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INVESTIGATING HUMAN RIGHTS VIOLATIONS:
INFORMAL READMISSIONS TO GREECE OF ASYLUM SEEKERS AND
UNACCOMPAINED MIGRANT CHILDREN FROM ITALIAN ADRIATIC
HARBOURS
AND THE HOVERING SPECTER OF DUBLIN REGULATION

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ABSTRACT

This thesis collocates the issue of readmissions of asylum seekers from Italian Adriatic harbours to Greece in the broader context of the Common Asylum System in Europe, considering it as a “side effect” of the System’s shortcomings, *per se*. Within these premises, the paper illustrates the abuses experienced by the victims in each phases of readmissions: at Italian harbours, during the return journey by ship and, once back to Greece, the human rights violations they are exposed to. It also assesses whether the phenomenon persists up today, after several years of systemic readmissions to Greece, as documented by credible NGOs and the UN Special Rapporteur on the human rights of migrants, François Crépeau, in his Italy country mission report of 2012. In doing that, it examines the outcome of a filed research carried out between April and July 2015, which included, among others, exchange of information with Italian NGOs operating in Adriatic harbours, interviews with asylum seekers in Patras and a scrupulous analysis of Italian media. Eventually, it identifies possible and durable solutions to the issue, entailing a radical change in the EU approach to migration and asylum matters and makes predictions for the future.

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Introduction and Methodology

Every year thousands of desperate people fleeing from war, persecutions and poverty, come to Greece irregularly crossing the Greek Turkish border, by land or by sea.

Greece, however, is not the end of their journey, but only a transit country. Hence, they try to move and reach, by any means, other destinations, mainly northern European States in search of a safe place to live and work.

These cross border movements within EU, in most of the cases, concern people in need of international protection, coming from countries torn by conflicts or ruled by dictatorial regimes, (such as Afghanistan, Iraq, Syria, Sudan, Eritrea) who would be obliged by EU law (Dublin III regulation) to seek asylum in the first place they entered Europe. Among them, there are many unaccompanied children and other vulnerable groups (pregnant women, survivors of torture, people with disabilities).

These secondary migratory movements, upsurge vulnerability of those who are on the move, cause further unnecessary suffering and even loss of human lives, in addition, are one of the main evidence of the failure of the European Common asylum system and its cornerstone, the Dublin regulation, based on a logic of restrictions to asylum seekers' freedom of movement, as it will be stressed in the introductory chapter dedicated to this specific topic. In this context, this research is interested in and follow the traces of asylum seekers who, after entering irregularly in Greece, choose the Adriatic path to seek refuge elsewhere, traveling as stowaways on ferries departing from the Greek seaside cities of Patras or Igumenista, with the aim of arriving in Italian Adriatic harbors and passing the frontier checkpoints, undiscovered.

The attention given to those ones is driven by the serious harms and human rights violations they are exposed to. In fact, if detected, in virtue of a bilateral readmission agreement signed in 1999, they are immediately pushed back, without formalities, by Italian border police to Greece, a country where they will likely to be subjected to ill-treatment, arbitrary detention and miserable life conditions. That occurs in total disregard of basic principles of international human rights law. First of all the principle of non-refoulment: the absolute prohibition binding all States, whether or not signatories to the Geneva Convention of 1951, of forcibly return refugees, asylum seekers and other persons in need of international protection to "a place where their lives or freedom would

be threatened”. Actually, the Hellenic Republic, despite being a EU member State, since 2011 has been declared “unsafe” by the ECtHR in *M.S.S. vs Belgium and Greece*, for serious concerns rising from systemic deficiencies of its asylum system that lead to prolonged administrative detention of persons in need of international protection in appalling conditions, homelessness, destitution, risk of deportation to Turkey and /or countries of origin.

Informal readmissions from Italy to Greece have been documented since 2008-2009 by reliable NGOs (HRW, Pro Asyl, Greek Council For Refugee, MEDU), as well as by the UN Special Rapporteur on the human rights of migrants, François Crépeau,¹ but there is no academic literature on the topic, except for briefs online articles ²and a single case law³. Anyway, those sources of information might be considered enough to assume that this practice was largely carried out in the major Adriatic harbors (Ancona, Bari, Brindisi, Venezia) in a systematic fashion up to 2013, as it has been verified on the base of hundreds victims’ interviews.

In the second chapter of this paper, I will describe readmissions to Greece in all their phases (attempts of getting on board of ferries, rejections at the border, return journey to Greece, human rights violations committed by the authorities involved), making direct references to the practice adopted by Italy as described in reports published by the above-mentioned NGOs and as displayed in *Sharifi vs Italy and Greece* case, ruled by the ECtHR on 21st October 2014⁴. I will also report some emblematic examples, quoting victims interviewed by the NGOS themselves. From paragraphs 2.6 up to 2.9, I will illustrate and analyse the data collected during my field research, focused on a period of time not covered by the previous reports, i.e. 2004 plus the first months of 2015. In fact, one of the

¹ In the report concerning his mission to Italy (29 September–8 October 2012), p. 13 and 14, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-46-Add3_en.pdf. accessed at 11th July 2015.

² See, Fulvio Vassallo Paleologo, Professor of Palermo University, “*Respingimenti collettivi ed omissioni di soccorso nel contrasto all’immigrazione irregolare*”, 1st November 2009, available at http://www.meltingpot.org/Respingimenti-collettivi-ed-omissione-di-soccorso-nel.html#.VZ5QP9Ew_IU, accessed on 7th July 2015 Alessandra Sciurba; researcher at Palermo University, “*Gli accordi tra stati membri dell’UE: gli accordi di riammissione Italia Grecia e la pratica dei respingimenti alla frontiera adriatica*”, 27th November 2009, available at <http://www.migreurop.org/article1488.html>, accessed on 7th July 2015.

³ *Sharifi against Italy and Greece* case, commenced in 2009 and ruled by ECtHR in 2014.

⁴ The only case law on the topic in question dealt by ECtHR up to date.

aim of this work is to understand whether the phenomenon of readmissions to Greece has ceased or to what extent and following which patterns is persisting, in particular after the above-mentioned ECtHR ruling, in the light of the fact that Italy was condemned and now must abide to the sentence.

The collection of data and information has been very challenging for limits in resources, time and cooperation from Italian public authorities. Anyway, the findings are enough to give a picture of the current situation. Within this scope, I did a field research in Italy and Greece, between April and June 2015, with the aim of identifying victims of readmissions and collecting data and figures to understand the issue, its extension and repeated patterns. The research included several interviews with Italian and Greek NGOs staff, journalists, lawyers, human rights activists, on the phone and vis-a vis. I made also a visit in Patras, from the 29 April to the 1st May. Here, I toured various places attended by undocumented migrants and asylum seekers and I identified interviewees randomly in a shop (a Sudanese bar in downtown) and an abandoned factory near the new port. The interviews with the victims were conducted in English and Arabic, and all interviewees were informed of the purpose of this study. Finally, I analysed carefully Italian media reports, in order to discover further cases of returns.

The issue of readmissions to Greece cannot be deeply understood without considering Greek asylum system and refugees' conditions of living in the country. Serious insecurity and widespread violations of human rights experienced by migrants and asylum seekers in Greece render readmissions operated by Italian authorities unlawful, according to the ECtHR jurisprudence. In addition they are also the pull factors that lead asylum seekers to leave and clandestinely undertake dangerous journeys, within the EU, like the "Adriatic path" to Italy, object of this study. Therefore, in the third section of this paper, I will try to paint a picture of the current legislative, political and social environment that asylum seekers face in Greece, mainly based on official governmental and non-governmental organizations' most recent reports on the country, as well as ECtHR case laws. This image, once again will stand out inconsistency of Dublin III regulation with human rights of people in need of international protection, as it obliges them to apply for asylum in Greece as first country of irregular entrance, even if the latter is unable of respect and fulfil their basic human rights, since no other legal alternative is provided.

In particular, in paragraph 3.7 I will try to explore the underlying motives of the questionable behaviour of Italian authorities. In fact, Italy despite having officially been halted Dublin transfers to Greece, since an “unsafe” country, it is still proceeding with readmissions of individuals from Adriatic harbours.

Finally, in the conclusions, I will attempt to resume my reasoning, identify possible solutions to the issue and make predictions for the future.

CHAPTER I
INTRODUCTORY CHAPTER ON EU LEGAL FRAMEWORK:
THE COMMON EUROPEAN ASYLUM SYSTEM AND THE DUBLIN REGULATION

One of the primary goals of the European Union, since its establishment, has been the progressive creation of an ideal space where goods and people can move freely without barriers or borders, where citizens feel safe and secure and their fundamental rights and freedoms are valued.

Within this scope, internal frontiers among member states has been abolished and, at the same time, the surveillance at the external EU borders has been strengthened by establishing an EU agency (FRONTEX), entrusted with the task of promoting, coordinating and developing European border management. A sophisticated and extremely costly⁵ technological system (EUROSUR) has been introduced too and entered into force in December 2013. The EUROSUR foresees even the use of drones and cooperation with neighbouring third countries, allowing monitoring and exchanging data concerning EU external sea and land borders and the pre-frontier areas in real time. These factors have increased the situational awareness at the external borders, as well as EU member States and Frontex's ability to react to whom is eventually approaching them, making Europe an inexpugnable fortress.

Furthermore, since 1999, the EU has been working to create a Common European Asylum System (CEAS), based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951 and the principle of non-refoulment. Therefore, common standards were gradually set out with the aim of harmonizing and improving the legislative framework in each single member state and fostering cooperation and exchange of best practices among them, in order to ensure that asylum seekers are treated equally wherever they apply, in an open and fair system. The CEAS includes several legislative instruments, i.e. the Asylum Procedures Directive, the Qualification Directive, and the Reception Conditions Directive. The Asylum Procedures

⁵ It is estimated a cost of 338,7 million Euro for the period 2011-2020, see European Commission press release "EUROSUR: Providing authorities with tools needed to reinforce management of external borders and fight cross-border crime", Brussel, 12th December 2011, available at http://europa.eu/rapid/press-release_MEMO-11-896_en.htm, accessed on 13th July 2015.

Directive⁶ aims to reach a much higher degree of harmonization amongst EU countries, a better quality of decisions also in terms of equity and promptness, conferring at the same time particular care and greater protection on vulnerable individuals. The Qualification Directive⁷ clarifies the eligibility criteria for international protection and foresees a series of rights granted to all the beneficiaries (such as protection from *refoulement*, residence permits, travel documents, access to employment, access to education, social welfare, healthcare, access to accommodation, access to integration facilities) as well as specific provisions for children and vulnerable groups. The Reception Conditions Directive⁸ ensures that homogeneous and humane material reception conditions (such as housing) for asylum seekers are guaranteed, as well as their fundamental rights fully respected across the EU.

The cornerstone of this system is the Dublin regulation⁹ that lays down 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 stateless¹⁰. The responsible State is determined predominantly on the ground of family links followed by responsibility assigned on the basis of the State through which the asylum seeker first entered. Dublin regulation has direct effect and is binding on all EU Member States and the Schengen Associated States (Iceland, Switzerland, Norway and Liechtenstein). The main purposes of this legal instrument thus are determining as quickly as possible the single responsible Member State, ensuring effective access to an asylum procedure avoiding the situation of “asylum seekers in orbit” - in which no Member State would take responsibility for the determination of their asylum claim - and deterring multiple asylum demands (asylum shopping)¹¹.

⁶ Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>.

⁷ Available at: <http://www.refworld.org/docid/4f197df02.html> [accessed 14 June 2015]

⁸ Available at: <http://www.refworld.org/docid/4f197df02.html> [accessed 14 June 2015]

⁹ Available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>

¹⁰ Article 1 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26th 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

¹¹ Ornella Feraci, *Il nuovo regolamento Dublino III e la tutela dei diritti fondamentali dei richiedenti asilo*, Osservatorio sulle fonti, 2/13, p. 5 available at http://www.osservatoriosullefonti.it/component/docman/doc_download/633-o-feraci.

Others regulatory instruments supports the Dublin Regulation, and all together form the so-called ‘Dublin system’. Among them, it should be mentioned an important tool to assist authorities in identifying the responsible state and applying correctly the rules set forth in the regulation, that is EURODAC, an EU-wide database for the comparison of fingerprints of asylum applicants, established by the Council Regulation No 2725/2000. Finally, to complete the framework, EASO was set up in 2010.¹² It is a European Union agency which contributes to the development of the Common European Asylum System by facilitating, coordinating and strengthening practical cooperation among Member States on the many aspects of asylum and provides operational support and expertise for Member States whose asylum and reception systems are under particular pressure. In addition, a Refugee Fund was created always in 2010, aiming to fund a number of actions ranging from reception of people in need of international protection and integration strategy to support Member States in developing and implementing their asylum policy¹³. The legislative instruments for a CEAS were completed in June 2013 with the adoption of the so called “asylum package”, that amends some of the legal instruments mentioned above. In particular, the recast Dublin Regulation (the so-called Dublin III) entered into force in July 2013¹⁴ and is applicable to claimants for international protection lodged from 1st January 2014 in all 28 EU member States and in the 4 associated ones. It is expected to increase the system’s efficiency and ensure higher standards of protection for asylum seekers falling under the Dublin procedure. On this path, it introduces improved procedural safeguards¹⁵ and a mechanism for early warning, preparedness and crisis

¹² By Regulation (EU) 439/2010 of the European Parliament and of the Council

¹³ The fund was replaced by the Fund for asylum, immigration and integration (AMIF), approved on 14th March, 2014, which allocates EUR 3.1 billion to be used between 2014 and 2020. The 20% of the resources will be invested in actions and programmes related to asylum.

¹⁴ Regulation (EU) No. 118/2014 which amends Regulation (EC) No. 1560/2003 laying down detailed rules for the application of the recast Dublin Regulation.

¹⁵ The main novelties are: the introduction of a broader definition of family of the minor, that now it includes siblings if legally residing in another EU countries (article 8). More safeguards are set forth for unaccompanied children, who must be assisted by a representative (guardian), who has access to all information relevant to the case. The State in which he/she has applied must proceed quickly for the search of relatives. The whole procedure must be conducted in accordance with the interests of the principle of the best interest of the child (article 6). It has been introduced to the suspensive effect of the appeal against a decision of transfer and the right to have access to free legal protection is guaranteed to aliens who cannot afford the costs. Stringent terms for the procedure procedures for take charge and take back requests were provided (articles 21 and 23). It clarifies the content of the right to information (art. 4). A personal interview in a language understandable by the interviewee, with the assistance of an interpreter if necessary, is

management serving to prevent a deterioration in, or the collapse of, asylum systems, with EASO playing a key role using its powers under Regulation (EU) No 439/2010. Nevertheless, it basically crystallizes the same criteria provided by Dublin II for the determination of the state responsible to deal with an asylum application and it does not remedy the underlying structural problems in the system.

In the described context above, access to the EU territory is becoming more and more challenging for persons in need of international protection. Tighter visa regimes, increased border controls and push backs at the external eastern frontier are among the major obstacles that asylum seekers continue to face when trying to access to EU territory. So as there are no legal avenues to reach Europe, refugees are forced to put at risk their lives and the lives of their loved ones, in order to find safety. And if they manage to land in Europe, an “*area of freedom, security and justice*”, the key question is how much liberty refugees would have. This crucial issue imply other questions, such as the available options of the migrants to move legally from the first country of entry to other EU destinations, choosing the place where they want to lodge their claim and where they want to live. Other arguments refer to the real possibilities to be treated fairly and equally everywhere, to have real access to the same rights, benefits and equal material services in every EU country. And, finally, the concern about equivalent chances of recognition of their status of refugee in every European State.

A recent research, carried out through AIDA, an Asylum Information Database run by ECRE, shows that the goal has not accomplished yet, despite the efforts to create a level playing field in the area of asylum. Actually, there are so many differences between national systems in Europe to render asylum a 'lottery' for refugees. Firstly, wide disparities are existing in asylum applicants' recognition rates. Many factors influence recognition rates, including divergences in the assessment of the risk of persecution or serious harm upon return, the use of country of origin information, the way in which credibility of asylum seekers' statements are assessed but also the observance and quality

provided in order to facilitate the application of the Regulation, (art. 5 paragraph). An Exchange of relevant information (for instance about health) before a transfer must be carried out with the responsible member state (article 31). Detention for the purpose of transfer is admitted when there is a significant risk of absconding (art. 28), pending the Dublin procedure. The latter provision raises concerns among some scholars, for the wide discretionarily that could be transformed in routine contrary to article 31 of the Geneva Convention on refugee.

of procedural guarantees such as legal assistance and interpretation¹⁶. In order to illustrate the case, we would refer as example to the Syrians. Despite owning a refugee profile, they have divergent recognition rates: low in Italy (51%) and Greece (60%) compared with a very high one of 99% in Germany¹⁷. In addition, in some countries they obtain the recognition of the refugee status, while in others the subsidiary protection that can make a great difference in their lives. In fact, even if the content of refugee and subsidiary protection status is further aligned with the recast qualification Directive, Member States may still apply a less favourable regime to beneficiaries of subsidiary protection, in particular with regard to the duration of their residence permit, which may only be valid for one year initially and renewable by another two years after¹⁸. Moreover, in a number of EU member states, beneficiaries of subsidiary protection or national humanitarian status do not enjoy the right to family reunification. It cannot be ignored that the divergences in recognition rates show that a refugee's chance of being granted protection status in the EU continue to depend on the country where the asylum application is being examined, which is determined on the basis of the criteria laid down in the Dublin Regulation¹⁹.

Beyond divergences in recognition rates, asylum seekers still face several obstacles depending on the State where they seek protection. In some countries, hurdles are related to the possibility of lodging their claims promptly, in others to obtaining decent material reception conditions. In particular, with regard to the level and quality of reception conditions (and the lack of access to it), it should be stressed that is an element taken into account by the ECtHR in its assessment of States' compliance with their obligations under Article 3 ECHR and is also a relevant factor in Dublin procedures.

Furthermore, there are other evident disparities among States, e.g. in having access to free legal aid in each phases of the asylum procedure²⁰, in time limits within challenge a

¹⁶ Asylum Information data base (AIDA), "Mind the gap; an NGO perspective on challenges to accessing protection in the common European asylum system, annual report 2013/2014, p. 20, <http://www.asylumineurope.org/annual-report-20132014>.

¹⁷ Data refers to 2013-2014, Aida, *ibidem* p. 37.

¹⁸ Aida, *ibidem*, p.38

¹⁹ Aida *ibidem* 20.

²⁰ In some countries the right to free legal assistance it is not foreseen by law. In others, even if it is provided by law, it is subordinated to certain requirements. In Italy, for instance, the access to free legal assistance is also subject to a merits test by the competent Bar Council, which assesses whether the grounds for lodging

negative first instance decision²¹ and in the chances of being deprived of liberty pending the asylum procedures.

In a number of countries, asylum seekers arriving at the border are automatically detained and the devastating effects of detention are well-known both on their physical and mental health, especially if children. Deprivation of liberty can also have a negative impact on the fairness of the asylum process for the individuals concerned, due to extra impediments that detention creates in accessing free legal assistance. In recent years, the ECtHR has found that detention conditions in facilities for asylum seekers amounted to inhuman or degrading treatment in certain countries - among others Greece²², Malta²³, and Belgium²⁴- and therefore violated Article 3 of the European Convention on Human Rights (ECHR). The Dublin Regulation, which provide rules to identify the responsible state to deal with asylum application lodged in one of the member states, is built on the assumption that there is a level playing field across the EU, but what described above demonstrates that the assumption is faulty. Actually, if the asylum seeker lodge a demand for protection to a Country that is not competent for his claim, the regulation establishes that the applicant for international protection must be physically transferred to the Member State identified as competent to examine it. This mechanism is based on trust between States, who consider each other equally safe and equally respectful of human rights. That presumption is unfounded, because as we have seen before, the standards of treatment, the rate of recognition of the forms of protection and the effectiveness of access to the procedures

an appeal are “not manifestly unfounded”. In other states, simply the low remuneration of lawyers under the legal aid scheme makes it less attractive for practitioners to engage in asylum and immigration cases.

²¹ time limits within which asylum seekers and their lawyers or legal advisors have to lodge an appeal against a negative first instance decision, varies a lot among states ranging from 8 days up 1 month. This time is very important and must be sufficient for preparing the defence; otherwise, it affects the right to have access to an effective remedy.

²²F.H. v. Greece, ECtHR Application no. 78456/11, Judgment of 31 July 2014, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145786> and, B.M. v. Greece, ECtHR Application no. 53608/11, Judgment of 19 December 2013, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-139758>, accessed on 13th July 2015.

²³Aden Ahmed v Malta ECtHR, Application no. 55352/12, Judgment of 23 July 2013, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122894>, accessed on 13th July 2015.

²⁴ Kanagaratnam and others v Belgium, ECtHR, Application no. 15297/09, Judgment of 13 March 2012, . available at <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-3779616-4323893>, accessed on 13th July 2015.

etc., vary from state to state²⁵. For this reason, over the past few years, there has been a significant amount of Court litigations at national and at European level, whereby asylum seekers challenged transfers to other Member States under the Dublin system, for both protection concerns and inadequate reception conditions²⁶. This culminated on January 2011, when the Grand Chamber of the European Court of Human Rights ruled in *M.S.S. vs Belgium & Greece* findings that, inter alia, Belgium had violated Article 3 of the European Convention of Human Rights by sending the petitioner, an Afghan man, back to Greece under the Dublin Regulation²⁷. In fact, by transferring the man, Belgium exposed the applicant to risks arising from the deficiencies of the asylum procedure in Greece, as well as inhuman and degrading treatment for the awful detention and living conditions he would encounter there. Similarly, in December 2011, in the case of *NS & ME*, the Court of Justice of the European Union settled that Member States have an obligation not to transfer asylum seekers to Member States where they would face inhuman or degrading treatment in violation of Article 4 of the Charter²⁸. It is clear that in these judgments, the Strasbourg and the Luxembourg Courts have denied the presumption that EU Member states are equivalent for refugees and asylum seekers. But

²⁵ Adele Del Guercio, “Gli effetti del sistema di Dublino sul rispetto dei diritti fondamentali dei richiedenti la protezione internazionale”, http://www.osservatorioaic.it/download/9gMB9uDY_Z_PdqcvqmhdSheiXvAB89Jh0JCJF7AQPGI/osservatorio-del-guercio-finale-1.pdf.

