



## Chapter 13

# International Protection





## CHAPTER 13

# INTERNATIONAL PROTECTION

### What is International protection?

International protection represents the system of regulations aimed at guaranteeing, safeguarding and protecting the fundamental rights of the person forced to flee from the Country of origin or of habitual residence due to the well-grounded fear to suffer personal persecution or serious damage. International protection is also addressed to who is present in one of the States that implements the Refugee Convention signed in Geneva. Finally, International protection includes the status of refugee and the status of subsidiary protection.

### What is the status of refugee?

The status of refugee is granted to foreign citizens or stateless persons who, rightfully fearing the possibility to be persecuted due to race, religion, nationality, the belonging to a specific social group or for political opinions, left their Country of origin and, because of said fear, no longer can or want to go back and make use of the protection of their own Country; or, not having citizenship (stateless persons) and, due to said events, being outside the Country where they had habitual residence, they can no longer or no longer want to go back for the above mentioned fear.

### What is subsidiary protection?

If foreign citizens or stateless persons seeking international protection do not meet the requirements to obtain the recognition of the status of refugee, they can be granted subsidiary protection. In order for subsidiary protection to be issued, there must be well-grounded reasons to believe that, if said foreigners went back to their Country of origin (or to the Country where they had habitual residence, if stateless persons), they truly would risk suffering serious damage. Serious damage means the well-grounded risk to suffer death sentence or the execution of a death sentence, torture, or any other form of sentence or inhuman or degrading treatment, and a



serious and personal threat against their lives deriving from in discriminated violence in situations of domestic or international armed conflict.

### **What is humanitarian protection?**

Humanitarian protection used to be a system that protected three distinct and autonomous positions in compliance with humanitarian obligations, international obligations and the State's constitutional obligations, including the ban on extradition for political offences.

Humanitarian protection was repealed by Law n. 132/2018 but this obviously does not mean that the constitutional and international obligations of the state have been abolished since the latter have been repealed origin in the constitution and in the international treaties. And indeed, the Law n. 173/2020 "the compliance with the constitutional and international obligations was appropriately reintroduced in the TUIMM of the Italian state" and the rule on the prohibition of expulsion and refoulement from Italian territory in the sense of recognizing the right of a person to receive international protection for special protection reasons, even in the cases other than those already provided for by the Law n.152/2018.

As in principle sanctioned by the United Sections Court Of Cassation, those who are born submitted a request for protection before the entry into force of the D.L. 113/2018 will be able today still be granted humanitarian protection pursuant to and by effect of article. 5 paragraph 6 legislative decree 286/98 through the attribution of a motivated residence permit for "special cases" two-years duration and convertible.

### **What is a residence permit for special protection?**

It is a residence permit issued to the asylum seeker who does not meet the conditions for recognizing international protection, but against which the Territorial Commission deems that there are other prejudices to the subject worthy of protection, In this event his/her repatriation to the country of origin.

Particularly, the rule that regulates the cases in which a residence permit can be granted for special protection reasons, protects the person from expulsion or refoulement to the state in which the foreign citizen may be subjected to persecution for reasons of race, sex sexual orientation, gender identity, language, citizenship, religion, political opinion, personal or social status, or may risk being sent back to another state in which he/she is not protected for persecution.

At the same, all situations in which a person must be extradited to a state are protected if there are reasonable grounds to believe that they risk being a subject to torture or inhuman or degrading treatment or if the obligations



referred to in Article 5, comma 6 or as to take into account the existence of a systematic and serious violations of human rights.

The institute of Special Protection, as amended by Law 173/2020 expressly excludes the possibility of expulsion of the subject from National territory, if this involved a violation of the right to respect for one's private and family life. In particular, administration must necessarily take into account the family ties of the person concerned, of his/her effective social integration in Italy, for the duration of your stay in the International Territory as well as the existence of family, cultural or social ties with the country of origin. The current regulatory framework underlines how the legislator intended to recognize a form of internal protection, in full respect of the fundamental rights of the individual, protected at the constitutional level and international and now expressly extended to respect for private and family life. Where the above conditions are met, the Territorial Commission transmits the documents to the QUESTURA for the issue of a residence permit bearing the wording "SPECIAL PROTECTION". The permit of special protection, as amended by Law 173/2020 at previous provisions introduced by Law 132/2018 has a two-year duration and can be converted into other residence permit.

