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Chair: Comparative Public Law

Migrant reception policies and procedures: A comparative study between Italy and Spain

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Introduction

Migration is a phenomenon that has always characterized the international community and continues to do so. Each state in its path has generated migratory flows. For this reason, the theme of migration has led to the development of various studies to outline a general picture, although it has not always been easy because, as will be seen, each flow has been characterized by different reasons and contexts. In this scenario, the main purpose of this thesis is to make a comparison between Spain and Italy with regard to the phenomenon of migration specifically in reception systems. In recent years both countries have been protagonists of a huge number of arrivals. Therefore, the objective is to understand how these countries over time have developed a policy to manage immigration, especially with regard to the reception system.

The first chapter proceeds with an overview of the immigration, trying to give an idea of the phenomenon starting from the notion of the immigrant. Who is an immigrant? and why does he/she decide to leave his country and his family and take such a risky journey? The reasons are many and it is difficult to classify. Surely every reason has one factor in common: that of improving the life standard. The high increase in migratory flows at the beginning of the 20th century gave rise to many concerns, especially after the outbreak of the Second World War. That is why the international community began to give importance to immigration in 1951 with the adoption of the Geneva Convention.¹ In the European scenario, however, we will have to wait a little longer. The first regulations and norms on immigration will come many years after the Geneva Convention. In this context, the Schengen agreements and subsequently the Dublin Regulation (which has been amended several times) will play a fundamental role.² Over the years, the European framework will be subject to more changes in order to ensure greater cooperation and coordination between the

¹ Cfr. «The 1951 Convention relating to the status of refugees and its 1967 Protocol». Available at <https://www.unhcr.org/4ec262df9.pdf>

² Nair, S., *“European Immigration Policy”*, (1991), Pergamon

Member States. It is in this context that Directive 2003/9/EC, which will characterize the reception system, will be drawn up.³

The second chapter will focus on the journey of “hope” that immigrants are forced to face in order to reach the European coasts. In order to better understand this process, I have tried to outline first of all the place of departure, since each flow is characterized by a precise zone of departure and a precise destination. In fact, as we will see, Italy will be characterized mainly by flows from the Horn and sub-Saharan Africa who embark from Libya, while Spain from Morocco, Algeria and sub-Saharan countries.⁴ It is also very important to realize how difficult and hard these routes are in order to better understand how desperate the reasons for leaving their own country are. Not all journeys are characterized “only” by crossing the Mediterranean by boats that in Spain are called “pateras” but start well before. In fact, the big obstacle is to cross the Desert. These journeys last for years and not everyone always finishes it. The Mediterranean counts thousands and thousands of deaths a year. The chapter ends with the arrival of the immigrants and with a detailed analysis of what will happen next: the reception.

Once these issues have been addressed, one of the most frequently asked questions about immigration will have to be answered: how much does it cost? how much does it cost an immigrant a day? But above all, how much does the European Union help us to manage this phenomenon? The third chapter will deal with these issues. There is no doubt that both countries spend high amounts of money to cover all the expenses that characterizes immigration. Italy is one of the countries that expends the most within the EU. Spain too, especially in recent years, has had to increase its expenses a lot. As far as the European Union is concerned, it is always in the front line to help countries to face the emergency situation through the creation of funds or other financial supports.⁵ The problem is that they are often not enough. For this reason, Italy in particular has complained several times.⁶

In the last chapter the focus of the speech will be to understand the legislative path that characterizes Italy and Spain in addressing the issue of immigration. As will see, the two countries have been marked by different processes and not without obstacles. Although they are two countries with a history of emigrants, both will be characterized by delays in the development of migration policies. Once the internal legislative scenario has been explained, it will be interesting to see whether they

³ Cfr. «Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers». Available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003L0009>

⁴ Geddes, A., *Immigration and European Integration: Beyond Fortress Europe*, Manchester, 2008

⁵ “EU funds for migration, asylum and integration policies”, available at <http://bruegel.org/wp-content/uploads/2018/05/EU-funds-for-migration.pdf>

⁶

actually comply with their laws, and international and European regulations. The answer to this question will be negative; Countries have not always respected the rules over the years. For this reason, they have repeatedly been protagonists of judgments that will be briefly discussed in this chapter.

CHAPTER I: The evolution of migrations

1.1 Who is a migrant?

1.1.1 Historical background

Migration is one of the great themes of our time. However, there is still a lot of confusion about this. A first problem is that it is not easy to define who the immigrants are, or rather which of the resident foreigners should be classified as such. Often the term “immigrant” is used as a synonym for refugee, asylum seeker, illegal immigrant without dwelling on the fact that each word listed has different nuances, characterised by different rights and protections. In the conventional definition adopted by the UN, the immigrant is “*a non-resident (both national or alien) arriving in a State with the intention to remain for a period exceeding a year*”.⁷ However, “we define as immigrants only a part of the foreigners who reside permanently and work in our country”⁸. Not only European citizens are exempt, but also other overseas citizens. Migration is as old as humanity. From archaeological research to Homeric poems and biblical testimonies, we know that movements of individuals, trade, peaceful settlements and bloody invasions have built the history of human civilizations.¹¹ The sedentariness laboriously conquered in the Neolithic, with the invention of agriculture and the birth of the first urban forms, has never been absolute. The movement of populations has always accompanied the formation of stable societies. Today, once again, migration is one of the most visible and controversial factors of change in our societies.¹² The first great mass migration dates back to the five-seventeenth century, when about 50 million Europeans migrated to the Americas, Africa, Asia, colonizing vast areas of the planet. In those centuries, until the beginning of the nineteenth century, 11 million Africans were deported by Europeans to America for purely economic reasons. The slave trade was therefore the first major episode of large-scale forced migration.¹³ A turning point was certainly during the Napoleonic period when immigration helped the economic growth of the communities of destination. The mercantilist policy of the time accepted this phenomenon and the economic

⁷ *Asylum and Migration Glossary 3.0, a tool for better comparability produced by the European Migration Network*, (October 2014) available at <http://migration.commission.ge/files/emn-glossary-en-version.pdf>

⁸ Ambrosini, M., “*Sociologia delle Migrazioni*”, (2011), il Mulino

¹¹ Colucci, M., Sanfilippo, M., “*Le migrazioni. Un'introduzione storica*”, (2009), Carocci, Roma

¹² Ambrosini, M., “*Sociologia delle Migrazioni*”

¹³ Hoerder, D., “*Cultures in contact: world migrations in the second millennium*”, (2002), Duke University Press, Durham-London

advantages it brought. It is shown in detail how emigration and immigration received, in that period, distinct value judgments with respect to the future.¹⁴ Between 1820 and 1940, about 60 million Europeans emigrated, at a rate of even more than a million people a year in the first twenty years of the twentieth century. Of these, 38 million emigrated to the United States. The others were distributed among Canada, South American countries, Australia and, to a much lesser extent, Africa.¹⁵ The arrival of the first and then of the second World War, entails a further upheaval of the structures of the migratory routes, outlining a new figure of migrant: the refugee. They escapes from wars and persecutions and, in particular, the Jewish refugee who escapes from the Nazi delirium.¹⁶ The shock caused by that enormous mass flight of people deprived of everything material and human flows into the 1951 Geneva Convention, which introduces for the first time the legal figure of the refugee.¹⁷ Refugee according to the Convention is a person 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 (..) is unwilling to return to it*”.¹⁸ With the end of the Second World War, the flow of emigration from Europe also decreased, partly because of a tightening of US migration policies. However, many Europeans continued to emigrate to America and Australia.¹⁹ Nevertheless, there were the first signs of an opposite movement, with the economic boom that has affected Europe since the 1960s; There was a need for labor in central and northern Europe and those of the south were ready to provide it. Italians, Spaniards, Portuguese and Greeks are now migrating within the continent, always and again to seek their fortune. In addition to these, also migrant workers from Turkey, Algeria, Morocco and northwest Africa countries began to join. To give an idea, the foreign labor force in Germany went from 0.6% in 1957 to 11.2% in 1972.²⁰ In 1973, however, a new change occurred: the world economic crisis that followed the oil shock convinced the countries of central and northern Europe to review their migration policies in a restrictive sense, and the flows of migrants on the south-north axis were significantly reduced.²¹ From the end of the eighties a new migratory axis opened up: the east-west axis.²² With the fall of the communist regimes, many eastern citizens find themselves with open doors and misery in their homes. In those years there will be the first attempts to manage the migration phenomenon from the

¹⁴ Sassen, S., “*Migranti, coloni, rifugiati. Dall'emigrazione di massa alla fortezza Europa*”, (1999) Feltrinelli, Milano

¹⁵ Hatton, T., and Williamson, J., “*Global Migration and the World Economy: Two Centuries of Policy and Performance*”, (2006) The MIT Press

¹⁶ Colucci, M., Sanfilippo, M., “*Le migrazioni. Un'introduzione storica*”

¹⁷ Hatton, T., and Williamson, J., “*Global Migration and the World Economy: Two Centuries of Policy and Performance*”

¹⁸ Cfr. «Convention and Protocol relating to the Status of Refugees» available at <https://www.unhcr.org/3b66c2aa10>

¹⁹ Colucci, M., Sanfilippo, M., “*Le migrazioni. Un'introduzione storica*”

²⁰ Bettin, G., Cela, E., “*L'evoluzione storica dei flussi migratori in Europa e in Italia*”, (2014), Cattedra UNESCO SSIIM, Università Iuav di Venezia

²¹ Sassen, S., “*Migranti, coloni, rifugiati. Dall'emigrazione di massa alla fortezza Europa*”

²² Hoerder, D., “*Cultures in contact: world migrations in the second millennium*”

"Schengen Agreement" to the "Dublin Regulation".²³ Western Europe is too attractive for them; 1.2 million people emigrated from Eastern Europe in 1989 and the flow continued throughout the 1990s. Millions of Poles, Romanians, Albanians, Moldovans, Ukrainians and Russians were moving westwards, not to mention the war refugees caused by the conflict in which the former Yugoslavia was involved.²⁴ In the meantime, more and more significant flows of migrants arrived from outside Europe, from Africa, Asia and South America in particular, going to compose the picture of the migratory phenomenon as we know it today. A picture where "forced" and "economic" migrants, reuniting family members and new European citizens mix together. Mass migration is therefore a constant in human history. To understand the presence of migrants, it is necessary firstly understand the context from which they come and then the reasons of their choice.²⁵ A story that today it is associated mainly with Africa and Asia is, instead, an eminently European product, contemporary with the structural changes that occurred especially at the beginning of the twentieth century.

1.1.2. Reasons for migration

Every migratory movement is always the result of a double order of factors: an objective, that is, different living conditions between the place of origin and the place of destination, and a subjective one, i.e., the emigrant's assessment of the situation and his consequent attitude.²⁶

There are many reasons for migration flows, and it is often difficult to identify them. They can derive from particular historical, political and economic situations that push the inhabitants of a territory to solve their precarious conditions of existence through the abandonment of their homes. These particular circumstances require some people to leave the places where they were born and raised to go elsewhere, in search of new opportunities for themselves and their families.²⁷

The desire to find a job and earn a wage is in most cases the main reason for migration. In the great historical migrations of past centuries, the prospect of a better life brought millions of people from their homeland to the New World and to the new lands of the southern hemisphere. However, say that the economic aspect is the only factor of migration is not correct. Those who abandon their country do not necessarily and exclusively move in search of better wage conditions, but also to

²³ Sassen, S., *"Migranti, coloni, rifugiati. Dall'emigrazione di massa alla fortezza Europa"*

²⁴ Bettin, G., Cela, E., *"L'evoluzione storica dei flussi migratori in europa e in Italia"*

²⁵ Sayad, A., *"La doppia assenza. Dalle illusioni dell'emigrato alle sofferenze dell'immigrato"*, (2002), CortinaRaffaello

²⁶ Centro Studi Emigrazione., in *"Studi emigrazione, rivista quadrimestrale"*, Morcellania Editrice, Brescia, p. 206 available at <https://drive.google.com/file/d/1PU0HptindFRo3ZbRKl2WP2sSudt8ECTi/view>

²⁷ Corti, P., *"Storia delle migrazioni internazionali"*, (2007), Laterza

improve their status, to meet expectations that are not only economic, but also existential,²⁸ therefore the decision to leave is made (not always) after a conscious choice, made according to the different options available. Individual actors become migrants, not because they are crushed by structural conditions that force their movement, but because they are pushed towards an improvement in their condition. Not all the inhabitants of the territories from which we start have in fact chosen to emigrate and for this reason emigration can often be seen as a conscious choice. Certainly, the persistent inequalities in wealth between rich and poor countries will continue to encourage large numbers of people to move in search of better living standards.²⁹ Obviously there are many other cases where the choice is almost mandatory. Political conditions and ethnic conflicts have led to large-scale migration. Expulsions and flight have contributed to these displacements. The emigration of more than 50000 Asians living in Uganda in 1972, many of them to the United Kingdom, resulted from the sudden expulsion decreed by the country's dictator, Idi Amin.³⁰ The displacement of 125,000 Cubans across the Mariel Bridge in 1980 was the most recent manifestation of an emigration that has been present ever since a communist regime took control of Cuba in 1959.³¹ Since the late 1970s, many thousands of Cambodians have fled the oppressive regime of Phnom Penh to neighbouring Thailand. Civil wars and international armed conflicts also generate migratory currents, although the end of hostilities tends to be followed by the return of the majority of migrants. The first examples were during the first two World Wars, which created a wave of migrants and subsequently drawn attention of the international community. In the 80's, the intensification of civil unrest in Central America generated flows of emigrants directed, above all, to the United States.³² The war in Afghanistan pushed to leave 3 million people, most of whom, in 1992, were still settled in the neighbouring Pakistan and Iran. Cultural traditions have also led millions of people to migrate. Climate factors such as floods, storms, destructive earthquakes, volcanic eruptions and other environmental disasters have contributed to large-scale migration in different parts of the world in different times of history.³³ Those who undertake this "journey" trust that they will be able to improve their economic conditions, and perhaps even more so those of their families. These choices certainly do not take place in the context of completeness and transparency of information, which would be necessary to be able to talk about rational decisions.³⁴ Rarely, and perhaps only by chance, do migrants go to the places that offer

²⁸ Castels S., Miller M. J., *"The Age of Migration"*, (2009), The Guilford Press, New York

²⁹ Castels S., Miller M. J., *"The Age of Migration"*

³⁰ In 1972 President and Military General of Uganda, Idi Amin, ordered for the expulsion of all Ugandans of South Asian descent. They were given just 90 days to leave the country.

³¹ On April 20, 1980, the Castro regime announces that all Cubans wishing to emigrate to the U.S. are free to board boats at the port of Mariel west of Havana, launching the Mariel Boatlift. The first of 125,000 Cuban refugees from Mariel reached Florida the next day.

³² Colucci, M., Sanfilippo, M., *"Le migrazioni. Un'introduzione storica"*

³³ Corti, P., *"Storia delle migrazioni internazionali"*

³⁴ Ambrosini, M., *"Sociologia delle Migrazioni"*

the theoretically best conditions. It must be recognised, however, that all this requires a lot of courage due the obstacles to mobility, the risks of exploitation, the long and tortuous routes and other complications.³⁵ In order to understand the causes of migration, it is important to adopt a multi-causal approach, characterized by a series of factors in different historical periods. Economic imbalances weigh heavily, as does the circulation of information that suggests the possibility of a better life abroad. Relationships between countries, the legacy of past history, linguistic communality all influence. Networks and other migratory institutions play a decisive role, mediating between the general interest to leave and the possibility of reaching a specific destination. The normative devices indicate the possible paths to enter or to regularize one's position.³⁶

1.1.3 Classification of migrants

In order to better understand the phenomenon of migration, it is important to make a clarification: not all people who move from one country (native) to another are the same. This means that there is a distinction between the various types of individuals who characterise migratory flows. In some cases, this distinction is very subtle and erroneously tends to be generalised. Today, in fact, we often hear about immigrants as a synonym of illegal immigrants, refugees, asylum seekers while in reality each term corresponds to a specific category. A first great distinction could be between migrants and refugees. After the Second World War, the Member States of the United Nations drew up the Geneva Convention in which for the first time they gave a definition of refugee status. In fact, the term has a very precise legal meaning. According to the Convention refugee status is granted to those persons who cannot return home because it would be too dangerous and therefore need to find protection elsewhere.³⁷ Immigrants, on the other hand, are used, especially in public debate, in a generic way, generating confusion and sometimes consequences for the life and safety of refugees. According to the Handbook on Procedures and Criteria for Determining Refugee Status the migrant *"is a person who (...) voluntarily leaves his or her country to settle elsewhere. He can be driven by the desire for change or adventure, or by family or personal reasons. If it is motivated exclusively by economic considerations, one must speak of an economic emigrant and not of a refugee"*.³⁸ Therefore, unlike

³⁵ Ibidem

³⁶ Koser, K., *"Le migrazioni internazionali"*, (2009), Il Mulino

³⁷ Cfr. «Convention and Protocol relating to the Status of Refugees, Art.1» available at <https://www.unhcr.org/3b66c2aa10>

³⁸ Cfr. «Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees» available at <https://www.unhcr.org/4d93528a9.pdf>

a refugee, a migrant is not persecuted in his own country and can return home safely, without any risk. However, not always the concept of migrants is clear. An economic migrant could be at the same time in life-threatening and vice versa. In the course of history the term has been increasingly associated with an economic connotation. In fact, the Manual makes reference to "economic migrant" and in addition introduces another group represented by those who move for family reunification reasons. The family is one of the central factors in the decision-making process of migrants and in the context of the recent humanitarian crisis, family righteousness and diasporas play an increasingly important role. Migration flows could, therefore, be divided into two main categories, "voluntary" migrants and "forced" migrants, which in turn are characterised by other small sub-categories. The first category includes the so-called economic migrants and those who reunite with their families, while in the second category the situation is quite different. "Forced migrant" is used to refer to those who have been forced to move due to environmental disasters, conflicts, famines, or large-scale development projects. It includes both people who are being persecuted individually or in groups, and those who flee war and devastation while not belonging to any specific persecuted or discriminated against group.³⁹ In this group we can include the category of so-called "internally displaced persons" (IDPs), who represent the most vulnerable category because they remain near to the conflict zones. According to the United Nations Guiding Principles IDPs are "*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border*".⁴⁰ In addition to IDPs, this category includes also "displaced people" who, according to the Convention, are "*those who, for various reasons (war, poverty, hunger, natural disasters, etc.), have left their country but are not in a position to seek international protection*".⁴² At international level there isn't a uniform legal definition of both terms "migrant" and "forced migrant". On the contrary, the term refugee is clearly defined under international refugee law, and Nation states have accepted a number of specific legal obligations towards these persons.⁴³ However, what should be highlighted it is another important difference that exist between Asylum Seekers and Refugees, which too often are treated as synonymuos. In reality, these words refer to two different categories who are treated differently inside the international community. Each term has a different meaning that carries its own international obligations and consequences. An asylum seeker is someone who is seeking international protection but whose claim

³⁹ Betts, A., "*Forced Migration and Global Politics*", (2009), Wiley-Blackwell, United Kingdom

⁴⁰ Cfr. «UNHCR., Emergency Handbook» available at <https://emergency.unhcr.org/entry/250553/idp-definition>

⁴²Internazionale., in "*Che differenza c'è tra profugo e rifugiato*", available at <https://www.internazionale.it/notizie/2013/06/20/differenza-profughi-rifugiati>

⁴³ Cfr. «Convention and Protocol relating to the Status of Refugees».

for refugee status has not yet been determined.⁴⁴ This type of person can apply for asylum because returning and living in his/her home country would mean to be persecuted on the basis of race, religion, nationality or political thoughts. The Asylum seeker is someone that has applied for international protection in this regard and has his application pending. In this sense, not every Asylum seeker can become a refugee, but every refugee has been considered as an asylum seeker. At international level, therefore, there is no real regime on the right to asylum.⁴⁵ Therefore, lacking an international discipline on asylum, very often we tend to define the institution through the use of traits that differentiate the status of asylum seeker from that of refugee.⁴⁶ The granting of asylum is, in any case, remitted to the discretion that the State has in the exercise of its territorial sovereignty, except for the possibility of suffering partial limitations due to the voluntary accession of the State to specific agreements. Furthermore, the States may provide two separate procedures: one consists in granting of asylum; the other consists in the recognition of the refugee status, in accordance with the provisions of the Geneva Convention. Where the state does not want to distinguish the two procedures, it is possible to grant asylum on the basis of the criteria set by the Convention. In the end, asylum seeker could be part to the category of “forced migrant”.

1.2. Rights of migrants in international law

1.2.1. The Universal Declaration of Human Rights

Too often in public language and in non-specialized media immigrants are represented as pertaining to a unique category. This would mean that leaving one country for another would be enough to make them belong to an undifferentiated group. In fact, international migration has many different causes, to which the host countries generally associate a specific package of rights. In other words, the rights held by immigrants depend on the status that they are recognized by the receiving states and this naturally creates a considerable stratification and differentiation of rights.⁴⁷

It is therefore worthwhile to present an overview of the main categories associated with the various forms of immigration and the sources that regulate this area.

⁴⁴ Boulby, M., Christie, K., *“Migration, Refugees and Human Security in the Mediterranean and MENA”*, Palgrave McMillan

⁴⁵ Ferrari, G., in *“L’asilo nel diritto internazionale”*, available at https://www.unhcr.it/wp-content/uploads/2016/01/9giovanni_ferrari__lasilo_diritto_internazionale.pdf

⁴⁶ *ibidem*

⁴⁷ A cura di Morozzo Della Rocca, P., *“Immigrazione, asilo e cittadinanza”*, (2015), Maggioli Editore

The international community started to deal with this theme after a series of events that have destabilized the order of the states, causing masses of refugees to abandon their own state community.⁴⁸ Especially in the twentieth century, following some sadly known events that shook the world, the international community has tried to define and regulate this phenomenon.⁴⁹ The reaction of the international community resulted in the drafting of a universally valid document for the protection of human rights. Therefore, on December 10, 1948, the United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights⁵⁰. The first document of historical significance in defense of human rights, which is composed of thirty articles in which the individual, civil, economic and cultural rights of each person are enshrined. The importance of this document is immediately clear in the first paragraph of the Resolution adopted by the General Assembly that established the Universal Declaration of Human Rights. In this paragraph the “inherent dignity and of the equal and inalienable rights of all member of the human family” are stated to be the foundations of freedom, justice and peace in the world.⁵²

Article. 1 states: "*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*".⁵³ The right to life; liberty and personal safety; legal personality; the right to equality before the law without discrimination; the right to freedom of movement; the right to seek asylum; the right to freedom of thought and religion; of opinion and expression; the right to work; to rest and to education constitute the universal values of democracy⁵⁴.

The Universal Declaration, precisely because "declaration" was not legally binding for the States and it was necessary to wait until 1966 for the rights proclaimed therein to be codified in two international Treaties: The Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights.⁵⁵ However, a significant part of the doctrine affirms that today it constitutes the universally binding "code of ethics" as a source of customary international law.⁵⁶

⁴⁸ Koser, K., "*Le migrazioni internazionali*"

⁴⁹ In those years the first large group of people (1,500,000 refugees) living outside their own country were Russians who had belonged to the Tsarist army and fled the Bolshevik Revolution.

⁵⁰ Cfr. «The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in Paris on 10 December 1948». Available at <http://www.un.org/en/universal-declaration-human-rights/>

⁵² Cfr. «The Resolution adopted by the General Assembly, part A of General Assembly Resolution 217 (III)International Bill of Human Rights, Preamble». Available at <http://www.un-documents.net/a3r217a.htm>

⁵³ Cfr. «The Resolution adopted by the General Assembly, part A of General Assembly Resolution 217 (III)International Bill of Human Rights, Preamble»

⁵⁴ Cfr. «International standards on freedom of religion or belief ». Available at <https://www.ohchr.org/en/issues/freedomreligion/pages/standards.aspx>

⁵⁵ A cura di Morozzo Della Rocca, P., "*Immigrazione, asilo e cittadinanza*"

⁵⁶ Sarti, S., in "*L'Italia dei rifugiati*", (2011), available at <http://www.osservatoriomigranti.org/assets/files/LItalia%20dei%20rifugiati.pdf>

The Universal Declaration of Human Rights also recognizes in Article 13 the right of everyone to leave their home country: "*Everyone has the right to freedom of movement (...) has the right to leave any country, including his own, and return to your country*"⁵⁷, but does not guarantee the right to enter any country exception made for the Refugees. The connection with the following Article 14 is therefore very close according to which: "*Everyone has the right to seek and to enjoy in other countries asylum from persecution; This right cannot be invoked if the individual is really wanted for non-political crimes or for actions contrary to the purposes and principles of the United Nations.*"⁵⁸ However, the first real legal instrument at universal level that establishes the rules regarding the asylum seekers, was drafted only few years later with the 1951 Geneva Convention.⁵⁹

1.2.2. The Geneva Convention

The Convention was drafted with the purpose of providing a basic standard treatment for refugees that could be used at a universal level. It establishes the concept of refugee, identifies the conditions for granting their specific "status"; it lists all the causes that, on the contrary, may prevent from the use of the right to asylum. Furthermore, gives content to the forms of protection that the States adhering to the document must guarantee to the refugee. The Geneva Convention enters into force on 22 April 1954 and represents "the most comprehensive effort ever attempted at international level to codify refugee rights".⁶⁰ The Geneva Convention is composed by seven chapters, divided into 46 Articles plus a final annexed document. Here, are established the terms to follow for the renewal, release and extension of the Refugee Travel Documents. The provision of principle provided by Article 14 of the Universal Declaration of Human Rights was therefore implemented by the 1951 Geneva Convention which defines refugees in Article 1, by saying that refugee shall be subjected to: "*a 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*"⁶¹. In reality, rather than giving the refugee definition, the Convention identifies the essential requirements for the recognition of "refugee status". It establishes that the applicant shall be "*outside*

⁵⁷ Cfr. Art.13, The Universal Declaration of Human Rights

⁵⁸ Cfr. Art.14, The Universal Declaration of Human Rights

⁵⁹ Morozzo Della Rocca, P., (a cura di) "*Immigrazione, asilo e cittadinanza*"

⁶⁰ D' Ignazio, G., Gambino, S., (a cura di) "*Immigrazione e diritti fondamentali. Fra costituzioni nazionali, Unione Europea e diritto internazionale*", (2010), Giuffrè Editore

⁶¹ Cfr. «Art.1, Convention and Protocol relating to the Status of Refugees». Available at <https://www.unhcr.org/3b66c2aa10>

the country of which he is a citizen"; that the applicant is deprived of the " *power or unwilling to return*" to the country of which one is a citizen; that there shall exist the causal link between the impossibility, or unwillingness to return, and the "*founded fear of being persecuted*"; Moreover, this fear of persecution shall be based on race motivation, religion, nationality, political opinions or belonging to a specific social group.⁶²

However, The Convention does not list or even explain the procedures for determining refugee status but it entrusts the individual States with the task of establishing them. It is a legal framework within each States construct their asylum policies and fulfill their responsibility for the protection of refugees. Nation State, therefore, in such a framework acts in accordance with its own legal system and according to the procedure that has been given⁶³. However, UNHCR has invited governments to adopt fair, rapid, flexible and non-restrictive asylum procedures that take into account how difficult it is in some cases to document the persecution⁶⁴.

It is clear that the foundation of "fear" listed in the 1 article of the Convention is the keystone for the recognition of status and therefore for the implementation of the consequent reception and protection mechanisms. The problem often arises because there are not listed the situations that can be traced back to these cases. Often the individual states define the parameters on which the fear of persecution can be constructed by. However, by persecution today we intend the intentional and serious deprivation of the fundamental rights of the person for the same reasons of race, religion, nationality, belonging to a specific social category, political opinions⁶⁵. From this categorization are excluded all persons not subjected to true and individual persecution, who are, on a different basis, protected by other international instruments. In order to guarantee that people not considered worthy of protection cannot use these parameters, the Convention lists, in an exhaustive way, the subjective limitations that integrate the exclusion clauses.⁶⁶ Specifically, Article 1F establishes the grounds for the exclusion of people from the definition of the refuge status. The Article recites: "*The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his*

⁶²Cfr. «Convention and Protocol relating to the Status of Refugees»

⁶³ Benvenuti, P., "*Flussi migratori e fruizione dei diritti fondamentali*", (2008), il Sirente

⁶⁴ Cfr. «Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees»

⁶⁵ Pineschi L. (a cura di), "*La tutela internazionale dei diritti umani, Norme, garanzie e prassi*", (2006), Giuffrè editore

⁶⁶ Cherubini, F., "*Asylum Law in the European Union*", (2015), Routledge

admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations".⁶⁷ These three provisions have in common the fact of presenting a "serious reason for considering that the situation exists" In other words it is said that the "proof of conviction is not required for the clause to apply"⁶⁸. Proof is needed in order to apply these grounds. It is important here to make a distinction between Article 1F and Article 33(2) of the 1951 Convention, that enunciates the exceptions to the application of the principle of "non-refoulement"⁶⁹. On one hand, Article 1F it is inserted in the framework of the refugee definition inside the 1951 Convention by listing the different grounds for exclusion from the refugee status based on criminal acts committed by the applicant. On the other hand, Article 33(2) doesn't belong to the framework of the refugee definition and does not build up a motivation from exclusion from the refuge protection. Indeed, they serve to two different purposes: Article 1F aims at protecting the integrity of the regime of the refugee protection; Article 33(2) is aimed at protecting the national security of the host country. The basic difference stands in the fact that Article 33(2) is more focused on defining the different treatments afforded to refugees, rather than establish their recognition of refugees as in the 1951 Convention. Moreover, it allows the withdrawal of levels of protection established by the principle of non-refoulement of certain individuals recognized to be potentially dangerous to the country in which they are hosted.⁷⁰ We must pose our attention also on the fact that the Refugee Convention establishes certain provisions to define situations where the status of refugees cannot be held any longer. As an example, one of these situations may consist in drastic changes in the socio-political conditions in the country of origin of the refugee. Thereby, if the conditions that built the motivation for the refugee. Article 1C lists all the conditions on the basis of which the refugee status shall be revoked. Here, the responsibility of protecting the refugees is given to the country on which it falls in the first instance, that is to say, the country of nationality or residence.⁷¹ Other situations where the status of refugee ceases to apply happen: when the refugee himself decides to refuse the protection of his country of origin; when a refugee that has acquired a new nationality claims the protection by the new country; when the risk of persecution that existed at the time of the flee no longer exists.⁷² Beyond the basic provisions listed in the Convention it is important to underline the backbone of this system: the principle of "non-refoulement". This principle is sanctioned by Article 33.1 and it has a central position within the Geneva Convention: it summarizes the humanitarian essence of the Convention⁷³.

⁶⁷ Cfr. «Convention and Protocol relating to the Status of Refugees» available at <https://www.unhcr.org/3b66c2aa10>

⁶⁸ Cherubini, F., "Asylum Law in the European Union"

⁶⁹ Cfr. Articolo 33(2), Convention and Protocol relating to the Status of Refugees . available at <https://www.unhcr.org/3b66c2aa10>

⁷⁰ Cherubini, F., "Asylum Law in the European Union"

⁷¹ Cherubini, F., "Asylum Law in the European Union"

⁷² Cfr. «Convention and Protocol relating to the Status of Refugees». Available at <https://www.unhcr.org/3b66c2aa10>

⁷³ Benvenuti, P., "Flussi migratori e fruizione dei diritti fondamentali"

On the other hand, this principle is also today considered to be a customary principle to be adopted, without exceptions, by every State, following its customary character.⁷⁴

The Convention and, consequently, its Optional Protocol constitute the first explicit moment of codification of this principle, that is to say of the "*non-refoulement*" in the refugee camp.⁷⁵ Previously, within some international Conventions we can find some provisions that only implicitly affirm this principle: in particular the Convention relating to the International Status of Refugees, adopted on October 28, 1933, within the League of Nations in favor of the cause of Spanish refugees, art. 3 the obligation for States parties to "not expel or not to admit at the border"⁷⁶. However, it is difficult to talk about a real codification of the principle of "*non-refoulement*". In fact, it was just a merely reiteration of the principles that were established in 1928 by the Agreement on the legal status of Russian and Armenian refugees⁷⁷.

The design of the principle of non-refoulement was not simple at all, especially for the various discordant opinions about it. However, the final text was adopted on July 1951 in the following form: "*1. No Contracting State shall expel or return ("refouler") to refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion ; 2. The benefit of the provision of the provision of the provision of the provision of the right-to-left security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, a belief to the community of that country"*.⁷⁸

The principle of "*non-refoulement*", enshrined in Article 33, raised some doubts on which State actions are included in it. In simple terms, made it difficult to identify which removal orders fall within the field of application of the prohibition on "*refoulement*". The provision identifies some exceptions to it. The first exception states that the benefit of the said principle cannot be claimed by any refugee that may represent a danger for the security of the country where he is present.

⁷⁴ Cfr. «Executive Committee, Conclusion No. 17 (XXXI), 1980. Available at Executive Committee, Conclusion No. 17 (XXXI), 1980».

⁷⁵ Goodwin-Gill, G., and McAdam, J., "*The Refugee in International Law*", (2007), Oxford

⁷⁶ Cfr. «Convention of 28 October 1933 relating to the International Status of Refugees». Available at <https://www.refworld.org/docid/3dd8cf374.html>

⁷⁷ Goodwin-Gill, G., and McAdam, J., "*The Refugee in International Law*"

⁷⁸ Cfr. Art.33, Convention and Protocol relating to the Status of Refugees. Available at <https://www.unhcr.org/3b66c2aa10>

Secondly, the said principle cannot be applied to any person that has been convicted by a final judgement for a serious crime that might create dangerous situation for the country.

Moreover, the benefits provided by the Convention shall be denied to any person suspected of a crime against peace, crime of war or crime against humanity, any non-political crime committed outside the country of the refugee, or to any persona that is suspected of crimes gainst principles and purposes of the United Nations (Article 33(2) and 1F of the 1951 Convention.⁷⁹

In the end, we can admit that the broader conception of this principle is adopted into the international community. Beyond the Convention (that was the first to present it) *Refoulement* is also prohibited by some regional agreements and covenants entitled to protect basic human rights, such as: the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3⁸⁰); Convention the American Convention on Human Rights (Article 22⁸¹); the Organization of African Unity (OAU) Convention on Refugees (Article II⁸²); the Statement the Cairo Declaration on the Protection of Refugees and Displaced Persons in the World Arabic (Article 2⁸³).

As already said, this principle is part of customary international law and for this reason shall be respected by all countries even if they have not signed the Geneva Convention.