²⁶ European Council on refugees and exiles (ECRE) website, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>, accessed 9th June 105

²⁷ ECRE, website, *ibidem*

²⁸ In Case C-411/10 before the Court of Luxembourg (available at: <http://www.refworld.org/docid/4e1b10bc2.html>, accessed 6 July 2015) concerned an Afghan citizen arrested on 24th September 2008, in Greece where it had not been able to apply for asylum. After liberation, he was ordered to leave the Greek territory within thirty days and then deported to Turkey. Escaped from Turkish prisons, on 12th January 2009 he could finally reach the United Kingdom, where he finally asked asylum. But on 30th July 2009 he was informed that he would be transferred to Greece on 6th August 2009, in accordance with the provisions of the Dublin Regulation 343/2003. The Court of Justice of the EU, in its judgment of 21st December 2011 (Joined Cases C-411 and 493/2010, available at <http://curia.europa.eu/juris/document/document.jsf?docid=117187&doclang=EN>., accessed on 5th July 2015), related to two cases of transfer of asylum seekers from the UK and Ireland to Greece, has recognized that EU law precludes the absolute presumption that the Member State designated as responsible for an asylum application, according to Dublin Regulation, respects the fundamental rights of the European Union. Member States and their national courts, in fact, must not transfer an asylum seeker to another State designated as competent when deficiencies in its asylum procedure are systemic and reception conditions make reasonable believe that the applicant would run a real risk of being subjected to inhuman or degrading treatment under Article. 4 of the Charter Fundamental Rights of the European Union. According to the Court, Member States have various tools to assess the respect of fundamental rights and, therefore, they cannot invoke their ignorance on the matter.

there is more to be said. Another ‘asylum crisis’ erupted in 2013 in Bulgaria, caused by a significant rise in the number of asylum applications, many of which originated by people fleeing from the conflict in Syria, making the Bulgarian reception system to collapse²⁹. This crisis, once again, put the functioning of the Dublin system into question and made Bulgaria the second EU Member State after Greece, with regard to which UNHCR and NGOs publicly called for a blanket suspension of transfers of asylum seekers under the Dublin Regulation, because of the risk of severe human rights violation.³⁰

The new Dublin Regulation, adopted in June 2013, takes into consideration this critical issue and subsequently introduced a mechanism of early warning in the event of excessive pressure on the asylum system of a certain Member State that might jeopardise the application of the Regulation itself³¹. It also explicitly prohibits to transfer a person to a country where there are substantial grounds for believing that systemic flaws in the asylum procedure and in the reception conditions might result in a risk of inhuman or degrading treatment. Nevertheless, it did not provide any form of relief for those asylum seekers who are stuck in an unsafe country. The Dublin system has revealed other severe flaws with enormous repercussion on human rights of the persons concerned. For instance, it stretches considerably the procedure times for obtaining asylum, making the applicants living “on hold” in a prolonged state of anxiety and uncertainty³². This gap can also produces disruption of family³³, homeless condition after transfer in the receiving country³⁴, and in certain circumstance, detention before and after transfer itself³⁵.

²⁹ Anyway, the number of arrivals is drastically decreased after the construction of a wall along the Turkish border in 2014. The fence, in combination with increased funding for patrolling the border, have meant that in 2014 only 4 thousand people have managed to enter illegally in Bulgaria, compared to 11 thousand in 2013. See, Editing, “Il nuovo muro tra Bulgaria e Turchia”, *Il post*, 6th April 2015, <http://www.ilpost.it/2015/04/06/il-nuovo-muro-bulgaria-turchia/> accessed on 5th July 2015.

³⁰ Aida, *ibidem*, p. 36.

³¹ Art. 33 of 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, Official Journal of the European Union)

³² Live on holds, European comparative report executive summary p. 3

³³ See, RED CROSS and ECRE, “*Disrupted flight, the realities of separated refugee families in the EU*”, 2014, <http://ecre.org/component/downloads/downloads/958.html>, accessed on 5th July 2015

³⁴ Daniela di Rado, Caterina Sarfatti e Martina Socci, Rapporto Finale del “Progetto Dubliners”, 2010, <http://cir-onlus.org/images/pdf/DUBLINER%20ITALIANO.pdf>, p. 36

³⁵ Daniela di Rado, *ibidem*, *ibidem*, p. 32.

However, the most relevant issue, within the scope of this research, is relating to criteria of determination of the responsible state, how they are applied into practice and what adversely consequences might have on the lives of asylum seekers. On the issue we can make several considerations. Firstly, it should be noted that the same hierarchy present in the former regulation is reconfirmed in Dublin III³⁶ and once again, it does not take into account the wishes of the applicant and the historical, cultural and social ties that can orient his/her choice towards a Member State rather than to another. Moreover, although the protection of the family unit represents the first and supreme relevant condition for determining responsibility in considering the request, studies conducted during the past regulation prove that, in practice, the criteria of the first state of asylum is the most applied³⁷ and that the presence of family members in the territory of another States is rarely considerate³⁸. These happens, for several reasons: on one hand, it is difficult for claimants to prove family links; on the other hand, the concept of family is quite narrow as defined by the law and it has been broadened by Dublin III regulation only for unaccompanied minors³⁹, not for adults⁴⁰. Secondly, the Regulation provides two clauses,

³⁶ By order of priority, the criteria set out how responsibility is attributed to Member States as follows: a) a State in which the applicant has a family member who has refugee status or whose application for asylum is being examined b) a State which has provided the applicant with a residence permit or a visa or the border of which has been crossed illegally by the applicant; c) in case when the circumstances specified above do not take place, if the applicant enters the territory of a Member State in which the need for him/her to have a visa is waived, that State is responsible for examination of the application¹⁷. If none of these criteria are applicable, the first Member State in which the asylum application is lodged becomes responsible for examining it.

³⁷ Just to make an example, in 2011, under Dublin II regulation, in Bulgaria there was only one outgoing transfer implemented on the ground of family reasons. This transfer was to Germany and was one out of nine requests sent under these provisions to Germany (six), France (one), Italy (one) and Austria (one) respectively (Source: Bulgarian State Agency for Refugees statistics), European Council on Refugees and Exiles "*Dublin II Regulation: Lives on hold*" - *European Comparative Report*, February 2013, p. 6, available at: <http://www.refworld.org/docid/513ef9632.html> [accessed 12 June 2015].

³⁸ In fact, statistics say that the majority of take charge or take back demands are grounded on EURODAC and Italy and Poland, as countries at the external borders, are the ones receiving the hugest amount of requests in 2013, see Susan Fraztke, "*Not adding up. The fading promise of Europe's Dublin system*", Migration Policy Institute, 2015, p. 9, available at <http://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>, accessed on 5th July 2015.

³⁹ Now it includes father, mother or other adult(s) responsible for the minor, or siblings and relatives (aunt or uncle or grandparent) insofar as legally present in another member state (Article 8)

⁴⁰ A family member in this case is only the spouse of the applicant or his or her unmarried partner in a stable relationship -where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals- and unmarried minor children, see definition at art. 2 letter g) of Dublin III, regulation.

i.e. the sovereignty⁴¹ and humanitarian⁴² clauses, that are functioning like a sort of exception with regard to strict application of the rule of the first country of entrance, In theory, they allow the determination of the responsible state on the basis of humanitarian grounds, linked respectively to the safety of the person concerned or family and cultural considerations. Nonetheless, being both discretionary provisions, there is a degree of flexibility in how Member States apply them, making their application limited to particularly vulnerable individuals or to transfers to Greece in the Dublin frame, due to the humanitarian crisis suffered by exiles and refugees in the country.⁴³ In conclusion, the responsibility results to be assigned primarily on the basis of irregular entry to the country thanks to the use of biometric data stored in Eurodac, despite this criteria is settled in a relatively low position in the hierarchy of article 7 of Dublin III.

As a consequence, almost always people receiving international protection remain in or are transferred to the countries where they first ask asylum.

This paper does not intend to provide a detailed examination either of the recast Dublin regulation, or an analysis of all issues concerning human rights violation arising on the concrete application of the new legal instrument. It rather tries to highlight how an inconsistent application of the criteria set forth in it, which obliges asylum seekers to ask protection in the first country of entry if they do not want to remain there or even if the latter cannot defend them against inhuman and degrading treatments, being itself the cause of ill-treatment, is contributing to their “clandestinization”⁴⁴ and to secondary migratory movements within EU. These movements, in particular, might result in deathly outcome or further victimization of asylum seekers, as it will be underlined afterwards in this section. The presence of myriads of movements of asylum seekers within Europe, trying to go from an EU country to another with higher standards of reception conditions and protection in general, is proven by the fact that asylum demands are concentrated in only few EU states. In 2013, 70% of the all asylum demands were concentrated in 5

⁴¹ Art.3 paragraph 2

⁴² Art 17 paragraph 2

⁴³European Council on Refugees and Exiles, Forum refugees, Hungarian Helsinki Committee, *"Dublin II Regulation: Lives on hold. European comparative report"*, 2013, p. 6, available at <http://www.refworld.org/docid/513ef9632.html> [accessed 6 July 2015]

⁴⁴ With this term, it is meant that asylum seekers try not to be identified and fingerprinted in the first country of entry and in the transit countries.

States: Germany, Sweden, Italy, France and UK. In 2014, the same trend is confirmed and these countries remain the top five⁴⁵, a further evidence of the failure of the whole system. The fact remains that EU Law continues to cause hardship for many asylum seekers, resulting in breaches of their fundamental rights in the EU when they are on the move⁴⁶. Clearly, a fair, equitable and more humane solution is required, that takes into consideration the wishes of the asylum seeker as well as his connections with a particular Member State. This kind of solution would also help individuals to integrate more easily⁴⁷. Finally, this new approach to the problem should give emphasis on the transfer of funds, rather than on enforced transfer of people⁴⁸.

What is of most interest to this research is the fate of those who in the attempt to seek sanctuary in Europe, are forced to irregularly cross the border of Greece. For its geographical position as gate of Europe, they enter in one of the country with lowest standards of protection and overt criticalities in its asylum system, as it will be shown in the third part of this paper. In particular, it is crucial to highlight which are the consequences that Dublin mechanism produces in their lives.

Asylum seekers arriving in Greece have a tight margin of choice. The first option is asking asylum in the country, as Dublin regulation requires it in the first country of entry, but they must be aware they would have few chances of being transferred to other countries for family reasons or other motives. Thus, they will remain in a country unable to offer a proper protection and a real prospect of integration in the future. The alternative is attempting to travel and apply for asylum elsewhere, with the hope of joining relatives or compatriots' Diaspora or simply finding in another EU Member State no language barriers, decent living conditions and the likelihood of being granted international protection. But in doing so, asylum seekers might need to put their lives in the hands of smugglers, paying a huge amount of money or undertake life-threatening journeys.

Migratory movements between Greece and Italy, included attempts to reach Adriatic ports by ferryboats, should be seen in the above framework.

⁴⁵ <http://www.unhcr.org/pages/4a02d9346.html>

⁴⁶ Michael Diedring "The long road towards a common European asylum system", November 7th 2014, European Progressive Observatory, <http://www.queries-feps.eu/the-long-road-towards-a-common-european-asylum-system/>

⁴⁷ Diedring, *ibidem*.

⁴⁸ Diedring, *ibidem*.

CHAPETR II

INFORMAL READMISSIONS TO GREECE

2.1 Attempting to reach Italy, a dangerous journey.

The attempt in reaching Italy it is proved to be a hazardous matter in itself, as at each stage of the journey, injuries and death are likely to happen.

Actually, only a small proportion of migrants tries to embark as ordinary passengers by using forge documents, while the majority of them does it clandestinely, hiding underneath or inside trucks,- between the loaded cargo, in cold storage or in tight spaces - boarding on the ferries. By this way they reach the Italian Adriatic ports (Ancona, Bari, Brindisi and Venice), sometimes with the connivance of the truck driver and / or the policeman on duty, behind the release of a "toll" for not interfering in the flee.

Finally, we can find cases of people climbing the tied hawsers of ships leaving at midnight, seeking for boarding under cover of darkness.

Just at this very first stage serious injuries or death have been reported by the interviewed migrants⁴⁹. Moreover, if detected during these attempts, immigrants are stopped and systematically beaten with extreme violence by the police officers⁵⁰.

Also during the crossing injuries, harmful health effects and even lethal incidents occur. Many have suffered horrific deaths, suffocated in containers for lack of oxygen⁵¹, frozen in cold rooms, or fallen down from the axes of the lorry and crushed by the wheels.

⁴⁹ One migrant reported of a friend falling from the top of rope down to the concrete wharf. He suffered a permanent lesion of the spine, making him paraplegic. Another referred to a compatriot killed during the boarding manoeuvres: the wheels of the truck under which he was hiding had crushed him when he fell down.

⁵⁰ Circumstance referred by migrants interviewed in Patras, and staff members of different NGOs (Praksis and Medicine du Monde).

⁵¹ We would like to give an account of some of the most recent ones. On June 24th, 2012, two young Afghans were fund died for suffocation. They were travelling with other fifteen fellow citizens hidden behind a false panel in a tourist bus disembarking in Ancona harbour, after a 26-hours journey in inhuman conditions. Other three of the same group were hospitalized "in a coma", while few days later, in the same port, an Afghan migrant was crashed by the wheels of the truck on which he had hidden himself during the crossing from Greece. Between May and July 2012, two Afghan citizens were found dead from suffocation on two trucks which disembarked in Venice. MEDU, Unsafe Harbours, 2013 p. 5, available at

Perhaps the most known incident, at least in the city area of Venice, is the one occurred on 11th December 2008, when a boy was found dead, on the asphalt of a peripheral road not far from the port. His name was Zaher Rezai and he was fleeing Afghanistan and forced recruitment by the Taliban. He slipped under the wheels of the truck where he was hiding to escape controls only eight kilometres after his arriving in Italy. He was only thirteen. In his pocket were found four plastic animals and a book of poems, written by him or collected during his long voyage, revealing his voice, his personality and, above all, his humanity even if it happened only after his death.

The event deeply shocked the city of Venice⁵² and urged a delegation of human rights activists to investigate the reasons of this bereavement, retracing Zaher's journey contrariwise, from Venice to Patras. Stories of other boys, including the one of Alisina Sharifi, another Afghan teenager, were collected in that occasion and then merged in the petition filed to the European Court of Human Rights⁵³.

Unfortunately other incidents have followed. The last death, in chronological order, took place in September 2014 during the crossing when the body of a Syrian man was found at the arrive at the port of Ancona⁵⁴.

2.2 Informal readmissions to Greece.

What is then the destiny of the lucky ones that manage to reach Italy evading the police border in Patras and concealing on vehicles without dying crushed or suffocated?

The patterns followed by Italian authorities have been described in details by hundreds of victims of readmissions interviewed by NGOS - that had thoroughly investigated this phenomenon⁵⁵ - and have been partially confirmed by the people interviewed during my research. In the fallowing part of this paragraph I will describe readmissions to Greece as

<http://www.mediciperidirittiumani.org/en/unsafe-harbours-report-readmissions-greece-italian-ports-violations-migrants-basic-human-rights-2/>.

⁵² Venice has dedicated a plaque and a forest to Zaher.

⁵³ Alessandra Sciarba "Caso Sharifi et al. V. Italia e Grecia – La corte di Strasburgo condanna l'Italia. Un ricorso costruito dal basso ferma i respingimenti dai porti dell'Adriatico", available at <http://www.meltingpot.org/Caso-Sharifi-et-al-v-Italia-e-Grecia-La-Corte-dirasburgo.html#.VVHKndEcTIU>, accessed on 26th April 2015.

⁵⁴ Fact reported by a human right activist member of Ambasciata dei diritti, Ancona

⁵⁵ HRW; PRO –ASYL and GREEK COUNCIL FOR REFUGEES; MEDU. Their reports cover a period of time ranging from 2011 to 2013.

proved by the aforementioned NGOS in their reports. While in paragraphs 2.6, 2.7, 2.8, 2.9 I will try to analyse data referring to 2014 and the first months of 2015, (years not covered by any NGOs) collected during my research, in order to understand whether readmissions to Greece are still going on, by following the usual patterns.

Recorded stories have numerous elements in commons. Migrants without papers are found and caught inside the ships or in the port area.

Although exhausted by a precarious journey, they do not receive neither medical assistance, except in case of emergency, nor even water and food for refreshment.

A 17 year-old- boy from Afghanistan referred that at his arrival in Venice, when he was found, after two days trip hidden under a lorry with a friend, he could not come out because unable to move. *“Finally the Italian Police had to pull me out” said, “I fainted. An ambulance came, but the police did not allow them to take us to the hospital”*⁵⁶.

Many claim that they got in touch only with the border police⁵⁷. That is because of the staff of the associations appointed to provide interpreting services, guidance and information to immigrants in the ports - a mandatory service required by Italian law through local Prefectures - works few ‘standard’ hours per day, sometimes not taking into account the ships’ arrival time. That is due to the limited budget provided by the Italian state, which is facing cuttings year by year, a policy that seriously affects the quality and efficiency of the services⁵⁸.

Some people reported the police is not even assisted by interpreters, so no communication exchange is possible out of gestural one.

J. from Eritrea, said *“I tried to tell them (the police) that I need protection, that I am a refugee and I do not want to be sent back to Greece. They could not understand me. I could not understand them. We tried to communicate with gesture.”*⁵⁹

The presence of interpreters and operators represent the basic tool to ensure that newcomers can be adequately informed about the right of seeking international protection

⁵⁶ Pro Asyl – Greek council for refugee, Human cargo, 2012 p. 23, available at http://www.proasyl.de/fileadmin/fm-dam/p_KAMPAGNEN/Flucht-ist-kein-Verbrechen/humancargo_01.pdf.

⁵⁷ According to official data collected by Medu (during the first half of 2013), half of the foreigners detained at the Adriatic frontier dealt exclusively with border patrol police.

⁵⁸ Read next paragraph 1.7

⁵⁹ Pro asyl, ibidem, p. 24

and their possibility to exercise this right. Moreover, as provided from the Schengen Handbook provisions⁶⁰, it is not required a specific formula for asylum seekers. In fact, in order to obtain it, it is sufficient to simply manifest the fear of being persecuted or suffering serious harm in the place where he is going to be deported.

Sometimes the police do not even proceed to identify migrants, nor to record their names, nationality and other details in specific registers. Missing then at the border the identification procedure, the basic communication and even brief interview with the migrant, it is obviously not possible to assess the factors of vulnerability (kind of protection needed, special medical treatments, and so on).

Many people arrived at Ancona's harbour complained they had been subjected to serious mistreatment and violence by the police. They reported to have been bullied and mocked, pulled, slapped, punched and robbed of their belongings.⁶¹In some cases, they were fingerprinted by force.

Readmissions to Greece are carried out following always a similar scheme. According to victims' accounts, on disembarking, third country nationals – if caught - are refused to enter in the national territory, keeping them on board or bringing them to the police station inside the port area. They are automatically sent back to Greece by ship, usually on the same day of the arrival. The readmission is executed informally, by simply appointing

⁶⁰ Practical Handbook for Border Guards to be used by Member States' competent authorities when carrying out the border control of persons (Schengen Handbook) established by European Commission in 2006, paragraph 10.1, provides: "A third-country national must be considered as an applicant for asylum/international protection if he/she expresses – in any way – fear of suffering serious harm if he/she is returned to his/her country of origin or former habitual residence. The wish to apply for protection does not need to be expressed in any particular form. The word "asylum" does not need to be used expressly; the defining element is the expression of fear of what might happen upon return. In case of doubt on whether a certain declaration can be construed as a wish to apply for asylum or for another form of international protection, the border guards must consult the national authority(-ies) responsible for the examination of applications for international protection", available at <http://www.statewatch.org/news/2006/nov/eu-schengen-handbook-com.pdf>.

⁶¹ An Afghan fifteen-year-old said to the interviewer: "I cried a lot, because they beat us so much. We were once beaten when we reached the hatch of the ship. The Italian officers beat us in the room where we were then locked, They took 85 euro from me. I had that money in my pocket. They beat me a lot They then asked me to run in circles around myself and I was forced to take off my clothes. They even pulled my boxer shorts to my belly and forced me run in circles around myself again. My friend was beaten more than I was. His lips were bleeding. They took 200 euros from him", Pro Asyl, *ibidem* p. 19-20. Many other are the victims who reported of having been beaten and stolen by Italian police officers of Ancona.

the captain of their custody, returning them to the embarkation port. The whole procedure takes place in a short time frame⁶² within few hours since arrival.

Precisely because of the quickness of the readmission, the migrant involved are not able to be aware of any legal mean to halt it before its execution. Furthermore, no formal, written, motivated and translated removal order is ever notified to anyone, preventing him or her to appeal against the measure also after its execution. Finally, no any oral information is given to the concerned persons, about their status, the procedures they are subjected to or the legal solutions against it.

Some interviewees said they signed a paper without being aware of its content, since it was not translated in a language understandable to them⁶³. Finally, it seems that even when in theory an alien possesses the pre-requirements to apply for a form of international protection, it is never taken into account by the Police.

As described above, no one was ever asked why he left his country of origin or Greece or if he was an asylum seeker in the latter country. And even if by chance someone asks for asylum or expresses his fear of being repatriated to Greece, the request has never a realistic chance to be registered.

A young man from Afghanistan said *“I told the Italian officers that I want to stay in Italy and apply for asylum, but they didn’t listen to me. They didn’t even take my fingerprints”*⁶⁴.

Similarly, no matter if a migrant appear to be a child or claim to be such, the claims are not taken into account, they are not given the benefit of the doubt neither undergone through an age determination procedure. They are simply sent back, as confirmed by the witness of an UNHCR official in Greece, relating to HRW that in 2011 and 2012 Italy returned two children per month to Patras, on average⁶⁵. In some cases, the removals are collective. Entire group of “prima facie refugees” are expelled all together in few hours.

⁶² Medu in its report related to the year 2012 noticed that readmissions are undertaken in 80% of cases within a few hours with these modalities

⁶³ Pro Asyl, *ibidem*, p. 11

⁶⁴ Pro Asyl, *ibidem*, 22

⁶⁵ HRW, “Turned Away”, 2013, p. 33, available at http://www.hrw.org/sites/default/files/reports/italy0113ForUpload_0.pdf, accessed on 28th April 2015..

A 17-year-old boy from Afghanistan referred to Pro-asyl staff⁶⁶ that at his arrival at Ancona, they were fifteen but eleven among them were sent back. The others escaped, jumping from the deck into the sea and were not found anymore; managing to flee or drowning.

Another adolescent, again from Afghanistan, told that when he arrived in Ancona they were 16 people. Being discovered by the crew before the arrival, they were locked in a room on the 9th floor of the ship and handed to the police at the port. They were all sent back, after being beaten and fingerprinted, except of one who was 13 years old, but there were other minors among those expelled⁶⁷.

It is crucial then to examine the occurrences during the return journey and the migrants' fate once arrived at the home port. Apparently, according to already the mentioned reports, detention conditions on ferries are very far from international standards. Victims complained about being locked in rooms without bathrooms, forced to urinate in plastic bottles, or held in machine rooms and parking areas, being not sufficiently (or nothing at all) provided of food or water⁶⁸. Some were kept in very dirty and inappropriate rooms, or suffered from cold or excessive heat⁶⁹. Some recount to be handcuffed to a pole for the whole voyage. Few reported about being victims of violence at the hands of the security personnel on board⁷⁰.

Upon return in Greece, adults and children, told about being beaten by law enforcement officials inside the port area and then arrested and detained in inhuman and degrading conditions for a considerable length of time, as Greece makes large use of administrative detention. It is hard to miss, then, the psychological prostration caused in this condition by the fear of being repatriated in their countries of origin.

An Afghan minor when returned to Igoumenista in March 2012, was directly imprisoned and detained with other adults in squalid conditions, without food for 16 days, despite the

⁶⁶ Pro asyl, ibidem, p. 17

⁶⁷ Pro Asyl, ibidem, p. 20-21

⁶⁸ In January 2012, 17-year-old Afghan Jamal A. told Human Rights Watch he was locked in a dark machine room during its return trip from Venice to Greece. "There was no toilet, just a bucket, the type that's a bucket for garbage," he remembered. HRW, ibidem, p. 33

⁶⁹ Pro asyl, ibidem, p. 13.

⁷⁰ Circumstance referred by Maria Rita Peca, member of Medu, during the conference "Il porto dei destini (ancora) sospesi", held in Venezia on 10th December 2014, available at https://www.youtube.com/watch?v=IOBKAO9I_xg

fact detention for children should only take place in extreme cases and for the shortest possible period of time⁷¹.

Sometimes returnees are detained in small police station cells, overcrowded and not appropriate for long-term stay. In October 2012, detainees held in a cell at Igoumenista harbour erupted in protests. They were over 90 in a cell designed for 30 people, incapables to lay down on the floor and sleep for the lack of space, so to be forced to sit on their legs⁷².

