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ITALIAN MIGRATION LAW AND POLICY IN 2013-2019

INTRODUCTION

Human mobility has acquired a new meaning in times of international disharmony. An analysis of migration's positive potential has been marginalized in favour of emphasizing the criminalization of the phenomenon and the associated threats. The EU migration policy framework has created a damaging image of migrants as a danger to European identity and society (Huysmans 2006). The migration crisis has reinforced this belief. Securitisation of forced migration and its participants has become a leading component of political discourse in Italy in 2013-2019.

This article analyses Italian migration law and policy. Our research focused on the period 2013-2019. Some excerpts, e.g. the historical conditions of shaping Italian migration legislation, required an extension of the chronological framework. We undertake the methodology of the political sciences. We perceive political phenomena as part of the system (systemic approach). We analyse extensively normative acts (legal and institutional method of analysis). At the same time, we use the results of statistical research (quantitative method). In the area of political implementation, we employ the decision-making method.

We argue that there is a correlation between the securitisation of Italian migration, asylum law and the situation of migrants and refugees in Italy. We hypothesize that until 2013, the Italian reception system had a crisis intervention character. We thus believe the lack of a long-term plan to manage the influx of foreigners negatively affected integration programmes and the interventional nature of undertaken decisions.

The article begins with a review of the Italian legislation and policy towards migrants. We divided this analysis into three periods, taking into account the level of increasing politicisation of the phenomenon. Particular research attention was focused on the period 2017-2019. We have outlined the links between the securitisation of migration law and the situation of migrants and refugees in Italy. Then we characterized the conditions of the Italian reception system for migrants. Further, in a short form, we considered a positive integration model on the example of Riace.

This article details the landmark judgment of the ECHR in Strasbourg in the case of Khlaifia (and others) against Italy. In the final section we discuss links between the politicisation of migration and the incrimination of humanitarian organisations. The discussion was based on the example of the "Aquarius" vessel.

THE ORIGINS AND DEVELOPMENT OF ITALIAN MIGRATION LAW OVER THE YEARS OF EMIGRATION

Italian migration legislation does not have a long history. Until the end of the 1980s, migration processes were a marginal issue in the Italian legal system, which was due to the eminently pro-emigration character of the state. For most of its existence, Italy was at the forefront of the list of countries in exile. After the reunification of Italy started in 1859, almost 26 million people emigrated. The highest intensity of emigration took place in the years 1901-1915, when more than 9 million citizens left Italy at the time (Del Boca, Venturini 2003: 305-310). Emigration was then a part of the game between left-wing politicians and the hierarchs of the Church. Catholic circles opposed emigration, arguing that it was the result of the dismantling of moral norms, rejection of Christian values and anarchist tendencies. Socialists, in turn, perceived emigration as a consequence of incompetent reforms and pauperization of society (Pelaggi 2011: 10-25).

In 1901, the General Commissariat for Migration (Italian *Commissariato Generale Dell'Emigrazione*) was set up to control and manage migrants arriving in Italy (Ministero degli affari esterni 1991: 9-12). The Constitution of the Italian Republic of 1947 stated in article 10 that "The alien, who, in his own country, is forbidden the effective exercise of democratic freedoms guaranteed by Italian Constitution, has the right of asylum in the territory of Italian Republic according to conditions stated by the law" (Costituzione della Repubblica Italiana 1947). For the next 40 years this article was practically defunct. Migrants were subject to meticulous checks, they required a systematic report, and in many cases were unjustifiably expelled from Italy (Fusaro 2008: 14-16). In the 1970s, migrants from Central Europe, Africa and Asia began to arrive in Italy. In 1976, for the first time in a hundred years, the migration balance was neutral (Cortese, 2016: 30-42). The response to the increasing migration flows was the Act no. 943 of 30 December 1986 (Legge 30 dicembre 1986, n. 943) commonly called the Foschi Law (Italian: Legge Foschi). The 'Foschi Law' regulated relations in the labour market. It imposed restrictions on non-European migrants who were denied the right to perform various types of work. Migrants were only allowed to work where Italian citizens were not able to manage all the positions and ensure proper productivity (Legge 30 dicembre 1986, n. 943). Parallel to this, 'Foschi Law' introduced standards of humanitarian treatment for non-European workers. In an attempt to counteract unfair competition in the labour market, it made possible the legalisation of stay of about 120,000 migrants (Colucci 2018: 16).

IMMIGRATION LAW IN ITALY BETWEEN 1990 AND 2016

On 28 February 1990 the Italian Parliament passed a law (Legge 28 febbraio 1990, n. 39) called the Martelli Law (it. Legge Martelli). The final shape of the act and its implementation was greatly influenced by signing the Schengen Treaty, which – in addition to membership in TREVI – required Italy to comply with European standards of security, policy and migration law (Pastore 2002:15). Another important impulse to change the migration law was the murder of a South African worker, committed by an Italian organised criminal group.

