FRAMING MIGRATION, POPULATION AND LEGAL ORDERS: THE INTEGRATION PUZZLE IN ITALY

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Abstract

The present contribution summarizes the relationships between, on one hand, migration and population in Italy and, on the other, between the Italian legal framework and the effective integration of migrant people taking into account the gaps on the former in the different dimensions of the phenomena at European, national and local level and the general political issues related to the latter

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1. Introduction

The present contribution summarizes the relationships between, on one hand, migration and population in Italy and, on the other, between the Italian legal framework and the effective integration of migrant people taking into account the gaps on the former in the different dimensions of the phenomena at European, national and local level and the general political issues related to the latter.

Among the peculiar consequences of the transformations that have been sweeping the EU Member States since the early 2000s (economic crisis, increased migratory flows and others), there is that of a heightened awareness in all its national societies of the importance – social, economic, political – of the problems linked to the exclusion or inclusion, integration and participation of foreigners.

Whether third-country nationals or stateless persons, legally or irregularly residing immigrants, refugees, asylum seekers[1] and so on, integration has been a central theme of public debate in Europe in recent years. The topic is closely linked to that of economic and social equality (more precisely, it recalls inequalities, which have grown exponentially in the last two decades), a founding value of continental liberal-democracies, and which, also because of the instrumentalization punctually recorded in the political debate, mainly during election campaigns, amply justifies careful reflection and rethinking on how to facilitate integration through rules.

The growing awareness of the structural character of migration, combined with the serious negative consequences of demographic decline and the presence of inner (isolated) areas,[2] mostly overlapping with rural ones, make Italy a unique case-study of migrant's integration in connection with local core-periphery dynamics and peculiar institutional and regulatory frameworks

[1] Legal positions used in EU Member States national legislation concur to define five main social groups that can be identified as the following: aliens (or non-EU citizens), EU citizens, refugees, migrant workers and illegal residents. In 2021 forced migrants were 89,3 million so divided: internal displaced people, 53,2 million; 21,3 refugees; Palestinian refugees under UNRWA mandate, 5,8 million; abroad displaced Venezuelan people, 4,4 million and asylum seekers, 4,6 million (UNHCR database). Main push factors are wars (32), food crisis or shortages (870 million interested people) and environmental crisis due to climate change (24 million of internal displaced people), besides Covid-19 pandemic.

[2] On the National Strategy for Inner Areas-NSIA see *infra*, note n. 95.

and tools. The close link between process of regression and recalibration (mostly impoverishment) of Welfare, historical regulatory gaps, the depopulation of vast areas and emerging social discontent phenomena, led to the search for answers that were neither based on emergency and short-term logics, nor exclusively on regulations. The answers had to be practically feasible and, to this end, adapted to the peculiarities of the socio-economic, geographical and cultural situation of the various territories.

From the observation of this complex and contradictory reality, which is even more relevant today in the face of the threatening geopolitical situation, a series of questions emerge concerning how to intervene, with which instruments and institutions to equip the country and the local authorities involved, in order to emerge from an *impasse* fraught with further and greater unknowns. To answer these questions, it appears necessary first to closely define the framework and the 'European paradigm', which constitute the essential regulatory premise for understanding the national discipline. Historical national gaps were in fact formed and consolidated during a period and in a context of prolonged EU disengagement and a vacuum not only of strategies, but of any useful collective political and regulatory initiative, despite the fact that increased migration was widely announced. Then, to examine the main possible and practicable integration strategies, defined starting from the geo-territorial characteristics of the regions involved and the national labour market.

Managing the phenomenon involves channelling the flows and avoiding both illegal trafficking and abuse of the right to asylum (such as false declarations of origin). Integrating, on the other hand, means first planning a progressive sizing of services (housing, health, social, welfare and others), appropriate to a larger and more industrious community. Secondly, subordinating to the interest in working and contributing to the country's prosperity, the recognition of citizenship rights. This, to be sure that those who come, do not just aim to take advantage of social protections. Increasing social cohesion implies first establishing the right institutions for this purpose and strengthening them, to overcome obstacles to individual and collective development and growing inequalities, since – to use Kant's words – even a Republic of wicked people can turn into a decent state in the presence of good institutions.

For a long time, we have been witnessing, on the contrary, a

process of impoverishment and side-lining of health, education and welfare services, implemented in the name of an alleged principle of rational organization (based on minimum thresholds) and by means of linear cuts, as easy as they are indistinct, a non-choice with inauspicious effects. Added to this is the problematic 'transversality' to numerous areas of state and local authority activity, which a serious commitment to integration necessarily requires: if already in ordinary times the fragmentation of functions, their duplication and the confusion of competences between offices invalidate any capacity for inter-administrative coordination and between the different levels of government in matters of high political impact, in conditions of emergency (economic, migratory, pandemic, etc.) the bureaucratic tangle becomes overwhelming and administrative officials do not know which level or office is responsible for a given policy.

Further, the national leading classes (*elite*) are generally reluctant to invest in increasing the supply of services necessary for integration, due to the fear of triggering an incremental mechanism, a pull factor – so to say – exponential and 'no return' for immigration (H. Nordström). Meanwhile, political forces of all orientations (not only Italian) find themselves, at best, annihilated by the dilemma: reactionary and conservative ones, whether or not to instrumentalise the issue to increase consensus in the polls; moderate and progressive ones, whether or not to confront it, fearful of indirectly fomenting populist sentiments and nationalist (or sovereignist) drifts. Political instability inevitably determines the government's agenda and the prospects for legislative interventions inspired by a calm, constructive parliamentary debate are becoming increasingly remote. Countries remain paralysed by political battles and the problem unsolved.

In the Italian case, a strategic function for future well-being (the management of migration, understood as the phenomena of immigration and emigration) has become, for at least a five-year period, a catalyst for consensus in the political *tourbillon* and the incessant electoral campaigning that characterises the domestic context; then, in the last year, a stone guest. In the weeks leading up to the last general election (September 25th, 2022), in fact, the topic remained out of the public debate, probably because it was a divisive issue for the electorate.

2. Migration and the EU

The issue of migration was prevalent in the public debate of the EU Mediterranean countries in the past years and it still remains among the major focuses of their decision-makers, policy experts and national legislators. Available data, mainly based on OECD regional monitoring systems – which usually do not include the number of asylum seekers –, indicate an increase in overall migration flows in 2019[3]. Across Southern European countries the dynamic was quite different, as migration to Spain increased consistently (+18% in 2019) while migration to Italy decreased slightly (-9%, Ibidem). Regarding mixed migration flows, the numbers of registered arrivals show that the Eastern Mediterranean route – leading to Greece and Bulgaria – was the main route taken by migrants and refugees travelling to Europe by sea and by land in 2019, compared to those travelling in 2018[4].

The underlying socio-economic challenges of the presence and the handling of temporary and permanent immigrants in the EU Mediterranean countries have a significant impact on the political scenario in terms of workable solutions to the main administrative problems and capacity of the national leaderships to present them to voters and to deal with cross-cutting tasks (as managing identification and relocation procedures, redefining national welfare systems or access to job market etc.).

The impact of Covid-19 pandemic on the evolution of migration flows ultimately showed the biggest fall in the number of registered arrivals through the Eastern Mediterranean route. As documented by Frontex (figure 3), there was a significant decrease of over three quarters, to around 20.000, while the number of detections of irregular border crossing in the Western Mediterranean region decreased by 29% to around 17.000 and the arrivals through the Central Mediterranean route almost tripled[5]. Even in 2022 the latter, together with the Balkan route, remains the

[3] OECD, ILO, IOM, UNHCR, "2020 Annual International Migration and Forced Displacement Trends and Policies Report to the G20", p. 4-5.

[4] DTM, *Mixed Migration Flows in the Mediterranean. Compilation of Available Data and Information*, February 2020, p. 3-4, whose data include all registered arrivals.

[5] To over 35.600 (Frontex New Release, *Irregular migration into EU last year lowest since 2013* due to Covid-19) on the 8 of January 2021; to 67.724 on the end of December 2021 (while to 61.618 through the Balkan route; IDOS, *Dossier Statistico Immigrazione 2022*, p. 2).

most used route where the highest number of illegal entries was recorded[6].

During the meeting of the EU Member States' Ambassadors of 16 June 2020, Italy, together with the Mediterranean countries Spain, Greece, Cyprus, Malta (Med 5), confirmed their willingness to negotiate an agreement on the European Asylum Agency. More than two years later however it is clear that the way of strengthening EU sectoral decision-making bodies is still long and difficult and that most of the small improvements so far realized at supranational level, were deeply connected with political circumstances and compromises.

Among the most interesting civic and government initiatives deserve consideration the "From the Sea to the City" Consortium, born in 2020 and launched by Mayors and city representatives from all over Europe that have shown their willingness to uphold fundamental refugees' and migrants' rights. With the aim of pursuing a welcoming and human-rights based migration and refugee policy, they offer a very significant example of bottom-up approach to socio-economic problems. The small dimension of towns, villages and cities of the Mediterranean landscape is in fact the right one to ensure an adequate, tailored and diffuse integration of asylum seekers and refugees coherent with European common legal traditions and values and respectful of its socio-economic fabric.

2.1. The "Dublin system" and its reform

The EU has no specific competence in the field of immigration. The policy of the European institutions has long been characterized, on the one hand, by the effort to pursue the common interest, on the other hand, by the protection of the Member States national prerogatives, in accordance to Articles 79 and 80 TEU. The following analysis will be focused, as first, on the so-called "Dublin system" and its failures and inefficiencies[7]. Second, the new

[6] The increase in arrivals in the EU is 77% compared to 2021 (for the Central Mediterranean route +59%, for the Balkan route +168%). Between January and the 24th November 2022, through the Balkan route arrived 281.000 migrants, while 94.341 travelled on the Central Mediterranean one (EU Commission, Frontex data).

[7] The negative outcome emerges most recently in the *Report on the implementation of the Dublin III Regulation*, 2nd December 2020, of the European Parliament, Committee on Civil Liberties, Justice and Home Affair, A9-0245/2020.

European Pact's proposal for a regulation on Asylum and Migration Management[8] will be considered, marking its new features and lack of significant improvements. In the final part, the future of migration policies is reviewed, through an analysis of the planned funding of the 2021-2027 financial framework.

The Treaty of the European Economic Community, signed in Rome on 25 March 1957, contains no provision devolving to the European institutions power in the field of immigration. The regulation of this matter is therefore left to the discretion of the Member States, without any regulatory framework. In the years following the signing of the Treaty of Rome, the increasing migratory flows towards Europe have placed immigration at the top of the EU Member States' agenda. Combating illegal immigration, strengthening border controls and the important role that controlled immigration plays in the economic and demographic development of the Union represent major challenges for the EU. Traditionally visas, asylum and immigration issues are left to intergovernmental cooperation only.

The Dublin Convention, signed by 12 Member States on the 15th of June 1990[9], was set up to determine the Member States responsible for examining an application for international protection (the minimum coordination among MS, their national policies through the adoption of a common criterion of responsibility) and to fulfil international obligations, in accordance with the Geneva Convention (1951) and the New York Protocol (1967)[10]. The so-called "Dublin system" was born as an international agreement, closely linked to the Schengen Agreement: they became two pillars of European asylum and immigration policies[11]. As stressed in several EU documents, it is the

[8] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM(2020) 610 final, of 23.9.2020).

[9] By Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, United Kingdom. On this topic, see, among others, N. Blake, *The Dublin Convention and rights of asylum seekers in the European Union*, in C. Harlow, E. Guild (eds.), *Implementing Amsterdam: immigration and asylum rights in EC law* (2001); A. Hurwitz, *The 1990 Dublin Convention – A Comprehensive Assessment*, Int'l J. of Ref. Law 646 (1999).

[10] On the so-called Geneve Convention, see B.S. Chimni, *The Birth of a "Discipline": From Refugee to Forced Migration Studies*, 22 J. of Ref. Stud. 16 (2009).

[11] On the harmonization policy pursued by the Dublin regulation, see R. Marx, *Adjusting the Dublin Convention: New Approaches to Member State Responsibility for*

'cornerstone' of the Common European Asylum System-CEAS[12]. The Dublin regulation should prevent an application by the same applicant from being examined in more than one Member State and requires it to be examined by the State where the applicant entered the EU. Furthermore, it (Dublin reg.) established other criteria for determining responsibility apart from first Member State of the entry. On its basis if the asylum seekers have illegally crossed the border of a Member State, it is that Member State that has to take charge of them. However, asylum seekers have the right to remain in the country of arrival, despite not having regular entry documents, and to be assisted according to the Reception conditions directive, the Asylum procedures directive and the Qualification directive.

After the entry into force of the Treaty of Amsterdam in 1999, the right to asylum felt within the Community competences because of the approval of the Dublin II Regulation (Regulation (EC) No. 343/2003), which replaced the Convention in 2003[13] and consisted also in the so-called "Eurodac-Regulation" (Regulation (EC) No. 2725/2000) as well as the related Implementing Regulations (Regulation (EC) No. 1560/2003 and Regulation (EC) No. 407/2002). Five different criteria underlie the decision of which country should be responsible for an asylum claim[14]. First, the principle of family unity: the State where a family member is located is competent. Second, the issuance of residence permits or visas: if the applicant holds a valid residence permit, the issuing State is responsible. Third, the application submitted in the

Asylum Applications 3, Eur. J. of Migration and L. 7, 14 (2001). On the relationship between the Dublin system and the Schengen system see, among others, K. Hailbronner, C. Thiery, *Schengen II and Dublin: Responsibility for Asylum Applications in Europe*, 34 Common Mkt. L. Rev. 987 (1997); B. Tonoletti, *Catastrofe e redenzione del diritto pubblico europeo*, in F. Cortese, G. Pelacani (eds.), *Il diritto in migrazione. Studi sull'integrazione giuridica degli stranieri* (2017) 55-106; M. De Somer, *Dublin and Schengen: A tale of two cities*, EPC Discussion Paper (15 June 2018).

[12] I.e. European Council, 'The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens' [2009] OJ C115/1, para 6.2.1.

[13] J. Aus, *Logics of Decision-making on Community Asylum Policy – A Case Study of the Evolvement of the Dublin II Regulation*, ARENA Working Paper No. 3 (February 2006).

[14] U. Brandl, *Distribution of asylum seekers in Europe? Dublin II Regulation determining the responsibility for examining an asylum application*, in C. Dias Urbano De Sousa, P. De Bruycker (eds.), *L'émergence d'une politique européenne d'asile* (2004) 33.

international transit zone of an airport: it is foreseen that when "the desire to seek international protection is manifested in the international transit zone of an airport of a Member State, that State is the competent one". Forth, in case of legal entry into a Member State, the latter will be competent for it. Last, in the opposite case of illegal entry or presence in a Member State, if the applicant has illegally crossed the border of a Member State by land, sea or air from a Third country, the Member State is responsible for the illegal entry or residence.

