



# Training of Lawyers on EU Asylum and Immigration Law (TRALIM 3)

**Margaux Bia**

**The Council of Europe legal system regulating  
asylum and immigration: instruments and case law**

**Paris, 21 June 2023**



Co-funded the European Union

# Content

## 1. The European Court of Human Rights

## 2. Rule 39 - Interim measures

- Definition
- Scope and purpose
- Camara v. Belgium
- Application
- Procedure
- Statistics

## 3. Individual application

# The European Court of Human Rights (ECtHR)

- The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights.
- Organ of the Council of Europe (47 members), not the European Union (27 members).
- The ECtHR interprets and rules on whether a Member State has violated the European Convention on Human Rights
- The European Court of Human Rights procedure is based on two types of applications: interstate affairs (art. 33) and individual requests (art. 34)
- Judgments are binding

# Interim measures

Interim measures are urgent measures indicated by the court while examining a case under Rule 39 of its Rules of Court.

## Article 39 Rule:

1. The Court Chamber (...) ***may, at the request of a party*** or of any other person concerned, or of their own motion, ***indicate*** to the parties ***any interim measure*** which they consider should be adopted ***in the interests of the parties or of the proper conduct of the proceedings.***

# Scope and purpose of Rule 39

## When to apply for interim measures?

1. To prevent the deportation of a person at risk of irreparable harm in the country of return (*I.M. v France, Tarakhel v Switzerland*)
2. Risk of ill-treatment related to sexual orientation (*K.N. v. France*)
3. To access asylum procedure and legal advice in the host country (*Kebe and others v. Ukraine*)
4. To prevent risk of being sentenced to death or life imprisonment (*Nivette v. France*)
5. Risk of flagrant denial of justice (*Othman (Abu Qatada) v. the United Kingdom*)
6. To prevent the separation of a family (*Veselji and others v Serbia*)
7. Saturation of the network for receiving asylum-seekers (*Camara v. Belgium n°49255/22*)

# Interim measures

Interim measures are adopted by the Court when there is :

- An imminent risk
- Of irreparable damage
- To a « core right » under the Convention

In practice – « core rights » :

- Life or physical integrity (Art. 2)
- Risk of torture, inhuman or degrading treatment (Art. 3)
- Situations concerning family or housing rights of vulnerable applicants, such as minors (Art. 8)

More recently:

- Unfair proceedings/ access to court/ enforcement of proceedings (Art.6 and 13)

# Camara v. Belgium, 2022

## Facts:

21 year old Guinean national who applied for international protection in Belgium on 15 July 2022. He was denied access to a shelter and medical care on account of the alleged saturation of the reception network, and has lived on the street for 3 months.

## Decision:

The Court indicated interim measure to enjoin the Belgian State to enforce the order made by the Brussels Labor Court to “*house the applicant in a reception centre, or else in a hotel or any other suitable facility should no places be available, subject to penalties for non-compliance and to provide the applicant with accommodation and material assistance to meet his basic needs.*”

## Press release:

1000+ positives decisions for applicants who had obtained **final** domestic decisions, in which the Court directed the Belgian Government to comply with the decisions of the national courts and provide the applicants in question with accommodation and material assistance.



# Camara – Relevant articles

Art 3. « No one shall be subjected to torture or to inhuman or degrading treatment or punishment. »

Art 6 §1. « (...) everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...) »

Art 13. « Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. »



# How to introduce Rule 39 application?

A valid application contains the following information:

## 1. Facts and complaint

## 2. Alleged violations

- National law, EU Directives
- ECHR

## 3. Imminence of the risk of irreparable harm

## 4. Exhaustion of domestic remedies

- How have the authorities/government been informed and engaged?

## 5. Request

## 6. Supporting documents

**Rule 39 - Urgent**  
**Request for interim measures**

To the  
Registrar c/o  
European  
Court of  
Human Rights  
Council of  
Europe

**BY FAX ONLY: +33 (0)3 88 41 39 00**

8 January 2021

Legal Representative (Person to contact):  
XXXX

**Applicant: XXXX**  
Case Number: 155857  
Country of Origin: Cameroon  
Greek Identification Number (Asylum Seeker ID Card): XXXX  
DOB: 2/6/1988

Dear Madam/Sir,

I represent XXXX, born on 2 June 1988 in Cameroon and currently living in the new camp in Lesbos (former Motja camp resident) in Greece. On behalf of the applicant, I am respectfully submitting this request to the European Court of Human Rights to order interim measures on the basis of Rule 39 of the Rules of the Court and to indicate such measures to the Government of Greece (**Annex 1 – Power of Attorney**).

**1. Facts**

The applicant is a Cameroonian national, born on 2 June 1988 (**Annex 2 – Copy of Identification Document**). The applicant is a victim of torture, psychological and sexual abuse. He has severe mental health issues and was diagnosed with Hepatitis B in June 2020. Médecins Sans Frontières (MSF) and the Mytilene Hospital confirmed that the applicant needs to be transferred urgently to access medical treatment and psychological support on the mainland.

The applicant fled his country of origin after several unlawful arrests and detention and following the rape and murder of his mother by military forces in December 2018.

The applicant arrived in Turkey in March 2019 and was twice detained. First in Istanbul for 14 days then in Izmir for 45 days. Each time he was falsely accused of theft then released. During his detention, Turkish authorities beat the applicant on his head and face with a gun butt in order.

# Interim measures :

- Free form and content
- No official procedure
- No motivation
- No publicity (except press releases)
- No plea possible
- No appeal

Dear Madam,

I acknowledge receipt of your correspondence of 8 January 2021 requesting the European Court of Human Rights for interim measures under Rule 39 of the Rules of Court.

This request has been given the above number which you must refer to in any further correspondence.

I would inform you that, according to the Court's practice, **unsubstantiated requests for an interim measure within the meaning of Rule 39 are not submitted to a judge for decision.** This includes requests, like yours in the present case, where the submissions do not contain any recent medical document.

A mere reference to submissions in other documents or domestic proceedings is not sufficient. All requests must be accompanied by copies of all relevant domestic court, tribunal or other decisions (e.g. in asylum or other proceedings). In particular, **you must submit information and recent medical reports, regarding the applicant's current state of health.** In case this information cannot be provided, please explain the reasons why this has not been possible.

Accordingly, in its present form, your request to apply Rule 39 will not be submitted to a judge for decision. It is your responsibility to make sure that the relevant information and/or documents are received by the Court **by 19 January 2021.** Otherwise, the Court may not be in a position to consider the request.

Dear Madam,

I acknowledge receipt of your correspondence of 19 January 2021.