If this principle is violated, the persons subject to *Refoulement* can appeal to the relevant structures in defense of human rights.⁸⁴

1.2.3. Further developments

On January 31, 1967 in New York was adopted The Protocol relating to the status of refugee. The push that led to the need for the Protocol was the desire to overcome the temporal and geographical limitations to the recognition of refugee status enshrined in the 1951 Convention. The starting point was the consideration that new categories of refugees were born after the adoption of the 1951 Convention. The Protocol extended the scope of the Convention on the push of the global dimensions assumed by the problem of the eradication of populations.⁸⁵ The signatory states agreed that new categories of refugees, which emerged after 1951, risked being excluded, due to the text of the

⁷⁹ Cfr. «Convention and Protocol relating to the Status of Refugees». Available at <https://www.unhcr.org/3b66c2aa10>

⁸⁰ Cfr. «European Convention for the Protection of Human Rights and Fundamental Freedoms». Available at https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁸¹ Cfr. «Convention the American Convention on Human Rights». Available at <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

⁸² Organization of African Unity (OAU) Convention on Refugees http://www.achpr.org/files/instruments/refugee-convention/achpr_instr_conv_refug_eng.pdf

⁸³ «Declaration on the Protection of Refugees and Displaced Persons in the Arab World». Available at <https://www.refworld.org/docid/452675944.html>

⁸⁴ Pineschi L. (a cura di), “*La tutela internazionale dei diritti umani, Norme, garanzie e prassi*”, Giuffrè Editore

⁸⁵ D' Ignazio, G., Gambino, S., (a cura di) “*Immigrazione e diritti fondamentali. Fra costituzioni nazionali, Unione Europea e diritto internazionale*”

Convention, from the recognition of the right to protection. The Protocol provides that the definition referred to in art. 1 of the Convention must be understood as if the words "*as a result of events that have occurred before 1 January 1951*" were omitted and establishes that the related legislation should apply without any geographical limitation.⁸⁶ It is essential to specify that, unlike other human rights conventions, the Geneva Convention and its Protocol do not have a committee that verifies that its content is respected. United Nations High Commissioner For Refugees (UNHCR) is responsible for this lack, as is also provided for in Article 35 of the Convention on the status of refugees⁸⁷. However, the amended definition of refugee in the 1951 Convention still contains some shortcomings which have come to light during its application. The first is undoubtedly the absence of a precise definition of "persecution", a fundamental element of the definition of refugee in the 1951 Convention.

In 1979, UNHCR published the "Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status", in which the term "persecution" referred to any threat to life or liberty, the existence of which had to be assessed on the basis of objective and subjective criteria. However, this definition of the term remains unsatisfactory because the breadth of the concept implies a difficult application; on the other hand, because it is contained in a non-legally binding document.⁸⁸ It is important, also, to underline the lack of references to economic, social and cultural rights within refugee status: for example, people who leave their country of origin or residence due to lack of education and/or employment are not considered refugees. In addition, there is also a lack of a gender perspective, not only as a reason for persecution, but also as a limitation to the protection of women and homosexuals. Another limitation is the lack of a definition of a refugee that goes beyond the exclusive violation of civil and political rights. In other words, there is a lack of a definition based also on other human rights.

One example may be the disregard of environmental issues, considering that the right to a healthy environment is a human right.⁸⁹ However, in the following decades there have been subsequent developments in this area. In 1969, the Organization of African Unity (OAU) adopted the "Convention governing the specific aspects of refugee problems in Africa".⁹⁰

Recognizing the UN Convention of 1951 as "the fundamental and universal instrument concerning the status of refugees" and making its own the definition of refugee contained therein, the OAU

⁸⁶ Cfr. «Protocol Relating to the Status of Refugees». Available at <https://www.unhcr.org/3b66c2aa10.html>

⁸⁷ Cfr. «Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond, Walter Kalin, 1 June 2001». Available at UN High Commissioner for Refugees (UNHCR)

⁸⁸ D' Ignazio, G., Gambino, S., (a cura di) "*Immigrazione e diritti fondamentali. Fra costituzioni nazionali, Unione Europea e diritto internazionale*"

⁸⁹ Ibidem

⁹⁰ Cfr. «Convention governing the specific aspects of refugee problems in Africa». Available at <https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>

Convention broadens the definition by establishing that it "*also applies to whom, in of external aggressions, occupation, foreign domination or events that cause a serious disturbance to public order [...] is forced to leave his habitual residence to seek asylum in another place outside the country of origin or citizen*".⁹¹

In November 1984, in reaction to the refugee crisis in Central America, a group of representatives of governments, university professors and Central American jurists met in Cartagena, Colombia, to elaborate what became the Cartagena Declaration on Refugees.⁹² As in the OAU Declaration, the definition of refugee is extended. The document states that refugees are those who "*flee their country [...] because their lives, their security or their freedom is threatened by generalized violence, foreign aggression, internal conflict, massive violations of human rights or other serious disturbances in public order*".⁹³

Over the past fifty years of life, the Convention has not lost its relevance and has shown an ability to adapt to new situations. Today, however, a debate is under way on a possible adaptation of its discipline to the changed historical-social context. Some doubts have been expressed on the effectiveness of the Convention in the context of globalized human relations, especially as a function of the need to counter the strong flows of illegal immigration and the criminal phenomena that can be connected to it.⁹⁴

1.3. Rights of migrants in European Union law: a brief overview

1.3.1. From the Schengen Agreement to the Maastricht Treaty

The European Union has faced with immigration and asylum law much later than the international scenario.

⁹¹ Ibidem

⁹² Cfr. «Declaracion de Cartagena sobre los refugiados». Available at <https://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>

⁹³ Cfr. «Declaracion de Cartagena sobre los refugiados»

⁹⁴ Benvenuti, P., "*Flussi migratori e fruizione dei diritti fondamentali*"

Although all its Members were signatories to the Geneva Convention and the New York Protocol, asylum law was an exclusive prerogative of the Member States until the Maastricht Treaty of 1993.⁹⁵ In fact, only with the establishment of the third pillar of the European Union that asylum became subject of intergovernmental cooperation.

However, at the beginning of the mid-eighties European cooperation took its first steps in the field of immigration, driven above all by the need to cope with the enormous increase in migratory flows that characterized those years⁹⁶. These flows were defined as "mixed", composed of refugees and of so-called "economic migrants"⁹⁷. The ambivalent nature of migratory movements entailed the need to deal with both asylum and immigration laws in a single regulatory context.

According to many scholars the development of the EU asylum and migration policy have generally been restrictive, mainly aiming to keep people outside the EU territory. In particular, Guiraudon affirmed that European cooperation, which could be defined as restrictive, was designed precisely on the basis of the desire of European governments to avoid excessive waves of migration.⁹⁸

However, to understand if the EU has undertaken a "restrictive" way we must first outline the path and the results obtained in these years.

The European Immigration and asylum law in the last decades was subject of many changes. This evolution can be divided mainly into three phases: the first, as mentioned above, began in the mid-80s characterized by the rules governing the free movement of people within the European community; the second phase with the entry into force of the Maastricht Treaty and the last corresponds with Amsterdam Treaty.

With the Treaty of Rome of 1957, which instituted the European Economic Community (EEC), there were no elements concerning the problem of immigration. This decision was probably dictated by the fact that the European community originally was created for an economic purpose and secondly because in those times the number of refugees was not a threat.⁹⁹

In July 1985, moved by the desire to create a single external border for the Community and to eliminate internal borders, Germany, France, Belgium, Luxembourg and the Netherlands signed the

⁹⁵ Bettin, G., Cela, E., *“L’evoluzione storica dei flussi migratori in Europa e in Italia”*, (2014), Cattedra UNESCO SSIIM, Università Iuav di Venezia

⁹⁶ Ibidem

⁹⁷ “Economic migrant” means a person who has left his or her own country and seeks by lawful or unlawful means to make a living for himself or herself (and their family in many cases) in another country.

<https://www.migrationwatchuk.org/briefing-paper/70>

⁹⁸ Guiraudon, V., and Joppke, C., *“Controlling a New Migration World”*, (2001), Routledge

⁹⁹ The Treaty of Rome brought about the creation of the European Economic Community (EEC), the best-known of the European Communities (EC). It was signed on 25 March 1957 by Belgium, France, Italy, Luxembourg, the Netherlands and West Germany and came into force on 1 January 1958. It remains one of the two most important treaties in the modern-day European Union (EU).

Schengen Agreement ¹⁰⁰. The agreement was resumed and expanded with the 1990 Schengen Convention, which came into force five years later, in 1995.

The Agreement and the then Convention, as well as the related agreements and rules, together form the "Schengen acquis", which was integrated into the framework of the European Union in 1999 and became EU legislation¹⁰¹.

The objectives pursued were the progressive elimination of internal borders, favoring the free movement of the European Community or of third countries citizens, and the realization of the uniformity of the rules governing the management of the external borders of the Community. However, the abolition of internal borders and the explosion of migratory flows led the necessity to intensify controls at external borders, placing the need to create a European policy on immigration and asylum.¹⁰² Chapter VII of the Schengen Convention, in particular from Articles 28 to 38, is specifically dedicated to asylum, and establishes for the first time the criteria for determining the State responsible for examining the asylum application. According to the Convention, the responsibility lies on the State which issued the visa or residence permit, unless there are several States which meet these conditions; In this case, the State which issued the residence permit for a longer period of time shall be responsible. If the asylum seeker has entered in the territory of the State illegally, the State in which the asylum seeker first entered is responsible.¹⁰³ With these criteria, indicated by the Art. 30, the Convention faces an element that will crucially characterize the asylum system in Europe;

Since there was no a specific European body, asylum applications were collected and examined by individual Member States. This structure is accompanied by the creation of the Schengen Information System (SIS) designed to allow States to collaborate with each other by exchanging information relevant to border control.¹⁰⁴ The Convention also provides, in the articles 37 and 38, the exchange of information the regulations, the statistics and the progress of the flows of asylum seekers, and on the data concerning the identity, the movements and any questions already submitted by individual applicants. One of the Schengen system aim was to prevent the simultaneous

¹⁰⁰ The Schengen Agreement is a treaty which led to the creation of Europe's Schengen Area, in which internal border checks have largely been abolished. It was signed on 14 June 1985, near the town of Schengen, Luxembourg, by five of the ten member states of the then European Economic Community.

¹⁰¹ *"The Schengen acquis integrated into the European Union"*, published by the General Secretariat of the Council, 1 May 1999

¹⁰² D' Ignazio, G., Gambino, S., (a cura di) *"Immigrazione e diritti fondamentali. Fra costituzioni nazionali, Unione Europea e diritto internazionale"*

¹⁰³ Cfr. «CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT of 14 June 1985». Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42000A0922%2802%29>

¹⁰⁴ *"What is the Schengen Information System?"* available at https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system_en

presentation of multiple applications, presented in several States to increase the chances of obtaining refugee status; Hence, to contain the phenomenon of the so-called refugees in orbit, “*refugees that fail to find a state willing to take responsibility for examining their asylum applications and are therefore shuffled from country to country in a constant quest for asylum*”¹⁰⁵, and to deny the possibility to freely choose the country to ask for protection, avoiding the “asylum shopping”.¹⁰⁶

This convention expresses for the first time the need of cooperation and harmonization of immigration policies in the European community. Schengen was followed by the Dublin Convention on determining the State responsible for examining an asylum application lodged in one of the Member States of the European Communities. The Convention was signed on 15 June 1990 and entered into force in September 1997 under the Bonn protocol. The content of the asylum provisions was essentially the same as the Schengen Convention. The objectives were very similar: avoiding multiple applications, “refugees in orbit”, and preventing asylum shopping¹⁰⁷.

Nevertheless, the system was characterized by a general uncertainty: both the Schengen and the Dublin Convention leave the national admission procedures and the examination of applications in the territory of the individual Member States. This led to the risk of discrimination, since states could adopt different treatments for similar situations. This approach has had the consequence of creating an excess of requests towards States characterized by certain geographical locations that give a more indulgent asylum policy than others. In addition to identifying the country responsible for examining the request, the Schengen acquis / Dublin also establishes rules regarding the extra-territoriality of individual states' decisions on asylum; The negative outcome of the application involves the refusal by the other Member States, thus making it impossible to re-submit the application, thus inevitably increasing the risk of refoulement.¹⁰⁸

However, the Schengen System begins to show the first problems with the increase in the number of States belonging to the System and with the consequent loss of homogeneity that derives from it. This situation means that decision-making by unanimity becomes increasingly problematic. As a result, the intergovernmental nature of the System becomes a factor of slowness and of low decision-making incisiveness.¹⁰⁹

¹⁰⁵ Marinho, C., and Heinonen, M., in “*Dublin after Schengen: Allocating Responsibility for Examining Asylum Applications in Practice*”, (1998), EIPASCOPE, pp. 1-12.

¹⁰⁶ Cherubini, F., “*Asylum Law in the European Union*”

¹⁰⁷ Cfr. «Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities-Dublin Convention». Available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A41997A0819%2801%29>

¹⁰⁸ Geddes, A., “*Immigration and European Integration: Beyond Fortress Europe*”, (2008), Manchester

¹⁰⁹ *ibidem*

However, the enormous efforts to strengthen controls at external borders have not had the effect of preventing illegal entry into the Schengen area. On the contrary, migratory movements became a stable and ineliminable component of European countries. This led to an increase in insecurity feelings among European citizens who began to demand more protection.

In these circumstances, the serious deficit of democracy and transparency that afflicts the Schengen System becomes increasingly difficult to justify and accept. At Community level, the need for a political and technical rethinking begins.¹¹⁰ The first attempt was with the Treaty of Maastricht, and subsequently with the signing of the Treaty of Amsterdam.

With the entry into force of the Maastricht Treaty the European Union enters in the second stage of asylum and immigration development.¹¹¹ Through this treaty, the Community acquires a new structure characterized by three main "pillars": the community dimension (EC), cooperation in the field of common foreign and security policy (CFSP) and in matters of justice and internal affairs (JHA).¹¹² The policies belonging to the first pillar were characterized by the community method, under which the role of the member states was marginalized in favor of the institutions; while the policies falling under the second and third pillars, governed by Titles V and VI of the Treaty on European Union, were based on the method of intergovernmental cooperation.

It is within the third pillar that the asylum policy falls, placed at the top of the list of "*matters of common interest*".¹¹³ It is also interesting to note that, although Title VI of the TEU is removed from the control of the Court of Justice, the Court itself has ruled against it, with the existence of its own power of control over activity carried out in the third pillar. This control would be limited only to the verification that the acts adopted in Title VI do not infringe the Community provisions.¹¹⁴

1.3.2. The innovations of the Amsterdam Treaty

The path towards the "communitarization" of migration policies took a fundamental step with the Treaty of Amsterdam that was signed on 2 October 1997 and entered into force two years later.¹¹⁵ In this treaty, matters relating to asylum and immigration were transferred from the third to the first pillar of the Union, thus passing from intergovernmental competence to that of the Community. The

¹¹⁰ Geddes, A., "*Immigration and European Integration: Beyond Fortress Europe*"

¹¹¹ Maastricht Treaty is a treaty that was signed on 7 February 1992 in Maastricht in the Netherlands, by the twelve member countries of the then European Community, now the European Union, which sets out the political rules and economic and social parameters necessary for the entry of the various member states into the said Union. It entered into force on 1 November 1992.

¹¹² Villani, U., "*Istituzioni di Diritto dell'Unione europea*", (2017), Cacucci

¹¹³ Villani, U., "*Istituzioni di Diritto dell'Unione europea*"

¹¹⁴ *Ibidem*

¹¹⁵ Nascimbene, B., Mafrolla, E., in "*Recent Developments in Community Immigration and Asylum Policy*", in Law, Immigration and Citizenship, vol.1, 2002, p. 13- 36.

new Title IV, directly included in the TEC, is in fact entitled "Visas, asylum, immigration and other policies related to the free movement of persons".¹¹⁶ The competence conferred on the Community is therefore very wide. In fact, Art. 61 of IV title listed new competences of European Community. "The careful wording chosen to define this list indicated that it was to be considered exhaustive and not merely of indicative value".¹¹⁷ These measures are:

1. (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,
2. (b) minimum standards on the reception of asylum seekers in Member States,
3. (c) minimum standards with respect to the qualification of nationals of third countries as refugees,
4. (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;¹¹⁸

In particular, pursuant to art. 61 lett. b and 63, the Council adopts measures concerning immigration policy and the protection of the rights of third-country nationals within a period of five years from the entry into force of the Treaty. In addition to abandon the unanimity rule within a period of five years after the entry into force of the treaty, the council, according to art. 63.3, required the adoption of "measures on immigration policy within in the following areas: a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including thus for the purpose of family reunion; b) illegal immigration and illegal residence, including repatriation of illegal residents".¹¹⁹ A further innovation brought by this Treaty is the integration of the Schengen acquis within the European Union with a specific attached protocol. The objective was pursued to bring together the Schengen rules in the Union. Therefore, by the political decision to proceed with the integration of the Schengen acquis into the European Union, the Treaty of Amsterdam recognized the effectiveness of cooperation and achievements in this area.

¹¹⁶ Boccardi, I., *Europe and Refugees: Towards an Eu Asylum Policy*, (2002), Kluwer Law Intl

¹¹⁷ Cfr. «TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS». Available at <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>

¹¹⁸ Ibidem

¹¹⁹ Cfr. «TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS». Available at <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>

This result led to the definitive success of the Schengen experiment, overcoming the signs of crisis that the system had begun to present.¹²⁰

1.3.3. Dublin Regulations

The next step in the process of building a common asylum system was the Tampere Summit of 15 and 16 October 1999. The political objective of this summit was to implement the provisions of the Amsterdam Treaty concerning an area of freedom, security and justice, in particular through the establishment of a Common European Asylum System (CEAS)¹²¹. It must be based "on the implementation of the Geneva Convention in all its components, thus ensuring that nobody is exposed again to the persecution, for example the principle of non-refoulement".¹²² The Tampere summit shows also the intention to implement in the short term the four milestones of asylum that were: the determination of the State responsible for examining applications; common rules for the procedure for granting asylum; minimum common conditions for the reception of asylum seekers, and approximation of the rules on recognition of refugee status.¹²³ And, in a second phase, to work towards the establishment of a common asylum procedure and a uniform status valid throughout the Union for those who have been granted asylum.

In the first phase between the period 1999-2005 were issued four regulations and four directives: the so-called "Dublin II", "Eurodac" and the directives of "Temporary protections", "Reception", "Qualifications" and "Procedure". The objectives set at Tampere were also confirmed at subsequent stages of the Community process, in particular: the Hague Programme adopted by the European Council in November 2004, to be implemented in the period 2004-2009; the Green Paper on the future asylum system in June 2007; the Policy Plan on Asylum presented by the Commission in June 2008; the European Pact on Immigration and Asylum adopted by the European Council in October 2008. To achieve this goal, the Commission elaborated, over the period 2005-2013, a series of instruments that make up the new "asylum package", using as a legal basis Article 78, par. 1, of the TFUE.¹²⁴ The new acts are presented as acts of recast, that is to integrate in one single text the substantial modifications with respect to the previous act and the provisions that have remained unchanged. New directives "Qualifications"; "Reception"; "Procedures", as well as the new "Dublin III" Regulation,

¹²⁰ Boccardi, I., *"Europe and Refugees: Towards an Eu Asylum Policy"*

¹²¹ Nascimbene, B., Mafrolla, E., *"Recent Developments in Community Immigration and Asylum Policy"*

¹²² Cfr. «Conclusioni della presidenza del Consiglio europeo di Tampere del 15 e 16 October 1999, par. 13»

¹²³ Cfr. «Conclusioni della presidenza del Consiglio europeo di Tampere del 15 e 16 October 1999, par. 14»

¹²⁴ Cfr. «Consolidated version of the Treaty on the Functioning of the European Union».

available at <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A12012E%2FTXT>

have therefore been adopted.¹²⁵The "second phase of Tampere" also includes the creation of the European Asylum Support Office (EASO), whose objective is to create cooperation between Member States in the field of asylum, to support European countries subject to particular migratory pressures and to improve the implementation of the Common European Asylum System (CEAS). However, the results set at Tampere have not been fully achieved: the ambitious objective of "common standards" has passed to a compromise of "common minimum standards", which leaves wide discretion to states in the discipline of the matter, excluding the harmonization. The Commission itself noted, in the Strategic Asylum Plan, that "even after some legislative harmonization at European level, various factors, including the lack of common practices, the different traditions and the diversity of sources of information on the countries of origin, intervene to determine divergent results. This leads to secondary movements and this is contrary to the principle of equal access to protection throughout the EU, and the European Council, in the same year, took note of the existence of "strong divergences between Member States regarding the granting of protection and the forms of the latter".¹²⁶

As a result, a new treaty was signed on 13 December 2007. The Treaty of Lisbon, which entered into force on 1 December 2009, introduced a number of changes to the current Treaties, both as regards the competences of the European Union and the composition of its institutions. The Treaty on European Community now is called Treaty on the Functioning of the European Union (TFEU) and, together with the Treaty on European Union (TEU), constitutes the legal basis for the Union. With the Treaty of Lisbon, the three-pillar structure created by the Treaty of Maastricht disappeared: competences in the areas of visas, asylum and immigration are transferred entirely within the TFEU, in particular in Title V, entitled "Area of freedom, security and justice" (Articles 67 to 89 TFEU).

On the basis of the difficulties encountered in the previous system, the provision of Article 67(2) TFEU was added, for which the Union is to develop a "common policy" on borders, visas and immigration. This provision allows the adoption of any type of legislative act, and in particular regulations, instruments that allow maximum harmonization and are characterized by being directly applicable. Furthermore, the common policy is based on the principle of solidarity between Member States and must be "fair" with third country nationals.¹²⁷ As provided for in the Amsterdam Treaty, the derogations taken into consideration here too are the concepts of "public policy" and "internal security", according to Article 72 TFEU, which states that they "shall prevent the exercise of the

¹²⁵ Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

¹²⁶ "European Pact on Immigration and Asylum", available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aj10038>

¹²⁷ The provision of the objective of equity replaces the previous provision of equal treatment between EU citizens and third-country nationals legally residing in the territory of the Union

responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security".¹²⁸

Within the area of freedom, security and justice, the art. 68 TFEU attributes to the Council the power to set general policy guidelines on the basis of five-year programming; while the power of legislative initiative falls under the exclusive competence of the Commission (but not for matters of police and judicial cooperation in criminal matters, where the power of initiative is also attributed to a quarter of the Member States). For the adoption of these acts, the ordinary legislative procedure referred to in articles 289 and 284 TFEU is provided, corresponding substantially to the co-decision of the former art. 251.¹²⁹ It should be stressed that the Union's competence in this area is shared between Member States and the Union. Member States can only legislate if the Union has not exercised its competence or has decided to end an existing competence, all in accordance with the principles of subsidiarity and proportionality, as laid down in Protocol No 2 annexed to the Treaties.

As regards the provisions on the right to asylum, Article 78(1) TFEU states that "*The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties*"¹³⁰ The art 78 par. (3) TFEU states, however, that if one or more Member States are required to deal with an emergency situation characterized by sudden emergence of third country nationals, the Council, on a proposal from the Commission, may adopt temporary measures for the benefit of the Member State or Member States concerned. The novelty introduced by the Treaty of Lisbon consists in the provision of consultation of the Parliament and the abolition of the provision for which the measures adopted on the basis of these assumptions should not have a duration of more than six months.

According to the provisions of art. 80 TFEU, the principles of solidarity and fair sharing of responsibility between Member States, including on the financial plan, are at the basis of the Union's

¹²⁸ Cfr. «Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community». Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>

¹²⁹The ordinary procedure, detailed in Article 294 TFEU, consists of the joint adoption of a regulation, directive or decision by the European Parliament which, therefore, has a co-decision role) and the Council, on a proposal from the Commission. http://www.amblav.it/Download/l_29720040922it00060016.pdf

¹³⁰ Cfr. Article 78 -ex Articles 63, points 1 and 2, and 64(2) TEC- of Consolidated Version of the Treaty on the functioning of the European Union. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>

policies on border controls, asylum and immigration, in this way, the TFEU acknowledges the principle of burden sharing already enunciated by the art. 63 TEC. Among the innovations stemming from the Treaty of Lisbon there is Article 6 TEU which includes the respect by the European Union of the Charter of Fundamental Rights of the European Union.¹³¹ As far as the European Court of Justice is concerned, the Treaty of Lisbon has made it possible to extend its jurisdiction, in particular as regards the reference for a preliminary ruling. In the matter of visas, asylum and immigration, the Court is now competent to know of appeals for preliminary rulings presented by any jurisdiction, both second and last instance, on the basis of the conditions ex art. 267 TFEU.

The crisis of migrants in Europe has highlighted the shortcomings of the Common European Asylum System. In November 2017, Members of the European Parliament approved the European Parliament's position on the reform of the Dublin system, which determines which country may be reimbursed for asylum applications. In addition to a thorough reform of the Dublin system, the European Parliament calls for border controls to be made more effective and for Member States to be able to monitor people entering Europe. Members of European Parliament also want to put into practice clear European rules to distinguish between immigrants and refugees, so as to ensure proper treatment of asylum seekers and ensure that each Member State contributes fairly by doing its part, for example by participating in the redistribution of refugees.¹³²

1.4 The Reception of migrants in EU law

1.4.1. The Common European Asylum System

Following the entry into force of the Amsterdam Treaty, the European Union has devoted itself to the creation and development of what will be the future Common European Asylum System (CEAS).

In 1999 the European Council had an extraordinary meeting in Tampere (Finland) with the aim of creating an area of freedom, security and justice in the European Union.

The objectives of this meeting were multiple. The first was undoubtedly to make the Union an area of freedom, security and justice, making full use of the possibilities offered by the Amsterdam Treaty; secondly, to strengthen the common foreign and security policy, including the development of a European security and defense policy; and to respect the obligations of the Geneva Convention relating to the status of refugees and other important international human rights instruments¹³³. On the last point, the European Council invited the Union and its Member States to contribute, within their respective spheres of competence provided for in the Treaties, to greater coherence between the

¹³¹ Boccardi, I., *“Europe and Refugees: Towards an Eu Asylum Policy”*

¹³² Geddes, A., *“Immigration and European Integration: Beyond Fortress Europe”*

¹³³ Cfr. «TAMPERE EUROPEAN COUNCIL 15 AND 16 OCTOBER 1999 PRESIDENCY CONCLUSIONS, European Parliament». Available at http://www.europarl.europa.eu/summits/tam_en.htm

Union's internal and external policies, with a view to promoting common development. In this context, the European Council reaffirms the importance that the Union and the Member States attach to the absolute respect of the right to seek asylum. It agreed to work towards the establishment of a Common European Asylum System, based on the application of the Geneva Convention in all its components.¹³⁴ Following the Tampere European Council, the Heads of State and Government of the European Union decided to establish a Common European Asylum System. Initially, this should have led to the establishment of common minimum standards and, in particular, certain minimum¹³⁵.

In this context, the reception directive was adopted¹³⁶. The aim of this directive was to ensure asylum seekers a decent and uniform standard of living in all Member States and to limit secondary movements within the Union¹³⁷.

This process of creating a Common European Asylum System has been characterized by phases: the first one starting from the Tampere conference until 2005 in which the main objective was the harmonization of the legal frameworks of the Member States on the basis of common minimum standards. Between 1999 and 2005, several legislative measures for asylum were adopted.

In fact, among the main results of the Conference there is the strengthening of partnerships with third countries, which led to the stipulation of agreements for the return of migrants illegally entered in the territories of the Union, which nevertheless raised doubts expressed by the European Parliament about the effective protection of the human rights of migrants. The Council also called for the establishment of a single system at Community level for the identification of asylum seekers (Eurodac)¹³⁸.

The conclusions of the Conference, which seemed to be pushing for a humanitarian approach and guaranteeing the rights of asylum seekers, insisting on the centrality of providing minimum conditions for the reception of asylum seekers and common rules for asylum procedures, were not however realized. Indeed, the application of these principles has proved difficult, in particular because of the unanimity principle laid down in the Amsterdam Treaty for the adoption of almost all relevant decisions.¹³⁹

¹³⁴ Cfr. «TAMPERE EUROPEAN COUNCIL 15 AND 16 OCTOBER 1999 PRESIDENCY CONCLUSIONS, European Parliament»

¹³⁵ Cfr. Points 13 and 14 of the conclusions of the Tampere European Council

¹³⁶ Cfr. «Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers».

¹³⁷ Cfr. «Secondary movements of asylum- seekers in the EU asylum system». Available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608728/EPRS_BRI\(2017\)608728_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608728/EPRS_BRI(2017)608728_EN.pdf)

¹³⁸ European Dactyloscopy is the European Union fingerprint database for identifying asylum seekers and irregular border-crossers. Asylum applicants and irregular border-crossers over the age of 14 have their fingerprints taken as a matter of EU law

¹³⁹ Cfr. «Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts». Available at <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A11997D%2FTXT>

This stalemate was partially overcome only in 2001 when the Treaty of Nice was signed, which entered into force on 1 February 2003. The Treaty modified the provisions of the Amsterdam Treaty in the field of asylum to a minimum extent but provided for the partial passage from the unanimity procedure to the qualified majority. The system of qualified majority voting has been tightened up and a clause has been added (Article 67) making qualified majority voting subject to the unanimous adoption by the Council of common rules and essential principles of Community legislation in these areas.¹⁴⁰ According to many, this testifies to the continuing reluctance of Member States to transfer sovereignty in this area. Subsequent summits, including Laeken in 2001, the year following in Seville, proved to be strongly influenced by the growing insecurity concerns in the old continent caused by the September 11 terrorist attacks. Member States' positions on immigration and asylum have indeed been strengthened and the focus has been on the fight against illegal immigration, the fight against terrorism and the need for more effective cooperation between Member States in the control of external borders, which have effectively monopolized discussions within the Community.¹⁴¹ These resolutions were also reaffirmed in the subsequent Thessaloniki European Council, which laid the foundations for the creation of the European Agency for the Management of Operational Cooperation at the External Borders of the Union (Frontex), established in 2004.¹⁴² In the same year the Hague Programme was adopted, aimed at defining the objectives of the Union in the following five-year period (2005-2010). The priorities in this document included: strengthening fundamental rights and European citizenship; the fight against terrorism; the establishment of a balanced political approach to the management of immigration through cooperation with third countries; integrated management of the external borders of the Union; the creation of a common asylum procedure; the strengthening of policies for the integration of immigrant communities; the creation of an effective European area of justice.¹⁴³ In this first phase, it was adopted normative acts of fundamental importance that have laid the foundations of the Common European Asylum System: the Dublin Regulation n. 343/2003, which replaced the 1990 Dublin Convention

1.4.2 The Directive on Reception of migrants

¹⁴⁰ Cfr. «Treaty of Nice Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts». Available at https://www.ecb.europa.eu/ecb/legal/pdf/it_nice.pdf

¹⁴¹ Macrillò, A., *“Il diritto degli stranieri”*, (2014), CEDAM

¹⁴² “*The European Council met in Thessaloniki on 19 and 20 June 2003. The meeting was preceded by an exposé by the President of the European Parliament, Mr Pat Cox, followed by an exchange of views concerning the main items on the agenda*”. Available at <https://www.consilium.europa.eu/media/20847/76279.pdf>

¹⁴³ The Hague Programme was approved by the European Council in November 2004. As the multi-annual programme it follows the Conclusions from Tampere 1999 and establishes general and political goals in the area of Justice and Home Affairs for the period of 2005-2009

As regards reception, it is important to recall that the 1951 Convention and the subsequent 1967 Protocol remain the largest international instruments in the field of refugees to which all EU Member States were signatories. However, these instruments did not impose any obligation on the signatory States to receive asylum seekers and refugees on their territory on a permanent basis and, even less, provided guidelines for reception standards. This decision ultimately remains the prerogative of each State. However, the participating States undertook (in accordance with Article 33 of the 1951 Convention) to not expel or reject (rifouler) a refugee at the borders of countries where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.¹⁴⁴

Therefore, in this first phase, it is precisely the EU that is taking a step forward in terms of the right to reception. In fact, on 27 January 2003, the Council approved the first reception directive “Directive 2003/9/EC” laying down “minimum standards” for the reception of asylum seekers in the Member States.¹⁴⁵ The Directive was applicable in all Member States, except Ireland and Denmark. This directive was intended to harmonize the Member States' rules on reception conditions for asylum seekers, thus contributing to the introduction of uniform European conditions in the field of asylum and to reduce secondary movements.¹⁴⁶ It was significant that the directive was issued as a matter of priority over the other equally important directives. This indicates that particular attention should be paid to the field of reception, given the “very specific characteristics of the need to receive applicants for international protection”, which must be regulated as a matter of priority.¹⁴⁷ Refugees, or more generally, immigrants are often people in economic and social deprivation, who have suffered personal persecution or have recently fled from situations of generalized violence due to armed conflicts. They are people who bear indelible marks on their lives and on their bodies and in their minds, who need health care, especially on the psychological, sometimes psychic side.¹⁴⁸ These are people who tend not to have a family or informal support network that can support them and assist them in the imminent arrival and pending the procedure by the uncertain timing in order to reach a decision about the request for recognition of a form of protection.¹⁴⁹ The purpose of Directive, consisting of 28 articles, was to establish minimum standards for the reception of asylum seekers in

¹⁴⁴ “L’Asilo nel diritto internazionale”, available at https://www.unhcr.it/wp-content/uploads/2016/01/9giovanni_ferrari_lasilo_diritto_internazionale.pdf

¹⁴⁵ Cfr. «Directive 2003/9/EC». Available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>

¹⁴⁶ Cfr. «Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers». Available e at <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A52007DC0745>

¹⁴⁷ Benvenuti, M., (a cura di), “*La protezione internazionale degli stranieri in Italia. Uno studio integrato sull'applicazione dei decreti di recepimento delle direttive europee sull'accoglienza, sulle qualifiche e sulle procedure*”, (2011), Jovene editore, p. 23

¹⁴⁸ Sayad, A., “*La doppia assenza. Dalle illusioni dell'emigrato alle sofferenze dell'immigrato*”

¹⁴⁹ Ibidem

the short term.¹⁵⁰ Article 1 indeed stated that "*This Directive establishes minimum standards for the reception of asylum seekers in the Member States*".¹⁵¹

The most relevant head of the directive regards the general reception conditions, where the duties of information are regulated (Article 5), documentation (Article 6), residence and freedom of movement (Article 7), family unit (Article 8), medical examinations (Article 9), schooling and education of minors (Article 10), work (Article 11), vocational training (Article 12), as well as general and specific provisions relating to material reception conditions and assistance health.¹⁵²

The directive, in Chapter IV, requires the Member States to take into consideration the specific needs of those who carry particular needs, also called vulnerable individuals, through the adoption of ad hoc measures. At procedural level, the issues of the reduction or withdrawal of reception conditions (Chapter III) and the remedies against negative decisions concerning the granting of benefits under this Directive (Chapter V).¹⁵³ As a result, this directive left the member and host states free to provide rules more favorable to their situations.

In 2007 the European commission based on art. 25 of the directive published a report on the application of the reception directive. This report indicated different criticalities, different practices, often not in line with the Directive itself. In particular: some States, including Italy, did not apply the Directive in the detention centers affirming "there are serious problems regarding the applicability of the directive in all the premises used to house the asylum seekers".¹⁵⁴ Under Article 6, Member States were obliged to issue applicants with a document certifying their name and status within three days of submission of the application. As indicated in the report "*Many States did not issue documents on time*" or some States had not yet introduced provisions in their national legislation (Germany, the Netherlands, Hungary, Greece and Spain). Others, despite having introduced a clear term, do not respect it in practice (Italy, Sweden, United Kingdom and France); In some Member States, there was no mechanism for identifying vulnerable asylum seekers, which lost all meaning for the provisions of the Directive on the reception of these persons; the response to the needs of vulnerable persons

¹⁵⁰ Cfr. «Council DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers». Available at <https://www.refworld.org/docid/3ddcfda14.html>

¹⁵¹ Ibidem

¹⁵² Cfr. «Council DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers». Available at <https://www.refworld.org/docid/3ddcfda14.html>

¹⁵³ Cfr. «Council DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers».

