



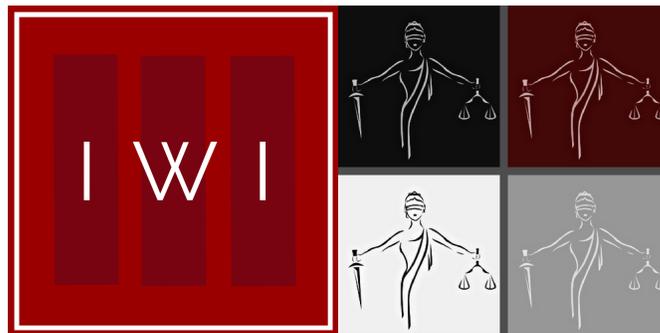
# **On the Margins: Women and Minors in Lawless Spaces**

## **Receiving Country Report: Italy**

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## Receiving Country Report: Italy

### *Abstract*

The significant arrival of migrants in Italy started from the events related to the Arab Spring in 2011. This development poses new challenges to the Italian Immigration Law, in particular,<sup>1</sup> the definition of the legal status of asylum seekers and to the interpretation of the procedure for examining asylum applications. The juridical status of migrants entitled to the right of international protection can be considered a fluctuating phenomenon and is marked by the tension between the need to protect human rights on one hand, and the preservation of State sovereignty on the other.<sup>2</sup> The principle of sovereignty of the European Union (EU) member countries gives an exclusive function of each sovereign state to control and protect its borders through the regulation of migration flows, with the aim of defending the so-called “national integrity”.<sup>3</sup> However, the European discipline has set the protection of fundamental human rights, including the rights of asylum seekers coming from non- EU countries, among the objectives of the Union. This new process of "communitarisation" is becoming the basis of the current European and local immigration discipline, with a strengthening of administrative cooperation that starts from the general EU plan to the particular of local administrations.<sup>4</sup>

This report aims to briefly describe and analyse the current Italian legislation on International Protection for asylum seekers and refugees, with a focus on women and unaccompanied minors, who account for more than 20 percent of the 130,000 asylum requests made in 2017.<sup>5</sup>

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<sup>1</sup> Ferreira, Sousana de Sousa, “Migrations and the Arab Spring—a new security nexus?” (2014) *10*(1) *Human Security Perspectives*, .62-90.

<sup>2</sup> Lavenex, Sandra. *The Europeanisation of Refugee Policies (2001): Between Human Rights and Internal Security* (2017), Routledge Revivals.

<sup>3</sup> Art. 3 TEU

<sup>4</sup> Emiliani, Tommaso, “E Pluribus Unum? The Communitarization of EU Migration, Asylum and Border Management Policies in Times of Crisis”. *European Integration Studies*, 11 (2017), 19-30.

<sup>5</sup> Elaborations from “Initiatives and Studies on Multi-Ethnicity (ISMU)” based on UNHCR data (2018) <<http://www.ismu.org/richiedenti-asilo-e-rifugiati-dati/>> last accessed 31 May 2018.

# 1. The Administrative Procedure of International Protection in Italy

In Italy, as in many other European countries, the procedure for the recognition of international protection follows the Administrative practice and finds its basis in the General Law on Administrative Procedure.<sup>6</sup>

## 1.1 Local Commissions: Establishment, Composition and Functioning

The competent authorities for the examination of applications for international protection are the Territorial Commissions established in the Prefectures. These are local offices of the Government which provide the necessary organisational and logistic support in coordination with the Ministry of the Interior Department for Civil Liberties and Immigration.<sup>7</sup>

Currently, the territorial Commissions are twenty, all established by decree of the Minister of the Interior which identifies their location and territorial jurisdiction. Special sections within these Commissions can always be established when there is an exceptional increase in asylum applications as evidenced by the trend of migratory flows and in order to save time.<sup>8</sup>

The juridistical competence of the Commissions is determined either by the territorial district in which the asylum request is presented or by the region in which the asylum seeker is hosted in a reception center.