At the time of the facts reported in Sharifi's complain, some Afghans referred a cruel practice experienced by themselves used in Patras to a BBC journalist⁷³. Those apprehended while attempting to leave for Italy or handed in to police as rejected by Italian authorities, were subjected to an extra punishment amounting to torture. They were confined about a week in filthy container, uncleansed for years, forced to relieve themselves in the same place. Prisoners were fed bread and water, through a small window - and sometimes the bread dropped into the excrements. While trying to take pictures, the journalist was stopped by two police officers pointing guns towards him, destroying his camera and bringing him to the police station to check his identity, practically detaining him for two hours.

Once released, asylum seekers run into objectives difficulties to gain access to asylum offices in order to process their demands, at length remaining, for this reason, without documents and protection from expulsion. They have fewer chances to be recognized as refugees than in other EU country, facing very poor reception conditions, as the government does not provide any kind of economic support nor a shelter to the majority of them for lack of economic resources. Furthermore, it is almost impossible to have access to the labour market so they are often forced to accept irregular and bad paid jobs. Being homeless, unemployed, and without the support of welfare state, lead asylum seekers to a degrading existence in the streets or in abandoned buildings, exposed to police violence and xenophobic groups' attacks.

⁷¹ HRW, *ibidem*, p. 20

⁷²HRW, *ibidem* p. 20-21

⁷³ Details of the journalist are intentionally not disclosed, since he is a refugee. The interview with the journalist was conducted in Padova, on 16th April 2015.

A seventeen-year-old Afghan who came in Greece when he was 13, interviewed by HRW in 2012, said “Life is so hard in Greece that it might be better in Afghanistan even with the Taliban”⁷⁴. We will comprehensively deal with the issue of racist violence against refugees and asylum seekers in Greece, as well as the asylum system and its shortcomings, in the second part of this paper.

2.3 Human rights violations committed by Italian authorities

Any time Italian authorities return irregular migrants to Greece, following the described pattern, a series of violations of basic human rights are committed. That has been clearly underlined by the Grand Chamber of the European Court of human rights, in the sentence delivered on the 21st October 2014, in the first case brought before it concerning informal readmission to Greece of a group of potential asylum seekers⁷⁵. In fact, if those who are turned away are potential asylum seekers, a violation of article 3 of the Convention of human rights occurs. In fact, they are exposed to the risk of cruel, inhuman and degrading treatment in Greece and to indirect refoulement, being subsequently deported from Greece to their country of origin where their lives are in danger. In addition, it might be a breach of Article 4 of Protocol No. 4 to the convention, if a group of third country nationals arriving at the seaboard are returned indiscriminately, without any previous evaluation of their individual case and their protection needs. Finally, a violation of Article 13, in conjunction with Article 3 and Article 4 of Protocol No. 4, is committed too, as the concerned persons are not able to lodge an asylum demand in Italy and to expose their argumentations to a Court, in order to challenge the removal measure before its execution⁷⁶.

⁷⁴ HRW, *ibidem*, p. 18

⁷⁵ The complainants, Sharifi and other 32 third country nationals (Afghan, Eritrean and Sudanese), tried to enter illegally Italy from Greece in 2009, stowing away on ferries headed to its Adriatic ports. Detected upon arrival, they were refused to disembark and quickly sent back by the same ferry used for coming in, without meeting any interpreter or a lawyer or receiving a written or an oral deportation order. Sharifi and others vs Italy and Greece’s judgment (ECTHR, 2014) is available at http://www.giustizia.it/giustizia/it/mg_1_20_1.wp?jsessionid=795A99FDE9BB23CD1DBD3FD4CC01F8D9.ajpAL03?facetNode_1=0_8_1_2&previousPage=mg_1_20&contentId=SDU1109298

⁷⁶ In Sharifi sentence the Court reaffirmed its well-established jurisprudence in the subject, already articulated in the *Hirsi Jamaa vs Italy* (2012) case, concerning boat migrants intercepted in high sea and pushed back to Libya by Italian Revenue Police and the Coastguard on the 6th May 2009, in compliance with bilateral agreements existing at the time, between Italy and Libya, available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231#{\"itemid\":\[\"001-109231\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231#{\)

It should be noted that Court of Strasbourg interprets article 3 of the Convention in a broad manner, inclusive of the principle of non-refoulment. That implies that not only torturing or ill-treating someone is forbidden by law, but also expelling him to a country where he might become a victim of such treatment - directly or indirectly through following repatriations. In the specific cases, Greece as receiving country should be considered a hostile nation for immigrants, a country where their human rights are systematically violated, as it will be subsequently pointed out in chapter III.

In spite of being a member of the European Union and a signatory of the European Convention of Human rights, Greece has been declared “an unsafe country” for asylum seekers by the European Court of human rights since 2011, with the sentence given in *M.S.S. vs Belgium and Greece*, mainly for chronic deficiencies of its asylum system⁷⁷. For this reason the ECtHR invited all Member States to stop Dublin transfers to Greece since that time.

There is an impressive amount of reliable sources⁷⁸ documenting the miserable conditions of irregular migrants and asylum seekers in Greece. They are deprived of their liberty without judicial supervision and for considerable length of time, sometimes even if minor, detained in facilities characterized by overcrowding, without adequate sanitary services, not aided by medical assistance. Subjected to violence and torture by the guards and at risk of being repatriated, at any time, to their countries of origin, these people are victims of a chain of refoulment (unfortunately a common practice in Greece, documented by UNHCR), in virtue of readmissions agreement signed with Turkey.

The ones that managed to be free are indeed leading a precarious life on the margin of society, exposed to labour exploitation and xenophobic attacks.

In the light of these facts, serious and substantial arguments sustain the assumption people readmitted to Greece might be at risk of treatment contrary to Article 3 of the convention after been pushed back (torture or other forms of inhuman degrading or cruel punishment or treatment). Due to this reason, Italian authorities have the duty to evaluate

⁷⁷ *M.S.S. vs Belgium and Greece*, (ECtHR 2011) available at

⁷⁸ Mainly reports of Governmental and non-governmental organizations.

the situation of the receiving country before proceeding with any removal and, eventually, refrain from doing it. In fact, on one hand it is a prerogative to the State's sovereignty the right of control over the borders and the judgment on the admission in and expulsion from the national territory. On the other hand, measures to remove an alien such expulsions and extraditions be never be applied when there are reasonable grounds to believe that the persons concerned would face the risk of torture or inhuman or degrading treatment in the receiving country or in the country of origin, once repatriated. That is imposed by the principle of non-refoulement, a corollary of the absolute prohibition enshrined in article 3 of the Convention of human rights and a norm of *jus cogens*, not susceptible of any exception.⁷⁹

In particular, the principle of non-refoulement should be applied to all potential asylum seekers, no matter if the persons in question are not yet recognized as refugees or if they have failed to seek for asylum or to refer about the risks they are going to face if returned.

“As the determination of refugee status is merely declaratory, the principle of non-refoulement applies to those who have not yet had their status declared (asylum-seekers) and even to those who have not expressed their wish to be protected. Consequently,

⁷⁹ The principle of non-refoulement is enshrined in the 1951 refugee convention to which Italy is party. Article 33 states: No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. It is also set forth in other international instruments (Article 2 § 3 of the 1969 Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa – “the OAU Convention”, as well as in universal human rights law (Article 3 of the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 16 § 1 of the 2006 United Nations International Convention for the Protection of All Persons from Enforced Disappearance) and regional human rights law (Article 22 § 8 of the 1969 American Convention on Human Rights, Article 12 § 3 of the 1981 African Charter of Human Rights and People's Rights, Article 13 § 4 of the 1985 Inter-American Convention to Prevent and Punish Torture and Article 19 § 2 of the 2000 Charter of Fundamental Rights of the European Union). In addition, it has become a norm of customary international refugee law, then binding *erga omnes*, but it is not explicitly settled in the European Convention of Human rights. Nevertheless, it can be deduced from the right to life or the prohibition of torture, through a broad interpretation, like the one adopted by the Court in Sharifi and Hirsi Jamaa case.

Refoulement is the forcible return of an individual who is potentially in need of international protection to a country where he would be at risk of a serious harm due to human rights violations. The act of *refoulement* may take many forms. It may consist in expulsion, extradition, deportation, removal, informal transfer, “rendition”, rejection, refusal of admission or any other measure which would result in compelling a refugee (*de iure* refugee) or a person who otherwise need international protection (*de facto* refugee) to remain in or to go back to the country of origin or where he is in danger. See the concurring opinion of the judge Pinto De Albuquerque, reported at the end of the sentence given in *Hirsi Jamaa vs Italy*, p. 59, English version, available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231#{"itemid":\["001-109231"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231#{)

neither the absence of an explicit request for asylum nor the lack of substantiation of the asylum application with sufficient evidence may absolve the State concerned of the non-refoulement obligation in regard to any alien in need of international protection”.⁸⁰

The principle of non-refoulment “encompasses any measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes rejection at the frontier, interception and indirect refoulement, whether of an individual seeking for asylum or in situations of mass influx”⁸¹.

Delivering persons to the custody of the captain of the ship who will carry them back to an unsafe country, is then included in the definition above.

When at the seaports the Police actuates an expulsion of an entire group of people, as often happens, there is also an infringement of Article 4 of Protocol No. 4 to the Convention that provides: “Collective expulsion of aliens is prohibited”.

The primary purpose of this prohibition is to prevent States from forcibly transferring groups of aliens to other States without examining, even summarily, the situation of each individual, even summarily, on a case-by-case basis, in order to guarantee effective protection of their fundamental rights and to avoid removal when there is a risk of harm. Furthermore, individuals subjected to an expulsion measure must be granted the chance to challenge it before a Court before its execution⁸².

In Sharifi case, as in the other testimonies collected during the investigations on the phenomenon of readmissions to Greece, the expulsion takes the form of prohibition of disembarking or refusal of admission in the territory, followed by the immediate forced expatriation to the harbour of departure.

⁸⁰ See also *Chahal v. the United Kingdom*, (ECtHR 1996) paragraphs 79-80, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58004> and *Ahmed v. Austria*, (ECtHR 1996) paragraphs 40-41, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58001> accessed on 25th June 2015.

⁸¹ UNHCR note on international protection, 13th September 2001 (A/AC.96/951), paragraph 16, available at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&skip=10&cid=49aea93a20&comid=4a27bb7b6&keywords=Notes%20International%20Protection>, accessed on 25th June 2015.

⁸² The Commissioner for Human Rights of the Council of Europe, in its recommendation, “concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders, dated 19 September 2001” also added: “The right of effective remedy must be guaranteed to anyone wishing to challenge a refoulement or expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the ECHR is alleged”.

The apprehenders are not interviewed or identified even through basic questions about name or nationality, while a quick conversation to investigate personal history and reasons of the journey should be fundamental to evaluate if the person in question might be considered a “*prima facie*” refugee.

Moreover, aliens were not informed on their right to seek for international protection, neither received any oral or written instance of readmission, for the lacking of interpreters and legal consultants or NGOS’ staff authorized to provide to this kind of services at the harbour checkpoints. The common pattern is basically caused by the lack of will of responsible authorities, the ones able to request interventions, as it will be stressed in the next paragraph.

Consequently, no proper assessment of individual protection needs is provided and actually it is denied full access to territory and to asylum procedures, even if theoretically guaranteed.

Finally, it can be assumed that the removal is substantially of a collective nature, thus in breach of Article 4 of Protocol No. 4 to the Convention, for the modalities in which the transfer of group of people took place – i.e. simply consigned to the captain of a ferry and taken to the Greek harbour of departure, without a previous examination of personal situation –.

Referring to violation of art 13 of the convention taken in conjunction with art. 3 and article 4 of Protocol 4 by Italian Government, it must be said that article 13 implies the obligation for the contracting parties of ensuring , at domestic level, an effective remedy to those under their jurisdiction, complaining of being victims of a violation of a right or fundamental freedom set forth in the convention.

A remedy is effective firstly when the complainant have the possibility - not only in theory but also in practice⁸³ - to have access to a national Court or an equivalent administrative body in order to see his/her complaint examined under a rigorous and independent

⁸³ To deem a State observant of art 13 of the convention, it is not enough that its legal system theoretically provides the right to accede to justice. It is fundamental the access is viable in concrete, considering all the circumstances of the case. Council of Europe, “*Guide to good practice in respect of domestic remedies*”, adopted by the Committee of Ministers on 18 September 2013, p. 11, available at <http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/GuideBonnesPratiques-FINAL-EN.pdf>.

scrutiny⁸⁴. Secondly, a remedy is considered effective in challenging a measure that can lead to potentially irreversible effects - such as a deportation to an unsafe country - only when possesses a suspensive effect, i.e. when an appeal to the Court suspends the implementation of the impugned measure, pending the proceeding⁸⁵.

Considering how readmissions to Greece are managed by Italian authorities, the requirements of an effective remedy, as mentioned, is not fulfilled at all. Immigrants are not aware, as not properly informed, of their rights and the chance of claiming them, so it can be assumed that the remedy is not concretely accessible.

In addition, as returns are informal, migrants do not receive any written readmission instance to challenge. But above all, due to the instantaneous nature of the readmission, they do not have any chance to challenge the removal measure before its execution and get a suspension by a Court.

Therefore, examining all the particular circumstances, it should be considered those who are pushed back in a short time frame are deprived of any remedy to appeal to competent authority - under Article 3 of the Convention and Article 4 of Protocol No. 4 - and to obtain a thorough and rigorous assessment of their requests before the removal measure is enforced.”⁸⁶ Practically that imply Italian police officers cannot reject at the frontier and forcibly return potential asylum seekers. Therefore they should be admitted in the territory and undergo through a fair and effective procedures for determining status and protection needs. Only if it has been established they do not have the requirements to be assessed as refugees - or in need of any other form of international protection – they can be sent back to their home countries.

I would like to stress Italy adheres to the European Convention of human rights and the Geneva Convention of 1951 on refugees, that oblige Italy to grant to asylum seekers entrance to the territory and refrain from refoulement. Also according to EU laws, aiming to create a common European Asylum System, EU directives (Reception Directive, Procedure Directive, Returns Directive, Qualifications Directive), clearly establish the

⁸⁴ Council of Europe, *ibidem*, p. 11.

⁸⁵ Article 13 of the Convention, combined with Articles 2 and 3, requires that the person concerned have the right to a suspensive remedy for an arguable complaint that his/her expulsion would expose him/her to a real risk of treatment contrary to Article 3 of the Convention or a real risk of violation of their right to life as protected by Article 2 of the Convention. Council of Europe, *ibidem*, p 35.

⁸⁶ *Hirsi Jama vs Italy*, *ibidem*, paragraph 205

right of accessing to procedure, of remaining in a member state territory pending the examination of an asylum demand and protection against refoulment.

2.4 Specific violations committed when the victims of readmissions to Greece are children not accompanied by adult relatives.

According to interviews collected by NGOS, a variety of cases occurs at seaport borders, i.e. children recorded as adults despite their evident childish look; children who, in spite of their declaration, had not registered as minors; documents from Greece proofing minor age ignored by Italian police officers; minors pushed back without verifying their age⁸⁷. Generally speaking, medical examination are rarely carried out in case the age is disputed and, when it happens, the person is not properly informed about the procedure he/she is going through, as well as of the result of the medical examination, its margin of error and legal ways to challenge it, plainly in opposition with what is expected by the UNHCR and Save the Children⁸⁸.

Pro-Asyl uncovered also cases of minors separated from their family by readmissions procedure. Two brothers were separated, since one was readmitted to Greece and the other was allowed to stay in Italy. In another cases, a boy who managed to reach Italy informed the authorities that his brother was legally residing in the country but it was not allowed to contact him. Italian police's practices are blatantly illegal, since not respectful of domestic and international laws.

Actually, the Consolidate Immigration Act, prohibits expulsions of minors. At the same time, the Convention on the rights of the child, to which Italy adheres, must be interpreted in the sense that unaccompanied minor migrants should be always admitted in the territory in order to determine which are the most appropriate actions for guaranteeing them⁸⁹.

⁸⁷ Pro Asyl, *ibidem*, p. 12

⁸⁸ See, Progetto presidium "buone raccomandazioni e buone prassi per la gestione dei flussi migratori misti in arrivo via mare", 2010, p. 25 available at http://www.unhcr.it/sites/53a161110b80eeaac7000002/assets/543ba8d00b80ee6820005135/2manuale_pr_aesidium.pdf, accessed on 30th June 2015.

⁸⁹ UN committee on the rights of the child, General Comment n. 6 par.84 (prohibiting return of a child to country of origin if it is in the best interest of the child, 26 forbidding forcible return of a child to any country "where there are substantial grounds for believing there is a real risk of irreparable harm to the child"; 19-22 detailing actions to be taken to determine the best interests of the child, including the access to the territory which is a prerequisite to this initial assessment process), available at <http://www.unicef-irc.org/publications/pdf/crcgencommen.pdf>, accessed on 30th June 2015.

Even within the European law framework, the Asylum Procedures Directive confirms the concept of the best interest of the child. Actually, in the preamble, the recital 33 settles: "The best interests of the child should be a primary consideration of Member States when implementing this Directive, in accordance with the Charter of Fundamental Rights of the European Union (the Charter) and the United Nations Convention on the Rights of the Child 1989 ".

Therefore, rejections of minors at the border are never acceptable and the best interest of the child is the principle which should inspire Administrative Authorities and Police in the immigration context.

It implies that, in cases of controversial age, the principle of the benefit of doubt shall be always applied in favour of the presumed, admitting the migrant to the territory, entrusting him to social assistants and treating him as a child until the age determination process is completed. According to the UN Committee on the right of the child guidelines, a correct practice in the age determination process should be based on a multidisciplinary approach, involving psychologists, social assistants and doctors.

States are thus recommended not to base the age determination solely on child's physical appearance or on a single medical test. Conversely, States are invited to consider the psychological maturity of the person, the margin of errors of medical exams and, in particular, to give always the benefit of the doubt.

In this respect, the bone x-ray is insufficient to determine the age because its error margin goes up to 2 years. Moreover, it is not ethic to expose children to radiation when there are no medical reasons to proceed with such kind of test.

Despite these recommendations, when the authorities go for an age determination test, the wrist x-ray test seems to be the most used at Italian maritime checkpoints, since it is not possible to conduct a multidisciplinary assessment in the short time frame of few hours, during which the boys are at the Adriatic ports.

In such cases, partners of Progetto Presidium require the authorities to proceed, at least, by respecting some safeguards. The first regard the margin of error that should be indicated in the medical report. The second provides that the minor should be properly informed and the test can be done only with his consent, offering an alternative in case of refusal. Then a copy of the report with the test result must be handed in to the person

concerned. Finally, the child must be informed, eventually with the help of mediators, about the outcome of the examination and its consequences⁹⁰.

In conclusion should be noted that, a part from having the right as children to be admitted in the territory and not pushed back, all minors have also the same opportunity as adults, if possessing the requirements foreseen by law, to exercise the right to seek for international protection, and to receive assistance, care and education by the host country

3.5 Human rights violations related to detention conditions on board during return journey.

As highlighted before, migrants deported to Greece are confined in inadequate and narrow cells, in wretched conditions. Sometimes they are handcuffed for all the trip time, minors included, although International law requires States not to criminalize unaccompanied children for reasons related to their immigration status or illegal entry⁹¹.

It is crucial then to clarify who are responsible of these abuses. On one hand, Italy has the primary responsibility to ensure that conditions and treatment of migrants during return journeys to Greece are conducted in respect of their basic human rights.

In particular, it should be pointed out that entrusting a private shipping company does not absolve Italy from this responsibility, as it maintains the obligation of monitoring that conditions of migrants during the trip are human and safe.

The Council of Europe guideline on forced return invites member states to ensure safety and dignity of returnees, limit the use of restraints to what is strictly proportionate and provide effective monitoring of returns and redress in case of abuses. The guidelines also highlight the responsibility of States for the ones acting under their instructions, whether these people are civil servant or employed by a private contractor⁹².

On the other hand, captains of the ferries and shipping companies have duties to perform. In fact, according to guidelines on stowaways developed by International Maritime

⁹⁰ Progetto presidium, *ibidem*, p. 25

⁹¹ UN Committee on the Rights of the Child, *General Comment No. 6*, para. 62, *ibidem*.

⁹² Council of Europe “*Twenty guidelines on forced return*”, 2005, available at http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf.

Organization (ILO),⁹³ also to be applied when stowaways are transported back to the port of departure, masters of ship must “take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities”⁹⁴ and “to ensure that stowaways are treated humanely, consistent with the basic principles”⁹⁵.

Ferry enterprises have to respect human rights of these “special passengers”, too, by ensuring human treatment on board and avoiding complicity in unlawful conducts. For this reason, they should also design and implement adequate policies and procedures to prevent and react to abuses committed by their employees.

2.6 Research outcome. Data and figures concerning the year 2014 and partial data relating to the first months of 2015.

The Italian Ministry of Interior in September 2013 released the statistics relating to irregular migrants traced by border police at Adriatic seaports, plus the data concerning readmissions⁹⁶.

In 2012, about 1.809 aliens were intercepted and 1,646 of the total number of traced people were returned to Greece. Over 90%. The port with more irregular arrivals was Ancona⁹⁷. Data showed also there was a decrease in the number of irregular migrants from Greece in the first six months of 2013, as only 619 foreigners were intercepted by police⁹⁸. But push-backs continues to be proportionately significant.

In this regard, it should be noted that in the port of Brindisi from the 178 migrants arrived - January 1st to June 30th 2013 - 173 have been returned to Greece; in Ancona from 214

⁹³ ILO, resolution FAL.11(37) entitled “*Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases*”, accessible through <http://www.imo.org/OurWork/Facilitation/Stowaways/Pages/Default.aspx>

⁹⁴ Paragraph 5.1, point number 7 of the Annex to Resolution FAL 11(37), *ibidem*

⁹⁵ Paragraph 5.1, point number 9 of the Annex to Resolution FAL 11(37), *ibidem*

⁹⁶ Consiglio Italiano per i rifugiati (CIR) and European programme for integration and migration (EPIM) “Access to protection a human right”, 2103, p. 34, available at http://www.emnitaly.cnr.it/wp-content/uploads/2015/03/Rapporto-Access-to-Protection_ITALIA_Epim.pdf, accessed on 30th June 2015.

⁹⁷ di cui: 691 presso il porto di Ancona, 662 a Bari, 173 a Brindisi, e 283 a Venezia.

⁹⁸ di cui: 214 presso il porto di Ancona, 135 a Bari, 178 a Brindisi e 92 a Venezia.

people, 178 were readmitted; in Bari on 135, 107 were readmitted, while in Venice, on 92 arrivals, 71 people have been readmitted.

Referring to official data on arrivals at Adriatic seaports for the second half of 2013, the 2014 and the first six months of 2015, it should be noticed that they have not been acquired for the lack of cooperation and administrative transparency of Italian authorities⁹⁹. Nevertheless, accessible data collected by the associations operating in the ports of Venice (Olivotto Cooperative), Bari (Rete Iside), Brindisi (CIR) and Ancona (GUS) concerning the year 2014. The joint analysis of official available data together with the one of the abovementioned association, allows us making interesting considerations.

What emerges is that the alleged number of arrivals of third country nationals at Adriatic seaports has sharply reduced in 2014. In fact, the total number of individuals registered by organizations assisting migrants in the four considered ports, we get 578 units. Although there are no data about foreigners who dealt only with Border Police in all the ports, it can be reasonably assumed that the total amount should not exceed one thousand units. How this decrease can be explained?

A first reason should be found in the decreasing number of shipping companies operating in the sea lane between Greece-Italy¹⁰⁰.

Secondly, our visit in Patras confirmed the perception the number of immigrants and asylum seekers there is considerably diminished, due to the latest political choices.

If in 2009 - when a delegation of Italian human rights activists went to Patras to obtain the power of attorney to commence a strategic litigation for Alisina Sharifi, a 14-year-old Afghan boy pushed back from Adriatic port together with other young men¹⁰¹ - there were around 2000 among migrants and asylum seekers living in that harbour city, nowadays they barely amount to few hundreds.

