, the just satisfaction was duly paid by the State.

Another interesting judgment, related to the breach by Italy of Article 14 in conjunction with Article 8, is *Taddeucci and Mc Call v. Italy*.[2109] The applicants were a homosexual couple registered as an unmarried couple in New Zealand; after the facts of this case they married in the Netherlands. When they moved to Italy, the second applicant (Mr. Mc Call), was refused a residence permit which he had requested on family grounds. The refusal was due to the fact that only different-sex spouses could qualify for a residence permit for "family members". In its judgment, the Court did not question the State's right to reject an application for a residence permit to an unmarried couple. However, Italy was condemned since the Court found that as regards the residence permit for family members, the applicants were treated equally to couples in a significantly different situation, namely different-sex couples that decided not to have their relationship legally recognized. The Court found that there was no objective and reasonable justification for this equal treatment of significantly different situations. The discrimination lied in the fact that the two applicants did not have access in Italy to any form of legal recognition of their union. The discrimination was, thus, found in comparison with heterosexual couples who, in abstract, could have married to obtain the permit. Italy has enacted Law n. 76 of 2016[2110] giving to same-sex couples access to a civil partnership comparable to marriage. Therefore, by

[2105] *Dhahbi v. Italy* App. No. 17120/09 (ECtHR, 8 April 2014).
[2106] Law n. 448 (Public Finance Measures for the stabilisation and the development) 1995 [Misure di Finanza Pubblica per la Stabilizzazione e lo Sviluppo].
[2107] Decree n. 337 of the Presidency of the Council of the Ministries (Regulation Amending The Decree n. 452 December 21 2000, of the Ministry of Social Solidarity, Concerning Allowance for Maternity and for Family Units with More than Three Minor Children) 2001 [Regolamento Recante Modifiche al Decreto del Ministro per la Solidarietà Sociale 21 Dicembre 2000, n. 452, in Materia di Assegni di Maternita' e per i Nuclei Familiari con Tre Figli Minori].
[2108] Law n. 97 (Dispositions for the Compliance with Obligations Stemming from Italian's Membership to the EU) 2013 [Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea].
[2109] *Taddeucci and Mc Call v. Italy* App. No. 51362/09 (ECtHR, 30 June 2016).
[2110] Law n. 76 (Regulation of Civil Unions Between Same-Sex People and Discipline of Cohabitation) 2016 [Regolamentazione delle Unioni Civili tra Persone dello Stesso Sesso e Disciplina delle Convivenze].

adopting this piece of legislation Italy has rectified its breaches since transnational same-sex couples are no longer discriminated with respect to different-sex couples. Furthermore, the just satisfaction has been regularly paid by the State.

Sharifi and others v. Italy and Greece[2111] is another case which is particularly relevant. The Court found that the unregistered return of 4 irregular migrants to Greece, on the basis of a bilateral readmission agreement signed in 1999, amounted to a violation of Article 3 of the ECHR, Article 4 of the Protocol n. 4, and Article 13 ECHR in conjunction with Article 3 ECHR and 4 Protocol n. 4. The applicants had neither been granted access to an interpreter, nor to a lawyer, nor to officials capable of providing them with the minimum information about their rights and the procedures to follow in order to seek international protection in Italy. Furthermore, they did not receive any official, written and translated, documents regarding their return to Greece. On July 13 2016, Italy submitted an action plan[2112] concerning the implementation of the judgment. Firstly, this document reaffirmed what already stated in *Hirsi Jamaa and others* in relation to the possibility to seek asylum in Italy.[2113] Secondly, the Government submitted a report[2114] of the *Consiglio Italiano per i Rifugiati* (Italian Refugee Council) on the reception conditions and on the procedures to apply for international protection in the Adriatic ports. This report was quoted by the State to highlight that in the Adriatic ports the migrants had access to an effective information system in relation to the options available to apply for international protection. Thirdly, Italy affirmed that, at the moment of the submission of the action plan the readmission agreement was applied in compliance with the principles dictated by the ECtHR and that asylum seekers were not subject to it. In support of these statements, the Government provided some statistics highlighting the lowering of the number of migrants sent back to Greece (from 3.433 in 2009, to 426 in 2015, to only 103 in the first half of 2016). Furthermore, a report, published in November 2013 by *Medici per i Diritti Umani*[2115] (Doctors for Human Rights) was quoted by Italy in its action plan. This report was used to show that irregular migrants who were intercepted on the ships coming from Greece had access to NGOs' assistance. The officials of the NGOs interviewed migrants in order to evaluate their legal status. Lastly, the State has underlined that, since 2008, Italy had applied increasingly the sovereignty clause provided for in Article 17 §1 of Reg. UE 604/2013, derogating in this way from the ordinary criteria established in Dublin III Regulation.

The *Sharifi* case is particularly interesting because its implementation has received, on September 20-21 2016, a feedback from the Council of Europe's Committee of Ministers. The latter acknowledges efforts made by Italian authorities to rectify the breach; however, several concerns are expressed. The Committee focuses on the report written by *Medici per i Diritti Umani* and

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[2111] *Sharifi and others v. Italy and Greece* App. No. 16643/09 (ECtHR, 21 October 2014).

[2112] Italy, '*1265 réunion (20-22 septembre 2016) (DH) - Plan d'action révisé (13/07/2016) - Communication de l'Italie concernant l'affaire Sharifi et autres contre l'Italie (Requête n°16643/09)* (13 July 2016) <https://rm.coe.int/16806933e0>; accessed 15 November 2017 [French].

[2113] *Ibid.*

[2114] Consiglio Italiano per i Rifugiati, 'Attività del *CIR – Rapporto 2013'* (15 May 2014) <http://www.cir-onlus.org/images/pdf/riv%20new%20TESTO%20RAPPORTO%202013.pdf> accessed 09 July 2017 [Italian].

[2115] Medici per i Diritti Umani, '*Porti Insicuri – Le Riammissioni dai Porti Italiani alla Grecia e le Violazioni dei Diritti Fondamentali dei Migranti*' (November 2013) <http://www.mediciperidirittiumani.org/pdf/low_rapporto_Medu_2013.pdf> accessed 13 July 2017 [Italian].

highlight several issues raised therein. The NGO complained about the uncertainty of humanitarian organisation's (human and financial) resources and of their insufficient presence in the Adriatic ports. The Committee also paid a special attention to the fact that in the same report the NGO affirmed that the 85% of migrants arriving from Greece were sent back in the next few hours, without any formal procedure, in a clear breach of the above-mentioned bilateral agreement. Another piece of information which is deemed relevant is that in the first half of 2013, only 50% of migrants arriving from Greece had access to the assistance of the organisations. Moreover, the Committee asked for statistical data to clarify the reduction of migrants sent back to Greece, stressing that, without the data related to the total number of arrivals and to the number of asylum requests received, the relevance of the reduction cannot be shown. In its decision, the Committee asks Italy to provide more up to date information in relation to the functioning and funding of the reception system in the Adriatic ports, on the procedures followed there and on migrants' access to NGO assistance, and on the numbers needed to better understand the decrease of migrants sent back to Greece.

Italy communicated an action report on March 16 2017, but the information contained therein were considered by the Committee insufficient to clarify the abovementioned issues. Italy was asked to send further information before the end of September 2017.

Also with regards to the individual measures the Committee of Ministers is not satisfied with the actions of the Italian government. One of the four applicants received international protection in Italy, but the situation of the others is considered not to have been sufficiently clarified in the above mentioned Italian action plan.

The last relevant case is *Khlaifia and others v. Italy.*[2116] The case concerned three Tunisian citizens who were intercepted at sea by the Italian coastguard and brought to Lampedusa. There, they stayed at an Early Reception and Aid Centre until a violent riot destroyed the centre. The migrants were then transferred to Palermo. Expulsion orders were, then, issued against them; however, they claimed that they did not receive all the relevant documentation. The ECtHR found a violation of Article 5 of the ECHR (right to liberty and security) §1, §2, §4, and of Article 13 in conjunction with Article 3 of the ECHR. In order to implement the judgement at issue, an action plan/report was awaited by the Italian Government before June 15 2017 but it is not yet available. However, in the yearly report to the Parliament, the Government stated that the Legislative Decree n. 142 of 2015 would permit to leave the emergency approach, leading, together with previous national provisions, to a structure and flexible system to face the arrival of migrants. Moreover, it is underlined that the new hotspot approach would allow the reception of migrants in structures where operators of the UNHCR and of the IOM can deliver them all of the relevant information. In the report it is also stated that the just satisfaction has been duly paid.[2117]

[2116] *Khlaifia and others v. Italy* App. No. 16483/12 (ECtHR, 15 December 2016).

[2117] Presidenza del Consiglio dei Ministri '*Relazione al Parlamento Anno 2016 - L'Esecuzione delle Pronunce della Corte Europea dei Diritti dell'Uomo nei Confronti dello Stato Italiano – Legge 9 Gennaio 2006*', (2016) 89-90 <http://presidenza.governo.it/CONTENZIOSO/contenzioso_europeo/relazione_annuale/RELAZIONE_2016.pdf> accessed 18 September 2017 [Italian].

In conclusion, ECtHR's judgments have deeply influenced Italian law and practice. As far as the last two judgements are concerned, the information on their implementation provided by the Government are not always complete and clear. The shortcomings of the Italian system have been addressed several times by the Court to bring it in line with human rights standards; the full compliance with these standards is a goal still to be reached.

6. How have the recommendations of the European Commission against Racism and Intolerance and of national human rights bodies concerning the integration of migrants been implemented?