Protests and anti-racist marches helped at drawing public attention to violations of migrants' rights. Legislative changes were introduced during the transformational breakthrough of the 1980s and 1990s, when to Italy came migration flows from the countries of former Yugoslavia and Albania (Pelaggi 2011: 45-50). Updating the legal regulations of migration processes became a necessity.

In Martelli's law, the provisions on the admission procedure have been significantly expanded. They mainly concerned their entry and stay on Italian territory. Martelli's law was the first to treat the financing of reception centres for migrants. It regulated the situation of asylum seekers and refugees. The law describes in detail the qualification of third country employees to work in Italy as well as the rules for the expulsion of dangerous illegal migrants (Legge 28 febbraio 1990, n. 39). The Act introduced also the possibility of employing migrants in Italian cooperatives (Campani 1993: 528-530).

The increasing influx of migrants has forced a comprehensive coverage of all existing migration regulations (Morgese 2015: 13 20). The Turco Napolitano Law of 1998 (Legge 6 marzo 1998, n. 40) formed the so-called *Testo Unico sull'Immigrazione* (a consolidated text covering all legal regulations on the status of foreigners in Italy).

This Law again details the rules for entry, exit and stay in Italy. It defines the procedures for family reunification and the possibility of work for family members brought to Italy. Emphasising the respect of the migrants' rights, Turco Napolitano Law was an act that liberalised the Italian approach to migration (Dondi 2003: 12).

Increasing trends of illegal migration and criminogenic phenomena in migrant communities have contributed to social and political expectations of changes in migration law. Such demands have been met by the law of 30th July 2002 called the Bossi-Fini Act (Legge 30 luglio 2002, n. 189). Its main objective was to combat illegal migration. The Act tightened the procedures for receiving and expelling foreigners. For example, it contained a provision allowing the immediate expulsion of a foreigner from Italy in the event of legal proceedings against him (Di Maio, Proto, Longarzia 2002: 12-14). Furthermore, the Bossi-Fini Law provided for a penalty of imprisonment for migrants who crossed the border illegally. It also increased the powers of the navy by introducing more frequent coastal controls and the right to detain ships, which until now had only been granted to coastguards (Colombo, Sciortino 2013: 199).

Since the Bossi-Fini Act, the tightening of migration regulations has been an important policy element of successive governments. In August 2008, Italy and Libya signed the Treaty of Friendship, Partnership and Cooperation (Benghazi Treaty), under which Tripoli committed itself to actively combat illegal migration. In return, Italy pledged to repay $5 billion (2009-2034) in compensation for 'Italian colonialism' in Libya (Ronzitti 2009: 2-8).

In the second half of the 2nd millennium, the themes of migration and Italy's multi-ethnicity became the axis of both ideological and, above all, political conflict. The struggle for electoral votes contributed to the radicalisation of discourse. Roberto Maroni, a member of the Northern League, placed "a halt to the Lampedusa landings and disembarkation of migrants, and general reduction of illegal migration" at the top of his political mission as Minister of the Interior. In 2010 Maroni estimated that he achieved 90% of this goal: "(...) in 2008, 37,000 people arrived in Lampedusa, 3150 in 2009 and only fifty-two in the first three months of 2010" (Rizzini 2010: 5). The councillors of the Northern League in Milan, on the other hand, have requested that only Italians "one hundred percent racially" can use public transport. (Milano, la proposta della Lega ... 2009: 1). Bidding with his political ally, Silvio Berlusconi, in his campaign to the European Parliament in 2009, put the greatest emphasis on the crackdown on illegal migration and the security of "native" Italians (Berlusconi: Sì ai rimparti ... 2009: 1).

The effect of this political bargaining was the so-called Security Package presented in May 2008, approved by the Act no. 125 of 24 July 2008 (Legge 24 luglio 2008, n. 125). It consisted of six legal acts which provided for increased penalties for irregular migrants on Italian territory. The package included two draft laws, legislative decrees and a decree-law. Italian citizens were facing confiscation of assets, a fine or imprisonment for aiding illegal migrants (Mosconi 2010: 75-77). The package included the creation of unarmed civic patrol groups to assist security services in "identifying illegal migrants". Previously they were forbidden because they seemed to be clearly associated with the fascist period (Ministero dell'Interno 2010: 3). The package also redefined the conditions for the reunification of foreigners' families: it increased the required income for the right to reunification and at the same time reduced the number of family members entitled to be reunited.

Later years have brought slightly softer solutions, mainly due to changes introduced by the European Union. By the Act of 2 August 2011 (Legge 2 agosto 2011, n. 129) the solutions of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) (Directive 2004/38/EC: 77-123) and Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country national (Directive 2008/115/EC: 98-107) were implemented.