The application for the issue of residence permit for special protection reasons can be formalized by the interested party directly before the territorially competent POLICE HEADQUARTERS, outside the procedure for the recognition of international protection.

The National Asylum Commission has indeed provided clear indications on the procedure to the police headquarters internal to follow in this case, affirming, as regards to the relative paths, the need for transmission by the police headquarters to the competent Territorial colleges in order to obtain an opinion whose nature is mandatory and binding since the legislator has outlined an ad hoc procedure completely autonomous and distinct from the international protection procedure whose ownership is for the note is sent to the police headquarters within which, however, the college plays a decisive role decision-making function being called to express an opinion.

### **What is a residence permit for temporary situations of disaster?**

A residence permit for temporary situations of disaster is granted if the Country to which the foreign citizens are supposed to return is in a contingent and exceptional calamity that does not allow the return and stay in safe conditions. The qualification has a duration of six months, renewable for a further six months if the condition that determined the release remains and is convertible into residence permit for work reasons as per the amendments made by Law 175/2020 to the previous introduced by Law 132/2018.





the residence permit for calamity allows compulsory registration with the National Health Service.

### **What is the permit for acts of particular civil value?**

It is a residence permit granted by the Minister Of Interior on the proposal of the perfect Territorially Competent to those who carry out acts of particular value, exposing their lives to a manifest danger to save people, to prevent or reduce the damage of a serious public or private disaster, to restore public order, to arrest or participate in arrest of criminals, to maintain the Law, to advance science or in general for the good of humanity or to keep the name and prestige of the country high.

The permit has a duration of 2 years, is renewable and allows you to study or carry out work and it can be converted into a permit for work purposes.

### **How to apply for international protection?**

Applications for international protection are submitted personally by applicants to the office of the border police when entering the national territory, or to the office of the Questura of competence on the basis of where the applicants reside. When submitting application, the receiving authority must inform applicants concerning the procedure to follow, their rights and duties during the procedure, and the timeframe of the procedure, providing them with an informative flyer. Applications can be submitted at any time and cannot be rejected or excluded for the sole fact of not being promptly submitted. The registration of the applications is carried out through a form, called "C3" in which applicants are required to provide their personal data, the indication of where their closest relatives are, their citizenship, the language spoken, any possible religious orientation and/or ethnic belonging, as well as the Countries crossed before reaching Italy. If the "C3" form presents translation and/or writing mistakes, applicants standing before the Territorial Commission for International protection recognition may or may not confirm the personal data provided and the reasons at the basis of the application. Therefore, the C3 form represents the necessary condition for starting the procedure that will lead to hearing applicants before the Territorial Commission.

### **Which State has jurisdiction over applications?**

The criteria concerning the jurisdiction over the examination of international protection applications are laid down by the so-called "Dublin Regulation" and must be applied according to the following hierarchical order:

1) criteria relating to family:



- the jurisdiction to examine applications is assigned to the State that authorised international protection, and thus residence, to a family member of the applicant, or that has under exam an international protection application submitted by a family member of the applicant, regardless of the fact that the family was already established in the Country of origin, as long as the parties involved express relevant written consent;
  - the jurisdiction to examine various applications submitted at the same time by several family members is assigned to the State competent for the highest number of applications, or the State competent for the eldest member of the family unit;
- 2) criteria relating to residence permits:
- if applicants hold a residence permit or an entry visa, the jurisdiction is assigned to the State that issued the permit or the visa; if applicants hold several residence permits or visas, the jurisdiction is assigned to the State that issued the permit or visa with the longest term or with the most distant expiry. Said criteria are applied also if the residence permit expired less than 2 years before submitting application for international protection and the visa less than 6 months before;
  - if the residence permit expired more than 2 years before and the visa more than 6 months before, the jurisdiction is assigned to the State where the relevant applications were submitted;
- 3) criteria relating to illegal residence or entry:
- the jurisdiction is assigned to the first EU Member State where applicants entered illegally.