## Decision on interim measure

On 20 January 2021, the Court (the duty judge) decided, in the interests of the parties and the proper conduct of the proceedings before it, **to indicate** to the Government of Greece, under Rule 39, **an interim measure requesting the Greek authorities to: a) guarantee to the applicant a medical assessment by a gastroenterologist-hepatologist; b) ensure, if necessary, his medical treatment; and c) guarantee to the applicant living conditions compatible with Article 3 of the Convention and his state of health.**

The parties' attention is drawn to the fact that failure of a Contracting State to comply with a measure indicated under Rule 39 may entail a breach of Article 34 of the Convention. In this connection, reference is made to paragraphs 128 and 129 of the Grand Chamber judgment of 4 February 2005 in the case of *Mamatkulov and Askarov v. Turkey* (applications nos. 46827/99 and 46951/99) as well as point 5 of the operative part.

# How to introduce a Rule 39 application ?

- By fax
- By mail
- Online R39 portal

European Court of Human Rights  
Cour européenne des droits de l'homme

Home The Court Case-law Press Hearings Statistics Applicants Official texts Events Library Français

As of 1 February 2022 the time-limit for applying to the Court is 6 months from the date of the final administrative decision.

### Apply to the Court

As announced in the Court's [press release of 29 August 2022](#), as from 1 September 2022 the Court has returned in some aspects to the normal processing of applications involving Ukraine. Due to the interruption of the international postal services to and from Ukraine, the Court will communicate with applicants via its electronic communication system, eComms. For that purpose, the Court will use the email address provided by the applicants. Regarding specifically the notification of decisions and judgments, where no email address has been provided the Court has exceptionally decided to notify the applicants about decisions and judgments adopted by its Chamber and Committee judicial formations only via its HUDOC database. Decisions adopted by the Single Judge will be notified only to those applicants who have provided an email address. Prior to contacting the Court about the state of the proceedings in a case, applicants are encouraged to consult the Court's [State of Proceedings](#) search tool for further information.

The Court is continuing to examine applications against the Russian Federation, including those lodged in the Russian language.

Due to the interruption of the international postal services to and from Russia and where the only means of delivery of the Court's decisions and judgments to the applicants is by post, the Court has exceptionally decided to notify the applicants about decisions and judgments adopted by its Chamber and Committee judicial formations after 1 March 2022 in respect of applications against Russia only via its HUDOC database. For the same reasons, the Court notifies decisions issued by the Single Judge in cases lodged by applicants with a postal address in Russia only if they provide the Court with an email address. Prior to contacting the Court about the state of the proceedings in a case, applicants and their representatives are encouraged to consult the Court's [SOP](#) search tool for further information.

Since 1 March 2023, the Court has simplified the procedure for applications raising issues that fall under its well-established case-law and where no observations are required from the parties. The parties in such cases are no longer informed by letter about the notification of an application under Rule 54 § 2 (b). Instead, a document entitled "Subject matter and Statement of Facts" is published on HUDOC. This document also contains a reference to an information notice which describes all arrangements relating to the procedure in question.

#### How to make a valid application

If you decide to apply to the Court, please ensure that your application complies with Rule 47 of the Rules of Court, which sets out the information and documents that must be provided.

Failure to provide any of the information or documents required by Rule 47 §§ 1 and 2 will result in the complaints not being examined by the Court. It is imperative that all fields in the application form are filled in.

#### How to lodge an application

The application form should be downloaded, completed, printed out and sent by post to the Court with the necessary documents. No other form must be used.

[Forms](#)

#### Contents

- [Apply to the Court](#)
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  - [State of proceedings](#)
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  - [Interim Measures](#)

[Rule 47](#)  
[Institution of Proceedings](#)

Procedure before the ECHR  
State of proceedings

EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

My Requests Privacy Technical Support

20/06/2023 12:48:35  
Strasbourg local time

### New Request

Submit a new request

[Submit a new Request](#)

### My Requests

View Open, Draft and Closed requests

[View my Requests](#)

### Rule 39 Information

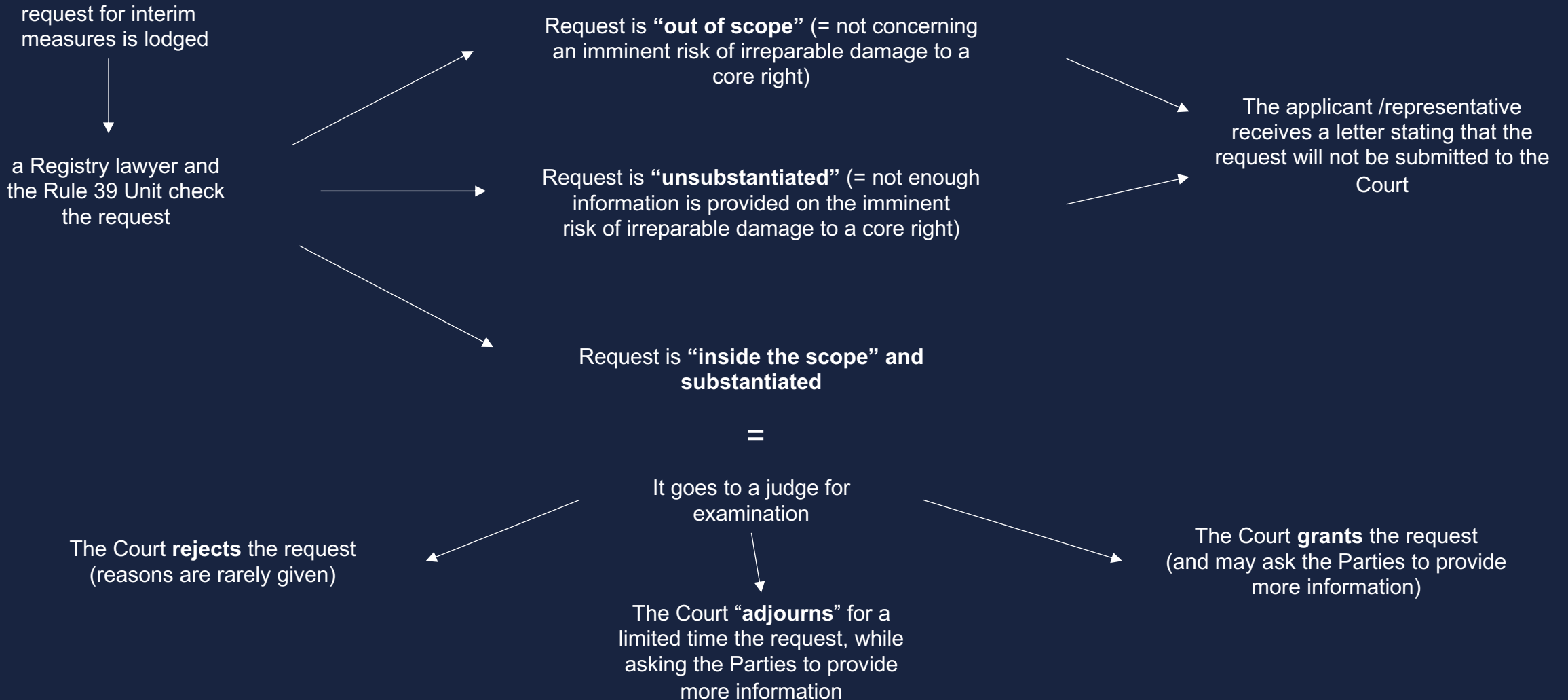
[Information on Interim Measures](#)