The Act introduced a number of changes in the procedure for assessing the foreigner's personal situation, on which depend the decision to grant the right of resi-

dence. The legislator also defined situations in which illegal migrants could be forcibly expelled. The Act also described the procedure of direct assistance to the state border in case of expulsion as a sanction or a risk of potential escape, when the application for the right of residence was rejected due to unfounded and false testimony (Di Pinto 2018: 318-320). Violation of the order to leave Italy was an offence enforced not by imprisonment but by financial penalties. In practice, illegal migrants were therefore no longer penalized for staying illegally in Italy, but for violating the obligation to leave the territory (Immigrazione: espulsioni ... 2011: 3).

Three years later the procedure for expelling refugees was changed. It was then decided that if international protection was granted in another country, the refugee would be deported to that state. Decree n. 12 of 13 February 2014 introduced a number of changes concerning long-term residents under international protection (Decreto legislativo 13 febbraio 2014, n. 12). Symmetrically, the European Commission's Communication on a Common European Asylum System (CEAS) in 2014 also simplifies the provision of residence and work permits for third-country workers (Open and Secure Europe 2014: 7-9).

MIGRATION LAW AND POLITICISATION OF MIGRATION IN 2017-2019

According to Albahari (2015), the politicisation and securitisation of migration in Italy began with the increased migration of Albanians in the early 1990s. Despite a seemingly humane approach, the policy was based on the discretion of officials and the practice of police deterrence. The migration crisis once again marked the image of migration with criminal exaggeration and pejorative symbolism. Securitisation in 2016-2019 not only took the form of a discourse of suspicion and threats, but also became a system of control and supervision (Saeed 2016: 236). The formal legal emanation of this approach was the Law 46/2017 (known as Minniti-Orlando).

By virtue of the Minniti-Orlando Law – in 26 courts were established departments specializing in migration procedures and international protection (previously they operated only in 14 courts). The competences of the "migration departments" have been extended. The range of their activities now included responsibility for the conduct and control of the international protection procedure. At the same time, the Act abolished the second instance for asylum seekers (Legge 13 aprile 2017, n. 46).

The Minniti-Orlando Act has significantly changed the procedures for identifying migrants. The formula for delivering decisions to applicants for international protection was redefined: the requirement to appear personally in court was replaced by a video recording of the applicant's testimony. Furthermore, the law converted the network of centres responsible for the identification and removal of migrants (CIE) into so-called repatriate centres (CPR, Centri di Permanenza per i Rimparti). The aim was to increase the effectiveness of expulsion procedures for illegal residents (Immigrazione: espulsioni ... 2011: 2). Minniti-Orlando also introduced provisions on the identifying of migrants intercepted during rescue and humanitarian operations,

including in this category persons crossing the state border illegally (Legge 13 aprile 2017, n. 46).

The Minniti-Orlando law has strongly correlated the issue of migrants with national security. It strengthened the xenophobic and racist perception of migration processes. The law imposed the status of public officials on the staff of reception centres. Studies have shown that this has lowered the level of trust of migrants in the staff of the centres (Eposito 2017: 1-2).

Over the years, NGOs have reported numerous cases of abuse and poor conditions in the CIE and CPR centres, comparing their organisation to that of prisons and arrests. The reports of non-governmental organisations proved that foreigners were staying in the centres without proper medical care and were deprived of contact with the outside world (Camilla 2017: 16). Depriving migrants of the possibility of direct confrontation in court and possible appeal against a negative decision was perceived as inconsistent with the Italian Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ASGI 2017: 1).

Significant changes in Italy's migration policy and law were introduced by Decree Law n. 113 of 4 October (Decreto-Legge 4 ottobre 2018, n. 113), followed by a package of laws (Legge 1 dicembre 2018, n. 132) functioning in the media as the ''Salvini Security Decree''. The Decree introduced new rules for the asylum procedure (Decreto Salvini su sicurezza e immigrazione ... 2018: 1). The international protection has been denied for persons:

- exposed to persecution and exploitation in their countries of origin or during migration (e.g. traumas suffered in transit countries such as Libya);
- fleeing life threatening and natural disasters;
- presenting relevant humanitarian arguments (Chiaromonte 2019: 327-340).

The Salvini decree has narrowed humanitarian protection to victims of domestic violence, particularly exploitative working conditions and people in need of immediate treatment or coming from a country that is in an 'extremely unfortunate' situation. Moreover, persons of "particular civic value" could apply for a residence permit (Corsi 2019: 2-4). The new law has extended the possible stay in CPR centres from 90 to 180 days. At the same time, Article 3 provided that asylum seekers may be detained in hotspot centres for up to 30 days in order to be identified and given the appropriate status. Article 6 provides for an increase in the repatriation funds from 0,5 million euro in 2018 to 1,5 million euro in 2019 (Pace 2018: 25-30).