The EU Commission evaluated the Dublin system in 2007 and suggested a reform which led to the adoption of recast Regulations for Dublin (Regulation (EU) No. 604/2013, "Dublin-III-Regulation") and Eurodac (Regulation (EU) No. 603/2013) in 2013 and to changes to the Dublin Implementing Regulation (Regulation (EU) 118/2014). The main objects of the recast were to strengthen the efficiency of the system and to improve the standard of protection for asylum seekers[15]. In 2014, the Dublin III Regulation came into force, replacing the previous one with measures not detailed enough to give a substantial change. The competence to examine an application for international protection still lies with the Member State that plays the greatest role in relation to the applicant's entry into the EU territory, with certain exceptions[16]. The criteria for determining the State responsible is still the same, with the residual criterion, but one that is predominantly applied, being the State of first entry into the EU. This very criterion leads to an imbalance in the responsibilities of the EU Member States: frontier and costal States – like Italy, Spain, Malta and Greece – are

[15] For several years, legal claims have been brought before the European Court of Human Rights to denounce the violation of the European Convention for the Protection of Human Rights by Member States, in application of the Dublin Regulation, almost always rejected or declared inadmissible. On this point see J. Lenart, *«Fortress Europe»: Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms*, Utrecht J. of Int.'l and Eur. Law 4 (2012).

[16] On the claims of State competences at this stage, J. Monar, *The External Dimensions of the EU's Area of Freedom, Security and Justice. Progress, Potential and Limitations after the Treaty of Lisbon*, Swedish Institute for European Policy Studies, Report n. 1 (May 2012) 23. On marginal, limited spheres of exclusive competence of the EU at the time, E. Neframi, *Division of Competences between the European Union and its Member States Concerning Immigration. Study required by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs* 7 (2011).

overloaded by the double burden of border control in the interests of all the Member States and the task of receiving asylum seekers.

Since 2014 the increasing numbers of flows made more and more clear the failures and inefficiencies of the Dublin system[17]. Frontier and costal EU Member States administrations were unable to handle the great number of asylum and international protection applications they received. These countries found themselves not equipped to monitor and control the great migrant inflows and flows out of the country and, in several cases, managed to circumvent the system by shifting the weight of the flows to the countries of last destination, such as Belgium, France, Germany, the Netherlands and Sweden. Further, the inter-administrative coordination among different national authorities was (and is still) lacking. Migrants often found (and still find) themselves stuck in a 'limbo' for long periods, awaiting a decision on their legal *status*. In addition, the Dublin system does not take sufficient account of several type of family members for reunification, which is currently the main reason for entry, and obviously places greater pressure on the countries on the Union's southern borders. The need for broadening the definition of "family links" to include also siblings and family formed in third states, for instance, has been often outlined by experts and scholars[18]. What does not work, finally, are the repatriations to the countries of first entry of the so-called 'Dubliners'[19]. Migrants tend to redistribute themselves after their arrival in Europe, mainly to countries, such as Germany and Sweden, which are not always able to trace migrant's movements and send them back, both for operational difficulty in avoiding illegality and economic reasons since repatriation has a cost. As documented by IOM, "[*a*] *total of 28,256 migrants were assisted to return from the European Economic Area-EEA in 2019, which accounted for 43.5 per cent of the total caseload. Despite a 17 per cent decrease as*

[17] On the non-functionality of the Dublin system as a burden-sharing instrument in the proper sense, see Matrix Insights Ltd., *What system of burden-sharing between Member States for the reception of asylum seekers?*, PE 419.620 (22 January 2010). On the redistributive implications that it however has, see G. Noll, *Negotiating Asylum* (2000), 318 ff.

[18] D. Thym, *Secondary Movements: Overcoming the Lack of Trust among the Member States?* in emigrationlawblog.eu (October 2020); F. Maiani, *L'unité familiale e le système de Dublin. Entre gestion de flux migratoires et protection des droits fondamentaux* (2006).

[19] C. Feitgen-Colly, *The European Union and Asylum: an Illusion of Protection*, Common Mkt. L. R. 1503 (2006).

compared to 2018, the EEA remains the top host region (IOM, 2020). Most of the beneficiaries were assisted to return from Germany (13,053, or 46 per cent of the total number of beneficiaries assisted from the EEA). Greece (3,804) remains the second main host country, despite a 22 per cent decrease in the number of migrants assisted compared to 2018. Austria (2,840) and Belgium (2,183) have lost their respective third and fourth positions, being overtaken by the Netherlands (3,035), which experienced a 41 per cent increase in the total caseload of migrants assisted (ibid.)"[20].

The most controversial aspect is the willingness of Member States to counteract the phenomenon so-called asylum shopping, i.e. the practice of asylum seekers applying for asylum in different countries or in a particular country after having transited through other countries. The EU legislation, through the so-called Dublin Regulation, establishes that asylum applications must be presented and registered in the country of first arrival and that the decision of the first Member State where the application has been formalized is the final decision in and for all other EU countries. This practice is very common amongst the so-called economic migrants and the whole mechanism therefore ends up entrusting the "filtering" role of the border countries, in order to control flows and limit entries[21].

As a consequence of the "migratory crisis" in 2015, the EU Commission launched on 4 May 2016 – as a first step of a full revision of the CEAS – a recast Dublin Regulation ("Dublin IV"), a recast Eurodac-Regulation as well as a proposal for the establishing of a European Union Agency for Asylum. The Commission Proposal "for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person"[22] aimed at streamlining the Dublin rules "*to enable an effective operation of the system, both in relation to the swifter access of applicants to the procedure for granting international protection and to the capacity of Member States' administrations to apply the system*". Besides it was intended to contain and limiting "*secondary*

[20] Available at migrationdataportal.org.

[21] On this topic, see C. Odorige, *The Shoppers; Venue Shopping, Asylum Shopping: A Resolution in EURODAC?*, *CEE e|Dem and e|Gov Days* 229-237 (2018).

[22] Proposal com(2016) 270 final. For an in-depth analysis of the proposal, see the study carried out on behalf of the European Parliament by F. Majani, *The reform of Dublin III Regulation* (28 June 2016).

movements within the EU, including by discouraging abuses and asylum shopping" and to identify tools *enabling sufficient responses to situations of disproportionate pressure on Member States' asylum systems"* through a "*corrective allocation mechanism*" that ensures a "*high degree of solidarity and fair sharing of responsibility*" among Member States. In the critical studies of EU Law scholars was unanimous evaluation that the 2016 Proposal would not enhance the efficiency of the system and from a practical implementation perspective streamlining the Dublin rules was bound to fail[23]. Shortly before the presentation of the Dublin IV proposal, a temporary and unprecedented derogatory scheme was approved[24]. The latter, at recital 34, expressly establishes that:

> "The integration of applicants in clear need of international protection into the host society is the cornerstone of a properly functioning CEAS. Therefore, in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation".

A different way to allocate asylum seekers to Member States was thus defined and it recalls the same logic of Art. 38 of the Asylum Procedures Directive: due regard must be given to the existing connection 'between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country'. Giving more weight to objective links between an asylum seeker and a given country, this scheme fuelled a broader

[23] See, among others, M. Di Filippo, *The Dublin Saga and the Need to Rethink the Criteria for the Allocation of Competence in Asylum Procedures*, in V. Mitsilegas, V. Moreno-Lax, N. Vavoula (eds.) *Securitising Asylum Flows* (2020) 196-235.

[24] The so-called relocation scheme, provided by the EU decision 2015/1523 of the Council of 14 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and of Greece OJ L239/146, and the (EU) Decision 2015/1601 of the Council of 22 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2015] OJ L248/80. On this topic, see C. Scissa, *Relocation: Expression of Solidarity or State-Centric Cherry-Picking Process?*, 1 Freedom, Sec., Just.: Eur. Legal Studies 132-51 (2023).

debate on the overall reform of the Dublin system. Despite the circumstance that the 2016 Dublin IV Proposal has been withdrawn in 2020, the new European Pact's proposal for a regulation on asylum and migration management recalls for many aspects the Dublin IV Proposal.

2.2. The New European Pact's proposal for a regulation on asylum and migration management

Presented at the end of September 2020, the new European Pact's proposal on asylum and migration management[25] follows years of complete deadlock and failed negotiations. It comes in a peculiar moment, after the failure of the last legislature to reach an agreement on the reform of the rules governing asylum at European level. At the same time the world panorama has changed drastically: from the spreading feeling of aversion towards reception and hostility towards NGOs or private entities among the Member States population and above all because of the SARS pandemic Covid-19. Irregular migrant arrivals on the EU territory have been falling sharply for some time and asylum applications, while remaining constant (around 700,000 requests per year from 2017 to 2019), are just over half of those recorded by Member States in 2015 and 2016. This is a far cry from the situation in the middle of the last decade. Nevertheless, irregular migration is still a cause for concern due to the volatile circumstances playing as push-factors driving migration in countries of origin.

Promised as "a fresh start", the new Pact however does not provide a proper binding regulation and it is a rather timid proposal, a useful starting point for further discussion among EU Member States, with strong limitations, as further analysed. The strategy of the Commission is twofold: on one side, a proposal for an asylum and migration management's Regulation, on the other, a "new solidarity mechanism" connected to "robust and fair management of the external borders" and capped by a new "governance framework". It recognizes that no Member State should bear a disproportionate responsibility and that all MSs should contribute to solidarity on a regular basis. To come to the contents, it provides four relevant novelties. First, the emphasis on the principle of solidarity between States of first arrival and

[25] Communication of the EU Commission, COM(2020)610 final, of 23 September 2020 on the proposal for a Regulation on asylum and migration management.

destination, as well as on the harmonization of procedures[26]. Second, a pre-screening procedure at the border aimed at identifying those arriving from a country on the list of so-called "safe countries" of origin and for whom the accelerated procedure is envisaged. Third, the outsourcing of controls. Fourth, the inclusion - for the first time - of siblings among the "family links", i.e. as persons to whom they can apply for reunification. The most controversial profile is related to the choice of focusing on border procedures oriented to quick and summary decisions - basically, of "no entry" - instead of an organic reform of the Dublin Regulation[27].

The new Pact has been described as "a three-story building" where the first floor is the external dimension, agreements with countries of origin and transit. The aim is to help people in their countries of origin: to deepen cooperation on migration through comprehensive, balanced and tailored partnerships with them. The second floor consists of measures to strengthen the control and management of the EU's external borders through several elements: a robust screening system that includes identification, health checks, fingerprinting and registration in the Eurodac database[28]; a new European border and coast guard, with more personnel, boats and equipment[29]. Border and migration management information

[26] See, among others M. Moraru, *The new design of the EU's return system under the Pact on Asylum and Migration,* EU Migration Law Blog (14 January 2021); V. Moreno-Lax, *A New Common European Approach to Search and Rescue? Entrenching Proactive Containment*, EU Migration Law Blog (3 February 2021); F.R. Partipilo, *The European Union's Policy on Search and Rescue in the New Pact on Migration and Asylum: Inter-State Cooperation, Solidarity and Criminalization*, 2 Freedom, Sec., Just.: Eur. Legal Studies (2021).

[27] For which the political conditions are clearly not yet ripe; see F. Maiani, *A "Fresh Start" or One More Clunker? Dublin and Solidarity in the New Pact*, EU Migration Law Blog (October 2020).

[28] Provided by Regulation n. 603/2013 of the European Parliament and of the Council is the database for comparing the fingerprints of asylum seekers and third-country nationals apprehended while crossing EU borders. In 2014, following Europe's warning to Italy, accused of contravening the Dublin Regulation and allowing unidentified migrants to transit through EU countries, the Italian Ministry of the Interior issued Internal Circular No. 28197 of 25 September 2014, which states that "the foreigner must always be subjected to photodactyloscopic and fingerprinting checks [...] regardless of the precise identification on the basis of the travel document, if possessed' or even 'the non-existence of grounds for doubt as to the declared identity. This is all the more so if there is a suspicion that he has applied for asylum in some other EU country".

[29] On the original institution, see F. Ferraro, E. De Capitani, *The new European Border and Coast Guard: yet another "half way" EU reform ?*, ERA Forum 385 (2016).

systems has to work in unison by 2023, giving costal and frontier guards the information they need to know who is crossing EU borders. Last but not least, the third floor is tailored to address the most complicated subject of European migration and asylum policies, namely solidarity and the distribution of responsibility for the management of asylum seekers among Member States. The new solidarity mechanism focuses primarily on relocation or sponsored returns. In the frame of the "return sponsorship", the Commission first determines whether a State is faced with "recurring arrivals" following Search and Rescue-SAR operations and determines the needs in terms of relocations and other contributions (capacity building, operational support proper, cooperation with third States). Afterwards it invites Member States to notify the "contributions they intend to make". They can choose to offer relocations for the eligible persons or return sponsorship of migrants not entitled to stay in the EU, and if the return is not carried out within eight months, the relevant State must accept the migrant on its territory. Eligible persons are those who applied for protection in the benefitting State, with the exclusion of those subject to border procedures in force of Article 45(1)(a) and of those assigned on the base of "meaningful links" – family, abode, diplomas – to the benefitting State, in coherence to Article 57(3). The assumption related to these measures is that the benefitting State must carry out identification, screening for border procedures and the first shortened Dublin procedure before it can declare a person eligible for relocation.

If offers are sufficient, the Commission combines them and officially establishes a "solidarity pool"[30]. In other words, Member

[30] The principle of solidarity was affirmed by the CJEU in its judgement in *Slovakia and Hungary v. Council* on 6 September 2017, dismissing the action brought by Hungary and Slovakia against the provisional mechanism for the mandatory relocation of asylum seekers (that contributed to enabling Greece and Italy to deal with the impact of 2015 crisis), adopted by the Council in its binding decision of 22 September 2015, n. 2015/1601 (*supra*, f. 13) on the relocation of 120.000 people within the Union. The Court found the Council "fully entitled to take the view, in the exercise of the broad discretion which it must be allowed in this regard, that the distribution of the persons to be relocated had to be mandatory, given the particular urgency of the situation in which the contested decision was to be adopted" (para 246). On the principle in EU law, see among others, M. Kotzur, *Solidarity as a Legal Concept*, in A. Grimmel, S. My Giang (eds.) *Solidarity in the European Union. A fundamental value in crisis* (2017); R. Wolfrum, C. Kojima (eds.), *Solidarity: A structural principle of international law* (2010); V. Mitsilegas, *Humanizing solidarity in European refugee law: The promise of mutual*

States can decide whether and to what extent to share commitments, choosing between relocating applicants or sponsoring returns. At the same time, they are bound to cover at least 50% of the relocation needs set by the Commission through relocations or sponsorships, and the rest with other contributions. In fact, if offers are not sufficient, the Commission provides - by means of an implementation act - specific relocation targets for each Member State and summarizes other contributions as offered by them. If such targets are not reached and the relocations offered fall 30% short of them, a "critical mass correction mechanism" will be adopted (with the obligation for the interested Member States to meet at least 50% of the relocation needs set by the Commission). A quite similar scenario is open by the declaration that a Member State is "under migratory pressure", by the EU Commission on its own motion or at the request of the concerned State (Art. 50). In this case, the beneficiaries of protection become eligible for relocation too (art. 51(3)). The measures thus set contribute to realize an "half-compulsory" solidarity which is far from effectively solving the failures of the system. There is a lack of strategic and long-term measures and a loss of focus on the fundamental values of the Union, while irregular immigration is encouraged.