The scarce presence of asylum seekers in Patras could be justified by 3 main factors:

⁹⁹ The Border Police has referred me to the local Prefectures and the latter have not even replied to my formal request of information.

¹⁰⁰ For instance, before, two companies departing from Greece docked in Venice, currently only one, the Anek line.

¹⁰¹ Alessandra Sciarba, "*Sharifi et al. vs Italy and Greece case – The Strasbourg Court finds Italy guilty. An Appeal form below stops refoulements from Adriatic sea ports*", 24th October 2014, available at http://www.meltingpot.org/Sharifi-et-al-vs-Italy-and-Greece-case-The-Strasbourg-Court.html#.VZ5TrdEw_IU, accessed on 7th July.

1. The destruction of the shanty town outside the city on 12th July, 2009, source of tension with Greeks inhabitants, for its being considered an eyesore, also for tourists arriving from Italy. Police and commandos of Greek army broke into the makeshift camp with bulldozers, destroying and burning everything. The camp had been built in 2002 by immigrants and, since then, thousands of people from different nations were used to have a shelter and live there. Before the raid, about 1,800 people were lodged there, mainly from Afghanistan, but the month before the police action, the number dropped to about 100 units after large-scale arrests¹⁰². Actually, in previous period, Police every evening removed systematically dozens of refugees and minors from the camp and those found without documents were forcibly moved first to Turkey and then to Afghanistan or other high riskily countries, like Somalia. Some of the applicants who filed the petition to the ECtHR together with Alisina Sharifi - who afterwards gave his name to the case - used to live there. Despite ECtHR resolution about the temporary suspension of their removal order issued by Greece, they were arrested and deported to Turkey in those raids¹⁰³.

2. The operation Xenios Zeus¹⁰⁴, inaugurated by the Minister for Public Order in October 2012, which led to many arrests and deportations in Patras..

3. A slight chance of success of breakaway from Greece. In fact, in the port area where means of transportation are embarking, the surveillance system has been strengthened through the installation of security cameras and the use of trained dogs by the police forces, making more difficult and risky the boarding. In addition, personnel on board is in charge of inspections during the trip and if someone is found, he is retained by the security staff of the shipping company, avoiding even the delivery to the Italian police. Finally, the recent Italian practice to employ X-ray scanners at high-energy level¹⁰⁵ to randomly examine vehicles' cargos, checking for illegally smuggled materials

¹⁰² Malcolm Brabant, "Greek police flatten migrant camp", Athens, BBC News, 19th July 2009, available at <http://news.bbc.co.uk/2/hi/europe/8146597.stm>, accessed on 11th May 2015,

¹⁰³ Fulvio Vassallo Paleologo, "Patrasso soluzione finale. Sgomberato il campo profughi", 14th July 2009, available at <http://www.meltingpot.org/articolo14691.html#.VVDBStEcTIU> available, accessed on 11th May 2015

¹⁰⁴ It will be described more in detail in paragraph 2.5

¹⁰⁵ Smiths Detection, a British company, on 30 January 2013, entered into a contract worth 19 million euro with the Customs Department for the supply of X-ray scanners to high energy that will be used to control goods at six major national ports, including Naples, Genoa and Bari. The scanner can penetrate thick steel up to 330 mm. A single scan of the cargo generates a detailed radiographic image that serves to distinguish the organic material from the inorganic. <http://www.ship2shore.it/it/rubriche/scanner-di-smiths-detection->

(weapons, explosives, drugs, general cargo) but also human beings. Such radiations are harmful for human health and, for this reason, are banned in other European countries¹⁰⁶. That forced asylum seekers to choose new routes to move within the European borders, including land routes through the Balkans - on foot or inside trucks - as testified by the increase of irregular entries presumably from Greece in central Europe¹⁰⁷. The border crossing is performed near the city of Trieste and Udine¹⁰⁸, in Hungary¹⁰⁹, Austria, Switzerland¹¹⁰, in Germany or Sweden.

Although the arrivals at Adriatic borders decreased, the most striking datum is the percentage of readmissions in proportion to arrivals and the very low number of asylum applications submitted at the border (only 39 in 2014 in the port of Ancona, Venice and Bari)¹¹¹.

Let us examine the situation in each specific harbour in 2014 and 2015.

Port of Venice year 2014

presto-in-sei-porti-italiani_52678.htm.

See

also

<https://www.port.venice.it/files/press.../2009/apvcom091120scanner.pdf>

At the port of Venice a fixed scanner able to inspect 40 trucks per hour was opened in November 2009, but since January preceding a mobile scanner was supplied by the Guardia di Finanza, Customs, Police and Harbour. <http://www.informare.it/news/gennews/2009/20092164.asp>

¹⁰⁶ Jack Doyle and Lee Sorrell, “*French ban X-ray scans for detection of illegal immigrants as radiation makes them 'too dangerous' for human health*”, Daily Mail, 14th May 2010, accessed 13 May 2015, <http://www.dailymail.co.uk/news/article-1278565/French-ban-X-ray-scans-illegal-immigrants-radiation-makes-dangerous.html>

¹⁰⁷ Watch the video “*Escape from Greece*”, https://www.youtube.com/watch?v=dtkiQ4_koFc.

¹⁰⁸ Local newspaper report that entries through Italian-Slovene border near the city of Udine and Trieste of Afghan, Pakistani and Iraqi, have been doubled in 2015 in respect to the previous year. Among, others see Ivan Francese, “Non solo barconi, ora i profughi arrivano dall’est: raddoppiati gli ingressi”, *Il Gionale.it*, 26th April 2015, available at <http://www.ilgiornale.it/news/cronache/non-solo-barconi-ora-arrivano-dallest-1120857.html>, consulted on 30th June 2015.

¹⁰⁹ For the considerable rise of irregular entering, the Hungarian Prime Minister, while I am writing this paper, has announced a plan to build a four-meter-high fence along the border with Serbia to stop the flow. According to the Hungarian office of immigration and nationality about 57.000 people have crossed into Hungary irregularly in the first months of this year, up sharply from 43.000 in all 2014. The UN refugee spokesperson is concerned for the fence plan and has condemned it, since the right to seek asylum is an alienable right and erecting a fence would place

¹¹⁰ In Frontex website is reported that secondary movements of mainly Asian migrants who originally entered the European Union through the Bulgarian-Turkish or Greek-Turkish land or sea borders and then proceed, through the Western Balkans, into Hungary have reached a peak in 2014. This year from January to April 2015, 5.042 Syrians and 6.402 Afghan were intercepted on this route.

<http://frontex.europa.eu/trends-and-routes/western-balkan-route/>

¹¹¹ Source: Ministry of Interior.

Data collected by Olivotto Cooperative, that worked there for 10 months in 2014 ¹¹².

Intercepted and met by the Cooperative	120	individuals including 60 minors
Readmissions	44	
Voluntary readmissions	2	

Nationalities:

Afghan	70 including	49 minors
Syrian	29 including	8 minors
Iraqi	6 including	3 minors
Eritrean	5	
Iranian	3	
Pakistan	3	
Palestinian	2	
Sudanese	1	
Egyptian	1	

Port of Venice

Data collected by Olivotto relating to February, March, April, May and June 2015

Individuals intercepted and met by the NGO	56 ¹¹³	among them 34 minors ¹¹⁴
Readmitted	11	

Port of Brindisi year 2014

Data collected by CIR

Intercepted and met by CIR	76 individuals	including 8 minors
Readmissions	52	

Nationalities:

¹¹² The service of assistance and information to migrants in the port of Venice remained closed in the months of January and February 2014, as the Cooperative Olivotto began being operational only in late February.

¹¹³ 41 out of 56 were Afghan nationals and among these 41, 29 were minors.

¹¹⁴ All the unaccompanied minors were admitted to the territory and handed in to the social assistants.

CIR did not provide detailed information on the nationality of the persons arrived at the port of Brindisi. It only reported about 8 Somali children and that prevalent nationalities among adults were, in descending order, Afghanistan, Somalia, Iran, Iraq and Syria.

Port of Bari year 2014

Data collected by Rete Iside

Individuals intercepted	36
Met by the NGO	24
Readmissions	12
Voluntary readmissions	1

Nazionalities: Siryan, Iraqi, Afghan

Rete Iside, the NGO that provides migrant with assistance and information in the port of Bari, referred that the 12 individuals readmitted were a group of Syrians arrived on 26th, April 2014. In that occasion, there was no chance of assisting and talking to any of them, because Police didn't ask for the intervention of the association, while they can't access spontaneously to the embarkation area, as not authorized staff.

Another significant malfunctioning should be highlight in the port of Bari. The association provides only interpreters of Arabic and French while no one speaks the official languages used in Afghanistan or Iraq (Dari or Pastu and Farsi), even though many migrants are Afghan and Iraqi citizens.

Port of Ancona year 2014

Data collected by GUS Italia (Gruppo Umana solidarietà)

Individuals intercepted and met by the NGO (approximatively) ¹¹⁵	309
Readmitted (only adults)	281

¹¹⁵ The number of people arrived by ferries from Greece in Ancona harbour has been calculated approximatively, as Gus runs an office at the port where immigrants already present in the territory regularly go to ask for information and, in its internal statistics, there is no distinction between the two categories. In any case, readmissions refer only to individuals arrived by sea

Amongst readmitted:

Syrians	157
Afghan	40
Iraq	24
Somalia	17
Sudan	7

Port of Ancona

Data collected by Gus relating to the first months of 2015.

January	14	individuals intercepted and met by Gus
	14	readmitted ¹¹⁶
February	7	individuals intercepted and met by Gus
	5	readmitted
	1	application for international protection at the border
March	12	individuals intercepted
	4	readmitted ¹¹⁷
April	8	individuals intercepted
	5	readmitted ¹¹⁸
May	18	individuals intercepted
	11	readmitted
	2	application for international protection ¹¹⁹

¹¹⁶ Among readmitted 8 Afghan nationals.

¹¹⁷ Among them 2 Afghan

¹¹⁸ Among them 2 Afghan

¹¹⁹ One of the 2 originating from a minor.

From the reported data about nationalities, it can be assumed that people arriving to Adriatic ports from Greece are all potential asylum seekers, thus possessing the right to access to Italian territory.

According with what has been reported by the mentioned NGOs, generally police officers attempt to foster the access to minors, a significant improvement in respect to the past. In particular, Dr. Riccardo Tumminia, the executive chief of the Police Border of Venice since January 2014, declared publicly¹²⁰ that in case of contention about the age of a migrant, under the area of his jurisdiction, the principle of presumption of childhood is always applied, and the presumed minor is entrusted to social assistants without going through any wrist test, thus resulting unnecessary.

That happens in conjunction with an opposite trend: while minors are admitted, an high percentage of adults are returned to Greece, if not clearly expressing their wish to seek for protection. Obviously, as previously underlined, this practice goes against a well-established jurisprudence of the ECtHR, stating that potential asylum seekers should not be rejected at the border, even though they do not ask for asylum, if they would face a real risk in the receiving country.

This trend can be better illustrated by our case studies. According to data provided by Olivotto cooperative, 120 individuals arrived in the port of Venice. Half of them were minors, then admitted to the territory and assigned to social assistants. Meanwhile, 46 adults out of 60 were readmitted to Greece, i.e. the 76.66%. A similar percentage occurred in the port of Brindisi, with 76.47 % of adults readmitted. The situation in the port of Ancona, which has the highest number of arrivals, is even more alarming, since the 90% of the total people arrived by sea were pushed back in 2014 and more than 50% of those ones were Syrians. In the first month of 2015, the percentage of adults readmitted from Ancona harbour was still high (66.10%), considering their nationalities¹²¹. In addition, the overall percentage of readmissions should probably be higher, because immigrants arriving in ports are more than those who actually had access to the care of the local associations, as shown by the case of the Syrian group in Bari.

¹²⁰ During a conference entitled “Il Porto dei destini sospesi”, held in Venice on 10th December 2014.

¹²¹ Mainly Afghans.

To date, it is not possible to quantify exactly the phenomenon, because of the Prefectures concern to release any information, neither to know if the migrants were readmitted or not.

Relating to the port of Venice, the cooperative Olivotto assisted 120 people but according to some partial data released by the Prefecture of Venice to the Association “SOS diritti”, the individuals intercepted by the Police were more, precisely 157 (data up to October 2014). That means that at least 37 people have been in contact only with the police in 2014. Even though the Cooperative Olivotto was not operating in the first two months of 2014, we cannot justify this difference of 37 units as result of the migrants’ movement in January and February. In fact, the average of the assisted migrants is 12 per month, with peaks in summer months that means the not registered 37 migrants must be distributed along the course of all the year.

Victims of readmissions interviewed during the present research confirms this circumstance too¹²².

It interesting to focus the attention on another factor that affects the high number of readmissions, i.e. the phenomenon of voluntary readmissions, sometimes classified and distinguished from other forcible returns by associations, in their statistics.

As highlighted by all NGOs - CIR, Olivotto, Rete Iside - and by DR. Tumminia, some migrants from Greece, even if advised about the opportunity to request asylum in Italy, refuse to be identified and fingerprinted because they fear to remain trapped in the country, due to Dublin regulation.

Despite their real needs for international protection, they prefer to return to Greece, for trying again for a second, - or more- time to cross irregularly Italian checkpoints. Their goal is to reach other European countries, where they can count upon the support of relatives or members of their community already living there and where refugee recognition rates, welfare systems and integration prospects are better than in Italy or Greece. This circumstance triggers a ping-pong effect between the two countries and puts at serious risk the lives of asylum seekers, who travel in unbearable conditions in order to reach this goal.

¹²² See paragraph 1.8

2.7 The right to information: how State's failure to inform immigrants at the border can affect the issue of readmissions.

The European Court of Human Rights, in the judgment given in *Hirsi Jamaa* case, has stated important principles on the right to information of migrants. These principles are applicable also in the cases of individuals arriving as stowaways from Greece. The Court provides that State Members of the Convention shall guarantee to foreigners the right to obtain sufficient information to guarantee their effective access to asylum procedure and motivate their claims. The cruciality of the right to be informed, that assure the effective access to refugee status, is evident in particular for people who have been notified a removal order thus are subjected to potentially irreversible consequences¹²³.

The Commissioner for Human Rights of the Council of Europe, in its recommendation “concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders (19th September 2001)”, echoing the ECtHR, states, *inter alia*:

“1. Everyone has the right, on arrival at the border of a member State, to be treated with respect for his or her human dignity rather than automatically considered to be a criminal or guilty of fraud.

2. On arrival, everyone whose right of entry is disputed must be given a hearing, where necessary with the help of an interpreter whose fees must be met by the country of arrival, in order to be able, where appropriate, to lodge a request for asylum. This must entail the right to open a file after having being duly informed, in a language which he or she understands, about the procedure to be followed. The practice of *refoulement* “at the arrival gate” thus becomes unacceptable.”¹²⁴

The current European¹²⁵ and Italian legislations do not require to provide *tout court* information on the possibility of asking international protection, as such a service must

¹²³ *Hirsi Jamaa and others vs Italy*, *ibidem*, para 204 and para 185.

¹²⁴ See <https://wcd.coe.int/ViewDoc.jsp?id=980219>, accessed 26th June 2015.

¹²⁵ DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) available at <http://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX:32013L0032>, establishes that where there are indications that third-country nationals or stateless persons present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member

be supplied only after the alien himself has expressed his willingness to seek for asylum. However, the domestic law¹²⁶ states that at every border crossing points, reception services, entrusted with the task of providing information and assistance to foreigners who wish to apply for asylum, should be planned and, if possible, be placed in the transit area, that means before getting in touch with the Police Border.

In addition, a Ministerial circular¹²⁷ specifies that recipients who can benefit from the assistance at the frontier are not only those who have applied or intend to apply for asylum, but also those aliens who can still receive humanitarian and / or temporary protection, plus other most vulnerable categories - unaccompanied minors, women who are victims of violence, individuals who have been subjected to torture or, generally speaking, aliens in need. Purpose of this provision is to prevent the violation of the principle of non-refoulement enshrined in the Geneva Convention and in the Article 3 of the ECHR.

Since the end of 2007, the management of the information service, at the official border crossings, is entrusted to the highest bidder, chosen through a tender organized by the local Prefecture¹²⁸. The quality of the offered service - opening hours, modalities of work, etc. - is not uniform in all the Italian territory as the content of the contract between the Prefecture and the entity awarded can vary from place to place, being at the discretion and at the available resources of the Prefecture.

In addition, as in the seaport there are no transit areas like in airports, information points are not placed before the police office where passports are checked. On the issue of

States must provide them with information on the possibility to do so, making also interpreters available, if necessary, in order to ensure communication and real access to the asylum procedure. Within this scope Member States should ensure that organisations and persons providing advice and counselling to applicants are present at border crossing points and have effective access to applicants. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible. Moreover, Member States have the duty to ensure that those other authorities deployed at the borders such as the police, border guards, receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged. (article 8 and 6 and whereas number 28).

¹²⁶ Article 11 of the Italian Consolidate Immigration Act, available at <http://www.altalex.com/documents/codici-altalex/2014/04/09/testo-unico-sull-immigrazione>, accessed on 8th July 2015.

¹²⁷ Circular of the Italian Ministry of interior, dated 2nd May 2001.

¹²⁸ CIR, *ibidem*, p. 44.

information points, several problems have been observed during the present research that led to the conclusion the way information is delivered in some cases does not meet the standards of sufficiency required by the European Court of Human Rights and the Commissioner for human rights of the Council of Europe and consequently affects the possibility to have a real access to international protection. In particular, it should be highlighted:

- 1) Complete absence of service for long time periods.

The service has not been covered in the ports of Venice and Brindisi for a long time gap because of delays in the renewal of the agreement with the Prefecture: in Venice for two months (January and February) in 2014, and one month (January) in 2015, while in the port of Brindisi for three months in 2015 from January to March (Cir has resumed service on April 1st, 2015).

- 2) Reduced amount of working hours in some ports (1h ½ or 2 per day) due to budget cuts made by the government.

The availability of the associations usually is designed to coincide with the arrival of the ships (days and times)¹²⁹. Anyway, the real time of arrival may diverge considerably from the official timetable, being subjected to weather conditions. That means that, NGOs' staff is involved mostly on call of the Border Police that practically is not warning them in every case, dealing with migrants without intermediaries¹³⁰. That is the case complained by the association Rete Iside, when on 26th April, 2014, twelve Syrian citizens, arrived at the port of Bari from Greece and the police did not alert them, while even the access to the boarding area was not authorized by the Prefecture. Such cases allow concluding the involvement of NGOs in assistance activities vary sensibly at the discretion of police individual officers and directors. The obvious consequence is an unquantifiable number of persons who get in touch only with Border Police, whose officers have often limited knowledge of international law on the protection of asylum seekers.

¹²⁹ In Venice, in 2014 the working days of the Cooperative Olivotto, went from Monday to Saturday even if the arrival of the ship from Greece was scheduled also on Sunday. Since 2015 the cooperative Olivotto' staff is available every day of the week.

¹³⁰ This circumstance has been referred by three out of four associations working in the 4 ports studied by this research.

However, the associations testify usually they are required in sensitive cases that involve minors or families.

3) Inadequacy of places where interviews are conducted. Some associations are not even equipped with an office at the port for confidentially interviewing migrants without the presence of police agents, which can be intimidating or limit immigrants' ability to speak freely¹³¹.

4) Limited time to the single talk if migrants arrive in large groups. As Border Police intends to repatriate them with the same ship on which they arrived, the short time gap between arrival and departure makes difficult to adequately evaluate them, identifying specific needs of protection or vulnerability factors.

5) Impossibility of direct access to the ship and to observe detection methods or treatment of stowaways - approaching the dock or the so called "sterile area"¹³², the port area where ferries disembark passengers – preventing direct contact with intercepted migrants. The presence of civil personnel in these areas could constitute a deterrent to eventual abuses by police forces.

2.8 Do summary readmissions continue in the recent years?

To date, 13 cases of readmissions have been recorded on the basis of accounts of victims and human right activists, informed about specific cases, as well by Italian media. They occurred in 2014 and the first four months of 2015.

Six out of them happened after Italy's conviction in Sharifi case (3 collective and 3 concerning single individuals). In particular, one occurred in Ancona, involving a group

¹³¹ The cooperative Olivotto that previously didn't own any office in the port area, since the beginning of 2015 has obtained the faculty of exclusively utilizing a room inside the Police border headquarter for interviewing migrants.

¹³² That happens in total disregard of Article 8 paragraph 2 of the Procedure Directive n. 2013/32 that states: "Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible".

composed by Iranian, Syrian and Iraqi citizens, on the 21st April, 2014, one week after the aforementioned judgment¹³³.

During the fieldwork in Patras, 5 young men readmitted to Greece from Italian Adriatic ports - one of them twice - were identified and interviewed:

1 Algerian, 1 Sudanese, 4 Afghan (including 2 underage of 16 and 14 years).

2 told that they were readmitted in 2015, 3 in 2014, 1 in the time before.

1 has been deported from Ravenna harbour, 1 from Venice, 3 from Ancona and 1 from Brindisi.

One said that he intentionally injured himself not to be repatriated, but the trick didn't work. Each one of them dealt only with Italian police, neither with an interpreter nor with a legal consultant or a staff member of the associations in charged by the Prefecture, not being provided a first orientation and information on asylum at border post. All stated that they would have applied for asylum in Italy, fearing to be returned to the miserable life full of abuses in Greece, but they were not given the chance.

All were repatriated on the return trip of the same ship within few hours from the arrival, without receiving any written return order.

This happened even to the two minors who were not asked their age, despite their clearly teenager look. In particular, one of the two claimed to have shown to Italian police a document by Greek authorities clearly indicating his date of birth and nationality (Afghani), so his condition of minor from an insecure country could not be ignored.

It is worth to highlight how no written removal order was received also by the boy deported from Venice, even though Dr. Tumminia, the chief executive in charge since January 2104 of the local Police Border, declared publicly he had introduced the practice of delivery a certificate. The document, translated in English and French, reports the individual has been intercepted, interviewed by the interpreter and, after being informed

¹³³ They had been discovered on a ferry belonging to Minoan line. They couldn't even touch the ground as they were kept on board and repatriated to Greece by Ancona – Ancora 21 respingimenti collettivi, nonostante la sentenza della CEDU continuano le riammissioni in Grecia”, press release - Ambasciata dei diritti Ancona, http://www.meltingpot.org/Ancona-Ancora-21-respingimenti-collettivi.html#.VVskstEw_IU.

of the possibility to apply for asylum, he has decided not to exercise this right. In addition, the paper should be signed by the person concerned¹³⁴.

Only one witnessed to have been badly beaten at the seaport border of Ancona by a Policeman, who has stolen also a document certifying the registration of his asylum application in Greece. Only one reported he was beaten by the crew on board and, finally, one by the Greek Police, upon his arrival in Patras.

Once back, one was arrested and confined in a cell at the port for 15 days, and then transferred to another prison where he was detained for six months, even though he was a minor. No one complained about inhuman conditions of detention on the ship during the return trip. All were placed in a room near the engine room and received food and water and a chance to get away from the cell to go to the toilet.

An interviewee reported a friend of him, an Afghani boy that was travelling a different day from him, had been intercepted by the crew, robbed, prevented from meeting the Italian police, detained and brought back to Greece.

Another seventeen Algerian boy described how he managed to enter in the port and get on a ship bound for Italy, climbing up one of the ropes that kept the boat tied to the dock. Once on board he had been discovered by the security cameras and, before departure, delivered by the crew to the police who beat him brutally.

Some of the interviewees who applied for asylum showed me the document attesting their asylum demand registration by Greek authorities, fixing also the appointment for the interview. One of them who had applied more than 5 years ago, at the time of our conversation, was still waiting for the interview. In the meanwhile, none has received a shelter or any kind of support by the State and they are all unemployed and homeless.

