Between declared rigour and actual precariousness: rhetorical profiles of legislation

di Cecilia Corsi

Abstract: This essay aims to highlight how some portions of legislation regarding the condition of foreigners reveal, behind aspects of declared rigour, a detachment from the reality of migratory dynamics, with the consequence of giving rise to a context of uncertainty that ends up favouring situations of illegality, as well as the violation of fundamental rights. Order, security, lawfulness, the fight against irregular immigration: these words have been bandied about to justify the legislative policy choices of the past few decades, but in an ideological and abstract manner, relying on the rigidity of rules to uphold logics of political rhetoric rather than of good government. The rules governing entry for work reasons and the rules governing the asylum are emblematic examples of the contradictions pervading immigration policies.

Keywords: immigration policies; entry for work reasons; asylum; humanitarian protection; security decree

1. Introduction.

This essay aims to highlight how some portions of legislation regarding the condition of foreigners reveal, behind aspects of declared rigour, a detachment from the reality of migratory dynamics, with the consequence of giving rise to a context of uncertainty that ends up favouring situations of illegality, as well as the violation of fundamental rights.

I have chosen to focus, in particular, on the rules governing entry for work reasons and the abolition of humanitarian protection as emblematic examples of the contradictions pervading immigration policies. In the pursuit of an abstract rigour, no room has been left for legislation with a sufficient degree of elasticity, as would be necessary to regulate complex phenomena that cannot be too tightly regimented. The consequence of much political and hence legislative rhetoric is often to increase illegality, people's vulnerability, and a sense of insecurity shared by everyone, citizens and non-citizens. A further consequence is the fragmentation of the legislative framework, which is becoming more and more confused and obviously creates uncertainties and disparities in treatment, as well as rules and practices that are in contrast with the Constitution and international law.

Amid the tightening of rules and provisions that are mostly rhetorical in nature, policy makers have ended up abandoning any attempt to rationally govern the migratory phenomenon. The choices made have often proven ineffective and

disorienting on the one hand and detrimental to the fundamental rights of individuals on the other.

2. Entry for work reasons between legislation and reality.

Italy experienced a major wave of immigration starting from the end of the 1970s: it was a mostly irregular and "spontaneous" influx, unlike the migratory flows towards central-northern Europe in the 1950s and 1960s, which were guided and encouraged by the destination countries themselves with the aim of procuring the manpower necessary for post-war reconstruction and the subsequent period of structural expansion.[1] From the mid 1970s, also as a result of the closing of borders decided by northern European countries, Italy became an alternative for a disoriented army of migrants, most of whom reached our country illegally, eventually finding precarious and irregular employment.[2]

Up to the 1980s, however, no *ad hoc* legislation was adopted to regulate the entry, stay and access to employment of foreign nationals. The only existing provisions were the ones contained in the Consolidation Act on Public Security of 1931, upon which an administrative practice based on circulars was built; it was only with the adoption of Law no. 943 of 1986 (so-called Foschi law) that the placement and treatment of non-EC workers were regulated for the first time[3] and a regularisation of pre-existing work situations was decided. The reform was completed by Decree-Law no. 416/1989, converted into Law no. 39/1990 (Martelli law), which, in addition to laying down provisions related to the entry, stay and expulsion of foreigners, provided for a further regularisation. And just a few years later, in an attempt to amend some aspects of the 1990 law, a series of decree-laws was issued; these were never converted into law, except for provisions relating to the regularisation of illegal workers (Law no. 617/1996).

New comprehensive legislation was finally approved in 1998 (the so-called Turco-Napolitano law, Law no. 40 of 1998). It was then incorporated into Consolidation Act no. 286 of 1998, which, as stated in the accompanying report, had the objective, among other things, of implementing a policy of limited, planned, regular entries through a system of yearly quotas, whereby immigrant workers would be channelled towards production activities and services in which there was a need for labour, thus preventing uncontrolled, chaotic flows and laying the basis for a planning policy. To this end, every three years the government

[1] U. Melotti, *Specificità e tendenze dell'immigrazione straniera in Italia*, in M.I. Macioti (cur.), *Per una società multiculturale*, Napoli, 1995, 73. L. Zanfrini, *I nodi irrisolti del rapporto tra immigrazione e democrazie europee*, in S. Polenghi, M. Fiorucci, L. Agostinetto (cur.), *Diritti Cittadinanza Inclusione*, Lecce, 2018, 26: with the end of the 1960s, recruitment devices gave way to so-called "stop policies". From that time, precisely when the project for a single European market was taking shape, immigration from regions outside Europe would become subject to a "restrictive orthodoxy".