## What are Territorial Commissions?

Territorial Commissions for the recognition of International Protection (TC) are administrative bodies with offices at the Prefectures with the duty to verify that requirements are met in order to grant international or for special protection reasons to applicants, on the basis of their personal account and of the reasons that forced them to leave their Country of origin or residence. The TCs operate under the control of the Asylum National Commission (which has competence with regard to the revocation and termination of the status of international protection already recognised by the TCs, as well as to the coordination, updating and training of the members of the Commissions).



## **How are Territorial Commissions composed?**

The amendments introduced by Lgs.D. No. 220/2017 in force as of 31 January 2018 provided for a new composition of the Territorial Commissions. Currently, they are composed of 4 administrative officials with preliminary investigation powers, by an official from the Prefecture, acting as President, and by an expert on international protection and human rights appointed by the UNHCR. Therefore, currently a Police official and a representative of the Local Body are no longer members of the Territorial Commissions.

The President, the officers making up the Commission, the support staff, the interpreters and all those who work in the Commission are called to observe the Code of Conduct- adopted on 15/11/2016 which established the rules of conduct that regulate responsibilities professional and ethical.

## **What do Territorial Commissions do?**

TCs have the duty to listen to applicants in the language indicated by the same, to examine the applications in an objective and impartial manner, and to adopt a reasoned provision based on the factual and legal circumstances with regard to the protection applications. The Commission's decision must be taken referring to the updated situation of the applicants' Country of origin and/or provenance. The decision can be of acceptance or rejection.

## **How are applicants heard?**

Applicants are heard before the Territorial Commission for the recognition of international protection in the language indicated by the same. Applicants are required to present themselves personally and to provide all the documentation in their possession relating to the application, including their passport. The private interview is carried out before an administrative official who, when possible, will be of the applicants' same gender. The interview can be postponed if the foreign citizen's health conditions are such to impede the carrying out of the interview or if the applicant makes such request for serious reasons. In the presence of vulnerable applicants because with particular needs, support personnel may be admitted to the interview in order to provide the necessary assistance. The Territorial Commission can anyway omit the applicants' presence at the interview when holding to have sufficient reasons to accept applications on the basis of the elements provided. In accordance with the regulations introduced by Law No. 46 of 2017, the interview is video recorded with audiovisual means and rewritten in Italian with the help of automatic voice recognition systems. Applicants can submit a reasoned request and ask not to be video recorded. The transcription of the interview is read to applicants in a language they can understand and in any case, through an interpreter. The member of the



Territorial Commission who carried out the interview, immediately after the reading and in collaboration with the applicants and the interpreter, verifies the correctness of the transcript, making any necessary corrections, and issues a copy for the applicant in Italian.

### **How does the under – age applicant procedure work?**

The application presented by a parent also extends to under-age not married children living on the national territory with the parent at the time of submitting the request. The application can be presented by the minor also at another time, through the parent. The unaccompanied minor who wishes to access the application for international protection has the right to receive all necessary information as well as to participate in all jurisdictional and administrative proceedings that concern him, and to be heard on the merits, in the presence of a cultural and linguistic mediator. The authority that receives the application immediately communicates to the Juvenile Court for the opening of the guardianship and for the appointment of the guardian who assists the minor in every phase of the procedure. The application can be presented personally by the minor or his / her guardian. The interview of the under-age children takes place before a member of the Commission who received specific training, in the presence of the parent who exercises parental responsibility or the guardian. In the presence of justified reasons, the Territorial Commission may again listen to minor without the presence of the parent or guardian, without prejudice to the presence of support staff, taking into account his degree of maturity and development, in the exclusive interest of the child.

### **What is the relocation procedure?**

The relocation programme was launched in September 2015 to allow Italy and Greece to deal with the high number of applications being submitted. The procedure provides for the transfer to another State of all international protection seekers belonging to nationalities for which the percentage of protections granted is equal to or above 75%. Said State then becomes competent to examine the applications on the basis of the quotas put at disposal by the other EU Countries (with the exclusion of Italy and Greece). Applicants must first be identified and provided with a photo line up in the State where they are present and where they formalised the international protection application. Applicants are then transferred to the competent Country identified according to the criteria provided for by the relocation procedure.