¹⁵⁴ Cfr. «Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers». Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0745>

(especially those in detention) was not always in line with the Directive; in some Member States, the level of economic and human resources dedicated to the implementation of the Directive remained questionable.¹⁵⁵

In the same period the European Community considered necessary to start a reflection in order to determine in which direction the CEAS should move. In 2007, with the elaboration of the Green Paper¹⁵⁶ on the future Common Asylum System, the second phase of implementation of the Common System began. The document, elaborated by the European Commission, is the basis of public consultations that have seen the involvement of government representatives and non-governmental organizations, on the basis of which the European Commission itself has approved a Strategic Plan on Asylum¹⁵⁷, presented in June 2008. The three pillars on which the system is to be developed are identified here: reinforcing the harmonization of protection standards by bringing the asylum legislation of the Member States even closer; guarantee and support effective cooperation between them; increase solidarity and a sense of responsibility between Member States and between European and non-European States.¹⁵⁸ The document is set in programmatic terms, dictating the steps to be taken to achieve the objectives set. Given that the legislative instruments put in place in the first phase of the CEAS can be considered an important goal. The Commission highlights how the determination of uniform minimum standards is not sufficient to lay a solid foundation. It is necessary to amend the current legislation and consider new instruments that allow to achieve a greater degree of harmonization and raising the minimum standards.¹⁵⁹

Only a few months later, the Commission approved another crucial document, the European pact on Immigration and Asylum, which set new objectives in five crucial areas: the organization of legal immigration on the basis of the receptive possibilities of states, the struggle illegal immigration, strengthening border controls, building an asylum-like Europe and strengthening partnerships with countries of origin.¹⁶⁰ The second phase of the CEAS is confirmed by the Stockholm Program on 11 December 2009 which establishes the roadmap of the Union's policies for all aspects of the area of freedom, security and justice for the period 2010-2014. Specific reference to the subject of asylum can be found in point 6.2 of the Program, in which, in addition to the customary declarations of intent on the creation of a common asylum procedure and a uniform status for those who have obtained a

¹⁵⁵ Cfr. «Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers»

¹⁵⁶ See *Green Paper on the future Common European Asylum System*, COM(2007) 301 final, 06.06.2007 Brussels.

¹⁵⁷ Cfr. «Policy plan on asylum an integrated approach to protection in the European Union». Available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:it:PDF>

¹⁵⁸ Cfr. «Policy Plan on Asylum. An Integrated Approach to Protection across the EU, COM (2008) 360 final, 17.06.2008 Brussels, p. 4».

¹⁵⁹ *Ivi*, p.4

¹⁶⁰ Cfr. «European Pact on Immigration and Asylum». Available at <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=LEGISSUM%3Ajl0038>

status of international protection, the Union's objective of adhering to the 1951 Geneva Convention and its 1967 Protocol is declared. This objective was achieved thanks to the provisions of the Treaty of Lisbon which gives the Union its own legal personality.¹⁶¹ It is important to remember that the art. 67 TFEU of the Treaty of Lisbon, emphasizes that the realization of the area of freedom, security and justice must take place by developing, among other things, a "common policy" on asylum matters (and no longer minimum standards).¹⁶² Following this report, the committee in 2008 put forward a proposal to recast the reception directive aimed at improving and harmonizing reception standards in the member countries. This proposal failed due to the inability of States to agree on some key aspects, such as detention, and in particular the prohibition of detention for unaccompanied minors. The Commission decided to try again in 2011 with a modified recast proposal, more in line with the requests of the Member States, which was approved in 2013, thus giving rise to Directive 2013/33 / EU. The first important change is highlighted in Article 1" *The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU*".¹⁶³ Compared to the past, the objective is no longer to have "minimum" standards, but "common" rules; moreover, in line with European asylum legislation, we no longer speak of asylum seekers, but of applicants for "international protection".¹⁶⁴ It is clear that aims of this new directive is to establish a better and more harmonized rules on reception conditions throughout the Union. For the first time, detailed common rules have been adopted on the issue of detention of asylum seekers, ensuring that their fundamental rights are fully respected. In particular, the Directive contains a complete list of conditions for detention, avoiding arbitrary practices, and limits the period of detention as much as possible; reduces detention for vulnerable people, especially minors; establishes important legal guarantees such as access to free legal assistance and written information when filing an appeal against a detention order; introduces specific reception conditions for detention centers, such as access to open spaces and communication with lawyers, NGOs and family members.¹⁶⁵ The new Directive also clarifies the obligation to carry out an individual assessment in order to define the

¹⁶¹ Cfr. «I Dossier del Centro Diritti Umani, Le due fasi del Sistema Comune Europeo di Asilo ». Available at <http://unipd-centrodirittiumani.it/it/schede/Le-due-fasi-del-Sistema-Comune-Europeo-di-Asilo/238>

¹⁶² Morgese, G., "La riforma del sistema europeo comune d'asilo e i suoi principali riflessi nell'ordinamento italiano", p. 16.

¹⁶³ Cfr. «Direttiva 2013/33/UE del Parlamento europeo e del Consiglio del 26 giugno 2013 recante norme relative all'accoglienza dei richiedenti protezione internazionale».

¹⁶⁴ For further information, see DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

¹⁶⁵ Cfr. «DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011»

specific reception needs of vulnerable persons; it pays particular attention to unaccompanied minors and victims of torture; and it ensures that vulnerable asylum seekers can also receive psychological support. Finally, it regulates the qualifications of representatives of unaccompanied minors and access to employment for an asylum seeker to be granted within a maximum period of nine months.¹⁶⁶ Despite important developments in the Common European Asylum System, there are still considerable disparities between Member States as regards the types of procedures used, the reception conditions set for asylum seekers, the recognition rates and the type of protection granted to beneficiaries of international protection. These differences contribute to secondary movements and to the most beneficial hunt for asylum and, ultimately, to an unequal distribution among Member States of the responsibility for providing protection to those in need.

Recent mass arrivals have shown that Europe needs a more effective and efficient asylum system, capable of ensuring an equitable and sustainable sharing of responsibility among the Member States, of providing sufficient and decent reception conditions throughout the country.

On 6 April 2016, the Commission outlined its priorities for a structural reform of the European framework for asylum and migration in the Communication “Reforming the Common European Asylum System illustrating various initiatives for a more humane, equitable and effective European asylum policy and to better manage regular migration.”¹⁶⁷ On 4 May 2016, the Commission presented a first set of proposals for the reform of the Common European Asylum System, in line with the three priorities. These were identified in: establishing a sustainable and fair Dublin system for determining the Member State responsible for examining asylum applications; strengthening the Eurodac system to better monitor secondary movements and facilitate the fight against irregular immigration; and creating a genuine European Asylum Agency to ensure the proper functioning of the Common European Asylum System.¹⁶⁸ These proposals were the first constituent elements of the reform of the structure of the CEAS.

With this second package, the Commission completes the reform of the asylum system by adopting four additional proposals: a proposal replacing the Procedures Directive with a regulation harmonizing the different procedural regimes of the Member States and creating a genuine common procedure; a proposal replacing the qualification directive with a regulation laying down uniform rules for the recognition of persons in need of protection and the rights granted to beneficiaries of international protection; a proposal to revise the reception directive in order to further harmonize

¹⁶⁶ “Un sistema europeo comune di asilo”, available at- https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-fact-sheets/ceas_factsheet_it.pdf

¹⁶⁷ Cfr. «Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010».

¹⁶⁸ Cfr. «Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL».

reception conditions in the EU.¹⁶⁹ These proposals are essential parts of the comprehensive reform of the CEAS and they are closely interlinked. This second phase was marked by the willingness to reform the "acquis in the field of asylum", to make it more effective, coherent with the Geneva Convention.

The aim of the developing a CEAS is to ensure a full convergence of national systems, reducing incentives for secondary movements and strengthening mutual trust between Member States along with the overall good functioning of the Dublin system.

CEAS ensures that wherever they are in the EU, asylum seekers are treated fairly and properly. It provides the tools necessary for the rapid identification of people in need of international protection and the repatriation of those who do not need protection. It is generous to the most vulnerable and strict categories against potential abuses, always respecting fundamental rights. It is also economically viable and flexible enough to adapt to the complex challenges which Member States face in this field. As part of this second round of reforms, the Commission proposes, with specific reference to the amendments proposed in the report by the rapporteur, Mrs Sophia in't Veld , to recast Directive 2013/33 /EU.¹⁷⁰

The Reception Conditions Directive establishes, as it was already mentioned, a minimum level of harmonization of the rules on the reception of applicants for international protection in the EU. However, reception conditions still vary considerably between Member States, both in terms of the organization of the reception system and in terms of the standards offered to the applicants.

The migration crisis has highlighted the need to ensure greater coherence in reception conditions throughout the EU and the need for a better preparation of Member States to cope with a disproportionate number of migrants.¹⁷¹ There are significant differences in the level of reception conditions provided by Member States. Some Members have persistent problems in ensuring the reception standards which are necessary for the dignified treatment of the applicants, whereas, in other countries the standards are higher. This contributed to secondary movements and exerted pressure on some Member States. In the light of the above, this proposal aims at: 1-further harmonizing reception conditions in the Union. In this way, on the one hand, it would ensure that asylum seekers receive decent treatment throughout the EU. On the other hand, incentives for asylum seekers to move illegally within and within the EU would be reduced, in particular in those Member States that offer a generally high level of reception conditions. The proposal will also contribute to a

¹⁶⁹ Cfr. «Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL».

¹⁷⁰ Cfr. «Briefing EU Legislation in Progress. Reception of asylum-seekers -recast directive». Available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593520/EPRS_BRI\(2016\)593520_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593520/EPRS_BRI(2016)593520_EN.pdf)

¹⁷¹ Cfr. «Directive 2013/33/EU of the European Parliament and of the Council of 26 June of 26 2013 laying down standards for the reception of applicants for international protection (recast) ». Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

more equitable distribution of asylum seekers among the Member States. To this end, Member States will have to take into account operational standards and indicators on reception conditions developed at EU level and will also need to have contingency plans to ensure the adequate reception of applicants in the event of a disproportionate influx of applicants; 2-to reduce incentives for secondary movements. In order to ensure an orderly management of migration flows, to facilitate the determination of the Member State responsible and to avoid secondary movements, it is essential that asylum seekers remain in the Member State responsible for their application and do not become unavailable. This obligation imposed on asylum seekers is provided for in the proposed reform of the Dublin Regulation. The introduction of more targeted restrictions on the free movement of asylum seekers and the serious consequences in case of non-compliance with these restrictions will contribute to a more effective control of the place where asylum seekers are located.

Another important aspect is access to the labor market. The deadline should therefore be reduced from a maximum of nine months to a maximum of six months after submission of the application. This aligns the access of applicants to the labor market with the duration of the substantive examination procedure. Member States are also encouraged to ensure access to the labor market within three months of submission of the application, if the application is likely to be well founded. Access to the labor market must be in full respect of labor market rules, which should also help to avoid market distortions. Further reduction of the current wide divergences between Member States' labor market access rules is essential to reduce opportunistic state research, which offers more employment opportunities and incentives to secondary movement.¹⁷² The proposal to recast the Reception Conditions Directive is fully consistent with the first proposals to reform the Common European Asylum System, presented on 4 May 2016. The proposal is currently awaiting Parliament's position at first reading and will finally be approved by the Council under the ordinary legislative procedure.¹⁷³

¹⁷² Cfr. «DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down standards for the reception of applicants for international protection (recast) ». Available <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2017-0186+0+DOC+PDF+V0//IT>

¹⁷³ Ibidem

CHAPTER II: The reception of immigrants

2.1 First step: from where do they come from?

The migration flows that characterized Europe has changed during the years. War, conflict, economic inequality, violence are all reasons for people to decide to abandon their countries in order to find a better life standard.¹⁷⁴ Europe, which at the beginning of the twentieth century was a place of emigration, in the last 60 years has become a favourite place of immigration. The end of the Cold War and the subsequent collapse of the Iron curtain induced a new migration flows from Eastern countries. The major countries of origin from 1989 and 2001 were Federal Republic of Yugoslavia, Romania, Turkey, Iraq and Afghanistan. Then, between 2002 and 2006, EU was characterized by a decrease of immigrant flow until 2006 with the Arab Spring. In fact, from 2006 on ward the asylum applications in Europe rose.¹⁷⁵

Iraq, Afghanistan and Syrian Arab Republic were the countries with most migrants and refugees in Europe (especially in Greece).¹⁷⁶

Now, according to UNHCR, the 32 per cent of migrants in EU are from Sub-Sharan Africa, followed by Morocco (20%), Guinea (14%), Mali (12%) and other nationality groups.¹⁷⁷ Obviously the list of countries from which these people depart is much longer and more detailed; Tunisia, Eritrea, Sudan, Chad, Pakistan, Iraq are some of the many countries of migrants who land in Europe.

However, the year of 2013 marked the beginning of what will be called the European crisis of migrants. In fact, from 2013 until 2017, the number of migrants has never stopped increasing. According to an estimate of UNHCR. 2015 was the year with the highest flow of immigrants, the amount of arrivals in that year was 1,015,078, most of them were Syrians, Afghans and Iraqis.¹⁷⁸

From 2000 to 2017 the number of migrants in the world raised from 173 to 258 million persons in which 65 million people are forcibly displaced from their home countries while 20 million (more or less) are refugees. More than half part of refugees are located in Syria, Afghanistan and Somalia. On

¹⁷⁴ Garcés-Mscarenas, B., and Penninx, Rinus., “*Integration Processes and Policies in Europe: Contexts, Levels and Actors*” (2016), IMISCOE Research Series

¹⁷⁵ Ibidem

¹⁷⁶ “*Europe — Mixed Migration Flows To Europe Monthly Overview*”, (August 2018) available at Europe — Mixed Migration Flows To Europe Monthly Overview (August 2018).

¹⁷⁷ “*International migration report*” available at

http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf

¹⁷⁸ ibidem

the other side, Colombia counts the largest numbers of internally displaced people (IDPs) followed by Syria and Iraq.¹⁷⁹ In 2017 the number of international immigrants was estimated of 258 million, that is, 3.4 % of the global population. According to International Organization of Migration (IOM) and some national data, the number of migrants and refugees arrived in Europe in 2017 was 172, 301 while in 2018 was 138,882.¹⁸⁰ Most of them arrived in Europe across Mediterranean sea.¹⁸¹ According to these data, the numbers of migrants is sharply down from their 2015-16 peak due the Eu deal with Turkey and then the bilateral agreement between Libya and Italy. In March 2016, the EU and Turkey agreed that irregular migrants and asylum seekers arriving on Greek islands from Turkey may be returned to Turkey. The deal provides that for every Syrian citizen who, after an irregular crossing, is returned to Turkey from the Greek islands, the EU receives from Turkey a Syrian citizen who has not tried to enter the EU illegally.¹⁸² This agreement was the key point of the closure of the Balkan route, a route widely used in the past by migrants from countries such as Afghanistan and Syria. They arrived in Turkey and through the Aegean landed in the nearest Greek islands, in particular Lesbos, Chios and Rhodes, from where they were taken to Athens and later reached Idomeni on the border with Macedonia. Whereas on 2 February 2017 the Italian Prime Minister Gentiloni and Fayez al-Serraj, Head of the Libyan Government of National Accord signed a Memorandum of Understanding based on a new era of cooperation on irregular migration and border control between Italy and Libya.¹⁸³ Despite all this, there are a lots people are still trying to reach Europe. The European Border and Coast Guard Agency (Frontex), in a recent work, presented the current situation in Europe showing the main migratory routes to reach the continent. These areas of departure are divided into: Western, Central and Eastern Mediterranean, Western Africa and Western Balkans. The Central Mediterranean has been one of the main migratory routes into the European Union with 23,276 people coming mainly from Tunisia, Eritrea, Sudan e Pakistan. The main departure area is Libya, although the number of departures from Tunisia has increased. However, since the summer of 2017, the number of migrants taking this route has decreased, especially for the involvement of the Libyan Coast Guard. In the first half of 2018 the total number of migrants on the Eastern Mediterranean stood at around 24,300 because of a significant increase of irregular crossings in recent months at the Greek land border with Turkey. The total number of

¹⁷⁹ “Global forced displacement hits record high. UNHCR GLOBAL Trends report finds 65.3 million people, or one person in 113, were displaced from their homes by conflict and persecution in 2015.” available at <https://www.unhcr.org/en-us/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>

¹⁸⁰ “Operational portal. Refugee situations” available at <https://data2.unhcr.org/en/situations>

¹⁸¹ International Organization for Migration “World migration report 2018”, available at https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf

¹⁸² Geddes, A., and Scholten, P., “The Politics of Migration and Immigration in Europe”, (2016), Sage Pubns Ltd

¹⁸³ EU Immigration and Asylum Law and Policy: “The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?” available at <http://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>

irregular crossings recorded in the first six months of 2018 was 80% higher than in the same period of last year.¹⁸⁴ The largest number of migrants are Syria and Iraq followed by Afghanistan and Somalia. However, the number of migrants arriving on the Greek islands from the Eastern route decreased after the EU-Turkey statement of 2016. While the Central and Eastern Mediterranean routes in 2017 were characterized by a decrease of migratory flows, the number of migrants detected in EU, especially in Spain, from Western Mediterranean (northern Africa) hit a new record high of nearly 22,900. This was more than double respect the previous record set in 2016. Morocco is the main transit country for migrants heading to EU, created an opportunity for more departures from its western coast in the second half of the year. The 40% of the migrants were nationals of Algeria and Morocco. In 2018, the migratory route in the Western Balkans from Serbia to Hungary and Croatia continues to reduce. The total number of irregular border stood at 2,100, 63% fewer than in the same period of 2017. However, behind these numbers there are thousands of people that every year try, often paying with death, to escape poverty, hunger and war. Thousands of victims who every year try to reach their personal "Europa dream".¹⁸⁵ According to an UNHCR report more than 1,500 refugees and migrants lost their lives trying to cross the Mediterranean in the first seven months of 2018.¹⁸⁶

2.1.1 The infinite journey of hope

The experience of freedom and the continuous flow of movement are the main characteristics of the postmodern condition. In today's society, travel becomes for many a daily experience that continually contrasts with the image of sedentariness negatively perceived by post-modern society.¹⁸⁷ A journey is generally perceived as something positive, voluntary and temporary. Obviously, this does not apply to the journey that migrants have to make. On the base of this category lies a completely different universe: people fleeing from wars, violence, famine, families who want to reunite, young people looking for a better future, men persecuted for their ideas, faith, sexual orientation.¹⁸⁸ It is assumed that those who undertake this particular type of "journey" are unable to do so in an alternative way: they cannot simply take a plane or ferry because they do not meet the legal requirements to enter the

¹⁸⁴ "Frontex: Number of irregular crossings at Europe's borders in 2018 lowest in five years" available at <https://sofiaglobe.com/2019/01/05/frontex-number-of-irregular-crossings-at-europes-borders-in-2018-lowest-in-five-years/>

¹⁸⁵ Parsons, C., and Smeeding T., "Immigration and the Transformation of Europe", (2006), Cambridge University

¹⁸⁶ "UNHCR: superata la soglia di 1.500 morti nel Mediterraneo", available at <https://www.unhcr.it/news/unhcr-superata-la-soglia-1-500-morti-nel-mediterraneo.html>

¹⁸⁷ Bauman, Z., "Making and Unmaking of Strangers", (1995), research article

¹⁸⁸ Castles, S., de Haas, H., and Miller, M., "The Age of Migration: International Population Movements in the Modern World", Fifth Edition

country of destination or because they do not have the necessary documentation to expatriate.¹⁸⁹ They do this journey in extremely risky conditions where arrival is not always guaranteed. That is why they are called “journey of hope”. The three main characteristics of a journey are departure, transit and arrival. Departure is the initial end of the journey. It constitutes the separation of the individual from his land of origin. The departure almost inevitably causes pain, despair, bewilderment and finally, detachment. Even more so if the departure is not voluntary. However, the most difficult moment is characterized by the second phase: the transit. Europe because of its geographical location offers several routes to undertake such trips. The main route today is the Mediterranean, with makeshift boats that do not always offer the safest solution. While land-based routes have decreased over time due to the various agreements between countries concerned. The sea has for years become the main means of access to the European coasts but also the main obstacle.¹⁹⁰ Since 1988 at least 27,382 migrants have died trying to reach Europe, of which 4,273 in 2015 alone and 3,507 in 2014.¹⁹¹ But for many, the sea route is not the only great risk to face. In fact, the journey of migrants from the African continent begins long before arriving on the coasts of Europe. Crossing the Mediterranean is only the last stage of their journey towards a new life. In fact, most of them who want to cross the Mediterranean have to cross before the desert and in some cases the detention camps. In Africa the situation is complicated. From the 54 states 29 of them have been experiencing deep internal instability for years. The hot spots are in the center and north of the continent where armed conflicts, violence and economic difficulties seem to never end. In this context, millions of people have decided, forced by circumstances, to leave the countries and find refuge elsewhere.¹⁹² The main African route remains the western through Niger and Libya. Migrants from Senegal, Gambia, Ivory Coast, Ghana, and Guinea, as previously said, are obliged to cross the desert routes, also called the “road to hell”, that links Niger to Libya. The average duration of the journey from the country of origin is twenty months and the average time spent in Libya is 14 months. Therefore, the journey between the country of origin and the time of embarkation takes a total of between two and three years.¹⁹³ In practice, the African migrants who arrived in Europe in 2016 and 2017 left between 2014 and 2015. This explains the continuous nature of the migratory flows that arrive without interruption. Unfortunately, we do not know the exact number of migrants waiting for the next boat in Libya or even those who are

¹⁸⁹ Castles, S., de Haas, H., and Miller, M., “*The Age of Migration: International Population Movements in the Modern World*”

¹⁹⁰ Colucci, M., Sanfilippo, M., “*Le migrazioni. Un’introduzione storica*”, (2009), Carocci, Roma

¹⁹¹ International Organization for Migration., “*Fatal journey. Tracking lives lost during migration*” (2004) available at https://publications.iom.int/system/files/pdf/fataljourneys_countingtheuncounted.pdf

¹⁹² Connor, P., “*At least a Million sub-saharan Africans moved to Europe since 2010*”, Pew Research Center, available at <http://www.pewglobal.org/2018/03/22/at-least-a-million-sub-saharan-africans-moved-to-europe-since-2010/>

¹⁹³ Castles, S., de Haas, H., and Miller, M., “*The Age of Migration: International Population Movements in the Modern World*”

currently crossing the desert. Another route is the Eastern one that crosses Ethiopia and Sudan and then arrives on the Libyan coast or Alexandria in Egypt. This time the average duration of the trip from the country of origin is 15 months and the stay of migrants in Libya is on average 3 months.¹⁹⁴ The African routes are entirely managed by intermediaries and traffickers. This means that migrants travel for months in very bad conditions and extreme traumas such as torture and violence are a rather common experience during the trip. More than 90% of migrants have been victims of violence, torture and inhuman and degrading treatment in their country of origin and along the migration route, particularly in places of detention and abduction in Libya.¹⁹⁵ Every trip counts his deaths. Therefore, the victims recorded in the press could only be an underestimation.¹⁹⁶ Among the dead are also the victims of collective deportations practiced by the governments of Tripoli, Algiers and Rabat. Particularly in Libya, there has been serious violence against foreigners.¹⁹⁷ In 2006, some NGO's accused Tripoli of arbitrary arrests and torture in detention center for foreigners. In September 2000 at least 560 men were killed in racist riots in Zawiyah, in the north-west of the country. However, when finally managed to cross the desert remains the last step, the sea. Most of the time it is crossed by very small boats overloaded with people, others instead by ferries and merchant ships, where often many people travel, hidden in the hold or in some container. But even here the safety conditions are still very low: a lot of people died by suffocation or drowning.¹⁹⁸ Although the main route chosen by migrants to reach Europe remains the Mediterranean, during 2015 more than 766,000 migrants chose to follow the Balkan route, it winds through the Balkans and many states of former Yugoslavia. The "traditional" Balkan route from Turkey passes through Bulgaria or Greece, then Macedonia, Serbia to try to enter Hungary, was flanked by a second Balkan route that passes from Greece to Albania, Montenegro and finally Bosnia and Herzegovina to try to enter Croatia; the flow in this second Balkan route is about 450 migrants per week who manage to reach Bosnia and Herzegovina.¹⁹⁹ With the 2016 Agreement between the European Union and Turkey, many said that the "Balkan route" was being definitively closed. Two years later, it can be said that the route has not been completely closed at all: in fact, thousands of migrants, refugees and asylum seekers are still trying to follow it to reach the countries of the European Union. The flow has always continued in these two years, but it is above all in recent months that there has been an increase in the number of attempts to cross the route.²⁰⁰

¹⁹⁴ Connor, P., "At least a Million sub-saharan Africans moved to Europe since 2010"

¹⁹⁵ International Organization for Migration "World Migration Report 2018"

¹⁹⁶ ibidem

¹⁹⁷ Global Detention Project., "Country Report. Immigration Detention in Libya: A Human Rights Crisis" (2018) available at <https://reliefweb.int/sites/reliefweb.int/files/resources/GDP-Immigration-Detention-Libya.pdf>

¹⁹⁸ De Cesris, V., and Diodato, E., "Il confine mediterraneo. L'Europa di fronte agli sbarchi dei migranti", (2018), Carocci

¹⁹⁹ Connor, P., "At least a Million sub-saharan Africans moved to Europe since 2010"

²⁰⁰ Karakoulaki, M., "EU-Turkey deal: the burden on refugees in Greece" (2018) available at <https://openmigration.org/en/analyses/eu-turkey-deal-the-burden-on-refugees-in-greece/>

Some UNHCR data clearly testify to this: 14,115 migrants managed to arrive in Greece from Turkey (by land or by sea) in the period 1 January - 30 April 2018 (with an average of over 3,500 people per month);²⁰¹ What is most worrying, however, is the worsening of the conditions in which migrants are forced to pass along the route: the route remains very dangerous in some places and unfortunately the tragic events continue. In these cases, people travel on foot, hidden in trucks, trucks or other vehicles, but not without risks. In trucks, people lost their lives as a result of road accidents, suffocation or crushing by the weight of goods. And at least people drowned crossing the border rivers: most of them today in Evros between Turkey and Greece, in Sava between Bosnia and Croatia and in Morava, between Slovakia and the Czech Republic and in Tisza between Serbia and Hungary.²⁰² Other people died of cold while walking across the border crossings, especially in Turkey and Greece. In Greece, on the north-eastern border with Turkey, in the province of Evros, there are still minefields. The journey ends with the arrival. Arrival is a protracted process, which can take place in hours, weeks, months or even years, as evidenced by numerous interviews with migrants who have been living in a foreign land for years. The arrival can be characterized by different processes outlined by International, European and National standards to which states are required to comply. These procedures, very often, instead of creating integration, structure a series of differentiations that often create the marginalization of the foreigner.

2.1.2 Countries of First Arrival: Italy and Spain

Migrants from Africa have at their disposal two main sea routes: the central Mediterranean and the western Mediterranean route. The first is used by migrants from the Horn and sub-Saharan Africa who embark from Libya to Italy and Malta. Libya, a meeting place for most African migrants, after the uprisings of 2011 became a transit country that has fuelled the criminal phenomenon of "smuggling" through which migrants pay traffickers to cross the Mediterranean Sea.²⁰³ The second route, that of the western Mediterranean, heads towards Spain and is crossed by migrants from Morocco, Algeria and sub-Saharan countries. Other migrants from Senegal and Mauritania in particular, use small wooden boats to get to the Canary Islands, still Spanish territory, but this route is little used because of the difficult conditions to make the crossing.²⁰⁴

²⁰¹ "Operational portal. Refugee situations" available at <https://data2.unhcr.org/en/situations>

²⁰² International Organization for Migration "World Migration Report 2018"

²⁰³ Connor, P., "At least a Million sub-saharan Africans moved to Europe since 2010"

²⁰⁴ Connor, P., "At least a Million sub-saharan Africans moved to Europe since 2010"

Figure 1: Frontex 2017 data (2018 not yet available)

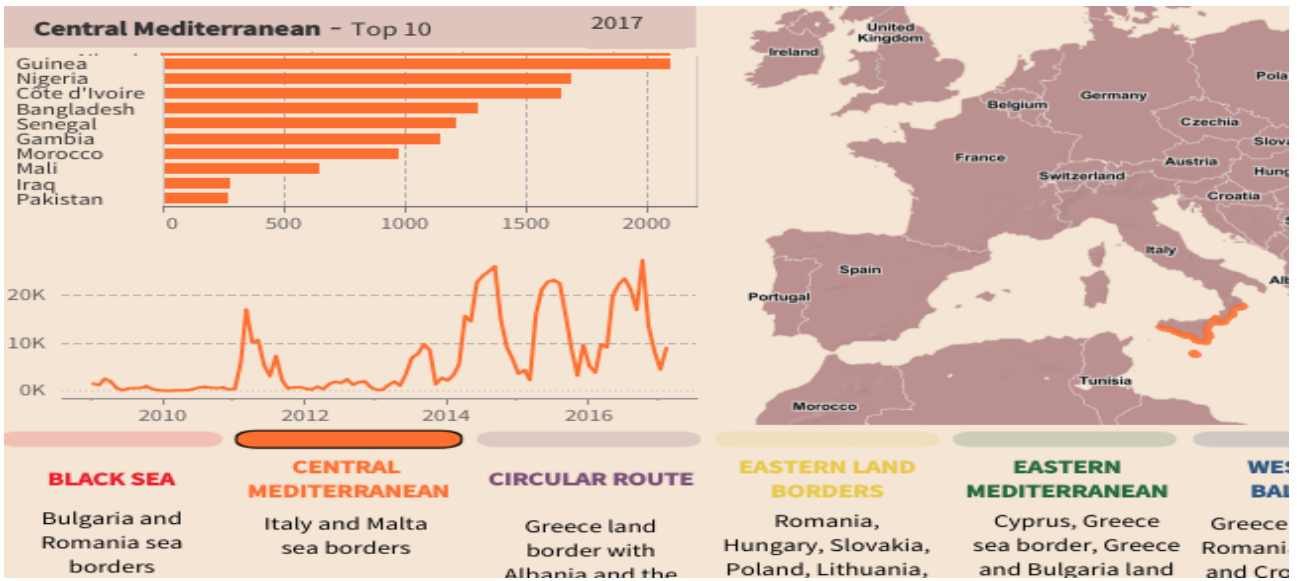
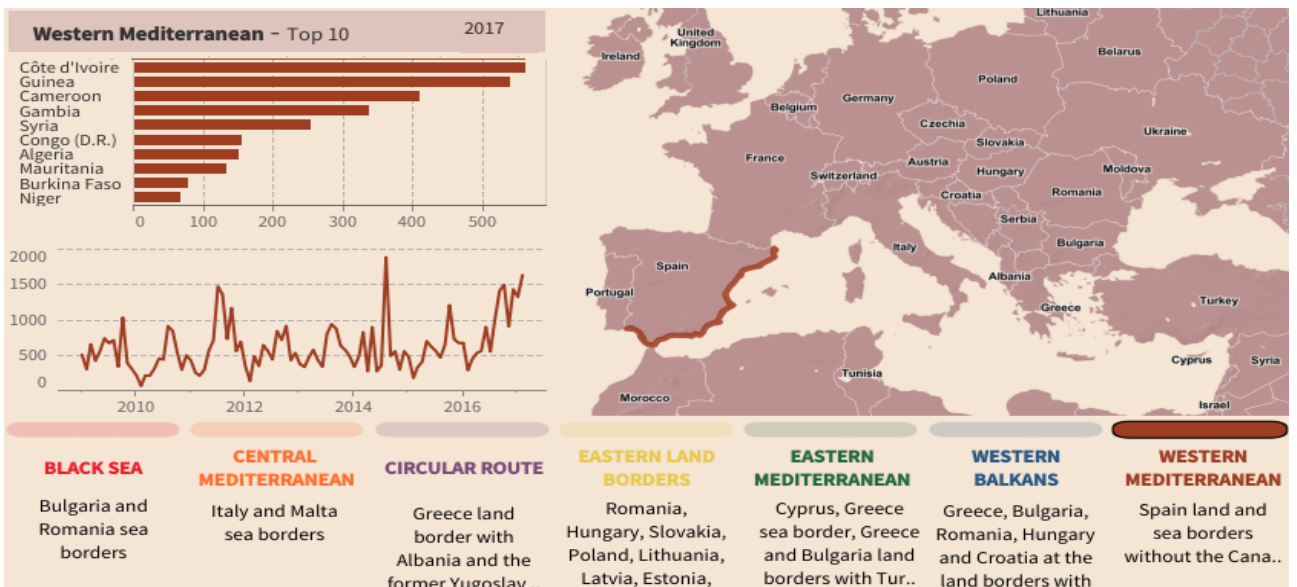


Figure 2: Frontex 2017 data (2018 not yet available)



2.1.3. Italy:

Italy for about a century has been one of the largest countries of emigration. The first departures date back to 1876 to the northern regions of Europe, in particular France and Switzerland. The moment of maximum development of the phenomenon was from the beginning of the century to the outbreak of

the First World War: there were more than 60 thousand expatriates. The 1913 was the year with the highest number of departures: 873 thousand. The trans-oceanic flow represented a share of about 60% of the total, with the United States alone absorbing more than 3 million Italian emigrants.²⁰⁵ Subsequently, with the First World War and the advent of Fascism, Italian emigration contracted greatly until the end of the Second World War. From that moment on, emigration resumed rapidly, so much so that, between 1945 and 1965, Italy was one of the European countries with the highest level of emigration. In the national territory there was a progressive “meridionalization” of the emigration flows, effect of the reduction of the departures from the other traditional exodus areas of Italy, such as the north-eastern one.²⁰⁶ Italy was therefore subject not only by an outward flow but also by an inward one, from the south to the north. With the Seventies, internal geographical mobility weakened and the last phase of mass emigration abroad came to an end. In those years Italy's role in the system of international migration changed radically, the country became a destination for immigration. Between the end of the 60's and the beginning of the 70's there were the first migratory movements towards Italy: these were students, workers coming from Eritrea, Ethiopia and Somalia, the former Italian colonies, or from other North African countries. These first flows are interesting above all for the type of people who arrive: they are women who enter the domestic work sector, they come from the former Italian colonies or from other African countries. In Italy, as in other European countries, there is a very close relationship between decolonization and immigration.²⁰⁷ During that period, considerable flows took place, above all, in two border areas: Friuli-Venezia Giulia (the border with the former Yugoslavia) and western Sicily where, in 1968, recruitment began organized by the shipowners of Mazara del Vallo who hired Tunisian immigrants to employ them in fishing boats.²⁰⁸ However, the greatest flow will come in the late '80s with the fall of the Berlin Wall. Italy will be the place of exodus of many countries of the east. From 1980 to 2000 migration flows almost doubled. The reasons for this trend are mainly: the geographical location of Italy in the Mediterranean area; the borders that make it particularly difficult to supervise the entire national territory; the economic miracle of that years; the "open door policy" practiced by Italy, and for more restrictive policies adopted by other countries.²⁰⁹ In 1981, the first ISTAT census of foreigners in Italy estimated the presence of 321,000 foreigners, of whom about a third were "permanent" and the remainder "temporary". In 1991, the number of foreign residents had actually doubled to 625,000. This migratory balance continued to grow in the 1990s and, since 1993.²¹⁰ In this context, it is clear that

²⁰⁵ Rosoli, G., “*Un secolo di emigrazione italiana 1876-1976*”, (1978), Centro Studi Emigrazione, Roma

²⁰⁶ *ibidem*

²⁰⁷ Colucci, M., “*Storia dell’immigrazione straniera in Italia. Dal 1945 ai giorni nostri*”, (2018), Carroci

²⁰⁸ Rosoli, G., “*Un secolo di emigrazione italiana 1876-1976*”

²⁰⁹ Bonifazi, C., and Livi Bacci, M., “*L’immigrazione straniera in Italia*”, (2014), Il Mulino, Bologna..