[2] G. Bolaffi, *Una politica per gli immigrati*, Bologna, 1996, 31 f.

[3] The law established rules regarding "unavailability", whereby foreign nationals were allowed access to a specific occupation where there was a shortfall in the national labour force; the assessment of worker unavailability was limited to the provincial level.

would have to approve a planning document laying down the general criteria for defining the inflows into the territory of the State.[4] On this occasion as well, new regularisation measures were adopted following the approval of the legislative reform.

The Consolidation Act of 1998 was amended just a few years later with the so-called Bossi-Fini law (Law no. 189 of 2002), though the mechanism of yearly quotas was not substantially modified.[5] Among the various new provisions introduced, I shall only mention the rules concerning the so-called *contratto di soggiorno* (residence contract), an expression that refers to an employment contract entered into by a foreign worker, which represents a prerequisite for obtaining a residence permit for employment purposes and must contain a guarantee on the employer's part that accommodation will be made available to the worker[6] as well as a commitment to pay travel expenses for the worker's return to the country of origin.[7] This was intended to emphasise an automatic link between the possibility of remaining in Italy and the existence and maintenance of the contract. It was touted by the political forces as an instrument for keeping a foreigner's stay firmly anchored to the continuing existence of an employment contract; in reality the expression was largely rhetorical, because this automatic mechanism could not and cannot work, as the loss of one's job does not constitute grounds for revocation of a residence permit (see ILO Convention 143/75 and Article 22, para. 11 of Consolidation Act no. 286[8]).

Moreover, the implementing regulation illegitimately required the conclusion of a residence contract for employed foreign workers who were already legally present in our country, not only in the case of those entering Italy for the first time.[9] This regulatory provision was eventually repealed in 2014,[10] but incredibly, still today, on the government's website we read that, although a residence contract is no longer required to establish a new employment relationship, the obligations borne by the employer with respect to

[4] See Art. 3 of the Consolidation Act on Migration Policies. The last planning document approved by the government dates back to the three-year period 2004-06.

[5] Regarding the breaks and continuities in centre-right policies in the years 2001-2006 compared to the policies of the previous years, see L. Einaudi, *Le politiche dell'immigrazione in Italia dall'Unità a oggi*, Bari, 2007, 306 f.

[6] This requirement was later made even more restrictive with Art. 35 of the implementing regulations because workers were also burdened with the obligation of exhibiting a certificate of suitable accommodation.

[7] See Art. 5-*bis* of the Consolidation Act. L. Calafà, *Migrazione economica e contratto di lavoro degli stranieri*, Bologna, 2012, 109 f.

[8] The 2002 reform had also confirmed the principle that, in the event of losing their job, workers would maintain their residence permit until its natural expiry. However, the maximum period of unemployment was reduced to 6 months; it was later increased to one year with Law no. 92 of 2012.

[9] Regarding the necessary equality of treatment among Italian and foreign workers and the various illegitimate aspects of the regulatory provision see W. Chiaromonte, *Lavoro e diritti sociali degli stranieri*, Torino, 2013, 190 f.

[10] Art. 36-*bis*, Presidential Decree no. 394/1999, repealed by d.lgs. 4-3-2014 n. 40 transposing Directive 2011/98/EU on the single permit.

accommodation and repatriation expenses remain; this amounts to an attempt to restore an abolished, illegitimate regime by obliging employers to complete a form in which they must essentially commit themselves to fulfilling the same obligations as before.[11]

I shall note, finally, that the Bossi-Fini law had the effect of repealing one of the most promising new provisions of the 1998 law: the authorisation to enter Italy in order to join the labour market, which aimed to enable prior contact between employers and workers and could have given rise to realistic legal channels for the entry of foreign workers.