The decree has laid down new procedures for refusal and withdrawal of international protection. Subsidiary protection and refugee status could be withdrawn as a result of evidence of sexual violence, production, possession and drug trafficking, robbery, theft and threats and violence against a public official. The beneficiary also lost international protection when he returned (even temporarily) to his country of origin. In addition, the asylum seeker could not be enrolled at the civil registry office exclusively on the basis of the residence permit granted. Migrant should also be in possession of a residence confirmation or other authorisation document (Article 13).

Even before the Decree was implemented, the lawyers of The Association for Juridical Studies on Immigration (ASGI) (Associazione per gli Studi Giuridici sull'Immigrazione) pointed out that the law on international and humanitarian protection was included in Article 5 of the *Testo Unico sull'Immigrazione.* Therefore, it stems directly from statutory provisions and should not be marginalised by a downstream act (ASGI 2018: 2).

Salvini's decree represented a kind of " illegality factory". The measures taken under this legislation increased the number of irregular migrants in Italy several times. As a result, the decree made the situation of unaccompanied minors particularly difficult. It has aggravated the already strong xenophobic attitudes (Bialasiewicz, Stallone 2019: 14). It reinforced the effect of moral panic and had a negative impact on the integration of foreigners into society.

RECEPTION SYSTEM AS PART OF ITALIAN MIGRATION POLICY

Compared to other European countries, Italy lately introduced a homogeneous reception system. The reception of migrants was based on temporary and random solutions. In 2014 Italy introduced the National Plan to face the extraordinary flow of non-EU citizens adults, families and unaccompanied minors (Ministero dell'Interno 2016: 4). Furthermore, Italy has implemented Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Directive 2013/32/EU: 249-284).

According to Chiara Marchetti (2016), the reception system is based on two opposing models. First of all, it is built on control, social and physical isolation of migrants from the local community. On the other hand, it is widespread throughout Italy and firmly rooted in society. This has been achieved in close cooperation with the third sector (Marchetti 2016: 122).

This dualism resulted in the two-level structure of the system: first and second reception (since 1999). The first level included a network of hotspots and first level centres. The second pillar of the reception was the Protection System for Refugees and Asylum Seekers (SPRAR – Sistema di protezione per richiedenti asilo e rifugiati) (Giannetto, Ponzo, Roma 2019: 7-8).

Hotspots were places of collective reception of migrants just after their arrival in Italy. They carried out health checks, emergency assistance and identification, which were the most important element at this stage of the reception. The identification included interviews with foreigners, fingerprinting of asylum seekers and the initiation of potential deportation procedures. These structures represented the first official meeting with European authorities and their agencies, who accompanied local decision makers and border guards.

During the identification were present technicians and experts from agencies such as European Asylum Support Office (EASO), EU Border Agency Frontex, European

Police Office (Europol) and European Union Agency for Criminal Justice Cooperation (Eurojust) (Garelli, Tazzioli 2018: 4-7).

Italy was the first EU country, along with Greece, to have a hotspot-based admission system. At the turn of 2017-2018, there were six hotspots in Italy (in Catania, Pozzallo, Taranto, Trapani, Messina and Lampedusa). In March 2018 two of these structures (Taranto and the hotspot on Lampedusa) were closed. The reasons were the conditions of detention of foreigners that offended human dignity (Melchionda 2016: 5-10) and critical remarks made by, among others, the European Court of Human Rights in Strasbourg.

After a positive decision in the hotspot, foreigners were transferred to first reception centres (Centri di Prima Accoglienza, CPA) or to first reception centres for asylum seekers (Centri di Accoglienza per Richiedenti Asilo, C.A.R.A.). There, decisions were made to transfer foreigners to second level structures. In reality, this procedure was only a theoretical construct. Migrants usually went directly to the Emergency Reception Centres (Centri di accoglienza straordinaria, CAS) (CNCA 2016: 4).

The CASs were temporary structures created as a response to the initially low involvement of regional authorities in the creation of SPRAR projects. Emergency Reception Centers were temporary structures created as a response to the initially low involvement of regional authorities in the creation of SPRAR projects. They were formed by Italian prefectures in agreement with cooperatives, associations and property owners. Over time they took the form of a hybrid of first and second reception. The nature of their activities was based on economic calculation and focused on generating profit (Panico 2016: 12).

Another layer of the reception system for migrants was the second level of reception. This is the only element of this system which was to guarantee paths of social integration with the supervision of local authorities and transparent management of funds. At the second reception level, asylum seekers and refugees became part of the SPRAR programme (Pasian, Toffanin 2018: 128-130).