²¹⁰ Colucci, M., “*Storia dell’immigrazione straniera in Italia. Dal 1945 ai giorni nostri*”

the phenomenon of immigration is constantly evolving. From 2000 until 2008 in Italy remained constant without giving rise to concern. It is true that since 2008, when European Union started to expand its borders, was no longer possible to detect the numerical entity through the annual applications for residence permits because, in accordance with the free movement of European citizens on the continent they can move freely without any permit.²¹¹ From 2008 to 2013 the trend of landings becomes unstable, reflecting, on one hand, the political-economic and social conditions of the countries of origin of migrants, and on the other, the policies of the Italian Government in contrasting arrivals. In the following two years, however, there was a drop arrivals due in particular to the "Treaty on friendship, partnership and cooperation" signed with Gaddafi's Libya, which aimed to combat immigration by stepping up border controls and rejections at sea. Italy for this Treaty was condemned by the European Court of Human Rights.²¹² In 2011, the exodus from Tunisia, Egypt and Libya, following the events that characterized the so-called Arab Spring led to an increase of arrivals by sea (so-called emergency North Africa). About 63,000 people landed, half of whom were Tunisian nationals and the other half consisted mainly of workers from other African countries, mostly from the Horn of Africa, fleeing from Libya because of the civil war. After only a year of below-average arrivals, the emergence and escalation of old and new conflicts in numerous territories in North Africa and the Middle East led, during 2013, to the arrival of 43,000 migrants, half of them from Eritrea and Syria.²¹³ From 2014 until 2017, there was a new phase of migratory flows towards Europe; Italy has welcomed on its coasts more than 600,000 migrants, or more than those who have arrived in the previous 20 years. If the total number of irregular migrants who crossed the external borders of Europe in the same period of time was over 2,800,000, it is interesting to keep in mind that 22% arrived in Italy along the route of the central Mediterranean and in particular in 2017 landings in Italy constituted 70% of all arrivals by sea in Europe. In fact, in the last four years more than 150,000 people have arrived on the Italian coast through landings and in particular more than 170,000 in 2014, 153,842 in 2015 and more than 181,000 in 2016. In 2017, although the number of migrants landed on the Italian coast in the second half of the year decreased (-34%) as a result of the agreements with Libya, the number of people who arrived by sea was still about 120,000, of which more than 15,700 were foreign minors alone (13% of the total). Because of its geographical location, Sicily, as in previous years since 2011, has represented the region in which the highest number of landings

²¹¹ "The evolution of migration flows in Europe and Italy." Available at

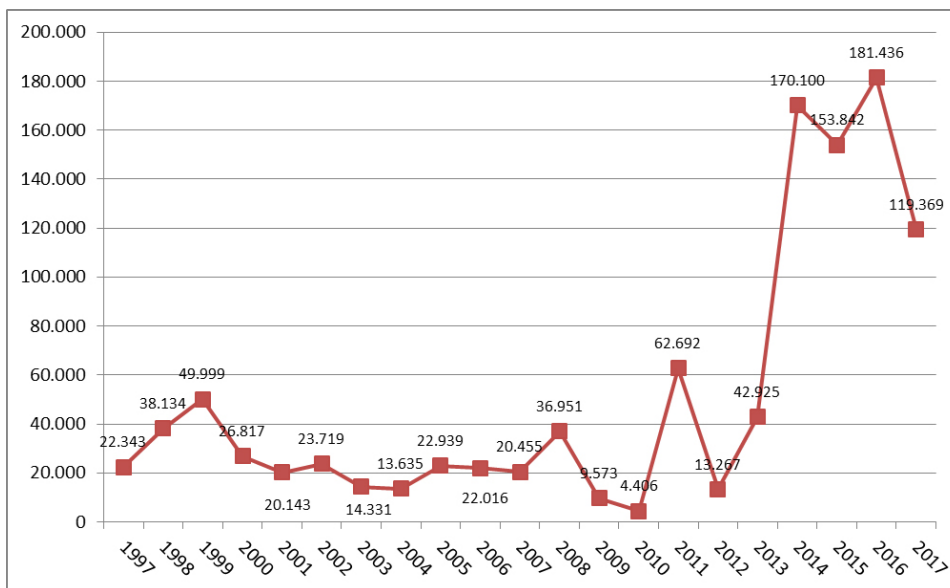
https://www.researchgate.net/publication/268504526_The_evolution_of_migration_flows_in_Europe_and_Italy

²¹² Ronzitti, N., "The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?" available at https://www.gla.ac.uk/media/media_126121_en.pdf

²¹³ Bani Salameh, M., "Migration from the Arab Spring countries to Europe: Causes and Consequences" available at https://www.researchgate.net/publication/322927124_Migration_from_Arab_Spring_countries_to_Europe_causes_and_consequences

occurred (about 75,000 or 63% of the total). This was followed by Calabria (22,787 migrants landed, equal to 20%), Campania (6,953, equal to 6%), Puglia (over 4,800, equal to 5%) and Sardinia (with 3,151 landings), where often the boats are "ferried" to the ports that at that time have availability of docking by rescue ships that intercept them at sea.²¹⁴

Figure 3: number of arrivals in Italy from 1997 to 2017



In Italy, more than 40% of all immigrants come from two geographically different areas: the countries of North Africa and those of Eastern Europe. North Africa is certainly one of the areas most involved in the migratory movements of the last decades, not only for its geographical position but also for its historical events of the last 150 years and for the lack of internal development. The legacy of colonialism is difficult to manage, given that all the countries that have been involved have not managed to make up for the delay accumulated during the years of occupation. Morocco is the country with the largest immigrant community in Italy.²¹⁵ The countries of the East have recorded the highest increase (30%); every two newcomers, one comes from Eastern Europe, with a double increase compared to North Africa and triple compared to the Far East, while immigration from the European Union and other advanced development countries, as already mentioned, is growing very slowly.²¹⁶

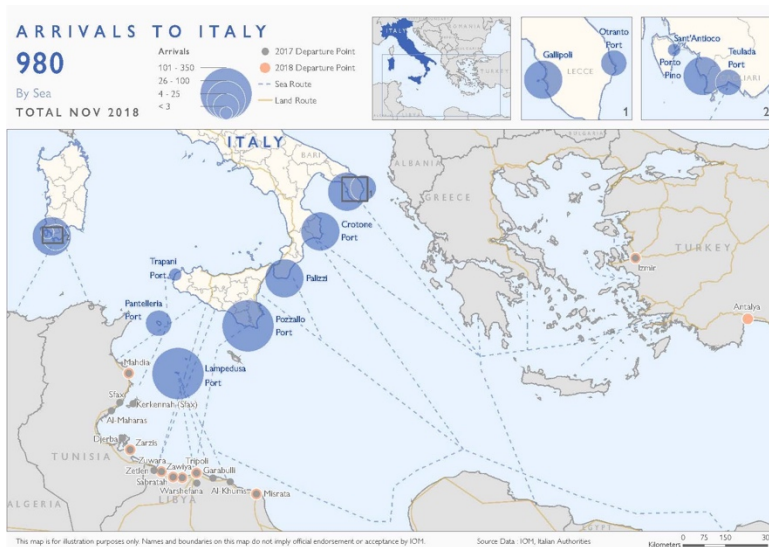
²¹⁴ Colucci, M., "Storia dell'immigrazione straniera in Italia. Dal 1945 ai giorni nostri"

²¹⁵ Bonifazi, C., and Livi Bacci, M., "L'immigrazione straniera in Italia"

²¹⁶ "Migration Report 2017" available at

http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf

Figure 4: Map 1 Main departure points from Libya and landing points in Italy (November 2018)



2.1.4 Spain:

Spain became the scene of African migration later and in smaller proportions than other European countries. Like Italy, Spain was also a country of emigration, especially in the years of the civil war (1936-39). At the end of the war, many Spaniards belonging to the republican decided to flee their country for fear of Franquists reprisals. They went mostly to France where they did not find the welcome they had hoped for. It is estimated that during the Retreat, some 500,000 Spaniards crossed the French border. Others decided to take refuge in America (Mexico, Chile, Argentina).²¹⁷ Those who went to France were locked up in internment camps. In spite of everything, some remained in France, others returned to France and the most unfortunate were deported to concentration camps, in particular to Mauthausen. The economic difficulties of the Franco regime and the economic boom of the 1960s provoked another important migratory movement towards France and Germany. Some 3 million emigrated at that time to work in French and German factories. Those emigrants left to help their families and most of them returned to Spain in the 1970s.²¹⁸ Only in 1980 Spain became an immigration society, a trend that became decisively established only in 1990, as shown by the

²¹⁷ Bover, O., and Velilla P., “*Migrations in Spain: Historical Background and current trends*”, (1995), available at <https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesSeriadas/DocumentosTrabajo/99/Fic/dt9909e.pdf>

²¹⁸ Bover, O., and Velilla P., “*Migrations in Spain: Historical Background and current trends*”,

following data: in 1985 there were 241,971 arrivals, while in 1995 they doubled to 499,773. It is, therefore, in the 1990s that the number of African immigrants who make Spain a true and proper “país de destino”, and not just as a place of transit to other European destinations. From the 90’s onwards, economic development allowed the Spanish economic miracle to take place, leading to significant migratory flows, generally from Africa.²¹⁹ The geographical proximity with Africa, as well as, the presence of two Spanish cities in Morocco (Ceuta and Melilla) allow to understand this phenomenon. After the Schengen agreements, Spain became one of Europe's gates. Spain received many immigrants from North Africa and sub-Saharan Africa. So, there was a low-skilled immigration that found work in construction and agriculture. On the other hand, Spain had to manage the human dramas of immigration such as rescuing immigrants who travelled in "pateras"²²⁰ to reach Europe or taking care of the bodies of those who died trying to cross the Strait of Gibraltar. In these years Spain became the land of five groups of different nationalities: Maghreb immigrants (Moroccans and Algerians); immigrants from sub-Saharan Africa; Latin American immigrants; Asian immigrants (Filipinos and Pakistanis); European immigrants (Portuguese and Eastern Europeans). The Moroccan community is the largest in Spain and is one of the oldest, mainly due to its geographical proximity. Until the end of the 1960s, the presence of Moroccans was not very significant, with the exception of Ceuta and Melilla.²²¹ In addition, there was also a strong immigration from Latin America, which intensified at that time. At the end of the 2000s, the economic situation deteriorated with the economic crisis and therefore the migratory flow decreased, although it remains significant. Some Latin American immigrants even decided to return to their country of origin. Mainly those who emigrate from Morocco do so because of the lack of prospects in their country: for economic reasons, for the difficulty of finding a job at home or for the desire to start a more profitable business, reasons that are intertwined with the intent to advance on a social scale, even for comparison with fellow countrymen settled in other European areas.²²² A distinction that must be made when we talk about flows from Africa is between Moroccans and Algerians, coming from a distinct geographical, cultural and historical area, the Maghreb, and immigrants from sub-Saharan Africa, which constitute the collective that includes more nationality. One is “Moros”, the other “negros”. Unlike the Moroccan community, the Algerian community is not so numerous in Spain, but it is predominant in France. However, since 2007, the presence of Algerians has increased, mostly in Valencia, Murcia, Alicante,

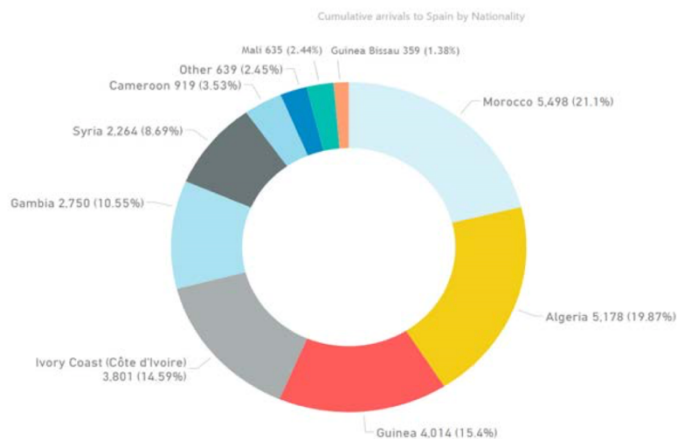
²¹⁹ Nash, M., *“Inmigrantes en nuestro espejo”*, (2005), Icaria

²²⁰ "patera" is a small boat with a flat bottom. It is used to define the type of boat used by immigrant groups to clandestinely access the coasts of southern Spain.

²²¹ Ceuta and Melilla are two Spanish enclaves located on the north coast of Africa. The two Spanish cities are the only land borders between the European Union and Africa. Since 2013, there has been an increase in the number of people who enter irregularly through this route

²²² López García, B., and Berrian, M., *“Atlas 2004 de la inmigración marroquí en España”* (2004) available at http://www.reis.cis.es/REIS/PDF/REIS_116_141169731568963.pdf

Barcelona, Tarragona, Lérida, Álava and La Rioja, and they devote themselves mainly to agricultural activity.²²³ In most cases, they went to Spain because friends and relatives already lived there, so they were able to offer them shelter and accommodation. Compared to the Maghreb, the emigration of sub-Saharan Africans to Spain is more recent: the first to arrive in the mid-seventies were the Senegalese and Gambian and settled mostly in Barcelona, and then expand to other regions of Catalonia and the Mediterranean.



Africans travel to Spain mostly by ship, and the most lucky manage to get through the trip. In fact, these people risk their lives and travel for days, weeks and months, spending a lifetime's savings to try to achieve a better future. They travel in dangerous and insanitary conditions that risk ipothermia, dehydration, and drowning; the boats they travel on are full of people and generally lack any safety equipment.²²⁴ According to data provided by the Spanish National Institute of Statistics (INE), in 2017 the Western Mediterranean (the route used to get to Spain) became for the first time the most active migration route to Europe. The number of immigrants rose by 166% compared to the previous year to almost 6,400 in June.²²⁵ The closure of other clandenstine immigration routes, mainly to Italy and Greece, is to be considered as one of the cause of this increase in arrivals in the Western Mediterranean, although there are many factors that affect flows, from good weather to the end of Ramadan. As confirmed by data from IOM the total number of arrivals at European level fell dramatically (by 56%) in 2017, but Spain was characterized by an increase compared to previous years.²²⁶ Of course, the arrivals in Spain are still much less than those in Italy, but there is a reversal

²²³ López García, B., and Berrian, M., “Atlas 2004 de la inmigración marroquí en España”

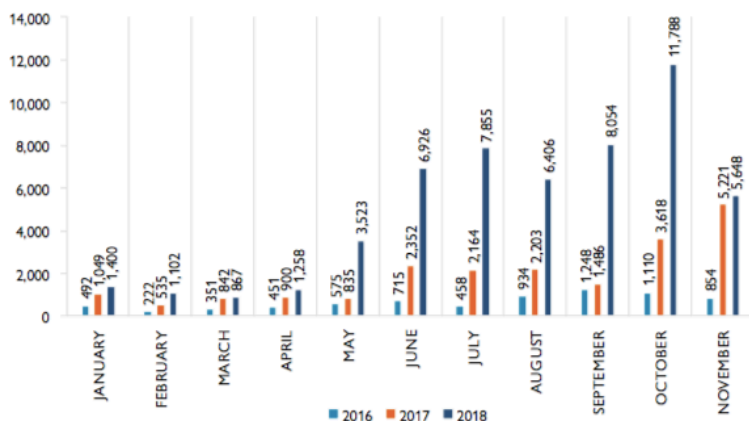
²²⁴ El País, “Viaje por la emigración” (2011) available at https://elpais.com/cultura/2011/11/25/actualidad/1322175610_850215.html

²²⁵ Instituto Nacional de Estadística “Cifras de Población a 1 de enero de 2017 Estadística de Migraciones 2016 Datos Provisionales” (2017) available at https://www.ine.es/prensa/cp_2017_p.pdf

²²⁶ IOM UN Immigration., “UN Migration Agency Updates on Migration Flows to Spain” (2018) available at <https://www.iom.int/news/un-migration-agency-updates-migration-flows-spain>

of the trend that may mean something. What are the reasons for this increase? Difficult to say with certainty. Is it a structural phenomenon, a lasting or temporary change? The agreements of the Italian Government in Libya are producing effects, such as the increase in the operations of the Libyan coastguard to intercept boats bound for Italy.

Figure 5: Sea Arrivals to Spain, comparison 2016 – 2018



2.2 Second step: What does it happen when they arrive at destination?

With reference to the Treaty of Rome, the European Economic Community (EEC) had no formal competence in the field of immigration policies. In fact, everything that had to do with the entry and residence of non-EU citizens was the prerogative of the Member States. As analyzed in the first chapter, the progressive increase in migration flows within Europe has raised the need to develop a common action to control and organize this phenomenon trying to create maximum homogeneity between countries, especially after the Schengen agreements. An initial response was the adoption of the Maastricht Treaty of 1992, which included immigration policy among the issues of common interest. This did not yet confer any specific competence on the Community, but the principle was established that cooperation in the fields of justice and home affairs, and specifically in the six areas of common interest, would become mandatory from a discretionary point of view. In order to mitigate the choice of leaving immigration matters outside the Community institutional framework, a so-called "passerelle clause" was introduced.²²⁷ However, the opportunity to remove immigration from the procedures of international cooperation and make them subject to the Community method was never seized. Thus, the gradual shift towards the exercise of Community competence would only developed

²²⁷ Tizzano, A., (a cura di), "Il processo d'integrazione europea: un bilancio 50 anni dopo i trattati di Roma" (2008) G. Giappichelli, Torino

later, through the amendments made at Amsterdam. Among the innovations introduced by the Treaty of Amsterdam, the most important concerned the partial "communitarization" of the discipline of immigration, which made it possible to move the subject from the intergovernmental area to Community competence, especially as regards visas, asylum, immigration and other policies related to the free movement of persons. The Union, thus, set itself the objective of achieving the free movement of persons in practice, in particular by abolishing border controls for both citizens of the Member States and nationals of third countries.²²⁸ As have seen before, Italy and Spain, given their geographical position, are countries, together with Greece, most affected by migratory flows from Africa and the Middle East. For this reason once analyzed the routes and the various types of flow, it is important to understand what happens to these people manage to cross the borders of these countries. The Entry, therefore, is the step following the arrival and is characterized by a series of European regulations which states are obliged to comply with. The increase of "Illegal" immigration in recent years has made these procedures longer and more difficult.

2.2.1- Internal and External borders and entry visas

In the Title IV of the Amsterdam treaty were listed the measures relating to the entry of third-country nationals into EU. The "communitarization" of the discipline of the migratory phenomenon and, in particular, of the measures regarding entry, has favored the definition of a unitary scheme. Account should also be taken of the integration of the Schengen acquis into the Community body which formed the common basis for the regulations on the crossing of the internal and external borders of the Member States. Former Art. 62(1) of the EC Treaty (now Art. 77 TFUE) provided, first of all, the adoption of measures to ensure, in accordance with Article 14, that there were no checks on persons, whether citizens of the Union or nationals of third countries, when crossing internal borders'; then, it provided measures relating to the crossing of the external borders of the Member States, which included rules and procedures to be followed by the Member States when carrying out checks on persons at those borders' and rules on visas for intended stays of no more than three months.²²⁹ The aim of uniformity of controls at the external borders was to promote the establishment of a common legal system allowing the free movement of persons within a common "area" between the Member States. This system was achieved, on the basis of the relevant provisions of the Community Treaties, through the mutual recognition of State border controls. Many provisions and acts governing the entry

²²⁸ Ibidem

²²⁹ Cfr. «Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union »available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

of third-country nationals into the territory of the Member States are governed by the Schengen acquis "communitarized" by the Treaty of Amsterdam.²³⁰ This provision broadened the Community's competence in the field of visas by providing for precise indications on the content of that competence, which includes: '(i) a list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement; (ii) the procedures and conditions for issuing visas by the Member States; (iii) a uniform format for visas; (iv) rules on a uniform visa'. In the former Article 62(2) therefore laid the foundations for the formulation of a common visa policy as a fundamental component of external border controls. The rules for short-stay visas include, first and foremost, the provisions on whether or not to present a visa at the external border.²³¹ In 2001, the Regulation was approved, containing the lists of countries whose citizens must be in possession of or are exempt from the visa requirement when crossing the external borders, subsequently amended by the Regulation N.509/2014 of the European Parliament and of the Council of 15 May 2014 repealed on 12 December 18.²³² The Regulation applied to visas issued for the purpose of entering and residing in one of the Member States for periods not exceeding three months, as well as to transit through the territory of one or more Member States. The list contained in the Regulation constituted a development of the Schengen acquis and were functional to the creation of a harmonized system of prevention of entry into the territory of the Member States. The rules on procedures and conditions for issuing short-stay visas by the Member States are important for the control of the crossing of external borders, as already provided for in the 1990 Convention and the Common Manual. Another key aspect of the harmonization of visa policies has been the creation of a uniform visa format valid in all Member States.²³³ This model was established by intergovernmental cooperation, on the basis of the repealed Article 100 of the Maastricht Treaty, by means of the 1995 Regulation on the establishment of a uniform format for visas and the subsequent amendments to it. As regards, on the other hand, the rules on long-term visas, which allow foreigners to have a stable presence in the territory of the Member States, it was included among the immigration measures set out in former Article 63 (now Article 77 TFEU), point 3.²³⁴ On this point, the influence of the Schengen Convention is evident, which has provided for a common regime for short-term visas only, while it has not provided for a common regime for long-

²³⁰ Tizzano, A., (a cura di), *“Il processo d'integrazione europea: un bilancio 50 anni dopo i trattati di Roma*

²³¹ Cfr. «Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union»

²³² *“Official Journal of the European Union”* available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:149:FULL&from=RO>

²³³ Cfr. «Handbook for the Processing of Visa applications and the modification of issued Visas» available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/policies/borders/docs/c_2010_1620_en.pdf“

²³⁴ Cfr. «Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union »

term visas. It follows from the above that there are several regimes applicable to checks on persons when crossing the external borders. The content of these arrangements varies according to the nationality of the persons concerned: for example, preferential treatment in the absence of checks on EU citizens, the role played by third-country nationals on the lists in determining whether or not a visa is required for entry to the territory of a Member State, and the arrangements for preferential treatment of nationals of certain third countries which are parties to agreements with the EU. As regards the operational and practical phase of border controls, in addition to the rules of the "Schengen system", the Community institutions adopted a number of instruments to improve their efficiency. In October 2004, the Council approved a Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders, called "Frontex", based in Warsaw, Poland. The purpose of creating this Agency is to respond to the need to improve the integrated management of the external borders of the Member States of the European Union. Without prejudice to the competence of the Member States for the control and surveillance of the external borders, the Agency shall simplify and render more effective the application of existing and future Community measures relating to the management of the external borders by ensuring the coordination of the actions undertaken by the Member States in the application of such measures, thereby contributing to an effective, high and uniform level of control of persons and surveillance of the external borders of the Member States.²³⁵ The main tasks of the Agency are as follows: coordinating operational cooperation between the Member States on the management of external borders; developing a common and integrated risk assessment model and preparing general and specific risk analyses; assisting the Member States on training for border guards by developing common training standards, providing training at European level for national border guards' instructors; organizing seminars and providing additional training for officials of the competent administrations; follow the development of research on the control and surveillance of external borders; assist Member States facing circumstances requiring reinforced technical and operational assistance at external borders; provide Member States with the necessary support to organize joint return operations.²³⁶ The 2006 Regulation of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders was approved. In 2016, it was replaced by Regulation (EU) 2016/399 of the European Parliament and of the Council establishing a Union Code on the rules

²³⁵ Cfr. «Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union available» at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/borders-and-visas/schengen/docs/frontex_regulation_consolidated_2011_en.pdf

²³⁶ Frontex., "*The role of Frontex in European coast guard functions*" (2008), EU publications, available at <https://publications.europa.eu/en/publication-detail/-/publication/83caecb-af76-11e8-99ee-01aa75ed71a1/>

governing the movement of persons across borders (Schengen Borders Code).²³⁷ The Schengen Borders Code is considered to be the central pillar of the management of external borders and sets out the rules for border crossing and the conditions for the temporary reintroduction of internal border controls. Secondly, as not all Member States have external borders to control and are not equally affected by border traffic flows, the EU uses its funds to try to partially compensate Member States' costs at external borders. In the financial period 2014-2020, this financial burden-sharing mechanism is known as the Internal Security Fund.²³⁸ Another category of measures concerns the creation of centralized databases for migration and border management purposes: the Schengen Information System (SIS), the Visa Information System (VIS) and Eurodac, the European fingerprint database for the identification of asylum seekers and aimed at ensuring the correct application of the Dublin Regulation. In addition, there are a number of measures (known as the Facilitation Package) for the prevention and sanctioning of unauthorized entry, transit and residence.²³⁹ Finally, there are measures in favor of operational cooperation in border management, the core of which is the European Coastguard and Border Agency. In the Lisbon Treaty, immigration is dealt with in Chapter 2 of Title V (dedicated to the area of freedom, security and justice), together with border controls and asylum.²⁴⁰ The Treaty provides for effective surveillance of the external borders and the creation of an integrated system between the EU Member States to carry out this control. The power to take decisions lies with the Council, which adopts acts in accordance with the ordinary procedure.²⁴¹ These decisions determine, for example, the common visa policy, the controls to which individuals crossing external borders are subject, or the conditions under which third-country nationals may move freely within the Union for a short period of time. This means that the Union intervenes alongside the Member States. Although the Member States have gradually agreed to surrender sovereignty in this area, they have nevertheless wished to retain certain prerogatives; the relationship with third-country nationals remains a sensitive issue, also because it is often linked to the political and diplomatic relations that each Member State has with other members of the international community. The Treaty affirms the principle of solidarity and fair sharing of responsibility between the Member States, including in financial terms. It also provides that, if a Member State is in an emergency situation, the Council may

²³⁷ Cfr. «REGULATION (EU) 2016/399 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)» available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

²³⁸ Geddes, A., and Scholten, P., *“The Politics of Migration & Immigration in Europe”*, (2016), Sage Pubns Ltd

²³⁹ *“Migrant Smuggling”* available at https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/facilitation-irregular-migration_en

²⁴⁰ Cfr. «Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007/C 306/01)» available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>

²⁴¹ Geddes, A., and Scholten, P., *“The Politics of Migration & Immigration in Europe”*

adopt temporary measures for the benefit of the Member State concerned. This means that the Council can intervene in order to support, including economically, the actions that the Member States take, for example, in order to respect the principle of non-refoulement.²⁴²

2.2.2 The arrival: distribution, Dublin and the crisis

Once the external borders have been crossed, the European states are faced with another problem: the responsibility for accepting asylum applications and, consequently, the subsequent reception of the migrant.

The Dublin Regulation provides guidelines for such action at the legislative level.

As mentioned in the first chapter, this regulation dates back to 1990, when twelve EU countries met in the Irish capital to set up a Convention for the management of asylum seekers. Thirteen years later, in 2003, the Convention was transformed into an EU Regulation “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 (recast)”.²⁴³ The Regulation was revised in 2013 (Dublin III), but in fact the system remained the same at its main point: the identification of the Member State responsible for processing an asylum application.²⁴⁴ Hence, the subsequent Regulations have limited themselves to introducing some clarifications including: fingerprints of those who apply for asylum and their inclusion in a database at European level, from which you can know where the first application was made; new definitions of relatives and representative of the child; obligation to always consider the best interests of the child and wider possibilities of reunification and more guarantees for children; methods and costs of transfers; mechanism for early warning, preparation and management of particular crises. The Dublin III Regulation identifies the EU country responsible for examining an asylum application through a hierarchy of criteria such as family unity, possession of residence permits or visas, irregular or visa-

²⁴² Geddes, A., and Scholten, P., *“The Politics of Migration & Immigration in Europe”*

²⁴³ Cfr. «Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national» available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003R0343>

²⁴⁴ Cfr. «REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) » available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

free entry. The adoption of the "one chance rule" is therefore identified as the solution, the rule according to which each individual, within the European territory, has the right to a single possibility of examining the application for recognition of the status. So that there will always exist only one competent country, and it will not be possible for the asylum seeker in question to submit an application in another country.²⁴⁵ Overall, the responsibility for examining an asylum application lies with the country in which the migrant made the "first entry", since it is assumed that this has issued a residence permit or an entry visa to the person concerned and has consequently allowed the entry and transit authorized on European soil. In practice, this mechanism entails very long times for the recognition of asylum, making the burden of the reception all on the country of first landing. This is also because of the tens of thousands of migrants who have arrived in Europe, only a small percentage are actually entitled to asylum. Of the 82,000 applications examined by the competent Italian bodies in 2017, 52.4% were rejected.²⁴⁶ But the data that should make us reflect is that, to date, it is estimated that in our country there are 600,000 irregular migrants.²⁴⁷ Behind these numbers, there is an underground phenomenon of illegality and exploitation. It often also involves potential refugees who, in order to reach their families in another EU country, prefer to avoid the length of Dublin regulation and European bureaucracy by choosing illegal (and often risky) escape routes. This is why the UN High Commissioner for Refugees, UNHCR, has repeatedly criticized Dublin III, accusing it of not effectively guaranteeing the rights of asylum seekers. In summary, the Dublin Convention, was not intended to obtain a fair distribution of asylum applications based on the principles of solidarity and cooperation of the Union, but essentially intended to reduced the phenomenon of multiple asylum applications while ensuring the examination of the request by at least one Member State.²⁴⁸ However, this solution has led to an excess of applications to only some countries because of their particular geographical location as transit areas to countries with greater possibilities for socio-cultural integration or with a higher level of economic well-being. The ineffectiveness of the Dublin system is mainly due to the difficulty of finding sufficient evidence to identify the State responsible for the irregular entry and, therefore, to apply the criterion that the asylum application must be examined by the EU country that has allowed, albeit involuntarily, access to its territory. Even if the competent State has been identified, the implementation of the transfer involves a high expenditure of police and

²⁴⁵ Cfr. «Dublin III Regulation» available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656666/dublin-III-regulation-v1_0.pdf

²⁴⁶ "Migranti, negato il diritto d'asilo a sei su dieci. E di molti si sono perse le tracce" available at

https://www.repubblica.it/cronaca/2018/01/15/news/migranti_negato_il_diritto_d_asilo_a_sei_su_dieci-186516773/

²⁴⁷ Organizzazione Internazionale per le Migrazioni., "La tratta di essere umnani lungo la rotta del Mediterraneo centrale" available at https://italy.iom.int/sites/default/files/documents/OIM_Rapporto%20tratta_2017.pdf

²⁴⁸ O.Feraci, "Il nuovo regolamento Dublino III e la tutela dei diritti fondamentali dei richiedenti asilo"; in Osservatorio sulle fonti, n.2, 2013 available at <https://www.osservatoriosullefonti.it/mobile-note-e-commenti/note-e-commenti-n-2-2013/633-o-feraci/file>

administrative resources and can be prevented by the person who becomes untraceable. The transfer procedure was also criticized for being too cumbersome, since in many cases Member States exceeded the three-month time limit laid down in the Convention for responding to requests for transfer and the period between the application for asylum and the identification of the State responsible exceeded nine months in some cases.²⁴⁹ These delays, as well as constituting a violation of the Dublin Convention, nullify one of its objectives, which is to avoid "situations that leave the asylum seeker in uncertainty as to the outcome of his/her application for a long time".²⁵⁰ In this context, Regulation 2725/2000 establishing "Eurodac", a computerized system for the collection and comparison of fingerprints, was introduced in order to ensure the effective application of the Dublin Convention.²⁵¹ The categories of persons to be fingerprinted are asylum seekers, foreigners apprehended for irregular crossing of a common external border and third-country nationals irregularly present on the territory of the Union. The gathering of information in a European database allows Member States to compare fingerprints when necessary in order to verify whether the person has already applied for protection within the EU. Substantial divergences in national laws and practices have, in fact, led to a wide use of the "sovereignty clause" (Article 17 of the Regulation), which gives the Member State the right to examine the asylum application submitted to it even if this would not be its responsibility under the criteria defined by the Dublin Convention.²⁵² In fact, a further reform of the Regulation has been proposed in recent years. At the moment, there are three official drafts around the European tables to reform these laws. The one closest to the requests of countries such as Italy and Greece and of migrant rights organizations is the one passed by the European Parliament, which provides for a series of requirements aimed at facilitating the transfer of asylum seekers from the first port states to the EU country where they would like to go and live.²⁵³ In conclusion, it should be noted that, neither the Schengen Convention nor the Dublin Convention provide elements to facilitate the approximation and harmonization of all national legislation. The subsequent result is leaving substantially unchanged the procedures for admission within the various countries, making the situation of the asylum system complicated and different, depending on the country in which the asylum application is made.