### Important

- This site is to be used exclusively for lodging requests for interim measures with the Court under Rule 39 of [the Rules of Court](#).
- Submissions which do not concern requests for interim measures will not be examined and such requests on this site will immediately be closed.
- Interim measures are urgent measures which apply only where there is an imminent risk of irreparable damage (claims under Articles 2 or 3 of the Convention, such as those related to expulsion or extradition proceedings or applicants' state of health in places of detention). For more information on requests for interim measures please refer to the [Court's Website](#).
- This site cannot, at present, be used to submit a request for interim measures by any person subject to any targeted national or international embargo, export control law, or [similar prohibition](#). Requests submitted contrary to this requirement cannot be processed by the Registry and will not be submitted to the Court. For more information on alternative methods to submit a request for interim measures, please refer to the [Court's Website](#).

# Procedure

## Recap of the interim measures procedure





# Statistics

Rule 39 requests listed by respondent state, granted and refused by the Court in 2020, 2021 and 2022

STATE	2020			2021			2022			TOTALS BY STATE						
	OUTSIDE THE SCOPE	REFUSED	GRANTED	OUTSIDE THE SCOPE	REFUSED	GRANTED	OUTSIDE THE SCOPE	REFUSED	GRANTED	OUTSIDE THE SCOPE	REFUSED	GRANTED	TOTAL 2020-2022			
Albania	8	1		9	7	2	2	11	11	4		15	26	7	2	35
Andorra				0				0				0	0	0	0	0
Armenia	9	7	1	17	9	8		17	5	7		12	23	22	1	46
Austria	12	11	1	24	36	15	1	52	24	6		30	72	32	2	106
Azerbaijan	9	5	53	67	10	14	39	63	4	19	1	24	23	38	93	154
Belgium	6	6		12	4	2	2	8	4	261	748	1013	14	269	750	1033
Bosnia and Herzegovina	5			5	4	1		5	8	1	5	14	17	2	5	24
Bulgaria	8	9	4	21	2	5		7	4	5		9	14	19	4	37
Croatia	4	1		5	9	1		10	6	1	1	8	19	3	1	23
Cyprus	4	4		8	1	2		3	2			2	7	6	0	13
Czech Republic	6	4		10	3	2		5	8	3		11	17	9	0	26
Denmark	1	9	1	11	6	5		11	1	5		6	8	19	1	28
Estonia	12			12	3	2		5	4	5		9	19	7	0	26
Finland	6	13	2	21	11	5		16	6	5		11	23	23	2	48
France	74	55	13	142	92	70	17	179	86	44	15	145	252	169	45	466
Georgia	7	2		9	9	4	2	15	4	4		8	20	10	2	32
Germany	92	15		107	80	18		98	79	11		90	251	44	0	295
Greece	21	65	95	181	25	13	24	62	31	47	101	179	77	125	220	422
Hungary	5	4	8	17	8	8		16	11	3	1	15	24	15	9	48
Iceland	1			1				0	1			1	2	0	0	2
Ireland	1			1				0	2	1		3	3	1	0	4
Italy	43	49	4	96	59	18	2	79	61	22	5	88	163	89	11	263
Latvia	3			3	4	2	3	9	14	3		17	21	5	3	29
Liechtenstein				0	1			1				0	1	0	0	1
Lithuania	2	4	1	7	1	1	3	5	35	7	6	48	38	12	10	60
Luxembourg	1	1		2	1			1	2	1		3	4	2	0	6
Malta	2	2	1	5	1		1	2	2	2	1	5	5	4	3	12
Republic of Moldova	1	1		2	2	1		3	3	1		4	6	3	0	9
Monaco				0				0				0	0	0	0	0
Montenegro	1		1	2	4	4		8	2			2	7	4	1	12
Netherlands	20	17	7	44	18	15	1	34	9	2		11	47	34	8	89
North Macedonia	2	3		5	5	5		10	3	1		4	10	9	0	19
Norway	5	7		12	5	6		11	1	1		2	11	14	0	25
Poland	10	7	6	23	17	12	57	86	22	34	64	120	49	53	127	229
Portugal	3	1		4	5			5	8			8	16	1	0	17
Romania	6	3		9	21	5	4	30	11	6	2	19	38	14	6	58
Russia	143	45	36	224	214	62	38	314	56	35	59	150	413	142	133	688
San Marino	1			1				0				0	1	0	0	1

# Interim measures

What to do after an interim measure indication ?

1. Contact applicant to know whether they want to pursue on the merits => individual application
2. Has the government implemented the measures?
  - If necessary, contact authorities to underline the non-respect of a ECtHR decision as a violation of Art. 34 of the Convention
  - If the interim measure is not respected by the State, inform the ECtHR (letter, fax) and complain about the violation of Art. 34 of the Convention
3. Communicate to the Court (letter, platform, fax) the choice or not to continue on the merits
  - ***If the applicant does not want to continue on the merits, the ECtHR will remove the interim measure***
4. If the applicant wants to continue of the merits, first assess the following:
  - The exhaustion of domestic remedies
  - Calculation of the 4-month delay to introduce the request on the merits

# Individual applications

## Article 34 Rule :

“The Court may receive applications from any **person, nongovernmental organization or group of individuals** claiming to be the **victim** of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto”

NB : the Court can also examine an inter-State case (Art. 33), e.g. Ukraine v. Russia (X) on the current conflict in Ukraine

# S.B v. Greece

- Syrian national living in Samos with her husband and 3 kids
- 8 months pregnant with lack of access to basic necessities (food, water, sanitary, medical assistance)
- Interim measures granted before she gave birth but not enforced
- Individual request lodged within deadline
- Transfer to the mainland shortly after

Please note that this form will work correctly only with Adobe Reader 9 Upwards (download available from [www.adobe.com](http://www.adobe.com)). Please save a copy of this form locally before filling it in using Adobe Reader, then print it and post it to the Court.