SPRAR has been operating since 1999 but was only institutionalised under the Law no. 189 of 30 July 2002 (Legge 30 luglio 2002, n. 189), becoming a system coordinated by the Ministry of the Interior in cooperation with ANCI, i.e. The National Association of Italian Municipalities (SPRAR 2017: 5-9). SPRAR operated on the basis of loans. Initially, they were annual and biennial. Later on, a 3-year loan was offered to launch the project (Marchetti 2016: 130).

The aim was to ensure so-called 360-degree integration (social, school, vocational and cultural) with the local community (Swiss Refugee Council 2016: 10). Most of the adapted structures were small-sized facilities, including single flats and other small residential complexes.

At the end of 2017, the number of persons admitted to the SPRAR programme reached 36 995. Almost 90% of beneficiaries were allocated to standard projects; 2% to programmes for persons with disabilities and mental illnesses; and 8% to programmes for unaccompanied minors (SPRAR 2018: 15-25). In 2018, there were 877 SPRAR projects in Italy, i.e. 12,9 % more than in 2017. Most of the projects were

implemented in Sicily (17.9%), Lazio (12.6%), Apulia (9.9%) and Calabria (9.4%) (30-35). The number of beneficiaries accepted at that time was 41 113 (SPRAR 2018: 5-10).

In 2019, 33 625 people were admitted to the second level of reception, in 844 SPRAR programmes. Once again, the largest number of places were allocated in Sicily (4,860), Lazio (3,399) and Calabria (3,336) (SPRAR 2019: 3-5).

The positive effects of SPRAR have led to increased interest in the programme on the part of entrepreneurs. Owners of many bankrupt enterprises, e.g. hotels, discos or gyms began to adapt their facilities to the needs of migrants. The funds allocated for the reception and integration of asylum seekers and refugees allowed for the co-financing of previously unprofitable and bankrupt businesses. However, this repeatedly took place at the expense of migrants (Ministero dell'Interno 2017: 7-9).

Successful experiences under the SPRAR have translated into postulates of third sector employees, social policy specialists, business circles and representatives of non-governmental organisations to change the system of receiving migrants. In this respect, there is a call for further quantitative and qualitative development of the SPRAR and the abolition of CAS centres, which were and are considered to be the worst element of the reception system. This will be difficult because – in accordance with the Salvini Decree – access to the SPRAR system has been limited only to persons already having refugee status or recognised international protection and unaccompanied minors. Under the Decree, the system has also changed its name to SIPROIMI – The protection system for refugees and for unaccompanied foregin minors (Sistema di protezione per titolari di protezione internazionale e per minori stranieri non accompagnati) (Decreto Salvini su sicurezza ... 2018: 2).

INTEGRATION OF MIGRANTS. CASUS RIACE

A stage that follows the reception of migrants is the process of integration and acculturation of foreigners. A properly designed reception system results in the integration process. At the same time, there is a feedback loop – because examples of positive integration of migrants support the reception system. These two pillars of migration policy are inextricably linked. Integration quality depends to a large extent on the initial reception in a country: „(…) Only through successful integration we can make migration a real opportunity for all – our citizens, migrants, refugees and society at large." (Dimitris Avramopoulos) (European Commission 2018: 2).

Formally, integration policy in Italy provides for the implementation of social and professional support, medical assistance or language training. It includes procedures for family reunification and access to the education system. It assumes creating symmetrical conditions and equal opportunities for migrants and Italian citizens. The reality is very different from these assumptions. However, in the patchwork mosaic of the Italian approach to migrants, there are places where the above mentioned back pressure occurs and integration is not an empty slogan. As always, there are

concrete people behind concrete actions. Domenico Lucano, former Mayor of Riace, was ranked among the 50 most influential people in the world according to "Fortune" in 2016. (Fortune... 2016: 1). He has been awarded several times for his activities towards integration of migrants. The small town in Calabria, which he managed, became an inspiration for integration processes not only in Italy.

Since the mid-1990s, Riace has been systematically depopulated. Young people left the town in search of a better life abroad and to richer regions of Italy. Apart from depopulation, the active presence of the Ndrangheta was an additional problem. The very first migrants (of Kurdish origin) appeared in Riace in 1998. Between 2004 and 2019 the city received almost 6 thousand asylum seekers and refugees from twenty different countries. The integration was supported by more than seventy cultural mediators employed by the municipality. They were all part of the SPRAR system. For both the native inhabitants and the whole region, the influx of young migrants was an impulse to rebuild the local economy (Driel, Verkuyten 2019: 2).

