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<<The activities of Lawyers on immigration and Asylum in the Different States of the EU>>

ITALIAN REPORT

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I - The legal background.

The Constitutional framework

The Italian fundamental Law is the Constitution of the Italian Republic (*Costituzione della Repubblica Italiana*), approved by the Constitutional Assembly (*Assemblea Costituente*) on 22 December 1947 and entered into force on 1 January 1948.

Only a few provisions, contained into article 10, refer expressly and specifically to foreigners: article 10.2 stipulates that <<*the legal status of foreigners in regulated by the law, in conformity with international norms and treaties*>>; article 10.3 deals with the right to asylum and affirms that <<*the foreigner who, in his or her own country, cannot enjoy effectively of the democratic liberties guaranteed by the Italian Constitution, is entitled to asylum in the territory of the Italian Republic, under the provisions of the law*>>. Article 10.3 forbids the extradition of foreigners for political crimes.

However, all the other constitutional provisions dealing with individual rights (political rights excluded) are applicable both to citizens and foreigners. This is partly true also for article 3, which prescribes the equal dignity and the equality before the law of <<all the citizens>>, without any distinction of <<*sex, race, language, faith, political opinions, personal or social conditions*>>, and attributes to the Italian Republic the task of <<*removing the ... hurdles which, limiting in practice the liberty and equality of the citizens, prevent the full realization of the human person and the actual participation of all workers to the political, economical and social organization of the Country*>>. This article must be read, in fact, in combination with the principle of inviolability of the human rights enshrined into article 2, and therefore interpreted as applicable also to foreigners, insofar the fundamental rights are concerned[2].

No constitutional provision expressly refers to EU citizens; however, the participation of Italy to the EU, and the *primauté* of EU Law over contrasting internal law are considered as constitutionally covered by article 11, authorizing those limitations of sovereignty which are necessary for achieving an international order which protects peace and justice between Nations.

Legal status of EU citizens and their family members

The main piece of Legislation concerning EU citizens and their family members is Legislative Decree 6 February 2007, No 30, implementing Directive 2004/38/EC, subsequently modified by Legislative Decree n. 32/2008, Decree-Law n. 89/2011 as converted into Law No. 129/2011 and Legislative Decree No. 150/2011. The general provisions on foreigners contained into Legislative Decree No 286/1998, Single Act on Immigration, are not applicable to EU citizens, unless when they contain "*more favourable provisions*" (Leg. Decree No 286/1998, art. 1.2).

Legal status of Non-EU family members of Italian citizens.

No specific legal regime on the point. With a view of preventing "reversed discriminations" against Italian citizens, Legislative Decree no 30/2007 on article 23 stipulates that its provisions concerning family members of EU citizens also apply, when "more favourable", to non-Italian family members of the Italian citizens.

Legal Status of foreigners.

The main piece of legislation on foreigners is Legislative Decree No 286/1998 ("Single Act on Immigration"), whose norms have been repeatedly amended, also in order to implement the subsequent EU legislation[3]. It is completed by the implementing rules contained into Presidential Decree No 394/1999, an act of Government having a mixed nature, normative in purpose but administrative in its legal force.

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[2] See Constitutional Court, Judgment 15.11.1967, No 120.

[3] In particular, article 9 of the Single Act on Immigration has been modified, and an article 9-bis has been introduced, by Legislative Decree No. 3/2007, in order to implement "Long-term residents" Directive No 2003/1009/EC; articles 4, 5, 13, 29 have been modified, and a new article 29-bis has been introduced, by Legislative Decree No 5/2007, in order to implement "Family Reunification" Directive No 2003/86/EC; articles 5, 10bis, 13 and 14 of The Single Act on Immigration have been amended By Law-Decree 23.6.2011 No 89 (converted into Law 2 August 2011, No. 129) in order to implement the "Return" Directive 2008/115/EC.

II - Some issues of domestic Law.