6.1. The implementation of the recommendations of the European Commission against racism and intolerance (ECRI)

6.1.1. Implementation at a legislative level

Italy has made relevant efforts to implement the Recommendations of the ECRI,[2118] included in various reports delivered since its creation. However, the last report, published on 7 June 2016, shows that Italy's legislation presents some *lacunae*. For example, Italy has not so far implemented the recommendation to ratify the Protocol No. 12 to the European Convention on Human Rights establishing a general prohibition of discrimination; neither it has enacted an *ad hoc* ordinary law on equal treatment and prohibition of discrimination,[2119] in order to implement the principle of equality laid down by art. 3 of the Italian Constitution. Nevertheless, although a general prohibition of discrimination does not exist under the national system, there are sector-related pieces of legislation providing for equal treatment between foreigners and Italian nationals. Among the others, the Legislative Decree (LD) No. 286/98, the so-called "Turco-Napolitano Act", as amended by Act No. 189/02 of 2002 (known as the "Bossi-Fini" Act) provides for special "Measures for social inclusion" and defines the concept of "Discrimination based on race, ethnicity, nationality or religion".[2120]

In this regard, Italy has to some extent implemented ECRI's General Policy Recommendation No. 7 to combat racism and racial discrimination. Indeed, Act n. 654 of 13 October 1975 ("Reale Act"), as amended by Act No. 205 of 25 June 1993 ("Mancino Act") and Act No. 85 of 24 February 2006, criminalized racial discrimination, incitement to racial discrimination, incitement to racial violence, racial violence, the promotion of ideas based on racial superiority or ethnic or racist hatred and the setting up or running of, participation in or support to any organisation, association, movement or group whose purpose is the instigation of racial discrimination or

[2118] The Reports and Recommendations issued to Italy by ECRI can be retrieved at the following: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/Italy_CBC_en.asp> accessed 2 July 2017.
[2119] The main source on such prohibition is found in Law No. 300 (Statute of Workers) 1970 [Statuto dei Lavoratori].
[2120] Artt 42 and 43, Legislative Decree No. 286 (Consolidated Law on Dispositions Concerning the Discipline on Immigration and the Norms on Non-nationals' conditions) 1998 [Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero].

violence. The Mancino Act also prohibits the public display of symbols and emblems of such organisations and, above all, makes racist bias an aggravating circumstance in connection with any offence. However, as mentioned above, these Acts present substantial *lacunae*, *e.g.* the lack of any reference to "colour and language" as causes of discrimination[2121]; in addition, public insults, defamation or threats against a person or group of people are ordinary crimes for the purposes of the Criminal Code, and not separate criminal offences, when committed against a person or group of people on the grounds of their race, colour, language, religion, nationality or national or ethnic origin. For these reasons, the ECRI has underlined the need to amend the Italian Criminal Code,[2122] which is deficient as far as the prevention and repression of genocide, crimes against humanity and war crimes is concerned. In fact, with the exception of the condoning of genocide, all the other crimes are considered as merely aggravating circumstances, instead of proper criminal offences. Turning to civil and administrative law provisions against racial discrimination, these are to be found in Act No. 300 of 1970 on employment, in the "Turco-Napolitano Act" and in Legislative Decrees N. 215 and 216 of 2003. These are in line with ECRI's general recommendation No. 7, although they do not cover discrimination on grounds of language and colour, for which no provision is made. The Italian legislation is deficient insofar as all organizations active in the field of combating racism and racial discrimination are not able to take legal action on behalf of alleged victims of these phenomena or in cases of collective discrimination. As an example, this is the case of the National Office Against Racial Discrimination, which is not entitled to take legal action in the event of discrimination.

Another issue raised by the latest ECRI's report concerns the ratification of the additional Protocol to the Convention on Cybercrime, aimed at criminalizing acts of racist and xenophobic nature committed through computer systems. The ratification of this Convention was approved by one of the houses of Parliament on July 6 2016 and is currently waiting for discussion before the Senate[2123]. The Italian legal order is also deficient with respect to the collection of data on hate speech and other hate-motivated offences. In addition, political extremism in Italy with strong xenophobic and islamophobic connotations gives rise to concerns.

6.1.2. Practical implementation and impact on society

The abovementioned "Turco-Napolitano Act" and subsequent amendments introduced by the "Bossi-Fini" Act contain measures to facilitate the integration of third country nationals lawfully residing in Italy, whose practical implementation can be deemed appreciable, even though not fully satisfactory. Since 2012, a compulsory individual training based on an "integration agreement"[2124] has been established , which aims at facilitating integration of foreign nationals and concerns the renovation of the residence permit upon condition, *inter alia*, of the acquisition

[2121] ECRI considered that Art 18*bis*, para. 1, of Law No. 482/1999 on linguistic and cultural minorities providing that the Reale Act "*shall also apply in order to prevent and counter intolerance and violence acts against people belonging to linguistic minorities*" is not equivalent to a prohibition of racism and racial discrimination on ground of language (ECRI Report on Italy, fifth monitoring cycle, published on 7 June 2016, note 7).
[2122] ECRI Report on Italy, 2016, 12 (see *supra*, note 93).
[2123] Legislative Proposal No. 3084, presented on April 29th, 2015.
[2124] In conformity with Article 4-bis, para. 2 of Legislative Decree No. 286/98, implemented by Presidential Decree No. 179 (see *supra*, note 92).

of a sufficient knowledge of the Italian language and culture and of compliance with the obligation to send children to school.[2125] Difficulties in accessing housing and home ownership for immigrants have been frequently recalled in the Recommendations directed to Italy, with special reference to disparity in the rent conditions and, also, to discrimination in the procedures of access public housing, which can vary depending on the local authorities. Even though the right to house and to private life is fully granted both at a national and international level, with the Italian law disposing the obligation of equal treatment in matter of access to public housing and equalizing non-nationals to Italian citizens,[2126] the practical compilation of the waiting lists and their criteria are municipal prerogatives, circumstance that leads to strong *de facto* divergences across Municipalities. This notwithstanding the several sentences of Italian Tribunals asking for the elimination of discriminatory policies. Nevertheless, the flourishing case-law shows a decisive trend toward the elimination of these disparities.[2127] On the same time, the adoption of Act No. 107/15 "on good schooling" has demonstrated an effort in improving the inclusion at school, introducing provisions with the aim of giving substantial financial and human support to schools with large numbers of foreign pupils and of promoting adult education and trainings specifically addressed to foreigners.[2128]

6.2. The implementation of the recommendations of National Human Rights Bodies on integration

In addition to ECRI, some recommendations on integration have been issued by UNHCR to Italy, which recently addressed some specific questions that are yet to be solved.[2129] Among the most significant, it has been recommended that, for the first two years after obtaining international protection, refugees should be included in disadvantaged workers categories that should be provided with an assisted access to work. Such *ad hoc* categorization has not been adopted yet, but a relevant initiative in this direction has been the strategy promoted by the Ministry of Labour and Social Policy, mainly focusing on vocational trainings and grant-assisted

[2125] ibid, Art 13.5-bis.
[2126] The right to house and to private life is protected by the Italian Constitution under the Articles 10, comma 2, and 117, comma 1. Moreover, European Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, implemented in Italy through Legislative Decree No. 3/2007 amending the Italian Consolidated Law on Migration, disposes the principle of equal treatment (see Art. 11, comma 1, lett. F of the Directive, and Art. 9 of the Consolidated Law on Migration; *supra*, note 92). Accordingly, under the Italian Consolidated Law on Migration regular non-nationals enjoy the full sphere of rights of Italian citizens regarding public housing and credit facility (see Art. 11, comma 1, lett. F of the Directive, and Art. 9 of the Consolidated Law on Migration; *supra*, note 92).
[2127] See *e.g.* Tribunal of Milan, Sent. of 21st March 2002, and the Regional Administrative Tribunal of Lombardy – section of Brescia, Ordinance No. 264 of 25th February 2005. For a full list of relevant cases, see <http://www.piemonteimmigrazione.it/mediato/images/materiali/CASISTICA_GIURISPRUDENZIALE_IN_DIRITTO_ANTIDISCRIMINATORIO.pdf> accessed 22 July 2017).
[2128] *E.g.* Art 23, Law No. 107 (Reform of the national system of education and formation enabling the reorganization of the current legislation) 2015 [Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti or "La Buona Scuola"], referring to improvement of adult education and trainings, especially for foreigners, to promote knowledge of the Italian language, facilitate access to work and boost social inclusion. See also Art 32, addressing the question of educational projects in schools and requesting for necessary human, financial and technical resources.
[2129] UNHCR Italy, Focus Group on Integration Final Report 2017.

jobs through the adoption of SPRAR Projects[2130] and pilot projects coordinated by the Ministry.[2131]

All beneficiaries of international protection who are destitute should be allowed access to suitable reception conditions for a minimum period of six months, renewable under specific circumstances. Control and monitoring systems should be standardized, with a particular attention to people with special needs. Such monitoring system should include mechanisms for the consultation and active participation of asylum-seekers, as well as a sanctioning system based on objective and verifiable parameters. However, a standardized mechanism has not been adopted yet; on the contrary, the system is characterised by great inhomogeneity, due to structural deficiencies, lack of adequate funds and administrative unevenness. In fact, Italy presents remarkable geographical inequalities in the process of integration of immigrants, with special reference to the services offered and to available facilities. Data on access to work, housing and scholarization display a strong regional disparity, with the local authorities often being unable to guarantee an effective application of the national and supranational legislation on integration and non-discrimination. Especially in the South, the implementation of integration policies often relies on associations, trade unions and religious organisations.[2132] To fix this problem, in 2014 the Ministry of Labour and Social Policies signed seventeen regional agreements to strengthen cooperation with regional and local authorities in the field of integration policies.[2133]