The integration model of Mayor Lucano assumed the employment of young migrants in the agricultural sector and in small industrial and commercial businesses. Migrants who decided to settle in Riace were guaranteed systematic Italian language education, driving licence courses and training to improve their professional qualifications. In response to delays in government funding, the municipality introduced a separate quasi currency used daily by migrants. This currency allowed for the purchase of food, clothing and telephone impulses. The payment system created simultaneously promotes regional autonomy and integration processes between autochthons and migrants. Intergenerational and intercultural meals, multiethnic civic groups dedicated to maintaining cleanliness and a friendly environment have become the city's showcase (Prefettura di Reggio Calabria 2017: 5).

In 2018, Riace did not receive guaranteed funds from the Ministry of the Interior. Mayor Lucano was charged with corruption, abuse of power and support for illegal migration. The procedure for the closure of the SPRAR programme in the city has started. Legal migrants could remain in Riace, but no longer as beneficiaries of the Italian reception system. Some of them were relocated to other SPRAR centres. The local community – including both Italian citizens and migrants – stood up for their migration absorption model. Citizens responded to the charges against the mayor by submitting his candidacy for the Nobel Peace Prize (Bisso 2018: 2). After 11 months, the court in Locri overturned proceedings and the ban on staying in the city for the former mayor. This allowed Lucano to return to his hometown of Riace (Candito 2019:1).

ITALY'S MIGRATION POLICY BEFORE THE ECHR IN STRASBOURG. KHLAIFIA CASE

At the end of 2016 the European Court of Human Rights in Strasbourg handed down a judgment closely linked to the migration crisis in Italy and the practice of the Italian authorities in dealing with migrants. In its judgment the Court stressed the

State's obligations arising from the particular importance of personal freedom and security.

In mid-September 2011 the Italian coastguard intercepted a ship with a group of Tunisian migrants. They were escorted to Lampedusa and placed in the reception centre in Contrada Imbriacola. Detained migrants were prevented from contact with the outside world. Overcrowding and horrible hygienic conditions led to riots. On 20 September the CPA centre was burnt down. The complainants were detained by the police during a demonstration and transported by plane to Palermo. They were placed on board of two ships, where they spent several days, and then were deported to Tunisia (Khlaifia and Others v. Italy 2016: 1-2).

In their appeal to the Court, the complainants alleged that their detention conditions in the reception centre and on board the ships infringed Article 3 of the Convention. In addition, they stated that did not have an effective legal remedy at their disposal (Article 13) and were collectively deported in violation of Article 4 of Protocol No 4.

By sentence of 1 September 2015. (Information Note on the Court's case-law no. 188 2015), the Court Chamber ruled that Article 5(1), (2) and (4) of the Convention had been violated. Judges unanimously found a violation of the right to liberty and security of person (Article 5(1) of the Convention) on account of the unlawfulness of detention, a violation of the right to immediate notification of the reasons for detention (Article 5(2) of the Convention), a violation of the right to appeal to the court to determine without delay the lawfulness of detention (Article 5(4) of the Convention) and a violation of Article 3 of the Convention (prohibition torture and of inhuman or degrading treatment or punishment) with regard to conditions in the Lampedusa detention centre.

At the same time, the Court rejected applicants' allegations concerning conditions of detention on ships, as their claims were contrary to the statements made by the Italian Member of Parliament who visited those vessels (Ministry of Foreign Affairs 2015: 3-5).

By a five-to-two vote, the Chamber also found an infringement of Article 4 of Protocol No 4, Article 13 of the Convention taken in conjunction with Articles 3 and 4 of Protocol No 4 (Nowicki 2017: 1). At the request of the Government the case was admitted for further consideration by the Grand Chamber. The Grand Chamber found violations of Articles 5(1), 5(2), 5(4) and 13 of the Convention. In Khlaifia vs Italy, the Court reaffirmed that no person, with or without valid documents, may be deprived of his right to *habeas corpus* (Cancellaro, Zirulia 2018: 3). At the same time, the Grand Chamber did not accept the charges of prohibition of inhuman and degrading treatment (Article 3 of the Convention). Nor did the Court recognise the plea of infringement of the prohibition of collective expulsions under Article 4 of Protocol No 4 to the Convention, indicating that each of the applicants had the opportunity to present individually to the Italian authorities their case and arguments for allowing them to remain in Italy. That circumstance excluded an infringement of Article 4 of Protocol No 4 (Khlaifia and Others v. Italy 2016: 68).

THE "AQUARIUS" VESSEL AND INCRIMINATION OF HUMANITARIAN ORGANISATIONS

An estimated third of those migrants who arrived in Europe via the Central Mediterranean route in 2018 indicated a need for international protection (UNHCR 2018: 5-12). The Italian 'closed ports' policy and the allegations of criminal activities carried out by NGOs (hereinafter referred to as criminalisation) has led to reduced humanitarian operations and increased mortality of migrants at sea and on Libyan territory. As a consequence, there is a greater frequency of calls for rescue operations by merchant and commercial vessels. This leads to serious delays and generates additional financial costs (Heller, Pezzani 2017: 3-7).