The Commissions are composed respecting the principle of gender balance and include an officer of the Prefecture (who functions as the President), an officer designated by UNHCR and four administrative officers.<sup>9</sup> In case it is necessary to assess particular elements regarding the situation of the country of origin, an officer from the Ministry of Foreign Affairs intervenes. All members must be

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<sup>6</sup> Law No. 241 (7 August 1990), *New Regulations on the Administrative Procedure*. This provides for the implementation decree of the so-called "Procedures Directive".

<sup>7</sup> Legislative Decree No. 25 (2008), *Implementation of Directive 2005/85 / EC laying down minimum standards for procedures applied in the Member States for the purpose of recognition and withdrawal of refugee status*.

<sup>8</sup> Art. No. 4 *Ibid.*

<sup>9</sup> Legislative Decree No. 220 (2017), *Supplementary and Corrective Provisions of the Legislative Decree 18 August 2015, n. 142, regarding the commissions for the recognition of international protection and unaccompanied foreign minors*.

selected on the basis of their experience or training acquired in the field of immigration and asylum or in the protection of human rights.<sup>10</sup>

As for the judicial power, each territorial Commission and each special section is guaranteed independence of judgment and assessment.<sup>11</sup> Their decisions are deliberated with the presence of the majority of the members and passed the favorable vote of at least three of them; in the event of a tie, the Chairman's vote prevails.<sup>12</sup>

## **1.2 The Procedural Phases**

The procedure for the recognition of international protection starts with the presentation of a specific application by the asylum seeker to the border police office upon entry into the national territory or to the police station at his place of residence. In case of a minor, the parents are to proceed with the request . For an unaccompanied minor, s/he can either present it autonomously, or their spouse can present on their behalf .<sup>13</sup>

The application, known as C3 Model, is drafted by police officers in the presence of an interpreter. Here the asylum seeker indicates his personal data and provides useful documentation for assessment of his/her status, sometimes by attaching brief explanatory memos. If the applicant is a woman, female staff participate in the process.<sup>14</sup> If there are doubts regarding the age of the unaccompanied minor, s/he may be subjected, without prior consent, to non-invasive medical checks.<sup>15</sup> In any case, the unaccompanied minor's request is immediately sent to the Juvenile Court and to the tutelary judge, who appoints a guardian to accompany and assist the young applicant at all stages of the procedure, within

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<sup>10</sup> Legislative Decree No. 25/ 2008, cit., Article 15.

<sup>11</sup> Legislative Decree No. 25/2008, cit., Article 4.

<sup>12</sup> *Ibid.*

<sup>13</sup> Legislative Decree No. 25/2008, cit., Article 6.

<sup>14</sup> Legislative Decree No. 25/2008, cit., Article 26, paragraph 1 - 2.

<sup>15</sup> Legislative Decree No. 25/ 2008, cit., Article 19, paragraph 2 - 3.

the next 48 hours .<sup>16</sup> The minor is immediately accepted in suitable structures in the municipality where s/he is staying.<sup>17</sup>

During the examination of the asylum application, the applicant has the right to remain in the Italian territory unless the person should be sent to another State of the Union responsible for examining the application for international protection. Therefore, in the event that doubts emerge regarding the jurisdiction of the Italian State to examine the application, the procedure is suspended in order to wait for the decision of the Dublin Unit<sup>18</sup>. Finally, if another State's jurisdiction is determined, the Commission transfers the procedure to the competent State.<sup>19</sup>

The verdict on asylum applications is objective and impartial, decided on a case-by-case basis. The Territorial Commission is expected to collect precise and updated information on the general situation in the country of origin of the asylum seeker and, if necessary, in the countries in which the applicant has transited. The presumably reliable data is provided by UNHCR, EASO, the Ministry of Foreign Affairs and any other agency or body for the protection of human rights operating at an international level. The Commission can also arrange, with the consent of the applicant, consultations with experts on fields like health, gender, religion and ethnicity, aimed at ascertaining the results of persecution or serious damage.<sup>20</sup>