²⁴⁹ O.Feraci, *"Il nuovo regolamento Dublino III e la tutela dei diritti fondamentali dei richiedenti asilo"*

²⁵⁰ Cfr. «Dublin III Regulation»

²⁵¹ Cfr. «Eurodac system» available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:133081&from=IT>

²⁵² Cfr. «Regulation (EU) No 604/2013 of the European Parliament and of the Council» available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013R0604>

²⁵³ «CEAS Reform: State of play of Negotiations on the Dublin IV Regulation» available at <https://www.asylumineurope.org/news/30-11-2017/ceas-reform-state-play-negotiations-dublin-iv-regulation>

2.3 Relocation and resettlement

In order to cope with the increasing number of migrants arriving in the Union and the limits of the Dublin Regulation, the European Agenda on Migration in 2015 proposed a temporary mechanism for the distribution of persons with a clear need for international protection, so as to ensure the fair and balanced participation of all Member States in the common effort.²⁵⁴ In this way, through relocation, the receiving State automatically became the State responsible for assessing the asylum application, relieving the burden of countries of first arrival such as Italy.²⁵⁵ The relocate plan initially proposed by the Commission provided for the distribution of a total of 20,000 persons among the Member States on the basis of a series of criteria such as GDP, unemployment rate, population and number of accepted asylum applications. In September 2015, the Justice and Home Affairs Council adopted two decisions to relocate 160,000 asylum seekers from Italy and Greece by 2017, to help these countries cope with the pressures of the refugee crisis.²⁵⁶ In other words, it was a temporary mechanism based on the solidarity of Member States which has been activated on the basis of Article 78(3) TFEU.²⁵⁷ In practice, this mechanism has been the subject of a great deal of criticism. Firstly, the Agenda follows the logic of the Dublin Regulation in determining the country responsible for examining the application for international protection. Therefore, the first country of arrival will no longer be competent, but the country identified in the relocation plans. In other words, it is not the applicant who may have family or knowledge in other countries who has the choice, but the Commission. Another critical point concerns the beneficiaries of the relocation measure. The Agenda clearly states that this mechanism will only cover "persons with a clear need for international protection" without specifying on the basis of which criteria the persons concerned will be identified and to which country they will be relocated.²⁵⁸ It appears that all other persons who do not have "a clear need for international protection" according to European standards will either be responsible for the first states of arrival, i.e. always Italy and Greece, or will be repatriated. Specifically, from the beginning of the program until 11 July 2016, 3,056 people were relocated from Italy and Greece. In December 2016,

²⁵⁴ Cfr. «Proposal for a COUNCIL DECISION establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary», (2015), available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_council_decision_establishing_provisional_measures_in_the_area_of_international_protection_for_it_gr_and_hu_en.pdf

²⁵⁵ Cfr. «DECISIONE DEL CONSIGLIO che istituisce misure temporanee nel settore della protezione internazionale a beneficio dell'Italia e della Grecia». Available at <http://ec.europa.eu/transparency/regdoc/rep/1/2015/IT/1-2015-286-IT-F1-1.PDF>

²⁵⁶ «*Solidarietà Europea: Un sistema di ricollocazione dei rifugiati*», available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_it.pdf

²⁵⁷ Cfr. «Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union»

²⁵⁸ O.Feraci, *"Il nuovo regolamento Dublino III e la tutela dei diritti fondamentali dei richiedenti asilo"*

8,162 people were relocated from both countries, 6,212 from Greece and 1,950 from Italy and in January 2017 the Commission estimates indicated a total of 10,888 people relocated.²⁵⁹ UNHCR is responsible for indicating situations where the security conditions that would allow people to remain in their own country are not guaranteed. In addition, to protect this vulnerable group of people, UNHCR has already adopted a resettlement plan for 22,000 people by 2020.²⁶⁰ To support this program, the EU provided EUR 50 million for the period 2015-2016. The reason for the resettlement mechanism was to prevent refugees in need of international protection from having to turn to criminal networks of traffickers thereby creating safe and legal routes to the Union for persons in need of international protection from third countries, for a period of two years.²⁶¹ The system has been applied to all EU Member States which, on the basis of a distribution key, will give priority to displaced persons in North Africa, the Middle East and finally the Horn of Africa. In addition, in order to avoid secondary movements of resettled persons, the Agenda provides for a commitment by the person concerned to remain in the host State for a period of at least 5 years, during which time he will not be able to acquire legal status in another Member State or gain access to social rights there.²⁶² If this commitment is not respected, the person concerned risks being returned to his or her country of origin. In practice, a total of 7,272 persons were resettled from the start of the program until 11 July 2016, and in December 2016, the number of persons resettled increased to 13,887. In addition, under the agreement between the EU and Turkey, a total of 2,761 persons were resettled.²⁶³

2.3.1 The reception centers: A comparative analysis between Italy and Spain

In recent years, especially in 2017 was witnessed what can be called a "migrant emergency" related to the arrivals on the Italian and Spanish coasts of migrants. It is clear that the management of thousands of people with often dramatic and traumatic experiences is undoubtedly complex. A

²⁵⁹ Cfr. «*Relazione della Commissione al Parlamento Europeo, al Consiglio Europeo e al Consiglio. Decima relazione sulla ricollocazione e il reinsediamento*» available at https://eur-lex.europa.eu/resource.html?uri=cellar:71f7784f-ff32-11e6-8a35-01aa75ed71a1.0012.02/DOC_1&format=PDF

²⁶⁰ «*Toward integration*” UNHCR Projected. Global resettlement needs” available at <https://www.unhcr.org/5b28a7df4.pdf>

²⁶¹ Cfr. «European Commission “RICOLLOCAZIONE E REINSEDIAMENTO. Responsabilità condivisa e apertura di percorsi legali verso l’Europa» (2017) available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170906_relocation_and_resettlement-sharing_responsibility_and_increasing_legal_pathways_to_europe_it.pdf

²⁶² Ibidem

²⁶³ Cfr. «The european Commission reports on progress made under the European Agenda on Migration, Bruxelles, 8 dicembre 2016» available at http://europa.eu/rapid/press-release_IP-16-4281_en.htm (link consultabile al 8 gennaio 2017)

complexity which, however, year after year is transformed into an emergency.²⁶⁴ These emergencies can be determined by many causes and, only by analyzing them, it is possible to lay the foundations for overcoming them. In the case of the reception of migrants, this is an ordinary emergency that occurs every year. Nor is it an emergency linked to the scarcity of economic resources, given that there are the necessary funds to guarantee the reception of asylum seekers arriving in these two countries. In addition, although the number of arrivals may be impressive in absolute terms, they do not in themselves determine an emergency and the number of places available for reception should be sufficient for asylum seekers.²⁶⁵ However, it is an emergency that stems from the ability of these countries to respond to this phenomenon, that is to say, the ability to put in place a quality reception system that knows how to have a comprehensive and long-term vision and is not based solely on stopping the landings. A good reception is undoubtedly an investment from all points of view: both for the quality of life and the possibility of integration of the people received and for the host society. In this context, understanding how it works, the number and quality of these structures, the integration between the people received and the host territory, and the critical issues of this system of reception becomes central.

2.4 Italy:

The system of migrant reception in Italy now takes many years. In fact, the first experiences date back to the 1990s with the first reception center, due mainly to the massive flows that accompanied the Albanian crisis of 1991 and 1997, the civil war in Somalia in 1992 and, above all, the exodus from the former Yugoslavia (1991-1995; 1998-1999). This system has changed a lot over the years until the last change made with the decree on immigration and security introduced by the current Minister of Interior Matteo Salvini in December 2018.²⁶⁶ The system has undergone a radical change from the previous one provided for by law 13/2017, converted into law 46/2017 of the former Minister of Interior Minniti.²⁶⁷ Over the years, 175,550 places have been activated in Italy to accommodate

²⁶⁴ IOM- UN Migration “*Mediterranean Migrant Arrivals Reached 171,635 in 2017; Deaths Reach 3,116*” available at <https://www.iom.int/news/mediterranean-migrant-arrivals-reached-171635-2017-deaths-reach-3116>

²⁶⁵ De Cesris, V., and Diodato, E., “*Il confine mediterraneo. L'Europa di fronte agli sbarchi dei migranti*”(2018), Carocci

²⁶⁶ “*Il sistema italiano di accoglienza: dalle prime esperienze degli anni '90 al modello attuale*”, available at http://www.camera.it/_dati/leg17/lavori/documentiparlamentari/indiceetesti/022bis/021/00000003.pdf

²⁶⁷ Cfr. «DECRETO-LEGGE 4 ottobre 2018, n. 113» available at <http://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg>

asylum seekers and refugees. A number that in absolute terms may seem alarming but, if put in relation to the resident population, it appears more modest.²⁶⁸ The Italian reception system operates on two levels: the first reception, which includes hotspots and first reception centres, and the second reception, which includes the Protection System for holders of international protection and for unaccompanied foreign minors (it replaced the previous Protection System for Asylum Seekers and Refugees), and the Extraordinary Reception Centre (CAS). The system, however, was not without problems, as the SPRAR program needed the availability of municipalities in order to function. Many municipalities, for various reasons, did not assume this responsibility. The result was too many applications, too few places. For this reason, in 2015 the CAS was introduced, a hybrid that formally falls within the first reception, but now practically gives a long-term reception as happens in the second reception.²⁶⁹ In general, it is divided into a first reception specifically dedicated to asylum seekers in the large Government Centres (HUB, CDA, CPSA, etc.) and in the Extraordinary Reception Centres (CAS) activated by the Prefectures. In addition, there is the second reception (SPRAR), primarily dedicated to those who have already successfully completed the asylum application process. These projects are activated by the local authorities and are characterized by small towns and networks with the territory and its services.²⁷⁰

²⁶⁸ Panorama., “*I veri numeri dell’immigrazione in Italia*” (2018), available at <https://www.panorama.it/news/cronaca/veri-numeri-dellimmigrazione-italia/>

²⁶⁹ “*Che cosa sono I Cas, lo Sprar e gli Hotspot*” (2018), available at <https://www.openpolis.it/parole/che-cosa-sono-i-cas-lo-sprar-e-gli-hotspot/>

2.4.1 First reception: Hotspots and first reception centers

The first reception is carried out in collective centers where newly arrived migrants in Italy are identified and can start, or not, the asylum application procedure. In particular, Hotspots are centers where migrants are collected upon their arrival. After an initial assessment, migrants who apply for asylum are transferred within 48 hours to the first reception centers, where they are held for the time necessary to find a solution in the second reception. The system based on hotspots and first aid center (CPA) has in theory replaced the previous system based on the various: First aid and Reception center (CPSA), Reception center (CDA) and Reception center for Asylum Seekers (CARA).²⁷¹ However, since the last change there is little clarity regarding the first reception. Up to now there are four hotspots: Lampedusa, Pozzallo, Trapani and Taranto. It is more complicated to precisely divide the regional first reception centers. According to one of the latest investigations of the Parliamentary Commission on the reception system of the Chamber of Deputies of 23 January 2017, there are 15 distributed in 7 regions: Sicily (4), Puglia (3), Veneto (3), Friuli Venezia Giulia (2), Calabria, Emilia Romagna and Lazio.²⁷² According to the latest available data updated to April 2018, in the first reception system there are about 9,500 migrants, of whom 500 in the hotspots and 9 thousand in the first reception centers. The figure for the number of migrants in the first reception reached its peak in 2016 (more than 15,000) and then fell steadily.²⁷³ As regards those who do not apply for asylum, the Centres of Permanence and Repatriation (CPR) are reserved, where those who have received expulsion procedures are "received" and must be detained for a maximum of 180 days.²⁷⁴

2.4.2 Second reception: the former SPRAR

Prior to the 2018 reform, asylum seekers after transit from hotspots and first reception centres were assigned to the second reception, the SPRAR program. Now the situation is more complicated. Asylum seekers remain outside this program because, as the name suggests, only those who have obtained a positive response to the application for asylum can access. The possible solutions for these people are to stay in the first reception centers, in the CAS or in the CARA. The SPRAR was

²⁷¹ Cfr. «Corte dei Conti “Sezione Centrale di Controllo sulla gestione delle amministrazioni dello Stato», available at http://www.corteconti.it/export/sites/portalecdc/_documenti/controllo/sez_centrale_controllo_amm_stato/2018/delibera_3_2018_g.pdf

²⁷² <https://immigrazione.it/docs/2017/dati-statistici-23-gennaio-2017.pdf>

²⁷³ Panorama., “I veri numeri dell’immigrazione in Italia” (2018)

²⁷⁴ Cfr. «Decreto Salvini, Pacchetto Sicurezza e Immigrazione», available at <https://portaleimmigrazione.eu/decreto-salvini-pacchetto-sicurezza-e-migranti/>

established by law 189 of 2002 and is coordinated by the Ministry of the Interior in collaboration with the National Association of Italian Municipalities (ANCI).²⁷⁵ Local authorities that choose to join the SPRAR can apply to access ministerial funds at any time, responding to a public notice always open. Once the application has been approved by the Ministry, the local authority receives three-year funding for the activation of a SPRAR project on its territory. At that point, the entity in turn publishes a call for tenders to allocate the resources obtained to a managing body, which must be a non-profit entity. The proposal considered best is awarded the contract for the management of the SPRAR project, with the municipality remaining as the reference body.²⁷⁶ The basic principles of the SPRAR system are: integrated reception, which involves the establishment of a local network to ensure 360 degrees integration into the local community, to be achieved through activities of social inclusion, schooling, employment, culture. Refugees and beneficiaries of subsidiary protection can stay in housing for six months, which can be extended for a further six months, during which time they are accompanied to find independent accommodation. In addition to housing, the managing bodies are called upon to provide a series of goods and services: environmental cleanliness and hygiene; food; kitchen equipment; clothing, linen and basic personal hygiene products; a phone card and/or recharge; subscription to urban or suburban public transport based on the characteristics of the territory.²⁷⁷ There are also a number of other services for social inclusion that make the difference to the objective of a real reception and integration: registration at the residence of the municipality, obtaining the tax code, registration with the national health service, integration at school of all children, legal support, implementation of Italian language courses, etc. In 2017, the total number of people employed in SPRAR projects was 11,734 (8.5 thousand employees and three thousand external collaborators, 60% of whom were women), whose fate, given the downsizing of the system, is very uncertain. According to the latest data updated to July 2018, there are 35,881 people in the SPRAR system, of whom about 3.5 thousand are unaccompanied minors.²⁷⁸ There are 877 active projects throughout Italy involving 754 local authorities, mainly municipalities. However, this system, although well articulated, has not been able to spread mainly because of the lack of adherence of municipalities.²⁷⁹

²⁷⁵ “*L’evoluzione del Sistema SPRAR*”, available at <https://www.avvisopubblico.it/home/home/cosa-facciamo/informare/documenti-tematici/immigrazione/levoluzione-del-sistema-sprar>”

²⁷⁶ Ibidem

²⁷⁷ “*Manuale operative per l’attivazione e la gestione di servizi di accoglienza integrata in favore di richiedenti e titolari di protezione internazionale e umanitaria*” available at <https://www.sprar.it/wp-content/uploads/2018/08/SPRAR-Manuale-Operativo-2018-08.pdf>

²⁷⁸ “*Rapporto sulla Protezione Internazionale in Italia 2017*” available at <https://www.sprar.it/pubblicazioni/rapporto-sulla-protezione-internazionale-in-italia-2017-sintesi>

²⁷⁹ “*I Numeri dello SPRAR*”, available at <https://www.sprar.it/i-numeri-dello-sprar>

2.4.3 The extraordinary reception: The CAS

CAS have been designed according to legislative decree 142/2015, art.11 as temporary structures to be opened in case of "significant and close arrivals of applicants" (legislative decree 142/2015, art. 11) that cannot be received through the ordinary system. CAS from temporary structures have become the rule. Unlike SPRAR projects, managed by non-profit bodies under the entrustment of municipalities, this extraordinary reception can be managed by both profit and non-profit bodies under the direct entrustment of prefectures. Each territorial prefecture then publishes periodic calls for tenders for the assignment of the management of the places.²⁸⁰ The CAS can be managed in collective reception or widespread reception mode. The collective reception includes facilities for hundreds of people: hotels, bed & breakfasts and farmhouses. The widespread reception takes place in the apartment and, although with less guarantees of quality. than the apartments included in the. Like the SPRAR, the CAS are also financed by the National Fund for Asylum Policies and Services and, as mentioned, are allocated through tenders based on a daily fee for each user. The average fee is 35 euros per person received per day, but each prefecture can modify the departure auction base, raising or lowering the fees.²⁸¹ Thus having in practice a function virtually identical to the SPRAR, the CAS if they were temporary structures waiting for the second reception. Unlike what happens in the SPRAR, there are no certain and agreed guidelines, so the quality of reception is much more uneven and left, in the final analysis, to the responsibility of the managing bodies.

table 1: reception facilities period 2016-17

	CAS	SPRAR	CAS MINORI	CPA	HOTSPOT	CPR (Ex CIE)	CPA MINORI (DM 1/9/16)	CENTRI MINORI FAMI	ALTRO	TOTALE
STRUTTURE	8.920	137	77	10	4	4	-	4	49	9.205
PRESENZE MIGRANTI	156.465	1.073	1.451	6.792	447	545	-	50	5.218	172.041
PERCENTUALE	90,95%	0,62%	0,84%	3,95%	0,26%	0,32%	0,00%	0,03%	3,03%	100,00%

According to this information, the reception system in Italy is characterized by a series of problems. As far as the first reception is concerned, it is "overloaded" by the too long time of the bureaucracy connected to the procedure for the application for international protection. The number of available places is enormously higher than the number of asylum applications made in Italy, more than 136,000

²⁸⁰ "Norme di Funzionamento interno dei centri di accoglienza straordinaria per cittadini stranieri" available at [https://www.comune.milano.it/dseserver/webcity/garecontratti.nsf/51607b595b240841c1256c4500569c90/7d1466c6ae208e6bc12580d600348266/\\$FILE/Norme%20funzionamento%20interno%20Centri%20di%20Accoglienza.pdf](https://www.comune.milano.it/dseserver/webcity/garecontratti.nsf/51607b595b240841c1256c4500569c90/7d1466c6ae208e6bc12580d600348266/$FILE/Norme%20funzionamento%20interno%20Centri%20di%20Accoglienza.pdf)

²⁸¹ "Il sistema funzionale dei Centri di Accoglienza Straordinaria: un'emergenza strutturale", available at <http://www.istitutoeuroarabo.it/DM/il-sistema-funzionale-dei-centri-di-accoglienza-straordinaria-un'emergenza-strutturale/>

places for 71,744 asylum applications in the first six months of 2017.²⁸² The numbers in the second reception (SPRAR) are still too small compared to those of the CAS, and are therefore unable to ensure the necessary structured transition between first and second reception, also aimed at freeing up places to meet the needs of new arrivals.

2.5 Spain:

Spain is not generally known to be a land of reception. Only a few migrants and asylum seekers are able to enter Spanish territory and/or access effective protection. Yet, with the evolution of migration routes, in 2017 Spain returned to being the third door to Europe, after Italy and Greece. The arrivals of migrants and refugees were three times higher than in 2016. In 2017 Spain registered more applicants for international protection than any other year: 31,120. While until 2016 it was customary to handle about 1% of EU-wide protection applications, in 2017 Spain registered 4.4% of total applications submitted in EU countries and granted refugee status to only 595 persons.²⁸³ Since June 2018, Spain has become the main land for migrants and refugees to Europe by sea, with more than 26,000 arrivals since the beginning of the year. Currently, arrivals in Spain account for about 40% of the EU total. This is largely due to the fact that the number of arrivals in Greece (EU/Turkey agreement of 2016) and Italy (Libya agreement of 2017) has fallen sharply.

2.5.1 the Spanish reception system:

At the end of the 1980s, the first four Refugee Reception Centres (CAR) were set up in Madrid (Vallecas and Alcobendas), Seville and Mislata (Valencia), all of which were publicly owned and involved nearly 400 places for asylum seekers. In 1995 it was formally recognized that, on the basis of article 2.2 of Law 5/1984 regulating the right to asylum and refugee status, refugees who lacked employment and economic means could benefit from the general or specific programs established with the aim of facilitating their integration in Spain.²⁸⁴ In the 1990s, a collaboration agreement was

²⁸² Il Sole 24 Ore “*Migranti, gare d’appalto carenti per i centri di accoglienza straordinaria*”, available at <https://www.ilsole24ore.com/art/notizie/2018-07-09/migranti-gare-d-appalto-carenti-i-centri-accoglienza-straordinaria--173643.shtml?uuiid=AEQkAIJF>

²⁸³ “*La llegada de inmigrantes a España aumenta un 28% y hace crecer la población por segundo año consecutivo*”, available at <https://www.elmundo.es/espana/2018/06/25/5b30be1dca4741905f8b465e.html#NZIONAMENTO>

²⁸⁴ “*Acogida e integración de refugiados*”, available at http://www.mitramiss.gob.es/cartaespana/es/noticias/Noticia_0458.htm

signed between the then Ministry of Labor and Social Security, now the Ministry of Labor, Migration and Social Security, and three NGOs: the Red Cross, CEAR and ACCEM, for the comprehensive (social, legal and health) care of asylum seekers and refugees. Since then, the system has undergone some changes. The beneficiaries of this National Reception System are applicants or beneficiaries of international protection, persons whose application for international protection has been accepted by Spain for examination, under European Union regulation 604/2013. One of the main characteristics of the reception system is that it has a mixed management character. It is made up of a network of publicly-owned reception centres, Refugee Reception Centres (CAR) and Temporary Stay Centres for Immigrants (CETI), as well as devices and programs for dealing with applicants and beneficiaries of international protection managed by specialized non-profit organizations, subsidised for this purpose by the Directorate-General for Migration of the Ministry of Labor, Migration and Social Security.²⁸⁵ The subsidies granted to NGOs for the reception are financed with funds that come from the General State Budgets for the General Secretariat for Immigration and Emigration, receiving co-financing, in some programs, from the European Refugee Fund, the European Social Fund and the Asylum, Migration and Integration Fund. In addition to belonging to one of these profiles, people who access the reception program must lack the economic resources to attend to their needs and those of their family, must not have previously been a beneficiary of the program and must not have left any other program or service financed by the Directorate-General for Migration. The reception program in Spain is a gradual process with the aim of achieving full integration and autonomy of those who benefit from it. The system is mainly developed in 3 phases. Before these phases, a preparatory phase called "Evaluación y Derivación" precedes them. In this phase the contact of the addressees with the Reception and Integration System begins. In this phase, a first evaluation of the needs is carried out and their derivation, if necessary, to the resources most adapted to their profile in the shortest possible time. It will be assessed whether the recipients have any particular vulnerability or reception needs. In order to guarantee coverage of the basic and urgent needs of the addressees who so require, they may be referred to provisional accommodation resources prior to access to the reception devices. The length of stay in these temporary accommodation, in general terms, should be reduced to the time required to complete the necessary formalities for referral to a reception centre or other resource. The days of duration of this phase (maximum estimated duration of 30 days) will not count towards the duration of the integration itinerary in phases: first, second and third phase.²⁸⁶ Once this procedure has passed, it begins the first stage or phase of reception aims to cover the basic needs

²⁸⁵ “*La situación de las personas refugiadas en España Informe 2013*” available at https://www.cear.es/wp-content/uploads/2014/09/InformeCEAR_2013-PDF.pdf”

²⁸⁶ “*El asilo en España, la protección internacional y los recursos del Sistema de acogida*” available at https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_España_2016.pdf

of the beneficiary through the reception devices, which are equipped with specialized technical personnel as well as psychological intervention, interpretation and translation services and legal advice, which complement the work carried out in the centre. All this to help to acquire the skills to facilitate an independent life on leaving the centre. We can distinguish between various centres: CAR, CETI, CATE Y CEAR.²⁸⁷ CAR are public establishments that provide, on a temporary basis, accommodation, meals, psychosocial assistance, etc., as well as other social services aimed at facilitating the socio community integration of people who apply for refugee status in Spain and who lack the economic means to meet their needs and those of their families.²⁸⁸ The Ministerial Order of 13 January 1989 regulates the Reception Centres for Refugees and Asylum-Seekers and the Resolution of 6 July 1998 approves the Basic Statute of the CAR and develops Order 13-1-1989, which regulates them.²⁸⁹ The objectives are several: to facilitate the process of social integration of asylum seekers. Information and guidance for the social, labour and cultural integration of asylum seekers into Spanish society; Referral to the network of social services in general. And the services offered are various: accommodation and temporary maintenance; Information and advice on new situations; Guidance for their incorporation into the educational, health and social system; Psychological care; Specialised social care and management of complementary economic aid; Development of courses for learning the language and basic social skills, among others.²⁹⁰ Currently there are four CAR: Alcobendas; Mislata; Seville and Vallecas. CETI, on the other side, are public establishments, managed by the Sub-directorate General for Integration of Immigrants, conceived as first reception devices and intended to provide basic social services and benefits such as: accommodation and maintenance; psychosocial and health care; legal assistance and leisure activities to the group of immigrants and asylum seekers who arrive in one of the Autonomous Cities of Ceuta and Melilla. The CETI of Melilla began operating in 1999 and has 472 places. It currently accommodates approximately 900 people. The CETI of Ceuta was inaugurated in the year 2000 and its capacity of reception is of 512 places, after the extension of its facilities produced in the summer of the year 2004.²⁹¹ The regulation of migration centres can be found in articles 264 to 266 of the Regulation of Organic Law 4/2000, approved by Royal Decree 557/2011, of 20 April.²⁹² The last

²⁸⁷ “*El asilo en España, la protección internacional y los recursos del Sistema de acogida*”

²⁸⁸ “*Centro de Acogida a Refugiados (C.A.R.)*” available at <http://extranjerios.miramiss.gob.es/es/ProteccionAsilo/car/index.html>

²⁸⁹ https://www.boe.es/diario_boe/txt.php?id=BOE-A-1998-19104

²⁹⁰ “*Centros de Acogida a Refugiados (C.A.R.)*” available at http://extranjerios.miramiss.gob.es/es/ProteccionAsilo/car/docs/Carta_de_Servicios_2018_2021_es.pdf

²⁹¹ “*Guía Laboral - Actuaciones dirigidas a inmigrantes, solicitantes y beneficiarios de protección internacional, apatridia y protección temporal*” available at http://www.miramiss.gob.es/es/Guia/texto/guia_15/contenidos/guia_15_37_3.htm

²⁹² Cfr. «*Real Decreto 557/2011, de 20 de abril, por el que se apureba el Reglamento de la Ley Organica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por ley Organica 2/2009*» available at <https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703>

type of reception center is CEAR. It has 1,726 temporary reception places for people seeking international protection, which are distributed in reception devices in Andalusia, the Canary Islands, Catalonia, Valencia, Euskadi, Navarre and Madrid. It has the following asylum reception programmes: temporary reception that favours the reception and inclusion of applicants and beneficiaries of international protection, applicants and beneficiaries of statelessness, persons under the temporary protection regime in Spain. These centres annually receive people in the first phase of the individualised reception and integration process, which lasts between 6 and 9 months. These are temporary accommodation places in hostels (for a maximum of 30 days), until they are referred to a place in the Temporary Reception Programme; Reception for People in Extreme Vulnerability Situations; Resettlement and Relocation Programmes.²⁹³

2.5.2 The second phase of reception:

The second or integration phase, begins when people leave the reception facility and require further support. For this purpose, an accompanying itinerary is defined, aimed at promoting their autonomy and independence. This phase will be carried out fundamentally through the services of economic aid and social intervention and in any case in the same province where the itinerary has begun. In this phase of integration, the entity responsible will carry out the following interventions with the addressees: establishment of an individual/family integration itinerary; Assessment and proposal of economic benefits of the project; Social intervention (access to the host social context, etc.);²⁹⁴ Guidance and referral accompanied by internal and external resources; Educational management (nursery, schooling of minors, homologation of qualifications, management of economic aid associated with educational activities); Activities aimed at training and labour integration and others. The itinerary may be completed by a third phase or phase of autonomy, in which the beneficiary may need eventual or sporadic assistance or support in certain areas. The duration of the phases is determined by the vulnerability profile of the people, establishing as a general rule two possibilities: 1) The general itinerary designed for people who are not particularly vulnerable, the complete itinerary will be of 18 months at the rate of 6 months in the reception phase, 6 months in the integration phase and 6 months in the autonomy phase; 2) The itinerary for people with special vulnerability has

²⁹³ “*CEAR. Comision Espanola de Ayuda al Refugiados*” available at <http://ong.consumer.es/cear-comisin-espaola-de-ayuda-al-refugiado>

²⁹⁴ Vega Pascual, J., “*Fases de la intervencion social con refugiados*”, available at <https://core.ac.uk/download/pdf/16359403.pdf>

a maximum duration of 24 months divided into 9 months of reception, 11 months of integration and 4 months in the autonomy phase.²⁹⁵

Inicio Itinerario de Integración

FASE E. Y D.	PRIMERA FASE	SEGUNDA FASE	TERCERA FASE
1ª Acogida	Acogida en Centro	Integración	Autonomía

As previously mentioned, in the last two years Spain has been subject to an increase in arrivals on its coasts, particularly in Andalusia. This has created a major crisis, especially as regards the reception system, which has failed to guarantee access for all applicants. This is why the Andalusian and central Spanish governments are trying to find temporary solutions, including the opening of the "Centro de Atención Temporal de Extranjeros" (CATE) in Cadiz to make up for these shortcomings.²⁹⁶

²⁹⁵ Cfr. «Real Decreto 557/2011, de 20 de abril, por el que se apureba el Reglamento de la Ley Organica 4/2000, sobre derechos y libertades de los extranjeros en Espana y sy integracion social, tras sy reforma por ley Organica 2/2009»

²⁹⁶ El País "Un centro temporal para atender a 600 migrantes al día en Cádiz", available at https://elpais.com/politica/2018/08/02/actualidad/1533214730_823096.html

CHAPTER III

The cost of immigration

3.1 An introduction

When it comes to migrants, one of the most controversial and debated issues is precisely that of figures, that is, how much a country really spends on each immigrant who arrives in its territory. What are the numbers behind the funding for the migration issue? And how does the European Union help the Member States? These are the most frequently asked questions which are often not answered precisely.

Over the years, this topic has caused controversy and discontent among the public opinion to the point of arguing that it is immigrants who create economic problems within countries.²⁹⁷ In order to understand if this statement is true it is proper to investigate by sinking into the dynamics that characterize the various countries. In recent years, the EU has been subject to strong criticism, especially in Italy, being accused of "abandoning" the countries most in need. This chapter, therefore, will be dedicated to answer series of questions related to the cost of immigration and to dispel, in some cases, false myths.

3.1.1 How much does the Italian reception system cost?

As already mentioned in the previous chapters, due to its geographical position, Italy is one of the countries most affected by migration flows, especially from the Mediterranean. Overall, since 2014, the first year of the emergency, thanks to Italian efforts, more than half a million people have been saved at sea. In 2016, 181,436 people were rescued, a figure well above the two previous years, more

²⁹⁷ "Altro che pagarci le pensioni, gli immigrati sono solo un costo", available at <http://www.ilgiornale.it/news/politica/altro-che-pagarci-pensioni-immigrati-sono-solo-costo-1316845.html>

than three times the level in 2013 and even higher than the period 2011-2012 characterized by the crisis of the so-called "Arab Spring".²⁹⁸ Between 2016 and 2017, 300,683 immigrants arrived in Italy, of whom only a small part were relocated to other European countries. These numbers have caused growing concern not only from the point of view of security but also from the economic point of view.

From 2011 to 2017 there was a growing increase in estimates of public spending to address the crisis of migrants. In 2011, €840 million was spent, while in 2017, expenditure reached €4.363 billion. Of this cost, however, not everything was allocated to reception, only about 68.4%. The remaining 31.6% is divided between rescue at sea, education and health.²⁹⁹ In 2017, expenditure on immigration amounted to 0.56% of primary public expenditure, which amounted to 778 billion in 2017. In particular, the cost of sea rescue increased from 249 million in 2011 to 781 million in 2017. Reception expenses increased from 306 million in 2011 to 3 billion in 2017. The rest of the expenditure is attributable to health and education, whose costs increased from 286 million in 2011 to 589 million in 2017.³⁰⁰

The National Fund for Asylum Policies and Services is responsible for the appropriations earmarked for reception (FNPSA).³⁰¹ The fund is managed directly by the Ministry of the Interior, which provides grants to local authorities that offer services for the reception of asylum seekers. In addition to the appropriations provided for in the ordinary budget chapter, this fund also receives the resources of the European Refugee Fund, as will be seen later, through the Ministry of the Economy and Finance.³⁰² Therefore, the FNPSA provides grants to local authorities that submit projects for the reception of asylum seekers, refugees and beneficiaries of subsidiary protection. On the basis of data collected from the prefectures, the daily cost per migrant in the "first reception" period would be about 30-35 euros, while the cost in the "second reception" period would be about 32,9 euros.

The only difference with respect to these numbers are the costs for unaccompanied foreign minors (MSNAs), for whom the cost per person per day is 45 euro.³⁰³ These sums include expenses incurred

²⁹⁸Cfr. «Documento di Economia e Finanza». Available at http://www.dt.tesoro.it/modules/documenti_it/analisi_programmazione/documenti_programmatici/def_2017/Sez.1_-_Programma_di_Stabilita_2017.pdf

²⁹⁹Cfr. «Documento di Economia e Finanza»

³⁰⁰ «*Alcune Implicazioni Dell'Immigrazione Sui Conti Pubblici*», available at https://osservatoriocpi.unicatt.it/cpi-Effetti_immigrazione_conti_pubblici.pdf

³⁰¹Cfr. «Corte dei Conti. Sezione Centrale di Controllo sulla Gestione delle Amministrazioni dello Stato». Available at http://www.corteconti.it/export/sites/portalecdc/_documenti/controllo/sez_centrale_controllo_amm_stato/2018/delibera_3_2018_g.pdf

³⁰²ibidem

³⁰³«*Migranti, i costi dell'accoglienza: 35 euro al giorno. Ma ai richiedenti asilo ne vanno 2,50*», available at <https://www.ilsole24ore.com/art/notizie/2018-06-03/migranti-costi-dell-accoglienza-35-euro-giorno-ma-richiedenti-asilo-ne-vanno-250-195615.shtml?uuiid=AE686hzE>

for professional operators employed in the reception, administrative management costs, pocket money, telephone card, supply of medicines, monthly hygiene kit, clothing, meals and food. It does not include indirect additional costs such as transport costs and public service costs. Most of the 30-35 euros go to the managing bodies of the centres, which cover the management costs and pay the operators' salaries. The immigrant, on the other hand, receives 2.5 euros daily via his pocket money.³⁰⁴ According to a latest report by the Minister of Foreign Affairs in 2016, the largest costs were dedicated to rescue at sea followed by first aid and health care, protection and education for a total of 3.3 billion, specifically as many as 881 million in rescue operations and transport of migrants, 250 million in health care costs, 89 million in salaries of staff, 66 million in contributions to Turkey in the management of refugees, which in 2017 became 99 million.³⁰⁵

Table 1: shows the estimated expenditure incurred for the migrant crisis. (Years 2011-2017)

TAVOLA III.2- STIMA DELLA SPESA SOSTENUTA PER LA CRISI MIGRANTI. ANNI 2011-2017										
	2011	2012	2013	2014	2015	2016 DPB ott. 2015	2016 Rapporto fattori rilevanti feb. 2017	2016 pre- consuntivo	2017 DPB ott. 2016	2017 aggiornamento
In milioni di euro										
Totale-scenario costante	840,0	920,1	1.324,9	2.030,4	2.665,6	3.430,6	3.542,9	3.719,3	3.914,1	4.304,0
Totale-scenario di crescita	-	-	-	-	2.665,6	4.227,2	4.239,6		4.261,7	4.700,3
In %										
Soccorso in mare	29,6	27,0	41,6	37,0	29,0	25,4	24,6	18,5	20,8	18,8
Accoglienza	36,4	39,9	34,8	38,6	50,3	58,3	59,6	66,5	64,9	68,2
Sanità e istruzione	34,0	33,2	23,6	24,4	20,8	16,3	15,8	15,1	14,3	13,0
In %										
Corrente	95,3	93,2	78,2	83,2	90,5	87,7	88,6	94,3	90,0	90,9
Capitale	4,7	6,8	21,8	16,8	9,5	12,3	11,4	5,7	10,0	9,1
In milioni di euro										
Contributi UE	56,0	90,7	78,8	70,3	106,6	112,1	112,1	120,8	87,0	91,0
Totale al netto dei contributi UE - scenario costante	784,0	829,3	1.246,1	1.960,1	2.559,0	3.318,5	3.430,8	3.598,5	3.827,1	4.213,0
In %										
Totale netto UE in % del PIL	0,05	0,05	0,08	0,12	0,16	0,20	0,21	0,22	0,22	0,25
Diff. rispetto a t-1 in % PIL	0,00	0,00	0,03	0,04	0,04	0,04	0,05	0,06	0,03	0,05
Totale al netto dei contributi UE - scenario di crescita						4.115,1			4.174,6	4.609,3
In %										
Totale netto UE in % del PIL						0,25			0,24	0,27

In addition to the expenditure listed above, another aspect that contributes to the increase in these figures is the timing of the Italian judicial and bureaucratic system. It should be noted that according to data from the Ministry in the last four years (2014-2018) the number of applications for protection as refugees exceeds 267 thousand, think that in the last 25 years there have been a little less than 650 thousand.³⁰⁶ It means that they have almost doubled in four years. A distinction is made between the

³⁰⁴ibidem

³⁰⁵ "Immigrati, ecco quanto ci costa davvero accoglierli", available at https://www.repubblica.it/solidarieta/immigrazione/2016/10/29/news/immigrati_quanto_ci_costa_davvero_accoglierli-150837863/?refresh_ce

³⁰⁶"Integration refugee in Greece, Hungary and Italy", available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614194/IPOL_STU\(2017\)614194\(ANN03\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/614194/IPOL_STU(2017)614194(ANN03)_EN.pdf)

first reception centers, which should manage the entry, immediate assistance and recognition of people entering our territory, and the second reception centers, which should accommodate for a limited period the people who apply for protection. Total expenditure is around €1.7 billion.