Irregular staying: treatment and sanctions. The transposition of "Return" Directive No 2008/115/EC[4]

- Is the pecuniary sanction for irregular staying foreseen?
Under article 10bis of Single Act on Immigration, as introduced by Law No 94/2009 ("security package"), the foreigner who illegally enters or remains in the territory of the State is punished by a criminal fine between 5.000 and 10.000 euros. This provision is not applicable to foreigners who are recognized by the competent authorities as in need of international or humanitarian protection, and the criminal proceedings are suspended during the examination of their claims. Likewise, the provision is not applicable to foreigners rejected at borders or who are found at border checks in the act of leaving the country.
Heavier fines are envisaged for those foreigners who, having already received an expulsion order, do not abide, without a valid reason, by a subsequent order of leaving Italy within 7 days which is adopted when there is no room available for them in any deportation centre, when they are freed from a centre because of the expiration of the time-limits for their detention. In those cases, under article 14.5bis of the Single Act on Immigration, as amended, it is foreseen a criminal fine amounting to a sum between 10.000 to 20.000 euros or, in mitigating situations, from 6.000 to 15.000 euros.

- Possible provisional means which limit the irregular migrants' freedom. The detention of migrants: its form, lawyer's intervention; duration and sources
Article 13.5 of the Single Act on Immigration stipulates that in some case the foreigner, which must be informed of this right, is entitled to apply to the Provincial Head of the Police (*Questore*) for a delay for organizing a voluntary return, also within the framework of programmes of assisted voluntary return. The Questore might grant a delay ranging from 7 to 30 days, renewable. In this case the foreigner is asked to submit evidence of adequate financial resources and, to avoid the risk of his or her absconding, one of those provisional measures is applied: *a)* the submission of passport or other travel document; *b)* the obligation to stay in a certain place; *c*) the obligation of periodically reporting to security forces
However, this opportunity is denied in all those cases, widely defined, in which, under article 13.4 of the Single Act on Immigration, the expulsion should be implemented by means of direct deportation or, when the immediate deportation is not technically possible (as it happens very often), by provisional detention into a detention facility named CIE- *Centro di Identificazione e di Espulsione; (Identification and Deportation centre*).
CIE detention normally stems from administrative decisions and, even when decided by the Judiciary[5], remains administrative in kind, and barely regulated by the Law.
The only legislative provision on CIE detention modalities is contained into article 14.2 of the Single Act on Immigration, stipulating that "*the foreigner is detained in the Centre under modes which guarantee appropriate assistance and full respect of his or her dignity (…). Freedom of Correspondence, including correspondence by telephone, is always guaranteed*". Presidential Decree No 394/1999, an administrative regulation, adds some basic guarantees, however subjected to the "regular course of the life in community", like the right to free internal communication, to essential services and socialization opportunities, as well as

[4] Italy has implemented the Return Directive, with a six-month long delay, by the urgent means of Law-Decree 23.6.2011 No 89 (converted into Law 2 August 2011, No. 129), which amended articles 5, 10bis, 13, 14 and introduced a new art 14ter into the Single Act on Immigration. This intervention turned out as necessary after the CJEU 28.6.2011 preliminary ruling on "El Dridi" case. Before this judgment, Italian Government opinion was that, since article 2.2 (b) of the Return Directive allow States not apply it to foreigners who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, its implementation was not necessary in Italy, where article 14 of the Single Act on Immigration, as modified by Law No.94/2009 ("security Package") tried to qualify the act of illegally remaining in the country after an expulsion order as a crime, punishable with prison terms and deportation as a consequence of the crime. However, with El Dridi judgment, the CJEU declared not compatible with the Return Directive the fact of imposing prison term on the sole ground of illegally remaining in the territory of a State after an expulsion order.
[5] See art. 15 and 16, Single Act on Immigration; expulsion as a criminal security measure or as an alternative to criminal detention.