As the EU Commission stated, the new Pact put "no effective solidarity mechanism in place". It does not allow for the introduction of the compulsory relocation and leaves open the issue of the asymmetry between the forced responsibility towards migrants of the countries of arrival (and first disembarkation) and the instead entirely voluntary solidarity of the other EU Member States in the migrants' relocation. In short, the Pact does not provide a lasting solution to the problem of their distribution and is the result of consultations in which, among many disagreements, the only points of agreement were the following three: improving the effectiveness of repatriations or returns, establishing a European return system, improving cooperation with Third countries in the area of 'migration management'.

2.3. The financial plan for the next five years

The Covid-19 pandemic that struck the world and its unexpected consequences generated the largest health emergency

recognition, 24 Maastricht J. of Eur. and Comp. L. 721-739 (2017); E. Kuçuk, *The Principle of Solidarity and Fairness in Sharing Responsibility: More than Window Dressing?*, 22 Eur. L. J. 448-469 (2016).

Western countries have faced since the post-war period. In this epochal moment, the European people and the Union's Member States have united to achieve a common goal, a post-pandemic economic and social reconstruction, through the approval of the Recovery Fund, the largest package of measures ever financed by the EU, amounting to 1,800 billion euros. The plan, which represents an important opportunity for the European integration process and for EU's competitiveness worldwide, is based on the principles of sustainability and equity. These two values also inspired during the pandemic the initiatives and actions carried out by the Third Sector actors, volunteers and NGOs to address the needs related to assistance, care and education. Without the intervention of this important component of our society, most of the vulnerable people, like migrants, would not have received help.

On December 17, 2020, the European Council adopted the regulation laying down the EU's Multiannual Financial Framework (MFF) for the period 2021-2027 (2020/2093). The regulation provides for a long-term EU budget of EUR 1074.3 billion for the EU-2, including the integration of the European Development Fund.

Together with the €750 billion Next Generation EU Recovery Facility, it enabled the EU to provide unprecedented funding in the coming years to support recovery from the COVID-19 pandemic and the EU's long-term priorities across policy areas. The 2021-2027 European budget is distributed in seven (7) policy areas and allocates around €23 billion for immigration, primarily for border management. This is a very low percentage, less than 2%, but at the same time the funds represent an increase compared to previous years. The general objective of the EU is to strengthen security in the management of entry and exit flows both by negotiating agreements with third countries and by strengthening the Schengen Information System. A large part of the funds will be allocated mainly to the strengthening of the security approach and about 75% of the EU budget on migration and asylum would be allocated to returns, border management and the outsourcing of controls. In this perspective it is planned to hire up to 10,000 border guards at the disposal of the European Border and Coast Guard Agency by 2027. The first element that catches the eye is the imbalance between the resources foreseen for border management (over 10 billion in total) and those for the integration of migrants, a sign of the political will to reduce arrivals as much as possible. This choice is based on the

awareness that the pandemic as well as the war in Ukraine fuel socio-economic crisis and consequently the migratory flows towards Europe[31].

2.4. How to improve the EU role and programs? The new EU Asylum Agency

The previous paragraphs examined the major complexities of the European Union's immigration policies. The regulation of the subject is left to the discretion of Member States until the Dublin Convention and the Treaty of Amsterdam. A common approach to the subject has not yet been developed. Yet strengthening cooperation in this area is one of the expressed goals of the European Union, which, however, in the search for agreements that bring together the will of all Member States, focuses more on border control and security than on the subsequent phase of reception and integration[32]. As outlined above, the pillar of EU policies on asylum is represented by the Dublin Convention, which provides that the first country of entry is in charge for the reception of migrants and asylum seekers. This approach has so far led to greater difficulties for the Mediterranean countries, which are obliged to manage huge numbers of people and asylum requests without the support of other EU Member States, most of which are against the relocation of foreigners[33].

Even though the European Commission hopes with the European Pact on Migration and Asylum to find a final agreement on these issues, overcoming the Dublin system, the political prejudice and the consequent opposition between border/frontier States and internal States remains strong, mainly for avoiding

[31] In the Sahel countries, the networks of criminal organisations and Islamic terrorism have in fact been joined by Russian mercenaries (Wagner battalion) who have been exerting further pressure, since September 2021, to increase migration flows from Libyan regions (interview to Emanuela del Re, EU Special Representative for the Sahel, *No ong, no quote*, Il Foglio 4 (26 November 2022).

[32] A. De Petris (ed.), *Refugee Policies in Europe. Solutions for an announced emergency* (2017).

[33] Considering the relevant numbers, two aspects deserve attention: first, the high number of requests for relocation from the State of first entry to other EU Member States, based on the Dublin Regulation (126.000, that's to say 1 every 5); and secondly, the large share of multiple applicants for protection (those who had already applied for protection) amounting to 61.7% of the 510,696, as revealed in relation to the biometric sets stored in the Eurodac database on asylum seekers over the last ten years (Idos, *Dossier Statistico Immigrazione 2022*, Scheda di sintesi, 3).

secondary movements of migrants[34]. The approach of responsibility and voluntary solidarity among EU Member States adopted in the new Pact does not provide a satisfactory solution.

Even in the assessment of the 2021 - 2027 MFF funds allocated to immigration, no better perspectives are in sight. The largest share of the funds is reserved for border security. The EU is aware that, what is coming will be a difficult season: the post-pandemic health and economic crisis and the war in Ukraine are leading to an increase in regular and irregular immigration that will test Europe's strategy on migrants[35]. Even if such challenges are unifying the Union, cooperation on migration control, including expulsion of irregular migrants, has become a priority in the Member States relations.

A new Voluntary Solidarity Mechanism was approved by the Declaration on relocation of migrants endorsed by a group of EU Member States (including Italy, Spain and Greece), on June 2022[36]. Admitting that several European countries might be

[34] J.-P. Brekke, G. Brochmann, *Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation*, 28 J. of Refugee Studies 145-62 (2015).

[35] UNHCR has declared Ukraine a Level 3 emergency (the highest level possible): more than 7,4 million individual refugees from Ukraine were recorded across Europe since 24 February 2022 (updated on 30th September 2022). For Ukrainian refugees on 4 March 2022, the EU activated for the first time the Directive 2001/55/EC, which 'in the event of a mass influx of displaced persons' grants them temporary protection (C. Kerber, *The Temporary Protection Directive*, 4 Eur. J. of Migration and L. 193 (2002); E. Küçük, *Temporary Protection Directive: Testing New Frontiers?*, 1 Eur. J. of Migration and L. 1-30 (2023); in the new EU Pact's proposal, an "immediate protection mechanism", aimed at substituting it, is provided). Single EU Member States were granted the option of applying the Directive not only to Ukrainian citizens, but also to stateless persons and third-country nationals, together with their family members, resident or beneficiary of national or international protection in Ukraine before the 24th February 2022. Instead, about 5 million foreigners present in the Ukrainian territory were excluded: workers, students, asylum seekers and other categories of short-term migrants. The Directive allows beneficiaries of temporary protection to move within the EU and to enjoy the assistance of the Member States where they choose to live. Thus, on one side, this offered to the neighbouring Member States (Poland, Hungary, Slovakia and Romania) the possibility to avoid the burdens that the Dublin Regulation would impose on them, as countries of first entry; on the other side, individuals free consent was taken into consideration in the procedure of choosing the destination country.

[36] The Declaration was endorsed and signed in Luxemburg on the 10th June 2022 by the Ministers for interior affairs (as representative of the respective Executives) of the 27 EU Member States also with the three Schengen-associated

temporary not available to contribute to the mechanism, as engaged in the frontline of the Ukrainian crisis, already hosting a high number of refugees from that country (like Hungary and Poland that gave asylum to millions Ukrainians), the agreement provides for the relocation of approximately 10,000 asylum seekers per year. The signatory Parties committed themselves on a voluntary basis to receiving a number of migrants in proportion to their population and gross domestic product. As an alternative to opening their borders to migrants, they could choose to make financial contributions or send material aid to third countries that could affect the flows. The Agreement specifies that "[r]elocations should mainly benefit Member States facing disembarkations as a result of search and rescue operations in the Mediterranean and Western Atlantic route" and under it, each contributing Member State had submitted a relocation commitment on the basis of an indicative number of movements. In practice while the last months experience showed the large reception capacities of EU countries and the feasible scope for simplifying procedures, the substantial disapplication of the recalled agreement at the first major test (the Ocean Viking and Geo Barents ships case on beginning of November 2022[37]) makes it clear that the increased administrative capacity put in place in response to the 'Ukrainian crisis' did not lead to a reversal towards better standards of protection in the context of the EU asylum and reception system (meaning that a "double standard" is at stake).

Regarding the use of European public funds for the national protection systems and facilities, the issue of controls and checks deserves attention. Many recent judicial enquiries and scandals have shown that frauds and misconducts put in place by managers of reception and protection facilities, are possible due to the lack of checks on the side of the recipients of the goods and services contracted or in other word, the lack of regular, protected hearings of the third-countries nationals hosted in these facilities. The new European Union Agency for Asylum-EUAA (which replaced – since 19 January 2022 – the European Asylum Support Office-

States, Norway, Switzerland and Lichtenstein. See S. Carrera, R. Cortinovis, *The Declaration on a Voluntary Solidarity Mechanism and EU Asylum Policy. One Step Forward, Three Steps Back on Equal Solidarity*, in CEPS In-Depth Analysis (October 2022).

[37] At the 24th of November 2022 only 117 migrants were re-located (ISPI and Ministry for Interior Affairs data).

EASO)[38] strengthened in its operational and control powers over the national systems potentially at risk might be a useful, significant improvement. In fact, EUAA's activities include not only technical support, but also specific focus on the deployment of operational and capacity building assistance in many formats, and mapping practices in different Member States. Further it has developed its own Anti-fraud Strategy Action Plan – in line with the EASO Anti-Fraud Strategy 2020-22[39] – and has documented and identified control activities[40] which are linked directly to the fraud prevention objectives and priority measures as a result of carrying out the fraud risk assessment process. Such a prospect has been emphasized just recently by the circumstance that OLAF has been asked to investigate alleged nepotism and mishandling of harassment claims at the EUAA. The anonymous complaint, by which several employees of the Agency called for a probe into top management, accused of covering up irregularities, is a matter of serious concern. If the analysis done by OLAF of all information of

[38] Regulation (EU) n. 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (available at the official website euaa.europa.eu). The new Agency is responsible for improving the functioning of the common European asylum system by providing enhanced operational and technical assistance to member states and bringing more consistency to the assessment of claims for international protection.

[39] EASO document adopted by the Management Board decision n. 61, EASO/MB/2020/067 (6 July 2020), www.euaa.europa.eu/sites/default/files/EASO_Anti_Fraud_Strategy_final.pdf.

[40] These activities include: to establish fraud investigations and response Protocols; to have in place the means to undertake investigations of potential frauds (giving due consideration to the scope, severity, credibility and implications of communicated matters); to communicate investigations results (European Anti-Fraud Office-OLAF or other investigators informs of the results of its investigations the EUAA's Executive Director and the Management Board) and to take timely corrective actions (Commission Decision of 12.6.2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings became applicable to the EUAA by analogy on 17/03/2020). Guidelines on Whistleblowing were made available to the Agency staff by creating a link on the EUAA's Intranet site (C4) as well as hotlines creating a link to OLAF's online forms for fraud allegation, also including more information on what to do in case of red-flag of fraud (Management Board decision n. 57 of 20 September 2019 establishing the EUAA's Guidelines on Whistleblowing, EASO/MB/2019/172). See the *document The EUAA Anti-Fraud Strategy: Updated control activities status for Q1 2022*, available online AFS_updated_Q1_2022.pdf.

potential investigative interest, according to standard procedures, will prove mismanagement by the EUAA executive director, it won't be easy restoring the body's credibility. Ultimately European attitude towards EU external border control (with its integrated border management approach) strongly influenced interaction and cooperation amongst relevant states on migration management and caused confusion on institutional mandates of the agencies involved (as shown by the case of Frontex, the European Border and Coast Guard Agency too[41]). The former is a strategic issue-area together with cooperation between intelligence agencies on the fight against international terrorism and energy security, compared to which migration management continues to remain peripheral.

3. Migration and the Nation-State

As already pointed out, despite the fact that increased migration was widely announced, a prolonged vacuum of EU strategies and engagement about its management favoured uncoordinated choices of reaction to the related challenges in the different EU Member States and a lack of any useful institutional and regulatory collective initiative.

When considering the scope of strengthening public institutions to meet the needs of a heterogeneous population, at national level, the assumption is (the existence of) a truly democratic regime and the rule of law while the focus must go on the currently identifiable gaps not addressed by ongoing policies or current regulatory initiatives. On the opposite, in despotic or kleptocratic regimes, the welfare of the people administered is not deemed worthy of attention.

In this view a first relevant point is the discrepancy between administrated and voters: the democratic representation mechanism and the exercise of the freedoms substantial to it (such as the freedom of association and assembly, guaranteed to foreigners as well as citizens by post-war constitutions) normally

41 B. Schöndorf-Haubold, *EU-Border Control by Frontex: European Police Cooperation between Migration Law, Crime Prevention and Human Rights*, written paper presented at the Conference on 'Cross Cutting Tasks Migration. Governance, Public Policies and Rights', 31st March 2022, University of Molise; F.R. Partipilo, *Frontex at a turning point? Fabrice Leggeri's resignation and some prospects for the EU Border and Coast Guard Agency*, ADiM Blog, Editorial (June 2022).

ensure the constant renewal of shared content and the satisfaction of the ever-changing demands and choral objectives of social groups (needs, demands, rights and duties with respect to 'host societies'). However, this aspect – defined by Rudolph Smend, formal integration[42] – requires that the statement of principles (like equality and dignity) and the exercise of the recalled freedoms be combined with the legislative recognition of full political rights. The latter has been restrictive for decades in the European countries and is not likely to happen in several EU Member States in the short term due to a lack of political will, and in some contexts, such as Italy, due to the Supreme courts caselaw. It excludes that Regions and local authorities may extend the right to vote to extra-UE citizens, asylum seekers, no long-term residents[43]. In federal systems, like Germany[44], individual state may recognize (and several *Länder* recognized) it to non-EU citizens, long-term residents only in the elections for the municipal (local) administration[45]. In such cases, the regulation of citizenship (for which long-term residence is usually a pre-requisite) and the fact that it is flanked by particularly empowering and stringent legislation on the integration of asylum seekers[46] is of major importance[47].