On average, the time it takes to examine and take a decision on an application for protection is one year. During this period, the state will have to pay all of them, even those who are not then entitled to protection. In other words, the slower the judicial bureaucracy is, the more the state will have to pay for these delays. In addition, people who are not entitled to protection become irregular immigrants, who will not be repatriated, because the cost is too high. They remain within the country but have no rights. They therefore live in a limbo that can lead them into crime, into the black market, into illegal activities. All these elements can further damage the economy of the state.

In the light of these data, a common European response is needed on several fronts: on the asylum system, the protection of human rights, the management of external borders and, above all, on financial matters. The European Council has repeatedly recognized “the significant contribution, including of a financial nature, made by the Member States at the forefront in recent years”.³⁰⁷ Indeed, the management of external borders is a matter of shared responsibility. Italy is playing a key role in ensuring this and is making an exceptional financial effort to fulfil its humanitarian obligations on behalf of the Union. In a recent interview, the EU Commissioner for Migration, Dimitris Avramopoulos, said that “Italy has been under particular pressure in recent years and the Commission will continue to support Italian efforts when it comes to managing immigration and welcoming those in need of protection”.³⁰⁸

The intensification of arrivals, even though these figures have decreased since 2018, puts considerable pressure on the country's reception capacity. Presences in the various reception facilities have increased from 22 thousand units in 2013, to 104 thousand in 2015, up to 176 thousand units in 2017. Most refugees are housed in temporary facilities (around 77 per cent), as conventional services for centrally managed asylum seekers and the locally managed Protection System for Asylum Seekers and Refugees have too limited a capacity. The implementation of EU outplacement plans has not produced the expected results.

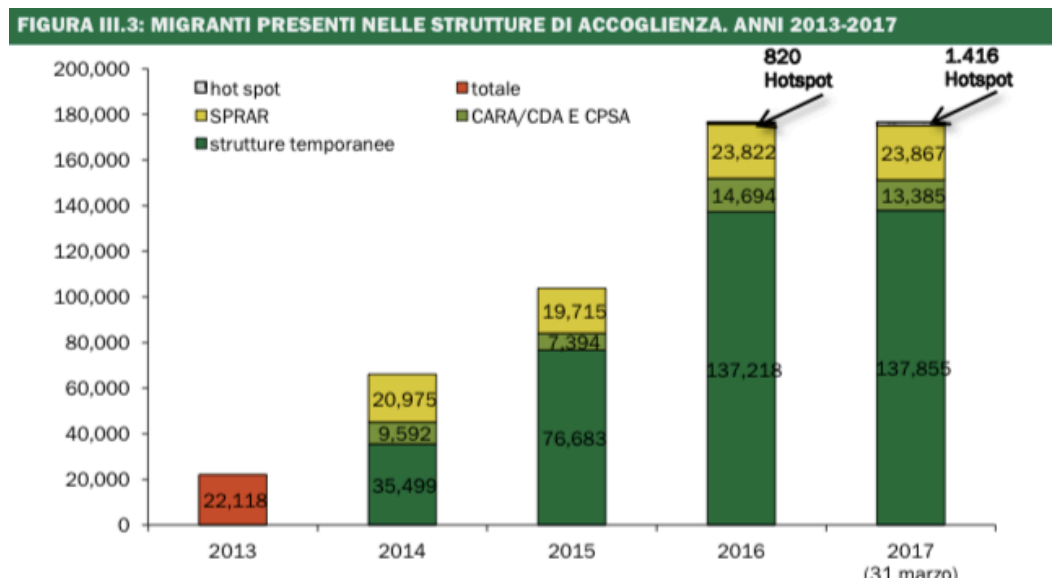
In this context, Italy has been forced to take further measures to alleviate local governments in areas with a high density of immigrants. It introduced a new national reception plan aimed at achieving a more equitable distribution of migrants and refugees across the territory (based on proportionality and sustainability criteria). To this end, in 2016, 100 million were allocated to municipalities that

³⁰⁷Cfr. «Refugee Crisis: European Commission takes decisive action - Questions and answers». Available at http://europa.eu/rapid/press-release_MEMO-15-5597_en.htm

³⁰⁸«*Rifugiati - fondi UE all'Italia per assistenza sanitaria*» available at <https://www.fasi.biz/it/notizie/novita/18936-rifugiati-fondi-ue-all-italia-per-assistenza-sanitaria.html>

receive international protection applicants for up to 500 euros per person.³⁰⁹ On 7 March 2018 the Italian Court of Auditors published the report "The first reception of immigrants: the management of the National Fund for Asylum Policies and Services (2013-2016)", which shows that for the reception of immigrants presumed refugees, net of the so-called indirect costs, Italy faced in 2016 a cost of 1.7 billion euros. The EU contributed only EUR 46,8 million to this expenditure, i.e. 2,7 % of the total cost borne by Italy. The report also points out that Italy is bearing the costs of not relocating asylum seekers to other EU countries, which as at 15 October 2017 amounted to EUR 762.5 million.³¹⁰

Table 2: shows the estimated expenditure incurred for the migrant crisis. (years 2013-2017)



As a sign of continuity with the commitments made at European level, in recent years several hotspots have been set up to identify migrants with the collaboration of officials from Easo, Frontex and Europol and further work is underway or planned, including through mobile structures at sea. All this has led to a further financial effort for Italy. Over 2.4 billion in reception, with about 9,200 hospitality centres located in 40% of the municipalities, not to mention the burdens of the State forces involved in immigration: Coast Guard, Navy, Guardia di Finanza and State Police.³¹¹ To support Italy in managing the emergency of migrants, the EU Commission has recently made available €9 million to improve the conditions of beneficiaries of international protection in reception centres.³¹²

³⁰⁹Cfr. «Decreto-legge del 22/10/2016 n.193- Disposizioni urgenti in materia fiscale e per il finanziamento di esigenze indifferibili». Available at https://www.ilsole24ore.com/pdf/2016/10/27/Dl_193_2016%20.pdf

³¹⁰«Spese per l'accoglienza degli immigrati presunti profughi: costi insostenibili per l'Italia», available at http://www.europarl.europa.eu/doceo/document/E-8-2018-002227_IT.html

³¹¹Spese per l'accoglienza degli immigrati presunti profughi: costi insostenibili per l'Italia”

³¹²«Migranti: 9 milioni euro da Ue per sanità in centri accoglienza», available http://www.ansa.it/europa/notizie/rubriche/altrenews/2018/08/22/migranti-9-mln-euro-da-ue-per-sanita-in-centri-accoglienza_a2d4f3b8-b4f6-4f63-8416-0f585da25fa2.html

The funds will help more than 42,000 people in five Italian regions - Emilia-Romagna, Lazio, Liguria, Tuscany and Sicily - with a focus on the most vulnerable, women and children. Finally, the 2018 Budget Law has provided, with Section II interventions, for a reprogramming of expenditure authorizations for the activation, rental and management of detention and reception centers for foreigners, amounting to 50 million euros in 2018 and 100 million in 2019. In addition, it has provided for an allocation for the experimental implementation of a national plan for assisted voluntary return of migrants. The allocation is equal to 500,000 euros for 2018 and 1.5 million for each of the years 2019 and 2020 (art. 1, co. 1122, Law no. 205/2017).³¹³ Since 2014, the EU Commission has mobilized over €200 million in emergency assistance to support Italy in managing the migration crisis, in addition to the resources of the National Programme of the Asylum, Migration and Integration Fund (FAMI).³¹⁴ However, this aid only covers a small part.

3.2 How much does the Spanish reception system cost?

The arrival of “*pateras*”, rafts to the Spanish coasts has skyrocketed by almost 600% in the last four years. The continuous increase since 2013 reached record levels in 2017. The last fiscal year left a veritable avalanche of boats unknown until then. According to official data from the Ministry of the Interior, in 2017 more than 20,000 immigrants reached the Spanish coast in illegal boats.³¹⁵

In 2013 3,244 immigrants by boats entered the country. The following year the figure approached 4,600, and in 2015 there were 5,312 illegal immigrants who had arrived in irregular boats. This trend worsened in 2016, when 8,162 illegal immigrants entered Spain via this route. But in 2017 all records have been pulverized: the figure has almost tripled that which occurred in 2016 and multiplies by seven that of 2013.³¹⁶ The increase in arrivals has seriously concerned the Spanish state about the increase in the costs of this phenomenon, particularly as regards illegal immigration.

³¹³Cfr. «Le risorse per l'accoglienza nella XVII legislatura». Available at https://temi.camera.it/leg17/post/le_risorse_per_l_accoglienza.html?tema=temi/accoglienza_dei_migranti_sul_territorio

³¹⁴“FONDO ASILO, MIGRAZIONE E INTEGRAZIONE (FAMI) 2014-2020”, available at <http://www.lavoro.gov.it/Amministrazione-Trasparente/Bandi-gara-e-contratti/Documents/Avviso-n-1-18-FAMI-Regioni-IMPACT>.

³¹⁵“Por qué las llegadas de migrantes en patera se han disparado a niveles de hace diez años” available at <https://www.publico.es/sociedad/pateras-espana-llegadas-migrantes-patera-han-disparado-cifras-diez-anos>.

³¹⁶“La ruta española de pateras alcanza cifras de 2008”, available at https://elpais.com/politica/2017/09/13/actualidad/1505297407_338569.html

With regard to the reception costs in 2018, the government has stated, that “The operation of the nine Centers for the Internment of Foreigners (CIE) in Spain last year cost 8.3 million euros, including food, cleaning, consumption of electricity, water and gas, and medical service.”³¹⁷ The daily cost of the place of each immigrant retained in these centers is 17 euros. This amount does not include the personnel costs involved in running these center, where the State holds immigrants in the process of expulsion for a maximum of 60 days, although the average stay is about 37 days. The parliamentary response also details that the expulsion of each foreigner, which includes the police escort and the plane or boat ticket, has an average cost of 1,807 euros. Of the 13,241 immigrants who passed through a CIE in 2011, only 6,825 were expelled, this meant an additional expenditure of 12.3 million euros.³¹⁸ According to a report by National Statistics Institute(INE), the most expensive reception center in Spain is that of Algeciras. The center cost 1.7 million euro, followed by Madrid, 1.6 million euro, and Fuerteventura, with total expenditure of 1.1 million euro in 2018.

The CIE of Barcelona, had a cost of 831,000 euros, Valencia, 472,000 euros, Malaga, 228,000 euros, Murcia, 517,000 euros, Tenerife, 288,000 euros, and Las Palmas, 248,000 euros.³¹⁹

These calculations do not include the costs for medical services that the State has subcontracted on a flat-rate basis and which are not specified by CIE and whose total is 1,258,000 euros.

The parliamentary specifies that cleaning and maintenance costs are calculated at 35.35 euros per square meter and 12.12 euros per square meter, respectively.³²⁰ The escalation of these costs has occurred as a consequence of the sharp increase in illegal immigration in recent years, which has also been reflected in the flows of minors illegally arriving to the Spanish coasts. More than 20 million euros was the bill that illegal immigration leaves in Spain for the internment and repatriation of those who are retained when entering the country illegally, often after risking their lives in sea crossings controlled by the mafias and carried out in subhuman conditions.³²¹ To this cost of more than 20 million for repatriations and temporary accommodation of illegal immigrants must be added the

³¹⁷“Cada plaza de inmigrante retenido en un centro de internamiento cuesta 17 € al día”, available at

<https://www.elmundo.es/elmundo/2012/06/04/espana/1338801548.html>

³¹⁸Cfr. «REGLAMENTO DE FUNCIONAMIENTO Y RÉGIMEN INTERIOR DE LOS CENTROS DE INTERNAMIENTO DE EXTRANJEROS (CIE)». Available at http://www.interior.gob.es/documents/10180/1703283/REGLAMENTO_CIE.pdf/ff3f967a-a71e-4622-8f14-220043b27a04

³¹⁹“España en cifras 2018” available at

https://www.ine.es/prodyser/espa_cifras/2018/files/assets/common/downloads/publication.pdf?uni=4f7e7b429c56ccbc4bf56b3e93ebc47b

³²⁰“LOS CENTROS DE INTERNAMIENTO DE EXTRANJEROS EN ESPAÑA: Origen, funcionamiento e implicaciones jurídico-sociales”, available at

http://nadiesinfuturo.org/IMG/pdf/DOCUMENTOS_WEB_MIGRACIONES_26_JARRIN.pdf

³²¹“Españoles o inmigrantes: las cifras reales de quién recibirá ayudas al alquiler” available at https://elpais.com/elpais/2018/03/15/hechos/1521118468_415822.html

multimillion added cost of surveillance, aid and emergency devices at land borders and at sea.³²² When the expulsion procedures are completed, the State carries with it the return trips of these immigrants.

According to data provided by the Government, the cost of these repatriations is already close to 10 million euros per year. In 2016 they amounted to 9.2 million euros. Last year, this expenditure was around 800,000 euros per month. To the cost of these return trips of illegal immigrants are added those related to maintenance, health care and care they receive in the Centers for the Internment of Foreigners (CIE), in which they are housed after being intercepted in their attempt to enter Spain.³²³ According to official data provided to Congress by the Ministry of the Interior, the CIE consumed 2.6 million euros in eleven months for food alone, from 1 December 2016 to 31 October 2017. That is, an average of almost 8,000 euros per day, about 2.9 million per year. And for health care provided in the ICDs, 750,000 euros were budgeted in 2017.³²⁴ To these items must be added those corresponding to the costs of guardianship, maintenance and care of illegal immigrants under the age of 18 who enter Spain alone, without family members or adults to take care of them. Last year, more than 2,300 minors arrived in pateras on the Spanish coasts, risking their lives on these dangerous journeys - the great majority of them all reached the Andalusian coasts or were rescued in maritime areas close to Andalusia. Therefore, the cost of guardianship, maintenance and care of these illegal immigrant minors has to be borne by each regional administration. And the annual amount is multimillionaire. Just one piece of information: last year, the State distributed 6.45 million euros in subsidies between the autonomous cities of Ceuta and Melilla to help them pay for the care they provide to these minors.³²⁵ The European Commission has announced a disbursement of €25.6 million to improve the reception capacity of migrants in Spain and increase returns.

Although all headlines speak of Italy, the Western Mediterranean is the only route where migration flows have increased in recent months. Spain, since the “Aquarius crisis”³²⁶, has also become the port of choice for the ships to which Italy and Malta close their ports. “Spain has seen the numbers of arrivals increase over the last year and we need to increase our support to help them manage it and return those who do not have the right to stay,” said European Commissioner for Migration Dimitris

³²² “*El coste de la emigración extranjera en España*”, available at

<http://www.gees.org/contents/uploads/articulos/LainmigracionysusefectosenEspaña4.0.pdf>

³²³ *ibidem*

³²⁴ “*El coste de la emigración extranjera: lo que no se quiere decir (ni oír)*”, available at <https://gaceta.es/espana/lo-que-no-se-quiere-decir-ni-oir-sobre-la-inmigracion-20180318-1218/>

³²⁵ “*La inmigración ilegal le cuesta a España más de 20 millones de euros al año*”, available at

https://www.abc.es/espana/abci-inmigracion-ilegal-cuesta-espana-mas-20-millones-euros-201806221639_noticia.html

³²⁶ Aquarius is a ship operated by two humanitarian organizations, SOS Méditerranée and Médecins sans Frontières, with the aim of saving migrants at sea. Last year, 2018, the ship hosted 629 migrants, 123 of whom were minors. The crisis stemmed from the fact that both Italy and Malta rejected the landing of people on board. Spain subsequently took charge of allowing the landing on the coast of the city of Valencia.

Avramopoulos.³²⁷ So far this year, 17,781 people have arrived in Spain through the Mediterranean compared to 16,531 who entered Europe through Italy, according to UNHCR figures.

Of the total, 24.8 million will go to the Ministry of Employment and Social Security and the Spanish Red Cross to improve the reception of migrants on the southern coast of the peninsula, Ceuta and Melilla. The money will be used to provide health care, food and shelter to people arriving via the Western Mediterranean route.³²⁸

But as the conclusions of the European Council made clear, one of the main objectives of the European Union is to increase and accelerate the returns of people in an irregular situation. To this end, the Commission has granted Spain €720,000 to improve "the quality of return facilities and infrastructure for movements". With this item, there are already 692 million that the EU has provided to Spain to help the authorities manage migratory flows since 2014.³²⁹

3.3 How the European Union deals with the costs of immigration

The increase in the number of migrants and refugees reaching the European Union is a challenge that the EU is trying to address in the best possible way, in light of the limited competencies it has and even if it has not always achieved the expected results. In fact, we are currently talking about a humanitarian crisis that is increasingly difficult to manage.³³⁰ In the absence of a common European response that sees migration as a human phenomenon and manages it accordingly, the task of receiving and accommodating migrants and providing them with initial personal contact has mainly been carried out by local and regional authorities, as well as non-governmental organizations and activists, who continue to play a key role in providing migrants and refugees with initial reception and access to services and fundamental rights. They have made a huge difference by offering their valuable support across Europe. This support includes, above all, the economic support which, as mentioned above, weighs heavily on the countries most affected.³³¹

³²⁷ "*Bruselas anuncia 25 millones de euros en ayudas a España para asistir a los migrantes*", available at <https://www.elmundo.es/internacional/2018/07/02/5b3a13e6268e3e097f8b456e.html>

³²⁸ "*El Gobierno invierte dos millones de euros al año en mantener las vallas de Ceuta y Melilla*", available at <https://www.elconfidencialdigital.com/articulo/seguridad/Gobierno-invierte-mantener-Ceuta-Melilla/20170830191253086540.html>

³²⁹ "*40 millones para la acogida de menores migrantes no acompañados*", available at <https://www.europapress.es/epsocial/migracion/noticia-gobierno-destinara-40-millones-euros-acogida-solidaria-ccaa-menas-20180905132742.html>

³³⁰ "*The EU and the Migrant Crisis*", available at <http://publications.europa.eu/webpub/com/factsheets/migration-crisis/en/>

³³¹ "*What is the current state of the migration crisis in Europe?*", available at <https://www.theguardian.com/world/2018/jun/15/what-current-scale-migration-crisis-europe-future-outlook>

However, the European Union offers a number of opportunities for financial support for its Member States. Although these funds are not intended to compensate for the lack of national funds, they can contribute to the resources of those engaged in social inclusion and integration of migrants and refugees in the European Union. Most EU funds are managed in cooperation with Member States in a shared management mode. Member States plan specific activities, select projects and beneficiaries and distribute payments through their managing authorities. The remaining EU funds are managed directly or indirectly by the European Commission.³³² In the case of direct management, the Commission is responsible for the complete implementation process, which is carried out directly by the headquarters or the executive agencies as the sole contracting authority with decision-making power. In the case of indirect management, implementation tasks are entrusted to partner states, international organizations and development agencies.³³³ In providing assistance on migration issues, local and regional authorities, NGOs and other bodies in the Member States usually have to make a distinction between the statuses of beneficiaries. While newcomers and undocumented migrants are offered limited assistance, often insufficient to ensure a basic standard of living, asylum seekers (under certain conditions) and refugees have access to social and health care, education, employment and self-employment, as well as other integration measures. Following the intensification of the migratory pressure over the last decade, the European Commission has taken further measures to financially manage the migrants' flows, and in particular to help some states that bear heavier burdens than others, like Italy and Greece. For this reason, in 2007 it was adopted the "Solidarity and Management of Migration Flows" program (SOLID), established to "ensure a fair distribution of responsibilities between Member States for an integrated management of the external borders of the EU and to implement common policies on immigration and asylum".³³⁴ This program is characterized by four financial instruments. European Fund for the Integration of Third-Country Nationals: created with the aim of supporting the Member States of the European Union through policies that allow third country nationals, who have come legally to Europe, to meet the conditions of residence and to integrate more easily into host societies.³³⁵ European Refugee Fund: aimed at States which receive asylum seekers, this fund supports programmes and actions related to the integration of persons whose stay is of a lasting and stable nature.³³⁶ The fund also provides for measures to deal with sudden

³³²“*EU funds for migration, asylum and integration policies*”, available at <http://bruegel.org/wp-content/uploads/2018/05/EU-funds-for-migration.pdf>

³³³ “*EU funds for migration, asylum and integration policies*”

³³⁴ “*Asylum, Migration, Integration*”, available at https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders_en

³³⁵ Cfr. «THE EUROPEAN FUND FOR THE INTEGRATION OF THIRD-COUNTRY NATIONALS», available at <https://www.eesc.europa.eu/resources/docs/the-european-integration-fund.pdf>

³³⁶ Cfr. «Refugee Fund», available at https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/refugee-fund_enDi

arrivals in the event of war and international conflict. European Return Fund: to ensure an effective return policy, in accordance with the Charter of Fundamental Rights and on the basis of preference for voluntary return, to address irregular migration.³³⁷ External Borders Fund: The objective of this instrument is to ensure uniform and high quality external border controls by encouraging flexible cross-border traffic, including through co-financing or targeted actions or national initiatives for cooperation between Member States on visa policy.³³⁸ Each of the four SOLID Funds was implemented through the definition of a Multiannual Programme whose guidelines are transposed into the individual Annual Programmes. In accordance with its founding regulation, this programme was completed in June 2015. Nowadays most EU funds related to migration policies have been allocated under two important programs: The Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). The first is the allocates the most funding, for the period 2014-20 had allocated 3.31 billion which have now reached more than 6.6 billion euros; the latter allocates 3.8 billion (for the same period.). As regards the shares allocated by these two funds, Italy benefited from 13.6% of AMIF and 13.7% of ISF Visa and Border. Spain benefited from 11.2% of AMIF and 17.2% of ISF. Unlike the latter, Italy benefited from one fifth of the emergency allocation.³³⁹

Table1: Allocation keys of AMIF and ISF in Italy and Spain

Country	AMIF basic allocation	ISF Visa and Borders basic allocation	AMIF emergency allocation	ISF emergency allocation	2015 share in non-EU immigration	2015-17 share in first time asylum seekers	December 2015 share in non-EU citizens in resident population	2017 share in GDP	2017 share in population
Italy	13.6%	13.7%	20.3%	33.1%	7.7%	10.2%	16.9%	11.2%	11.8%
Spain	11.2%	17.2%	---	---	7.6%	1.9%	11.9%	7.6%	9.1%

The objective of the Asylum, Migration and Integration Fund shall be to promote the efficient management of migration flows and the implementation, strengthening and development of a European Community approach to asylum and integration. The Fund shall be dedicated to the highest level of solidarity and shared responsibility between Member States, in particular those most affected by migration.³⁴⁰ The AMIF can provide funding in different areas: asylum, legal migration and integration, solidarity and irregular migration and return. It promotes a joint approach to ensure high standards of protection for migrants and refugees across the European Union and to improve access to rights and integration measures for non-EU persons at national, local and regional level.

³³⁷Cfr. «Refugee Fund»

³³⁸ibidem

³³⁹Cfr. «EU funds for migration, asylum and integration policies», available at <http://bruegel.org/wp-content/uploads/2018/05/EU-funds-for-migration.pdf>

³⁴⁰Cfr. «EU funds for migration, asylum and integration policies»

Specifically the main objectives are four: to strengthen and develop all aspects of the Common European Asylum System, including its external dimension; to support legal migration to Member States in accordance with their economic and employment needs; to promote the effective integration of third-country nationals into host societies; promote fair and effective return strategies in the Member States, contributing to the fight against illegal immigration, with particular attention to the sustainability of return and effective readmission in countries of origin and transit; improve solidarity and the sharing of responsibilities between Member States, especially those most exposed to migration flows and asylum seekers, including through practical cooperation.³⁴¹

The Internal Security Fund (ISF) consists of two separate instruments, one providing support for the management of external borders and the common visa policy, (Regulation (EU) No 515/2014); and one tasked with financial support for police cooperation, preventing and combating crime and crisis (Regulation (EU) No 513/2014).³⁴²

In addition to the funds listed above, the EU also has decentralized agencies dealing with migration. These agencies help to support countries through funding. Frontex is currently the agency that has allocated the most money so far with €1.638 followed by The European Asylum Support Office (EASO) with €456 million and finally The European Union Agency for Law Enforcement Cooperation(Europol).³⁴³

Table 2: initial and current commitment allocation of certain migration-related

Instrument/programme	Initial allocation 2014-2020	Current allocation 2014-2020
AMIF	3,137	6,654
ISF	3,764	3,882
Emergency support EU	-	647
SIS	69	91
VIS	69	81
EURODAC	1	1
FRONTEX	628	1,638
EASO	109	456
EUROPOL	654	753
Total	8,431	14,201

³⁴¹ “Asylum, Migration and Integration Fund (AMIF)”, available at https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en

³⁴² “Internal Security Fund - Borders and Visa”, available at https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/internal-security-fund-borders_en

³⁴³ “EU funds for migration, asylum and integration policies” available at <http://bruegel.org/wp-content/uploads/2018/05/EU-funds-for-migration.pdf>

Another important aspect of European action and the funds allocated to it is integration. The EU identifies five priorities for long-term integration: reception; education; employment; housing; and access to public services. At each of these points a state can make use of different funds.³⁴⁴ For example, in the field of education, different EU funds can be used together to make schools more inclusive and non-segregated, while the European Regional Development Fund (ERDF) can be used to make facilities more modern and accessible.³⁴⁵ The European Social Fund (ESF) and the Asylum,³⁴⁶ Migration and Integration Fund, on the other hand, can support specific training of educators to help them cope with early school leaving, while the European Aid Fund for the Most Deprived can provide material assistance to students in need.³⁴⁷ Member States and regions therefore have a wide range of EU funding instruments at their disposal to support different types of integration projects.

According to the Commissioner for Migration, Home Affairs and Citizenship "Investing in integration policies today is essential to ensure that European society remains prosperous, cohesive and inclusive in the future. This will be our priority for the coming years. Only through successful integration can we make migration a real opportunity for all, for our citizens, for migrants and refugees and for our societies in general".³⁴⁸

³⁴⁴Cfr. «TOOLKIT ON THE USE OF EU FUNDS FOR THE INTEGRATION OF PEOPLE WITH A MIGRANT BACKGROUND», available at https://ec.europa.eu/regional_policy/sources/policy/themes/social-inclusion/integration-of-migrants/toolkit-integration-of-migrants.pdf

³⁴⁵Cfr. «European Regional Development Fund», available at https://ec.europa.eu/regional_policy/en/funding/erdf/

³⁴⁶Cfr. «European Social Fund (ESF)», available at <https://ec.europa.eu/social/main.jsp?catId=325&langId=en>

³⁴⁷Cfr. «Fund for European Aid to the Most Deprived (FEAD)», available at <https://ec.europa.eu/social/main.jsp?catId=1089>

³⁴⁸«*Integration of migrants: Commission presents toolkit to help Member States make the best use of EU funds*» available at http://webcache.googleusercontent.com/search?q=cache:_iH2EjJZGHYJ:europa.eu/rapid/press-release_IP-18-364_en.pdf+&cd=1&hl=it&ct=clnk&gl=es&client=safari

CHAPTER IV: The legislative framework and the limits to its enforcement

4.1 An introduction

As a response to this change and evolution of the last decades, it is good to understand how Spain and Italy have tried to address and to respond to the phenomenon of immigration by means of legislation. As will be seen, the two countries have been characterized by different legislative paths due to their different historical, geographical and political paths. Both countries have experienced the sad reality of emigration before immigration, which, however, has not always provided the appropriate tools to acquire the ability to accommodate the other, adapting the functioning of the state to social changes. In fact, the two legal systems alternate periods of severe restrictions and limitations on these flows, not always guaranteeing adequate protection to migrants' rights. Nevertheless, the two systems have over the years tried to address the phenomenon, changing, adapting periodically their laws to make them more effective.

4.2 Delays in the design of proper migration policies in Italy

Italy, since not too long ago, has experienced one of the most important outgoing migratory phenomena of the modern age: it is estimated that between 1876 and 1976 about 24 million Italians left, mainly to other European countries and the Americas. Even today, some data tell us that Italians living abroad have a population of over 4.5 million people, 95% of whom live on American continents or in Europe, and over 100,000 Italians go to live in other countries every year.³⁴⁹ Although the issue of migration is very delicate for the country, the Italian political system only realized the phenomenon of immigration towards the beginning of the 1980s. However, at the legislative level, we will have to wait for the Law No 943 of 30 December 1986.³⁵⁰ In the meantime, the situation was tampered with by continuous regularization until the economic crisis and growing unemployment led to the total block of the system of migration quotas, based on job and entry permits, launched in 1982.

³⁴⁹ “*Rapporto italiani nel mondo 2018*”, available at http://www.astrid-online.it/static/upload/sint/sintesi_rim2018.pdf

³⁵⁰ Cfr. «COLLOCAMENTO DI LAVORATORI - Norme in materia di collocamento e di trattamento dei lavoratori extracomunitari immigrati e contro le immigrazioni clandestine». Available at <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/1992/luglio/legge-943-86.html>

4.2.1 The first steps towards immigration: Law No 943 of 30 December 1986

The main reason for the first legislative decree in favor of immigration was a legal one. In 1975, Italy signed convention the “International Labor Organization” to discourage irregular migration and protect its workers abroad, so that they had the same rights as the native ones.³⁵¹ This inevitably made it necessary to have an equally and clear legal framework in Italy on the subject of immigration. For this reason, about ten years later, the “Regulations on the placement and treatment of non-EU immigrant workers and against illegal immigration” was adopted.³⁵² It had the great merit of introducing some very important rules on the subject of immigration.

Among the main points were: the family reunification (Article 4); the possibility of entering the country at the specific request of the Italian employer (Article 6 (1)); the definition of the rights of non-EU workers; the definition of social policies to control migration flows and many others. These acknowledgements were certainly positive in their intentions but, in fact, they only accentuated the protectionist character of the Italian labor market, since employers were charged with providing concrete evidence of the need to hire a foreign citizen before admitting him to the country.³⁵³ In addition to this complexity in entering Italy on a regular basis, there was also the superficiality in the control of visas and in the penalties provided for those who hired irregular workers. In fact, the legislation failed dramatically in its objectives and irregular immigration continued to grow exponentially. Although the Law No 943 remained largely unimplemented, it is to be credited with being the first to empathize with immigrants, something that will be lacking in subsequent regulations.³⁵⁴

4.2.2 Law No 39 of 28 February 1990 “Martelli law” and its contradictions

In 1990, precisely because of the limits of the Foschi law, which increased the number of cases of irregular migration flows, legislative decree no. 416 was issued, later amended into law no. 39/1990, better known as the Martelli Law.³⁵⁵ The prologue to this new law was a news episode on 24 August 1989: the death of the South African refugee Jerry Essan Masslo by a group of Italians.³⁵⁶ This racist

³⁵¹ “*History of the ILO*”, available at <https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>

³⁵² Cfr. «Norme in materia di collocamento e di trattamento dei lavoratori extracomunitari immigrati e contro le immigrazioni clandestine».

³⁵³ Einaudi, L., “*Le politiche dell’immigrazione in Italia dall’Unità a oggi*”, (2007), Editori Laterza

³⁵⁴ *ibidem*

³⁵⁵ Cfr. «*Norme urgenti in materia di asilo politico, d’ingresso e soggiorno dei cittadini extracomunitari e di regolarizzazione dei cittadini extracomunitari ed apolidi già presenti nel territorio dello Stato*». Available at https://www.unhcr.it/wp-content/uploads/2015/12/Legge_Martelli.pdf

³⁵⁶ “*VIVEVA IN ITALIA DA UN ANNO E MEZZO E CHIEDEVA UN MONDO SENZA APARTHEID*”, available at <https://ricerca.repubblica.it/repubblica/archivio/repubblica/1989/08/26/viveva-in-italia-da-un-anno-mezzo.html>

murder made clear the need for more precise legislation on issues such as the regulation of entry of immigrants but, above all, the recognition of the fundamental rights of the person and not only of the worker. With the Martelli law the matter of immigration came under the jurisdiction of the Ministry of the Interior and accepted for the first time officially the presence of foreigners in Italy.³⁵⁷ The approval of this law was at the center of political debate for a long time: on the one hand it saw the opposition of the Italian Republican Party (PRI), on the other that of the then Italian Social Movement (SI) and the League. For this reason, the law was on the stage of public opinion where it created real factions between those who believed it was necessary to give strict rules to the entry of foreigners and those who considered it a useless measure.³⁵⁸ As far as its structure is concerned, the Martelli law provided, on the one hand, for a preventive mechanism, implemented by the first example of quantitative planning of the entry flows of so-called economic immigrants, through the issue of a special residence permit by the competent Police Headquarters or Police Station; on the other hand, for a repressive phase, on the basis of criminal provisions, the procedure for the expulsion of socially dangerous foreigners and irregular immigrants.³⁵⁹ It also provided another amnesty for irregular immigrants already present on the territory and the first measures to promote the integration of immigrants. Compared to the previous provisions, this Law was characterized by the severely restrictive approach of the conditions of entry into the country, also in order to meet the demands that came from other European countries, which, by virtue of the simultaneous accession of Italy to the Schengen Treaty, feared a large influx of foreign workers on their territory. The procedure of expulsion of foreign citizens becomes a widespread and easy to implement practice in the form of an administrative decree. In fact, the basis of this law was the visa requirement for all countries affected by migratory flows, increased border control and renewed attention to expulsion from the country, considered the only way to curb criminal behavior by foreigners. To summarize, the innovative elements were, first of all, the introduction of new reasons for regular entry into Italy as for study, medical care, tourism; Introduction of entry flows for work reasons; New provisions on the issue of permits and registrations to the registry offices; Right to apply for refugee status to foreigners of any nationality so that they can enjoy the same treatment as Italian citizens in terms of religious freedom, health care, primary education, work and tax; Introduction of the expulsion procedure; Indications of the regions as reference for initiatives and laws on integration; Regulation of appeals to the regional administrative courts against refusal and withdrawal of residence permits and refusal to grant refugee status.³⁶⁰ With the collapse of the Soviet regime and the subsequent exodus from Eastern Europe there

³⁵⁷ Favaro, G., and Bordogna, M.T., “*Politiche sociali ed immigrati stranieri*” (1989), NIS, Roma

³⁵⁸ Einaudi, L., “*Le politiche dell’immigrazione in Italia dall’Unità a oggi*”

³⁵⁹ *ibidem*

³⁶⁰ Cfr. «Norme urgenti in materia di asilo politico, d’ingresso e soggiorno dei cittadini extracomunitari e di regolarizzazione dei cittadini extracomunitari ed apolidi già presenti nel territorio dello Stato»

will be a significant change in the perception of migration flows. In fact, many of the policies following the Martelli law, such as the Dini decree of 1995,³⁶¹ will be conditioned by the emergence in public opinion of a negative orientation towards immigrants. In the following years, laws and decrees followed one another in order to remedy the existing gaps within the Martelli law. In 1992 a new citizenship law raised the deadline for the naturalization of foreign citizens to 10 years of continuous legal residence, while in 1993 the Mancini law against xenophobia and discrimination³⁶² and the Conso decree were approved,³⁶³ which introduced new crimes attributable to foreigners and modified the expulsion procedure. During 1995 a decree law was approved, then converted into law n. 563/1995, so-called Puglia law, which decreed the opening, for the years 1995, 1996 and 1997, of reception centers along the Pulian coast: this law has been extended from time to time and still constitutes the foundation of the Italian system of first reception.³⁶⁴

4.2.3 Law No 40 of 6 March 1998

With the Prodi government in 1996, was made an attempt to give a new impetus to Italian migration legislation for two main reasons. The first was the accession to the Schengen Agreement, which required the EU's border countries to strictly control their own borders, the second was driven by the need to combat irregular and illegal immigration.³⁶⁵ The Law No 40 of 6 March 1998 known also as "Turco-Napolitano law" is part of this climate of renewal and was born from the ashes of the Dini decree. It enshrined new restrictions on border control and expulsions, as well as an amnesty for foreigners who worked irregularly in the country. However, it did not obtain the consent of public opinion since some of the proposed reforms were contrary to the Constitution and turned out to be very difficult to implement. In order to overcome this situation of uncertainty, on March 6, 1998, the Turco-Napolitano Law, was enacted with the title "Regulations on immigration and rules on the condition of foreigners", which was incorporated into Legislative Decree No. 286 of July 25, 1998

³⁶¹ "Un passo indietro: la riforma previdenziale del 1995 (legge 335/95)", available at <https://www.ilsole24ore.com/art/SoleOnLine4/Speciali/2007/pensioni/un-passo-indietro.shtml?uuid=7eabba74-1ffe-11dc-984a-00000e251029>

³⁶² Cfr. «Conversione in legge, con modificazioni, del decreto-legge 26 aprile 1993, n. 122, recante misure urgenti in materia di discriminazione razziale, etnica e religiosa». Available at http://nodiscriminazione.regione.puglia.it/download/NormativaNazionale/Legge_205-1993.pdf

³⁶³ Cfr. «Legge 23 dicembre 1993, n. 547». Available at <http://crypto.ecn.org/old/law/conso.htm>

³⁶⁴ Cfr. «Conversione in legge del decreto-legge 30 ottobre 1995, n. 451, recante disposizioni urgenti per l'ulteriore impiego del personale delle Forze armate in attivita' di controllo della frontiera marittima nella regione Puglia».