ENG - 2018/1  
Application Form

**Warning:** If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) requires that a concise statement of facts, complaints and information about compliance with the admissibility criteria MUST be on the relevant parts of the application form itself. The completed form should enable the Court to determine the nature and scope of the application without recourse to any other submissions.

**Barcode label**  
If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

**Reference number**  
If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

32816/20

**A. The applicant**

**A.1. Individual**  
This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to section A.2.

**A.2. Organisation**  
This section should only be filled in where the applicant is a company, NGO, association or other legal entity. In this case, please also fill in section D.1.

1. Surname

2. First name(s)

3. Date of birth  
0 1 0 1 1 9 9 3 e.g. 31/12/1960  
D D M M Y Y Y Y

4. Place of birth  
Syria

5. Nationality  
Syrian

6. Address  
Dhrama (Greece)

7. Telephone (including international dialling code)  
+90 541 366 79 02

8. Email (if any)

9. Sex  male  female

10. Name

11. Identification number (if any)

12. Date of registration or incorporation (if any)  
e.g. 27/09/2012  
D D M M Y Y Y Y

13. Activity

14. Registered address

15. Telephone (including international dialling code)

16. Email



# Individual application: recap

Admissibility of an individual application

## *Jurisdiction of the ECtHR*

- Ratione temporis
- Ratione loci
- Ratione personae
- Ratione materiae

## *Admissibility criteria*

- Exhaustion of domestic remedies
- 4 months from final decision [protocol 15]
- Anonymous; substantially the same; manifestly ill-founded; abusive; no significant disadvantage

# Interim measures vs individual application

Differences between interim measures and individual application

## Interim measures

- Must demonstrate imminency of irreparable damage
- Only certain rights
- Prima facie admissibility
- Order with temporary effect

## Individual application

- Can take years to be adjudicated
- All ECHR rights
- Admissibility conditions
- Judgments/decisions

Thank you

Any question or comment, contact me @ [margaux.bia@dlapiper.com](mailto:margaux.bia@dlapiper.com)



# Training of Lawyers on EU Asylum and Immigration Law (TRALIM 3)

**Natacha Fauveau Ivanovic**

**The EU Charter of Fundamental Rights provisions in  
relation to asylum and immigration**

**Paris, 21 June 2023**



Co-funded the European Union

# **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

## **Asylum Law**

# Field of Application

## Article 51

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

# **Asylum Law is Guaranteed by the Charter**

## **Article 18**

### **Right to asylum**

**The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as ‘the Treaties’).**

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# **Asylum Law is European Law**

- 1. The Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees is incorporated in article 18 of the Charter**
- 2. The Geneva Convention is completed by European rules:**
  - a. Directive 2011/95/EU of 13 December 2011 – Qualification Directive**
  - b. Directive 2013/32/EU of 26 June 2013 – Procedure Directive**
  - c. Directive 2013/33/EU of 26 June 2013 – Reception Standards**
  - d. Regulation (EU) No 604/2013 of 26 June 2013 – Dublin Regulation**



# Essential Charter Provisions in Asylum Law

## Substantial Rights

**Human Dignity (Article 1)**  
**Prohibition of inhuman  
treatment (Article 4)**  
**Respect for private and family life  
(Article 7)**  
**Protection of Removal (Article  
19)**  
**Non-discrimination (Article 21)**  
**Children Rights (Article 24)**  
**Healths Care (Article 35)**

## Procedural Rights

**Right to Good Administration  
(Article 41)**  
**Right to an Effective Remedy and to  
Fair Trial (Article 47)**

# Human Dignity (Article 1)

**Human dignity is inviolable. It must be respected and protected.**

**Human dignity is mentioned:**

- in Point 16 of the **Qualification Directive** ;
- in Point 60, Article 13.2 (d) and Article 25.5 of the **Procedure Directive** ;
- In Points 18 and 35 of the **Reception Standards Directive** ;
- In Point 24 and Article 29 of **Dublin Regulation**

# Human Dignity

## Reception Standards Directive

### Article 20.5 of the Directive 2013/33/UE

**Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.**

« the obligation to ensure a dignified standard of living, provided for in Article 20(5) of Directive 2013/33, requires Member States, by the very fact that the verb ‘ensure’ is used therein, to guarantee such a standard of living continuously and without interruption. Secondly, it is for the authorities of the Member States to ensure, under their supervision and under their own responsibility, the provision of material reception conditions guaranteeing such a standard of living, including when they have recourse, where appropriate, to private natural or legal persons in order to carry out, under their authority, that obligation » (CJEU, **Decision 12 November 2019, C-233/18, par.50**)

# **Respect for private and family life (Article 7)**

**Everyone has the right to respect for his or her private and family life, home and communications.**

**- Family unification**

**(CJEU, Decision 18 April 2023, C-1/23)**

**- Dublin Regulation**

## **Protection in the event of removal, expulsion or extradition (Article 19.2)**

**No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.**

**Basic principle inherent to Asylum Law**

# **Prohibition of torture and inhuman or degrading treatment or punishment (Article 4)**

**No one shall be subjected to torture or to inhuman or degrading treatment or punishment.**

# **Article 4 Prohibition in Dublin**

## **CJUE, 16 February 2017, n°C-578/16**

**It follows from all of the preceding considerations that the transfer of an asylum seeker within the framework of the Dublin III Regulation can take place only in conditions which preclude that transfer from resulting in a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter.**

**It must be recalled that the prohibition of inhuman or degrading treatment laid down in Article 4 of the Charter corresponds to that laid down in Article 3 of the ECHR and that, to that extent, its meaning and scope are, in accordance with Article 52(3) of the Charter, the same as those conferred on it by that convention. (Par. 65 and 67)**

# **Article 4 Prohibition in Dublin**

## **CJUE, 19 March 2019, n°C-163/17**

**Moreover, it is settled case-law that the provisions of the Dublin III Regulation must be interpreted and applied in a manner consistent with the fundamental rights guaranteed by the Charter, inter alia Article 4 thereof, which prohibits, without any possibility of derogation, inhuman or degrading treatment in all its forms and is, therefore, of fundamental importance, and is general and absolute in that it is closely linked to respect for human dignity, which is the subject of Article 1 of the Charter.**

**it is immaterial, for the purposes of applying Article 4 of the Charter, whether it is at the very moment of the transfer, during the asylum procedure or following it that the person concerned would be exposed, because of his transfer to the Member State that is responsible within the meaning of the Dublin III Regulation, to a substantial risk of suffering inhuman or degrading treatment. (par.78 and 88)**



# **Non-discrimination (Article 21.1)**

**Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**

# **Non - Discrimination**

## **Point 17 of the Qualification Directive:**

**With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.**

**Non-Discrimination is inherent to Asylum Law**

# **The rights of the child (Article 24)**

**In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.**

**The best interest of the child is a general principle of law and it applies in asylum law procedures as in any other procedure**