the right of being visited by outsiders, in particular by the assisting lawyer, ministries of faith, family members, consular representatives or authorized members of humanitarian entities. The room for arbitrariness in the implementation of those rules is wide, and some lawyers suggests that the non-criminal nature is a disadvantage in the end, since it entails the non applicability of the more detailed rights and guarantees foreseen by the Italian prison Law (Law 26 July 1975, No 354, as amended)[6].
Under article 14.5 of the Single Act on Immigration, as amended, the administrative detention of foreigners requires confirmation by the Justice of Peace and, if confirmed, it is deemed as authorized for 30 days. However, if serious difficulties arise concerning the acquisition of travel documents or the identification of the foreigner, or his/her nationality, the judicial authority, normally the Justice of Peace[7], can extend the detention, upon police request, for other 30 days. After the expiration of this term, if another extension is needed, the Questore can seek an authorization for other 60 days of detention, and, eventually, a subsequent request for another term of 60 days. This leads to a maximum detention period amounting to 180 days[8].

- Basic aspects of the proceedings: representation by counsel; delays; administrative and jurisdictional remedies

Unlike the underlying deportation order, whose legal review requires a claim lodged by the foreigner, the administrative detention order must necessarily be presented to a Judge for review in 48 at the latest. The Judge has other 48 hours to confirm the measure and, if one of those time limits is infringed, the detention order becomes null and void (see Single Act on Immigration, article 14.3 and 14.4). The foreigner must be timely informed of the hearing, which must be carried on in chambers, and is accompanied before the judge to be heard. He must be necessarily assisted by a lawyer and, lacking a counsel of his or her own choice, a court-appointed Lawyer is provided. The foreigner is admitted to legal aid without any inquiry into his or her economical resources. The detention-ordering administration can take part to the hearing as well.
Under article 14.6 of Single Act on Immigration, the judicial decisions which confirm or extend the administrative detention of foreigners are only challengeable before the *Corte di Cassazione*, which is the Italian Supreme Court.

Execution of expulsion order. Possibility of suspensive measures.

When the execution of an expulsion order is not preceded by a detention period, a form of judicial control is necessary as well. Under article 13.5bis of Single Act on Immigration, the administrative decision ordering the immediate deportation of a foreigner to the border must be transmitted to a Justice of Peace within 48 hours at latest, cannot be carried on during the reviewing phase and becomes null and void if it id not confirmed by the Judge within the following 48 hours. All procedural rules, the provision concerning the representation by counsel included, exactly mirror those concerning the control on detention orders.
When the foreigner raise a claim against the expulsion order before the Justice of Peace, the case must be quickly examined and, under article 18 of Legislative Decree No 150 of 2011, decided into 20 days at the latest. Under article 5 of the same legislative Decree is possible to apply for suspensive measures as well, to avoid a deportation risk when the proceedings are still pending.
Apart from the necessity of a judicial review detention orders and the execution of expulsion orders not proceeded by detention, and the possibility of an application for suspensive measures within the proceedings

[6] This is the position, by instance of the "Unione delle Camere Penali d'Italia" UCPI, probably the most representative Italian voluntary association of Lawyers dealing with Criminal Law, see UCPI, Press release of 30.5.2013: "Carcere di Reggio Calabria e CIE di Crotone. Viaggio dal Purgatorio all'Inferno" http://www.camerepenali.it/news/5335/Carcere-di-Reggio-Calabria-e-CIE-di-Crotone-viaggio-dal-Purgatorio-all_Inferno.html. In Bari, a group of lawyers promoted a civic class action, aimed at obtaining a judicial inspection on the detention standards in the local CIE, and their subsequent improvement. Further information on this initiative can be found to the website of Association "Class Action Procedimentale"(http://www.classactionprocedimentale.it).
[7] This is not always the case: under the special provision of Article 21.2 of Legislative Decree No 25/2008, implementing "Procedures" Directive No 2005/85/EC, if a foreigner who is already detained in a CIE applies for asylum, when the first 30 days terms approaches an extension of his or her detention period can be only granted by an ordinary civil court (Tribunale), and only for a single time. Therefore, the maximum detention period of an asylum applicant is sixty days.
[8] Moreover, article 20.4 of Presidential Decree No 394/1999 adds that <<*the detention cannot last beyond the amount of time which is strictly necessary to enact the expulsion order, and in no case more than the terms established in the Single Act on Immigration.…*>>.

concerning the expulsion order, there is no specific legal remedy for suspending the execution of an expulsion order.