Migrants interviewed emphasized that due to the police abuse suffered in Greece and the generally harsh living conditions, they will attempt the journey to Italy despite its dangerousness, over and over again.

An Algerian man of the group stated he had attempted thirteen times to reach Italy, using various routes and methods. He added also that who has not enough money to pay a smuggler for a trip on a migrants' boat is forced to try covertly on ferries headed to Italy.

¹³⁴ "Il Porto dei destini Sospesi", Conference, *ibidem*.

Apparently, on the basis of the collected stories, it seems that readmissions are carried on with the same modalities as in the previous years. Only detention conditions on board during the return trip appear better than in the past. Furthermore, the interviewees who referred to have been beaten by the police at arrival in Patras, did not make any mention of containers used as cells at the port. When they were specifically questioned on the issue, they answered saying they know nothing about the practice – neither directly nor through others' accounts.

Nevertheless, the witnesses collected during this research depicted a very sad situation. Almost all the readmitted met in Patras were homeless, before and after their readmission to Greece. They had no access to food, water, sanitary infrastructure or medical care, forced to live, teenagers amongst them, in abandoned factories near the new harbour, full of garbage and toxic materials.

Subjected to violence by harbour police or security personnel of the shipping companies, if detected in the harbour area or on board, they reported also harassments in the city of Patras by the police that regularly - once a month - sweeps up people in the abandon buildings they occupy, arresting the ones found without documents¹³⁵. I was witness of the severe injuries done by the police on two boys, as one had an arm broken while the other was wearing a cervical collar.

Many of them have been living in these miserable conditions for years causing them mental health problem, as no perspective for life and social condition's improvement is foreseeable in a short term. Just to make a couple of examples, a young Sudanese man stated to be alcohol addicted, while on 28th April, 2015, a young Afghan committed suicide after having unsuccessfully attempted to hide under a truck in the harbour area and, consequently, having been beaten by the police.

To the cases of readmissions directly reported by the victims and mentioned above, should be added other cases referred by activists and media.

¹³⁵ Those circumstances were confirmed also by the local section of Medicine Du Monde

Four episodes concern Ancona harbours, 3 out of 4 are collective expulsions¹³⁶ - in particular collective expulsions involved 68 individuals, all together (among them a Syrian family formed by three members: a single mother plus two underage children).

Two episodes concern Bari harbour and 2 out of 3 were collective expulsions¹³⁷. Here collective expulsions involved even more people i.e. 79 individuals. Among them an entire group of 12 Syrians has been expelled.

¹³⁶ In chronological order, one episode goes back to 14th May 2014. it was witnessed by an activist of the Association “Ambasciata dei diritti”. The group consisted of 80 people (mostly Syrian nationals and some Somali and Palestinian) hidden in two trucks boarded on the ferry belonging to Minoan line Company. Some of them jumped into the sea in an attempt to escape the police forces, while twenty overshoot the wire meshes surrounding the port area and moved away along the streets of the city, disappearing without leaving a trace. At least two people, were brought to the emergency first aid with the help of two ambulances and a medical care. On the fate of the remaining 40, after an initial interview to assess their position, surrounded by the border police and assisted by GUS, the Ngo in charged by the local Prefecture, only 8 were accepted, two minors and six who applied for asylum. The others were readmitted to Greece with the same ship on which they arrived in the Doric port. A second episode was reported by a local online newspaper on 30th May 2014. It relates to the finding of 13 non-EU citizens from Somalia, Iraq and Syria who had travelled for 16 hours hidden in cramped rooms housed in two different means of transportations by the Revenue Guard, in cooperation with the Customs Department, at the customs entrance of the Doric port. In one lorry, five women and seven men were found, travelling in a semi-trailer with a load of gravel on to disguise the gap where they were crammed. In the second vehicle was found a Syrian traveling alone in the false bottom housed in a van driven by a Bulgarian driver.

Out of these 13 people only one has applied for asylum, while the other twelve have been returned to the Greek port from where the ship they took to come on had departed, see Carlo Leone, “Immigrazione clandestina 13 persone fermate al porto di Ancona, 30 maggio 2014, <http://www.senigallianotizie.it/argomenti/siria>.

A third case it has been already mentioned and refers to a group of migrants pushed back on 29th October, 2014, one week after the conviction of Italy in Sharifi case.

Another refugee was readmitted from Ancona, in early April 2015.

The fourth readmission involved a single Syrian mother with her two children, holding forge documents and took place in April 2015. It was reported by a human right activist.

¹³⁷ An on line blog informed about news dated 11th August, 2014, related to an expulsion of foreigners without valid documents for travel abroad: 52 Albanian nationals, 6 Syrians, 6 Afghans, 1 Serb, 1 Sudanese, 1 Iraqi. In the article those people were defined as dangerous for public order and security, showing clearly the tendency to criminalize undocumented migrants without objective reasons. Luca Turi, *Bari, arresti e respingimenti della polizia di frontiera al porto*, http://www.lucatur.it/page.php?id_articolo=23339&id_categoria=2&titolo=BARI.%20ARRESTI%20E%20RESPINGIMENTI%20DELLA%20POLIZIA%20DI%20FRONTIERA%20AL%20PORTO.

Dating back to April 2014, other news on 12 immigrants, all men, found squatting in the narrow space of a truck without cargo, discharged in the port of Bari. The driver of the vehicle, a 36-year-old Bulgarian, was arrested and immigrants pushed back to Greece. The compartment that housed the migrants, all Syrian nationals, was carved into the front of the trailer, in correspondence with the bulkhead that separates it from the cockpit: was 80 cm x 2 meters high. See http://www.quotidianodipuglia.it/bari/scoperti_al_porto_di_bari_12_migranti_nell_39_intercapedine_di_un_tir_un_arresto/notizie/653096.shtml. This group of Syrians did not have a chance to meet Retiside’s employers, as confirmed by the latter.

On 13th February, 2015 a piece of news was published about a return to Greece of a Syrian man, holding a fake Bulgarian identity card, see

As already said, some sources of information about expulsions are also articles published by online media. Any time that these sources have reported that a numerous mix group formed by Syrians and Afghans or other foreigners coming from country torn by conflicts was entirely - or with the only exception of one or few units - pushed back in a limited timeframe, we have considered it reasonably a collective expulsion, considering also that no legal way to halt the execution of the expulsion was viable in practice.

2.9 Conclusions.

The most salient outcomes of this research might be summarized in few bullet points.

- 1) The number of arrivals of irregular migrants at Italian Adriatic ports is substantially decreased with respect of previous years, amounting in 2014 to not much more than 578 individuals. Consequently, cases of readmissions are decreased as well.
- 2) The reasons of this reduction are mainly due to the fact that the Adriatic route is disused and, currently, other itineraries to move from Greece to other EU destinations are preferred, like the Balkans route.
- 3) Anyway, on the basis of accounts of the victims and human rights activists, as well as according to news in on line newspapers, 13 cases of readmissions were globally recorded in 2014 and the first months of 2015, involving 155 persons;
- 4) Readmissions concern every major Adriatic harbours including Ravenna, never mentioned before by NGO's reports, and sometimes take the form of massive expulsions in Ancona and Bari.
- 5) A high percentage of foreigners adults pushed back by border police has been observed, reaching in the case of Ancona in 2014 the 90%. This is an alarming data, since it goes against a well-established jurisprudence of the ECtHR stating that potential asylum seekers should not be rejected at the border, even though they do not ask for asylum, if they would face real risks of harm in the receiving country.

- 6) Due to issues relating to the way how information to migrants is delivered at the border, a “grey zone” has been identified, where police border deal exclusively with foreigners, without intervention of external actors (consultants or NGOS staff). In that context, an unknown number of informal readmissions might have been executed.
- 7) A significant positive trend has been noticed: by default, unaccompanied migrant children seem to be admitted to the territory and given to the custody and care of social assistants.
- 8) Finally, some individuals intercepted by police border, although entitled to seek asylum, do not apply for it in Italy, preferring to be readmitted to Greece without being identified and fingerprinted. Their aim is to try again the crossing from Greece to Italy and reach, undiscovered, Northern EU countries.

Considering this main points, we can assume that the practice of arbitrary removals to Greece continues until today with a widespread character and even if it could be objected its systematicity, for sure its frequency cannot be denied.

CHAPTER III

REASONS THAT MAKE READMISSIONS TO GREECE UNLAWFUL:

WIDESPREAD VIOLATIONS OF HUMAN RIGHT OF MIGRANTS AND ASYLUM SEEKERS IN GREECE

3.1 General pertinent information on Greece.

The issue of readmissions to Greece cannot be deeply understood without considering Greek asylum system and refugees and asylum seekers' conditions of living in the country. Serious insecurity and widespread violations of human rights experienced by migrants and asylum seekers in Greece render readmissions operated by Italian authorities unlawful, according to the ECtHR jurisprudence. In addition, they are also the pull factors that lead asylum seekers to go away and clandestinely undertake dangerous journeys, within the EU, like the "Adriatic path" to Italy, object of this study.

Therefore, in this third section, I will try to paint a picture of the current legislative, political and social environment that asylum seekers face in Greece, mainly based on official governmental and non-governmental organizations' most recent reports on the country, as well as case laws. This image, once again will stand out how Dublin III regulation is inconsistent with human rights of people in need of protection by obliging them to apply for asylum in Greece as first country of irregular entrance - since no other legal alternative is provided - even if the latter is unable to respect and fulfil their basic human rights.

Over the last years, Greece have experienced a constant pressure on its borders and an increasing number of irregular crossings by sea and by land from Turkey. Main entry points are the areas around river Evros, the islands of North Eastern Aegean Sea and Dodecanese Islands. Since 2010, surveillance measures at the Turkish land border has been strengthened through the construction of a 10 kilometre fence¹³⁸, the use of high

¹³⁸ Amnesty International, "*The human cost of fortress Europe, human rights violations against migrant and refugees at Europe's borders*", 2013, P. 11, http://www.sos-europe-amnesty.eu/content/assets/docs/The_Human_Cost_of_Fortress_Europe_July_2014.pdf.

technology equipment's¹³⁹ and the deployment of Frontex special teams¹⁴⁰. Nevertheless, migratory flow is not decreased.

Investments in deterrence measures aimed to discourage irregular entries and campaign of systematic collective expulsions of potential asylum seekers to Turkey - explicitly prohibited under Greek, EU and international law - documented by UNCHR¹⁴¹ and Syrians arrived in mass on inflatable boat from Turkey to the touristic island of Kos, about 1.500 individuals in a couple of weeks. While waiting for their applications to be processed, they sleep roughly in the streets or in makeshift refugee camps¹⁴² annoying British tourists.

Actually we can observe how the top five nationalities of asylum applicants in 2014 (Pakistan, Afghanistan, Albania, Bangladesh, Syria) do not coincide with the main nationalities of arrivals¹⁴³, a circumstance that confirms how many arrivals in Greece choose not to apply there for asylum, sometimes continuing their journey to other EU countries. Several factors cooped to make Greece "unsafe" for refugees and asylum seekers, as was declared in 2011 ECtHR, in *M.S.S. vs Belgium and Greece* judgment,¹⁴⁴ i.e. the incapacity of Hellenic government to face the conspicuous and constant number of arrivals of people needing international protection, the beginning of the economic crisis, and the consequently reduction of public resources for satisfying 'basic subsistence needs' and, finally, insufficient funds received for this purpose by EU. The main issues underlined in *M.S.S. vs Belgium and Greece* may be summarized as follows:

¹³⁹ electronic surveillance system such as thermal cameras, live scans for fingerprinting, helicopters, police patrol vehicles etc. items purchased thanks to the funds given by the European Commission, Amnesty International, *"The human cost of Fortress Europe, human rights violations against migrants and refugee at Europe's borders"*, p. 12

¹⁴⁰ Poseidon Land and Sea Operation, see Amnesty International, *"Greece frontier of hope and fear, migrants and refugee pushed back at Europe's Border"*, 2014, p. 26.

¹⁴¹ UNHCR, *"Greece as a country of asylum Observation on the current situation of asylum in Greece"*, December 2014, p. 7, available at www.refworld.org/docid/54cb3af34.html

¹⁴² Elaine O Flynn, *"And still they come: Syrian refugees take dinghies to make the dangerous journey from Turkey to holiday isle of Kos"*, Mailonline, published 31 May 2015, <http://www.dailymail.co.uk/news/article-3104680/And-come-Syrian-refugees-dinghies-make-dangerous-journey-Turkey-holiday-isle-Kos.html>, accessed 4 June 2015.

¹⁴³ UNHCR, *ibidem*, p. 5

¹⁴⁴ *M.S.S. vs Belgium and Greece* [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050#{\"itemid\":\[\"001-103050\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050#{\)

1. Systematic practice of detaining asylum seekers in appalling conditions¹⁴⁵ in detention centres or police stations;
2. No support by the government for guaranteeing the basic needs of refugees and asylum seekers, leading them to a miserable life at margin of society (homelessness, difficulty in finding food, no access to sanitary facilities);
3. Objective obstacles in accessing to the asylum procedure. That is happening due to the lack of information on the possibility of applying for international protection, to the inaccessibility to competent offices for registering asylum application, being the offices overcrowded and suffering of deficiencies in the working time (applications could be submitted only once a week at that time);
4. Deficiencies in the procedures managed by the police officers responsible of applicants' examination for their lack of training, qualifications and/or competence - which actually resulted in superficial interviews with the applicants, negative decisions worded in a stereotyped manner not supported by references to the countries of origin, neither by legal reasoning - and for lack of interpreters and free legal aid.
5. Ineffective procedure in notifying negative decisions and informing the person concerned on filing an appeal and according to which deadline. This deficiency was particularly problematic in case the applicant didn't have a residential address;
6. An automatic suspensive effect of the appeal to freeze repatriation orders was not foreseen by law, putting asylum seekers at risk of refoulement.
7. Excessive length of the proceedings.
8. Very low rate of success in applying for asylum or other forms of international protection¹⁴⁶.

¹⁴⁵At the time of the sentence in question, the scandalous conditions of detention presented different degrees of gravity depending on the detention facilities, i.e. overcrowding, dirtiness, lack of space, lack of ventilation, little or no possibility to move properly, no place to relax, insufficient mattresses, dirty mattresses, no free access to toilets, inadequate sanitary facilities, no privacy, limited access to care, racist insults and the use of physical violence by guards.

¹⁴⁶ In 2008, the success rate at first instance (proportion of positive decisions in relation to all the decisions taken) was 0.04% for refugee status under the Geneva Convention (eleven people), and 0.06% for humanitarian or subsidiary protection (eighteen people), bearing in mind that the specific year the overall amount of asylum applications reached number 19,880, UNHCR, Observation on Greece as a country of

9. Risk of deportation to countries of origin (through Turkey or directly) for both ones have not yet applied for asylum and registered applicants who have been issued with pink cards.

In execution of this judgement, Greece has launched an in-depth reform for implementing the capacity to ensure a fair and efficient asylum procedure on its territory, the so-called “Greek Action Plan on Asylum and Migration Management”. The reform have been enhanced by various supporters, including the European Commission, the European Asylum Support Office (EASO), and UNHCR, resulting in in the establishment of the new Asylum Service, a First Reception Service and an Appeals Board, through the adoption of the Law 3907/11. In 2013, Greece also transposed the (recast) Qualification Directive (QD) but has not yet transposed the recast) Asylum Procedures Directive (APD) or the (recast) Reception Conditions Directive (RCD)¹⁴⁷.

In the fallowing paragraphs, we intend to analytically examine the various aspects of the Greek asylum system in force and its effectiveness

3.2 Criticalities concerning the first reception service

According to domestic law¹⁴⁸, irregular entries to Greece are a penal offences even tough usually the Public Prosecutor does not proceeds irregular migrants and asylum seekers. The newcomers are immediately transferred to first receptions facilities if there are places available, otherwise they are kept in detention facilities or police stations. The First Reception Service (FRS) was established in 2011 and it is placed under the supervision of the Minister of Public Order and Citizen Protection. It represents an essential part of the Greek Action Plan, as response to the M.S.S. condemnation, with the aim of gradually replace the systemic use of administrative detention when a third country national arrive

asylum, 2009, <http://www.refworld.org/docid/4b4b3fc82.html> While in case an appeal was lodged against a first instance unfavourable decision, the respective success rates were 2.87% (25 people) and 1.26% (11 people). By comparison, in 2008 the average success rate at first instance was 36.2% in five of the six countries which, along with Greece, receive the largest number of applications (France, the United Kingdom, Italy, Sweden and Germany). See UNHCR, “*Global Trends 2008, Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*”, <http://www.unhcr.org/4a375c426.html>

¹⁴⁷ UNHCR, “*Greece as a country of asylum*”, *ibidem*, p. 3.

¹⁴⁸ Art. 83 of Law 3386/2005 as amended by art. 121 of Law 4249/2014, available at http://www.mfa.gr/images/docs/ethnikes_theoriseis/codification_of_legislation_en.pdf, accessed on 13th July 2015.

in an irregular manner in Greece. It is composed by a Central Service and regional ones, the latter responsible of establishing and running first reception centres. First reception centres are closed centres¹⁴⁹ where new arrivals are provided with the basic necessities, medical and psychosocial assistance. Here immigrants are identified¹⁵⁰ and registered, while obtaining information on their rights and duties. According to the procedure, personal needs must be assessed to recognise in this first phase vulnerable individuals¹⁵¹. At the end of the process, depending on the case, migrants might be referred to the Asylum Service to register their asylum application or to the Police for deportation procedure.

The Greek Action plan foresaw the creation of eight FRC but to date only one has been created in Fylakio- Orestiada, operating since March 2013, at the land border with Turkey where, ironically, the number of entries significantly dropped down since 2012. Then there are two mobile units operative in the island of Lesbos and Samos, where is converging a massive flux of migrants. The mobile units have reduced capacity to register and screen migrants, so they are focussing almost exclusively on registration of unaccompanied and separated children. All the others are processed by the police that operates quickly, and thus summarily, with the result that many mistakes are made and persons with specific needs are not properly identified or nationalities are not correctly registered¹⁵².

Even though the 50% of new arrivals disembark in Chios or other Dodecanese islands first receptions centres have not been established yet there, creating serious humanitarian challenges for the lack of appropriate structures where to host people¹⁵³. As a

¹⁴⁹ People are not allowed to leave without permission and the centre is secured with barbed wire and permanently guarded by the Hellenic Police.

¹⁵⁰ It is usually used the term “screening” to mean identify the country of origin.

¹⁵¹ According to national law (art. 11 of Law n. 3907/2011, vulnerable groups are: unaccompanied children, people with disabilities or suffering from incurable diseases, elderly persons; pregnant women or women having recently given birth, single parent with children, victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation and victims of trafficking.

¹⁵² UNHCR noticed that Palestinians coming from Syria sometimes are registered as Syrian, sometimes as Palestinian nationals, sometime as stateless, *ibidem* p. 11

¹⁵³ Nowadays, in Kos, where there is no reception facility, police was taking migrants and asylum seekers to an abandoned hotel with makeshift beds, limited running water, and no electricity, while others were hosted in tents provided by Doctors without Borders. Finally others were left on the streets, where British tourists seeking relaxation and fun were complaining about being disturbed by their views. HRW dispatch on 28 May 2015, <http://www.hrw.org/news/2015/05/28/dispatches-ugly-truth-behind-british-tourists-ruined-holidays-greece>

consequence, immigrants are detained in police cells, port facilities or other temporary locations, for an amount of time that can range from few hours to several days. Authorities are unable to provide enough food and assistance so, to reduce the pressure, they often release people without finalizing the reception procedure and properly determine nationalities and specific needs. After release, these persons are left to look after themselves without receiving any kind of support.

At the end of the first reception procedure, even if migrants wish to apply for asylum or they have lodged a demand, are usually transferred in pre removal detention centres and deprived of their liberty until the registration of their application is completed. Imprisonment is grounded in a deportation order that is automatically issued by the competent authorities.

In Evros region the pre-removal centre is adjacent to first reception centre, making instantaneous the transfer to one place to the other, while in the islands, as we have mentioned before, the limited detention capacity of police stations or Hellenic Coast Guards premises guarantee migrants to be released. In all cases, unaccompanied children are transferred to specific reception facilities, even though UNCHR documented many cases of children not identified as such and detained like adults, or considered to be adult by mistake, released and left completely alone¹⁵⁴. Vulnerable individuals are usually released, as Syrians since April 2013. In the case of Syrians in particular, once verified the nationality, the deportation order is suspended for 6 months and they are almost instantly released from detention, a procedure applied also to Palestinians.

In conclusion, the most evident criticality of the FR system, resides on insufficient numbers of structures - being only one, plus 2 mobile units -and not well distributed across the territory. That creates a persistent state of humanitarian emergency at the main entry points, as immigrants have no decent accommodations as guarantee of their human dignity. Moreover, the existing reception centres are employing an insufficient number of employees in proportion to the number of daily arrivals. In this respect, again the police plays a fundamental role in screening the new arrivals, in order to support the reception

¹⁵⁴ UNHCR, *"Greece as a country of asylum"*, ibidem, p. 13

service staff that creates the prerequisite to mistakes in identification and evaluation of elements of vulnerability, as police officers are not adequately trained and skilled.

In addition, after the completion of the first reception procedure, in reception centres or, lacking them, in police stations, another issue has been noticed: all asylum seekers – with the only exception of Syrians, minors and vulnerable individuals - are hit by a deportation order and deprived of their liberty, by default. In addition, detention lasts for a length of time that goes from the submission of the asylum demand to its registration, enduring several months, because of the considerable backlog of the Asylum Service¹⁵⁵. That occurs in total disregard with recommendations given by UNHCR in its guidelines, according to which detention of asylum seekers can only be exceptionally applied, when is proved to be necessary, reasonable and proportionate to a legitimate purpose and when alternative measures are proved to be not possible¹⁵⁶.

3.3 Obstacles in accessing asylum procedure

Access to the asylum procedure and its quality were considered to be amongst the main deficiencies of the Greek asylum system before the reform¹⁵⁷ and the new asylum system, adopted with the Law 3907/11, started operating only on 7th June 2013. The most meaningful innovation introduced by the reform is that registration, examination and first instance decision-making of asylum applications are under the jurisdiction of an independent and civil service, and no longer managed by the police. Under the New Procedure, applications for international protection are received and registered by the Asylum Service, composed of the Central Asylum Service, situated in Athens and 5 Regional Asylum Offices (RAOs), and 4 mobile Units around Greece

The law 3907/2011 planned the creation of six more RAOs , not yet provided to date.

Every RAO has its own territorial jurisdiction¹⁵⁸, while the RAO of Attica, in Athens, has territorial jurisdiction for all locations in Greece that are not under the jurisdiction of the

¹⁵⁵ See paragraph 2.3

¹⁵⁶ UNHCR, *Detention Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention*, 2012, guidelines 4.1,4.2,4.3, available at <http://www.refworld.org/pdfid/503489533b8.pdf>, accessed on 15th June 2015.

¹⁵⁷ UNHCR, *Greece as a country of asylum*, ibidem p. 16

¹⁵⁸ The RAO of Northern Evros (Evros); RAO of Southern Evros (Alexandroupoli); RAO of Lesbos; RAO of Rhodes; RAO of Attica; The Asylum Unit of Amygdaleza; The Asylum Unit of Thessaloniki and Patra. The

other Asylum offices, so applications for international protection may be registered in Athens from all over the country.