The most important part of the investigation phase is the hearing, defined by the law as a "personal interview". The interview must be arranged by the Commission<sup>21</sup> and can be omitted only in two cases: when the Commission considers that it already has sufficient elements for the recognition of refugee status and/or when the personal interview cannot be supported by the applicant due to certified medical-psychological reasons.<sup>22</sup> The interview takes place in the presence of four members of the Commission (the rapporteur and three administrative officers) with specific training and, where possible, of the same

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> For further information on the Dublin Unit: < <http://www.asylumineurope.org/reports/country/italy/asylum-procedure/procedures/dublin>> accessed 1 May 2018

<sup>19</sup> Legislative Decree No. 25/2008, cit., Article 3, paragraph 3 - 30.

<sup>20</sup> Legislative Decree No. 25/2008, cit., Article 8, paragraph 3 bis.

<sup>21</sup> Legislative Decree No. 25/2008, cit., Article 12, paragraph 1, amended by law 13 of 2017, Article 6, paragraph 1, letter b. The law is designed to protect the applicant, whose application can not be denied without being granted the benefit of a personal interview.

<sup>22</sup> *Ibid.*

gender as that of the applicant. In the event that the applicant is a bearer of special needs, support staff such as psychologists, mediators and the minor's guardian can participate in the hearing. During the interview, the applicant is assured the possibility of exhaustively presenting the elements provided in the application.

At the end of the investigation, the Commission can adopt one of the following decisions:

- a. Recognition of refugee status;
- b. Recognition of subsidiary protection;
- c. Rejection of the asylum request due to lack of reasons.

Aside from the aforementioned, in cases where the application for international protection is rejected, but the Commission still considers that there may be serious humanitarian reasons for protection, the documentation is forwarded to the Police headquarters for the provision of a residence permit on humanitarian grounds- further analysis of such will be examined in section 2.3 of this report.

In case of a negative result, scenario (c), it is possible to submit a review request. The request can only be made if new elements or documents that were previously not available can be found. A re-examination request can be sent to the Commission which has examined the application only if important elements are deemed to not have been previously examined or are made available at a later stage. In any case, the legislation explicitly provides for re-examination of the case only on the basis of these elements. The deadline for the appeal provided for by the law is 30 days. Following the appeal, the law provides that a residence permit for asylum is issued.

## **2. Grounds for International Protection to Women and Minors in Italy**

### **2.1 The Refugee Status**

Refugee status is recognised under certain conditions. For the purposes of assessing the recognition of refugee status, the Geneva Convention established that **acts of persecution** must alternatively:

1. Be sufficiently serious, by their nature or frequency, to constitute a serious violation of fundamental human rights;
2. Constitute the sum of various actions, including human rights violations, whose impact is sufficiently serious to exercise a serious contravention of fundamental human rights;

The acts of persecution may take the form of:

- a) acts of physical or mental violence, including sexual violence;
- b) legislative, administrative, police or judicial measures, which are discriminatory in nature or are implemented in a discriminatory manner;
- c) disproportionate/discriminatory judicial or criminal penalties;
- d) denial of access to legal safeguards and consequent disproportionate or discriminatory sanctions;
- e) judicial actions or criminal penalties as a consequence of the individual's refusal to take part in a conflict, when this could lead to the commission of crimes or acts considered war crimes or against humanity;
- f) acts specifically directed against a gender or against childhood.<sup>23</sup>

In examining whether an applicant has a well-founded fear of being persecuted, it is irrelevant that the applicant actually possesses the racial, religious, national, social or political characteristics of the acts of persecution, it is sufficient that such characteristics are attributed to him/her by the individual/body guilty of such persecution.