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[42] R. Smend, *Verfassung und Verfassungsrecht* (1928), in *Staatsrechtliche Abhandlungen*, Berlino, 1968, 119-276, spec. 148-60, ital. transl. *Costituzione e diritto costituzionale*, ed. by G. Zagrebelsky, Milano, 1988. For a framework in the philosophical, legal and sociological context, see U. Pomarici, *La teoria dell'integrazione di Rudolf Smend*, II *Democrazia e diritto* 109 (1982).

[43] See the decisions adopted by the ital. C. cost. n. 372 e 379 of 2004 (the first devaluated the provisions of the statutes of Tuscany and Emilia that recognised participatory rights), and the opinions by the Council of State of 16 March 2005 (concerning the town of Genua) and 6 July 2005 (concerning the town of Forlì).

[44] On the different groups and the structure of legal regulation of migrant's status in Germany (pre-Integration Reform 2016), see J. Bast, *The Legal Position of Migrants – German Report*, in E. Riedel, R. Wolfrum (eds.), *Recent Trends in German and European Constitutional Law. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht* 63-105 (2006).

[45] On the general topic, see F. Miera, *Political Participation of Migrants in Germany* (2009).

[46] A. Farahat, *Progressive Inklusion: Zugehörigkeit und Teilhabe im Migrationsrecht* (2014).

[47] In the case of the Federal Republic of Germany the Integraziongesetz, adopted on 1 July 2016, is inspired by a binary approach: 'fördern und fordern' (support and demand). It regulates the rights and responsibilities of migrants undergoing the identification and recognition procedure (in most cases, as asylum and international protection seekers). The logic of support and protection of this

Fragmented and dispersed among heterogeneous legal frameworks and rule-makers, EU migration (and immigration) law[48] is far from reaching an appropriate stage of common development and internal coherence. Much depends on the assessment of the supranational courts (the European Court of Justice and the European Court of Human Rights), which can come into play according to the usual mechanisms regulated by the treaties (by the TFEU and the ECHR respectively) and to which a large part of the concrete definition of the extent of the 'rights' of migrants who come into contact with national procedures for the recognition of their status or the guarantee of specific prerogatives connected to it, is owed[49]. The emphasis on universalistic mechanisms as equal treatment (playing as "inclusive institutions"[50]), is of particular importance for material integration[51].

At Member States' national level, economic and cultural integration goes hand to hand with the peculiar characters of the

group of foreigners subordinates the provision of social benefits to numerous certain conditions.

[48] J. Bast, *Deepening Supranational Integration: Interstate Solidarity in EU Migration Law*, 22 Eur. Publ. L. 289-304 (2016).

[49] A meaningful example is the right to a fair trial (art. 6 ECHR) and its related standards: 'fair and public hearing', within a 'reasonable time', before an independent tribunal (6 years according to the Eur. Ct. H.R.). See, e.g., the *Lombardi Vallauri v. Italy* case. No less important is the right to an effective remedy for asylum seekers under 'accelerated' procedures and the decision of the CJEU in the *Diouf* case (C–69/10; see X. Groussot, E. Gill-Pedro, *Old and new human rights in Europe: The scope of EU rights versus that of ECHR rights*, in E. Brems & J. Gerards (eds.), *Shaping Rights in the ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights*, 232-258 (2014)). On the lacking cooperative approach between CJEU and the ECtHR in applying a similar standard of protection in the field of asylum and migration, see J. De Coninck, *The Impact of ECtHR and CJEU Judgments on the Rights of Asylum Seekers in the European Union: Adversaries or Allies in Asylum?*, in W. Benedek et al. (eds.), Eur. Y.B. on Hum. Rts. 343-372 (2018).

[50] In the sense of D. Acemoglou, J.A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (2012).

[51] See i.e. the conclusions of AG Bot in the CJEU case C-502/10, *Staatssecretaris van Justitie v. Mangat Singh*: "The granting of long-term resident status must also allow those nationals to be offered rights and obligations which are comparable to those of European Union citizens in a wide range of economic and social matters such as employment, accommodation, social protection and social assistance and strives for as close a harmonization as possible of their legal status. To that effect, that status also seeks to guarantee them legal certainty by affording them reinforced protection against expulsion" (§30).

civil society, being and acting as community of equals in terms of rights and intentions that is embodied in the care of the common, civic, local goods (based on inalienable rights and duties of solidarity)[52]. The degree of internal cohesion, the trust in political institutions and the range of opportunities (discursive, institutional, political etc. that affect his mobilization) concretely available to the individual[53], are largely depending on historical and cultural backgrounds.

3.1. Fragments of a missing (integration) model

If the widely shared objective is to integrate foreigners permanently and regularly living on national territory, to achieve this target it is important, first of all, to overcome the logic of the emergency and start from the structural character of migration[54]. This entails on the one hand, setting (in same case, re-opening) regular channels of access[55] and, on the other, shifting the focus to society, fight against inequalities[56] and discrimination, development and social cohesion[57].

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[52] On the so-called horizontal relationships among pro-beneficiary actors from a political sciences perspective, see M. Cinalli, *Horizontal networks vs. vertical networks in multi-organisational alliances: a comparative study of the unemployment and asylum issue-fields in Britain?*, 8 Eur. Pol. Com. Working Papers 1–25 (2004).

[53] M. Cinalli, M. Giugni, *Institutional Opportunities, Discoursive Opportunities and the Political Participation of Migrants in European Cities*, in L. Morales, M. Giugni (eds.), *Social Capital, Political Participation and Migration in Europe: Making Multicultural Democracy Work?*, 43-62 (2011).

[54] T.J. Farer, *Migration and Integration: the Case for Liberalism with Borders* (2020).

[55] At European level, the employment placement scheme for third-country nationals and the common asylum system are separated. These are sets of rules that have developed independently and inconsistently and serve very different purposes: in the first case, attracting highly qualified workers (such as information technology experts) or workers from sectors with employment deficits (such as care and health care), through a 'race for talent' in line with the goal of full employment, as set out in the EU programmes; in the second, complying with the obligations of the Geneva Convention on the Right of Asylum, which binds all EU Member States, without encroaching on state prerogatives to regulate access to the national labour market. See F. Weber, *Labour Market Access for Asylum Seekers and Refugees under the Common European Asylum System*, 18 Eur. J. of Migration and L. 34-64 (2016).

[56] F. Heckmann, *Integration and integration policies*, IMISCOE Network Feasibility Study (2006).

[57] R. Berger-Schmitt, *Considering social cohesion in quality of life assessments: concept and measurement*, 58 Soc. Indicators Res. 403 (2002).

Secondly, the operational, geographical, anthropological, cultural-historical, economic and legal context matters. The past of colonial powers such as France and Great Britain has, for instance, influenced the choice of the assimilationist (or universalist) approach to (reception and integration) policy beyond the Alps[58] and the multicultural (or segregationist) approach across the Channel[59]. However, these models[60] functioned until citizenship ceased to work also as "Social Lift" (or Ultimate Rate of Change), and the privilege of belonging to the Nation or being Her Majesty's subjects, the main vehicle of demands for changes in socio-economic policies. This is, in fact, the reason for immigrants' compliance to these models and the social pact they underpin.

In France, the increase in inequalities, since the second half of the last century, has coincided with the debate on the rewriting of the rules of coexistence (modified thirty-one times). In Great Britain, traditional pragmatism, which limited regulatory interference to trade between communities from former colonies, first turned towards the establishment of a cultural policy promoting the diversity of immigrants (with significant support, including economic support from the religious and cultural representatives of the various communities). Then, at the end of the 1990s, social fragmentation and growing separation between groups, as well as the religious question and the resurgence of Islamic fundamentalism, prompted the introduction of correctives to the multicultural model and the explicit contrast of all forms of unlawful discrimination.

In Germany the main function to the needs of the labour market has, since the 1960s, characterized the policy of controlled entry and gradual recognition of residence rights for foreign workers who have been living in the Country for some time. Since

[58] E. Grosso, *L'integrazione alla francese: tra assimilazione e differenza*, in G. Cerrina Ferroni, V. Federico (eds.), *Società multiculturali e percorsi di integrazione: Francia, Germania, Regno Unito ed Italia a confronto* 65 ff. (2017). On the sharing of this model in the Italian context, in the pursuit of the principle of equality, see, E. Lanza, *Il trattamento giuridico dello straniero nell'epoca della globalizzazione*, in G. Moschella, L. Buscema (eds.), *Immigrazione e condizione giuridica* 87 (2016).

[59] T.J. Farer, *Migration and Integration*, cit. at 54, 96 ff.

[60] On integration models based on universalist (equal treatment-based, hegemonic/hierarchical or authoritarian) or selective (multicultural, meritocratic or club-type) devices of participation in the decisions of the organised community, such as citizenship, see M. Ambrosini, M. Cinalli, D. Jacobson (eds.), *Migration, Borders and Citizenship: Between Policy and Public Spheres* (2019).

1999, first the citizenship reform and then the *Integrationsgesetz* (2016) have served to equalize the treatment of children born in Germany with the children of German parents and to recognize wide-ranging integration opportunities – in implementation of the constitutional guarantees of dignity (Art. 1, para. 1, GG) – for long-term resident migrant workers[61], refugees and asylum seekers who demonstrate commitment and meet certain requirements (*inter alia*, language learning)[62]. In addition, during the years of the economic crisis, strong investments were made in strengthening childcare and employment services for working parents (and working women), in order to support the fertility rate[63]. As a result, the latter has risen again in recent years, mainly thanks to the contribution of foreign women and couples.

3.2. The peculiar case of Italy: multiple gaps scenario

Regarding Italy – where non-EU nationals legally living in 2021 rose up to 3.561.540 (+187,664, +5.6%) after the drop in the previous two years due to the pandemic[64] –, first, the historical experience of weak constitutionalising process[65], from the outset split into two very different realities, North and South, matters.

[61] This is the requirement to which European legal protection of non-EU workers is generally subject under the directive of the Council 2003/109/CE (of 25th November 2003). Until 2003, among those admitted to the various forms of protection, this condition was only met in the case of refugees (titled of the right to asylum as defined by international law and derived from the EU common constitutional heritage). Since 2011 (Dir. 2011/51/UE introducing the definition of a "person eligible for subsidiary protection"), the same condition is also considered to be met for the so-called "European asylum" applicants.

[62] On the relevance of the constitutional legal order in the administrative management of the implications of the 2015-2016 migration crisis, see U. Di Fabio, *Migrationkrise als föderales Verfassungsproblem*, *Gutachten im Auftrag des Freiestaats Bayern* 49 ff. (2016) and M. Möstl, *Verfassungsfragen zur Flüchtlingskrise*, 142 Archiv des öffentlichen Rechts 175 (2017).

[63] EUROSTAT, *Family Social Expenditure. Germany* - Country Report (2019).

[64] Idos, *Dossier Statistico Immigrazione 2022*, *Scheda di sintesi*, 4 (at the end of 2020 there were 5.2 million legally resident foreigners and 80.000 guests in migration facilities, SAI; OECD Report 2021).

[65] S. Cassese, *Governare gli italiani. Storia dello Stato* (2014). It was also a consequence of the weakness of liberal ideas in the history of Italian unification path and afterwards. Above all, Italian political parties did not fulfill the nationalizing task attributed to them by the Ital. Constitution (art. 49, «[a]ll citizens have the right to freely associate in parties to contribute democratically to determining national politics»), which was necessary to help the Country overcome the moral failures caused by the fascist experience.

Here public organizations and civic institutions are perceived as structurally ineffective, weak or absent, and the relationship with them, conflicting, at times frustrating. A second aspect characterizing the Country relates to the logic of belonging/extraneity[66] (often prevailing in the public and political debate) and it is the subject of an interesting strand of recent sociological studies. It points to groups even other than migrants (especially ethnic[67], religious[68], unorganized, such as the illiterate, the unemployed) as the target of the 'charge of exclusion'[69] that agitates non-cohesive or fragmented communities[70]. Both aspects concur to determine an internal tension and because of this tension, despite being a country of stable immigration for almost half a century, after having been among the most important emigration countries in the world for more than a century[71], it has not been able to equip itself with an efficient regulatory framework for the ordinary management of migration phenomena; nor with a national discipline on integration, useful for local policy to grant a minimum common standard of services and actions aimed at facilitating migrants' involvement and participation processes.

Migrants' subjective status definition in the internal legal system has occurred over time by virtue of administrative qualifications centred on the condition of regularity or irregularity. In internal documents and so-called 'gray literature' of the Italian

[66] M. Nettesheim, *Migration: Zwischen Menschenrecht und "Community"*, in *Sfide e innovazioni nel diritto pubblico/Herausforderungen und Innovationen im Öffentlichen Recht*, in L. De Lucia, F. Wollenschläger (eds.) 7 ff., espec. 19-20 (2019).

[67] E. Anderson, *The White Space*, in 1 *Sociology of Race and Ethnicity*, 1 ff. (2015); Id., *The Imperative of Integration* (2010); M. Möschel, *Law, Lawyers and Race: Critical Race Theory from the US to Europe* (2014).

[68] G. Kepel, *Les banlieues de l'Islam*, Paris, Le Seuil, 1987. About Italy, R. Mazzola, *La convivenza delle regole. Diritto, sicurezza e organizzazioni religiose* (2005) and P. Piccolo, *Libertà religiosa e accoglienza dei migranti: l'integrazione e la normativa italiana*, in G. Dammacco, C. Ventrella (eds.), *Religioni, diritto e regole dell'economia*, 464 ff. (2018).

[69] N. Luhmann, *Das Recht der Gesellschaft*, 583-584 (1993); ID., *Inklusion und Exklusion*, 6 Soziologische Aufklärung 241 (1995). A recent interesting analysis is given by S. Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (2014).

[70] On the individualisation and erosion of territorial sovereignty (together with the failure of government forces) as causes of the current loss of certainties resulting from globalisation and the re-emergence of nationalisms, Z. Bauman, *Strangers at our door* (2016). On the 'precarisation of government' and the retreat of the state, see I. Lorey, *State of Insecurity*, 13 (2015).

[71] Between 28 and 30 million expatriates between 1861 and the early 1970s.