Despite this effort in the creating several points across the country where to lodge an asylum application, problems in registration and tricky access to asylum procedure are still suffered by asylum applicants¹⁵⁹. One of these problems is represented by the required physical presence of the asylum seeker before the authorities at the time of the filing of an asylum claim, as domestic law does not envisage applications by proxy. This praxis creates complications anytime a person files an asylum demand to a non-competent authority, because until he manages to appear in person before the competent office to amend the irregularity and have his claim officially registered, he is not protected from detention and subsequent deportation¹⁶⁰. Another issue is given by the backlog of the RAO of Attica caused by the fact that it is understaffed and, at the same time, it receives a disproportionate amount of applications, as asylum seekers clearly do not want to apply in the regional offices. In 2014, the number of arrests at the Greek –Turkish line were massive, while only a very small number of claims were registered in RAOs having jurisdiction in this area, despite asylum seekers were properly and systematically informed of their rights¹⁶¹. That happens because many people could not want to remain in Greece, wishing to move elsewhere in Europe or prefer to present themselves to Attica RAO, in Athens, where by the way, the registration is quite problematic. In fact, the RAO of Athens receives the vast majority of applications for international protection in Greece¹⁶². Actually, the Asylum Service estimates that from 200 to 250 people queue every day in front of its office for the registrations, while it has the capacity to register an

authorities competent to receive and register asylum applications under the Old Procedure were basically Police Directorates. These authorities still examine applications lodged before 7 June 2013. See, Aida, Country report, updated to April 2015, p. 20, available at <http://www.asylumineurope.org/reports/country/greece>, accessed on 30th June., 2015

¹⁵⁹ Statement released by UNHCR, “*Observations on the current situation in Greece, Request for dissemination to the Committee of Ministers in the context of the supervision of the execution of the MSS v. Belgium and Greece judgment*”, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2680339&SecMode=1&DocId=2232182&Usage=2>;

¹⁶⁰ AIDA asylum information data base, *National country report, Greece*, updated to April 2015, p. 23, available at <http://www.asylumineurope.org/reports/country/greece>, accessed on 2nd July 2015.

¹⁶¹ UNHCR, “*Greece as a Country of asylum*”, 2014, *ibidem* p. 16

¹⁶² During the first 8 months of 2014 was responsible of 68% of all registrations of applications, UNHCR *ibidem*, p. 17

overall of 150 demands per week, including the ones submitted by aliens in pre-removal detention¹⁶³. Usually at 7 o'clock in the morning, an employee of the Service choose 30 persons at maximum - on the basis of the availability of the daily changing and limited pool of interpreters - from the queue who will have access to the office. But to date, the eligible persons per day are further reduced, as on Monday 25 May 2015 the Greek Asylum Service announced that: "the Regional Asylum Office of Attica, from that day until further notice would attend to a reduced number of people due to lack of personnel"¹⁶⁴. The ones who have no access to offices do not receive any documents proving their attempt to apply for asylum and their status as irregular migrants puts them at a risk of being arrested by the police in the street and subsequently deported.

In addition, there is another element of concern. Access to the asylum procedure for detainees subject to removal procedures is not guaranteed either. A detainee having expressed his or her will to apply for asylum must wait for months in order to see his or her application registered, again for the insufficient capacity of the Asylum Service¹⁶⁵. Several measures were taken to obviate the issue with the aim of making the access to the service most effective, such as the introduction of priority lines for individuals with specific needs and unaccompanied and separated children, the implementation of a fast-track procedure for Syrians and the possibility to schedule a registration appointment via Skype for those who come from remote areas. In the same spirit, the Asylum Service announced in December 2014 a weekly schedule defining the availability of translators for each language for registration to ensure that prospective applicants will not queue before the RAO on the days when translators for their language are not available¹⁶⁶. However, all these attempts have shown not to be enough. For ensuring a wider and real access to asylum procedure, EASO proposed to increase the current number of total employees of the Asylum Service and the number of Regional Asylum Offices, as

¹⁶³ On mid May 2015 some Syrians were still assembling and protesting outside the Regional Asylum Office in Attica for having been waiting for months to submit their application, queuing in front of the Office and unsuccessfully trying to book an appointment via skype for the registration of their claim. - See more at: <http://www.asylumineurope.org/news/15-05-2015/greece-syrian-refugees-protesting-outside-asylum-service#sthash.CMmdUBkC.dpuf>.

¹⁶⁴ <http://www.asylumineurope.org/news/26-05-2015/greece-asylum-service-reduces-operations-athens-due-staff-shortage>

¹⁶⁵ Aida, *ibidem*, p.25

¹⁶⁶ Aida, *ibidem*, p.15

foreseen in Law 3907/2011. In particular, it should be advisable to open one unit in Thessaloniki, where a RAO for persons not detained is not yet in place, thereby forcing applicants to register in Athens¹⁶⁷.

For this significant challenge in accessing the competent office and registering their asylum claim, many people remain in a status of irregularity and are placed in pre-removal detention¹⁶⁸. And even if it is possible to lodge a demand for international protection from any detention centre, as we have already underlined in the previous paragraph, the registration might take several months unduly prolonging the length of deprivation of liberty.

It is extremely important to avoid that persons seeking international protection remain for a considerable length of time without registering their claim, as in the meanwhile they might be at risk of removal to countries of transit or origin, becoming victim of refoulment.

Having said that, in reality, it is necessary mentioning also another major obstacle in accessing the asylum procedure that is the systematic practice of informal forced returns (push-backs), faced by a large number of third-country nationals, taking place from the Greek territorial borders and the Greek islands and largely documented by NGOs and UNHCR¹⁶⁹. The vast majority of those affected by pushbacks are Syrians, Afghans, Somalis and Eritreans, *prima facie* refugee who, as a consequence, are prevented from exercising their right of asylum. This practice therefore results in a breach of the principle of non-refoulment, a norm of international customary law and a cornerstone of international refugee protection.

¹⁶⁷ Aida, *ibidem* p. 14.

¹⁶⁸ That is what happens in, the Regional Asylum Office for Northern Evros, which is located on the premises of the First Reception Centre. As it is not able to register the asylum claims of the majority of people who express their wish to apply for international protection within 15 or 25 days – the maximum period that people can spend in the First Reception Centre, the ones who couldn't register their applications, are considered 'irregular migrants' and are referred by the Director of the First Reception Centre to the Fylakio Detention Centre. Once the asylum applications is registered, the Regional Asylum Office systematically issues a recommendation to the Hellenic Police on the necessity to detain (or continue the detention of) persons applying for international protection, assuming that detention facilitates the speedy completion of the asylum procedure. See, ECRE report of visit to Fylakio's detention centre (15 th March 2015) available at <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/1003-ecre-visit-to-fylakios-first-reception-centre-shows-asylum-seekers-stuck-in-detention-carrousel-.html>

¹⁶⁹ Actually it is only suspected but not proved, the participation of FRONTEX guest officers in push-backs and other abuses carried out at the Greek-Turkish boundary. See Amnesty International, "Fortress Europe", *ibidem*, p. 20.

A young man interviewed in Patras, on 29th April 2015, allegedly Syrian national, reported such a kind of experience, stating an asylum seeker is not “safe” from expulsions unless he reaches Thessaloniki. Managing to cross the land boundary and then walking for 7 days in Greek territory (170 kilometres), he was caught by the Police upon arrival in a village, after entering a drugstore to buy food¹⁷⁰. He was detained for 1 day in the police station without food or water, but only one coffee. He was not officially registered, nor asked any personal details and, finally, he was handed over, together with other refugees, to special police forces, particularly brutal. According his witness, they were wearing Greek uniforms but were not speaking Greek (supposedly were German speakers) and their faces were covered. They were brought to the bridge over the river Evros at the Turkish line and abandoned there, even though he had expressed the wish to apply for asylum.

3.4 Other major shortcomings of the current asylum system: second line reception; administrative detention of undocumented third country nationals; integration policy; treatment of unaccompanied and separated children (UASC).

Reception conditions are a “major shortcoming” in the Greek asylum procedure and “no significant progress has been achieved” to date, in the opinion of UNCHR ¹⁷¹. In this frame, accommodation is a key element when the State does not mainstream welfare or does not granted allowances for asylum seekers, like in the instance case. Nevertheless, shortage of places in reception centres or apartments in relation to the overall number of asylum seekers is a long-standing issue in Greece and charitable organisations cannot even replace the State by supplying accommodation to irregular migrants who suffer from homelessness, as it is considered a crime. In October 2014 available places were only 1.063, 743 for adults and families and 320 for UASAC, plus 12 places in Athens for persons with serious mental health problems. The government committed himself to increase the number of places up to 2.500 within the end of the previous year; however it has not lived up the promise. Amongst the asylum seekers, family, UASAC, single parents are prioritized in the assignment of a place to live by the National Centre for

¹⁷⁰ The person concerned was not able to remember the name of the village.

¹⁷¹ UNHCR, “Greece as a country of asylum”, 2014, ibidem p. 19

Social Solidarity, responsible for reception facilities since 2011. Single adults have limited chances to get a place to stay, as well as persons with disabilities or suffering from mental infirmities or chronic diseases. However, even the ones who have the chance of getting a shelter have to wait for pretty long time period, ranging from 5 to 7 months¹⁷². The possibility of overcoming the lack of available shelters is strictly linked with the access to the labour market, a circumstance that might strengthen asylum seekers' resilience. In this respect, asylum seekers suffer plenty of restrictions limiting their access to the labour market, even though the law¹⁷³ establishes that they in Greece have the right to work immediately after the application's registration, with the achievement of the so called "pink card". Actually, the competent authority can issue a temporary work permit in favour of an asylum seekers after making sure the job is of no interest for "a Greek national, a citizen of the European Union, a person with refugee status, a person of Greek origin, and so on"¹⁷⁴. The priority given to Greek and EU citizens makes extremely difficult for asylum seekers to find a regular employment¹⁷⁵, exposing them to exploitation. In addition, asylum seekers without a work permit are deprived of a series of basic social rights, i.e. access to unemployment allowance, EU funded programmes for access to work market and other benefits, which in turn subject them to further poverty. In conclusion, shortage in the accommodation system and lack of job opportunities are amongst the main deficiencies that frequently lead to destitution and homelessness of people seeking international protection. Forced to sleep in public parks, abandoned buildings or squalid and overcrowded apartments sometimes without sanitary facilities, heating, electricity, running water, asylum seekers are exposed to racist attacks by police and extremist groups. They look for food in soup kitchens or in the rubbish bins or buy staple foodstuff with the little money earned through informal and occasional jobs. This

¹⁷² Data related to the year 2013 reported by UNCHR, "Greece as a country of asylum", 2014, *ibidem* p. 20

¹⁷³ Article 4 paragraph 1 (c) of the Presidential Decree 189/1998, available at <http://www.asylumlawdatabase.eu/en/national-and-other-legislation/greece-presidential-decree-no-1891998>, accessed on 13th July 2015.

¹⁷⁴ Article 4 paragraphs 2 and 3 of the Presidential Decree 189/1998

¹⁷⁵ Exploitation of foreigners in Manolada farms, for example is a well known phenomenon. See Yannis Baboulas, "Greece's modern slavery: lessons from Manolada", *New Statesman*, 19th April 2013, <http://www.newstatesman.com/austerity-and-its-discontents/2013/04/greeces-modern-slavery-lessons-manolada>, accessed on 2nd July 2015.

miserable life style often ends up deteriorating their psychologically and physically health conditions and even if the applicants have the right to have access to hospital and to be given medical care for free¹⁷⁶, if financially indigent and totally uninsured¹⁷⁷, anyway strict bureaucratic procedures can be an obstacle for surgeries and provision of sanitary material¹⁷⁸.

At the time of the writing of this paper¹⁷⁹, eight homeless Syrian nationals were sleeping in a flowerbed of the central square of Omonia, Athens. They reported of fearing about being robbed by drug addicted, who normally attend that area, and harassed by the police. All of them arrived to Greece by boat, passing by the island of Chios, and not applied yet for asylum, while benefitting of a six months suspension of a deportation order. In fact, in case of postponement of removal, the law foresees that the recipient of the order should be provided with accommodation by state authorities if unemployed and have also to be guaranteed access to health care. Nevertheless, the law envisaging these rights has not been yet followed by the due regulatory act¹⁸⁰ with the consequences described above of people sleeping in the street.

Another issue of particular concern is the systematic use of administrative detention of immigrants and conditions of living in in pre-removal detention centres.

When aliens are detected in the territory or at the borders, without residence permit or any other document authorizing them to enter or stay in the country, they are systematically subject to administrative detention, without any individual assessment of their personal case. The detention practice is not follow in few exceptions, i.e. regarding to Syrians nationals, who are promptly released with the suspension of the deportation order, and to the ones who disembark on the islands because of limited places in detention facilities, regardless of their nationality.

¹⁷⁶ First aid is also free.

¹⁷⁷ Article 14 Presidential Decree 220/07, available at <http://www.asylumineurope.org/reports/country/greece/reception-conditions/access-and-forms-reception-conditions/provision#sthash.87hf6kK8.dpuf>, accessed on 13th June 2015.

¹⁷⁸ Circular of the Ministry of Health 70456/25.07.2013, mentioned by UNHCR, "Greece as a country of asylum", *ibidem* p. 21

¹⁷⁹ End of April 2015.

¹⁸⁰ Art. 37, par. 5 of Law 3907/2011, available at: <http://www.refworld.org/docid/4da6ee7e2.html> [accessed 13 July 2015].

This policy, carried out not only with the purpose of identifying individuals and managing removals, but also as a deterrent to discourage further arrivals and foster voluntary returns, is rising several concerns. Firstly, categories who should not be detained are deprived of liberty, i.e. asylum seekers unable to lodge their demands for limited access to competent offices, UASC, vulnerable groups like survivors of torture, persons whose returns to country of origin is not feasible, such as Eritreans etc.). In particular, as we have already mentioned, asylum seekers are kept in detention for several months, until applications are registered and their interviews are completed by the Asylum Service, an action that can take some months because of the high number of demands and limited capacity of the understaffed Service. This praxis is totally in contrast with UNHCR's directives stating that detention of asylum seekers should be "a measure of last resort, for the shortest possible period and in full compliance with international and EU law"¹⁸¹. Another issue is represented by the absence of a periodic ex officio judicial review of the necessity in prolonging the detention duration, which has been lately admitted up to 18 months, the maximum time length permitted by law¹⁸² (even though in some cases detention lasts longer).

In addition, conditions of detention centres do not meet minimum standards of hygiene¹⁸³, with absence or limited medical care, persistent overcrowding, poor diet, lack of hygienic services and basic facilities, absence of heating and cooling system, plus the violent

¹⁸¹ See UNHCR, *Detention Guidelines guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention*, 2012, available at <http://www.refworld.org/docid/503489533b8.html> [accessed 2 July 2015].

¹⁸² Return Directive and domestic law.

¹⁸³ Just to make an example of how currently conditions in the Fylakio Detention Centre are, I would like to report some statements pronounced by ECRE, following a fact finding mission conducted in December 2014: "conditions are extremely bad, in particular as migrants may be detained for prolonged periods of time up to 18 months. The dormitories in Fylakio Detention Centre are large cells, behind bars, containing between 50 to 60 bunk beds, access to the courtyard of the detention centre is limited to 3 hours a day, weather permitting. The ECRE delegation found the place to be cold and damp. There is no doctor present in the detention centre and detainees only receive paracetamol, irrespective of any medical complaint they have. Although women with small children and babies are regularly detained there, including at the time of the ECRE visit, the detention centre neither provides baby food nor baby milk. Access to free legal assistance is very limited as there is only one lawyer, deployed by the Greek Council for Refugees, which is clearly insufficient to meet the needs of the persons wishing to challenge either their detention or a negative decision relating to their asylum application". Furthermore "The lack of places in suitable reception accommodation for vulnerable asylum seekers and in particular unaccompanied children is extremely problematic as it may result in the transfer of unaccompanied children to detention centres, including to Fylakio Detention Centre" See more at: <http://www.asylumineurope.org/news/02-04-2015/ecre-publishes-report-visit-fylakio-greece#sthash.1DzzAXL8.dpuf>

attitude of the guards towards the detainees¹⁸⁴. The NGO “Doctors without Borders” in its report *Invisible suffering* (2014)¹⁸⁵ has highlighted how prolonged detentions in sub-standards conditions endanger physical and mental health of detainees. In Amygdaleza, a detention centre for migrants and asylum seekers located north of Athens, several cases of suicide were recorded in 2014 and 2015, apparently linked to the awful living conditions, generating a sense of frustration and hopelessness among detainees¹⁸⁶.

For the reasons explained above, in recent years, the ECtHR has found that detention conditions in Greece amounted to inhuman or degrading treatment and therefore violated Article 3 ECHR with respect to detention centres¹⁸⁷.

Finally, lacking places in proper detention centres, many third-country nationals are held in police stations or other infrastructures linked to the Port or Border Police offices, where

¹⁸⁴ A Syrian refugee interviewed on 1st, May 2015, who spent fifteen days in Corinth centre in March 2013, told that violence perpetrated by the guard was very frequent and detainees were beaten up for trivial reasons. He saw people being hospitalized with broken nose or legs.

¹⁸⁵ Available at, <http://www.doctorswithoutborders.org/news-stories/special-report/invisible-suffering-migrants-detained-greece>, accessed on 5th July 2015.

¹⁸⁶ Meltingpot redazione, “Grecia centro di detenzione di Amygdaleza - la protesta dei migranti: Freedom we die here” Il Governo Syriza si impegna per la sua chiusura in 100 giorni e per la chiusura di tutti i centri”, 17th February 2015, http://www.meltingpot.org/Grecia-centro-di-detenzione-di-Amygdaleza-La-protesta-dei.html#.VZUIxdEw_IU [consulted on 2nd July 2015]

¹⁸⁷ See, for instance The latest ECtHR’s judgement on the topic, delivered in *Mahammad and Others v Greece* (available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150297>, accessed on the 10th July 2015) on the 15th January 2015 refers to Fylakio centre (see footnote number 181). The Court stated that 14 foreign nationals detained in that Greek centre were held in conditions amounting to inhuman and degrading treatment, under Article 3 of the European Convention on Human Rights (ECHR). The Court further found there to have been a violation of the right to a speedy review of the legality of their detention before a legal body. This one is the latest of a long series of recent rulings delivered by the ECtHR repeatedly condemning the inhuman and degrading conditions at detention centres in Greece. The Court came to similar conclusions in the cases of *H.H. c. Greece* ruled on 9th January 2015, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146777>, accessed on 10th July 2015 and *F.H. v. Greece* available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\"fulltext\":\[\"Tatishvili v. Greece \(no. 26452/11\)*\"\],\"languageisocode\":\[\"FRA\"\],\"itemid\":\[null\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\) accessed on 7th July 2015}. In the case of *F.H. v. Greece*, in particular, the ECtHR held that the applicant, an Iranian national, was detained in overcrowded and unhygienic conditions before ending up on the streets without any material support and no access to health care. The ECtHR ruled that both the detention conditions and the living conditions after the applicant’s release constituted degrading treatment Furthermore, the Court held that Article 13 (right to an effective remedy) read in conjunction with Article 3 was further breached given that F.H. had been given no effective remedy by which to complain of his detention conditions. While in *Tatishvili v. Greece* case, - available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\"itemid\":\[\"001-145785\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\) accessed on the 7th July 2015 - the Court took into particular consideration the length that the applicant had been detained, 10 months in Petrou Ralli detention centre, and the over-crowding in both Thessaloniki immigration police and the Attica immigration department (Petrou Ralli). The Court noted that centres, including Petrou Ralli, were inappropriate for detention purposes of irregular migrants.

the situation is even worst since these buildings are not designed to host people for long time periods¹⁸⁸.

Another serious flaw in the system is represented by difficulties of international protection beneficiaries in integrating in the Greek society.

Due to the absence of an adequate integration policy and to the persistent economic crisis, refugees and beneficiaries of other forms of international protection lead a life at margin of society. As we have already stressed, accommodation and work access are fundamental to integration. Regarding accommodation, in theory asylum seekers have access to second line reception centres, even though there is an enormous gap between the available places and the number of requests, as explained above. But when their status is formally recognized, they have eventually to leave the shelter they have received. As a result, they are at risk of becoming homeless, as social housing or other means of subsistence (i.e. rental subsidies, grants etc.) are not provided by the State to refugees.

On the other hand, refugees and beneficiaries of other form of international protection – similarly to asylum seekers - face concrete obstacles in getting a work permit that would allow them to gain a certain economic stability, together with serious difficulties in participating in the employment programmes, as unable to procure the required documentation, all reasons that condemn many of them to remain unemployed and destitute. Moreover, current austerity measures exclude non-citizens and people who do not reside in the country since long time from enjoyment of fundamental social rights¹⁸⁹. They also face delays in issuance or renewal of the residence permit and convention travel documents, all basic requirements to gain access to other rights. Furthermore, refugees have problems in fulfilling legal requirements to initiate the family reunification, especially because they have to attach official translation of documents (like copies of family members' travel documents and family status certificate) in certain circumstances difficult to obtain. Sometimes, they have also to prove to possess stable and regular

¹⁸⁸ See *AFFAIRE MD c. GRÈCE*, ruled on 13th February 2015, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-147884>, accessed on 10th July 2015. In this case ECtHR found that the detention conditions endured by a Bangladeshi national, Mr Toiabali MD, at the aliens' police department in Thessaloniki amounted to a violation of Article 3 of ECHR, which prohibits inhuman and degrading treatment. The Court also found the Greek authorities to be in violation of the right to a speedy review of the lawfulness of detention.

¹⁸⁹ For example law 4093/2012

resources to sustain the family, an appropriate accommodation and a health insurance for him/herself and family members¹⁹⁰, so making impossible in reality the realization of the right. While the right to reunite with the family is not recognized by law, to beneficiaries of subsidiary protection.

Finally, it is worth making few comments on the situation of the vulnerable category of unaccompanied and separated children that seems to be particularly problematic in Greece. Actually, we can observe they are systematically treated as irregular migrants and therefore detained, without being informed on the reasons of detention and its possible length¹⁹¹, even though, theoretically, they should not be detained at all¹⁹². A significant number of unaccompanied children (whose majority comes from Afghanistan)¹⁹³ that are deployed in special facilities for adolescents all over the territory, abscond for a variety of reason, including worst quality of accommodation, thus remaining without an effective protection and risking to become victims of labour or sexual exploitation.

An age assessment procedure for young people was established for the first time in Greece on October 29th 2013, with a Ministerial Decision of the Ministry of Health (Official Gazette B' 2745/ 29-102013)¹⁹⁴, but in reality, the Greek Council for Refugees has noted

¹⁹⁰ Art. 4 of P.D. 167/2008

¹⁹¹ Aida, asylum information data base, national country report, Greece, updated to July 2014, p. 54, available at <http://www.asylumineurope.org/reports/country/greece>, accessed on 2nd July 2015.

¹⁹² Article 37 of the CRC requires States Parties to ensure that the detention of children be used only as a measure of last resort and for the shortest appropriate period of time. And guidelines 9.2 of UNHCR Detention Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention, 2012, says "As a general rule, unaccompanied or separated children should not be detained. Detention cannot be justified based solely on the fact that the child is unaccompanied or separated, or on the basis of his or her migration or residence status."