# **The Best Interest of the Child Qualification Directive**

## **Article 20.5**

**The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.**

## **Point 18**

**The ‘best interests of the child’ should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor’s well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.**

# **The Best Interest of the Child Procedure Directive**

## **Article 25.6**

**The best interests of the child shall be a primary consideration for Member States when implementing this Directive.**

## **Point 33**

**The best interests of the child should be a primary consideration of Member States when applying this Directive, in accordance with the Charter of Fundamental Rights of the European Union (the Charter) and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interest of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background.**

# **The Best Interest of the Child Reception Standards Directive**

## **Article 23**

- 1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.**
- 2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:**
  - a. family reunification possibilities;**
  - b. the minor's well-being and social development, taking into particular consideration the minor's background;**
  - c. safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;**
  - d. the views of the minor in accordance with his or her age and maturity.**

# **Health Care (Article 35)**

**Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.**

# **Lack of Health Care May Amount to Article 4 Violation**

**CJUE, 16 February 2017, n°C-578/16**

**In that context, it must be held that, in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in his state of health, that transfer would constitute inhuman and degrading treatment, within the meaning of that article (par.74)**



# **Right to Good Administration (Article 41)**

- 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.**
- 2. This right includes:**
  - a. the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;**
  - b. the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;**
  - c. the obligation of the administration to give reasons for its decisions.**

# **CJEU Application of the Principle**

## **CJUE, 18 December 2008, n°C-349/07**

**Observance of the rights of the defence is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual.**

**In accordance with that principle, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision. They must be given a sufficient period of time in which to do so.**

**The authorities of the Member States are subject to that obligation when they take decisions which come within the scope of Community law, even though the Community legislation applicable does not expressly provide for such a procedural requirement. (par. 36-38).**

# **CJEU Application of the Principle**

## **CJUE, 22 November 2012, n°C-277/11**

**The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely.**

**That right also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision ; the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence. (par. 87-88).**

# **Right to an Effective Remedy and to Fair Trial (Article 47)**

**Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.**

**Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.**

**Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.**

# **CJEU Application of the Principle**

## **CJUE, 1 December 2022, n°C-564/21**

**it should be noted that, in the context of the protection of the rights and freedoms guaranteed by EU law and the right to effective judicial protection, the second paragraph of Article 47 of the Charter guarantees the right to a fair trial, a particular aspect of which is respect for the rights of the defence, which, according to that paragraph, entails the possibility of being advised, defended and represented. Those rights must be respected in any proceedings against a person which may result in an act adversely affecting him or her. The effective exercise of those rights has as a necessary corollary the right of access to the file. (par.36)**



# Training of Lawyers on EU Asylum and Immigration Law (TRALIM 3)

**Noemí Alarcón Velasco**

**National legal framework and case-law on asylum  
and immigration cases in Spain**

**Paris, 21 June 2023**



Co-funded the European Union

# Legal framework on asylum and immigration in Spain

# ASYLUM

- **Asylum law (2009)** (Ley de Asilo)
- No regulation developed, use of the 95' Regulation (Royal Decree) for certain aspects that are not in conflict with the 2009 Law
- CEAS (Common European Asylum System) Directives transposed: the Qualification Directive /2011 has been transposed.
- Migration Law (Ley Orgánica de Extranjería 4/2000) contains rules applying also for asylum seekers and refugees (Ley de Extranjería y Reglamento de Extranjería).
- Problems with the access to procedures: “cita previa”





## ASYLUM Caselaw

- 1. Access to reception conditions for Dublin returnees:** TSJ Madrid (Superior Court of Madrid), Judgement 7.12.2018
- 2. Free movement of asylum seekers from Ceuta/Melilla (enclaves) to the Peninsula:** Judgement of TSJ Madrid nº 671/2019 (and others) and Supreme Court Judgement (Sentencia núm. 1.128/2020) 29.07.2020
- 3. Resettlement: Refugee status vs Subsidiary Protection (complementary pathways):** Supreme Court Judgement (Sentencia núm. 1773/2020) 17.12.2020
- 4. Compatibility Asylum and immigration procedures:** Spanish Ombudsman decision on October 2017 and several court judgements establishing the compatibility.
- 5. CJEU: C-36/20** (25 June 2020) concerning the interpretation of “other authorities” competent to receive asylum applications (examining magistrate) and the use of detention measures in cases where it is not possible to find accommodation in a humanitarian protection centre.

## MIGRATION LEGISLATION

**Migration Law** (Ley Orgánica de Extranjería 4/2000 reformed several times, L.O. 2/2009) + Regulation: Royal Decree 557/2011 + 2 reforms applying

1) Relevant reform in October 2021 referring to unaccompanied children → to help them to integrate into society and get a residence permit when arriving to legal age of majority

2) Recent reform of the Regulation adding new types of residences → Royal Decree (REAL DECRETO) 629/2022, de 26 July

- Arraigo social
- Arraigo familiar
- Arraigo formación
- Renewal

## MIGRATION CASELAW

**Zaizoune (CJEU C-38/14) 23 April 2015: Return Directive (2008)**, common standards and procedures for returning illegally staying third-country nationals, Articles 6(1) and 8(1).

+

**POST-ZAIZOUNE DOCTRINE: C-568/19 (8 October 2020)**: it is possible to apply domestic law: the Spanish migration law is compatible within the Directive: 1) fine + compulsory departure 2) Expulsion + entry ban

+

The **Constitutional Court** in its recent judgement (STS 47/2023 10 May): alleges the breach of the fundamental right to legality of sanctions (art.25.1.c) for unreasonable imposition of removal: if there is no aggravating circumstance or negative element, the fine must applied instead of the expulsion (article 57 LOEX).

**THANKS!**



# Training of Lawyers on EU Asylum and Immigration Law (TRALIM 3)

**Alessio Sangiorgi**

**National legal framework and case-law on asylum  
and immigration cases in Italy**

**Paris, 21 June 2023**



Co-funded the European Union

# Migration and asylum: the Italian legal framework

## Article 10, Constitution of the Italian Republic

1. The Italian legal system shall conform to the generally recognised principles of international law.
2. The **legal status of foreigners** shall be **regulated by law** in compliance with international provisions and treaties.
3. A **foreign national**, who is denied – in his or her country – the enjoyment of the democratic freedoms established by this Constitution shall be entitled to the **right of asylum** in the Republic under such conditions as shall be established by law.
4. A foreign national may not be extradited for a political offence.