Long-Term residents. Transposition of Directive 2003/109/EC

- **does a differentiated national long-term residence legal regime exist?**

It does. Under article 9 of Single Act on Immigration, to apply for this kind of permit of stay, a foreigner must have been already enjoying a permit of staying for at least 5 years, earning an income which is at least equivalent to the annual amount of the "*assegno sociale*"[9] and have an adequate accommodation. Moreover, the candidate must undergo and pass an Italian language proficiency exam. Directive 2011/51/EC, extending the scope of EU long-term residence permit to beneficiaries of international protection, is not implemented yet, despite the expiration of the time limits on 20 May 2013. This permit of stay, called "EC permit of stay for Long-Term resident", offers qualified rights not enjoyed by other regular migrants to the same extent. In particular, the right to work and the right to free movement are strengthened, as well as the access to social security and public relief. Right to participate to the political life at the local level is also envisaged, even though specific implementing provisions are lacking.

- protection against expulsion. Administrative and Judicial practice

Family issues. Transposition of Directive 2003/86/EC

- **family reunification. Requirements**

The sponsor who applies for family reunification should, as a rule, provide for due evidence of an accommodation which satisfies some requirements of hygiene and fitness for human habitation, to be verified by the Municipality. Those requirements, which usually gives great important to the dimension of the flat, are not asked in case of application for reunification with a children who is less than 14 years old, insofar the homeowner assents to his or her living there. The sponsor must, also, provide due evidence of an annual income by legitimate sources which is not lower than the annual amount of the "assegno sociale" [10], increased by a half for every family member for whom the reunification is asked[11]. In the calculation of the available income, the resources of those family members who are already living with the sponsor are taken into consideration. Lastly, if the family member is more than 65 years old, the sponsor must guarantee a sickness insurance.

Under article 29bis of the Single Act on Immigration, sponsors who are refugees are exempted by income, housing and sickness insurance requirements and enjoy of mitigated procedural provisions, aimed at simplifying their burden of proof on their family ties. The beneficiaries of subsidiary protection enjoy of the same mitigated rules of evidence, but are not exonerated by income, insurance and accommodation requirements.

- **spouses and unmarried partners**

Article 29.1, listing the family ties giving entitlements to family reunifications, only refers to the "spouse" , and not to a partner. Even though some specific provisions of law concerning unmarried partners do exist in the Italian system, and unmarried couples are considered by the current Italian jurisprudence as, to some extent, constitutionally protected[12], they cannot be considered as equivalent to marriages. Moreover, Italian family law does not contemplate any form of "registered partnership".

[9] The "assegno sociale" is the public assistance benefit for destitute persons having more than 65 years; at present amounting to 5.749,90 Euros.

[10] See above, note n. 9.

[11] Specific mitigating rules are in place for numerous families, when the reunification is asked by a beneficiary of subsidiary protection or for children who are less than 14 years old.

[12] The legal basis for constitutional protection of unmarried couplet is article 2 of the Italian constitution, which guarantees protection to the fundamental rights of the human person, seen not only as an isolated individual but also as part of those "social groups where his or her personality is expressed"; see Corte di Cassazione, judgment 7214 of 21 March 201.