¹⁹³ By September 30th, 2014, the national centre for social solidarity received referrals for 1.664 UASC of whom 984 were from Afghanistan, data quoted by UNCHR, Greece as a country of asylum, *ibidem* p. 22

¹⁹⁴ According to the Ministerial Decision," the determination of the age of a child shall be conducted by a team of medical doctors. The macroscopic characteristics of the child such physical appearance shall constitute the first indicators of age assessment. If a decision cannot be taken based on these characteristics, a psychologist and a social worker shall examine the cognitive, behavioural and psychological development of the person. Only as a last resort, the Ministerial Decision states, shall the examinee be referred to a state medical institution for medical examinations by means of dental x- rays and x-rays of the left wrist. This is a very positive development since up until now the police officers or the Asylum Service (as the case may have been) could use medical examinations to determine the age of unaccompanied children, but this was not an obligation. The method mostly used was dental x-rays which can be subject to a considerable margin of error and are therefore unreliable. It remains to be seen how the new procedure is implemented, but in any case, the ground is set for a proper age assessment of children". Procedural guarantees related to the age assessment provided in the law include: - the obligation for the child to be properly informed in a language they understand about the medical examinations itself and its consequences, including refusal to

that, despite the provision, the norm is not properly implemented (responsible services, procedures or even the types of appropriate exams are yet to be designated). As a consequence, most children whose age is disputed do not go through an age assessment or some of them even claim to be adults in order to be released faster from detention, avoiding the procedure of age assessment¹⁹⁵,

This dysfunction leads to many children being treated like adults and eventually confined.¹⁹⁶

Protocols concerning a best interest assessment and a best interest determination procedure are not in place to guide public and private institutions and authorities when taking actions affecting unaccompanied children.

In addition, the guardianship mechanism is inadequate, at least at the early stage, as the public prosecutor is appointed by default as temporary guardian of the minor until a permanent one is designated. That implies he has to handle hundreds of cases and is unable to follow properly each assigned minor, lacking the support of a technical staff.

Lastly, issues related to the right to education have been as well risen, with particular reference to the “lack of introductory languages classes or targeted support services” that “undermine the effective enjoyment of this right”¹⁹⁷.

3.5 Racism and xenophobia

Undeniably, Greek society is affected by a penetrating anti-immigrant sentiment, which has spread out from the bottom up to the political and public sphere since the beginning of the economic recession, intensifying the phenomenon of vulnerability and social exclusion of foreigners. The police operation “Xenius Zeus” launched by the former

undergo the tests; - the obligation to receive the consent of the child or their guardians to carry out the examinations; - the guarantee that a negative decision cannot be based solely on refusal to undergo the age assessment - the benefit of the doubt, both pending the results and in case the results are not conclusive. Aida, asylum information data base, national country report, Greece, updated to July 2014, *ibidem*, p. 54

¹⁹⁵ Aida, National country report, Greece, updated to July 2014, *ibidem* p. 54

¹⁹⁶ Aida, National country report, Greece, updated to July 2014, *ibidem* p. 55. See also the affaire Mohammad c. Grèce, December 2014 (available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148635>, accessed on 10th July, in which ECtHR has held that the detention of an unaccompanied child at Feres and Soufli border post for over five months constituted inhumane treatment as well as a violation of the right to liberty and the right to an effective remedy.

¹⁹⁷ Statement contained in UNCHR, Greece as a country of asylum, 2014, *ibidem*, p. 23

government in early August 2012, with the aim of a crackdown against illegal immigration and petty crime in the capital, shows openly this attitude also from the side of institutions. During the operation, ten thousands of people of foreign origins because of their appearance and physical characteristics, were routinely stopped and searched in the streets of Athens. They could also be taken to police stations and arbitrarily confined for long hours, to verify their identity documents and status (racial profiling-based checks). Testimonies collected by HRW that drafted a report on the subject, revealed how they were clearly targeted for their race and ethnicity, in the absence of other objectives criteria¹⁹⁸.

Xenophobic reactions at community level rose anytime the government was about to build new reception facilities in certain neighbourhoods, grounded on concerns about public security and increase of criminality,¹⁹⁹. A strong increase in the levels of incitement to racial hatred has been registered, as well, in the country, in the context of public discourse, including from representatives of political parties. Hatred is usually directed against immigrants, but also against Roma people, Jews and Muslims, generating problematic that are not adequately addressed, conjuring a widespread impunity for acts of hate speech and insufficient official condemnation²⁰⁰. The overall result is that racist stereotypes are not limited to far-right political parties, but have permeated large parts of society as well as some parts of the Greek Orthodox Church²⁰¹.

Several incidents of racist violence, discrimination and intolerance committed by civilians and by police forces, threatening the protection and physical integrity of forced

¹⁹⁸ See HRW “*Unwelcome Guest, Greek police abuses of migrants in Athens*”, 2013, available at <https://www.hrw.org/report/2013/06/12/unwelcome-guests/greek-police-abuses-migrants-athens>, accessed on 2nd July 2015.

¹⁹⁹ Such as in the case of the construction of a reception centre for UASC in Patras, run by Praksis.

²⁰⁰ ECRI European Commission against racist and intolerance, report on Greece 2014, p.19-20, available at http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/Greece_CBC_en.asp, accessed on 2nd July.

²⁰¹ Just to make a concrete example, mentioned on 18 October 2012, during a plenary session, a Golden Dawn MP referred to migrants in Greece as “sub-humans who have invaded our country, with all kinds of diseases”, but that statement was not followed by a strong reaction by parliament. See. ECRI, *ibidem*, p-18.

and economic migrants²⁰², have been recorded since mid-2011 by the Racist Violence Recording Network, an umbrella of civil society and grassroots organizations coordinated by UNCHR and the National Commission for Human Rights. The RVRN presented its latest annual report on 06th May 2015 with the following outcomes. During the period of January – December 2014, the RVRN recorded 81 incidents of racist violence with more than 100 victims. In 46 incidents, immigrants or refugees were targeted because of their ethnic origin, skin color and/or any other relevant characteristic revealing the fact that they were not natives. 32 incidents were committed against LGBTQI persons, in 3 of these cases the victims were foreigners who were targeted because of their sexual orientation and ethnic origin or skin color. Finally, 3 were anti-Semitic attacks to sacred places and symbols²⁰³. The majority of the incidents against refugees and asylum seekers occurred in public places or on public transportation, resulting in personal injuries combined with verbal abuse, threats, theft and property damage²⁰⁴. The overwhelming majority of the perpetrators are Greek citizens.

Referring to racial attacks against refugees and asylum seekers, two trends are to be stressed. Firstly, the pattern of incidents, consisting in physical assaults by groups of people, reminds the *modus operandi* of extremist groups recorded in previous years. Even though the perpetrators, in their vast majority, do not connect themselves to the Golden Dawn (either directly or indirectly, by their clothes and/or the use of distinctive characteristics)²⁰⁵ or their membership in another organized group, it is quite clear from

²⁰² Among them few resulted in the victim's death. I would mention that in August 2012, when the atmosphere was characterized by Xenios Zeus, two deathly stabbings happened. An Iraqi boy who was only 19 was assaulted outside a Mosque in Athens and stabbed to death. Another one of Indian origin on the 24th August was stabbed, as well, in the heart of the Capital. Read Argiris Panagopoulos "*Per Zeus ad Atene è caccia grossa. Con i neonazisti in parlamento, si moltiplicano le aggressioni razziste. E il governo espelle gli immigrati nel nome del dio dell'accoglienza*", 26th August, 2012, read on http://www.globalproject.info/it/in_movimento/per-zeus-ad-atene-e-caccia-grossa/12145, accessed on 11th May 2015.

²⁰³ RVRN annual report 2014 p.5, available at <http://www.unhcr.gr/1againstracism/en/rvrn-annual-report-2014>, accessed on 2nd July 2015.

²⁰⁴ RVRN ibidem p. 6.

²⁰⁵ Far-right political party, in Greece, entered the Hellenic Parliament the first time in 2012. Described by scholars and media as Neo-Nazi and fascist, racist and xenophobic, as the leadership and its members have openly voiced their hatred of immigrants and Jews on many occasions, praise of Nazism and Hitler, Holocaust denial and antisemitic hate speech. Its leader and founder, Nikolaos Michaloliakos, following an investigation into the stabbing and murder of anti-fascist rapper Pavlos Fyssas in September 2013, was arrested with several other Golden Dawn MPs and members, and held in pre-trial detention, in a high-security prison in Athens, on suspicion of forming a criminal organization that attacked dark-skinned

the description of the attacks that organized groups still operate²⁰⁶. Secondly, the frequent involvement of law enforcement officials is considerably alarming²⁰⁷. Most victims interviewed by RVRN were undocumented migrants and, thus, unwilling to denounce the assault because they would be arrested and deported, so facing possible secondary victimization, or because they do not trust the justice system. Consequently, all this circumstances regrettably lead to the impunity of perpetrators. Actually, in ECRI's report, we read "fear of arrest and deportation discourages victims of racist violence who do not have a regular residence status from reporting incidents to the police. The negative attitudes of members of the police towards migrants and their unwillingness to investigate cases of racist violence against the latter effectively added to a general atmosphere of impunity"²⁰⁸. Anyway, it should be admitted that several measures have been taken by the Government over the last years, to tackle hate crimes and racist violence, with the creation in 2012 of Special Departments and Offices against racist violence within Hellenic police, that began to operate in 2013²⁰⁹. A Public Prosecutor for the prosecution

immigrants, gay people and political opponents (leftists). Despite these charges and arrests, at the last legislative election that took place in Greece on 25 January 2015, Golden Dawn became the 3rd political force in Greece, winning 17 seats in the Parliament. Nikolaos Michaloliakos, Golden Dawn's leader, who is now under house arrest after serving the maximum allowable 18 months in pre-trial detention, stayed away from the first hearing held last April and for the second one of 7th May 2015. His absence is being seen as a deliberate attempt to undermine proceedings. The trial is to resume on 12 May 2015. "A full and fair Golden Dawn trial is crucial for Greece, and important for all of Europe," Tad Stahnke, who heads the Washington-based organisation Human Rights First, said. "It is a chance for Greece to use democratic means and the rule of law to hold powerful individuals accountable for a wave of violence targeting the most vulnerable in society."

He added also that "A credible trial will send a powerful signal throughout Europe that, notwithstanding the pressure of economic and migration crises, there will be no impunity for organised racist and political violence intended to corrode respect for democratic values and human rights." See, Paris Ayiomamitis, , "Trial of far-right Golden Dawn leaders starts in Greece" Athens, Monday 20 April 2015, the Guardian, <http://www.theguardian.com/world/2015/apr/20/greece-far-right-golden-dawn-nikos-michaloliakos-trial-start> and Helena Smith, "Golden Dawn leaders' trial adjourned until next week", Athens, 7th May 2015, The guardian, <http://www.theguardian.com/world/2015/may/07/golden-dawn-leaders-resume-trial-greece>, both accessed on 10th May 2015.

²⁰⁶ RVRN *ibidem* p. 8

²⁰⁷ In 2014, 21 incidents were recorded by RVRN, where the perpetrators were either only law enforcement officials or law enforcement officials along with other ones. Out of these, 13 took place in public places, 6 in detention areas (police stations, detention centres) and 2 in an abandoned private place. In most of these cases, the law enforcement officials resorted to unlawful acts and violent practices during the exercise of their duties. These acts constitute arbitrary practices which reflect, in an objective manner, the degrading treatment of victims and the unnecessary overstepping of boundaries during the performance of their duties. RVRN, *ibidem*, p.12.

²⁰⁸ ECRI, *ibidem*.

²⁰⁹ Presidential Decree 132/2012.

of acts of racist violence was appointed in October 2013, and a new legislative provision was adopted, which guarantees a temporary residence permit on humanitarian ground to migrants who report racist violence incidents to the police²¹⁰.

In addition, penalties for crimes committed for racist reasons were harshened²¹¹ through the introduction of a general aggravating circumstance and providing the sentences to be non suspensive. This stimulates police and prosecutors to investigate the existence and the nature of motives behind a criminal behaviour, and judges to take into account this motivations in their decisions. However, it is quite controversial whether these legislative amendments will be sufficient in fighting incidents of racist violence among police forces, in the context of routine operations against third country nationals and without the presence of witnesses²¹². Therefore, the implementation of further measures to combat hate crimes and racist violence through society and among Hellenic Police is backed on by international organizations²¹³. The latter recommend, *inter alia*:

1. Ratification of Protocol 12 to the ECHR.
2. Creation of a Task Force composed of institutions, Ombudsman and National Human Rights Commission and NGOs, enhancing the cooperation between the authorities and civil society, to develop a comprehensive national strategy to combat racism and intolerance.
3. Specific training programs for employees of Police forces.
4. A broad-based public campaign launch by the Greek authorities, to denounce racist attitudes as contrary to Greek values and interests, and to promote an inclusive and multi-cultural approach towards Greek identity.
5. Establishment of a truly independent and effective police complaints mechanism with no connections with the police bodies themselves;
6. The *ex officio* prosecution of all punishable acts committed with racist motivation, as well as the civil claimants' exemption from the fee.

²¹⁰ Joint Ministerial Decision 306.5/2014

²¹¹ L. 4285/2014.

²¹² RVRN stresses that eyewitnesses play an important role. Their presence and peaceful intervention act prohibitively for the perpetrators and protectively for the victim, 2014 annual report, p. 13-

²¹³ ECRI and RVRN.

7. Abstention from prosecution on the grounds of illegal entry and prohibition of arrest and administrative detention of a complaining witness for the period between filing a complaint and the issuance of the special prosecutor's act, provided in JMD 30651/2014 Article 1(1) (b), as well as the witnesses of racist attacks and ensuring of their access to the authorities.

3.6. Positive aspects: recognized improvements in the quality of asylum procedure and encouraging prospective for the future after the latest election. But Greece is still unsafe.

The New Asylum Service, operative since June 2013 within the framework of the Minister of Public Order and Citizens Protection, is now responsible for examining applications for international protection at first instance and for carrying out Dublin procedures, while the Appeals Authority has jurisdiction for examining appeals against rejections by the first instance bodies²¹⁴. However, the applications lodged before 7 June 2013, are still under the old procedure, which means they are processed by police authorities.

Under the new law, the quality of the procedure and the decision making have been significantly improved and now are considered to be in compliance with minimum standards set forth in international, EU and national legislation²¹⁵. In particular, it is relevant to highlight that the Asylum Service personnel (especially caseworkers) are nowadays adequately prepared and trained, thanks to the constant technical support of EASO²¹⁶ and UNCHR, and a COI (Country of Origin Unit) has been established, partially staffed by UNHCR affiliates and partly by members of the Service, while asylum interviews are conducted with the assistance of qualified interpreters provided by METAction. Providing an accommodation according the old procedure was (and still is) a big issue, as many applicants were homeless and so incapable of receiving a notification of a negative decision in regards of their application. This point is crucial as delivery

²¹⁴ Law 3907/2011.

²¹⁵ UNCHR, Greece as a country of asylum, *ibidem*, p. 25

²¹⁶ Easo is an agency of the European Union that plays a key role in the concrete development of the Common European Asylum System. It was established with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need. EASO acts as a center of expertise on asylum. It also provides support to Member States whose asylum and reception systems are under particular pressure. <https://easo.europa.eu/>

failures are directly connected with the impossibility of resorting an appeal. The New Asylum Service makes a real effort to tackle this problem, calling the asylum seeker by phone and asking to present themselves to the Service. When the person cannot be reached by phone, the Asylum Service notifies the decision when he appears for the renewal of his card²¹⁷.

The applicants under the New Procedure receive by the Asylum Service a new asylum seeker's card, valid for 4 months, with the exception of asylum seekers coming from Albania, Bangladesh, Egypt, Georgia and Pakistan, whose card is valid for 3 months²¹⁸. The card is renewed until the issuance of the final decision on the asylum application²¹⁹. The processing time for adjudicating applications has been speeded: the average time from the registration of an application in one of the RAOs to the issuance of a first instance decision is 90 days, while the average time from the appeal to the decision is 49 days and 100 days is the average time to get a first or a second instance decision, if the application or appeal is lodge from a pre-removal detention centre. The improvement in decision-making process have had also a positive impact on protection rate, as under the old procedure first instance protection rate ranged between 0.86% and 2.05% (from 2005 to 2014), while now under the new procedure the first instance recognition rate is 17.2% per refugee status and 7.65% per subsidiary protection, totalling 24,85% for the year 2014²²⁰. However, the overall rejection rate is still higher than in other EU countries, but it should be stressed that protection rate for Syrians is 99.5 %, for Eritreans 79.2%, for Somalis 66%, for Afghani 61.9% and for Ethiopians 61.4%²²¹. Moreover, the appeal against a rejection at first instance before the Appeals Boards of the old procedure or the Appeals Authority of the New Procedure has automatic suspensive effect. The appeal stage has distinctive features too: a negative decision issued at this stage can be challenged before the Administrative Court. The latter appeal has no automatic suspensive effect but the appellant can demand the application of an interim measures to

²¹⁷ Aida, national country report, 2014, *ibidem*, p. 26.

²¹⁸ Aida, National country report, 2014, *ibidem*, p. 26

²¹⁹ Aida, National country report, 2014, p 26

²²⁰ official data reported by UNHCR, Greece as a country of asylum, *ibidem* m, *ibidem*, p. 6

²²¹ Official data reported by UNHCR referring up to August 2014, Greece as a country of asylum p. 26

suspend the deportation and it is at the discretion of the court to decide on granting it or not.

In spite of these positive improvements, there are still some negative notes to take into account. Firstly, a considerable backlog of appeal cases, pending under the old procedure (including cases commenced more than 7 years ago) will be dealt by the Police, whose capacity has often been questioned, also in the present essay. Secondly, asylum seekers not always have access to free legal assistance, both at first instance and in the appeal phase, as there are a number of significant barriers in having access to it, pretty ironically being the request for legal aid in itself an application procedure before a court²²². Accordingly, in order to submit an application which must be signed by a lawyer, the asylum seeker need to pay a lawyer or find one willing to file the legal aid application pro bono²²³. Even where the legal aid request is submitted and deemed successful, lawyers are appointed by the Bar Association and the applicant has no choice over his or her legal representative. In addition, the low level and great delays in remuneration awarded to the lawyers, is as a severe disincentive for legal professionals to take up asylum cases.

In the end, legal assistance, according to their capacity is provided by NGOs that now are facing serious funding difficulties.

A part from better quality of the asylum procedure and of the decisions issued at first instance, as well as, in the appeal phase, it seems that in the near future, thanks to the newly elected executive, there will be room for further positive improvements in the Greek asylum system.

Tsipras's government, in charge from January 2015, is definitely showing a new attitude towards strangers. Immigrants are not considered anymore a threat to national security but victims of international wars, who must be protected and integrated in the society to make them productive members of the community and not a burden anymore²²⁴.

Syriza's program is pretty ambitious and it provides primarily to face immediately the heavy backlog of asylum cases, prioritizing vulnerable individuals. The programme intends then to arrest the security forces' alleged practice of forcing migrants arriving

²²² Aida, national report 2015 ibidem p. 42

²²³ Aida, national report 2015 ibidem p. 42

²²⁴ Preethi Nallu, "The real winners of Greek election", 26th January 2015, <http://www.refworld.org/docid/54c89fc94.html> [accessed 21 April 2015]

from Turkey back across land and marine borders²²⁵, a purpose that represent a great step forward, compared to the previous government that simply denied this practice.

In mid-February 2015, the new Government, after the deaths of 4 detainees, two of which were suicides committed in Amigdaleza centre, ²²⁶ has also committed itself to close several pre removal detention centres, making them to operate as open infrastructures and to reduce the use of immigration detention, revoking a previous Ministerial Decision that was allowing indefinite detention of migrants beyond 18 months. At the same time, the government engaged in increasing the number of the available shelters for asylum seekers and refugees, bringing the number of places up to 5.000, with the aim of reducing the issue of homelessness amongst them. Finally, it plans to renegotiate the Dublin agreement that impose to asylum seekers to seek protection in the first country they arrive in. As stressed by many observers, this provision puts a disproportionate percentage of cases upon the shoulders of southern European countries, such as Greece, Italy and Spain which are located at the external borders of the EU.

The harsh economic crisis faced nowadays by Greece makes the country not adequately equipped to cope with asylum seekers, and in needs of support by the others EU members in dealing with the issue. What the Hellenic government wishes is external aid in processing asylum cases and in relocating asylum seekers to other member states, on the basis of 2001 EU Directive on Displacement, that allows the voluntary transfer of refugees between EU states. Nevertheless, it is foreseeable that European northern countries are unlikely to be open to accept such kind of proposal, making the achievement of this goal particularly delicate, needing time, patience and great diplomatic efforts. Actually, only after few months since the new executive's settlement, it is rather difficult to determine if the situation for refugees and asylum seekers living in Greece it is about to change in the near future. To date, despite the planned reform and the concrete improvements in the asylum system, Greece is still an inhospitable place for people in need of international protection and UNHCR continues to advise Governments to refrain from returning there asylum-seekers.

²²⁵, Preethi Nallu, *ibidem*.

²²⁶ See more at: <http://www.asylumineurope.org/news/15-05-2015/aida-update-greece%E2%80%99s-commitment-change-detention-policy-treatment-syrian-applicants#sthash.4tqa2sx0.dpuf>

3.7 Despite the situation in Greece, Italian Government keeps ambivalent attitude towards transferring migrants to Greece.

Italian State's attitude is ambivalent regarding the issue of transferring migrants to Greece.

First of all, Italy officially declares to have halted them, in compliance with the ruling. That is in front of the decision of the ECtHR given in the *MSS vs Belgium and Greece* case and recommendation of UNCHR of not returning asylum seekers to Greece, under Dublin regulation, as they would be exposed to inhuman and degrading treatments. Nevertheless, the summary returns described in the first section of this paper from Adriatic frontiers²²⁷ continue routinely and to legitimize this behavior, Italy invokes a bilateral readmission agreement (signed in 1999 and entered into force in 2001).

In accordance with this treaty, Italy and Greece are both obliged to accept "upon request", "without formalities", and "within a certain time-frame" (15 days), the return of third country nationals when they are detected entering at official or unofficial border points along the coastline or elsewhere in the territory, without proper documents. The readmission is subjected to an explicit approval by the receiving country that should be issued without delay (48 hours) and may be refused only if there is no evidence that migrants have traveled irregularly from one country to the other.

Even though, theoretically, the Readmission Agreement is bilateral and should therefore be applied by both counterparts, in practice, only Italy has returned migrants to Greece²²⁸ and, apparently, the procedure is not even, carefully, followed each time.

Research findings²²⁹ demonstrate that people apprehended in the Italian territory are returned after the approval of Greek authorities, if they declare of being arrived to Italy through Greece within the time limit regulated by the Readmission Agreement. At the same time, persons apprehended in the ports of Ancona, Bari, Brindisi and Venice are returned following an informal procedure, putting them, as already mentioned, under the

²²⁷ Pushbacks to Greece carried out in Adriatic harbours cannot be referred to the Dublin regulation framework as returnees did not have a chance to apply for asylum.

²²⁸ Pro-asyl, *ibidem*, p. 7

²²⁹ Pro Asyl, *ibidem*, p. 7

custody of the captain of the ship, who is invited to take immediately on board and carry them back to the country of departure²³⁰.

Actually, these informal returns appear to be in compliance with domestic law rather than the bilateral agreement signed with Greece²³¹. In fact article 10 of the Italian Consolidate Immigration Act admits “rejections at the border” (that means refusal of entering the territory) of individuals travelling without necessary travel documents, providing that the commercial carrier (airline or ship company) on which the undocumented traveler was moving, is obliged to board and return him to the country of departure.

However, both readmission agreement and consolidate immigration act contain a number of safeguards in favour of undocumented third country nationals and prohibit returns of people who are in need of international protection or would face human rights abuses, if removed²³². Nevertheless, these safeguards remain purely theoretical: are neither applied nor taken into consideration in the cases examined in this paper.

At this point, a logic question to ask is about the inconsistency of this behaviour.

A part from stowaways arriving by ferry, the number of undocumented immigrants coming from Greece by boat and disembarking on south-western shore (Puglia, western coast of Sicily and Calabria) is considerable and it is sharply rising.

According to official data provided by the Italian Ministry of Interior, it has shift rapidly from 9,215 people in 2013 to 15,283 in 2014.