Ministery for Interior, the usual distinction is made between *planned inflows*, which mainly concern so-called economic migrant (foreign jobseekers), and *unplanned inflows*, formed by migrants fleeing for humanitarian reasons (wars, persecution, natural disasters, floods, desertification, drought and other catastrophes). The former are subject to an ordinary discipline (Unified Text on Immigration) and have been periodically updated, modified and side-regulated (8 times in 36 years)[72]. The relevant discipline is limited to the entry phase of immigrant workers and jobseekers[73] and according to it the recognition of a residence permit is subject to the (previous) sign of a job contract[74].

The latter have been the focus of a discipline with special characteristics that has only recently become the object of provisions mostly of supranational and international derivation and aimed above all at speeding up and facilitating administrative procedures. These are intended at distinguishing those who, although they cannot materially have access to the ordinary discipline of legal permanence, can nonetheless apply for a temporary permit on the base of special reason, also with a view to

[72] The so-called 'flows decree' (the last one was adopted on 21 December 2021, a Presidential decree) is the instrument by which the State determines in advance the maximum number of foreign workers (determined on the basis of the needs of national-based firms) it is able to accept. It is designed to implement a three-year planning (but it does not because the relevant "documento di programmazione triennale" has only been adopted twice, in 2004 and 2006) and has been actually adopted not every year (with the exception of seasonal work), but quite often in coincidence with a new legislation (1986, 1990, 1995, 1998, 2002, 2009, 2012, 2020). Consequently, the regular channel of foreign workers inflow is not always "open" and it is subject to the availability of the quotas defined in the flows decree eventually adopted by the Executive in power. Otherwise, as has often been the case, it is completely closed. Even if the demand for foreign workers in some sectors (so-called 3D jobs: dirty, dangerous and demeaning) is structural in Italy and the most common estimates indicate an annual need for 250,000 foreign workers, it happened only once, in 2007, that such a number was the indicated quota in the flows decree (see Table n. 1).

[73] In Ital. labour law two interests are balanced: on one side, a restrictive interest in preventing and controlling migration by regulating the procedures for allowing access to work, on the other, a protective interest, both to ensure equal treatment of native and foreign workers and to protect the foreigner as a person (M. D'Onghia, *Il lavoro (regolare) come strumento di integrazione e inclusion sociale dei migranti*, in H. Caroli Casavola, L. Corazza, M. Savino (eds.), *Migranti, territorio e lavoro. Le strategie di integrazione*, 51 ff. (2022)).

[74] Art. 5 *bis* of the Unified Text on Immigration-UTI. The link between the two legal acts is logic and chronologic.

obtaining a status useful for aspiring to a long-residence permit. The same procedures have the effect of isolating the others in order to subject them to the irregularity regime and remove them from the territory of the State.

A constant over the years has been that the closure of the regular channel of foreigner workers inflow is matched by an increase in the unplanned (or irregular) inflow and in the number of long-residence permits accorded for humanitarian reasons.

Table n. 1
Decrease in permits issued for labour reasons, increase in those issued for humanitarian ones
2007-2021

Year	Non-seasonal work permits	Seasonal work permits	Total work permits	International protection applications
2007	170.000	80.000	250.000	13.310
2008	150.000	80.000	230.000	31.723
2009	No decree	80.000	80.000	19.090
2010	104.080	80.000	184.080	12.121
2011	No decree	60.000	60.000	37.350
2012	17.850	35.000	52.850	17.352
2013	17.850	30.000	47.850	26.620
2014	17.850	15.000	32.850	64.886
2015	17.850	13.000	30.850	83.970
2016	17.850	13.000	30.850	123.600
2017	13.850	17.000	30.850	130.119
2018	12.850	18.000	30.850	53.596
2019	12.850	18.000	30.850	43.783
2020	12.850	18.000	30.850	26.963
2021	27.700	42.000	69.700	53.609
2022	40.000	30.000	70.000	77.195*

Quotas of foreigners admitted in Italy for work purposes (source so-called Flows decrees 2007-2021) and number of applications for international protection submitted (source National Commission for Asylum Right[75])
**Source Eurostat, Asylum applications – monthly statistics (at 31st December 2022).*

[75] See www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/riepilogo_anno_2021__0.pdf

The system was and is still designed according to a fundamentally rejecting paradigm: just consider the citizenship law, which is anachronistic and inspired more by a country of emigration's need to maintain a link with its ex-pats abroad and their descendants than by a country of immigration's need to integrate newcomers[76]. There has been also a lack of any serious consideration of the economic measures necessary to inflows management and effective integration of asylum seekers (the most numerous group), and to meet the needs arising from the entry of these "other" (climatic, economic) migrants or long-term and job-seekers foreigners. Only because of the measures taken during the pandemic, aimed at bringing irregular migrants 'out' to legality[77], and the new provisions on so-called 'special protection'[78], after the abolition of humanitarian protection in 2018[79], did the rate of recognition of asylum applications increase in 2021 (see Table n. 1 above).

For the first time in 15 years the number of placements for non-seasonal work increased (27.700). Applications for the total number of entries, mostly for foreign workers already in Italy, were more than three times as high (215.000) and those for non-seasonal

[76] Law n. 91 of 1992, requiring the longest residence duration (ten years continuously) among the EU Member States' legal orders. On the blurring of the distinction between citizenship regimes based on the two traditional criteria, *jus sanguinis* and *jus soli*, K. Hailbronner, *Nationality*, in T.A. Aleinikoff, V. Chetail (eds.), *Migration and International Legal Norms*, 75 (2003).

[77] The provisions aimed at regularising the (illegal) situation of workers employed in three specific sectors (agriculture, tourism and domestic and personal care work), adopted in 2020 by the Law Decree n. 34 of 2020 (so-called 'Decreto rilancio'), immediately deemed to be inadequate to the real needs vour of workers in the domestic and agricultural sectors. More than three quarters of the new work permits issued in 2021 (38,715, 76.0%) refer not to new entries, but to the emersion of workers already on the national territory.

[78] Introduced by the Law Decree n. 130 of 2020 (so-called 'Decreto Lamorgese'), converted in Law n. 113 of December 2020, that meant the overcoming of the binary system by which it had been provided (by the previous d.l. 113/2018) that the local authorities part to the second reception national System would be in charge of activating integration services and projects only for protection beneficiaries and unaccompanied foreign minors, while it had reserved to the Central authorities (Prefetture) the provision of first reception services for asylum seekers according to the discipline of Extraordinary Reception Centres.

[79] Following the entry into force of the Legislative Decree n. 113 of 2018, the number of irregular migrants in Italy would grow by as much as 120-140,000 over the next two years, bringing the estimated number in early 2020 to around 610,000 (www.ispionline.it).

workers more than five times as high (111.000), resulting in a considerable delay. To remedy the latter, provisions for simplification were adopted in order to speed up the permit procedure (maximum 30 days) and, only for 2021, to grant the possibility of immediately hiring workers covered by the quota and already present in Italy, albeit irregularly[80]. The latest decree confirms however that utilitarian logic that is far from creating medium- to long-term integration projects for migrants (as demonstrated by the larger quota reserved yearly for seasonal workers compared to the negligible one for other workers from Third countries)[81]. Thus, the paradox is perpetuated: while having to tackle the landings of irregular migrants along the 8300 km of coastline, Italian Executives need to meet the internal demand for labour coming from companies.

3.3. Labor Law gaps

Economic integration, which primarily concerns the achievement of emancipation (or economic autonomy) through decent employment, is a strategic, fundamental objective, explicitly stated in the European Union's integration strategies[82].

Italian labour regulation present numerous critical issues that often constitute, themselves, an obstacle to the integration process. Here it is sufficient to re-call two peculiar circumstances set for the "regular" access to the internal labour market, that tend to favour, rather than avert, 'irregularity'. First, the assumption that the initial labour supply and demand matching necessarily takes place when the potential worker is still in his or her home country[83]. Second, the double requirement of the unfulfillment of the flows quota and the verification (on initiative of the employer, by the Job Center) of the unavailability of a worker already present in the

[80] Articles 42-45 of the Law Decree n. 73 of 2022, converted in Law n. 122 of 2022.
[81] Available at www.interno.gov.it/it/notizie/decreto-flussi-2021-69700-ingressi-consentiti-italia-lavoratori-non-comunitari; see M. Savino, *Tornare a Tampere? L'urgenza di un dibattito sui canali regolari di ingresso*, ADiM Blog-Editoriale, 4 (January 2022).
[82] Istat, Ministery for Interiors, *Integrazione: Conoscere, misurare, valutare*, 29 ff. (2013).
[83] Art. 22 of the legislative Decree n. 286/1998 (so-called Unified Text on Immigration-UTI). The provision introduces a procedure contrary to the common experience that it is impossible to establish a remote working relationship without a direct on-site meeting between employer and employee.

national or EU territory, to take that job[84]. The picture is made even more complex by the deeply rooted phenomenon of exploitation of land workers who are preferably migrants because - according to the current industrial food production system - the workers mobility has become an intrinsic need of the supply chain. As consequence of their vulnerable situation, migrants and foreign workers are more exposed than indigenous people to forms of undeclared work and criminal behaviour such as "caporalato" (gangmaster, illegal hiring)[85].

Again, it is at European level that the first signs of a positive change are to be seen: the social conditionality clause has been in 2021 for the first time included in the formulation of the most important programme of the EU budget, the 2023-2027 Common Agricultural Policy (CAP), which amounts to just under 35% of its annual budget, some 390 billion euro for the next four years. The long bottom-up transnational social initiative of several European citizens' associations[86] resulted in the Amendment No. 732 to the Proposal of the 2021 Regulation on the PAC[87], on the social cross-

[84] In practice it is a cumbersome, rigid and slow procedure that frustrates the effectiveness of substantive measures and fuels irregularity (*Il lavoro (regolare) come strumento di integrazione e inclusione sociale dei migranti*, cit. at 73, 54).

[85] L. Paoloni, *La sostenibilità "etica" della filiera agroalimentare*, in M. Goldoni, S. Masini, V. Rubino (eds.), *La sostenibilità in agricoltura e la riforma della PAC*, 155 ff., esp. 168-9 (2021). The Italian legislator has showed a peculiar distortion in approaching the issue: aimed mainly at regularising pockets of illegality and not so much at actually combating illegal work and informal or criminal middlemen.

[86] Namely the Associazione Rurale Italia, with Coordinamento europeo via Campesina (ECVC) have been working for years for the adoption of the social conditionality clause in the CAP National Strategic Plans.

[87] The amendment, approved on the 22nd October 2020, was adopted as art. 14 ("Principle and scope"), Section 3 ("Social conditionality") of the Regulation (EU) 2021/2115 of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common Agricultural Policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council. It states that «[M]ember States shall indicate in their CAP Strategic Plans that, at the latest as from 1 January 2025, farmers and other beneficiaries receiving direct payments under Chapter II or annual payments under Articles 70, 71 and 72 are to be subject to an administrative penalty if they do not comply with the requirements related to applicable working and employment conditions or employer obligations arising from the legal acts referred to in Annex IV».

compliance in agriculture. Latest from January 2025, by mean of an administrative sanction affecting the beneficiaries of EU direct or annual payments who disrespect working and employment conditions or employer obligations deriving from national, EU and international law, it grants the protection of the rights of farm workers, including migrants[88].

In addition, foreign employees suffer a form of labour segregation (in construction industry and agriculture), they lack contractual protection and guarantees[89], earn on average a quarter less than Italians (wage discrimination), risk unemployment more often[90] and do not have the opportunity to see their efforts recognised and rewarded through a functioning social lift. And it is precisely this condition of "legal" minority and restriction in a "parallel" workfare market that so often prevents effective labour and social integration.

On the active labour policies[91] front, the legislative interventions (establishment of the National Agency for Active Labor Policies-ANPAL, reform of the Job Centers, introduction of work-school alternation and enhancement of apprenticeships) did not have a significant impact and remained at the level of mere organisational "make-up".

Such a deficient regulatory framework is counterbalanced by increasingly widespread best practices, voluntarily developed in different areas, and implemented with the participation of various actors: the private sector (firms, multinational enterprises and the business community), trade unions, civil society partners and local institutions. Analyses of these best practices clearly indicate that multiple actions - such as the provision of scholarships, training

[88] L. Paoloni, *La sostenibilità "etica" della filiera agroalimentare*, cit. at 85, 169.

[89] Foreigner seasonal workers (with a short-residence permit), for example, are not entitled to certain forms of social security and assistance, such as family allowance on the basis of art. 25, par. 1, UTI.

[90] Foreigner seasonal workers are excluded from involuntary unemployment insurance and reimbursement of the contributions (paid by the employer) in the event of repatriation too.

[91] These are qualified as measures of a public nature in support of weak social groups on the labour market and aimed at facilitating their integration or reintegration into the labour market through professional retraining paths or direct incentives to companies to ensure their inclusion in the workforce. These measures are distinct from those of a passive nature addressed to those who have lost their jobs and aimed at reducing the social and economic hardship connected to the state of unemployment (through the allocation of subsidies).

placements and administrative assistance activities by bilateral bodies and observatories, the promotion of better working conditions, labour inclusion measures in national collective job agreements - combined in an integrated approach, also aimed at fostering greater company productivity, represent the most effective mean of real integration of foreign workers as well as a prerequisite for effective dignity of all workers[92].

3.4. Demographic and anti-depopulation policy gaps. Reception and Integration System

Despite the prevailing "securitization" approach fuelled by the political debate in recent years, an increasing number of studies and research on concrete experiences see in the settlement of migrants or in efficient asylum seekers and refugees' reception policies the pivot for a revitalisation of the Italian lands, Alps and Apennines or for small municipalities[93]. Similarly, integration projects carried out by asylum seekers and refugees, supported and followed by the Italian reception system[94] is seen as an opportunity for development and revitalisation of inner areas[95] and their small communities[96]. The arrival of migrants in the Peninsula in fact

[92] M. D'Onghia, *Il lavoro (regolare) come strumento di integrazione e inclusione sociale dei migranti*, cit. at 73, 63-66; D. Marino, *Dall'azienda all'insediamento informale: esperienze positive di integrazione e lavoro sicuro*, in L. Calafà, S. Iavicoli, B. Persechino (eds.), *Lavoro insicuro. Salute, sicurezza e tutele sociali dei lavoratori immigrati in agricoltura*, 203 (2020); M. Monaci, L. Zanfrini (eds.), *Una macchina in moto col freno tirato. La valorizzazione dei migranti nelle organizzazioni di lavoro*, for ISMU Foundation (2020).