As is by now clear, however, the mechanism for managing inflows for purposes of employment is founded not only on a system of yearly quotas,[12] but also on two wholly unrealistic assumptions: employers would have to plan out their recruitment needs many months in advance (given the length of the hiring procedure[13]) and would also have to hire a worker they have never met before. The legislation envisages, in fact, two forms of recruitment: a) a request naming a specific worker residing abroad; b) a numerical request for workers who have already been included in the lists of foreign nationals seeking employment in Italy (lists kept by the Italian consular authority in the country of origin and created on the basis of bilateral agreements). For easily understandable reasons, numerical requests have hardly ever been used, except for seasonal work: it is very rare for an employer to hire a person he or she does not know. Requests naming specific workers mostly regarded foreign nationals who had already worked for that employer (often undeclared work) and who returned to their country of origin for

[11] These obligations are assumed upon completing specific sections of a mandatory hire reporting form ("Unificato-Lav") or, in the case of domestic work, in the notification submitted to the INPS (National Social Security Institute), cf. http://www.integrazionemigranti.gov.it/normativa/procedureitalia/Pagine/Lavoro.aspx#contenuto4, 15 June 2020.

[12] According to Art. 21, para. 4 of the Consolidation Act.: "The yearly decrees shall take account of the indications provided by the Ministry of Labour and Social Security on occupational trends and unemployment rates at a national and regional level, broken down by skills or jobs, as well as the number of foreign nationals not belonging to the European Union who are included in employment registers". With the Bossi-Fini law it was added that "the yearly decree and interim decrees shall moreover be drawn up on the basis of data on the actual demand for labour, broken down by region and provincial catchment areas, collected in a computerised civil registry database established by the Ministry of Labour and Social Policies….".
Art. 27 of the Consolidation Act sets rules governing entry for work in particular cases outside the quotas.

[13] One need only consider that the Bossi-Fini law reintroduced the rule regarding the necessary verification, in order for work authorisation to be issued, of the unavailability of a worker already present in the national territory to occupy the position for which a hire request was submitted, though the employer was free to reject the available worker. Under an amendment introduced in 2013, the issuance of work authorisation was allowed only in the event of unavailability of workers present in the territory.

the sole purpose of collecting their entry authorisation and then legally re-entering Italy.[14]

We can gather, therefore, that the mechanism conceived by the legislator, which is mainly based on the assumption that the first meeting between the supply of and demand for labour takes place when migrants are still in their own countries, has never worked.

To this we may add that for a number of years the decrees establishing quotas were very restrictive in relation to the actual needs of our labour market and the solution of a visa and residence permit for job seekers, an approach that might have been worth trying out in order to establish viable pathways of entry,[15] was eliminated by the Bossi-Fini law in 2002 and thus never implemented in practice. All this resulted in the need to rely on a series of regularisations also after the approval of the 1998 law, one of the aims of which was precisely to create a system of planned, regulated flows. It should be noted, in fact, that a new regularisation campaign was already launched in 2002,[16] which resulted in the legalisation of the status of over 600,000 workers.

Furthermore, on a number of occasions it has been necessary to resort to the use of the flows decrees themselves as masked regularisations, as occurred in 2006 and in 2007-2008.

The decree of February 2006[17] authorised foreign workers in Italy up to a maximum quota of 170,000, but by May employers had already submitted a considerably higher number of applications for the grant of authorisations for non-seasonal employment; it was thus decided to adopt a further decree "in order to meet the requirements of the labour market and avoid penalising the national production system, as well as the domestic work and care sector",[18] resulting in the authorisation of an additional quota of 350,000 entries. The following year, the decree for 2007 authorised the entry of 170,000 foreign workers for non-seasonal employment, but no fewer than 683,000 applications were received. The flows decree for 2008 declared in the recitals that "the high number of hire requests sent to the immigration offices, which were not satisfied after the exhaustion of the quotas related to the provisional planning for the year 2007, express a socially relevant need, with particular reference to the home care sector, which it is believed must be satisfied", so that quota set for 2008 could be filled through the excess applications already submitted for 2007. However, as was clear to everyone,

[14] A. Guariso, *Art. 22*, in G. Savio (cur.) *Codice dell'immigrazione*, Rimini, 2012, 209 f. See also V. Pinto, *Migrazioni economiche e rapporti di lavoro. Alcuni spunti di riflessione*, in S. D'Acunto, A. De Siano, V. Nuzzo (cur.) *In cammino tra aspettative e diritti*, Napoli, 2017, 249 f.

[15] With the aim of enabling prior contact between employers and workers, the law had established two ways for job seekers to gain entry to Italy; the first was the so-called sponsor approach, whereby private or public entities could assure the foreigner's maintenance in Italy for a certain period, until he or she found a job; the second, subordinate option was to allow entry to foreign nationals who demonstrated to have sufficient means to live in Italy for a certain period of time in which they would seek employment.