# Migration: the Italian legal framework

## IMMIGRATION in Italy is a fairly new phenomenon

- In the 90's: first legislation on migration (Law Martelli), due to the **first large flows** of migrants in Italy when thousand of people were coming from Albania
- 1998: enactment of a **consolidated text** (D. Lgs. n. 286/1998) > still in force;

**Goals:** manage and schedule **regular entry** and flow decree; set up good standards of **integration** for aliens lawfully **resident** and with a work permit; contrast **irregular entries**.



# Migration: the Italian legal framework

In 2002, the so-called “**Bossi-Fini law**” imposed a new restrictive perspective. In particular:

- Limitation on family reunification;
- Regular permanence only for people holding a working contract;
- More strict procedures for expulsion > **compulsory accompanying** to the border even before a judicial pronouncement (then declared partially incompatible by the Constitutional Court);
- Other restrictive amendments made between 2007 and 2009.

**N.B.**: by that time the migrants flow started to become a constant one and emerged as a **sensitive political issue**.





# Migration: the Italian legal framework

With the so-called “**Security Package**” (2008-2009) the government laid down also some **criminal provisions, again in a restrictive dimension of immigration:**

- **aggravating circumstance** of aliens committing a common crime;
- **new crime** of illegal entry and permanence;
- possibility to **hold** irregular migrants for more than 180 days with a new intent of expulsion



# Migration: the Italian legal framework

- No direct legislation on asylum and international protection
- Transposition of the **Common European Asylum System (CEAS)**  
(Directives Qualification, Procedures and Reception Conditions)
- Italian system provide(d) for three types of protection:
  1. Refugee status;
  2. Subsidiary protection;
  3. Special protection (formerly humanitarian protection – until 2018).



# Humanitarian protection

- Provided for under Article 5, co. 6, D. Lgs. 286/1998 (as amended in 2008)
- **Granted in case of denial for international protection on the base of serious reasons of humanitarian nature (after individual evaluation)**
- Evaluation and protection of **applicant's vulnerabilities**
- Police headquarters issued a permit of stay for humanitarian reasons as requested by the Territorial Commission (no discretion)
- Repealed by decree-law n. 113/2018 (Security decree)



# Asylum Law:

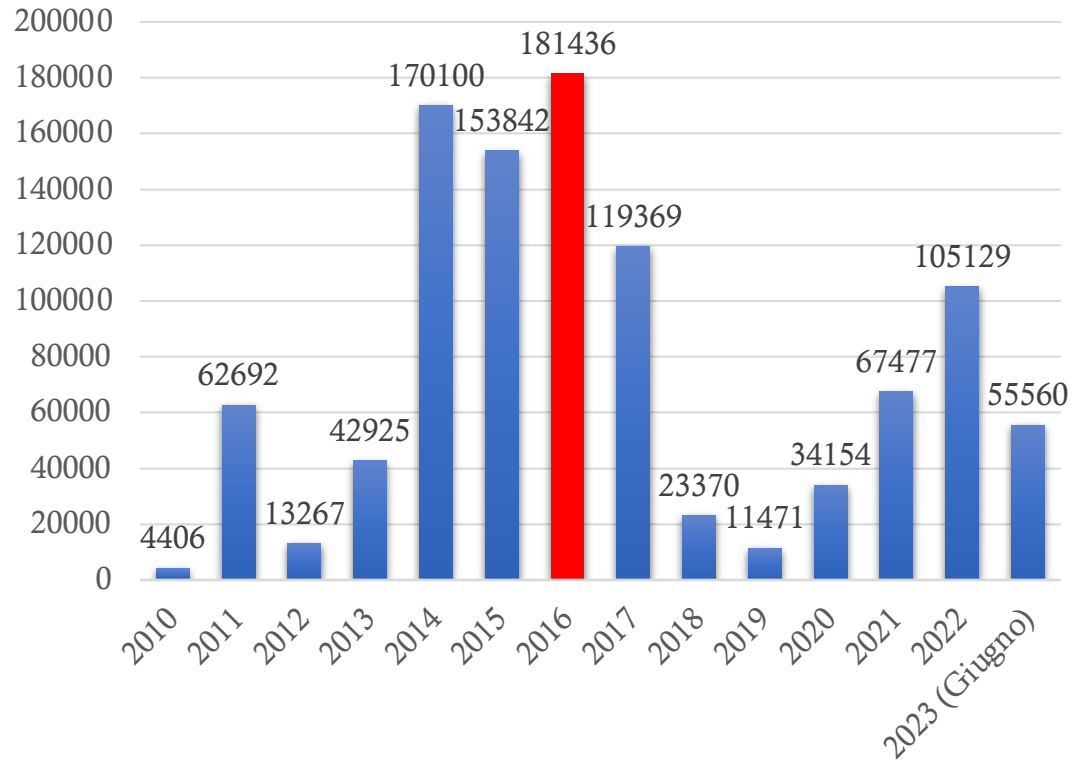
## Application for international protection

- Asylum seekers must apply through a specific application form as soon as possible, either at the border or at the Police offices;
- The application is transmitted to the relevant Territorial Commission;
- Currently, there are 41 Territorial Commissions in Italy;
- Four members: the President (from the Prefecture), two components from the Ministry of Interior, and a UNHCR delegate;
- Audition of the applicant with possibility of interpreter assistance;
- 3 months for the decision;
- The Commission can grant or deny international protection;
- Possibility of judicial appeal against the denial.

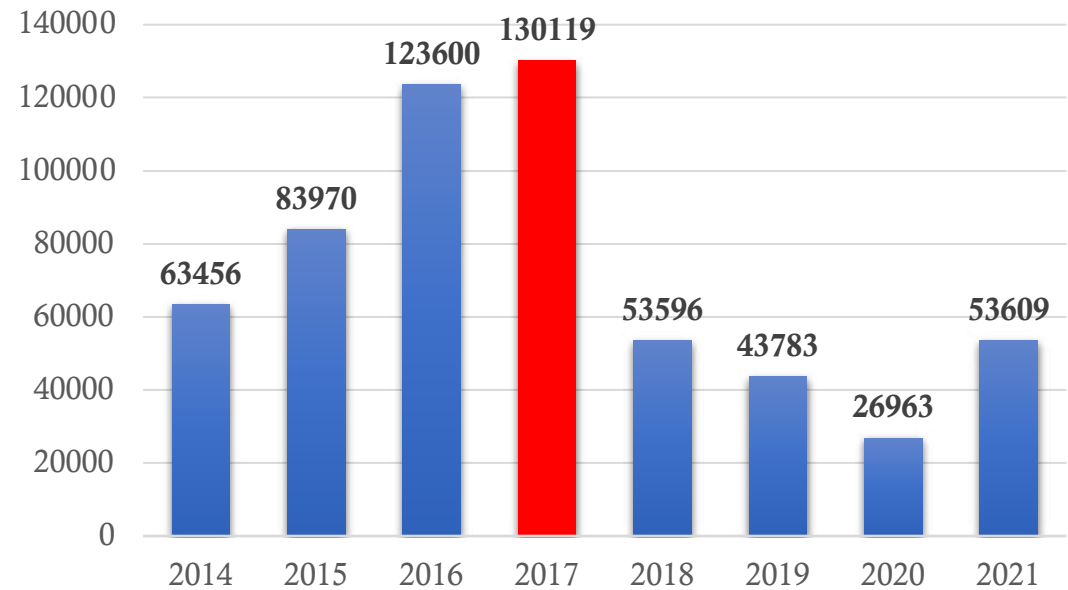


# Statistics

## Arrivals



## Applications for international protection



*Source: Ministry of the Interior*



The project is co-financed with the support of the European Union's Justice programme