Another noticeable problem is the subjective disparity in acceding integration facilities in Italy. Most of the rights protected under common laws and Courts' decisions are addressed specifically to permanent non-nationals with a regular permit of residence. Additionally, the main category of beneficiaries of integration policies is constituted of the Roma population and non-nationals recently arrived and regularly present in the country. On the contrary, a specific integration policy for refugees and people who qualify for international protection is lacking.[2134] This situation translates into substantial integration problems, as the lack of post-reception support for beneficiaries of protection upon leaving reception facilities, especially for those who could not stay in a second-line reception SPRAR facility and had to leave the CARA (First Line Reception Centres) immediately after they were recognized international protection.[2135] As already mentioned, reception standards differ considerably among facilities, especially on a geographical basis, and UNHCR found that in some cases services provided are particularly inadequate to support refugees' social inclusion.[2136]

[2130] The System of Protection for Asylum Seekers and Refugees has been introduced by Law No. 189 (Modifications in the Law Concerning Immigration and Asylum) 2002 [Modifica alla normativa in materia di immigrazione e di asilo or "Bossi-Fini"].
[2131] UNHCR, Final Report 2017, 19 (see *supra*, note 101).
[2132] ECRI Report on Italy, 2016, 26 (see *supra*, note 93).
[2133] The scope is to project and structure a better system of local services addressed to immigrants, with the aim of facilitating the access to such services. Further details can be found at the following: <http://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/politiche-di-integrazione-sociale/Pagine/Attivita-e-servizi.aspx> accessed 22 July 2017.
[2134] ECRI Report on Italy, 2016, 26 (see *supra*, note 93).
[2135] UNHCR, Final Report 2017, 8 (see *supra*, note 101).
[2136] ibid, 11.

7. How is migrants' right to access to healthcare regulated within the national legislation?

7.1. The Constitutional framework and its interpretation

Article 32, para. 1 of the Italian Constitution states that "the Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent". The provision is enshrined among several other significant rights in the Title II of the Charter, and its most common interpretation includes the duty of the State to provide for every individual an appropriate access to healthcare. In essence, the above-mentioned article also grants to the individual the right of seeking public assistance by the state. This positive obligation is confirmed by the constant jurisprudence of the Italian Constitutional Court, which has interpreted the right to healthcare as a "primary and fundamental right that imposes full and comprehensive protection" by the state.[2137] Moreover, such duty could not be affected even by financial necessities.[2138]

The applicability of Article 32 to migrants derives from the wording of the same article, which refers to the "individual", expressing the concept that citizenship should not be taken into account when dealing with the right to healthcare. In addition, such provision should be interpreted in the light of Article 3,[2139] that sets forth the principle of non-discrimination before the law, and Article 2, which binds the Republic to guarantee not only civil and political rights of the person, but also to fulfil the duties of economic and social solidarity. It should be underlined that, even if the text of Article 3 refers to "citizens", the same Court has reaffirmed that "when dealing with fundamental rights, the constitutional principle of non-discrimination does not admit any inequity between the citizen and the foreigner".[2140]

It follows that every migrant, regular or irregular, has the same right to seek health assistance from the Italian State; this principle is confirmed by the judgment 252/2001 of the Constitutional Court, stating that "this irreducible core of the protection of health as a fundamental right of the person must thus be recognised also to foreigners, regardless of their position with respect to the rules that discipline the entrance and permanence in the country" (§2).

[2137] Italian Constitutional Court, judgement 992/1998, §2. See also: Italian Constitutional Court, judgements 88/1979, 559/1987, 992/1988, 105/2000.
[2138] Italian Constitutional Court, judgement 309/1999, §3. See also: Italian Constitutional Court, judgement 203/2016.
[2139] Article 3 in conjunction with Article 32 has been used by the Constitutional Court in many cases to avoid discriminations and barriers to the access to healthcare (as example, see judgement 416/1995, setting forth the principle of "equality of health services").
[2140] Italian Constitutional Court, judgement 62/1994, §4.

7.2. Statutory regulations

7.2.1. The right to access to healthcare of legal migrants

The constitutional provisions on the right to access to healthcare have been implemented on a statutory level in 1978, when the *Sistema Sanitario Nazionale* (National Healthcare System) was created[2141] in order to provide free public healthcare to everyone. The principle that legal migrants have access to the Healthcare System has been specified in the legislative decree 286/1998 ("Testo Unico sull'immigrazione"). Indeed, Article 2, para. 1 reaffirms the respect of foreigners' fundamental rights under national and international law, and Article 2, para. 2 establishes that, in addition, legal migrants have the same rights and duties of Italian citizens.
In accordance with this principle, Article 34 of the same decree provides that legal migrants have the right or the option to register within the National Healthcare System, receiving the same services and conditions of Italians. In particular, the inscription to the National Healthcare System is mandatory for legal migrant workers or work-seekers, asylum seekers, and those who have been admitted in Italy on the ground of family reunification or humanitarian reasons or for adoption. The duty to register is also extended to family members and minors.[2142] On the other hand, other categories of migrants have an option to register within the public system or to pay for private insurance; usually this category includes short-term migrants, as students or au pairs. If they choose to use the public service, they pay the same amount as Italians or other migrants do by paying their taxes.[2143]

7.2.2. The right to access to healthcare of irregular migrants

Since regular migrants enjoy the same rights and duties of Italian citizens, the main issues can be found in the protection of irregular migrants' right to access to healthcare. First of all, it should be underlined that minors, even if irregular, still have the right under national legislation to register within the National Healthcare System[2144] in accordance with the Italian international commitment in the New York Convention.[2145]
Indeed, the status of irregular migrants differs from the full equality in civil rights given to regular migrants: the law simply states that their fundamental rights enshrined in national and international instruments should be respected.[2146] Their right to access to healthcare is set forth by Article 35 of the *Testo Unico sull'immigrazione* (Italian Law on Immigration). The article states that foreign citizens, whose permanence in the country is not in compliance with national migration law, still have the right to seek from public service "urgent" and "essential" medical care (para 3). According to the Circular Letter 5/2000 of the Ministry of Health, "urgent" healthcare should be considered any medical care that cannot be postponed without jeopardizing

[2141] Law 833/1978 and 33/1980.
[2142] Testo Unico sull'Immigrazione (d.lgs. 286/1998), Article 34, §1-2.
[2143] Testo Unico sull'Immigrazione (d.lgs. 286/1998), Article 34, §3-4.
[2144] Testo Unico sull'Immigrazione (d.lgs. 286/1998), Article 35, §3(b). See also: Agreement of the State-Regions conference of December 20 2012, Annex A, §1.1.1.
[2145] United Nations' Convention on the Rights of the Child, Article 24.
[2146] Testo Unico sull'Immigrazione (d.lgs. 286/1998), Article 2, §1.

the patient's life or health; while "essential" healthcare consists in any treatment, diagnosis or therapy regarding diseases not immediately dangerous, but which could lead to health damage or death if not cured. Moreover, Article 35 of the *Testo Unico* also gives special relevance to some treatments to be always granted, such as the one concerning pregnancy, vaccines, infectious diseases and drug addiction. The procedure to access to such services is specified by Article 43 para.3 of the Presidential Decree 394/1999: since irregular migrants cannot register within the National Healthcare System, they should apply for a six-months valid STP Regional Code, where STP stands for "*Straniero Temporaneamente Residente*", Temporarily Resident Foreigner.

7.3. The regional system and the different approaches towards irregular migrants' healthcare

Following the new Article 117 of the Italian Constitution,[2147] the power of regulation of public healthcare is shared between the State and the Regions. This concurrent discipline means that the State must provide the general provisions on the matter, while regional administration can choose how to put it into practice and regulate it more specifically. In particular, the Ministry of Health determines the LEA (*Livelli Essenziali di Assistenza*), essential services to be granted to everyone – and to irregular migrants in particular, but it is up to the Regions to implement them.[2148] The practice has shown that heavy differences persist between regions, both on an economic and policy ground: some regions have integrated healthcare services for irregular migrants within the normal healthcare system, some others have created specific medical helpdesk directed to them, others do not have any regional provision on the matter, leaving the national discipline directly applicable.

7.4. Illegal immigration as a criminal offence and negative outcomes on access to healthcare

In 2009, the right-wing governed led by Silvio Berlusconi, enacted the law 94/2009, which is generally referred to as "Bossi-Fini" from the name of its creators. One of the most controversial aspect of such statute is the addition of Article 10bis to the *Testo Unico sull'immigrazione* (d.lgs. 286/1998). The provision created a new criminal offence, namely the "crime of illegal immigration". What matters here is the effect that considering illegal immigration as a crime has on access to public healthcare: following the 2009 law, a strong debate on whether illegal migrants should be referred to police when assisted by public hospitals. Indeed, by creating a new crime automatically prosecutable, it seemed that the law required the public medical staff to report to the police any illegal migrant seeking for assistance.[2149] Such interpretation was disproved by the circular 12/2009 of the Ministry of Health, which, in reaffirming the validity of Article 35 para. 5 of the *Testo Unico*, expressly denied the possibility of

[2147] This Article has been heavily modified by the constitutional reform 3/2001, which, inspired by a federalist vision of the State, transferred numerous competences to the regional administrations.
[2148] In particular, the Agreement of the State-Regions Conference of September 7 2016 157/CSR.
[2149] The Italian Criminal Code, at Article 362 requires all public employees to report to the police or the public procedure any crime related to the cures given during their work if it is automatically prosecutable by the state (*reato perseguibile d'ufficio*).

reporting immigrant migrants for the mere fact of being illegally on the Italian soil. Irregular migrants are thus subjected to the same rule applicable to Italians and legal migrants and have to be reported only if any other crime automatically prosecutable occurs.
The fact that the obligation to report has been repudiated does not mean that the effects of the criminalisation of illegal immigration do no longer affect access to healthcare, as irregular migrants have still a reasonable fear of being reported to authorities when seeking public assistance – which requires them to denounce their irregular status.