In the light of this figures, it can be assumed these informal readmissions at Adriatic harbours are used as a deterrence measure to prevent an even more massive arrival of asylum seekers from Greece. The massive arrivals might be pushed by the fact that many immigrants in Greece, feel trapped in dire living conditions with no hope for future

²³⁰ See the form used for returning migrants from the port of Bari, in attachment to “Turned Away”, HRW’s report of 2013.

²³¹ In the form is present and explicit reference to the Italian Unified Immigration Act, even though “rejections at the border” procedure under national law, in theory would not be applicable to returns to Greece because of disappearance of the concept of a border between Italy and Greece has disappeared, since both countries belong to the Schengen Area.

²³² Art. 6 of the readmission agreement provides for its non-applicability inter alia to those recognized by the requesting states as refugees under the 1951 Geneva Convention or as stateless persons under the 1954 Convention in relation to the status of stateless persons. Article 18 foresees that the risk of chain-refoulement should be taken into account and that the readmission can be denied if in the state of destination or in another state, to which he or she could be later transferred is at risk of inhuman, degrading treatment or punishment, death penalty or his life can be in danger because of his race, nationality, specific social group membership, political opinion.

improvements, a situation that makes them ready to escape, with any means, with the aims of reaching other EU destinations.

Italy, by this time, is under an enormous pressure in the central Mediterranean due to migratory flow proceeding from Libya and it would be unable to face another wave coming from the Adriatic Sea. In 2014 the Italian military operation Mare Nostrum in the Sicily Channel rescued about 170.000 migrants coming by boats and the prevision for 2015 is calculate around 190.000 individuals, on the basis of the first 5 months trend²³³. That creates an emergency never experienced before by any other EU member state.

Furthermore, Italy is a country at the external EU border and consequently, it is penalized by Dublin III Regulation that is linking the responsibility of examining asylum claims to the State through which the asylum seeker first entered. To prove this statements, we can observe that Italy is the country receiving in absolute the higher numbers of Dublin transfers requests²³⁴. That is the reason why the country is overburdened, leading automatically to systemic deficiencies in Italian asylum procedure and reception conditions. Shelters for asylum seekers are lacking or they are of bad quality, for both overcrowding and mismanagement by the private companies entrusted by the State to run reception facilities²³⁵. Consequently that is pushing German Administrative Courts, as well as ECtHR, to suspend Dublin transfers to Italy of vulnerable individuals²³⁶.

²³³ Ignazio Masulli, *L'Europa e lo spettro dei migranti*, <http://temi.repubblica.it/micromega-online/leuropa-e-lo-spettro-dei-migranti/>, accessed 24th June 2015

²³⁴ Italy in 2013 received 18.827 requests of take charge or take back asylum demands - mainly based on Eurodac – representing one quarter of all requests amongst Eu member states and nearly 30% of total transfers, see Susan Fratzke, *Not adding up the fading promise of Europe's Dublin system*, 2015, Migration Policy Institute, p. 9-10 .

²³⁵ Currently investigations are carried out by Rome's Pubic Prosecutor, against some companies' directors accused of criminal organization and Mafia. See Claudia Fusani, "Mafia Capitale, Salvatore Buzzi lo stratega dell'organizzazione. Per lui le cooperative sono il vero business", 3rd December 2014, The Huffington post, available at http://www.huffingtonpost.it/2014/12/03/mafia-roma-coop-_n_6263620.html, accessed on 2nd July 2015.

²³⁶ See Tarakhel case vs Switzerland, sentence delivered by the Gran Chamber of ECtHR, on the 4th November 2014, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148070>, stating that transfer of asylum seekers belonging to vulnerable categories such as a family (a couple with children) to Italy, thus in particular cases, under Dublin regulation, might be in breach of art 3 (prohibition of inhuman and degrading treatment), in hypothesis of absence of specific safeguards.

Following his visit to Italy in July 2012, Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, observed that the inadequate living conditions for asylum seekers in Italy were receiving increasing attention in other EU member states, due to the growing number of legal challenges by asylum seekers to their transfer to Italy under the Dublin Regulation. Muižnieks noted that a series of judgments by different administrative courts in Germany have prevented asylum seekers from being sent back to Italy, due to the risk of homelessness and a life below minimum subsistence standards and that the ECtHR has

Nonetheless, it is not foreseeable a change in Dublin system in a short timeframe, even if it should be highly advisable introducing a different and more equitable burden sharing of refugees among all EU Member States. By the way, EU Commission, after the last shipwreck occurred on the 19th April 2015 off Libya' shores²³⁷ in which around 700 people drowned, put in its agenda a new comprehensive proposal to improve migration management²³⁸. This proposal is aimed at activating, for the first time, the emergency response mechanism in assisting Italy and Greece under Article 78(3) of the Treaty on the Functioning of the European Union. This scheme will consent to relocate 40.000 persons - Syrian and Eritrean nationals - in need of international protection, arrived in either Italy or Greece by the 15th April 2015 and after, to other EU Member States on a voluntary basis, over the next 2 years. In any case, the plan will involve a ridiculous number of asylum seekers in proportion with the overwhelming influx that Italy and Greece are subjected to. That means that, obviously, the scheme will not amend the critical situation existing in the reception systems of the two countries. Furthermore, to date, it is still not clear if all 28 EU member states will be engaged, as some Prime ministers have firmly expressed their dissent. Actually, there is little appetite among Member States to change existing policy frameworks and commitments in the area of asylum, migration and border controls. They are much more interested in exploring ways to prevent asylum seekers, refugees and migrants from arriving in the EU - being admissible within this scope, even the use of military force for bombing smugglers' ships in Libyan territorial waters - rather than find ways to share responsibilities after their arrival. That inevitably will push Italy to continue practising informal readmissions of

also been receiving applications alleging possible violations of Article 3 as a result of Dublin transfers to Italy. See the report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Italy, from 3 to 6 July 2012, <https://wcd.coe.int/ViewDoc.jsp?id=1975447>

²³⁷ See <http://www.ilfattoquotidiano.it/2015/04/19/immigrazione-naufragio-strage-nel-canale-sicilia-si-temono-700-morti/1604101/>

²³⁸ European Commission, *European Commission makes progress on Agenda on Migration*, press release, 27th May 2015, http://europa.eu/rapid/press-release_IP-15-5039_en.htm. The European Commission proposal foresees also 1) the resettlement of 20 000 people from outside the EU, in clear need of international protection as identified by the UNHCR, over 2 years among EU member states, on a voluntary basis; 2) concrete actions to prevent and counter migrant smuggling; 3) new guidelines for Member States concerning fingerprinting of newly arrived; 4) a public consultation on the future of the Blue Card Directive that could be used to make it easier for highly skilled people to come and work in the EU but is currently scarcely used.; 5) the reinforcement of Joint Operation Triton, in central Mediterranean.

refugees to Greece and, in the near future, probably also to other countries²³⁹ thanks to fact that there also media attention is missing at all on this phenomenon. In fact, ordinary citizens are daily informed by TV and newspapers about those desperate coming from Libya on unseaworthy vessels but know nothing about abuses routinely committed in Adriatic ports. This let Italian authorities free to continue acting illegally undisturbed, as there is no public denunciation and, consequently, no form of open indignation. It also leads to the absurd that the same people - Syrian, Eritrean, Somali nationals - rescued in the Strait of Sicily in the spotlight of the world, in the Adriatic ports are pushed back in silence and in the shadow, among the general indifference.

3.8 Conclusions.

Although its asylum system reform and positive prospective for the future, up to date, Greece is still an unsafe country for asylum seekers. Widespread violations of their human rights have been registered, a circumstance that renders readmissions from Italian Adriatic harbours to Greece unlawful, resulting, in particular, in breaching of article 2 and 3 of ECHR.

Violations of asylum seekers' human rights, in Greece, consist mainly in:

- 1) Inhuman and degrading treatments for inadequacy and insufficiency of reception centres and shelters.
- 2) Deprivation of liberty for unduly prolonged time in detention facilities where living conditions are not decent and adversely affect their physical and mental health.
- 3) Risk of direct deportation to countries of origin, or indirectly through Turkey, caused by lack of real access to the asylum procedure.
- 4) Risk of becoming homeless, destitute and marginalized.
- 5) Risk of being victims of violence and racist attacks.

²³⁹At the time of the writing of this paper, Italian Parliament is ratifying a bilateral readmission agreement signed with Macedonia, enabling Italy to push back refugees arriving through the Balkan route at the Nord East frontier with Austria and Slovenia.

CONCLUSIONS AND RECOMMENDATIONS

As reported by UNHCR, the world is currently experiencing, at global level, an “age of unprecedented mass displacement”²⁴⁰ of people fleeing wars, violence and massive human rights violation, for the first time after the Second World War,

The figures are shocking: the annual global trends’ study by UN’s refugee agency (UNHCR) found that in 2014, the number of people uprooted from their homes hit the record of 59.5 million, one out of five is Syrian and 86% of displaced persons are hosted in poor countries²⁴¹.

Referring to Greece, the country is one of the main gateway to Europe for geographical location and proximity to the Middle East, where conflicts are progressing. That creates the conditions to make the country particularly affected by this exceptional migratory flow, while facts showed it unprepared to manage alone the wave of refugees²⁴².

In the first five months of the current year, irregular arrivals by sea raised up to over 42 thousands - 6 times as many as last year and almost the same number of the total arrivals for the whole 2013²⁴³ - putting to the test the asylum system in a critical moment, being at risk of economic collapse and exit from Eurozone.

At the time of writing, a humanitarian crisis is enduring in Greek eastern islands where thousands of Syrian, Iraqis or other nationals arrives daily paddling on small boats from Turkey shores. This human flux is putting huge pressure on the limited islands’ resources, not capable to offer decent accommodations in the respect of their human dignity and creating a backlog of persons waiting to be registered by the police.

Despite the in-depth reform of the Greek asylum system carried out since 2011, in execution of the judgment issued by the ECtHR in *M.S.S. vs Belgium and Greece*, difficulties for asylum seekers and refugees are persisting in all the country both in

²⁴⁰ Words of Antonio Guterres, UN high commissioner for refugee.

²⁴¹ See <http://www.unhcr.org/pages/49c3646c4d6.html>

²⁴² EU has not supported Greece in reception efforts to the same extent that it has supported its activities aimed to secure EU external borders. For example, between 2011 and 2013, the European Commission gave Greece €12,220,969 under the European Refugee Fund. Its allocation to Greece for the same period under the Return Fund and the External Borders Fund to enhance border control measures and increase detention facilities was €227,576,503, see Amnesty International, “Greece: Frontier of hope and fear”, *ibidem*, p. 7

²⁴³ Watch, “*Greece: Boats of Refugees in Kos*”, <http://youtu.be/QNQh8XawoLA>.

receiving adequate basic needs items (accommodation, food, health care) and in having a full access to asylum procedure.

Furthermore, due to the harsh economic recession and austerity measures imposed by EU, refugees' perspectives of occupation and integration in the social fabric are rather pessimistic. As highlighted in the second section of this paper, violence and arbitrary deprivation of liberty - affecting even minors -, hasty mass expulsion at the Greek-Turkish border, a widespread xenophobic sentiment affecting the civil society, diverse political parties and some parts of the ecclesiastic spheres, are occurring nowadays like in the past. This well-known situation made the ECtHR to declare Greece an unsafe country since 2011, inviting the other EU member States not to transfer there asylum seekers who first entered EU through Greece, under Dublin procedure. The UNHCR echoed the Strasbourg Court with official statements of equal significance, the last one in the Country report of December 2014. Despite that, asylum seekers crossing the Greek-Turkey border and looking for sanctuary do not have any right of freedom of movement within EU. Consequently, they don't have any legal mean to move afterwards from the first country of entry to other EU member states and are obliged by Dublin III provisions to apply for asylum there. That is, among others, in sharp contrast to the mobility provided to European Union citizens within Schengen area.

Consequently, refugees are forced to use clandestine and precarious overland routes through Albania, the Balkans and Bulgaria, or, in alternative, the "Adriatic path", recurring sometimes to smugglers in order to leave Greece. These travels inside the EU multiply the migrants' sufferings, often causing unnecessary loss of human lives.

The present research focused exclusively on those who tried to reach Italian shores departing from Patras, as stowaways on ferries. Despite to the fact those people become victims of abuses that further exasperate their vulnerability – being excluded from the access to Italian territory and asylum procedure - and Italy has been recently sentenced for that in *Sharifi vs Italy and Greece* case, the topic is not frequently discussed in the public debate. According to the above mentioned sentence, among other, Italy was found guilty of breaching art. 3 of the ECHR, for having returned to Greece a group of Afghan citizens, and art. 13 for having deprived them of an effective remedy to oppose the immediate expulsion. Despite this, informal readmissions to Greece of *prima facie*

refugees from Italian Adriatic harbours are still going on. Even if the number of arrivals at the Adriatic ports is decreasing, since the sea passage fell into disuse in favour of land routes²⁴⁴, during the present research thirteen cases have been documented through media reports and individuals' accounts, six of them (3 collective and 3 concerning single individuals) occurred after Italy's conviction in the just cited case. The overall number of people expelled amount to 157. Compared to the past, very little improvements have been found. Detention conditions on board during the return trip, previously depicted as inhuman and degrading, have been ameliorated at least in the case of people interviewed for this research. A positive trend in admitting unaccompanied minors in the country has been recorded. Finally, isolated cases of violence by Italian and Greek police upon return have been witnessed and no one of torture. However, in 2014, the percentage of adults intercepted by the police who had the chance to meet the NGOs' personnel working in the ports and to be informed about the rights of demanding international protection - since entitled to do that²⁴⁵ - and afterwards have been deported to Greece, is still incredibly high, ranging between 76,46% and 90%, depending on the port of arrival. That goes against a well-established jurisprudence of the ECtHR.

Apparently, a single ECtHR's sentence is not enough to eradicate a rather complex phenomenon that, actually, seems to be directly connected to the shortcomings of Common European Asylum System, as highlighted in the preamble of this thesis. Therefore, unless a radical change in the European institutions' approach to migration issue, the scenario is not predictably going to switch. In fact, on the one hand asylum seekers will continue escape from Greece looking for a place that can offer higher rate of recognition of the refugee status and better protection and integration perspectives. On

²⁴⁴ UNHCR is particularly concerned about risks faced by refugees and migrants in the Western Balkans as an increasing number of people are using this route for their journeys. Men, women and children are often walking for days, exposed to violence and abuse from smugglers and criminal networks, natural elements or accidents along train tracks. What has to be known as 'the Western Balkans route' is seeing a dramatic increase in refugees and migrants. Some are registering for asylum in the Balkans, others are heading onwards. Most of those travelling this route are from refugee-producing countries, mainly Syria, Afghanistan, Iraq, Eritrea and Somalia. They mostly come via Greece, and with the recent surge in sea arrivals there, the number of people undertaking this journey is expected to grow further. See UN High Commissioner for Refugees (UNHCR), *Risks growing for increasing numbers of refugees and migrants crossing the Western Balkans*, 12 June 2015, available at: <http://www.refworld.org/docid/557ad1dc4.html> [accessed 18 June 2015]

²⁴⁵ Syria, Afghanistan, Iraq are the top three nationalities arriving in Italian Adriatic harbours

the other hand, Italy, a overwhelmed country by the migratory influx from the Central Mediterranean Sea and penalized by the Dublin regulation as first State of entry, will reasonably continue to push back new arrivals to eastern borders.

First and foremost, Italy should comply with the ECtHR's sentence and immediately halt readmissions to Greece as not respectful of human rights enshrined in international customary law and international treaties which Italy is part of. As well as, a more human right oriented - and compliant with ECtHR's jurisprudence - interpretation of the existing Dublin regulation should be immediately applied. This interpretation would impose on Greece, to make the greatest use as possible of the discretionary clause provided by art. 17 paragraph 2 of Dublin III regulation, requesting other EU countries to take charge of asylum applicants on humanitarian grounds, and at the same time, on the latter to accept those requests. That *per se* could enhance the legal mobility of migrants throughout Europe.

Moving from these premises, there is much more to be done at regional level. Emergency measures to tackle the humanitarian crisis in Greece (and Italy) are urgently needed and should involve the entire European Union. The adoption of short-term remedies, such as the resettlement of asylum seekers already present in the territory of frontline countries like Greece (and Italy) to other EU member states that have a real capacity to offer hospitality and protection, grounded on art. 78, paragraph 3, of TFEU²⁴⁶ should be an option highly advisable, to ease pressure on Greek asylum system. In fact, on the one hand, resettlement would refrain asylum seekers to undertake further perilous trip or enrich smugglers' illegal business within Europe. On the other hand, it would avoid to let them being stuck in a country unable to offer adequate protection and safety and would be a mean to temporarily get over the perverse mechanism of Dublin III Regulation that binds them to the first country of entry if they have been identified and fingerprinted there or if they have already received a negative first decision to their asylum request.

The European Commission is moving in this direction, as has recently prepared a plan based on resettlement of asylum seekers from Italy and Greece to all EU countries. The programme was supposed to be discussed and approved by the European Council by the

²⁴⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012E/TXT>

end of June 2015, but the matter has been postponed²⁴⁷. Even though the Commission is talking about relocating an insignificant number of individuals (24.000 from Italy and 16.000 from Greece over 2 years, exclusively Syrian and Eritrean nationals) and for this reason has been heavily criticized by UN Special rapporteur on the human rights of migrants²⁴⁸, a strong opposition has already been expressed in many EU countries (France, UK, Poland, Ireland, Denmark, Hungary, just to mention a few) as anti-immigrant and anti-EU right-wing parties makes significant electoral gains in UK to France, causing reluctance among ruling parties to “Europeanise” immigration policies. The Directive 2001/55/CE²⁴⁹ concerning temporary protection, is another instrument that could be proved useful in the present circumstances. The directive, in fact, allows EU members States to grant temporary protection in the event of a mass influx of displaced persons who come from a specific third countries or geographical area. It can be applied to people who flee from armed conflicts or endemic violence, being or risking to be victims of systematic or generalized violations of their human rights, so unable to return to their country of origin. The directive seems to suit particularly Syrians, Iraqi, Afghan, Somali, and Eritreans. People enjoying this form of protection are allowed to reside for a limited length of time in an EU country and to engage in employed or self-employed activities. This legal instrument provides an immediate and temporary protection to people possessing the described requirements and tries to fairly distribute them among EU member states, although it leaves governments completely free to indicate the extension of the hosting availability, in terms of numbers of people to be received. In fact. Art. 25, § 1 states that “the Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate - in figures or in general terms - their capacity to receive such persons [...]”

²⁴⁷ Actually, the discussion upon this point has been further postponed by the European Council.

²⁴⁸ “The EU’s resettlement proposal is good in principle but woefully inadequate in its scale,” the human rights expert said and added “It is good that a mandatory EU-wide relocation system, with an appropriate distribution key, will be presented for adoption by all EU member states. However, such a system must be based on the wishes of the asylum seekers, an increase in mobility throughout the common EU territory, and on numbers of relocated asylum seekers that actually match the number of arrivals.” - See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15961&LangID=E#sthash.PSzXH7ng.dpuf> “EU’s resettlement proposal is a good start but remains woefully inadequate” – UN expert message GENEVA (15 May 2015).

²⁴⁹ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0055>, accessed on 13th July 2015.

Nevertheless, it should be stressed that the directive must be “activated” by a Council Decision, backed by a Commission’s proposal and adopted by a qualified majority of the Council that could be actually not easy to reach. But apart from the mentioned urgent measures of resettlement and temporary protection, EU should put in place much more efforts and investments for the completion of a real CEAS, deducting part of resources allocated for securitization and border control²⁵⁰ in favour of the Refugee and Integration Funds. In addition, the Union have to take stock of the collapse of the Dublin system and the failure of a restrictive policy of the freedom of movements of people in need of international protection within EU, reconsidering in medium term, a serious and total revision of the mechanism and criteria set forth in the Dublin Regulation. This process should be joint with the effort to overstep the idea of a Europe that solely representing the interests of the most powerful nations, putting at the centre the human rights of migrants and asylum seekers. That implies also the realization in concrete of the principles pursuant to article 80 TFEU of solidarity and fair sharing of responsibility between member states in the field of border control, asylum and immigration. In fact, frontline states have shouldered the overall responsibility of dealing with irregular migrants that arrive in Europe, for too long, as stressed also by UN special rapporteur on human rights of migrants. The current logic of forcibly allocate individuals and families to countries in which they don’t want to live (mainly the ones at external borders as first countries of entry) must be revised, as these country don’t offer them the chance of a better life. In addition, it should be reconsider the use of force and detention by police forces to take fingerprints²⁵¹ if the persons concerned are reluctant to do it spontaneously.

²⁵⁰ The huge investment of resources by the European Union and its member States into ineffective and paradoxical border control mechanisms could be supply in many other ways. The ability of migrants to reach European soil despite a huge investment in securing borders demonstrates doubtless that sealing international borders is impossible. Migration is a long-standing part of the human condition and, in the globalized and conflict-ridden world in which we live, it is inevitable. See “Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants”, 8 May 2015, p. 17, accessible at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_36_ENG.doc.

²⁵¹ See European Union: European Commission, *Commission Staff Working Document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints*, 27 May 2015, SWD(2015) 150 final, available at: <http://www.refworld.org/docid/55688b174.html> [accessed 22 June 2015].

*“Trying to confine migrants to the territory of the frontline countries obliges migrants to continue traveling underground, further empowering smuggling rings and unscrupulous employers, and places undue responsibilities on such frontline countries”*²⁵², according to the words of UN Special rapporteurs François Crépeau, and *“contribute to the difficult access to the asylum system, as the Special Rapporteur observed in Greece”*²⁵³.

Conversely, it should be established a mechanism enhancing the asylum seekers’ choice and a more equitable burden sharing among all EU countries. Persons seeking international protection in Europe might be distributed in all Member states *pro quota*, determined on the basis of population, gross internal product, rate of unemployment and number of asylum demands already received. The role of EU should be to support the countries receiving asylum claims with proportionate and adequate financial and technical assistance.

In addition, to further facilitate freedom of movement within EU, mutual acknowledgement of refugee status decisions among member States should be introduced. In fact, despite the effort to create a Common asylum system in Europe, nowadays mutual recognition does not exist and a person whose international protection is recognized by a certain country is forced to live within its borders, being allowed to circulate only for three months, but not to work, study or live permanently in any other State. The mutual recognition of the refugee status could facilitate reunification of refugee with their family members within EU and their better integration in society. Finally, it would facilitate the job finding process, giving in a shorter time their cultural and fiscal contribution to the hosting community, as integrated members and taxpayers.

In conclusion, it is required a human right oriented change in EU migration policy at a broader spectrum, that, in the current situation, might be challenging but it is essential. It should imply opening legal channels to let people in need of international protection to

²⁵² End of Mission Statement Migrants and the Mediterranean: UN rights expert on human rights of migrants follow up visit to Brussels for further development of his study on EU border management “Banking on mobility to regain control of EU borders”, 5 February 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15544&LangID=E>.

²⁵³ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants*, 24 April 2013, p. 18, A/HRC/23/46, available at: <http://www.refworld.org/docid/51a743124.html> [accessed 22 June 2015]

safely reach the common territory, instead of sealing the borders²⁵⁴ or bombing ships in the Libyan territorial waters, as recently proposed, thus preventing asylum seekers from exercising the right of asylum. Providing legal means to arrive in Europe is a solution that represents the only way to fight human traffickers and avoid deaths at sea. This change of political orientation should also include a reform of the rules concerning the mechanism of identification of the state responsible to process an asylum application, with the aim of halting dangerous secondary movements within EU. The omission in fully implementing human rights and legal guarantees in the management of borders and migration can undermine irreversibly the capacity of the European Union to act as a worldwide model in the protection of human rights.

²⁵⁴ a strategy that, by the way, resulted in being excessively costly and totally ineffective, considering the record of arrivals in 2014 and these first months of 2015.

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