Same-sex marriages are not considered by the Italian family law as well and cannot be celebrated in Italy[13] neither it is possible to register them in Italy when legally celebrated abroad[14]; however, same-sex marriages celebrated abroad deserves protection and respect by the law, since, despite what above, the Italian judiciary and the Constitutional Court have also clarified that same-sex couples fully enjoy of the fundamental right to a free family life[15]. In consideration of this trend, same-sex couples who have legally married abroad should be considered as "spouses" for family reunification purposes. If not, an unjustified difference of treatment might arise between foreigners who are same-sex spouses of non-EU nationals and foreigners who are same-sex spouses of a EU (or Italian) citizen: in fact, the Italian Ministry of Interior, by means of administrative directions dated 26.10.2012, has already accepted that a foreigner who has married, by same-sex marriage legally celebrated in another EU Country, an EU or Italian citizen must be considered as "family member" within the meaning of Legislative Decree 30/2007 (transposing the "Free movement of persons" Directive No 2004/38/EC)[16].
The possibility for a EU citizen of applying for family reunification with his or her non-EU spouse is excluded if the spouse is less than 18 years old, or is legally separated. Moreover, article 29.1ter rules out family reunification entitlements in case of polygamous marriages, when the sponsor is already married with a foreigner legally residing in Italy.

- **Descendants**

Under article 29.1 (b) and 29.1 (c) of the Single Act on Immigration, sponsors can apply for family reunification with their own or their spouse's underage children, provided that the children are unmarried and the other parent, when existent, assented to the reunification.

ascendants

Under Article 29.1 (b) the sponsor might apply for family reunification with his or her own dependent parents, provided that they do not have other sons or daughters in their Country of origin, or if the parents are more than 65 years old and their sons or daughters in the Country of origin cannot sustain them because of serious and documented health conditions. It is also possible the reunification with adult sons or daughters who are dependent, when they have health condition entailing a total disability and are unable, for objective reasons, to earn their own livelihood.

EU Citizens and their Family members

- **Right of residence for more than three month. The requisite of sufficient resources**

Article 7.1 (b) of Legislative Decree NO 30/2007 stipulates that the right of residence for a period longer than three months of EU citizens who are neither workers nor students is conditioned to the availability of sufficient resources for themselves and their family members, not to become a burden on the social assistance system of the state. Self-declarations are normally considered as an acceptable means of proof.
The criteria for assessing the adequacy of the economic resources are better clarified by article 9.3(b) same Legislative Decree: the appropriate benchmark is considered the annual amount of the "assegno sociale", to be increased by a half for each family member, under the same rules applicable to family reunification of non-EU citizens. Article 93bis, as amended, clarifies that, in this case, the "assegno sociale" threshold is not a rigid provision, since the whole individual situation of the sponsor must be taken into account, in particular for what concerns his or her accommodation costs.
The Ministry of Interior, by administrative directions dated 21 July 2009[17], adds that the resources to be considered are not only the incomes, but the savings as well, and can also be offered by third persons. When the resources appear not sufficient, the refusal of registration is not automatic, but implies a fair balance and proportionality test, in order to avoid those refusals which might cause excessive or disproportionate harm to the individual concerned.

[13] Corte Costituzionale, judgment 14.4.2010, No 138.
[14] Corte di Cassazione, judgment 15 March 2012, No 4184).
[15] See the same judgments mentioned above, at notes 10 and 11.
[16] Ministry of Interior, Circolare 26.10.12, No 8996 http://www.stranieriinitalia.it/images/circogay8nov2012.pdf.
[17] http://www.asgi.it/public/parser_download/save/circolare.del.ministero.dell.interno.21.luglio.2009.n.18.pdf.

- the case of non-EU family members of Italian citizens in Italy.

Under article 23 Legislative Decree no 30/2007 the provisions concerning the legal treatment of non-EU family members of EU citizens are also applicable, whenever they represents "more favourable provisions" to non-Italian family members of the Italian citizens. Lacking a specific legal regime on the point, they therefore enjoy, in general terms, of the same treatment of foreigners who are family members of an EU Country different from Italy.