# Recent legislative reforms

- I. **Minniti - Orlando Decree-Law**, D.L. No. 13/2017 (later converted with amendments into Law No. 46/2017).
- II. **Salvini Decree-Law** (also known as **Security Decree**), D.L. No. 113/2018 (later converted with amendments into Law No. 132/2018).
- III. **Salvini Decree-Law bis** (also known as **Security Decree bis**), D.L. No. 53/2019 (later converted with amendments into Law No. 77/2019).
- IV. **Lamorgese Decree-Law**, D.L. No. 130/2020 (later converted into Law No. 173/2019).
- V. **Migration Flow Management Decree-Law**, D.L. No. 1/2023 (later converted with amendments into Law No. 15/2023).
- VI. **Cutro Decree-Law**, D.L. No. 20/2023 (later converted with amendments into Law No. 50/2023).



# Minniti – Orlando Decree-Law

## POSITIVE ASPECTS:

- **Professionalisation of Territorial Commissions**
  - ✓ **250 new officials** hired after public competition (since May 2018)
  - ✓ Modification in the composition: **two permanent officials** with administrative functions
  
- **Specialised sections** in the courts, responsible for Migration and International Protection
  - ✓ knowledge of English or French
  - ✓ preference to those with previous experience
  - ✓ training courses

**BUT** no extra burden upon public finances, and  
no increase in the workforce (hon. judges)



# Minniti – Orlando Decree-Law

## NEGATIVE ASPECTS:

- **Special and speedy Chamber proceedings** (no more than 4 months in first instance and no more than 6 months at the Court of Cassation)
- **No hearing before a judge** (utilisation of video recording of the audition in front of the Territorial Commission)
- **Extremely short deadline** to challenge the denial of international protection and to appeal the decision of first instance (30 days)
- **Removal of the second instance on the merit** (*unicum* in Italy)
- **No automatic suspensive effect of the appeal** to the Court of Cassation (lawfulness confirmed by the CJEU)





# Salvini Decree-Law 113/2018

- **Repeal of humanitarian protection:** replaced by temporary residency permit, awarded only in some **exceptional cases** → acts of particular value to society, severe labour exploitation, torture, domestic violence, extraordinary natural disasters and particularly serious health reasons
- **No more special reception facilities** for holders of humanitarian protection and for asylum seekers (ex SPRAR only for holders of international protection)
- Possibility of **denying or even withdrawing** internationally recognised refugee status in case of a broadened number of crimes (including “socially dangerous” crimes such as sexual violence; the manufacture, trafficking and possession of drugs for non-personal use; robbery and extortion; violence or threat against a public official)



# Salvini Decree-Law 113/2018

- **Detention of asylum seekers** within hotspots in order to ascertain their identity and nationality is set at **30 days** > in case of difficulties with the process of identification, the period of detention can be extended to up to **six months**
- **No civil registration** for asylum seekers (this is without prejudice to the inscription to the sanitary system, access to work, enrolment of children in school, reception measures)
- **Revocation of Italian citizenship** for convicted of terrorism felonies
- **No legal aid** whether the appeal against the decision issued by the Territorial Commission is dismissed as inadmissible or barred to proceed further



# Salvini Decree-Law bis 53/2019

- Pecuniary administrative sanction **from 150 thousand to 1 million euros**, in the case of non-compliance with the prohibition of entry, transit, or stop, in the territorial sea of the State, plus a secondary sanction of **confiscation** of the boat.
- Possibility of having **interceptions** in order to acquire information aimed at preventing the **crime of aiding and abetting illegal immigration**.



# Lamorgese Decree-Law

- New **convertible permits** in the hypotheses of special protection, natural disasters, elective residence, acquisition of citizenship or stateless status, sports, artistic work, religious reasons and assistance to minors.
- **Special protection** extended: now eligible for special protection not only the person who was in **danger of being tortured**, but also:
  - i. those who risk being subjected to **inhuman or degrading treatment in their country of origin**
  - ii. those who risk **violating the right to respect for their private and family life on national territory**.



# Lamorgese Decree-Law

- **Residence permit** for special protection has been extended from 1 year to 2 years.
- The concept of residence permits for **natural disasters** has been extended.
- Registration in the **register of the resident population** of the applicant for international protection.
- New framework of **prohibitions and navigation limits for NGOs'** boats and reduction of the administrative penalties in case of non-compliance.
- Answer to the request for the acquisition of the Italian citizenship reduced from four to **three** years
- New Reception and Integration System, structured in a **double binary** of services.



# Migration Flow Management Decree-Law

- NGO vessels conducting Search & Rescue **must** reach without delay the **port assigned by the authorities** to disembark migrants

## NEGATIVE ASPECTS:

- This **prevents NGOs from carrying out multiple rescues** at sea, forcing them to ignore other rescue requests if they already have people on board
- NGO vessels have been **assigned ports** in Central and Northern Italy, **far from where migrants are rescued**, exposing them to prolonged suffering
- Crews on board of NGO vessels are **obliged to register every person** who intends to apply for international protection
- NGOs that **fail to comply** with these stringent rules will be subject to **administrative sanctions, fines** and the **seizure of the ship**