At the same time, representatives of the Italian government have repeatedly suggested that Libya should be treated as a safe port. The Libyan coastguard has strengthened its maritime activities. This is largely thanks to agreements with the Italian government and the creation of the Libyan SAR region. As a result, 85% of the people rescued by the Libyan coastguard are deported to Libya, where they face torture and imprisonment in inhumane conditions. Consequently, the vast majority of boats with migrants try to get into Europe, avoiding the Libyan SAR area and its coastguard (UNHCR 2018: 2-6).

The extremely dangerous crossings of the Mediterranean Sea often require humanitarian aid. Its symbol was the activity of the vessel "Aquarius". Managed by the NGOs: SOS Mediterranean and Medici Senza Frontiere (Doctors Without Borders), the 'Aquarius' is an allegory of ineffective cooperation between humanitarian organisations and the Italian government and, more broadly, the European Union.

In June 2018, "Aquarius" rescued 629 people in the Mediterranean Sea without obtaining permission to reach a safe port in Italy. In one of his Twitter entries, Italian Interior Minister Matteo Salvini commented that "Italy will not become another refugee camp". (for: Tomassetta 2018: 3). A similar situation occurred two months later, when the crew of "Aquarius", citing international maritime law, called on EU and North African countries to designate the nearest safe mooring for the vessel with 141 people on board. Italy, Malta, Tunisia and Libya were contacted directly. In the end, only Malta agreed to moor the ship safely in port. Following this, the migrants were relocated in France, Germany, Luxembourg, Portugal and Spain (2).

These events were the prelude to the final detention of the vessel "Aquarius" in November 2018. At the request of the Catania Public Prosecutor's Office, the ship was seized in order to launch an investigation into hazardous sanitary waste, initially estimated as dangerous to health (Cancellaro, Zirulia 2018: 2). According to the Prosecutor's Office, the organisations managing the humanitarian action were carrying out organised criminal activities, helping in illegal migration and trading in illegal waste. Valeria Calandra, President of the Italian division of SOS Mediterranean, described the waste management procedure during the humanitarian mission as follows: "The same protocols are applied on board, which are taken into account in all projects, in as many as 72 countries around the world, ensuring the separation of medical waste

from those of potential danger. The standard procedures that are followed after arrival on site include delivery of the refuse to the waste management company in the port, which takes it from us and removes it to designated storage areas. Waste management is critical to our medical operations around the world as it helps us prevent epidemics such as Ebola, cholera and many others. In all the years of the "Aquarius" ship's operation, the procedures we have followed in Italy have never been challenged by any competent authority (Medici Senza Frontiere 2018a: 2).

The Italian authorities have brought charges against 24 persons, including the ship's captain, Evgenia Talanin. A fine of EUR 460 000 was imposed and bank accounts of MSF and SOS Mediterranean were blocked. In addition, 24 tonnes of waste were investigated, including food leftovers, medical supplies and clothes. Doctors, including those not involved in the MSF organisation, and activists of the AIDS campaign jointly drew attention to unfounded and disturbing allegations by the prosecution that clothes could be a source of HIV infection (Tondo 2018: 5).

Italian public prosecutors and politicians began to stress the "criminal" aspects of the activities of humanitarian organisations helping migrants. In the light of the media campaign, the MSF and SOS Mediterranean decided to end the ship's missions: "(...) This is a dark day for the world. Europe has not only failed to provide the necessary search and rescue capacity, but has also sabotaged those who tried to save the lives of people in need. The end of 'Aquarius' means more deaths at sea, more avoidable human disasters without witnesses". (Medici Senza Frontiere 2018: 1). The "Aquarius" saved almost 30,000 people in international waters between Libya, Italy and Malta. The last mission ended on 4th October 2018 when the ship arrived in the port of Marseille, having previously saved 58 people (ibid.: 3).

Since 2018 the Italian migration policy has been accompanied by a specific aspect of the demonisation and incriminations of humanitarian operations in the Mediterranean Sea. Accusations against NGOs most often concern collaboration with smugglers, stimulating illegal migration and contributing to a higher so-called death rate at sea. It is argued that the presence of humanitarian operations encourages refugees to migrate. The sources of funding are also being questioned (Heller, Pezzani 2017: 5-7).

Accusations against NGOs active in the maritime humanitarian sector have been combined with the imposition of bureaucratic restrictions on their activities. The measures taken are in breach of the UN Declaration on Human Rights Defenders. The Declaration demonstrates the responsibility of States to unequivocally recognise the legitimacy of human rights defenders and to facilitate and publicly support their work. States should therefore recognise their contribution to the development of human rights and the direct saving of human life. The Declaration further stresses the need to provide a safe and conducive environment for the defence and promotion of these rights. It also points to the appropriate use of the judicial system and civil proceedings of nations regarding the activities of non-governmental organisations (Declaration on human rights defenders 1998: 1-10). None of the above aspects have been ensured in relations between the Italian authorities and humanitarian organisations operating in the Mediterranean.