8. How do migrant children benefit from the right to education under your national legislation (Article 2 of the first Protocol to the ECHR)?

The right to education is primarily expressed in Article 31 of the Italian Constitution, according to which the Italian Republic protects youth through the implementation of the necessary institutes and structures. This right is recognized by the Convention on the Rights of the Child of 1989, which represents the most authoritative instrument for the protection and promotion of children' rights. The Convention lays down the prohibition to discriminate on the basis of race, sex, language, religion, political opinion and national origin and other factors for the enjoyment of the rights it contains.[2150] Article 38 of the *Testo Unico sull'Immigrazione* of 1998 n. 286 (Consolidated Act on Immigration) provides that all minors, both Italian and foreigners, have the obligation until the age of 16 to take part in the national education system.[2151] They are subject to the provisions of the law concerning the right to education and of access to educational services. The same provision stresses that the effectiveness of these rights is guaranteed by the State, together with the regions (*Regioni*) and the local authorities, also through the activation of special language courses. According to par. 3 of Article 38, the School community welcomes linguistic and cultural differences since they are considered as fundamental values at the basis of mutual respect, cultural exchange and tolerance. For these reasons, the School community promotes initiatives aimed at fostering hospitality and protecting foreigners' cultures and languages of origin, as well as carrying out common intercultural activities. These initiatives are undertaken in cooperation with foreigners' associations, diplomatic and consular delegations and voluntary organizations, taking into consideration different local needs. The availability of the right to education to migrant children has been further clarified by Article 45 PD 394/1999, which provides for foreign children the same right to education of Italian children, even when they do not have a valid title to stay in the Italian territory. It should be noted that Article 6, par. 2 of the mentioned Consolidated Act on Immigration, as modified by Law 94/09, makes sure that the access to the obligatory educational services ("*prestazioni scolastiche*

[2150] Emanuele Rossi, Paolo Addis e Francesca Biondi Dal Monte, *La libertà di insegnamento e il diritto all'istruzione nella Costituzione italiana – Il diritto all'istruzione dei minori stranieri* (Associazione Italiana dei Costituzionalisti, Osservatorio Costituzionale 2006) 13 [Italian].
[2151] ASGI, "Access to Education – Italy", (aida Asylum Information Database), <http://www.asylumineurope.org/reports/country/italy/reception-conditions/employment-education/access-education, accessed 9 June 2017>.

obbligatorie") is not subject to the obligation of the beneficiary to have a residency permit.[2152] This principle applies to the registration of children at the *créche* (attended by children under the age of 3). Under Article 45 of the mentioned act, migrant children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs.[2153] They are automatically integrated in the obligatory National Education System and included in the class appropriate to their age. The Faculty commissions can deliberate upon the admission of the foreign student in a different class, basing their decisions on elements such as the school system of the country of origin, the verification of their abilities and skills and the educational qualification owned, if any. Proposals for the allocation of foreign students in each class are formulated by the Faculty commission, avoiding the creation of classes with a predominant presence of foreigners. The Ministry of Education released a communication on this issue on January 8 2010, underlying that the number of foreigners per class should not exceed its 30%.[2154] However, although there are exceptions, as a general rule the schools cannot refuse to enroll foreign minors.[2155] The Faculty commission also defines the necessary adaptation of the teaching programs, in relation to the competencies of the students. Consequently, specific and individual interventions would be adopted in order to facilitate the learning of the Italian language, using, if possible, the institution's financial and structural resources. The knowledge and practice of the Italian language could also be strengthened by the activation of intensive courses on the basis of specific projects. Finally, it should be noted that foreigners cannot be discriminated with respect to Italians as regards to access to scholarships and other services related to the right to participate to the life of the school community. However, sometimes these rights are subject to the requirement of residence, which cannot be fulfilled for children of parents who are irregular migrants.[2156]

All the measures previously mentioned are aimed at contrasting scholastic discrimination. The general principle of equality can be primarily found in Art. 3 of the Italian Constitution, which states, at its first paragraph, that "every citizen has equal social dignity and is equal in front of the law". Although its authors used the expression "citizen", the right is not limited to them but can be extended to foreigners and stateless people, as already decided by some Constitutional Court's judgments during the 1960s.[2157] The principle of non-discrimination applied to the school system is also protected by Art. 34 of the Italian Constitution, according to which the school is open to everyone and primary education should be mandatory and free. Moreover, Italy adopted different international conventions on the principle of non-discrimination, which have become

[2152] In addition, foreign minors cannot be asked to provide a residence permit to enrol in a school until they have not completed their course of studies, even if the latter ends after the minor turns eighteen years old. *I minori stranieri extracomunitari e il diritto all'istruzione dopo l'entrata in vigore della legge n. 94/2009*, available at: <http://www.meltingpot.org/I-minori-stranieri-extracomunitari-e-il-diritto-all.html>, accessed 15/07/2017.
[2153] ASGI, Access to Education.
[2154] Rossi, Addis e Biondi Dal Monte, La libertà di insegnamento 15.
[2155] Elena Rozzi, Mariella Console, *Minori stranieri e diritto all'istruzione e alla formazione professionale*, 2014, p. 10, available online at <http://www.piemonteimmigrazione.it/mediato/images/inmediares/materiali/manuali/Minori_stranieri_e_diritto_allistruzione_e_alla_formazione_In_Media_Res.pdf>, accessed 15/07/2017.
[2156] Ibid, p. 12.
[2157] Refer in particular to decisions nn. 120/1967, 104/1969, 144/1970, 46/1977, 62/1994, 219/1995.

an integral part of its system.[2158] Nevertheless, its implementation in the sector of education still shows some weaknesses. According to the last Report of the Working Group for the Convention on the Rights of the Child (CRC Group),[2159] Italy should develop specific programs in order to improve the scholastic integration of foreign minors and of minors who are part of minorities. In particular, the Italian State should guarantee the professional, technical and financial resources needed, both for their integration and individual orientation. Moreover, a particular attention should be paid to migrant children and to Roma and Sinti children. The Italian Government is asked to provide for, and financially support, the admission of a cultural mediator, particularly in those schools where the presence of foreign children is higher than the 50%.

The right of education is provided for by two additional pieces of legislation. The first is LD 142/2015, which implements directive 2013/33/EU laying down standards for the reception of applicants for international protection. Art. 21 par. 3 of the mentioned act applies the provisions of art. 38 of the Consolidated Act on Immigration to unaccompanied minors seeking asylum and children of asylum seekers. The second is Law 7 April 2017, n. 47 on the protection of unaccompanied children,[2160] whose enactment has been praised by UNICEF.[2161] Paragraph 3 of Article 14 imposes on all educational institutions to adopt necessary measures to enable the unaccompanied minors to complete their studies since their entry in the reception facilities. However, no additional public financial resources are devoted to perform this task. Furthermore, paragraph 4 protects minors who cannot be identified at the moment of their arrival in the reception facility: indeed, they can obtain the diplomas at the end of their studies even if they turn eighteen while they are completing these studies.

9. How are foreign school and university diplomas recognised in your country (e.g. through national law under the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997) and what are the practical procedures?

9.1. The recognition procedure

In the Italian legal system a diploma is awarded by the competent national authority, upon the successful completion of each cycle of studies. Foreign qualifications must be recognised as equivalent to those awarded in Italy through the so-called **recognition procedure**. In this

[2158] In particular, Italy ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 1965. Furthermore, the same principle is stated in all the main international and European treaties and conventions on the protection of human rights of which Italy is part.

[2159] Gruppo di Lavoro per la Convenzione sui Diritti dell'Infanzia e dell'Adolescenza, *I diritti dell'infanzia e dell'adolescenza in Italia. 9° Rapporto di aggiornamento sul monitoraggio della Convenzione sui diritti dell'infanzia e dell'adolescenza (CRC) in Italia, anno 2015-2016* (2016), par. 4, page 147.

[2160] Legge 7 aprile 2017, n. 47, recante "Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati".

[2161] <https://www.unicef.org/media/media_95485.html>, accessed 15/07/2017.

context, reference will be made only to the rules applicable in Italy in order to implement the CoE/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 1997 (Lisbon recognition Convention), ratified by Italy by Law n. 148/2002.[2162] This Convention has been ratified by all members of the Council of Europe (with exception of Greece and Monaco) and some non-member states.[2163] The aim of this Treaty is to simplify the recognition of qualification granted in one Party in another party; indeed, the recognition procedure tend to be complicated due to the differences between legal systems, national educational systems and legal validity of the qualifications.
In cases where a recognition of a foreign qualification diploma concerns a third country that has not ratified the Lisbon Qualification Convention, the Legislative Decree n. 286 of 1998 and its implementation through the Presidential Decree n. 394 of 1999[2164] lay down specific rules which will not be accounted for in this context.

9.2 General Principles

In order to obtain the recognition in Italy of any foreign qualification, there are three steps to perform in advance in the country of origin. These general principles apply both to countries which have ratified the convention and third parties.

– Legal Translation: an official translation in Italian made by a certified translator with legal validity. The list of the certified translators is provided by the Italian diplomatic offices.[2165]

– Legalisation: a certification of the authenticity of a document provided by the Italian diplomatic offices. Under the Hague Convention of October 5 1961, ratified by Law n.1253/1966, the Endorsement (hereafter apostille) replaces the legalisation.[2166] As a result of the Brussels Convention of 1987, neither the legalisation nor the apostille is necessary for the contracting parties of this Convention.