An important specific provision for foreigners who are family members of an Italian citizen, however, is article 19.2 (c) of the Single Act on Immigration, which, with the only exception of expulsions decided by the Minister of the Interior for State security concerns, prohibits the expulsion of those foreigner who are living together with first or second-degree relatives or a spouse having the Italian citizenship.

- Jurispridencial criterias concerning limitation to residence entitlements of EU citizens and their family members grounded on security grounds

Under article 21.1 of Legislative Decree February 2007, No 30, entry and residence entitlements of EU citizens and their family member can be limited, by means of a specific administrative decision on security grounds: namely, for "State security" reasons, imperative reasons of public security or other reasons of public policy or public security.

When the concerned individual already enjoys of permanent residence, articles 21.6 and 21.7 add that the "other reasons" of public policy and public security only justify a removal decision when they can be qualified as "serious reasons", while persons who are residing from more than 10 years and minors can be expelled only for reasons of State security or "imperative" reasons of public security, unless the expulsion of the minor is found necessary in his or her own best interest.

In broader terms, articles 21.4 and 21.5, in line with article 27 of the Directive, stipulates that expulsions shall comply with the principle of proportionality, can never be justified by economical reasons and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat to public policy and security. It is also acknowledged that previous criminal convictions shall not in themselves constitute grounds for taking such measures.

While expulsion orders against foreigners are reviewed by justices of peace, and therefore lay judges, those against EU citizens and their family are within the jurisdictional control of the Tribunale ordinario, which is the ordinary first-degree Court for civil and criminal lawsuits.

This seem to offer to the individual concern higher chances of a more accurate and professional control over the full respect of the principle of proportionality, and the actual seriousness of the threats to public policy and security represented by their behaviours.

The Italian judiciary has often criticized the vague and generic reasoning of some expulsion order against EU member and their family, as well as the excessively wide concept of public policy and security they seem to be based upon. By example, the Tribunale di Reggio Emilia, with a recent decision, has found as clearly disproportionate and therefore null and void the decision to expel a Romanian national for the mere reason she was a street sex worker, a behaviour which, in Italy, is neither a crime in itself[18].

In the same decision, the Tribunal also criticized the fact that the expulsion decision, in its reasoning, was ambiguously hinting to the possibility that the woman was "in a chain of exploitation", without even clarifying whether they meant that the she had a directive role in the chain (which was not supported by any element) or the mere victim of the exploitation process, in which case the quality of victim should have not turned her into a "danger".

[18] See Tribunale di Reggio Emilia, decision No 2280 of 11 October 2012
http://www.meltingpot.org/IMG/pdf/non_convalida_allontanamento_immediato.pdf

III
Organizational Aspects.

Specialized training

- University courses

Italian Universities have been quite late in identifying immigration law as a field which deserves specific and dedicated courses for law students; however, the situation is changing and several faculties of Law have now optional courses on immigration law in their curricula.

An interesting innovation in the Italian academic panorama is represented by the optional curricular courses offered by the roman Universities "La Sapienza" and "Roma 3"; both courses are conceived as "legal clinics", combining theory and practical approach, and offer to their students the opportunity of "learning by doing", engaging themselves in a practical traineeship at a "legal help- desk". Postgraduate courses in immigration law are nowadays offered, however by most Universities.

- Bar Councils and Lawyer's association

Bar Councils (and Law schools founded or assisted by Bar Councils) have the institutional responsibility to offer continuous learning opportunities to their members[19], and are important providers of specialized training courses for lawyers. Many of them are very dedicated to immigration law and related fields, and organize long vocational or refresher courses with a yearly frequency, which are often free of costs.

In the Italian tradition, the voluntary associations of lawyers are numerous and varied, and very active in the organization of courses and seminars, which often includes immigration law.