In Italy, the recognition of refugee status allows for: the issuance of a 5-year residence permit for political asylum; granting of travel documents ; provision of a refugee card allowing further renewals; the right to apply for citizenship after 5 years; the right to reunite with one's own family without the obligation of providing proof of accomodation and income<sup>24</sup>; access to employment and education; and access to healthcare and social assistance as any Italian citizen.

### **2.1.1. International Protection for Victims of Trafficking**

Among the categories most exposed to the phenomenon of trafficking are women and unaccompanied minors. The UNHCR Guidelines on the Protection of Refugee Women suggest that in case a woman

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<sup>23</sup> UN General Assembly (28 July 1951), *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 137 <<http://www.refworld.org/docid/3be01b964.html>> accessed 15 May 2018.

<sup>24</sup> Art.29 bis Legislative Decree n. 286 (1998), *Consolidated text of the provisions concerning the regulation of immigration and rules on the condition of the foreigner* <[https://www.esteri.it/mae/normative/normativa\\_consolare/visti/d\\_lgs\\_25\\_luglio\\_1998\\_n\\_286.pdf](https://www.esteri.it/mae/normative/normativa_consolare/visti/d_lgs_25_luglio_1998_n_286.pdf)> accessed 11 May 2018

fears persecution or severe discrimination because of her gender, she can be considered- for the purpose of determining her status- as a member of a particular social group.<sup>25</sup>

Italy is endowed with an efficient set of interventions carried out by both the Public Administration and private social organisations supporting victims of trafficking.<sup>26</sup> Such programmes focus on the protection and assistance of asylum seekers who have been victims of slavery, trafficking and other serious forms of exploitation. In this regard, the Legislative Decree No. 286 of 1998 contains regulations that have been considered *avant-garde* and became a role model for other European systems.<sup>27</sup> The norms of the Act provide for the issuance of a special residence permit for persons who have been victims of violence or exploitation and are exposed to real danger due to their statements during the criminal proceedings or due to their decision to escape.<sup>28</sup> The residence permit provided for by law can be issued not only following the victim's complaint but also in cases wherein the victim cannot or does not want to turn to the Judicial Authority. Similarly, a victim of trafficking can be considered a refugee precisely because of the condition in which she finds herself after the departure, during the trip or in the country of destination. The victim of trafficking, from this point of view, could be exposed to the risk of persecution and therefore is entitled to be recognised as a refugee under Article 1 letter A (2) of the Geneva Convention. The UNHCR Guidelines have indeed clarified that some victims of trafficking may form part of the refugee definition provided by the Geneva Convention of 1951, provided that all of them meet requirements contained in the definition itself.<sup>29</sup> The Italian legal system, in incorporating the above-mentioned European directives, introduced specific rules aimed at qualifying victims of trafficking as vulnerable persons among asylum seekers.<sup>30</sup>

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<sup>25</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on the Protection of Refugee Women*, July 1991 <<http://www.refworld.org/docid/3ae6b3310.html>> accessed 15 May 2018

<sup>26</sup> Italian Senate (2017), *Italy twentieth out of twenty-seven Member States* <[http://www.senato.it/japp/bgt/showdoc/17/DOSSIER/1010790/index.html?part=dossier\\_dossier1-sezione\\_sezione3-h1\\_h12&spart=si](http://www.senato.it/japp/bgt/showdoc/17/DOSSIER/1010790/index.html?part=dossier_dossier1-sezione_sezione3-h1_h12&spart=si)> accessed 11 May 2018

<sup>27</sup> Legislative Decree No. 286/1998), cit., Article 18.

<sup>28</sup> Art. 18 Legislative Decree No. 286 (1998), cit.

<sup>29</sup> UNHCR, *Guidelines on international Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* <<http://www.unhcr.org/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html>> accessed 11 May 2018.

<sup>30</sup> Nicodemi, Francesca, “La tutela delle vittime della tratta di persone in Italia oggi: riflessioni sulla capacità di risposta del sistema italiano alle vittime del trafficking rispetto alle evoluzioni del fenomeno”, *Diritto, immigrazione e cittadinanza*, 2(2) (2015), pp. 83-108.