## How is the reception system organised with regard to international protection seekers?

International protection seekers that have formalized their application for international protection and lack sufficient means to guarantee a quality of life suitable to support themselves and their family members, have access to reception measures. Said measures must guarantee the respect of the applicants' private lives – including differences of gender and needs related to age –, the protection of their physical and mental health, and the unity of their family. The reception must also provide for measures addressed to persons with particular needs, as well as measures aimed at preventing any form of violence, and thus at guaranteeing the applicants' safety and protection.

Law 173/2020 has renamed the "protection system for international protection holders and for unaccompanied minors" (SIPROMI) in (SAI) "system of hospitality and integration", establishing that they can be welcomed:

- applicant for international protection;
- holders of international protection;
- unaccompanied minor;
- foreign citizens in administrative continuation entrusted to social services upon completion of 18 years of age, and if they do not access specifically dedicated protection system;
- holders of a residence permit for special protection, except in cases for which the causes of exclusion of international protection have been applied;
- holders of residence permits for special case issued pursuant to art.1, co. 9, D.L 113/2018 (humanitarians in transitional regime), of art. 18 (social protection), of the art. 18 bis (victims of domestic violence), of art. 22, co. 12-quarter (labor exploitation), legislative decree n. 286/98;
- holders of residence permit for medical treatment issued pursuant to art.19, co. 2, lett. D-bis, legislative decree n.286/98, of residence permit for calamity, of permit of residence for acts of particular civil value.

## How long does the reception of the international protection seeker last?

The reception is guaranteed for as long as is necessary to complete the procedure of examining the application in an administrative way before the Territorial Commission. In case of rejection of the application by the territorial commission, the reception remains for the entire duration of the judicial procedure before the ordinary court in the cases where the presentation of the appeal determines the automatic suspension of the effects of the rejection provision of the Territorial Commission. In the other cases, provided by



art.35-bis, co. 3, legislative decree n.25/2008, the stay in reception and subject to the adoption by the court of a suspension measure the enforceable effectiveness of the contested decision.

### **What decisions can the Territorial Commissions take?**

The T.C decision can be of granting or rejecting the application. In the event of granting the application, the Commission recognizes the right of the applicant to receive international protection - and related permission residence for a period of 5 years – recognizing the refugee status or the subsidiary protection. If the Commission does not recognize the right to international protection, it will have to ascertain whether the applicant has the right to the recognition of a special protection, and therefore to the issue of a two-year residence permit, convertible into residence permit for work reasons, except for the cases for which they are the causes of denial and exclusion of international protection have been applied. If, on the opposite, the T, C. believes that the applicant is not entitled to any form of international nor special protection, a rejection decree will be adopted. The rejection decree can be appealed before the ordinary Court.

### **What to do if an international protection application is rejected?**

In case of rejection of the application for international protection the applicant can present appeal to the territorial competent Court. In order to present the appeal is necessary the assistance of a lawyer. The applicant lacking the necessary resources to support the payment of legal fees may present an application for admission to legal aid of the State, personally or through the appointed lawyer. The appeal must be presented, under penalty of inadmissibility, within 30 days from the date of notification of the decision of the Territorial Commission, or in the reduced term of 15 days if the request was examined by the Territorial Commission according to an accelerated procedure. The applicant for international protection has the right to remain in Italian territory until the deadline for proposing the appeal expires. The presentation of the appeal automatically suspends the executive effectiveness of the contested provision, with the exception of the cases in which the appeal is proposed:

- by an applicant for the international protection against whom a detention order;
- against the decision declaring the application for the protection inadmissible internationally;
- against the decision of rejection for manifest groundless



- against the decision taken against the applicant for international protection from a safe country of origin;
- against the decision which held that the applicant for international protection has submitted the application in conditions of illegal stay, for the sole purpose of delaying or preventing the execution of an expulsion or refoulement order;
- by an applicant for international protection subject to criminal proceedings or also convicted with a non-definitive sentence for some specific crimes or is found under the conditions provided by art. 6, co. 2, letters a), b) and c), legislative decree n. 142/2015. In the latter cases, the contested provision can be suspended by the court upon presentation of a specific application. The filing of an appeal or precautionary petition does not suspend the executive effectiveness of the rejection decision of the Territorial Commission which declares inadmissible. For the second time, the repeated application for international protection, or in case of first repeated application presented, however, during the execution phase of provision removal. The applicant authorized to remain in the territory following the presentation of the appeal has the right to issue a residence permit for asylum request, except in the event that he/she is detained in a C.P.R