In January 2019, the European Parliament adopted a resolution on the situation of fundamental rights in the European Union in 2017. (European Parliament 2019). The resolution in article 15 recalled the order to provide assistance to all people in need at sea. It also referred to the draft Resolution on guidelines for Member States to prevent the criminalisation of humanitarian aid adopted in 2018 (European Parliament 2018). It calls on member states not to criminalise humanitarian aid and to ensure the best search and rescue capacities for people in a dangerous and life-threatening situation (ibid.).

On 5 August 2019, the Italian Senate approved the Decree-Law no. 53 pf 14 June 2019 (Testo coordinato del decreto-legge 14 giugno 2019, n. 53), referred to in the media coverage as a "security decree bis". The decree took effect on 8 August 2019 (Legge 8 agosto 2019, n. 77). This law consists of 18 articles, the first five of which concern operations to rescue migrants at sea, NGOs and closed ports. The law gave the Minister of the Interior more power to block ships carrying rescued migrants from entering Italian territorial waters. It also introduced increased fines for captains and crew of NGO missions. In addition, a sanction in the form of vessel seizures was included. Minister Salvini commented on the new law: "(...) The security decree bis, which guarantees more police powers, more border controls, arrests of the Mafia and the Camorra, has become law. I thank Italy and the Blessed Virgin Mary." (Sirianni 2019: 1).

CONCLUSION

More than ever, migrations affect the entire international community. They are an integral part of the development processes of countries. Migration processes affect the quality of life in both the countries of origin and destination.

The analysis has positively verified the hypotheses. The phenomenon of migration has been politicised in Italy. Migration has become a security problem because – in the name of political interests and electoral game – it was and is presented as a threat. Fear management, in turn, translates into the perception of danger. There is a strong link between the securitisation of Italian migration, asylum law and the situation of migrants and refugees in Italy.

The architecture of Italian migration law reflects politicisation of the problem. Until 2013 the Italian system of reception of migrants was a crisis intervention. The changes in the reception system in the following years corresponded to the demand of politicians.

Policymakers like Salvini create a climate of danger. At the same time, they read and interpret the polls correctly, and at the end of the day, their rhetoric and projects are in line with social expectations. Securitisation has made it possible to apply ordinary legal measures in the name of security. Security decrees facilitated the deportation of migrants and made it more difficult to apply for the status of political asylum seeker. In 2018, Salvini threatened to sabotage the EU budget if Italy did not relieve

the burden of receiving refugees crossing the Mediterranean Sea. Thus, migration issues and the migrants themselves have become a bargaining chip in Italy both in internal politics and in relations with the European Union (Magnani 2018: 1). Since 2018 the number of homeless migrants on Italian streets has increased. Pathological phenomena related to migration – prostitution, physical violence, theft – have deepened (Pace 2018: 27-35).

This state of affairs has a strong impact on the social integration of both foreigners and Italian citizens. All positive integration models of migrants are based on interaction and living in each other' neighbourhood. Our research shows that the Italian migration policy and law from 2017-2019 makes it very difficult. The lack of a long-term plan to manage the inflows of foreigners has negatively affected integration programmes and the interventional nature of the decisions taken. The criminalisation of migration processes, foreigners and humanitarian activities, carried out in political and media discourse has a destructive impact on the interaction between migrants and native Italians.

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Słowa kluczowe: polityka migracyjna, prawo migracyjne, Włochy, sekurytyzacja, uchodźcy

Keywords: migration policy, migration law, Italy, securitization, refugees

ABSTRACT

Background. *The intensification of migratory flows has opened up a discussion on the values on which the European Union is based. Securitization of migration in Italy has influenced changes in migration law and political discourse.*

Aim. *The main aim of the article was to determine the impact of legislation and policies on migration and migrants in Italy.*

Method. *We conducted a review of the narrative literature from the studied area. In our work we used the methodology of political sciences. We have subjected normative acts to in-depth analysis. In addition, we used the results of statistical research.*

Results. *There is a strong link between the securitization of Italian migration and asylum law and the situation of migrants and refugees in Italy. The architecture of Italian migration law reflects the politicisation of the problem. Securitization has enabled extraordinary legal measures to be taken in the name of security. Italian migration policy and law from 2017-2019 has negatively affected the quality of life and the integration of migrants.*

Additional information. *The results provide a starting point for broader research into other European migration systems and policies. The results of an in-depth comparative analysis and the use of countries' experiences may be a starting point for redefining the Polish migration law and policy on migration and migrants.*