## 2.2 The Subsidiary Protection

Subsidiary protection is recognised in the event of a **serious damage** to the person. For the purposes of recognition of subsidiary protection, serious damages are considered to be:

1. A death sentence or execution of the death penalty;
2. Torture or other form of inhuman or degrading punishment or treatment against the applicant in his country of origin;
3. Serious and individual threats to the life of a civilian resulting from indiscriminate violence in situations of internal or external armed conflict.

In Italy, the recognition of subsidiary protection allows for similar rights as the recognition of refugee status, with differences regarding the freedom of travelling- the police station should issue a valid travel document only if the holder of subsidiary protection has valid reasons that do not allow him to apply for a passport to the diplomatic authority of the country of origin- and in the potential request of citizenship, which is not possible as in the case of refugees.

The residence permit for subsidiary protection can always be converted into a working residence permit, thus renouncing the status of subsidiary protection.

## 2.3 The Humanitarian Protection

The legislation does not unequivocally define the requirements of "humanitarian protection" worthy of protection, instead adopting a general provision that allows for the inclusion of a wide category of subjective cases that are not part of the concept of "international protection".<sup>31</sup> This juridical gap partly compensated for the jurisprudence, which over time defined a sort of decalogue of the "serious humanitarian motives" to be considered worthy of protection: being under the age of 18, living with relatives or with a spouse of Italian nationality, being a pregnant woman or in the six months following the birth of a child, being the victim of serious exploitation and violence, even domestic, and/or being a victim of exceptional events such as conflicts, natural disasters or other grave and life-threatening events currently occurring/having occurred in countries outside the European

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<sup>31</sup> Legislative Decree No. 25/2008, cit., article 32, paragraph 1 - 2 ° - 3 ° - 3 ° bis and Legislative Decree No. 286/1998, cit., article 4, paragraph 1 .

Union. Nevertheless the notion is open to interpretation by the individual territorial Commissions, which enjoy a certain discretion in deciding whether or not a subject is worthy of humanitarian protection. Once the territorial Commission has expressed itself for the existence of serious humanitarian motives deserving of protection, this is formally recognised by the Head of the local police department.

### **2.3.1 Underage asylum seekers**

In this case, the Territorial Commission grants the humanitarian protection, without ascertaining other personal conditions that merit particular attention. This is due to the personal experience of the applicant who has faced a traumatic and stressful situation despite being still far from being emotionally and psychologically mature, and experiencing events that will probably have long lasting consequences on his/her psyche even in adulthood.

The practice is in line with the jurisprudential address that tends to recognise humanitarian protection to asylum seekers who fled their country when they were still minors.<sup>32</sup>

## **3. The New Legislative Decree on Unaccompanied Minors**

The outline of the Legislative Decree 22 December 2017, n. 220, contains supplementary and corrective provisions to the Legislative Decree 18 August 2015, n. 142, which implemented two EU directives on international protection<sup>33</sup> and on the reception of applicants for international protection.<sup>34</sup> The new provision is aimed to adapt the composition of the territorial Commissions for the recognition of international protection to the massive increase in asylum applications. The scheme also introduces some changes to the current national regulation on unaccompanied foreign minors, with the goal of concentrating all court proceedings in the same court, identified as the Juvenile Court. In addition,

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<sup>32</sup> Lastly: Genoa Court, order of 29 June 2017.

<sup>33</sup> Directive 2013/32 on common procedures for the recognition and withdrawal of international protection, also known as “Procedures directive”.

<sup>34</sup> Directive 2013/33, also known as “Reception directive”.

legislative decree n. 220 introduces new important norms on the protection of unaccompanied foreign minors through legal guardians.

### **3.1 The Competence on the Protection of Unaccompanied Minors**

The "protection" of minors is mainly governed by the Italian Civil Code.<sup>35</sup> The designation of the guardian is necessary for the protection of the child in all situations wherein the parents are unable to exercise parental responsibility, due to being deceased, being subjected to a judicial order that excludes the child's parental responsibility, or because they are far away, as is the case with unaccompanied foreign minors.