[16] D.l. 9-9-2002 n. 195, converted into l. 9-10-2002 n. 222.

[17] Decree of the President of the Council of Ministers, 15 February 2006.

[18] Recitals of the Decree of the President of the Council of Ministers, 25 October 2006.

a large majority of the foreigners for whom authorisation was requested already lived in Italy and were irregularly employed and it was likewise evident that the flows decrees served as a regularisation measure.[19] I will note further that the following year, in 2009, a further regularisation was undertaken, though limited to domestic helpers and caregivers;[20] this was followed by another two: one in 2012 and another that is still in progress (see *infra*).[21]

It may thus be concluded that planning through flows decrees has proven to be not only inconsistent but also an obstacle to overcoming situations of irregular employment: if employers were allowed to submit requests for an entry authorisation irrespective of the decree, the government would have an indication of the number of undeclared workers ready to be regularised.[22]

Finally, up to the first decade of the 21st century the flows decrees together with the mechanism of recruiting workers by name had shown to be insufficient and ineffective in regulating the influx of foreign workers. Nonetheless, in the subsequent years, due to low economic growth on the one hand and the arrival of large numbers of refugees on the other hand,[23] yet another requirement was introduced for the issuance of authorisation to hire a foreigner, namely the unavailability of workers already present within the national territory.[24] Furthermore, the yearly decrees have essentially blocked the inflows of so-called "economic migrants" (despite the fact that a structural demand for foreign workers exists in certain sectors[25]). The decrees have almost exclusively regarded seasonal workers and only marginally regulated, if at all, the possibility of converting seasonal or other types of permits into permits for "subordinate employment".[26] Only family reunification[27] remains one of the main channels of legal entry,

[19] Cf. M. McBritton, *Migrazioni economiche e ordinamento italiano*, Bari, 2017, 137 f.; S. Briguglio, *Una regolarizzazione in tempo di pandemia: la lezione del passato*, in *Questione giustizia*, sez. *Diritti senza confini*, 28 May 2020 who mentions the queues of foreign workers (officially in their own countries!) in front of post offices, waiting to submit applications for authorisation to enter. Later, when Decree-Law no. 89/2011 ruled out the issuance of an expulsion order (and consequent prohibition of re-entry) against foreign nationals whose irregular status emerged from border police checks at the time of their exit from the national territory, it was evident that the intention was to facilitate the exit and subsequent re-entry of workers already present in Italy.

[20] D.l. 1-7-2009 n.78 converted into l. 3-8-2009, n. 102.

[21] For a precise reconstruction of the regularisations that have taken place since 1986, see S. Briguglio, *op. cit.*

[22] Cf. S. Briguglio, *op. cit.*

[23] M. Colucci, *Foreign immigration to Italy: crisis and the transformation of flows*, in *Journal of Modern Italian Studies*, 2019, 429 f.

[24] Art. 22, par. 2 Consolidation Act as amended by d.l. 28-6-2013 n. 76 converted into l. 9-9-2013, n. 99. See also note no. 13.

[25] See W. Chiaromonte, *Regolazione del lavoro immigrato e diffusione del lavoro sommerso*, in M. Savino (cur.), *Per una credibile politica europea dell'immigrazione e dell'asilo*, Roma, 2018, regarding the employment data for foreign workers in certain sectors of the labour market also during the years of economic crisis.

[26] F. Pastore, *Zombie policy: politiche migratorie inefficienti tra inerzia politica e illegalità*, in *il Mulino*, 2016, 598.

[27] See Art. 29 of the Consolidation Act, which allows reunification for the so-called nuclear family: spouse, children who are minors and only in particular cases for dependent adult

confirming the desire of many foreigners to settle in our country.[28] But in the past decade, and above all in the years of the so-called humanitarian crises, migration policies have undoubtedly focused on the arrivals by sea, so much so that the world of immigration not tied to this reality and to this image has begun being relegated to the background.[29]

The influx of migrants seeking protection is a phenomenon that has been viewed with growing concern, and indeed the legislation on the right of asylum has been marked by continuous restrictions.[30] In order to comprehend, among the various legislative interventions, the impact of the repeal of the legislation governing humanitarian protection, which was broad in scope, with a good degree of elasticity, we need to reconstruct, albeit summarily, the trials and tribulations tied to the (non-)implementation of Article 10, paragraph 3 of the Italian Constitution.