[93] M. Dematteis, A. Di Gioia, A. Membretti, *Montanari per forza. I rifugiati nelle Alpi e negli Appennini* (2017); M. Giovannetti, *Il sistema di accoglienza e protezione per richiedenti asilo e rifugiati nei piccoli comuni italiani*, 1-2 Contesti – Città Territori Progetti (2017); M. Giovannetti, N. Marchesini, L. Pacini, *L'accoglienza di richiedenti asilo e rifugiati nelle aree interne: una strategia per il rilancio del territorio*, 2 Working papers. Rivista online di Urban@it (2018); A. Membretti, G. Cutello, *Migrazioni internazionali ed economie incorporate nelle aree montane*, 1 Mondi migranti (2019).

[94] Sistema di accoglienza e integrazione-SAI (official website www.retesai.it). See A. De Petris, *Reception and integration policies of asylum seekers in Italy*, in Id. (ed.), *Refugee Policies in Europe. Solutions for an announced emergency*, cit. at 32, 103 ff.

[95] On the National Strategy for «Inner Areas»-NSIA see F. Barca, P. Casavola, S. Lucatelli S. (eds.), *Strategia nazionale per le aree interne: definizione, obiettivi, strumenti e governance*, 31 Materiali UVAL (2014).

[96] The adaptation necessary for refugees and asylum seekers to reach integration must involve civil society on a small and large scale and it is always a two-way process, dynamic and multifaceted, requiring efforts and involvement of all

coexists with a significant depopulation phenomenon[97], connected to a serious demographic decline (and an increasing old-age index)[98] and enhanced by internal and international emigration of the native population[99].

It is worth recalling here the relation between the number of asylum seekers hosted and the resident population. ISPI estimates show that it is low compared with other European countries: 3 per 1.000 inhabitants[100]. Both institutional determinations[101] and

parties, that of the refugees and asylum seekers to adapt to the host society without having to give up their cultural identity and that corresponding to the willingness of host communities and public institutions to meet the needs of a heterogeneous population (M. Gnone, *L'integrazione dei rifugiati: il* refugee gap *e l'attivazione dei territori*, UNHCR (2018)).

[97] Between 1981 and 2019, three thousand eight hundred Italian municipalities (out of 7847) lost an average of 22% of their inhabitants each year, while the national population increased by a total of 3 million people, but not uniformly. The municipalities with a tendency towards depopulation are small: the average number of inhabitants is 5,815. In 75% of the cases they are even below 3,000 inhabitants and only 549 municipalities have more than 5,000 inhabitants (Istat data and Ministery for the South and Cohesion data, elaborated by the Centro Studi Enti locali, www.entilocali-online.it). See C. Tomassini, D. Vignoli (eds.), *Rapporto sulla popolazione* (2023), published by Associazione Italiana per gli Studi di Popolazione.

[98] The average number of children per woman for Italy has "risen" from 1.2 in the mid-1990s to 1.24 in 2020, when circa 405 thousand children were born); it was 1.44 in the years 2008-2010 (Istat database, *Report Natalità 2020*). In France it stands at 1.83, in Germany at 1.53, while the average for EU Member States is 1,5. The working-age population (so-called productive potential) currently amounts to 36 million Italians, but ISTAT estimations indicate that it will fall to 25 million in 2070. This follows the silence or a blatantly anti-birth policy that has prevailed over the last 30 years.

[99] E. Pugliese, *The Mediterranean model of immigration*, 3 Academicus Int.'l Sci. J. 96-107 (2011); Id., *La nuova emigrazione nel crocevia migratorio italiano*, 12 Sociol. e ricerca soc. 138-149 (2020).

[100] While in Sweden it is 24 per 1.000 inhabitants and it decreases for Malta (17), Austria (13) and Germany (12); see www.ispionline.it/it/pubblicazione/migrazioni-italia-tutti-i-numeri-24893 (2022 data).

[101] On the ground of the economic sustainability of the commitment and the feasible involvement of prefects, municipalities and other local institutions, the quota of circa 2,5 migrants per 1000 inhabitants was fixed by the 2016 Agreement between the National Association of Ital. Municipalities and the Minister for Interior Affairs coherently to the assessment criteria per region defined by the Permanent Conference for Relations among the State, the Regions and the Autonomous Provinces of Trento and Bolzano (s.c. Unified Conference; www.statoregioni.it/it/conferenze-unificata) of 10 July 2014.

practical evidence[102] suggest that a certain proportion helps to avoid dynamics like concentrations in ghetto-suburbs (as exist in large metropolises), where urban and social degradation nourish each other, and is useful in the view of exploiting the advantages of both a widespread territorial distribution of migrants and the broader social interaction typical of the local dimension.

In this dimension effectiveness of integration pathways is also favoured by the contextual character of a pre-existing cohesion as community. Historical, cultural and artistic traditions play a great role as they substantiate a disparate set of networks, leveraging the most engaging and effective youth gathering activities (sports, music, games, recreation) often promoted within religious groups.

During the so-called migration crisis (2015), for instance, positive experiences of co-habitation between migrants and the local population happened in some remote areas of Italian mountain regions, as in Molise, Piemonte and Valle d'Aosta. In such contexts, the fear of isolation, harsh weather conditions and external dangers are strategic drivers of amalgamation, reciprocal trust among different groups and solutions for potential social conflicts (or the integration of minorities)[103]. In depopulated areas, like the small village of Ripabottoni, where migration is a challenge and an opportunity, the local community took action, promoted

[102] In this sense, the conclusion of the research conducted by the Universities of Hildesheim and Erlangen-Nuremberg and funded by the Robert Bosch Foundation, *Two Worlds? Integration Policy in Urban and Rural Areas*, which examines 92 municipalities in 12 German *Länder* (www.bosch-stiftung.de/en/story/urban-versus-rural-areas-how-can-integration-work), matches with the one of CNEL IX Report, *Integration Indexes of immigrants in Italy*, 2013 («the conditions for the social and occupational integration of immigrants are better in more restricted contexts of low 'social complexity', i.e. in territories that are not part of particularly large urban areas or metropolitan realities, characterised by a high demographic concentration, by a more frenetic and competitive life, by selective mechanisms (sometimes excluding), by mediating structures (and superstructures) that regulate social relations, making them increasingly indirect and anonymous, thus increasing the sense of alienation, marginalisation, and non-belonging», p. 13). A meaningful example is drawn by M. Cerutti, *Il ruolo delle Regioni*, 64 Dislivelli. Ricerca e comunicazione sulla montagna 38-39 (2016), describing the Plan to repopulate mountain municipalities adopted by the Piemonte Region. In cooperation with Uncem, Coldiretti, cooperatives and voluntary associations, actions were taken to foster the integration of refugees in small mountain villages and experimental social farming projects were promoted.

[103] H. Caroli Casavola, *L'integrazione nella società pluralista e i migranti*, 2 Rivista Trimestrale di Diritto Pubblico 383-404 (2020).

petitions and organized street protests against the closure – decided by central authorities – of the local migration center, gaining the attention of the international press[104].

Further, the relevant local authorities always maintain a margin of discretion in favour of "tailored" individual solutions, they pursue integration as a duty especially with respect to the indigenous population to which they are held accountable much more than in metropolitan contexts.

On this basis, the role of local authorities would be indispensable. However, in praxis their involvement is limited to the second reception system (SAI) that in recent years has undergone a greater compression in terms of number of places financed and target of foreign guests identified by the legislation.

Acceptance of migrants is in fact structured in a twofold organization. First, hotspots and first aid and assistance centres (Centri di primo soccorso e assistenza[105]) are devoted to the immediate reception (so-called first reception). Second, a public System for Reception and Integration («Sistema di accoglienza e integrazione» -SAI, formerly called SPRAR and Siproimi) provide several peculiar services to refugees and migrants entitled to other forms of humanitarian protection. This permanent system is flanked by extraordinary reception centres-CAS, i.e. temporary structures used by the *Prefetti* (peripheral branch of the Executive) with the consent of the interested municipalities to provide additional (second) reception places in the event of a massive and close increase in flows[106].

Until 2001, the so-called second reception was left to private initiatives and the Third sector. With the piloting of the National

[104] Amongst others, Gianluca Mezzofiore, *The Italian Hilltop Village Fighting to Keep Its Migrants*, CNN (2018), and Thomas Saintourens, *En Italie, le Village qui Voulait Garder ses « Ragazzis » Migrants*, Le Monde (2nd March 2018); about the case, see L. Darboe, *The Roller-Coaster Ride of an African Child. From Gambia to Italy* (2018).

[105] These centres are established by decree of the Minister of the Interior, after consultation with bodies (Unified Conference and Coordination Tables) that are also shared by regional and local authorities. The migrant is received there for the "time necessary" to complete the identification operations, to record the application and initiate the procedure for examining it, as well as to ascertain the migrant's health conditions. However, in the event of temporary unavailability of places in second reception facilities, the applicant may remain in these governmental centres "for the time strictly necessary for the transfer" (Legislative decree n. 142/2015).

[106] Art. 11 of Legislative decree n. 142/2015.

Asylum Program, thinking and planning about migrant landing and asylum policy were framed as a "system" and reception for integration has moved from the private sphere into the public one. The latter led to a major breakthrough, as local public authorities and the State begun to be involved with taking responsibility in this regard. Since its institution[107], the Italian reception and integration system – recognized as best practice by the European Commission – has been able to produce positive experiences not only in terms of implementation of fundamental rights, but also as territorial development opportunities. Nevertheless, following the migratory crisis of 2015, the evolution was unbalanced. The temporary reception centres (CAS) were greatly expanded (80% of the financed places), while to the ordinary reception system, at the time named Sprar, was left only 18% of places[108]. The service offered in the Cas is a *quod minus* compared to that granted by the Sai. Yet there is a macroscopic distortion of the rules, given that two-thirds of migrants in Italy are accommodated in the Cas and the procedures are almost always 'accelerated' and impoverished in terms of legal guarantees. Nor has wider kind of abuse been lacking: up to EUR 1 million in 2019 and EUR 1.5 million in 2020 were diverted from their original allocation to finance integration projects for asylum seekers in reception centres and used to carry out the repatriations of irregular migrants[109].

Involved on a voluntary basis, the Italian municipalities that take part to the System to some extend (as project leaders[110], facility

[107] The original law provided for the institution of a «Protection System for Asylum Seekers and Refugees»-SPRAR (Law of the 30 July 2002, n. 189). The governance of the System is multilevel, as both the Ministery of Interior and the municipalities take part in implementing the reception services and facilities. The 2020 discipline brings the focus back to the permanent reception system, but in confirming the parallel reception in CAS, it does not entirely overcome the emergency approach to the issue and keeps the role of central authorities preponderant.

[108] 2018 data, the remaining 2% were places in private families or other form of so-called diffuse reception.

[109] L. Di Sciullo, *Modelli in frammenti…e frammenti di modello? Il singolare caso dell'Italia, tra segregazione esplicita e integrazione implicita*, in B. Coccia, L. Di Sciullo (eds.), *L'integrazione dimenticata. Riflessioni per un modello italiano di convivenza partecipata tra immigrati e autoctoni*, 19 (2020).

[110] Within the Reception and Integration System, 62.7% of the project-leading municipalities have less than 15 thousand inhabitants and offer a total of more than 10 thousand places (39% of the total). One third of the municipalities fall within the 15-100 thousand inhabitants' bracket and provide 32% of the total

owners or because they are part of an association of municipalities) are actually 1.614, the 20,4% of the total (among them, all the metropolitan cities and biggest regional cities). A large part of them (40%) belong to the so-called 'inner areas' – i.e. territories considered marginal and characterised by negative demographic/economic/social trends - and the majority (73%) to the so-called 'rural areas' – i.e. those territories whose economy is based on agriculture (non-intensive or specialised) and often experiences difficulties and limitations in development (see Table n. 2).

Table n. 2
Distribution of municipalities part of the Sai
and their population by demographic size and type of area, 2020

Characters	*Number of towns and villages*		*Population*	
Population density	Absolute amount	%	Absolute amount	%
up to 5000 inhabitants	868	53,8%	1.768.176	5,9%
5001-15.000 inhabitants	395	24,5%	3.478.531	11,7%
15.001-50.000 inhabitants	248	15,4%	6.599.264	22,2%
50.001-100.000 inhabitants	63	3,9%	4.342.238	14,6%
More than 100.000	40	2,5%	13.532.584	45,5%
Location				
Clusters	937	58,1%	26.471.928	89,1%
Inner Areas	677	41,9%	3.248.865	10,9%
Type of Area				
Urban hubs or intensive and specialised agriculture hubs	436	27,0%	20.959.097	70,5%
Mid-range rural areas or	1.178	73,0%	8.761.696	29,5%

number of places in the network, while the large municipalities with more than 100 thousand inhabitants number 38 and cover 28.5% of the total number of places (amounting at 794 in 2020; source Cittalia data). In 2022, as consequence of the Ukrainian crisis, the number of places in the SAI grow up to 44.591.

areas with development problems				
Total Municipalities	1.614	100%	29.720.793	100%

Source: Cittalia (M. Giovannetti, Il sistema pubblico di accoglienza e i suoi effetti nei territori, 2022, p. 29)

Taking part to the SAI (as Sprar was renamed by the law decree n. 130 of 2020) implies the providing of first-level services to which international protection applicants and asylum seekers have access, including – in addition to material reception services – healthcare, social and psychological assistance, linguistic-cultural mediation, Italian language courses and legal and territorial orientation services; and the providing of second-level services, accessed by all the other categories of beneficiaries of the system, who already have access to the first-level services and specifically additional services, aimed at integration, concerning work orientation and vocational training. In other words, asylum seekers receive a more limited range of services than beneficiaries of asylum and protection (any form, international, temporary, subsidiary, special)[111]. Further, as a result of the Ukrainian crisis, the admission to the System for Reception and Integration suffers from a selective attitude, by status, nationality and country[112].

In the framework of the National Recovery Plan municipalities have now opportunity and means[113] to implement projects responding to one of the six missions or political priorities identified by the EU, including the ecological and demographic transition, eco-system services and the digitalisation of the

[111] The second-level services are a privilege recognized only to migrants entitled to asylum and protection, while first-level services are for asylum or protection applicants and are intended to pursue basic elements for cultural inclusion, through the acquisition of language skills, assistance in administrative procedures, primary education concepts and cultural mediation.

[112] Ukrainians and Afghans and asylum or protection applicants and beneficiaries are most often present in the ordinary Reception & Integration System-SAI, while migrants from other countries, in the CAS.