The rules of the Italian Civil Code on guardianship of unaccompanied minors have been sporadically implemented, during the last thirty years, by norms of international conventions and national regulations.<sup>36</sup> However, a need for a re-formulation of old norms arises in recent years, and this is why some articles of legislative decree n. 220 introduce major changes to outdated provisions on the topic. In particular, with a view to rationalise the system, all phases for the appointment of the guardian are concentrated towards one Judge, identified in the Juvenile Court<sup>37</sup>, who "opens" the protection phase according to the norms of articles 343 and following of the Civil Code. This new provision allows the acceleration of a procedure that, otherwise, would take months and could have major consequences on the well-being of the minor.

The choice of guardian is a fundamental decision consisting of identifying the most suitable subject to take care of the minor's interests: for this reason it is necessary, as far as possible, to listen to the child him/herself in choosing a guardian who is able to instruct and educate him/her (similar to what the parents could do), taking into account the minor's abilities, inclinations and aspirations.<sup>38</sup>

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<sup>35</sup> Articles 343 to 389 of Italian Civil Code.

<sup>36</sup> Among the others: Law n. 184/1983 on adoption and custody and the rules governing immigration and international protection and Law n. 47/2017 on unaccompanied foreign minors.

<sup>37</sup> Legislative Decree n. 220/2017, Article 2, paragraph 1, letter a.

<sup>38</sup> Tamagnone Michela., Lopomo Diego, *La scelta, la nomina e il giuramento del tutore; l'inventario e il rendiconto; la relazione con il giudice durante la tutela* in Long Joelle, *Tutori volontari di minori stranieri non accompagnati. Materiali per l'informazione e la formazione*, (2018) Milan, Wolters Kluwer.

### 3.2 Unaccompanied Minors and Age Attribution

In order, for an unaccompanied minor, to have access to the protection and rights that are recognised by current Italian legislation, it is first necessary that s/he is identified as such: if, in fact, they are erroneously identified as an adult, a guardian will not be appointed, s/he will not be accepted in a shelter for minors and, in the worst case scenario, could even be deported from the country.

Foreign minors usually arrive in Italy without any identification documents and therefore it is not always possible to verify their age through a documental basis. The situation may occur in which minors declare themselves to be adults after entering the country, often because they do not want to be separated from the adults they had been travelling with. In addition, most of the child victims of trafficking are forced to declare themselves as adults by those who intend to exploit them through prostitution.<sup>39</sup>

The identity of an unaccompanied foreign minor is ascertained by the Public Security authorities, by means of photosigning and, for children aged over 14, fingerprinting. The identification procedures are carried out at the police headquarters (or the police station) territorially competent according to the domicile of the minor (or the location of the shelter in which they were placed) or to the place where the minor was traced, in any case only after it has been guaranteed to the minor immediate humanitarian assistance. For the purpose of ascertaining the declared age, the authorities of public security consult the national information system of unaccompanied foreign minors established at the Ministry of Labor and Social Policy (SIM) and other public databases containing relevant data.<sup>40</sup> In cases where serious doubts remain regarding the age declared by an unaccompanied foreign minor, and if it has not been possible to ascertain their age through a personal identification document, the public prosecutor's office at the juvenile court may arrange for social and health examinations. There is no scientific method that allows for age determination, since the differences in biological maturation between subjects of the same age are large. The methods available only allow them to estimate the age of a subject, with a certain degree of probability, within a certain range (equal to approximately  $\pm 2$  years)- an extremely wide margin of error.<sup>41</sup> Moreover, the reliability of these methods is widely discussed in the scientific

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<sup>39</sup> Rozzi Elena, *L'accoglienza dei minori stranieri non accompagnati e il rilascio dei documenti* in Long Joelle, *Tutori volontari di minori stranieri non accompagnati. Materiali per l'informazione e la formazione*, (2018) Milan, Wolters Kluwer.