Available at

http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1995-12-30&atto.codiceRedazionale=095G0603&elenco30giorni=false

³⁶⁵ Einaudi, L., "Le politiche dell'immigrazione in Italia dall'Unità a oggi"

(the so-called Consolidated Act on Immigration).³⁶⁶ The Turco-Napolitano, therefore, was the first Italian immigration law of a general nature, systematic and not approved in emergency circumstances; One of the major innovations introduced by this law was the expansion and greater definition of the planning of migration flows, which was integrated into national foreign policy through a system of privileged quotas in favor of countries that collaborated in the repatriation of immigrants expelled from Italy.³⁶⁷ A great merit of the new immigration law was certainly the introduction into the Italian regulatory system of the Consolidated Act on Immigration, as amended several times, which concentrated within it all the national regulations in this area, helping to simplify and streamline and tidy the Italian legislation on the subject. The Turco-Napolitano law operated both with a view to the working and social integration of immigrants, through measures such as the provision of entry for job search, the establishment of a residence card (Article 7) or a document that allows foreigners residing in Italy in a regular manner for at least five years to participate actively in local public life, replaced by the "EC residence permit for long-term residents" (Directive 2003/109/EC). Article 2 stipulated that irregular foreigners should still enjoy the rights to compulsory education, health and legal protection. In addition, the policies of control and expulsion, considered necessary and complementary to integration measures and national needs, were strengthened.³⁶⁸ The number of cases in which the irregular expelled person could be liable to be accompanied to the border increased, as did the number of center for temporary stay and assistance (CPT), created to detain and identify immigrants and eventually expel them. The detention in these center, imposed through administrative channels, was foreseen for a maximum of 30 days, and has been the subject of many criticisms over the years for the discretionary power with police were in charge of making use of it and also for the severe restriction of fundamental rights that derives from the prolonged detention in these centers.³⁶⁹ In addition, for the first time the figure of the sponsor is included, that is, a citizen, an association or a foreigner legally resident who takes responsibility for bringing into the country a foreigner ensuring to maintain it throughout the period of the search for a job.³⁷⁰ In conclusion, the main objectives of Act were:

³⁶⁶ Cfr. «Il Testo Unico sull'immigrazione- scheda di sintesi». Available at <https://www.avvisopubblico.it/home/home/cosa-facciamo/informare/documenti-tematici/immigrazione/testo-unico-sullimmigrazione-scheda-sintesi/>

³⁶⁷ Cfr. «Disciplina dell'immigrazione e norme sulla condizione dello straniero». Available at <http://www.camera.it/parlam/leggi/980401.htm>

³⁶⁸ *ibidem*

³⁶⁹ «Cosa sono i C.I.E. (Centri di Identificazione ed Espulsione), rinominati dal decreto legge 13/2017 C.P.R. (Centri di Permanenza per i Rimpatri)», available at <https://www.meltingpot.org/Cosa-sono-i-C-I-E-Centri-di-Identificazione-ed-Espulsione.html#.XGBIpyOh2CU>

³⁷⁰ Cfr. «Disciplina dell'immigrazione e norme sulla condizione dello straniero»

- The planning of measures to promote regular entry and a three-year plan through the quota system.
- Recognition of the right and protection of the family, the provision of a residence card and in general the start of a series of integration paths for new migrants.
- Fighting against the criminal exploitation of immigration and illegal immigration.

The Turco-Napolitano law was more than adequate in purpose but, like the previous ones, failed in its implementation. Entry policy continued in an uncertain manner, and even the sponsor mechanism was not treated in such a way as to be one hundred percent effective. As for the residence cards, they were not distributed enough to meet the needs of all foreigners in Italy with the result that immigrants born in the country did not receive recognition from the administrations to enforce their rights. For this reason, in 2001, the new center-right majority found itself once again facing a migration problem that had never been completely resolved, and it is in this context that a new law on immigration known as Bossi-Fini, was introduced.³⁷¹

4.2.4 Law No 189 of 30 July 2002

In the following years, immigration grew further, also as a result of the entry of new States into the European Union, and consequently also the number of those entitled to transit and stay in Italy; The increase in immigration made the political debate on these issues even more heated, and the legislation of reference recalled these contrasts. This season was inaugurated in 2002 by the law of “Modification to the regulations on immigration and asylum”, which significantly modified the Turco-Napolitano in a restrictive sense for non-EU citizens interested in immigrating to Italy.³⁷² The law introduced innovative rules regarding the control of migration flows, but as far as integration policies are concerned, the ineffective previous rules were essentially left unchanged. The most important aspects of this law were a series of measures to remedy irregular immigration. In fact, the new law acted on the control side of those already residing in Italy, shortening the duration of residence permits from 3 to 2 years, giving greater weight to the role of the CPT and to the accompaniment to the border, introducing the taking of fingerprints for all foreigners and the crime of illegal stay; Also on new income, eliminating the sponsor system introduced by the previous law and creating a single procedure, based on the residence contract, which made it much more difficult for non-EU citizens

³⁷¹ Einaudi, L., “*Le politiche dell’immigrazione in Italia dall’Unità a oggi*”

³⁷² Cfr. «Modifica alla normativa in materia di immigrazione e di asilo». Available at <http://www.camera.it/parlam/leggi/021891.htm>

to come and work legally in Italy.³⁷³ This law was accompanied by a gigantic amnesty, the most massive in European history, which involved more than 650,000 individuals. Even in the case of the Law No 189, there was no lack of controversy among those who believe that it was not a decisive measure.³⁷⁴

4.2.5 Last developments

In 2007, the harshness of the last law was mitigated by the Amato-Ferrero bill, which, however, did not see the light of day due to the early end of the legislature. However, in the meantime, the transposition of the Community legislation (in particular, see the sheets on Directives 2004/83/EC, 2003/109/EC 2003/86/EC) intervened to modify the system again, making an initial harmonization with the other European States before the advent of a new center-right government made a further tightening of the legislation through the so-called security package. It was launched by the former Minister of the Interior Maroni which included three main legislative instruments:

- Law No 125/2008, which introduces new types of crime for illegal immigrants and those who favor their illegal stay on Italian territory (including employers who hire them illegally), the new aggravating circumstance of clandestinity for criminal offences, the tightening of penalties for those who declare their identity to be false and expulsion for EU or non-EU citizens who have been sentenced to more than two years' imprisonment.
- Legislative Decree no. 160/2008, containing rules that restrict the possibility of family reunification by limiting the number of family members who can be reunited and raising the level of income necessary to access this right.
- Law No. 94/2009, finally, provides for several elements regarding public security, among the most important include the introduction of the crime of illegal entry and residence, the tightening of penalties for the crime of aiding and abetting illegal immigration, a further lengthening of the maximum detention time, up to 6 months, in the CPTs (renamed CIEs, Identification and Expulsion Centers), the introduction of new economic stakes and not only

³⁷³ “La Legge Bossi Fini e i diritti dei migranti: un primo bilancio”, available at <https://www.meltingpot.org/La-Legge-Bossi-Fini-e-i-diritti-dei-migranti-un-primo.html#.XGBnOCOh2CU>

³⁷⁴ *ibidem*

for entry, family reunification and renewal of the residence permit, including the notorious integration agreement and the points residence permit.

This approach, probably the most restrictive ever seen in Italy, was partially mitigated in the following period by the decrees implementing the European directives that had meanwhile been approved: in particular, the rules on expulsions and detention have been partially modified by the entry into force of the Return Directive, those on entry, stay and movement by Directives 2009/50/EC, 2009/52/EC, 2004/38/EC and, above all, the Procedures and Reception Directives. Legislative Decree 142/2015 partly redraws the reception system for applicants for international protection. It introduces important innovations in the Italian reception system, on profiles such as: the reception of vulnerable persons, first of all minors, especially if unaccompanied; the procedures for examining applications for international protection; the duration of reception in the course of judicial appeal; the detention of the applicant.

4.2.6 Next step: Decree-Law No 113 of 4 October 2018 “the new security decree”

The latest news regarding immigration arrives at the end of November 2018 with the approval of the Decree-Law No 113 of 4 October 2018 better known as the decree "Salvini" name of the current Minister of Interior.³⁷⁵ This decree was not without criticism, on the contrary, perhaps the most criticized in recent years with regard to immigration policies.³⁷⁶

The measure intervenes, first of all, in order to eliminate the disproportion between the number of recognitions of forms of international protection already regulated at European level, such as refugee status and subsidiary protection, and the number of residence permits issued for humanitarian reasons, eliminating the discretion in granting humanitarian protection, and introducing a typing of cases of protection, with the indication of specific requirements for applicants.³⁷⁷ In cases of risk in which the applicant could incur as a consequence of the expulsion order, the Territorial Commissions will be able to assess the existence of other conditions hindering the rejection. A specific procedure is foreseen for applications submitted at the border after the foreign citizen has been detained for having circumvented or attempted to circumvent controls, with the provision of detention of asylum seekers

³⁷⁵ Cfr. «TESTO COORDINATO DEL DECRETO-LEGGE 4 ottobre 2018, n. 113». Available at <http://www.gazzettaufficiale.it/eli/id/2018/12/03/18A07702/sg>

³⁷⁶ “*Italy's new security decree clamps down on immigration*”, available at <https://www.euronews.com/2018/11/29/italy-s-new-security-decree-clamps-down-on-immigration>

³⁷⁷ “*Decreto Salvini su sicurezza e immigrazione: il testo coordinato in Gazzetta*”, available at <https://www.altalex.com/documents/leggi/2018/09/25/decreto-salvini-sicurezza-e-immigrazione>

in order to ascertain the identity or nationality of the applicant. The number of offences which, in the case of a final conviction or in the case of a defendant considered socially dangerous, entail the revocation or denial of international protection is increased.³⁷⁸

For these types of crimes, in the event of a conviction at first instance, the suspension of the procedure for the granting of protection and the expulsion of the foreign citizen is provided for. In addition, special urgent measures have been introduced to ensure the effectiveness of return measures for foreign citizens who do not have the right to stay in the country, with an extension from 90 to 180 days of the maximum duration of detention of the foreigner in detention centers for repatriation (art. 2).³⁷⁹ The decree cancels the residence permit for humanitarian reasons (article 1), which had a duration of two years and allowed access to work, the national health service, social assistance and housing. In its place are introduced permits for "special protection" (one year), "for natural disasters in the country of origin" (six months), "for serious health conditions" (one year), "for acts of particular civil value" and "for special cases" (victims of severe violence or labor exploitation);³⁸⁰ Article 12 redraws the SPRAR, already mentioned in the previous chapters, the Protection System for asylum seekers and refugees (managed with municipalities): only holders of international protection and unaccompanied foreign minors will have access to it. In order to streamline the procedures for the registration and management of migrants, ten new Territorial Commissions for the examination of applications have been established? since January 1, 2019;³⁸¹ The decree (Article 8) provides for the withdrawal of humanitarian protection from refugees who return to their country of origin without 'serious and substantiated reasons', once they have applied for asylum.³⁸²

4.3 The historical path of migration policies in Spain

Spain has traditionally been an emigrant country. However, in the last decade this trend has been drastically reversed and the country has become one of the main poles of attraction for immigration in the world. Spain has one of the highest immigration rates in the world, and also has the highest percentage of foreigners over the total population. The analysis of immigration policies in Spain can be divided into the time dimension 1982-2009, which corresponds to the governments of Felipe González (1982-1996); José Maria Aznar (1996-2004) and José Luis Rodríguez Zapatero (2004-

³⁷⁸ «Decreto Salvini su sicurezza e immigrazione: il testo coordinato in Gazzetta»

³⁷⁹ Cfr. «TESTO COORDINATO DEL DECRETO-LEGGE 4 ottobre 2018, n. 113- Art.2»

³⁸⁰ Cfr. «TESTO COORDINATO DEL DECRETO-LEGGE 4 ottobre 2018, n. 113- Art.1»

³⁸¹ Cfr. «TESTO COORDINATO DEL DECRETO-LEGGE 4 ottobre 2018, n. 113 -Art.12»

³⁸² Cfr. «TESTO COORDINATO DEL DECRETO-LEGGE 4 ottobre 2018, n. 113- Art.8»

2010). Each era has brought different solutions to the issue of immigration. Spanish political decisions have been quite caotic and it is therefore important to highlight the factors of change during the last quarter of a century. Since 2010, the changes made to the Spanish system have been smaller than in previous years but still important. The approval of Organic Law 7/1985 of 1 July 1985 on the Rights and Freedoms of Foreigners in Spain, known as the "Ley de Extranjería", was a condition of Spain's incorporation into the European Communities.³⁸³

4.3.1 1980-1996: Weak social perception of immigration and incorporation into the government agenda.

The phenomenon of immigration was not significant in terms of a public problem, although there has been an upward trend in the number of foreign residents since 1978, the year in which the Spanish Constitution was approved, it represents a negligible proportion in terms of demographic problems.³⁸⁴ Public opinion and the political class considered the issue of migration as a second-order problem as opposed to problems such as the consolidation of democracy, unemployment or terrorism. It barely appeared in opinion polls and barometers, nor was it the subject of academic study or media headlines. Only a few social organizations, such as Caritas, CEAR or the Red Cross, had incorporated this objective into their intervention agendas.³⁸⁵ It is therefore understandable that the first law regulating this phenomenon in Spain, Organic Law 7/1985, of 1 July, on the Rights and Freedoms of Foreigners in Spain, commonly known as the "Ley Orgánica" and as its title indicates, reveals the way in which this issue was dealt with and the lack of knowledge existing at the time of the phenomenon of immigration.³⁸⁶ The legal framework of the law did not honor its title "Rights and Freedoms of Foreigners in Spain" but established a clear distinction between legal and illegal immigrants. It approved the creation of detention center for illegal migrants and their subsequent expulsion. A law that prioritized the dimensions of admission and control, putting the competences of this matter in the Ministry of the Interior. There is a broad consensus that the law on foreigners was a condition derived from the process of integration of Spain into the European Community. In effect, the public problem is highlighted by a supranational political actor and not as part of the endogenous formation of the

³⁸³ Cfr. «1985 - Organic Law 7/1985, of 1 July 1985, on the rights and freedoms of foreigners in Spain». Available at <https://www.perfar.eu/policias/organic-law-71985-1-july-1985-rights-and-freedoms-foreigners-spain-0>

³⁸⁴ Gonzales, C., "El análisis de la opinión pública sobre la inmigración. El caso español", 4o Congreso sobre la inmigración en España, (2004), Girona

³⁸⁵ Gonzales, C., "El análisis de la opinión pública sobre la inmigración. El caso español"

³⁸⁶ "LA POLITICA DE INMIGRACIÓN EN ESPAÑA", available at <https://dialnet.unirioja.es/descarga/articulo/4817961.pdf>

governmental agenda.³⁸⁷ Although extra-EU migration issues are absent from the text of the Act of Accession, a clause was introduced restricting the free movement of persons for a transitional period of seven years. In February 1986, the Single European Act was signed, which included a programme of harmonisation in the field of immigration. Since then, border control has been combined with the objective of responding to the labour needs of the Spanish labour market, hence the implementation of measures aimed at labour recruitment, such as the design of annual quotas of workers that have been applied with a certain regularity and inefficiency since 1993 and the periodic recourse to regularizations.³⁸⁸ In this sense, the situation of illegal immigration at this stage requires the implementation of two regularization processes: the first in 1985 is a process provided for in the immigration law, and the second in 1991 is an exceptional process that arises from a non-legislative proposal of the Congress of Deputies, of April 9 that urges the government of Felipe Gonzalez to open a new regularization process due to the increase in irregular immigration. During this period, the Offices for Foreigners (1991), the General Directorate of Migration, under the Ministry of Social Affairs (1991), and the Interministerial Commission for Foreigners (1992) were created.³⁸⁹ The need to develop the integration dimension within immigration policy led to the approval of the first Plan for the Social Integration of Immigrants (1994), which incorporated the creation of the Forum for the Social Integration of Immigrants and the Permanent Immigration Observatory.³⁹⁰ The 1990s did not address the problem from the perspective of immigration, and Spain has to wait a decade after the approval of the immigration law for the integration dimension to be incorporated into its immigration policy.

4.3.2 1996-2004: Visibility of the public problem and its incorporation in the decision-making agenda

The trend noted in the previous period has intensified since 1996, when the growth of foreigners was eleven times higher than in 1980 and four times higher than in 1995. This dynamic produces a significant increase in the social perception of the problem of immigration. With the triumph of the Popular Party in the legislative elections of March 1996, a new period in immigration policy began. A period marked by two clearly differentiated stages: a first one from March 1996 until the summer

³⁸⁷ *ibidem*

³⁸⁸ “*Immigration control and border management policy in Spain*”, available at http://digital.csic.es/bitstream/10261/64154/1/Poland%20Report%20_Immigration%20control%20_2009.pdf

³⁸⁹ “*LA POLITICA DE INMIGRACIÓN EN ESPAÑA*”

³⁹⁰ “*Aprobado el Plan para la Integración Social de los inmigrantes*”, available at https://elpais.com/diario/1994/12/03/espana/786409207_850215.html

of 1999 where the continuity of the policies implemented by the socialist governments of Felipe González was maintained; and a second one (1999-2004) marked by a multiple legislative change in this matter.³⁹¹ Since the mid-1990s there has been a strengthening of policy networks in this field, that is, the participation of social agents in the decision-making process and in its management has been strengthened; the objectives of immigration policy have been diversified, placing greater emphasis on integration and the expansion of rights. In the period 1996-1999, the minority government presided over by José María Aznar inherited a new immigration regulation, Royal Decree 155/1996, of 2 February, which introduced for the first time the permanent residence permit and regulated the right to family reunification.³⁹² In addition, its third transitory provision opened a third regularization process: 24,691 irregular immigrants were regularized, distributing the granting of permits as follows: work and residence permit (17,676) and residence permit (7,015). The inclusion of immigration in the agenda of political and social actors and the proximity of the general elections of 2009 marks the beginning of the second stage: the approval in less than a year of two laws: Organic Law 4/2000 of 11 January and Organic Law 8/2000 of 22 December. Two political initiatives marked by different strategic approaches, the first tended to approximate the gap between the rights of Spaniards and the rights of immigrants, and the second maintained the commitment to the dimensions of admission and control within immigration policy.³⁹³ The organic law 04/2000 "On the Rights and Freedoms of Foreigners in Spain and their Social Integration", recognizes, albeit timidly, the autonomic and local competence in matters of social and labor integration of immigrants when in its art.8 it poses the "adequate coordination of the actions of the public Administrations with competence on integration".³⁹⁴ From then on, there has been the paradox of an exclusive competence of the State, which in its development depends on the basic actions in matters of integration implemented by the Autonomous Communities and local governments. The new Law 8/2000 conditioned some of the rights granted to foreigners to their legal status, such as the right of association (art. 7.2) and the right of assembly (art. 7.1). On the contrary, Law 4/2000 recognized the health rights of all immigrants, regardless of their legal status, and established a permanent regularization procedure provided that a stay of two years in Spanish territory and the development of an economic activity could be demonstrated.³⁹⁵ The legislative change opened a new regularization process, the fourth since 1985,

³⁹¹ "LA POLÍTICA DE INMIGRACIÓN EN ESPAÑA"

³⁹² Cfr. «Real Decreto 155/1996, de 2 de febrero, por el que se aprueba el Reglamento de ejecución de la Ley Orgánica 7/1985». Available at <https://www.boe.es/buscar/doc.php?id=BOE-A-1996-4138>

³⁹³ "LA POLÍTICA ESPAÑOLA DE INMIGRACIÓN EN LAS DOS ÚLTIMAS DÉCADAS", available at <http://digital.csic.es/bitstream/10261/11920/1/Art%C3%ADculo%20Pedro%20Garc%C3%ADa%20Cabrera.pdf>

³⁹⁴ Cfr. «Organic Law 4/2000, of 11 January 2000, on the rights and freedoms of foreigners in Spain and their social integration». Available at <https://www.perfar.eu/policies/organic-law-42000-11-january-2000-rights-and-freedoms-foreigners-spain-and-their-socialhttp>

³⁹⁵ Cfr. «Organic Law 4/2000, of 11 January 2000, on the rights and freedoms of foreigners in Spain and their social integration»

which initially ran from February 22 to April 28 but was finally extended to four months, in this process 183,000 immigrants were regularized. Although immigration remained one of the main issues of concern to Spaniards, in the election campaign for the elections scheduled for 14 March 2004, its visibility was overshadowed by the debate over the presence of Spanish troops in the Iraq war and the terrible terrorist attacks of 11 March.³⁹⁶

4.3.3 2004-2010: The continuity in immigration policy

During the governments of José Luis Rodríguez Zapatero we witnessed for the first time a slowdown in the entry of immigrants into our country. The four and a half million foreigners in 2009, represents only 1.6 times the foreign residents in 2005. The slowdown in the annual variation rate confirms this trend. The economic crisis that Spain has been going through since 2008, with a 4% drop in GDP after 14 years of an expansive economic cycle, is a key factor in the decrease in the flow of immigrants.³⁹⁷ On the other hand, the increase in the unemployment rates of immigrant workers discourages the Spanish labor market as a focus for attracting labor. The change of government in the March 2004 general elections gave the impression that a radical shift in immigration policy could take place. But the reality was different: the previous legal framework was maintained in his first term of office (2004-2008). The government set itself the following fundamental objectives: to manage migratory flows in an orderly manner so that all those who wished to come to our country could do so in accordance with the needs of our labor market, to strengthen cooperation policies with the countries of origin and to develop the integration dimension of immigration.³⁹⁸ The fight against irregular immigration remains a priority and border control is reinforced, hence the development of the Ulises Programme in the Strait, operations such as RIO, the implementation of SIVE (Intensive External Surveillance System) in the Strait and the Canary Islands, the construction of the border fence in the autonomous cities of Ceuta and Melilla, and the tightening of penalties for human traffickers.³⁹⁹ Therefore, the control of flows and the fight against irregular immigration are

³⁹⁶ “*LA POLÍTICA ESPAÑOLA DE INMIGRACIÓN EN LAS DOS ÚLTIMAS DÉCADAS*”

³⁹⁷ “*Spain’s Immigration Policy as a new instrument of external action*”, available at https://ddd.uab.cat/pub/estudis/2008/hdl_2072_204386/9.pdf

³⁹⁸ “*Spain’s Immigration Policy as a new instrument of external action*”

³⁹⁹ *ibidem*

maintained as priority objectives of Spanish policy. Integration has been one of the symbols of the new immigration policy, a responsibility shared by the three levels of public administration: central, autonomous and local.⁴⁰⁰ The principle of integration, conceived as a process aimed at achieving the gradual incorporation and participation of immigrants with legal residence in Spain in economic and social life in a climate of respect and participation, is intended to be as important a dimension as those aimed at controlling irregularity and managing legal immigration flows.⁴⁰¹ Other actions carried out in this stage are the signing with 20 non-EU countries of agreements for the repatriation of emigrants, which are essential to implement the new European directive on the expulsion of illegal immigrants. It has also directed its efforts towards an expulsion pole such as sub-Saharan Africa by implementing two Africa Plans (2006-2008 and 2009-2012) and the signing of bilateral agreements so that immigrants from these countries can exercise their right to vote in the 2011 local elections.⁴⁰²

4.4 How the two countries enforce EU norms on immigration of this country nationals

After a brief overview of the evolution of the legislative framework on immigration in the two countries, it is important to understand whether Spain and Italy have actually applied the rules on immigration consistently over the years. However, it is not always easy to determine whether or not a country actually complies and effectively enforces those rules. In the last decade, especially from 2014 onwards, the two countries have been the protagonists of several events concerning violations and non-implementation of European rules. Often, in order to justify these shortcomings, the EU is accused of not being able to support the countries most affected by migratory flows. One of the most frequent criticisms regarding the EU is the application Dublin Regulation and its limits. In the follow paragraphs will analyze some of the most critical points concerning the alleged violation of European standards by Spain and Italy.

4.5 Italy

Article 10 of the Italian Constitution establishes the right of asylum for foreigners who are not guaranteed the effective exercise of the democratic freedoms guaranteed by the Constitution in their country. This rule was written by the constituents more than 70 years ago, coming into force on

⁴⁰⁰ “*Las Políticas de Integración social de inmigrantes en España*”, available at <http://www.carm.es/ctra/cendoc/haddock/14945.pdf>

⁴⁰¹ *ibidem*

⁴⁰² “*LA POLÍTICA DE INMIGRACIÓN EN ESPAÑA*”

January 1, 1948. However ancient its origins may be, it does not always seem that Italian system takes this provision duly into account. From 2014 until today, most of the people who arrive by sea are asylum seekers.⁴⁰³ We talk about 70% of the total migration flows. The problem is that not everyone who arrives in Italy has this right. In fact, according to some data from the Viminale, the percentage of negative decisions regarding requests for protection in 2018 was around 82%.⁴⁰⁴ In addition, according to the Ministry of Interior, in the last year there has been a halving of both humanitarian and subsidiary protection. However, the percentage of refugee status remained constant, accounting for 8% of all decisions in both years.

Table 1: shows the requests for protection in Italy in 2018

Gli esiti delle richieste di protezione in Italia (gennaio-dicembre 2018)						
	Status rifugiato	Prot. sussid.	Prot. umanit.	Diniego*	Altri esiti	Tot. esaminati
Gennaio	434	339	1.825	3.950	2	6.550
%	7%	5%	28%	60%	0%	100%
Febbraio	425	274	1.821	4.099	12	6.631
%	6%	4%	27%	62%	0%	100%
Marzo	603	382	2.751	6.099	8	9.843
%	6%	4%	28%	62%	0%	100%
Aprile	524	281	2.401	4.781	13	8.000
%	7%	3%	30%	60%	0%	100%
Maggio	614	358	2.508	5.595	24	9.099
%	8%	4%	28%	61%	0%	100%
Giugno	704	321	2.219	4.207	619	8.070
%	9%	4%	27%	52%	8%	100%
Luglio	526	251	1.680	5.013	21	7.491
%	7%	3%	22%	67%	0%	100%
Agosto	523	408	1.556	3.558	6	6.051
%	8%	7%	26%	59%	0%	100%
Settembre	659	377	1.619	6.682	11	9.348
%	7%	4%	17%	72%	0%	100%
Ottobre	735	427	1.105	6.634	24	8.925
%	8%	5%	12%	74%	0%	100%
Novembre	720	470	356	6.141	29	7.716
%	9%	6%	5%	80%	0%	100%
Dicembre	690	364	236	5.870	17	7.177
%	10%	5%	3%	82%	0%	100%
TOTALI	7.157	4.252	20.077	62.629	786	94.901
%	8%	4%	21%	66%	1%	100%

⁴⁰³ "I flussi migratori e i richiedenti asilo in Italia", available at <https://www.openpolis.it/flussi-migratori-richiedenti-asilo-italia>

⁴⁰⁴ "Richiedenti asilo ed esiti in Italia, 2018 anno di record", available at <http://viedifuga.org/richiedenti-asilo-ed-esiti-in-italia-2018-lanno-dei-record/>

Although Italy has been bound by the EU's various regulations on the management and protection of immigration for years, it has been accused by the Commission of failing to comply with certain European standards, including the identification of people who pass through Italy to reach other countries.⁴⁰⁵ As already mentioned in the previous chapters, the Dublin Regulation states that the Member State in which the person first entered illegally is responsible for 12 months for examining his/her asylum application, but where the applicant has stayed for at least 5 months in another Member State, the Member State in which he/she has been staying for the last 5 months is responsible.⁴⁰⁶ So there are cases of people hiding for 5 months in other countries so as not to be identified until they can apply for asylum in that country even if they entered from another Member State. As early as 2015, the European Commission threatened Italy with infringement proceedings for failing to comply with the procedures of the Eurodac system, which allows EU countries to help identify asylum seekers and persons apprehended in connection with the irregular crossing of an external border of the EU.⁴⁰⁷ By comparing fingerprints, EU countries can check whether an asylum seeker or a foreign national found illegally on their territory has already made an application in another EU country or whether an asylum seeker has irregularly entered EU territory. Italy has therefore been accused on several occasions of not having collected and entered in the Eurodac system the fingerprints of migrants seeking asylum, the last charge of the Commission dates back to January 2019.⁴⁰⁸ However, the violation of the rules of the Eurodac system are not the only ones that have worried the European Commission. In fact, in 2015 the first hotspots were opened in Italy, centers of identification and sorting of migrants arriving after surviving the flight from their country and the trip to the Mediterranean Sea. Here, once they had fingerprinted themselves, they had to be able to ask for political asylum, and then they waited for an answer. The situation, in reality, turned out to be confusing (still today).⁴⁰⁹ Barbara Spinelli, MEP, declared that "the Italian authorities have adopted new illegal practices in violation of the rights of migrants and asylum seekers at the Lampedusa hot spot", and added that "*Once in the hot spot, migrants are hastily interviewed and receive an*

⁴⁰⁵ "Italy should 'use force' to fingerprint migrants", available at <https://www.politico.eu/article/italy-should-use-force-to-fingerprint-migrants-frontex-refugees-dublin/>

⁴⁰⁶ "What is the Dublin Regulation", available at <https://openmigration.org/en/analyses/what-is-the-dublin-regulation/>

⁴⁰⁷ "EU urges Italy to fingerprint migrants by force if necessary", available at http://www.ansa.it/english/news/politics/2015/12/14/italy-intransigent-on-iding-migrants_99f471e5-1854-4d99-8294-05a948e09d70.html

⁴⁰⁸ "Migranti, l'Ue mette l'Italia nel mirino: aperta procedura d'infrazione", available at <http://www.ilgiornale.it/news/politica/migranti-lue-mette-litalia-nel-mirino-aperta-procedura-1633825.html>

⁴⁰⁹ "La verità sul sistema Hot Spot – Violazioni e illegalità a Lampedusa", available at <https://www.a-dif.org/documentitesti/la-verita-sul-sistema-hot-spot-violazioni-e-illegalita-a-lampedusa/>

incomplete form without information on the right to asylum".⁴¹⁰ Therefore, many migrants received refoulement measures without having had the opportunity to apply for asylum under Directives 2011/95/EU called the "Qualification Directive" and 2013/32/EU called the "Procedures Directive". Once the refoulement orders were received, the migrants were expelled from the centres with a document that obliged them to leave the country within seven days from Rome Fiumicino airport".⁴¹¹ Another accusation that always concerns the violation of European directives, in this case on reception, is in terms of accommodation and assistance for asylum seekers. As a matter of fact, asylum seekers do not want to stop in Italy precisely because of these shortcomings on the part of the Italian system. In the last year Italy has again been the protagonist of accusations of violations, in this case of human rights, with regard to the agreement with Libya in 2017 to combat illegal immigration.

4.5.1 Hirsi Jamaa and Others v. Italy

It is interesting at this point to examine the judicial application of the principles we commented on in the previous pages, in relation to the cooperation between Italy and the Libyan authorities that began well before the agreements of 2015. The "Hirsi and other v. Italy" judgment of the European Court of Human Rights is exemplary in this case.⁴¹² The proceedings in question were initiated by eleven Somali and thirteen Eritrean citizens, involved in one of the refoulement operations carried out by Italy in the spring of 2009, following the agreements concluded with Libya. In particular, the boats on which the applicants were found were intercepted by the Italian authorities on 6 May 2009, in international waters 35 miles south of Lampedusa. The migrants were transferred to the Italian patrol boats and returned to Libya. The applicants reported that the Italian authorities would omit any identification procedure against them and would not inform them of the destination of the transfer. Once in the port of Tripoli, the migrants were handed over to the Libyan authorities. The applicants invoked the rules laid down in Article 3 of the Geneva Convention and Article 4 of the Protocol. Furthermore, they complained that they had not been able to avail themselves of any effective means

⁴¹⁰ "Migranti, Ue: Italia prenda le impronte anche con l'uso della forza. Aperto solo 1 hotspot su 6, Grecia sta facendo di più", available at <https://www.ilfattoquotidiano.it/2015/12/14/migranti-ue-italia-prenda-le-impronte-anche-con-luso-della-forza-aperto-solo-1-hotspot-su-6-grecia-sta-facendo-di-piu/2303719/>

⁴¹¹ "Migranti, Ue: Italia prenda le impronte anche con l'uso della forza. Aperto solo 1 hotspot su 6, Grecia sta facendo di più"

⁴¹² Cfr. «ECtHR - Hirsi Jamaa and Others v Italy [GC], Application No. 27765/09». Available at <http://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509>

of redress against the measures adopted by the Italian authorities, in breach of Article 13 of the CEDU. The Court upheld the action on all the points raised by the applicants. The Italian Government tried in vain to justify itself by referring to the *Hussun* case of 2005.⁴¹³ The Court was very clear on this point in stating that whatever the nature of maritime operations, the obligation of States to comply with their obligations under the Convention does not fail. The principle of non-refoulement, as well as the prohibition of collective expulsions, cannot be derogated from on the basis of arguments linked to the nature of maritime operations.⁴¹⁴ On 23 February 2012, the Grand Chamber of the European Court of Human Rights unanimously condemned Italy for breaching Article 3 (double), Article 4 of Protocol No 4 and Article 13 (in conjunction with the two previous articles) of the ECHR.⁴¹⁵ This judgment was intended to be a way of discouraging future cooperation with Libya as regards the rejection of immigrants. This was not the case.