[113] Around forty billion euros is the share of resources made available by the European Union (Recovery Fund) to finance public investments (and reforms) planned by municipalities (Anci, *Aggiornamento PNRR sugli investimenti che vedono Comuni e/o Città metropolitane come soggetti attuatori*, 5 January 2022, available at www.anci.it/wp-content/uploads/Aggiornamento-ANCI-PNRR-5-gennaio-2022.pdf and Dossier Anci, *Comuni e Città nel PNRR*, ottobre 2021).

economy, infrastructure and education. A number of local authorities have drawn up a series of innovative proposals, the so-called Political Manifesto of Welcome, endorsed by trade organisations with specific statements of commitment (Anci, Cittalia, Uncem and others)[114]. It aims at the innovation of municipal welfare and the combination of social, migrants' reception and integration policies through the interoperability (and co-governance) of the Sai network with the integrated social-welfare system[115] (with health facilities, community hospitals and community houses). Thus, small municipalities propose themselves as an experimental laboratory of new compensatory mechanisms of inequalities and socio-economic disadvantages or fragilities and new forms of inclusion, coexistence and solidarity[116] in territories often marginalized, abandoned and deprived of services and economic and cultural activities by decades of dysfunctional policies[117].

3.5. Welfare gaps

The long-standing failure to manage channelling irregular inflows was also combined with inertia and absence of any comprehensive reform of the Italian welfare system[118].

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[114] Available at piccolicomuniwelcome.it/il-manifesto. See for instance, G.D. Giorgione, *Il Comune? Sociale e inclusivo. A Roseto Capo Spulico adesso decidono i cittadini*, Corriere della Sera (1 febbraio 2023) (www.corriere.it/buone-notizie/23_febbraio_01/comune-sociale-inclusivo-roseto-capo-spulico-ora-decidono-cittadini-bd321cb6-a07b-11ed-b6cb-0e3019005a4f.shtml?&appunica=true&app_v1=true).

[115] Introduced by the Law of the 8th November 2000, n. 328.

[116] They are made possible by the emerging instruments to fight poverty and for social inclusion, such as the Basic Income, the PON Inclusion, the National Strategy for Inland Areas.

[117] R. Pazzagli, *Un Paese di paesi* (2021). Most of southern Italy is historically characterised by weak development processes and a deep gap in the growth levels of the relevant regions compared to those of northern Italy. The weakness of development processes is determined, among other causes, by insufficient investment in basic infrastructure (airports, roads, waste and water management facilities). See E. Felice, *The roots of a dual equilibrium: GDP, productivity, and structural change in the Italian regions in the long run (1871–2011)*, 23:4 Eur. Rev. of Econ. Hist. 499–528 (2019).

[118] Consider, for instance, the social expenditure allocated to families (including the allowance for marriage leave, the ordinary shopping card, and the municipalities' household allowance), for which Italy ranks very low compared to the European average (twenty-third out of the twenty-eight EU members with a commitment equal to 5.97% of gross domestic product, compared to an average

On this front, the division of competences between State and regions, provided for in the Constitution, is of primary importance. In fact, the Fundamental Charter states that the former is responsible for regulating the condition of foreigners on national soil, while the latter, for regulating and providing housing, social welfare and other utilities and services related simply to the presence in the territory[119]. A substantial body of rules has been developed over time to implement constitutional norms[120] and constitutional caselaw has defined certain rights as 'financially conditioned'[121], the relevant guarantee depending on budgetary limits. However, the differentiation in quantity, quality and rules of access to the welfare services and facilities available in each Region is the characteristic of the system. More general the difference between law in action and law in books in this field is very large.

With regard to the range of recognised juridical situations, as the Constituents had personally experienced the condition of exiles during the fascist dictatorship and wanted to affirm the universal nature of fundamental freedoms, which were to be considered inalienable for every human being, a significant part of social rights and Welfare services is guaranteed to all individuals regardless for nationality. Furthermore, during the last 20 years the Constitutional Court played a major role interpreting the relevant provisions (i.e. articles 2, 3, 32, 34 and 38 Cost. on the right to equal treatment, health, education, social assistance and protection against illness,

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of 9% of the other countries; EUROSTAt data, May 2019), as well as policies related to childcare services and to combating housing needs (see Senate of the Republic, Impact Assessment Office, *Chiedo Asilo. Perché in Italia mancano i nidi (e cosa si sta facendo per recuperare il ritardo)*, July 2018).

[119] Art. 117, par. 2, lett. *a)* and par. 3 and 4 Ital. Const.

[120] It includes, among others, the Unified Text on Immigration-UTI (Legislative Decree n. 286 of 1998), the Law n. 388 of 2000, the Legislative Decree n. 142 of 2015 (on the procedures to recognize international protection) and the Law Decree n. 130 of 2020. See H. Caroli Casavola, *L'integrazione dei migranti: gli ostacoli giuridici*, in M. Savino (ed.), *La crisi migratoria tra Italia e Unione europea: diagnosi e prospettive*, 104 ff. (2017).

[121] Their implementation is gradual and limited by the reasonable balancing with other interests or goods enjoying equal constitutional protection (see the It. Const. Court decisions n. 455 of 1990, 304 of 1994, 432 of 2005, 250 of 2017). On this subject, C.R. Sunstein, S. Holmes, *The Cost of Rights: Why Liberty Depends on Taxes* (2000).

disability and old age)[122], through the lens of international human rights conventions and other supranational bodies' acts[123]. As a result of the Court's constitutionality review, the subjective dimension of the scope of several types of protection was extended. In particular, the right to health consists of an «irreducible core» (on which the 'minimum content' of health services is calibrated) that is an «inviolable sphere of human dignity», as such, object of guarantees extended to all, including irregular migrants[124]. Several social benefits and rights are limited by law only to regular immigrant workers, refugees and beneficiaries of a form of protection, but granted to disadvantaged groups (as disable and old people) taking into account a person's «basic needs»[125]. Access to social housing and kindergartens is often subjects to long-residence conditions fixed by each Region: in several cases the Court declared them void because found unreasonable and discriminatory against non-indigenous people[126]. The social family allowance was by law limited to long-term resident foreigners whose family members reside in the national territory too: the CJEU in a preliminary ruling procedure found the provision incompatible with Directive No.

[122] S. Cassese, *I diritti sociali degli "altri"*, 4 Rivista di diritto della sicurezza sociale 677 ff. (2015), and G. Corso, *Straniero, cittadino, uomo. Immigrazione ed immigrati nella giurisprudenza costituzionale*, 3 Nuove Autonomie 377 (2012).

[123] Including art. 2, 4, 9 and 10 ECHR, Part I, Principle 11 and artt. 11 and 13, Part II of the European Social Charter (adopted in Turin in 1961), the 2003 EU directives (EC Reg. n. 343/2003, so-called "Dublino II" and dir. 2003/9/CE, so-called Directive Reception) that oblige Member States to guarantee first aid and essential treatment of illness to asylum seekers and a minimum core of health services to others (irregular migrants or those awaiting repatriation).

[124] See the It. Const. Court decision n. 252 of 2001.

[125] It. Const. Court decision n. 40 of 2013 and decision n. 50 of 2019.

[126] It. Const. Court decisions n. 106, n. 166 and 107 of 2018. It deserves attention here the EU anti-discrimination law with its *de facto* horizontal exclusion effect and the CJEU novel approach (grounded on art. 19 TFEU and developed starting from the *Kücükdeveci* case) by which - starting from directive 2000/43 (Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180/22; between 2000 and 2004 the Council of the EU adopted four directives on equal treatment) -, the general principle of non-discrimination applies also in «areas such as social protection, including social security and healthcare, social advantages, education and access to and supply of goods and services which are available to the public, including housing» (M. de Mol, *The Novel Approach of the CJEU on the Horizontal Direct Effect of the EU Principle of Non-Discrimination: (Unbridled) Expansionism of EU Law?*, 18:1-2 Maastricht J. of Eur. and Comp. L., 109 ff., esp. p. 124 (2011).

2003/109 which has direct effect insofar as it requires equal treatment between third-country nationals as considered by the directive, and nationals of the Member State where they reside[127].

Among the few good Welfare innovations is the adoption of the universal child allowance («Assegno Unico Universale per i figli a carico»)[128]. This is a measure to support parenting, appreciable in its intention to recognise the value of children as resources for the community, and effective in acting on care needs without regard to the social background. However, it is not combined with measures to strengthen the childcare system and it has some critical aspects. In fact, it is a benefit paid to any parent, from birth until the age of 21 of each child, regardless of the parent's working status and income (universal basis) and it presupposes the ability to fill out a means test form (the one related to the *Indicatore di situazione economica* -ISE).

An indispensable pre-requisite for benefiting of most of the recalled social and public services is to be registered in the population official registry, which by law falls to each municipality (responsible for planning services). It is a paradigmatic case of the layering of partly political and partly judicial dynamics generating legal fragmentation in this field. The 2015 discipline clearly provided the right to be registered as resident for asylum seekers too (namely at the reception centres or protection facilities address), but at the time of the EU migratory crisis several local authorities denied it to foreigners without passport. The 2018 national legislator adopted new provisions explicitly excluding the right to be registered for asylum applicants on the grounds of the 'precariousness of the asylum application permit'[129]. In its 2020 decision n. 186, the Supreme Court ruled out the reasonableness of the mentioned regulation making it more difficult to detect foreign

[127] CJEU judgement 25.11.2020, case C-303/19, concerning art. 2, c. 6 bis, of Law n. 153 of 1988 (as for Italian applicants there is no obligation for their families to reside in Italy) and It. Const. Court, decision n. 67/2022 (decision of inadmissibility of the question of constitutionality). See the recent Court of Cassazione ordinance of 9.11.2022, n. 33016.

[128] Ital. Law n. 46 of 2021 and Law Decree n. 230 of 2021. With regard to families, since two years Italy data show that out of a total of 25 million families, the majority are one-person families (33,3%). In second place are families with children (32,1%), followed by those without children (19,8%) and finally by one-person/single-parent families with children (C. Tomassini, D. Vignoli, *Rapporto sulle famiglie*, cit. at 97, 10 ff.).

[129] Art. 13 d.l. n. 113/2018.

presence in the territory. The same pattern had occurred for access to social housing (services or benefits), made more difficult for EU protection beneficiaries with long-residence permit – despite of art. 40 UTI – by several regional legislators requiring eight or ten years' residence in their territory. The Constitutional Court first held that the duration of residence required was excessive[130], then, more recently it clarified that the long duration is not in itself indicative of a high probability of permanence, whereas other circumstances – such as type of employment contract, number of children, school-age children attending regional schools – are[131].

In this perspective, an initial examination of the decisions available to date suggests the importance of the legal protection of situations of «stability» achieved in Italy and manifest through a series of significant indexes: an employment contract, preferably a lifetime one, proficiency in the Italian language and the regular rental contract of an accommodation (room/flat/house) suitable for habitation[132]. As well as the importance of protecting persons in a state of vulnerability broadly intended (pregnancy, exposure to the potential sexual and labour trafficking danger)[133].

Even more than for natives, the achievement of a stable situation depends for foreigners on the use of education and training systems, which should start as early as the pre-school stage, in early childhood. The main limitation of the discipline is that the funded integration measures and the type of services to which foreigners have access are provided on the basis of having obtained a residence permit and are reserved exclusively for asylum or international protection beneficiaries. Thus, the asylum seeker's young child is the first and most likely to be adversely affected by the shortage of places in kindergartens. Kindergartens are important not only to support women, but above all to ensure that children, especially those with disadvantaged backgrounds, have an educational pathway that helps them overcome their initial

130 It. Const. Court decisions n. 106 of 2018 (about a law adopted by Liguria Region).
131 It. Const. Court decisions n. 44 of 2020 (about a law adopted by Lombardia Region).
132 It. Court of Cassation, III Civil Section, Ordinance 14 December 2020, n. 28436.
133 It. Court of Cassation, II Civil Section, Ordinance n. 1750/2021 and I Civil Section, decision n. 2039/2021. On the concept of vulnerability, J. Herring, *Vulnerability, Childhood and the Law*, 9-10 (2018). See also UNHCR, GMG, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, available at www.ohchr.org.

disadvantage. In this way, two important social objectives are met and inequalities are reduced.

Actually the data on the later stages educational pathways of pupils with a migrant background reflect the main inequalities suffered by these pupils in accessing, staying in and leaving the education and training: in terms of school delay, learning level and early school leaving rate, they are significantly worse than the national average[134]. These results are also often caused by the need to assume economic and care commitments and responsibilities towards the family.

A main welfare policies cross-cutting problem is the avoidance of an accurate targeting and tailoring measures on individuals deserving of support, and instead the choice of a windfall aid strategy. The reason of this (choice) is twofold: the broader easier political consensus and the lower administrative effort required to allocate benefits. But this way the improvement is minimal: neither absolute nor relative poverty is reduced[135]. Last but not least, there is also a lack of instruments and measures to strengthen young people's autonomy and the transition from school to work.

4. The administrative issue and policy implementation

As showed above, the condition of people with a migratory background in countries like Italy is clearly characterized by a marked imbalance in favour of social and economic rights, administrative procedural rights and judicial guarantees[136], to the

[134] Gruppo CRC, *I diritti dell'infanzia e dell'adolescenza in Italia*, Save the Children Annual Report 2021, November 2021, p. 6 (www.savethechildren.it; www.gruppocrc.net). See also the Osservatorio nazionale per l'integrazione degli alunni stranieri e l'educazione interculturale.

[135] Absolute poverty is the condition of those who lack the minimum resources that ensure the satisfaction of basic market needs, such as food, water, housing, clothing and medicine. Relative poverty consists in the inability to access social, political and cultural goods and services: those in relative poverty, therefore, while being able to have the minimum necessary for survival, are not able to take advantage of all available possibilities and services. The groups most affected by absolute poverty are children and foreigners (see the recent Istat Annual Report 2022, *La situazione del Paese* (23 November 2022) 236-7; available at www.istat.it).

[136] The recalled CJEU case C-502/10, *Staatssecretaris van Justitie v. Mangat Singh* (supra, n. 29) has regard to the legislative provisions concerning the treatment of non-EU citizens long-term residents, the Dir. 2003/109 which "harmonizes the criteria for acquiring the status of long-term resident and the rights which are

detriment of civic and political empowerment (participation and representation rights limited by access to citizenship)[137].

In general, the implementation of any public policy is hampered by the long-standing administrative issue. By this is meant a number of disadvantages: the resistance of an oversized bureaucratic apparatus to any innovation, modernisation and to the logic of streamlining activities, the tendency to centralise functions and competences in State authorities/bodies (or mistrust of infra-state entities) and the absolute lack of self-restraint in exercising discretion or political power and ineffective performance control-procedures. Even the most targeted policy risks being compromised in its implementation due to persistent dysfunctions in the administrative system.

A recent case is exemplary of this problem. Among the 69,700 immigrant workers set out in the Ital. flows decree 2021, several hundred were selected in the Italian embassies in Africa and there trained by attending language and specific training courses for the various employment sectors for which work applications had arrived (were received by the Executive), agriculture, construction, cultural mediation, home and personal care. Training courses were financed by the Italian government using national and EU funds[138], namely those assigned to a number of action-projects selected and financed in the framework of the Asylum, Migration and Integration Fund-AMIF[139]. Foreigners, mostly African citizens

attached to it on the basis of equal treatment with the citizens of the European Union".