# Cutro Decree-Law

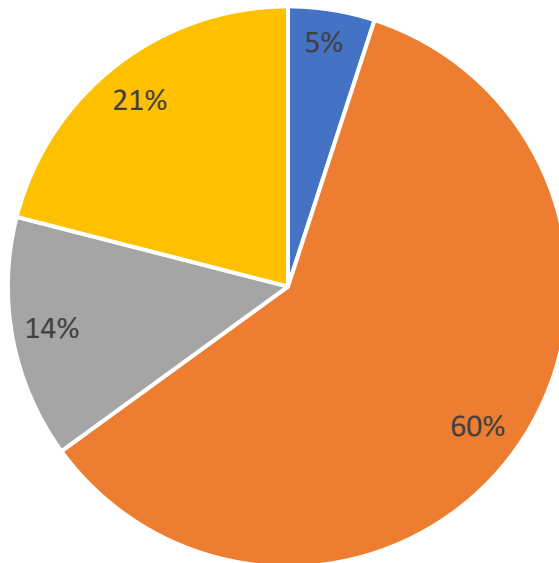
- **Aggravated sanctions** for those who commit the crime of aiding and abetting irregular migration
- Introduction of a **new criminal offense** when, as a result of aiding and abetting irregular migration, one or more persons suffer from **injuries or death**
- **Repeal** of the provisions that allowed **special protection** to be granted to those who had built a **private and family life in Italy**



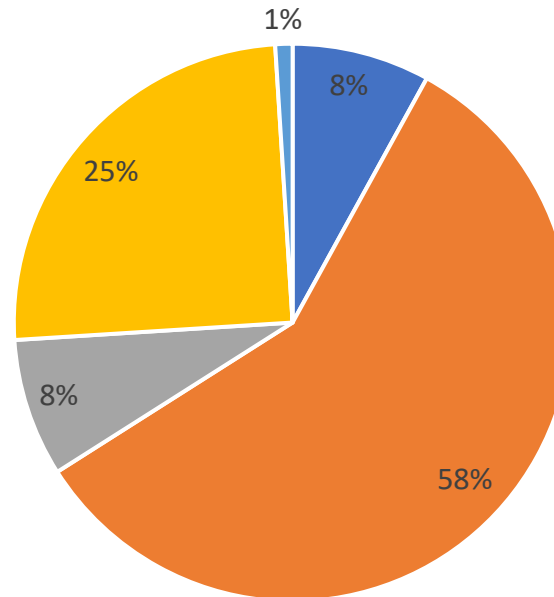


# Application outcomes

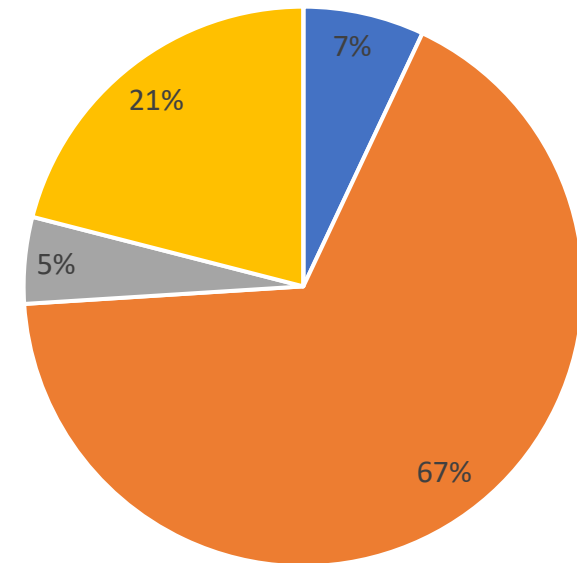
2016



2017



2018



■ Refugee status ■ Rejection ■ Subsidiary ■ Humanitarian ■ Others

*Source: Ministry of the Interior*

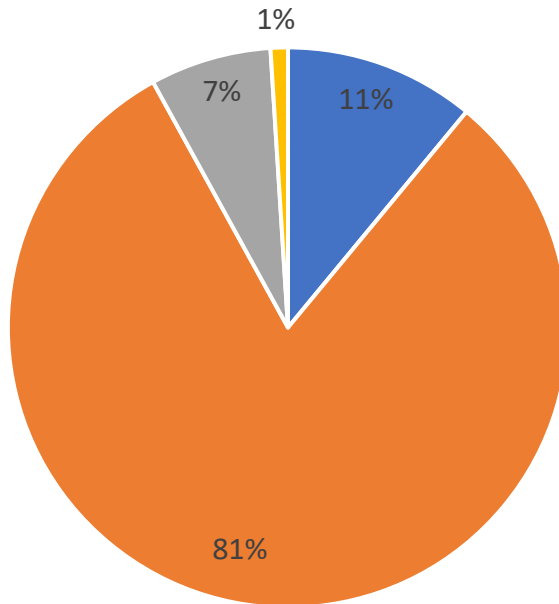


The project is co-financed with the support of the European Union's Justice programme

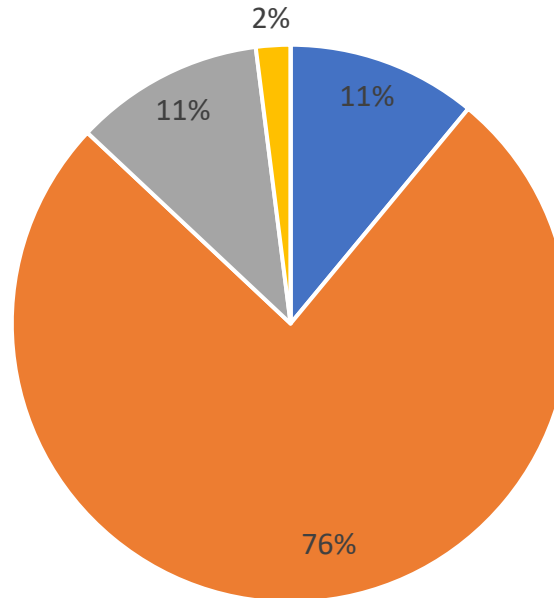


# Application outcomes

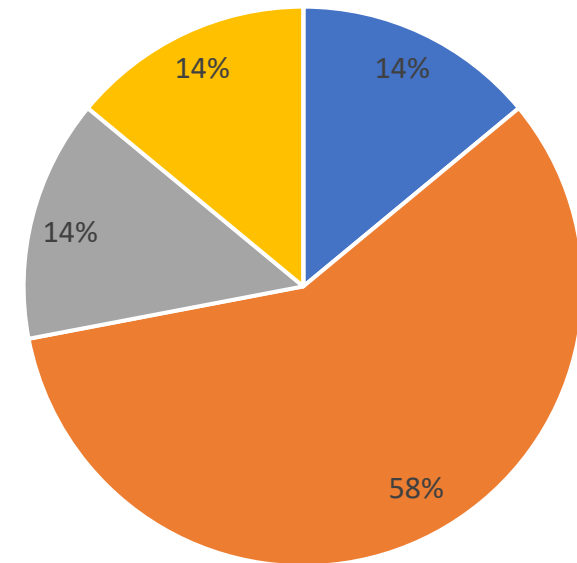
2019



2020



2021



■ Refugee status ■ Rejection ■ Subsidiary ■ Humanitarian ■ Others

*Source: Ministry of the Interior*



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# Thanks for your attention

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