4.5.2 Case of *Khlaifia and Others v. Italy*

The case of *Khlaifia*, resumes the discourse of the accusations reprehensible to Italy for what concerns the inefficiencies of the System of reception. The case was brought against the Italian Republic on the basis of an action brought by three Tunisian citizens.⁴¹⁶ In particular, the applicants claimed that their detention in a reception center for irregular migrants had been in breach of Articles 3 and 5 of the Convention. They also claimed that they had been subject to collective expulsion and that they had no effective remedy under Italian law to denounce the infringement of their fundamental rights.⁴¹⁷ Specifically, the three applicants had arrived at the Rescue and First Aid Centre in Lampedusa, which, according to them, were inhumane and degrading. These conditions were, according to them, inhumane and degrading. They were the cause of the subsequent revolt which led to the fire which broke out in the Centre.

The consequent damage caused to the structure had, therefore, induced the Italian authorities to arrange the more than one thousand migrants present on the island in Palermo, on three ships docked at the port, for several days. Finally, from Palermo airport, the migrants were repatriated to Tunisia

⁴¹³ *ibidem*

⁴¹⁴ “*Interception-at-sea: Illegal as currently practiced – Hirsi and Others v. Italy*”, available at <https://strasbourgothers.com/2012/03/01/interception-at-sea-illegal-as-currently-practiced-hirsi-and-others-v-italy/>

⁴¹⁵ “*La storica condanna nei confronti dell’Italia: il caso Hirsi*”, available at <https://dirittointernazionaleincivica.wordpress.com/2017/06/26/la-storica-condanna-dellitalia-il-caso-hirsi/>

⁴¹⁶ Cfr. «*ECtHR - Hirsi Jamaa and Others v Italy [GC], Application No. 27765/09*»

⁴¹⁷ Cfr. «La pronuncia della grande Camera della Corte EDU sui TRATTAMENTI (e i conseguenti respingimenti) di Lampedusa del 2011». Available at <HTTPS://WWW.PENALECONTEMPORANEO.IT/D/5123-LA-PRONUNCIA-DELLA-GRANDE-CAMERA-DELLA-CORTE-EDU-SUI-TRATTENIMENTI-E-I-CONSEGUENTI-RESPINGIMENTI-DI>

after a summary verification of their identity before the Tunisian consul, in application of the Italo-Tunisian agreement of April 5, 2011.⁴¹⁸ The applicants complained of an infringement of Article 3 ECHR on account of the conditions in which they had lived both in the reception centre and in the ships moored at the port of Palermo; infringement of Article 4 of Protocol No 4 ECHR on account of having been the victim of collective expulsion; Infringement of Article 5 ECHR by reason of the unlawful deprivation of liberty in the absence of effective justification and by reason of the fact that it was not also possible to challenge the legality of that treatment; Infringement of Article 13 ECHR by reason of the fact that, in view of the previous profiles of censure, internal judicial remedies were completely ineffective.⁴¹⁹ The Grand Chamber of the European Court of Human Rights has condemned Italy for the unlawful detention of three Tunisian citizens, confirming the existence of the violation of the Right to liberty and security, art. 5 ECHR, and the Right to an effective remedy, art. 13 ECHR. This is a decision of absolute importance: it is the first sentence for the illegal detention of migrants in Italian first reception centres. The sentence is of primary importance also because it calls into question the current detention practices within the hotspots.⁴²⁰

4.5.3 Libyan case: violation of international law? or necessity?

On 2 February 2017, Prime Minister Paolo Gentiloni and Prime Minister of the Government of National Unity of Tripoli Fayeze al Serraj signed the New Memorandum of understanding (Mou) on **"illegal immigration" and border security**.⁴²¹ The agreement, which extends the validity of the first treaty of friendship between Italy and Libya, signed in 2008, provides that Italy will finance infrastructure to combat irregular immigration, train staff and provide technical assistance to the coast guard and the Libyan border guard and to cooperate in the adaptation and financing of what are more than softly defined as "reception centers" for illegal migrants in Libya.⁴²² The 2008 pact provided for Italy to pay Libya five billion dollars in aid, in exchange for constant patrolling of the coast to prevent migrants from leaving. The agreement had already been criticized at the time by human rights

⁴¹⁸ *"Detenzione in centri di accoglienza, un commento sulla sentenza Khlaifia vs Italia"*, available at <https://www.asgi.it/allontamento-espulsione/detenzione-centro-accoglienza-sentenza-khlaifia-italia/>

⁴¹⁹ *"Detenzione in centri di accoglienza, un commento sulla sentenza Khlaifia vs Italia"*

⁴²⁰ Cfr. «La pronuncia della grande Camera della Corte EDU sui TRATTAMENTI e i conseguenti respingimenti) di Lampedusa del 2011»

⁴²¹ *"Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic"*, available at https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

⁴²² Cfr. «Ratifica ed esecuzione del Trattato di amicizia, partenariato e cooperazione tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista, fatto a Bengasi il 30 agosto 2008». Available at http://www.camera.it/_dati/leg16/lavori/schedela/apritelecomando_wai.asp?codice=16pdl0017390

organizations, which denounced the arbitrary detention of migrants, ill-treatment and torture by the Libyan authorities. Despite this, in 2012 Italy renewed its agreement with Tripoli. The results of this agreement have led to a significant reduction in the number of migrants landed in Italy (33,288 between July and November 2017, 67% less than the same period in 2016).⁴²³ According to reports and interceptions, people being returned to Libya and distributed in detention centres are being beaten, tortured, extorted and raped. These images led UN Secretary-General António Guterres to define himself as "horrified" by the scenes shown and also stating that those responsible could be accused of "crimes against humanity".⁴²⁴ In addition, the United Nations High Commissioner for Human Rights, Zeid Raad al Hussein, also called the cooperation between the European Union and the Libyan coastguard "inhumane". In fact, according to a latest report by Oxfam, but also amnesty international, such an agreement would violate a high number of human rights. This widespread report analyses the strategy implemented by the Italian government and the EU, which shows all its inadequacy in managing policies of regular entry into the European continent and mechanisms for the automatic redistribution of migrants between Member States.⁴²⁵ Considering the above, the accusation of Italy's complicity in the violations of the fundamental human rights of migrants committed in Libya is not unfounded. According to customary international law, a state is an accomplice, and therefore subject to international liability, when it assists or assists another state in the commission of an international crime if (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State or international organization; and (b) the coercing international organization does so with knowledge of the circumstances of the act.⁴²⁶

4.6 Spain

In June 2017 Spain, headed by Socialist Prime Minister Pedro Sánchez, announced the decision to welcome the ship Aquarius with 629 migrants on board after Italy and Malta had refused to allow

⁴²³ "Libya: EU's Patchwork policy has failed to protect the human rights of refugees and migrants", available at <https://www.amnesty.org/download/Documents/MDE1993912018ENGLISH.pdf>

⁴²⁴ "Perché l'accordo tra Italia e Libia sui migranti è sotto accusa", available at <https://www.internazionale.it/notizie/annalisa-camilli/2017/11/29/italia-libia-migranti-accordo>

⁴²⁵ "One year on from Libya migration deal, people still in captivity and suffering abuses", available at <https://www.oxfam.org/en/pressroom/pressreleases/2018-02-01/one-year-libya-migration-deal-people-still-captivity-and>

⁴²⁶ Conforti, B., "Diritto internazionale", (2018), Editoriale Scientifica

docking in their ports.⁴²⁷ This gesture has given rise to an image of a country in solidarity and ready to welcome. The Spanish Prime Minister defined this reception as an "obligation to help avoid a humanitarian disaster" ensuring that Spain is determined to strengthen and ensure compliance with European standards.⁴²⁸

The question is: can Spain be defined as a model of openness and welcome for migrants? In order to better understand this aspect, we need to make a more in-depth analysis of the measures adopted by the Spanish government in recent years. The result of this analysis will see the Spanish government often defined as "hypocritical" in the field of migration policies. In recent years, Spain has been accused on several occasions of violating European standards and of not guaranteeing a minimum level of reception. The previous government, chaired by the Conservative Mariano Rajoy, is an example. His government was characterised by a policy of closed doors with regard to the flow from Africa. Some newspapers defined Spain as "one of the least cooperative countries in the EU quota system".⁴²⁹ In fact, in 2015, Spain said it was ready to accept the EU quota for refugees and to accept 14,931 of them, except then years later to re-negotiate the figures downwards. And at the end of last year, the real share of people received in the country was 1,279, 13.7% of what was initially expected.⁴³⁰ So much so that the NGO Oxfam filed a complaint with the Madrid office of the EU Commission against Spain for failure to comply with the quota of 9,323 migrants that it had undertaken to accept in the redistribution agreement between EU countries concluded the year before.⁴³¹ This is also attested by the Spanish Supreme Court, which, called upon to rule on an appeal by the Catalan association Stop Mare Mortum, found that the Central State had failed to comply with binding international agreements.⁴³² However, the criticism does not end there, in fact there are many accusations being made against the Spanish Government.

The Council of Europe has criticised the government in Madrid for the immediate expulsions at the borders of Ceuta and Melilla, Spanish enclaves in Africa that are often assaulted by immigrants and

⁴²⁷ "España acogerá a 60 migrantes del 'Aquarius' tras alcanzar un acuerdo de seis países", available at https://elpais.com/politica/2018/08/14/actualidad/1534250252_962443.html

⁴²⁸ "Aquarius in Valencia: Spain welcomes migrants from disputed ship", available at <https://www.bbc.com/news/world-44510002>

⁴²⁹ "Migranti, la Spagna condanna la propria ipocrisia sui ricollocamenti", available at <https://www.ilfattoquotidiano.it/2018/07/13/migranti-la-spagna-condanna-la-propria-ipocrisia-sui-ricollocamenti/4490266/>

⁴³⁰ "What is Europe's migration fight about?", available at <https://www.politico.eu/article/europe-migration-crisis-fight-explained/>

⁴³¹ "Oxfam denounces Spain for 'violating' migrant quota pact", available at <https://www.infomigrants.net/en/post/5167/oxfam-denounces-spain-for-violating-migrant-quota-pact>

⁴³² "Stop Mare Mortum inicia una acción legal para exigir a España que acoja a 19.000 refugiados", available at <https://www.20minutos.es/noticia/3019301/0/stop-mare-mortum-inicia-accion-legal-para-exigir-espana-que-acoja-19-000-refugiados/>

are therefore surrounded by a high wall of barbed wire that separates them from Morocco.⁴³³ What the EU is asking Spain to do is to improve the conditions of the reception centres built in the vicinity of the two cities. "It is necessary for the Iberian authorities to ensure that the Centres for the temporary stay of migrants have the same standards of living conditions, education, health care, language and training that asylum seekers have in peninsular Spain", writes Tomas Bocek, special representative of the Secretary General of the Council of Europe, for Migration and Refugees.⁴³⁴ The human rights watch organization had reported in a report on the poor condition of asylum seekers and other migrants arriving on the Spanish coast by sea. The migrants are kept for days in dark and unhealthy cells in police stations, and then placed in facilities for longer-term detention, waiting for a return that may never happen.⁴³⁵ The dark, cage-shaped police cells are not the place to keep asylum seekers and migrants coming to Spain," said Judith Sunderland, associate director for Europe and Central Asia at Human Rights Watch. "Spain violates the rights of migrants, and there is no evidence that this acts as a deterrent."⁴³⁶ Not to mention the latest data on police facilities in Motril, Almeria, and Malaga. According to some testimonies, the detainees are locked inside at all hours, and are left out only for medical checks, to take fingerprints, for interviews and, in Almeria and Málaga, to go to the bathroom since there are no toilets inside the cells. Men are not allowed to brush on the grounds that they could be used as weapons.⁴³⁷

The European Court of Justice recently delivered an important ruling on a case presented by the Spanish NGO Malaga Acoge. The court ruled that the Spanish Immigration Act violates EU law because it allows the automatic rejection of a residence permit or expulsion solely on the grounds of a criminal record, against non-EU citizens who are consequently treated as second-class citizens. For the court, the right to family life is superior⁴³⁸

4.6.1 The case of N.D and N.T v. Spain

⁴³³ "European council criticizes Spain for poor conditions in migrant holding centers", available at http://www.xinhuanet.com/english/2018-09/06/c_137450277.htm

⁴³⁴ "Council of Europe slams conditions for migrants in Spain's exclave cities", available at https://elpais.com/elpais/2018/09/06/inenglish/1536232097_658790.html

⁴³⁵ "Spain: Migrants Held in Poor Conditions", available at <https://www.hrw.org/news/2017/07/31/spain-migrants-held-poor-conditions>

⁴³⁶ "Spagna, migrant tenuti in condizioni pessime e ostacoli alle richieste di asilo", available at https://www.repubblica.it/solidarieta/immigrazione/2017/07/31/news/spagna_migranti_tenuti_in_condizioni_pessime_e_ostacoli_alle_richieste_d_i_asilo-172027059/

⁴³⁷ "Conditions in detention facilities", available at

WWW.ASYLUMINEUROPE.ORG/REPORTS/COUNTRY/SPAIN/CONDITIONS-DETENTION-FACILITIES

⁴³⁸ "Spanish Aliens Act Violates EU Law, ECJ Rules", available at <https://www.liberties.eu/en/short-news/14486/14486>

In 2017 Spain was held responsible by the European court of human rights of the violation of Articles... rules of the ECHR that prohibits collective repatriations and obliges to guarantee the right to an effective appeal. in fact, the Spanish government was accused of the so-called "hot refoulements". in fact, according to the testimonies of the two applicants, N.D.E. N.T., on 13 august 2014 they managed to climb over the fence of Melilla entering in Spain. At that point, N.R. and N.T., along with 80 other people from Sub-Saharan Africa, were immediately rejected by the civil guard without access to any kind of protection.⁴³⁹ But the story doesn't end here. In fact, once rejected, they were subjected to mistreatment and violations by Moroccan guards. Therefore, the actions of the state security forces violated the European Convention on Human Rights, which safeguards the right to an effective remedy and prohibits collective expulsions. For this reason, the Court of Strasbourg ordered Spain to pay to each of the applicants 5,000 euros in compensation.⁴⁴⁰

4.6.2 Ceuta y Melilla

For a long time, illegal immigration to Spain was a major problem. At the beginning of the 1990s, one of the main stages of illegal immigration into Europe was via the Canary Islands, which are located on the west coast of Morocco. Over the years, flows have begun to focus on Andalusia, the Spanish region already close to Moroccan territory, and through two Spanish enclaves in Morocco, Ceuta and Melilla.⁴⁴¹ In an attempt to limit this passage, the Spanish government built a double wire mesh three metres high (later doubled to six), almost ten kilometres long around Ceuta and more than eight kilometres around Melilla, barriers which were erected in 1997 and 1998 respectively to separate them from Morocco.⁴⁴² Real walls of barbed wire and metal blades, with watchtowers, video surveillance systems, high-intensity lighting, and control towers, equipped with internal walkways for soldiers of the Guardia Civil and constant patrols of the Spanish and Moroccan police forces. The aim is to stem the migratory flows that since the 1990s have seen many sub-Saharan migrants trying to cross the border to reach Europe. One of the most militarized borders of the Old Continent, built with the consent of the European agency Frontex, and of which very little has been said since their

⁴³⁹ “*The case of N.D. and N.T v. Spain*”, available at <https://www.ecchr.eu/en/case/the-case-of-nd-and-nt-v-spain/>

⁴⁴⁰ “*Spagna - La Corte di Strasburgo stabilisce che i respingimenti a caldo del Governo sono illegali*”, available at <https://www.meltingpot.org/Spagna-La-Corte-di-Strasburgo-stabilisce-che-i.html#.XGCslCOh3BV>

⁴⁴¹ Saddiki, S., “*World of Walls: The Structure, Roles and Effectiveness of Separation Barriers Paperback*”, (2017), Open Book Publishers

⁴⁴² Saddiki, S., “*World of Walls: The Structure, Roles and Effectiveness of Separation Barriers Paperback*”

construction.⁴⁴³ The first major massive attempt to migrate to Europe took place in 2005: some men, in an attempt to pass the "Great Wall of Europe", were killed. More than 700 humanitarian organizations signed a petition calling for the establishment of an International Commission of Inquiry to verify responsibility for the events in Ceuta and Melilla. The year after those dramatic events, Amnesty International denounced how the rights of migrants were violated and that the truth of the facts had not emerged, expressing doubts about the lack of necessary guarantees of objectivity in the conduct of investigations.⁴⁴⁴ The summer of 2006 the European Union allocated a fund of about 70 million euros to be allocated to Morocco to support the "*Programme d'urgence de soutien au développement institutionnel et à la mise à niveau de la stratégie migratoire présentée par le gouvernement marocain*".⁴⁴⁵ The aim is to develop appropriate border control systems and to improve the Moroccan legal framework. However, although attempts to cross the border were reduced in subsequent years, the violence of the Spanish and Moroccan police never diminished. In 2012, another attempt that won the headlines: hundreds of migrants managed to enter Melilla. Two years later, a new tragedy: on February 6, 2014, 300 migrants of sub-Saharan origin tried to swim, starting at 7 am, to the beach of El Tarajal, taking advantage of the low tide, wearing life jackets and rudimentary jackets made of plastic bottles, without the Moroccan forces being able to stop them.⁴⁴⁶ According to documents produced by local NGOs, the deaths recorded in the Tarajal were caused by the excessive use of anti-riot weapons. On that occasion, 15 people died on the border between Ceuta and Morocco.⁴⁴⁷ Between 1 and 2 January 2017, a desperate attempt was made by more than 800 migrants, mostly from sub-Saharan Africa, to cross the barbed wire barrier that separates Morocco from Melilla, which was followed by a tough clash with the Moroccan police. 602 people were able to arrive at Ceuta, 132 of whom were seriously injured by the civil guard.⁴⁴⁸

⁴⁴³ "*Fortress Europe in Africa: EU's silence on Ceuta and Melilla*", available at <https://eurocultur.eu/2018/01/16/fortress-europe-in-africa-eus-silence-on-ceuta-and-melilla/>

⁴⁴⁴ "*Spain: Ceuta migrant tragedy – deplorable disregard for human life*", available at <https://www.amnesty.org/en/latest/news/2015/02/spain-ceuta-migrant-tragedy-deplorable-disregard-human-life/>

⁴⁴⁵ Cfr. «Document d'action pour le Programme d'appui aux politiques migratoires du Royaume du Maroc». Available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/c_2016_8836_morocco_aap_2016_part_3_annex_1.pdf

⁴⁴⁶ "*Spain admits firing rubber bullets at migrants swimming to enclave*", available at <https://www.telegraph.co.uk/news/worldnews/europe/spain/10638607/Spain-admits-firing-rubber-bullets-at-migrants-swimming-to-enclave.html>

⁴⁴⁷ Ibidem

⁴⁴⁸ "*Más de 600 migrantes subsaharianos acceden a Ceuta tras saltar la valla*", available at https://elpais.com/politica/2018/07/26/actualidad/1532590163_134194.html

Image 1: shows the map location of Ceuta and Melilla



Recently Tomáš Boček, the special representative of the council of Europe, described the Spanish situation in crisis with regard to immigration, adding that the reception center in Ceuta and Melilla guarantee the same standards as the other centres in Spain. Including adequate housing, health care,

access to language courses and training. It also reaffirmed the condemnation of hot expulsions that Spain is used to doing at the borders of Ceuta and Melilla.⁴⁴⁹

⁴⁴⁹ “*Council of Europe slams conditions for migrants in Spain’s exclave cities*”, available at https://elpais.com/elpais/2018/09/06/inenglish/1536232097_658790.html

Conclusion

My research had the purpose to investigate the origins and dynamics of immigration, especially with regard to the issue of reception. I chose this topic because today immigration is one of the main aspects that characterizes the European scenario. For this reason, it seemed useful to investigate what happens once these people arrive in our countries. To deepen this topic, I have taken into consideration Italy and Spain. I select these countries because they are currently the most affected by migratory flows and therefore best represent these issues. So, the objective of my research has been to deepen the issue of reception through a comparison between Spain and Italy. At the end of this research it will be interesting to observe that these two countries that appear to be very similar to each other actually have addressed the issue of immigration in a very distinct way. These different approaches obviously had important impacts within the structure of the reception system. To develop all this, I structured my thesis into 4 chapters in which each part analyzed a different aspect.

The first chapter has provided the necessary tools to understand who an immigrant is, where he/she comes from and the main reasons for taking that journey. Once I had analyzed this aspect, I felt it necessary to go deeper into the issue of immigration within the international and European framework in order to understand how it had developed over time. Certainly, the first major international step was the adoption of the Geneva Convention in 1951, which paved the way for further development.⁴⁵⁰ As far as the EU is concerned, there have been delays in addressing this issue. The reason for this was mainly due to the willingness of the states to maintain sovereignty in the management of flows. This situation will change over time. In fact, from the end of the 1990s, the European Community will be working on developing a more cooperative system which will then take the name of Common European Asylum System (CEAS).⁴⁵¹ This aspect will be very important to understand the subsequent developments made by Italy and Spain. As will be seen in the last chapter, these two countries have not always fulfilled the norms both at international and European level; The second

⁴⁵⁰ Cfr. Convention and Protocol relating to the status of Refugees . Available at <https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNTS+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+into+force+4+October+1967%29+606+UNTS+267/0bf3248a-cfa8-4a60-864d-65cdfec1d47>

⁴⁵¹ “*Common European Asylum System*”, available at https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

chapter focuses mainly on the journeys that immigrants must undertake to reach the Italian and Spanish coasts. Then it will try to determine what happens once these people manage to reach European territories. This opened up a number of issues, including the various European norms, in particular the Dublin regulation. In this chapter we will analyze the reception system within the two countries; The third chapter addresses the issue of the cost. How much does immigration cost to Spain and Italy? And how much does Europe help these countries? As has been noted, both countries spend large amounts of money on immigration each year, most of which is spent on reception center. In conclusion, the fourth chapter dealt with the domestic political path that the two countries have taken over the years to manage immigration

The comparison between Italy and Spain aimed at explaining how two countries so culturally, historically and geographically close are far away on matters related to immigration and in particular the reception. In order to better understand these differences, it was necessary to analyze a series of aspects, including the type of migratory flows, the quantity of arrivals, the perception that Italy and Spain have had of immigration and, above all, the political path taken by the two countries. For this reason, the last chapter was fundamental to outline this process. Starting from the fact that the Italy and Spain shared the experience of emigration, both started to take their first steps towards immigration policies only at the end of the 1980s. At that time the two countries were facing different experiences that strongly outlined their policies. Italy, characterized by the enormous migratory flow from Eastern Europe, began to develop restrictive policies to try to manage these flows. On the other side, Spain was characterized by a large flow from Morocco and in 1985 adopted the first Organic Law on the Rights and Freedoms of Foreigners in Spain, known as the "Ley de Extranjería".⁴⁵² Unlike Italy, Spain will also be characterized by another problem: the internal consolidation of the democracy. In fact, only a few years before (1978), the constitution had been approved.⁴⁵³ However, in both cases, the political process of those years was not without problems. In this scenario, the first reception centers were created to assist the growing number of arrivals in the Spanish and Italian borders. Since 2000, both countries have adopted more "similar" policies that respect EU requirements and international standards. In those years it will be approved the first reception directive "Directive 2003/9/EC" laying down "minimum standards" for the reception of asylum seekers in the Member States.⁴⁵⁴ Subsequently, by analyzing the various information, I was able to

⁴⁵² Cfr. «1985 - Organic Law 7/1985, of 1 July 1985, on the rights and freedoms of foreigners in Spain». Available at <https://www.perfar.eu/policies/organic-law-71985-1-july-1985-rights-and-freedoms-foreigners-spain-0>

⁴⁵³ Cfr. «CONSTITUCIÓN ESPAÑOLA». Available at <https://boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>

⁴⁵⁴ Cfr. «Directive 2003/9/EC». Available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>

outline some differences between the two reception systems. The Italian's reception system is based on two phases, the first characterized by the arrivals in the hotspots and then in the first reception centers; The second characterized by the Protection System for holders of international protection and for unaccompanied foreign minors. On the other hand, the Spanish system is mainly developed in 3 phases, which are preceded by a preparatory phase called "Evaluación y Derivación". The first phase or reception phase aims to cover the basic needs of the beneficiary through the reception devices. Here we can distinguish between the various centres: CAR, CETI, CATE and CEAR. The second phase, or integration phase, starts when the people leave the shelter and need further support. To this end, an accompanying pathway is defined, aimed at promoting their autonomy and independence. The itinerary can be completed by a third phase or autonomy phase, in which the beneficiary may need possible or sporadic assistance or support interventions in some areas. Again, both reception systems are characterized by a number of limits reported within my thesis.

From 2014 to 2017 there was an increase in migration flows, especially on the Italian and Greek coasts, compared to the Spanish ones. In that period, Italy had to manage a much higher number of arrivals than Spain. This has had strong consequences in terms of policies but especially in the field of reception. Spain, on the other hand, has remained more "isolated", sometimes guaranteeing better management of arrivals, as in the case of Aquarius.⁴⁵⁵ However, analyzing various studies, both countries are characterized by similar level of inefficiency and irregularity. For this reason, in last years, as pointed out in the last chapter, Italy and Spain have been protagonists of violations of some European and international standards. The last example concerns the "Diciotti case", in which not only Italy but also Malta are the protagonists.⁴⁵⁶ The case concerns a boat with 190 people fleeing from Libya which was in the Maltese area. Because of the conditions of the boat the Italian military ship "Diciotti" has intervened to carry out the transshipment of people. Subsequently, both countries refused to dock the ship in their ports. The Italian Minister for the Interior Matteo Salvini has threatened to reject the 191 people in Libya thus violating Article 33 of the Geneva Convention which prohibits an asylum seeker or refugee from being expelled or rejected in any way "(...) towards the borders of territories where his life or freedom would be threatened (...)".⁴⁵⁷ In this case, Libya, was not considered a safe country. In 2012 Italy, as I remember in the last chapter, had already been unanimously condemned by the European Court of Human Rights in Strasbourg for violating Article

⁴⁵⁵ Aquarius is a ship of the fleet of the NGO Doctors Without Borders that in 2018 had on board 629 migrants, including 123 unaccompanied minors, 11 children and 7 pregnant women. The ship asked to be able to dock in an Italian port. Italy refused. The ship was later docked in the port of Valencia.

⁴⁵⁶ "Standoff in Italian port as Salvini refuses to let refugees disembark", available at

<https://www.theguardian.com/world/2018/aug/21/italy-refugees-salvini-refuses-coastguard-ship-docks-diciotti>

⁴⁵⁷ Cfr. «Art. 33- Convencion and Protocol relating to the status of Refugees»

3 of the Convention on Human Rights, the one on degrading treatment and torture, having rejected on the high seas to Libya a boat where there were about 200 people.⁴⁵⁸ The Diciotti case is therefore a clear symptom of how the migration policies of the Mediterranean countries, in particular Spain and Italy, are in crisis.

⁴⁵⁸ Cfr. «ECtHR - *Hirsi Jamaa and Others v Italy* [GC], Application No. 27765/09»

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Summary

Introduction

This thesis aims to analyze and compare the system of reception of migrants in two of the most affected European countries, Italy and Spain. The objective, therefore, is to understand if there is a similarity between the two countries in dealing with this process or, if not, what distinguishes them. In order to arrive at an answer, it was necessary to deepen the international, political and historical context that characterizes the two countries. The thesis will begin by addressing a central question: who is an immigrant? and why he /she "decides" to leave his country and face what will be called a "journey of hope".

Chapter 1: Migration and International panorama

This chapter has dealt with the main features of migrants and the International and European legal scenario. The migration is a phenomenon that has always characterized the history of humanity. Each historical period has been characterized for various historical, political and economic reasons by migratory flows. The reason for these movements are many, it is impossible to say that there is only one. Instead, it can be said that every reason has one aspect in common: that of improving the standard of living.⁴⁵⁹ However, there is still a lot of confusion about this. A first problem is that it is not easy to define who the immigrants are, or rather which of the resident foreigners should be classified as such. Often the term "immigrant" is used as a synonym for refugee, asylum seeker, illegal immigrant without dwelling on the fact that each word listed has different nuances, characterised by different rights and protections. As regards the regulatory scenario, the international community started to deal with this theme after a series of events that have destabilized the order of the states, causing masses of refugees to abandon their own state community.⁴⁶⁰ Especially in the twentieth century, following some sadly known events that shook the world, the international community has tried to define and regulate this phenomenon. The first real legal instrument at universal level that establishes the rules regarding the asylum seekers, was the Geneva Convention. The Convention was drafted in 1951 with the purpose of providing a basic standard treatment for refugees that could be used at a universal level. It establishes the concept of refugee, identifies the conditions for granting their specific "status"; it lists all the causes that, on the contrary, may prevent from the use of the right to asylum. Furthermore, gives content to the forms of protection that the States adhering to the document must

⁴⁵⁹ Ambrosini, M., "*Sociologia delle Migrazioni*"

⁴⁶⁰ Koser, K., "*Le migrazioni internazionali*"

guarantee to the refugee. Whereas the European Union has faced with immigration and asylum law much later than the international scenario. However, at the beginning of the mid-eighties European cooperation took its first steps in the field of immigration, driven above all by the need to cope with the enormous increase in migratory flows that characterized those years⁴⁶¹. The European Immigration and asylum law in the last decades was subject of many changes; The Schengen Agreements and the Dublin Regulation will play a key role in shaping the migration in European countries particularly for Italy and Spain. With regard to the provisions governing the reception system, reference will be made to the first reception directive “Directive 2003/9/EC” laying down “minimum standards” for the reception of asylum seekers in the Member States.⁴⁶² It will subsequently be modified by changing “minimum standards” with a "common policy" on asylum matters to avoid different and restrictive interpretation by states.⁴⁶³

Chapter 2: The journey of hope

The second chapter of the thesis focused mainly on the journeys defined of "hope" that immigrants must undertake to reach the Italian and Spanish coasts. In particular, it will analyze the points of departure and arrivals. The area of departure is divided in two main parts: Western, Central and Eastern Mediterranean and Western Africa. The first is used by migrants from the Horn and sub-Saharan Africa who embark from Libya to Italy and Malta. The second route, that of the western Mediterranean, heads towards Spain and is crossed by migrants from Morocco, Algeria and sub-Saharan countries. Then it will try to determine what happens once these people manage to reach European territories. This opens up a number of issues, including the various European norms, in particular the Dublin regulation. As far as the reception system is concerned, the two countries are characterized by different models. The Italian's reception system foresees two phases, the first characterized by the arrivals in the hostposts and then in the first reception centers; The second characterized by the Protection System for holders of international protection and for unaccompanied foreign minors. On the other hand, the Spanish system is mainly developed in 3 phases, which are preceded by a preparatory phase called "Evaluación y Derivación". The first phase or reception phase aims to cover the basic needs of the beneficiary through the reception devices. Here we can

⁴⁶¹ Koser, K., “*Le migrazioni internazionali*”

⁴⁶² Cfr. «Directive 2003/9/EC». Available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>

⁴⁶³ Morgese, G., “*La riforma del sistema europeo comune d’asilo e i suoi principali riflessi nell’ordinamento italiano*”, p. 16.

distinguish between the various centres: CAR, CETI, CATE and CEAR. The second phase, or integration phase, starts when the people leave the shelter and need further support. To this end, an accompanying pathway is defined, aimed at promoting their autonomy and independence. The itinerary can be completed by a third phase or autonomy phase, in which the beneficiary may need possible or sporadic assistance or support interventions in some areas. However, the reception systems of the two countries present difficulties in several aspects.

Chapter 3: The costs of immigration

this chapter focuses on one of the most controversial and debated issues, that is, how much immigration costs these countries. What are the numbers behind the funding for the migration issue? And how does the European Union help the Member States? These are the most frequently asked questions which are often not answered precisely. In Italy from 2011 to 2017 there was a growing increase in estimates of public spending to address the crisis of migrants. In 2011, €840 million was spent, while in 2017, expenditure reached €4.363 billion. Of this cost, however, not everything was allocated to reception, only about 68.4%. The remaining 31.6% is divided between rescue at sea, education and health.⁴⁶⁴ In Spain the increase of arrivals in the last two years has seriously concerned the Spanish state about the increase in the costs of this phenomenon, particularly as regards illegal immigration. With regard to the reception costs in 2018, the government has stated, in a written reply, that “The operation of the nine Centers for the Internment of Foreigners (CIE) in Spain last year cost 8.3 million euros, including food, cleaning, consumption of electricity, water and gas, and medical service.”⁴⁶⁵

While as far as the European Union is concerned, it offers a number of opportunities for financial support for its Member States. Although these funds are not intended to compensate for the lack of national funds, they can contribute to the resources of those engaged in social inclusion and integration of migrants and refugees in the European Union. Most EU funds are managed in cooperation with Member States in a shared management mode. Nowadays most EU funds related to migration policies have been allocated under two important programs: the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). The first is the allocates the most funding, for the period 2014-20 had allocated 3.31 billion which have now reached more than 6.6 billion euros; the latter allocates 3.8 billion (for the same period.).

⁴⁶⁴ Cfr. «Documento di Economia e Finanza»

⁴⁶⁵ “Cada plaza de inmigrante retenido en un centro de internamiento cuesta 17 € al día”, available at <https://www.elmundo.es/elmundo/2012/06/04/espana/1338801548.html>

Chapter 4: The legislative process and the limits to its application

The last chapter will analyze the legislative path that each state has taken towards immigration and the developments that have taken place over the years. However, Spain and Italy have not always complied to the letter with these laws and this has led to serious consequences, including sentences against them. In Italy immigration became part of the legislative framework only in 1986 with Law No 943 of 30.⁴⁶⁶ It had the great merit of introducing some very important regulations on the subject of immigration. From here it is possible to divide the Italian legislative path into three other significant stages: in 1989 with the Law No 39; in 1998 with Law No 40 law and in 2002 with the Law No 189. The legislative process has not ceased, it has continued to develop until the last stage with the new safety decree in 2018. The analysis of immigration policies in Spain can be divided into the time dimension 1982-2009, which corresponds to the governments of Felipe González (1982-1996); José María Aznar (1996-2004) and José Luis Rodríguez Zapatero (2004-2010). Each era has brought different solutions to the issue of immigration. Spanish political decisions have been quite chaotic and it is therefore important to highlight the factors of change during the last quarter of a century. Since 2010, the changes made to the Spanish system have been smaller than in previous years but still important.

Conclusion

The objective of this thesis was to investigate the origins and dynamics of immigration, especially with regard to the issue of reception. To do this, I have chosen to compare two countries: Italy and Spain. These two countries, although similar in their culture, history and geography, will in fact present many differences, especially in terms of reception. These different approaches have obviously had an important impact within the structure of the reception system. In fact, as shown in chapter 2, both countries have a very different reception system. In order to develop all this, I have analyzed different aspects including the different migratory flows, the historical path of the two countries, the geographical aspects but especially the political ones. As a result, the two countries are currently

⁴⁶⁶ Cfr. «*COLLOCAMENTO DI LAVORATORI - Norme in materia di collocamento e di trattamento dei lavoratori extracomunitari immigrati e contro le immigrazioni clandestine*». Available at <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/1992/luglio/legge-943-86.html>

facing a period of crisis at both policy and migration management levels. This crisis is testified by the various events that are characterizing our days.