<sup>40</sup> D.lgs. n. 142/15, art. 19-bis, comma 3-bis.

<sup>41</sup> Tamagnone Michela, Lopomo Diego, *La scelta, la nomina e il giuramento del tutore; l'inventario e il rendiconto; la relazione con il giudice durante la tutela* (2018), cit.

field, also because they are based on standards that are now outdated and based on different populations than the ones to which unaccompanied minors usually belong.

In the case of an alleged minor applicant for international protection, the law requires a consent to the medical checks by the minor him/herself or their legal representative. The refusal by the minor to undergo the medical examination does not constitute grounds for impeding the acceptance of the application for international protection, nor for the adoption of the decision.<sup>42</sup> The law provides that the social and health assessment of age must be carried out using a multidisciplinary approach.<sup>43</sup> This procedure must be conducted by a multidisciplinary team, including a social interview, covering the previous life experiences relevant to the assessment, a pediatric visit and a psychological or neuropsychiatric evaluation.<sup>44</sup> If at the end of each phase or stage of the procedure certain elements emerge with regard to the minority of the applicant, no subsequent verification is carried out.

The result of the social-health assessment must be communicated to the applicant, in a manner consistent with their age, maturity and level of literacy, in a language that they can understand, in addition to the to the legal guardian and to the judicial authority which ordered the assessment. The applicant has the right to receive a written copy of the result. However, these norms are not always respected, and the practices are still quite different between Italian regions: in some contexts only the X-ray of the wrist is performed, in other cases it is evaluated through the maturity of the teeth and/or the genital development, while the psychological/neuropsychiatric interview is almost never carried out.<sup>45</sup> The margin of error is sometimes shown to the extent of  $\pm 2$  years, others of  $\pm 6$  months, and in a few instances it is not really indicated. In conclusion, often, no written document concerning the age-determination assessment is issued to the applicant.<sup>46</sup>

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<sup>42</sup> D.lgs. n. 25/08, art. 19.

<sup>43</sup> Law 47/2017. art. 5.

<sup>44</sup> D.p.c.m. n. 234/16, art. 5, commi 1-2.

<sup>45</sup> Rozzi Elena., (2018), *L'accoglienza dei minori stranieri non accompagnati e il rilascio dei documenti* in Long Joelle, , *Tutori volontari di minori stranieri non accompagnati. Materiali per l'informazione e la formazione*, (2018) Milan, Wolters Kluwer.

<sup>46</sup> *Ibid.*

## 4. Concluding Remarks

In view of the above described, it is evident that the Italian system is characterised by a high degree of arbitrariness vis-a-vis the path that asylum seekers and refugees take, both in the phase that precedes the recognition of international protection and in the phase that follows it.<sup>47</sup> This phenomenon reaches the maximum extent in the decision-making phase of the protection application, during the administrative and judicial review phases. The factor that contributes to the high discrepancy between the decisions on asylum requests can be traced back to the Territorial Commissions called to analyse the applications: it is possible to notice, in fact, the great difference among the various local Commissions in their decision-making processes. In addition, the outcome often depends on how the request is presented to the Commission during the hearing, but for which the law doesn't provide certain standards. Following the recognition of international protection, it is evident that refugees often meet a number of difficulties on the national territory. A real vacuum of reception and assistance occurs, which contributes to the creation of large social marginality. It is this situation of social exclusion that seems to be the most worrying outcome of the current configuration of the Italian system for the protection of asylum seekers and refugees.

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<sup>47</sup> Leo Leonora. *Aspetti critici del sistema di Protezione Internazionale in Italia (2014)*, ASGI <<https://www.asgi.it/wp-content/uploads/2015/03/report-febbraio-2014.pdf>> last accessed 08 June 2018

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# GLOBAL LEGAL REVIEW

WHERE WOMEN'S EMPOWERMENT & LAW MEET