– Declaration of Value: a document, issued by the Italian diplomatic offices, containing information about the educational qualification obtained abroad. This document provides information on the legal status and nature of the issuing institution, the access

[2162] Law n. 148/2002 (Ratification and Implementation of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, approved in Lisbon on April 11 1997, and compliance rules of the internal legislation) [Ratifica ed esecuzione della Convenzione sul riconoscimento dei titoli di studio relativi all'insegnamento superiore nella Regione europea, fatta a Lisbona l'11 aprile 1997, e norme di adeguamento dell'ordinamento interno]
[2163] Australia, New Zealand, Belarus, Holy See, Israel, Kazakhstan, Kyrgyz Republic and Tajikistan.
[2164] Decree n. 394 of the President of the Republic of Italy (Regulation to implement the Consolidated Law provisions governing immigration and the status of foreigners) 1999, [Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero] Art. 46
[2165] Decree n. 445 of the President of the Republic of Italy (Consolidated Law on provisions and regulations on administrative documentation) 2000 [Testo unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa] Art. 33
[2166] List of the competent authorities for the *apostille* for each country: <https://www.hcch.net/en/instruments/conventions/authorities1/?cid=41>

requirements to the study programme, the legal duration of the studies and the value of the qualification in the country of origin. Instead of the Declaration of Value, the so-called Diploma Supplement is required in the countries in the European Higher Education Area under the Bologna Process.[2167]

These documents are to be presented to the competent authorities: the Local School Offices (Uffici Scolastici Provinciali) for the recognition of school diplomas and the University Administrative Offices (Segreterie Universitarie) for the recognition of high-school diplomas giving access to the University and university diplomas.

9.3 The Lisbon recognition Convention and its implementation by Italy

The Convention concerns: 1) the recognition of qualification giving access to higher education; 2) the recognition of higher education qualifications; 3) the recognition of qualifications held by refugees, displaced persons and persons in a refugee-like situation. In Italy the recognition procedure, and the sources of law regulating it, vary depending on the purpose for which an application for recognition of a foreign qualification is made. An application for recognition may be made for **academic purposes**, mainly to get access to Universities (first cycle programmes) or to pursue further studies (second/third cycles programmes) or for the purpose of acceding to an **employment in the public administration**, or for other purposes.[2168]

9.4 Recognition of foreign qualifications for academic purposes

The recognition of foreign qualifications to get access to higher education studies (first cycle programmes) or to further University studies (second and third cycles programmes) is regulated by Law n. 148 of July 11 2002. One of the most important aspect of this law is that art. 9 abolishes the principle of nostrification (*equipollenza*), which implied the need to prove that a foreign qualification is equivalent to one earned in Italy, as the exclusive means to have a foreign qualification recognised, regardless of the purpose of the application for recognition.
The application for recognition of foreign qualification for academic purposes should be made to Universities and AFAM Institutions (*Alta Formazione Artistica e Culturale)*. These are designated by art. 2 of the competent authorities. The decision on the application for recognition should be made within 90 days from the application. The university may decide to fully recognize the qualification, to refuse the recognition or to only partially recognize it (this means that the interested person has to pass further exams or to complete a period of internship before being able to access the university studies).[2169] In case the applicant wishes to appeal the decision of

[2167] Bologna Process: <http://www.eua.be/policy-representation/higher-education-policies/the-european-higher-education-area-and-the-bologna-process>
[2168] For more detailed information see CIMEA: Information Centre on Academic Mobility and Equivalence, in compliance with the Art. IX.2 of the Lisbon Recognition Convention <http://www.cimea.it/en/services/services-recognition-of-qualifications/recognition-of-qualifications.aspx>
[2169] Access to University studies (first cycles programmes) is granted if the following conditions are met: the applicant has an official certificate from the foreign secondary school; the qualification obtained allows entry to comparable first cycle programmes in the relevant foreign system and the qualification is obtained after 12 years of

refusal, he/she has to file a complaint to the Regional Administrative Tribunal *(TAR),* within sixty days.

9.5 The recognition of qualifications for non-academic purposes

A recognition of foreign qualifications may be necessary once the foreigners has completed his/her course of studies and wishes to use his qualifications to a) seek employment in the public sector or b) to obtain a career progress in the public administration, c) to be registered in job seeking centres or d) to get access to internships (*praticantati*) necessary to get access to regulated professions. This subject-matter is regulated by the Presidential Decree n. 189 of 2009.[2170] This decree applies to the recognition of diplomas awarded by higher education Institutes of the contracting parties to the Lisbon recognition Convention.

In order to take part in public competitions leading to employment in the Italian public administration (case *a)* above), the holder of a foreign qualification must apply for recognition to the Italian Ministry of Education, University and Research (MIUR) and the *Presidenza del Consiglio dei Ministri - Dipartimento della Funzione Pubblica* (art. 2).[2171] The competent authority to carry out the recognition is the President of the Council of Ministers (*Presidente del Consiglio dei Ministri*), upon proposal of the competent ministry.

In all the other cases (*b)*, *c)*, *d)* above) the individual assessment of the application for recognition is carried out by the Italian Ministry of Education, University and Research (MIUR). The applicant may submit his/her application directly to the interested public administration (art. 3 par. 2) and the final decision will be made within 90 days by the MIUR; such a decision will be communicated to the administration that forwarded the application for recognition. An internal appeal procedure (*procedura di riesame*) is provided for in case the application is rejected.

9.6 The recognition of qualifications held by refugees, displaced persons and persons in a refugee-like situation

For refugees, displaced persons and persons in a refugee-like situation,[2172] the Legislative Decree n. 251 (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) of 2007 is applicable. In particular, its art. 26, § 3 states that persons who are qualified as refugees or have been granted subsidiary protection status are subject to the same provisions regulating the recognition of diplomas, certificates and other foreign qualifications which are applicable to Italian citizens.

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schooling. In addition, should a national test or final exam be necessary to enter a higher education institution, this requirement is also mandatory for the applicant.

[2170] DPR n. 189 (Regulation on the recognition of academic qualifications) 2009 [Regolamento concernente il riconoscimento dei titoli di studio accademici, a norma dell'articolo 5 della legge 11 luglio 2002, n. 148]

[2171] The procedure is regulated by art. 38, par. 3, of the Legislative Decree n. 165 (General rules on the work in the public administrations) 2001 [Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche].

[2172] Section VII of the Lisbon recognition Convention.

10. How is participation of migrants in political decisions regulated in your national legislation? Are they legally allowed to participate in their country of residence the same way as in their country of origin?

In the Italian legal system there is an inseparable tie between citizenship and participation to political decisions. "The long-term non-EU foreign residents do not enjoy any kind of political rights, not even at the local level, unless they naturalize".[2173] The only exception is made for EU citizens in municipal elections. The main obstacle in the recognition of political rights to migrants is article 48 of the Constitution that reserves the participation in political life to citizens. Although there have been attempts to expand migrants' influence in political life at all levels, only a cohesive political will can overcome the constitutional obligation.

10.1. Participation in National Political Life

Foreigners do not have the right to vote for the election of the Parliament. Proposals to extend the possibility to vote to foreigners have been made only in 1996. The draft Turco-Napolitano Act (Consolidated Act n. 286 of 1998) included the provision for third country nationals to vote after 5 years of regular residence in the country. However, this provision was not retained in final text of the law. In more recent years, the issue of participation in political life by migrants has gained momentum in the political debate. The Democratic Party (*Partito Democratico*) granted the right to vote in primary elections (*elezioni primarie*) to designate the candidate to the Prime Minister held in December 2012, December 2013 and April 2017 to all documented residents.

10.2. Participation in Political Life at Regional Level

There is no national legislation concerning the right to vote at a regional level. The Constitutional Court, in judgment n. 196/2003 has recognized the possibility for Regions to legislate even in absence of a national legal framework, implementing article 122.1 of the Constitution. In this framework, two regions, Emilia Romagna and Toscana, in 2004 included in their Statutes the possibility for legal residents to vote and to be voted in regional elections.[2174]
Article 3, par. 6, of Statute of Tuscany stated that: "The Region promotes, in respect of constitutional principles, the extension of the right to vote to immigrants". However, judgement of the Constitutional court n. 372 of 2004 considered this provision not to have a binding nature, but only a cultural/political purpose.[2175] With judgment n. 379 of 2004 the Constitutional Court considered article 2, paragraph 1, letter f) and article 15 paragraph 1 of Emilia Romagna Statute inconsistent with articles 1, 48, 117, 121 and 122 of Constitution insofar as it extended

[2173] Guido Tintori, *Access to Electoral Rights*, EUDO Citizenship Observatory Robert Schuman Centre for Advanced Studies [2013], p. 1.
[2174] Valeria Ferraris, *La partecipazione politica degli stranieri a livello locale*, Working paper by the International and European Forum on Migration Research [Italian].
[2175] The provision is "inconsistent with article 48 of the Constitution and with articles 117, 121 and 138" that entitles the Parliament with exclusive competence to, respectively, modify electoral standards and to amend the Constitution.

electoral rights (including participation in referendum and other public consultations) to immigrants and legal residents in the Region.[2176]

The provisions of the two Statutes have been judged by Council of State (higher administrative court) and the Constitutional Court either unconstitutional – electoral rights as confined to citizens- or as an invasion of central state competences in the field of electoral rights and status of migrants.[2177]

10.3. Participation to municipal elections ("elezioni comunali") by nationals of EU member States and third country nationals

The right to vote and to stand as a candidate at municipal elections is recognized by Article 22 par. 1 of the Treaty on the Functioning of the European Union and by art. 40 of the Charter of the fundamental rights to all citizens of EU members. The latter provision states: "Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State." A more detailed discipline can be found in Directive 94/80/EC which was adopted after the Maastricht Treaty introduced the concept of European citizenship, including the right to stand and to vote in municipal election. The national legislation implementing this Directive is the Legislative Decree n. 197 (Implementation of Directive 94/80/EC concerning the exercise of the right to vote and to stand as a candidate in municipal election) of 1996. Under this law, EU citizens can vote for the major and for local bodies such as *consiglio del comune* (city council) and *circoscrizione* (district) of the city where they are registered in the electoral list of voters. They can be elected *consigliere* (councilman) and members of the *giunta del comune* (municipal council); however, they cannot be appointed as *vice-sindaco* (deputy major).