137 Council of Europe, Directorate of Social and Economic Affairs, *Political and Social Participation of Immigrants through Consultative Bodies*. *Community Relations* (1999).

138 See, among others, the *Before you go* project launched by Arcs (www.arcsculturesolidali.org).

139 The first European programme aimed at achieving solidarity-based management of immigration, asylum and external border management policies, also in financial terms, dates back to 2005, the so-called Solid (see the Communication from the Commission to the Council and the EU Parliament establishing a framework programme on *Solidarity and Management of Migration Flows for the period 2007-2013*, 6.4.2005, COM(2005)123 final). It entailed the establishment of four funds with resources to be distributed among the Member States: the first is the European Return Fund, intended to finance national mechanisms for the voluntary or forced return of migrants to their countries of origin (Decision of the European Parliament and the Council n. 575/2007/EC of 23.5.2007); the second is the European External Borders Fund, aimed at ensuring uniform controls at the Union's borders and thus, efficient management of the

attended the courses for months and in many cases obtained an A1 certification in Italian language. They were told that they had been identified as part of a (often seasonal) work contract which would be effective once obtained the Italian language certificate and attended the training courses, and that the workplace would be in Italy. But they never arrived in Italy.

This was due to a legal obstacle: the failure of the administration depending on the Ministry of the Interior (including its territorial network organisation, "Prefetture", long understaffed) to issue the necessary paperwork, the "nulla-osta" or clearance. It is required for the employer's application for the visa allowing the legal entry of the chosen foreign worker. The waiting time for the preparation of documents are unreasonably long and prevent employers from getting them and seeing the procedures completed in time compatible with the bathing or agricultural harvest season. This is why the situation has in fact resulted in a lot of frustration on the employers' side as well. In the bathing facilities on the Adriatic Riviera and on farms in many central and southern regions, family firms and production chains suddenly found themselves short of labour and scrambling to find replacements among the natives. The simplification provisions adopted in the meantime, setting a maximum term of 50 days for the conclusion of the procedure[140], were to no avail[141].

flows of persons entering (Decision of the European Parliament and the Council 23.5.2007, n. 574/2007/CE); the third is European Refugee Fund, set up to finance national reception and social inclusion policies for international protection applicants and refugees through resources that, in Italy, have flowed into Sprar/Sai projects (Decision of the European Parliament and the Council, 23.5.2007, n. 573/2007/CE); the fourth is the European Fund for the Integration of Third-Country Nationals, which has resulted in the substantial addition of European funding to the limited national resources allocated to implement social inclusion initiatives for non-citizens (Decision of the European Parliament and the Council, 25.6.2007, n. 435/2007/CE). These programmes were valid for the period 2007-2013. The next development was the establishment of AMIF for the period 2014-2020 (Reg. UE 16.4.2014, n. 516/2014), aimed at strengthening common immigration and asylum policies as a step towards a Europe that is an area of freedom, security and justice (cons. 1-5 Reg.). About AMIF expenditure see L. Davis, *EU external expenditure on asylum, forced displacement and migration 2014-2019*, ECRE Working Paper (2021), available online at https://ecre.org/wp-content/uploads/2021/03/Working- Paper-14.pdf.

[140] Artt. 42-45 of the law-decree 21 June 2022, n. 73.

[141] After two years since the law decree 19 May 2020, n. 34, they are still not ready with processing the 200.000 applications for regularisation of foreigner workers present in Italy at the outbreak of the pandemic (A. Ziniti, *La burocrazia frena il*

This experience shows that the main issue is not the lack of training on behalf of migrant workers – as claimed by members of the Executive[142] –, but the inadequacy of the Italian competent offices to carry out the administrative procedures. A confirmation of this is offered by the fact that even for Italian citizens the administration is not able to readily guarantee the link between NRP-funded projects and employment services (given by Job centres). There is a shortage, for example, of thousands of simple workers to be employed in the completion of broadband (TLC sector), and despite the fact that in the 18-29 age group eleven thousand unemployed people only hold a primary school certificate (benefitting from the minimum income), no training has been offered them in time to meet this demand for work[143]. The lack of adaptiveness, readiness and capacity for action stems from the inadequacy of the existing administrative system, which is poor in competence and not open enough to civil society neither solicitous in intercepting its demands or suggestions and involving its components or stakeholders in defining which projects deserve promotion, support and financing.

The idea of involving civil society in public decision-making process – by administrators standing above sectional interests – form the basis of a broad movement that has characterised administrative law in recent decades and that in various contexts is known as *New Governance*, *Participatory Decision-making*[144] and as

decreto flussi: lavoratori formati ma senza nullaosta, La Repubblica (4 December 2022), 1, 8 e 9).

[142] Ansa, *Tajani, decreto flussi? Vorremmo lavoratori già formati* (3 December 2022).

[143] M. Ferrera, *Il reddito di cittadinanza e il lavoro che manca*, Corriere della Sera (20 January 2023).

[144] R.T. Bull, *Making the Administrative State Safe for Democracy. A Theoretical and Practical Analysis of Citizens Participation in Agency Decisionmaking*, 65:3 Admin. L. Rev. 611 ff. (2013); J. Boulois, *Représentation et participation dans la vie politique et administrative*, in *La participation directe du citoyen à la vie politique et administrative* 46, esp. pp. 50 ff. (1986); L. Blomgren Bingham, *The Next Generation of Administrative Law: Building the Legal Infrastructure for Collaborative Governance*, 2 Wiscon. L. Rev. 297 (2010), and Id. *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Public and Stakeholder Voice*, 2 J. of Disp. Resol. 269 ff. (2009); J. Freeman, *Collaborative Governance in the Administrative State*, 45 UCLa L. Rev. 1 (1997); A.F. Popper, *An Administrative Law Perspective on Consensual Decisionmaking*, in 35 Admin. L. Rev. 255 (1983); R. Irvin, J. Stansbury, *Citizens Participation in Decision Making: Is it Worth the Effort ?*, 64 Pub. Admin. Rev. 55 (2004).

emerging function of the *enabling state*[145]. It did not find material implementation neither has produced relational tools aimed at connecting administrations with civil society' smaller groups representatives, the so-called Third Sector[146]. Although the collaborative governance' administration model has been formally legitimised in the Italian constitutional and legal system[147], the procedural instruments of synergic public-private actions in the field of migration law are finding it difficult to function 'at full

[145] N. Gilbert, B. Gilbert, *The Enabling State: Modern Welfare Capitalism in America* (1989); N. Gilbert, *The «Enabling State» from Public to Private Responsability for Social Protection: Pathways and Pitfalls*, Oecd Social, Emploiment and Migration Working Paper n. 26 (Sept. 2005); S. Cassese, *New paths for administrative law: A* manifesto, 10 Int.'l J. of Const. L. 603–613 (2012); J. Wallace, *The enabling state: where are we now?*, Rev. of policy development 2013-18 (2019), E. Chiti, *La rigenerazione di spazi e beni pubblici: una nuova funzione amministrativa?*, in F. Di Lascio, F. Giglioni (eds.), *La rigenerazione di beni e spazi urbani. Contributi al diritto delle città*, 13, esp. p. 27 ff. (2017). This expression nowadays means not only the shifting of the focus of public activities toward measures aimed at financing benefits through the market, but also a type of administrative activity aimed at facilitating action by private individuals and in which discretion is exercised according to an articulated scheme in which the weighing of interests coexists with negotiation between the administration and private actors with respect to the content of the intervention. In fact the importance of private input emerges very clearly over the past 50 years' economic development: collective progress in quality of life comes from individual decisions of entrepreneurs to invest in risky new ventures or experiments with a new ways of doing things.

[146] The so-called Third sector is understood to be the set of entities that act outside the market (the so-called first sector) and the state (the so-called second sector) in order to achieve purposes of general interest without making personal profit. See, on this topic, G. Arena, M. Bombardelli (eds.), *L'amministrazione condivisa* (2022), which takes stock of the 25 years that have passed since the pioneering theoretical formulation of the essay *Introduzione all'amministrazione condivisa*, by G. Arena, published, 117-118 Studi parlamentari e di politica costituzionale 29 (1997) and before, Id., *Amministrazione e società. Il nuovo cittadino*, 1 Riv. Trim. Dir. Pubbl. 43 (2017). More recently, E. Rossi, *Il fondamento del Terzo settore è nella Costituzione. Prime osservazioni sulla sentenza n. 131 del 2020 della Corte costituzionale*, Forumcostituzionale.it, 3 (2020).

[147] As expressly stated in the Ital. Constitutional Court decisions of 26 June 2020, n. 131 and 29 December 2021, n. 52. See, *ex multis*, E. Rossi, S. Zamagni (eds.), *Il Terzo settore nell'Italia unita* (2011); F. Alleva, *I confini giuridici del Terzo settore italiano* (2004); P. Michiara, *L'ordinamento giuridico del terzo settore. Profili pubblicistici*, 2 Munus 457 (2019). About the recent normative development, L. Gori, *La saga della sussidiarietà orizzontale. La tortuosa vicenda dei rapporti fra Terzo settore e P.A.*, federalismi.it, 181 (2020); D. Caldirola, *Il Terzo settore nello Stato sociale in trasformazione* (2021); A. Patanè, *Enti del Terzo Settore e principio di solidarietà. Le opportunità del PNRR per rigenerare una rete a sostegno della società*, 15 Soc. e dir. 55 (2023).

speed'[148]. Further the major administrative tool, the so-called integration contract, has a very limited subjective effect because most third-country nationals entering Italy is excluded by the relative field of application and practically abandoned to its fate in a no-rule zone, without any serious commitment on the side of public authorities facing the entire society[149].

5. An assessment

What then are the institutions in a country that have a major impact on the strategy and performance of integration? As the previous analysis shows, two sets of institutions are important. The first set consists of the regulations that govern the economic relationships of individual and firms (institutions that support market or market institutions). These include the regulations that govern labour markets and the behaviour of firms. As a result of these regulations, when a person reaches a contractually defined legal status i.e. as an employee of a firm, he knows what rights and obligations he takes on as a result. It is up to the state, as part of the political process, to define and enforce the specific rights/obligations structures on which market institutions are based. However, as we have seen above for Italy (§ 3.3), when the 'regular' access to labour market is unlikely to happen because very difficult, subject to quantitative restrictions, defined year-by-year and hampered by administrative dysfunctions, even these institutions end up being discriminatory and even extractive[150]. Those circumstances in fact exclude some potential workers from labour market and thus from exercising the contractual power associated with a lawfulness situation. Irregularity, on the contrary, condemn them to a minority situation which expose them to risks of exploitation and encourages the continued creation of revenues and castes.

The second set of institutions consists of countries' national education, training and Welfare systems, including their innovation system. Together these form the network of institutions in the public and private sectors whose activities and interactions

[148] L. Galli, *Rethinking integration contracts. The role of administrative law in building an intercultural society*, 44 ff. (2021).
[149] L. Galli, *Rethinking integration contracts*, cit. at 148, 146 ff.
[150] To use the words of D. Acemoglu, J.A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty*, cit. at. 50.

initiate, enable and diffuse social cohesion contributing to the well-being of both, population and foreigners, migrants, third-country nationals (institutions that support social cohesion in intercultural society). With regard to these institutions (inclusive and democratically oriented), private actors can play a decisive role cooperating to and orienting public decision-making processes. They can share ideas, funds, responsibility and push for more clarity on the public sector. Not all of these institutions are based on a rights/obligations structure (by i.e. the requirement of being a tax-payer). Several institutions are based on voluntary mechanisms, inspired by a meritocratic, long-term rewarding *ratio* and operate only after a basic investment of time/commitment and spontaneous behavior (which shows compliance or adherence to the internal legal order). These institutions aim at ensuring a continuing turnover of the country's ruling elite and policy-makers, and a power that is always in contention. But this *ratio* must be known, and this is not always the case.

Further, in specific national context, like the Italian one, there is a great need to improve rules and the general efficiency of civil service. Regarding the first, access to several socio-economic rights – with the exception of life-threatening situations – suffers from a strong time conditionality (such as all those linked to citizenship or subordinated to long-term residence), which condemns people in a limbo of legal and material uncertainty. As to the second, the administration has not the capability to carry out the tasks that it has been given[151], and existing procedures are complex and diverse, and they do not make always possible i.e. to fulfil requirements or re-establish rights after failure to observe a time limit (for exercising those rights). Thus, the rejecting pattern always looms on third-country nationals.

It is important to understand that both sets of institutions should be seen as infrastructure of pluralism (for an "open" society) and as common goods that EU and each Member state cannot exempt themselves from providing. Many migrants today come from national, war or other contexts where the culture of the common, priceless goods (such as the environment, hygiene, peace, health) is lacking. Their reception entails costs and disadvantages in the short term for the local host communities and considerable

[151] It might happen also that it is «captured» by the special interest groups who want to frustrate its efforts to uphold the public interests.

benefits in the long term for the entire state and continent. They fill the gap in generations capable of producing: the birth rate, a labor force for domestic and common markets, the continuity of rural art-crafts and traditions that Europeans do not guarantee, sustainability of pension systems, investments perspectives are some of these advantages. We need to acquire from them inputs, creativity, desire to do, enthusiasm, but we also need to transmit to them the culture of civic, common goods, access to decent living, learning conditions and opportunities for emancipation.

Last but not least, in order to reduce the impact of national dysfunctions, the drive towards a serious commitment to the widest possible sharing of objectives, cooperation and inter-administrative coordination between Member states at all levels (from the highest institutional and political to the operative ones) must be increased. In this respect, efficiency is a principle expressly laid down for the European administration in Article 298 of the TFUE, and it is to be correctly red as «*eine ressourcenschonende Zweck-Mittel-Relation*»[152] (a resource-saving purpose-mean relationship) having full legal relevance, and not as merely programmatic[153].

On this basis, commitment to the recalled aims should be pursued even where this represents a cultural challenge for those players lacking virtue politics[154] theory and practice.

[152] W. Hoffmann-Rief, *Effizienz als Herausforderung an das Verwaltungsrecht – Einleitende Problemsskizze*, in *Id.* and E. Schmidt-Aßmann (eds.), *Effizienz als Herausforderung an das Verwaltungsrecht*, 11 ff., 17. (1998).

[153] E. Schmidt-Aßmann**,** B. Schöndorf-Haubold, *Verfassungsprinzipien für den Europäischen Verwaltungsverbund*, in A. Voßkuhle, M. Eifert, C. Möllers (eds.), *Grundlagen des Verwaltungsrechts*, B. I and II, 247 ff., 320 (2022).

[154] J. Hankins, *Virtue Politics: Soulcraft and Statecraft in Reinassance Italy* (2019).