When, in the course of the judicial proceedings, the applicant is also convicted with a non-definitive sentence for certain specific crimes or is subjected to criminal proceedings for the same crimes and in conditions for his detention, the effects of the suspension cease and he loses the right to remain in the area pending the appeal decision. The appeal against the decision of the Territorial Commission can be presented both in the case in which the T.C. has denied the recognition of international or special protection and in the case in which another form of protection was granted, but the applicant believes that he is entitled to superior protection.

### **Are international protection applicants allowed to work?**

After 60 days from the submission of an international protection application, applicants are allowed to work.

If the Questura does not issue a residence permit for asylum seeker contextually with the reception of the international protection application, it anyway issues a receipt certifying the formalisation of the application. This constitutes a temporary residence permit and thus allows to enter into an employment contract.

While waiting for the renewal of a residence permit, and if a definitive decision has not been taken on the international protection application, applicants are allowed to work.



Residence permits for asylum seekers cannot be converted into a residence permit for work reasons.

### **Can international protection seekers leave Italy?**

International protection seekers have the right to remain in Italy up to the adoption of the decision concerning their application. Besides, if they lodge an appeal against the negative decision of the Territorial Commission, they can remain on the Italian territory for the whole time they are authorised.

Applicants are issued a residence permit for asylum seekers that lasts six months, is renewable, and is valid limitedly to the Italian territory.

Therefore, applicants are not authorised to transit and stay in the other EU Member States. If they are found in a Member State, lacking a residence permit valid on that territory, they will be brought back to Italy.

International protection seekers are also required to inform the competent authorities concerning any change of residence or domicile, in order to receive the communications concerning their application. Applicants must present themselves personally before the Territorial Commission to carry out the personal interview aimed at examining their international protection application. If they are called and do not show up without a prior request to postpone the interview, the Territorial Commission will take its decision concerning the application on the basis of the documentation at disposal.

### **Is it possible to convert a residence permit for special protection?**

The convertibility of the residence permit was established with Law 173/2020 for a special protection reasons in a residence for work purposes, subordinate or autonomous, in the presence of the condition provided for by the law for these residence permit.

For the conversion of the residence permit for social protection reasons is that passport is always required.

### **Can international protection holders be granted a EU residence permit for long-term residents?**

After 5 years of permanence in Italy, international protection holders meeting specific requirements have the right to apply for a EU residence permit for long-term residents.

The calculation of the period of residence is carried out starting from the date on which the application for international protection was submitted.

International protection holders, unlike the holders of a different residence permit, do not have to submit any documentation relating to the fitness of



their accommodation, nor do they have to prove to have passed the Italian language test. However, they are required to indicate their residence. The EU permit for long-term residents shows the indication of the state which has recognized international protection and the date of recognition.

### **Can international protection holders be granted family reunification?**

International protection holders have the right to family reunification under privileged conditions compared to holders of a different residence permit. The procedure for family reunification and the categories of family members that can be reunified are the same provided for by the Consolidated Act on Immigration. However, if the holders of international protection are unaccompanied minors, the entry and stay for family reunification are granted to their ascendants of first grade without the limitations provided for in general.

In order for international protection holders to exercise their right to family reunification, they do not have to submit any proof concerning a fit accommodation and a minimum income. If they cannot provide official documents certifying their family bonds, they can make use of other means capable of proving said bonds. The Italian Embassy or Consulate in their Country of origin are required to carry out verifications each time held necessary in order to issue suitable substitutive certificates. In any case, applications for family reunification submitted by holders of international protection cannot be rejected for the sole lack of evidence of family bonds.

### **Can international protection holders work abroad?**

International protection holders have freedom of movement in the Schengen Area, for a maximum period of ninety days.

The residence permit for international protection issued by the Italian State does not allow holders to work in other EU Member States.