In order to vote EU citizens are required to submit a request to the mayor of the Municipality where they reside, 40 days before the elections. They are therefore enrolled in a special electoral registry called *Liste aggiunte* (additional lists).[2178] However, the right to stand as a candidate has been seriously restricted: the non-citizen has the only right to be appointed as city councillor or alderman, never as mayor or deputy mayor, as stated in article 1.5 of Law n. 197 1996.[2179] Art. 2 par. 4 of the Consolidated Law on Immigration n. 286 1998 [*Testo Unico sull'Immigrazione*] states that: "the foreigner legally resident in Italy participates in public local life." However, this provision is not in itself sufficient to enable third country nationals to vote. It should be noted that Italy has made a reservation to the Strasbourg Convention on the Participation of Foreigners in Public Life at a Local Level. According to Chapter C of the Convention, each

[2176] Renzo Dickmann, Le sentenze della Corte sull'inefficacia giuridica delle disposizioni "programmatiche" degli Statuti ordinari, (Federalismi.it) <http://federalismi.it/ApplOpenFilePDF.cfm?artid=2760&dpath=document&dfile=10022005120016.pdf&content=Le+sentenze+della+Corte+sull%27inefficacia+giuridica+delle+disposizioni+%27%27programmatiche%27%27+degli+Statuti+ordinari.+Nota+a+Corte+cost.,+n.372/04,+378/04+e+379/04+-+stato+-+dottrina+-+> accessed 10 July 2017 [Italian].

[2177] D'Auria, *L'immigrazione e l'emigrazione, in Trattato di diritto amministrativo*, a cura di Cassese, 2007, 3rd edition, Milano, Giuffrè, p 237 [Italian].

[2178] Tintori, cit., p. 7.

[2179] S. Bonfiglio, *Interpretazione costituzionale e cittadinanza inclusiva*, [2003] La cittadinanza europea [Italian].

Contracting Party should grant every foreign resident the right to vote and to stand for election in local authority election (art. 6). However, Italy, at the time of ratification of this Convention, declared that it will confine the application of this instrument to Chapter "A" and "B", placing a reservation on Chapter "C".

11. How can migrants acquire citizenship in the country? Is there a possibility of double nationality?

11.1. Acquisition of Italian citizenship: *Iure sanguinis*, *iure soli*, judiciary ruling on natural paternity/maternity and adoption

Law n. 91 of 1992[2180] lays down rules concerning the Italian citizenship. There are several ways to acquire Italian nationality: automatic acquisition, acquisition by claim and naturalization.[2181] In this context, we will focus on naturalization, merely hinting at the other ways of acquiring the citizenship.

Article 1 of the law establishes a principle of *ius sanguinis* by which citizenship is automatically passed on either from an Italian parent, mother or father, to their child. Individuals born in the territory of the Republic will acquire the Italian citizenship only if their parents are unknown, stateless or cannot pass on their citizenship to their child according to the laws of the State of which they are citizens or do not have known parentage on the Italian territory and whose natural citizenship is impossible to ascertain. A further case of automatic acquisition concerns the foreign minor who is recognized or declared Italian by filiation. Lastly, citizenship extends to those foreign minors adopted by an Italian citizen.[2182]

Pursuant Article 4, the acquisition of citizenship by claim is threefold. A foreigner or stateless person whose direct ancestors up to the second degree were Italian citizens by birth can become citizen if at least one of these three requirements are fulfilled: a) service in the Italian armed forces; b) employment by the Italian government, even abroad; c) residence in Italy for at least two years before reaching to the age of 18 years old; d) Foreigners born on the Italian soil can claim Italian citizenship after continuous legal residence in Italy (up to 18 years old) and attendance at a school recognized by the Italian State. The interested person must submit the request one year before turning 18. Lastly, there is a right to claim Italian nationality by the foreign spouse of an Italian citizen, in case certain conditions are met: a) legal residence in Italy for a period of at least two years (or three if the couple is living abroad); b) absence of a criminal

[2180] Law n. 91 (Citizenship Legislation) 1992 [Legge in materia di cittadinanza]. English version available at: <http://www.refworld.org/docid/3ae6b4edc.html>

[2181] Bruno Barel, *La cittadinanza* a cura di Paolo Morozzo della Rocca, *Manuale breve di Diritto dell'Immigrazione* (Maggioli 2013) 363. [Italian].

[2182] Farnesina, Ministero degli Affari esteri e della Cooperazione Internazionale, (Minister of International and International Cooperation), "Consular services, Citizenship", <http://www.esteri.it/mae/en/italiani_nel_mondo/serviziconsolari/cittadinanza.html> last accessed on the 22nd of June.

record for serious crimes; c) the applicant should not be considered a threat to national security and public order (Art. 5).

11.2. Acquisition of citizenship by naturalization

Outside the mentioned cases, every foreigner can apply for naturalization. However, it is important to remember that this procedure is discretionary and depending by a decree of the President of the Republic, upon proposal of the Ministry of the Interior, having heard the Council of State. The law prescribes a legal residence in the country for a required minimum of time. The amount depends upon the category of individuals interested: 3 years for descendants of former Italian citizens up to the second degree and for foreigners born on Italian soil; 4 years for citizens of a European Union country; 5 years for stateless persons and refugees, as well as for adult foreigners over the age of 18 adopted by Italian citizens; 7 years for children adopted by Italian citizens before the entry into effect of Law no. 184/1983; 10 years for the others. However, no period of legal residence is required for foreigners who have been employed in the service of the Italian Republic for a period of at least 5 years, also abroad (Art. 9). Importantly, the act is adopted upon the effective and established integration of the foreigner in the Italian society. For this reason, it has been pointed out by the jurisprudence that the naturalization process is largely discretionary in nature. In fact, the concerned administration does not hold itself to the mere checking of the legal requirements, but it attempts to ascertain a true 'Italian sentiment',[2183] to the point that it includes in its evaluation any element regarded as relevant, even historical facts.[2184] Regarding the competent organ, whether the applicant's residency is in Italy or abroad, the application for citizenship can be submitted either to an authorized police office (*Prefettura*) in Italy or to a competent Italian consulate in the foreign country. Nevertheless, as of 18 of June 2015, applications must be submitted exclusively electronically.[2185]

11.3. Dual Citizenship

A clear principle that allows dual nationality has been established in Law n. 91 of 1992, with Article 11. Hence, as of after 15 August 1992, Italian citizenship is no longer lost in concomitance with the acquisition of other citizenship, unless there is an express and formal renunciation by the Italian citizen, except in some exceptional circumstances[2186]. To be noted, minors do not lose their Italian citizenship if one or both parents lose it or acquire foreign citizenship.[2187]

[2183] According to Art. 10 of the Law, the applicant must swear to be faithful to the Republic and to observe the Constitution and the laws of the State.
[2184] Bruno Barel 'La cittadinanza', 384-385.
[2185] *See* Law n. 94 (Public Security Legislation) 2009 [Disposizioni in materia di sicurezza pubblica], Italian version available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-07-15;94!vig>. According to the case law, the decision can be appealed only for lack of legitimacy, without any possible scrutiny based on the motivation, if it is logical and coherent, *see* Cons. Stato, Sez. VI, 25 Marzo 2009, n.1788.
[2186] *See* Articles 11 and 12 of the Citizenship Law.
[2187] Farnesina, "Consular services, Citizenship".