- The deontological and legal obligation of continuous learning

Under article 13 of the Italian Code of Conduct for Lawyers, keeping constantly abreast is a deontological obligation, in particular with reference to those fields of laws which a lawyer usually deals with. Article 13 of Law 31.12.2012, n. 247 (the new law governing the legal profession) reiterates and reinforce the lawyer's duty to engage in continuous learning, in conformity with the provisions of detail approved by the National Bar Council, whilst the local Bar councils, under article 29 of the same Law, are entrusted with the control over the continuous learning commitment of their members.

Lawyers' Associations dealing with migration law

One of the most active associations in the immigration law field is the "***Associazione per gli Studi giuridici sull'Immigrazione*" (ASGI).** It is prevalently made of private lawyers, but it is also open to other experts in the field. From 1999, together with the voluntary association of magistrates "*Magistratura Democatica*", it promotes the publication of "*Diritto, Immigrazione e Cittadinanza*"; one of the most authoritative Italian legal reviews in this field of Law.

Immigration Law has also turned into one of the main areas of interests for all lawyers' associations dealing with human rights law: a special vocation to this field has been shown, for example, by the "***Unione Forsense per la Tutela dei diritti Umani (UFTU)"*** which, in cooperation with other partners, has engaged itself in a number of interesting project aimed at the protection of migrants. Are to be mentioned, among others, the coordination and promotion of a research project on racist hate speech in Italy, whose results have been presented to the UN Committee on the Elimination of Racial Discrimination, and an ongoing project on the strengthening of migrants' protection in Algeria, to which UNHCR also contributes.

All main Lawyers associations, however, have shown, to a certain extent, interest and commitment in the immigration issues, in particular when those issues touch or interrelate with the specific areas of interest of each association. By means of example, it is to mention the special attention to administrative detention of foreigners shown by the ***Unione delle Camere penali d'Italia*** **(UNPI)**, probably the most representative Italian association of Criminal defense lawyers.

The organization of the free legal aid to migrants. Turns and services.

[19] See Article 29.1 (d) and (e), Law 31.12.2012, No 247.

Under articles 13.5bis and 14.4 of the Single Act on Immigrations, foreigners who challenge an expulsion order or defend themselves against an administrative detention order <<are admitted to legal aid at expenses of the State>>. This provision is doubled and reinforced by article 142 of Presidential Decree 30.5.2002, n. 115 (Single Act on Expenses of Justice), which stipulates that, in the proceedings against an expulsion order <<*lawyers' fees are paid by the State*>>. Under the prevailing opinion of the Italian judiciary, those provisions mean that defense costs of foreigners challenging expulsion or detention orders are automatically paid by the State, independently from the common admissibility criteria of lack of resources and "not manifestly ill-founded character" of the claim. For some justices of peace, however, an express declaration by the foreigner about his or her intention to enjoy of this benefit is needed anyhow. A minority of judges, notwithstanding those provisions, have considered the admission of foreigners to legal aid as conditional to the general requisites, but this position is progressively whining.

When a foreigner has to defend him or herself from a detention order, or (as it is technically possible, but very rare) has challenged an expulsion order by alone, and does not have a counsel of his or her choice, a court-appointed lawyer is designated, to be chosen, under articles 13 and 14 of the Single Act on Immigration, between those lawyers who are registered into the list, formed by the local Bar Councils, of criminal defence lawyers capable of being court-appointed. Those provisions, dated 1998 and not adjourned since then, do not take into full account the specific and trans-disciplinary nature of the immigration law field, unduly treating it as a branch of general criminal law.

However, most jurisdictions have found ways to conciliate the provisions of the law with the fundamental right and interest of foreigners to a quality and specialized legal assistance. By instance, the Bar Council of Bologna have a list of lawyers who are qualified to be court-appointed in immigration law procedures which is distinct and separated by the list of criminal defence lawyers[20]. Other Bar Councils have created, within the general list of court-appointable criminal defence lawyers, a specific sub-list of lawyers dealing with immigration issues.