11.4. The reform of the law: renewed *ius soli* and the new *ius culturae*

In 2013, the Italian Institute of Statistics estimated that almost 80,000 babies were born in Italy from non-Italian parents.[2188] On October 13 2015, the Chamber of Deputies of the Italian Parliament approved a reform to the current legislation on the acquisition of Italian citizenship, which was transmitted to the Senate for its final discussion and approval. The intention of the proposal is to modify the existing legislation on the acquisition of citizenship of minors whose parents are not Italian citizens, granting another particular case for acquiring citizenship by birth (*ius soli*) and an additional one when the child has concluded a study cycle in Italy (the so called *ius culturae*). The first requires a formal declaration from one of the parents, who must be a legal resident,[2189] before the minor reaches the legal age. In the second case the minor is granted citizenship if these conditions are satisfied: being born in Italy or having entered the country before turning twelve years old, together with the regular attendance of at least one cycle of studying for a minimum of five years. Again, one parent, with a valid residence permit, must present the request. Furthermore, the reform introduces a new case of naturalization for foreigner minors, discretionary in nature, which allows those who entered the country before eighteen years old, legally resident in Italy for at least six years and successfully completed a cycle of education.[2190]

12. How is your country assisted by EU programmes and funding with regard to the integration of migrants?

12.1. The EU Policy Framework for migrants' integration

Immigrant integration policies fall within competence of the Member State, but the European Union has always been aware of topical role of migrants in economic, social and cultural development of host countries. The key to maximize the benefits of migration is the successful integration of migrants in the fabric of our societies. Therefore, since the 1999 Treaty of Amsterdam the EU has periodically set priorities and goals to drive EU policies, legislative proposals and funding opportunities, aimed at supporting the process of integration, particularly in countries where the flow of immigration is strong, like Italy.[2191] The 7 June 2016 Action Plan on the integration of third country nationals is the latest goals setting document published by the European Commission (EC). The Action Plan provides a comprehensive framework to support Member States' efforts in developing and strengthening their integration policies, and describes the concrete measures the Commission will implement in this regard. All the policy actions

[2188] *See,* Istat, Italian Institute of statistics, English version at: <http://dati.istat.it/?lang=en>.
[2189] He or She must hold either a permanent permit of stay or long-term permit.
[2190] Camera dei Deputati, Commissione Affari Costituzionali, Cittadinanza ed Immigrazione, available at: <http://www.camera.it/leg17/465?tema=integrazione_cittadinanza> [Italian], last accessed on the 21st of June.
[2191] For an overview of the development of the EU policy work on integration, *see* European Commission, Migration and Home Affairs, Integration, <https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/integration_en>.

relevant for the integration area are included in the Plan: pre-departure and pre-arrival measures, education, employment, access to housing and health care, active participation and social inclusion. The instrument provides also tools for strengthening coordination between the different actors working on integration at national, regional and local level.[2192] For the key to integration is the creation of jobs opportunities, the EC main instrument is the European Social Fund (EFS), that aims at supporting inclusion for vulnerable groups through ensuring better jobs. Italy is using EFS funds to increase employment possibilities for young people, including disadvantaged groups, such as migrants.[2193]

12.2. The EU Funding: the Integration Fund (2007-2013) and the Asylum, Migration and Integration Fund (2014-2020)

In order to implement the policy framework, an adequate, coherent and flexible set of financial resources are essential for the realization of the EU objectives on integration of migrants in host societies. For the period 2007-2013, the European Fund for the Integration of non-EU immigrants (EIF) was financed, with a budget of EUR 825 million, as part of the General Programme "Solidarity and Management of Migration Flows" (SOLID).[2194] The EIF aimed at supporting Member States in the formulation, realization and evaluation of policies and specific actions to ensure the integration of non-EU citizens to be part of the host country. The target group is those migrants who legally reside in the country, particularly women and children. According to the programme, Member States have to report on the activities and actions carried out for the process of integration of migrants. Remarkably, more than 300 programs were enacted by Italy.[2195] At the moment, Italy is supported on its integration policy by the "Asylum, Migration and Integration" Fund (AMIF) with a budget of EUR 3.137 billion for 7 years. Not so different from the previous one in the objectives, the AMIF focuses on supporting legal migration to EU States in line with the labour market needs and promoting the effective integration of non-EU nationals.[2196] The Italian Refugee Council has in particular benefited from

[2192] European Commission, European Website on integration, Migrant Integration Information and good practices, EU policy framework for migrant integration, <https://ec.europa.eu/migrant-integration/the-eu-and-integration/framework>.

[2193] European Commission, European Social Fund, The EFS in Italy, <http://ec.europa.eu/esf/main.jsp?catId=386>. An excellent example of the merits of this funding project is the "Diamante Impresa" project, whose objective is to increasing migrants' employment rate, by introducing incentives to get them employed or to start their own business, see The EFS in the News, Immigrants to Italy get help to find jobs or start a business, 13/01/2017, <http://ec.europa.eu/esf/main.jsp?catId=67&langId=en&newsId=2713>.

[2194] An action developed by the European Commission and aimed at ensuring an equal sharing of responsibilities between Member States for the management of the Union's external borders and for the implementation of common asylum and immigration policies. *See*, <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/integration-fund_en>.

[2195] Ministero degli Interni, Fondo Europeo per l'Integrazione di cittadini di paesi terzi (2007-2013) programmi e strumenti, 7, available at: <http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/21/0180_Volumetto_FEI-ANCI-DEF.pdf> [Italian].

[2196] This Fund will also provide financial resources for the activities and future development of the European Migration Network (EMN). EMN aims to respond to EU institutions' and to EU State authorities' and institutions' needs for information on migration and asylum by providing up-to-date, objective, reliable and comparable data, with a view to supporting policy-making. *See*, <https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en>.

the fund. Among the main successful projects focusing on integration two projects are worth mentioning: "Legami Integri", which supports a wide range of migrants' inclusions projects and "FAMI-glia", aimed at promoting family reunifications schemes.[2197]

Conclusions

Everyday, Italy has to face a non-stop flow of migrants: the national legislation is trying to comply with the short and long term evolution of this phenomenon, even if it is difficult to keep up with all the needs emerging from this situation.

Due to the high numbers of migrants and asylum seekers arrived in Italy in the last years, the Italian Government has created the "Hotspot system", in order to implement the new approach launched by the European Agenda for migration in 2015 and to provide first assistance to migrants. Regarding the treatment of EU and non-EU migrants, EU migrants have a more favourable treatment, as they have a right of residence in Italy up to 3 months without any condition, while third country nationals can be admitted in Italy depending on the reason and duration of their stay. Italy introduced in 2007 the Long Term Residence Permit for foreigners legally residing in Italy for more than 5 year, who can prove to have a minimum income and knowledge of Italian language. In Italy there are different authorities dealing with migrants, most of all directorates belonging to Ministry of Interiors, with jurisdiction in migration issues like reception and integration. Talking about numbers, in the last year application for asylum in Italy increased up to 47% compared on 2016. Most of the applications are from men coming from North Africa. As already known, Italy is the 3rd EU country with the largest number of non-nationals living in its territory, and this number is going to increase: in fact, in the first 6 months of 2017 more than 93.000 migrants disembarked on the Italian coast.

Regarding the implementation of ECHR decisions, ECtHR's judgments have deeply influenced Italian law and practice: Italy breached the provisions of ECHR several times, with violations related on access to justice, right to an interpreter at court, right to information. The new hotspot approach would allow the reception of migrants in structures where operators of the UNHCR and of the IOM can deliver them all of the relevant information.

The shortcomings of the Italian system have been addressed several times by the Court to bring it in line with human rights standards; the full compliance with these standards is a goal still to be reached.

Regarding the implementation of recommendations against racism, Italy's legislation presents some lacunae. It hasn't enacted an ad hoc ordinary law on equal treatment and prohibition of discrimination; anyway, there are sector-related pieces of legislation providing for equal treatment between foreigners and Italian citizens (*i.e.*,Bossi Fini Act). We can observe positive actions regarding housing and right to education even if data on access to work, housing and

[2197] Italian Refugee Council (Consiglio Italiano per i Rifugiati), for a complete list of active projects *see*: <http://www.cir-onlus.org/it/cosafacciamo/i-nostri-progetti/14-progetti/2233-frontiere-minori> [Italian].

scholarization display a strong regional disparity, with the local authorities often being unable to guarantee an effective application of the national and supranational legislation on integration and non-discrimination.

Every migrant, regular or irregular, has the same right to seek health assistance from the Italian State. the inscription to the National Healthcare System is mandatory for legal migrant workers or work-seekers, asylum seekers, and those who have been admitted in Italy for family reunification, humanitarian reasons or adoption. Irregular migrants still have the right to seek from public service "urgent" and "essential" medical care, and the national legislation expressly denied the possibility of reporting them for the mere fact of being illegally on the Italian soil.

All minors, both Italian and foreigners, have the obligation until the age of 16 to take part in the national education system, also through the activation of special language courses. The access to the obligatory educational services is not subject to the obligation of the beneficiary to have a residency permit. Migrant children have access to the same public schools as Italian citizens and are entitled to the same assistance and arrangements in case they have special needs.

Although there have been attempts to expand migrants' influence in political life at all levels, foreigners do not have the right to vote for the election of the Parliament, neither at regional level. EU citizens can vote for the major and for local bodies. They can be elected as councilman and members of the municipal council.

National law establishes a principle of ius sanguinis by which citizenship is automatically passed on either from an Italian parent, mother or father, to their child. Outside the mentioned cases, every foreigner can apply for naturalization: the law prescribes a legal residence in the country for a minimum of time. A clear principle that allows dual nationality has been established in Law n. 91 of 1992. On October 13 2015, the Chamber of Deputies of the Italian Parliament approved a reform to the current legislation on the acquisition of Italian citizenship, which was transmitted to the Senate for its final discussion and approval. The intention of the proposal is to modify the existing legislation granting another particular case for acquiring citizenship by birth (ius soli) and an additional one when the child has concluded a study cycle in Italy (ius culturae).

Regarding the use of EU Funding on Integration, Italy is using EFS funds to increase employment possibilities for young people, including disadvantaged groups, such as migrants. More than 300 programs were enacted and, at the moment, Italy is supported on its integration policy by the "Asylum, Migration and Integration" Fund (AMIF) with a budget of EUR 3.137 billion for 7 years.

Table of legislation

Italian Constitution	Article 48. "*All citizens, male and female, who have attained their majority, are electors.* *The vote is personal and equal, free and secret. The exercise thereof is a civic duty.* *An Act of Parliament shall establish the conditions and the procedures under which Italian nationals resident abroad may exercise their right to vote in Italian elections, and shall guarantee its effectiveness. For this purpose a 'Foreign Constituency' shall be created to which Members to both Houses of Parliament shall be elected. The number of seats shall be established by a constitutional law and comply with the criteria enacted by Act of Parliament.* *The right to vote cannot be restricted except for civil incapacity or as a consequence of an irrevocable penal sentence or in cases of moral unworthiness as laid down by law.*"
	Article 117. "*Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU-legislation and international obligations.* *The State has exclusive legislative powers in the following subject matters:* *a) foreign policy and international relations of the State; relations between the State and the European Union; right of asylum and legal status of non-EU citizens;* *b) immigration;* *c) relations between the Republic and religious denominations;* *d) defence and armed forces; State security; armaments, ammunition and explosives;* *e) the currency, savings protection and financial markets; competition protection; foreign exchange system; state taxation and accounting systems; equalisation of financial resources;* *f) state bodies and relevant electoral laws; state referenda; elections to the European Parliament;* *g) legal and administrative organisation of the State and of national public agencies;* *h) public order and security, with the exception of local administrative police;* *i) citizenship, civil status and register offices;* *l) jurisdiction and procedural law; civil and criminal law; administrative judicial system;* *m) determination of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory;* *n) general provisions on education;* *o) social security;* *p) electoral legislation, governing bodies and fundamental functions of the Municipalities, Provinces and Metropolitan Cities;* *q) customs, protection of national borders and international prophylaxis;* *r) weights and measures; standard time; statistical and computerised co-ordination of data of state, regional and local administrations; works of the intellect;*

	s) protection of the environment, the ecosystem and cultural heritage. *Concurring legislation applies to the following subject matters: international and EU relations of the Regions; foreign trade; job protection and safety; education, subject to the autonomy of educational institutions and with the exception of vocational education and training; professions; scientific and technological research and innovation support for productive sectors; health protection; nutrition; sports; disaster relief; land-use planning; civil ports and airports; large transport and navigation networks; communications; national production, transport and distribution of energy; complementary and supplementary social security; harmonisation of public accounts and co-ordination of public finance and the taxation system; enhancement of cultural and environmental assets, including the promotion and organisation of cultural activities; savings banks, rural banks, regional credit institutions; regional land and agricultural credit institutions. In the subject matters covered by concurring legislation legislative powers are vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation.* *The Regions have legislative powers in all subject matters that are not expressly covered by State legislation.* *The Regions and the autonomous provinces of Trent and Bolzano take part in preparatory decision-making process of EU legislative acts in the areas that fall within their responsibilities. They are also responsible for the implementation of international agreements and EU measures, subject to the rules set out in State law which regulate the exercise of subsidiary powers by the State in the case of non-performance by the Regions and autonomous provinces.* *Regulatory powers shall be vested in the State with respect to the subject matters of exclusive legislation, subject to any delegations of such powers to the Regions. Regulatory powers shall be vested in the Regions in all other subject matters. Municipalities, provinces and metropolitan cities have regulatory powers as to the organisation and implementation of the functions attributed to them.* *Regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women.* *Agreements between a Region and other Regions that aim at improving the performance of regional functions and that may also envisage the establishment of joint bodies shall be ratified by regional law.* *In the areas falling within their responsibilities, Regions may enter into agreements with foreign States and with local authorities of other States in the cases and according to the forms laid down by State legislation*"
	Article 121. "*The organs of the Region are: the Regional Council, the Regional Executive and its President.* *The Regional Council shall exercise the legislative powers attributed to the Region as well as the other functions conferred by the Constitution and the laws. It may submit bills to Parliament.*

	The Regional Executive is the executive body of the Region. *The President of the Executive represents the Region, directs the policy-making of the Executive and is responsible for it, promulgates laws and regional statutes, directs the administrative functions delegated to the Region by the State, in conformity with the instructions of the Government of the Republic.*"
	Article 122. "*The electoral system and the cases of ineligibility and incompatibility of the President, the other members of the Regional Executive and the Regional councillors shall be established by a regional law in accordance with the fundamental principles established by a law of the Republic, which also establishes the term of elective offices.* *No one may belong at the same time to a Regional Council or to a Regional Executive and to one of the Houses of Parliament, to another Regional Council, or to the European Parliament.* *The Council shall elect a President amongst its members and a Bureau.* *Regional councillors are not answerable for the opinions expressed and votes cast in the exercise of their functions. The President of the Regional Executive shall be elected by universal and direct suffrage, unless the regional statute provides otherwise. The elected President shall appoint and dismiss the members of the Executive.*"
	Article 138. "*Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting.* *The said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one fifth of the members of a House or five hundred thousand electors or five region councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes.* *A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members.*"
Statute of the Region of Tuscany	Article 3: General Principles. "*1. The activities of the regional authority are based on the principles of the Constitution of Italy and the agreements between States on the European Constitution.* *2. The objectives of the regional authority include enabling individuals to achieve the full potential of their development, and to foster the principles of freedom, justice, equality, solidarity and respect of personal dignity and human rights.* *3. The regional authority upholds the principles of social and institutional subsidiarity; it seeks policy integration in autonomous municipalities and recognizes and fosters social cooperation and its free development.* *4. The regional authority guarantees participation in regional political issues to all those who reside in Tuscany and to Tuscans resident outside Italy.* *5. The regional authority fosters the right of all individuals who reside in Tuscany and Tuscans resident abroad to participate in regional policy issues .*

	6. Within the principles of the Constitution of Italy, the regional authority favours extending voting rights to immigrants. "
Statute of the Region of Emilia-Romagna	Article 15: Participation Rights. "*1. Within the framework of the constitutionally recognized faculties, the Region recognizes and guarantees to all those who reside in a municipality of regional territory the rights of participation contemplated in this Title, including the right to vote in referendums and other Forms of popular consultation.* *2. The Region recognizes and promotes democratic forms of association and self-management in the respect of their autonomy and assures organizations that express widespread or collective interests the right to make known and publicly exchange their opinions and assessments on matters of regional competence, through appropriate consultation mechanisms.* *3 Any person carer of general or private interest as well as bearers of interest in an associate form that may be prejudiced by a regional act may have the right to intervene in the process of formation of the same, in accordance with the rules laid down by the By-Laws and the Laws regional.* *4 The regional laws define the limits and the rules of implementation of the direct democracy institutes covered in this Title.*"
Law n. 91/1992 (Citizenship Law)	Article 1 "1.The following shall be citizens by birth: (a)children whose father or mother are citizens; (b)persons born in the territory of the Republic both of whose parents are unknown or stateless, or who do not have the citizenship of their parents under the law of the State to which the latter belong. 2. Children found in the territory of the Republic whose parents are unknown shall be deemed citizens by birth in the absence of proof of their possession of any other citizenship."
	Article 2 "1.Recognition or judicial declaration of the filiation of a person while he or she is still a minor shall determine the person's citizenship in accordance with the provisions of the present Act. 2. If a person whose filiation is recognized or declared is of full age, he or she shall retain his or her citizenship status, but may declare, within one year of such recognition or judicial declaration, or of the declaration that foreign legislation has effect, that he or she chooses the citizenship determined by the filiation. 3. The provisions of this article shall also apply to children the paternity or maternity of whom cannot be declared, provided their right to maintenance has been judicially recognized."
	Article 3 "1. A foreign minor adopted by an Italian citizen shall acquire citizenship.2. The provision of paragraph 1 shall also apply to persons adopted prior to the date of entry into force of this Act. 3. If the adoption of an adopted person is revoked by that person, he or she shall loose Italian citizenship, provided he or she possesses or has reacquired another citizenship. 4. In other cases or

	revocation the adopted person shall retain Italian citizenship. However, if the adoption is revoked while the adopted person is of full age, he or she may, within one year of such revocation, renounce Italian citizenship, provided he or she possesses or has reacquired another citizenship."
	Article 4 "1.An alien or stateless person whose father or mother, or one of whose direct ascendants in the second degree were citizens by birth shall become a citizen: (a)if he or she actually performs military service for the Italian State, having previously expressed the wish to acquire Italian citizenship; (b)if he or she obtains public employment in the service of the State, including service abroad, and declares the wish to obtain Italian citizenship; (c)if, having reached full age, they have had legal residence for at least two years in the territory of the Republic and declare, within one year of attaining their majority, that they wish to obtain Italian citizenship. 2. Aliens born in Italy who have been legally resident in Italy up to the attainment of their majority shall become citizens if, within one year of that date they declare the wish to obtain Italian citizenship."
	Article 5 "The alien or stateless spouse of an Italian citizen shall acquire Italian citizenship if he or she has been legally resident for at least six months in the territory of the Republic, or for three years after the date of the marriage, if the latter has not been dissolved or annulled or has not ceased to have civil effects and there is no legal separation."
	Article 9 "1.Italian citizenship may be granted by Order of the President of the Republic upon the recommendation of the Minister for the Interior, following consultation of the Council of State, to: (a)aliens whose father or mother or one of whose direct ascendants in the second degree have been citizens by birth, or who were born in the territory of the Republic and who, in both these cases, have been legally resident in the territory for at least three years, subject to the provisions of article 4, paragraph 1, subparagraph (c); (b)aliens of full age who have been adopted by an Italian citizen and who have been legally resident in the territory of the Republic for at least five years after their adoption; (c)aliens who, for at least five years, have been in the service of the State, including service abroad; (d)citizens of a State member of the European Community who have been legally resident for at least four years in the territory of the Republic; (e)stateless persons who have been legally resident for at least five years in the territory of the Republic; (f)aliens who have been legally resident for at least ten years in the territory of the Republic. 2. By an Order of the President of the Republic made following consultation of the Council of State and consideration by the Council of Ministers, upon the recommendation of the

	Minister for the Interior and in agreement with the Minister for Foreign Affairs, citizenship may be granted to an alien who has rendered eminent services to Italy, or where its granting is in the special interest of the State."

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