As for turns, articles 8 and 9 of Law 6 march 2001, No 60, by modifying article 29 of the implementing provision of the Italian criminal procedure code, stipulate that Bar Councils must establish an administrative office, which, by means of dedicated phone lines, is entrusted with the task of giving to the judiciary (and the police) the name of the lawyer to be formally appointed by them. This name o must be extracted by means of an automatized mechanism (a software programme), based on a rota system.

Provided that Single Act on Immigration refers, on the issue of court-appointement of lawyers, to the criminal procedure law provisions, the automatic mechanism described above should be in principle considered in place in the immigration field as well; however, article 29.2 of the Criminal Procedure Code implementing rules, as amended, stipulates that <<the automatized system is not used when the proceedings concern specific matters, requiring specific knowledge>>. This gives to the Justices of Peace and their administrative offices the possibility of bypassing the centralized system, in particular when specific sub-lists of immigration law counsel have not been created by the Local Bar Council. The wide discretionary powers used by some Justice of Peace when designating lawyers in this field is sometimes criticized as biased or otherwise unfair.

Interventions before European Courts: ECHR and CJEU

One of the most important initiative in the field of migration law carried on by a lawyers association has been the assistance to the applicants before the **ECHR** in the case ***Hirsi Jamaa and others v. Italy***, started in 2009, the case, indirectly cared by **UFTDU** through two of their members, was about a group of Somali and Eritrean nationals leaving from Libya, who had been intercepted by Italian ships at High Seas, and pushed back to Libya, without enjoying of the opportunity of reaching the territory to apply for asylum, nor of an individual evaluation of their case. The case was finally decided in Grand Chamber by a judgment dated 23 February 2012, which, finding in favour of the applicants, contains landmark rulings on the applicability of the ECHR to High Seas interception of migrants, the positive obligation of States not to deport migrants in territories where they would likely be at risk even when they do not apply for asylum, and the applicability of the prohibition of collective expulsion also in the context push back operations.

As for the ECJU is concerned, the most important initiative carried on by Italian lawyers to achieve a landmark ruling is represented by the advocacy and awareness-raising activities which prepared and accompanied the reference to that Court from the Corte di Appello di Trento for a preliminary ruling in the

[20] See Bar Council of Bologna, decision of 24 June 2002, http://www.ordineforense.bo.it/default.asp?id=40&ACT=5&content=125&mnu=15.

"**El Dridi**" case. With this judgment, as already mentioned above in this report, the ECJU found that Italy could not lawfully circumvent the necessity of implementing the Return Directive by transforming the mere fact of remaining in the territory after an expulsion order in a crime, disproportionally punishing it with prison terms.

Although tried by individual lawyers, this case should be considered a sort of "coral effort" and the result of a complex "strategic litigation"; The reference for a preliminary ruling in El Dridi case, in fact, has been surrounded and preceded by a very active intellectual debate between lawyers, magistrates and criminal law professors, in a good measure stimulated and hosted by the free web magazine "**Diritto Penale Contemporaneo**", an editorial initiative of a Law Firm of Milan carried on in cooperation with the Criminal Science department of the University "Cesare Beccaria" of Milan.

Stimulated by landmark cases and by growing opportunities of specialized training, More and more lawyers are learning how to rise cases to European Courts. Italian cases before the ECHR are now the 11% of the total workload of the Court, putting Italy to the third place for applications to ECHR after Russia and Turkey. Of course, not all those recourses are related to migration issues, but some of them are: a good indicator of the growing interest of immigration and asylum lawyer for the ECHR is given by the small but not irrelevant number of 15 interim measures (rule 39) asked by Italian lawyers to the Court in the attempt of blocking an incumbent expulsion from Italy[21].

[21] ECHR, 2012 thematic statistic on interim measures,http://www.echr.coe.int/Documents/Stats_art_39_2012_ENG.pdf.