3. Entry for asylum: a history of non-implementation.

Given a constitutional provision viewed as "undoubtedly broad and favourable to foreigners" and the awareness of the members of the Constituent Assembly "of having undertaken to regulate a particularly advanced institution within the framework of the *very fundamental principles* of the Constitution of the new legal order",[31] Italian lawmakers have never really taken on the task of implementing Article 10, paragraph 3 of the Constitution through an organic body of legislation.

As is well known, the Geneva Convention was ratified in 1954, with the time and geographical limitations then provided for,[32] but it is equally well understood that the definition of refugee[33] is much more restrictive than the definition of those

children and dependent parents. Regarding the numerous problems connected to the right to family unity, see P. Morozzo della Rocca, *Il ricongiungimento con il familiare residente all'estero. Categorie civilistiche e diritto dell'immigrazione*, Torino, 2020.

[28] On the evolution of the reasons at the basis of residence permits in the five-year period 2011-2016, see M. Colucci, *Storia dell'immigrazione straniera in Italia*, Roma, 2018, 176-177.

[29] M. Colucci, *Storia dell'immigrazione*, cit., 171.

[30] See the Minniti decree of 2017 and the "security decrees" of the Conte government and, finally, Decree n. 150 of 7 April 2020, which declared Italian ports "unsafe" for vessels under foreign flags for the duration of the health crisis. In addition to abolishing humanitarian protection (see *infra*), d.l. 4-10-2018, n. 113 also heavily impacted the procedures for gaining recognition of international protection by increasing the reasons for disqualification and cases in which applications would be considered manifestly unfounded or inadmissible, with a broadening of immediate and frontier procedures and the introduction of a list of safe countries of origin.

[31] M. Benvenuti, *Il diritto di asilo nell'ordinamento costituzionale*, Padova, 2007, 28

[32] It could be applied to events occurring in Europe prior to 1951, and it was only with the amending Protocol of 1967, ratified in 1970, that the time limitation was set aside and later, with the so-called Martelli law of 1990, the geographical limitation was also removed.

[33] According to the Convention, refugee status is granted to anyone who is outside his or her country of citizenship because of a well-founded fear of being persecuted on grounds of race, religion, nationality, membership of a particular social group or political opinions and is unable or, due to that fear, unwilling to ask that country for country; or to any stateless person who is outside his or her country of residence as a result of such circumstances is unable or, due to the aforementioned fear, does not want to return there.

entitled to the right of asylum under Article 10, paragraph 3 of the Italian Constitution. Therefore, the constitutional provision remained unimplemented and this later led, above all starting from the end of the 1990s, to courageous decisions on the part of the ordinary courts, which aimed to lend effectiveness to the constitutional provision. It was argued that given the directly effective character of the constitutional provision, it had to be possible for an individual – absent an implementing law – to apply directly to a court in order to gain recognition, pursuant to the aforesaid Article 10, of his or her right of asylum through a ruling.[34]

Notwithstanding a subsequent[35] (and, it is worth noting, not always clear) *revirement* of the Court of Cassation, it should be underscored that, both among legal scholars and in case law, there was a growing conviction that the constitutional provision on its own gave foreigners a right of asylum, and that it identified the denial of the exercise of democratic freedoms as grounds justifying that right, while indicating the actual ability or inability of the asylum seeker to exercise such freedoms in the home country as the criterion for assessing the situation concerned.[36]

Given this uncertain legislative and jurisprudential framework, the most important new developments in those years were taking place at a European level following the communitisation, with the treaty of Amsterdam, of the rules on asylum, together with those regarding visas, immigration and other policies connected to the free movement of persons. This was followed by the approval of important directives,[37] including the "Qualification Directive", which is of particular interest here, because besides specifying the characteristic features of acts of persecution which entitle individuals to refugee status under the Geneva Convention, it introduced the principle of subsidiary protection. Such protection would be due where, despite the requirements for the recognition of refugee status not being met, there were well-founded reasons to believe that if the person were to return to his or her country of origin (or, in the case of a stateless person, to the country of habitual residence), he or she would run the risk of suffering serious harm (Art. 2(e)). As the same Directive specifies, the following are to be considered serious harm: a) the death penalty or execution; b) torture or another form of inhuman or degrading punishment of an applicant in his or her country of origin; or c) a serious and individual threat to a civilian's life or person arising from indiscriminate violence in situations of internal or international armed conflict.

[34] Cf. Court of Cassation, Joint Divisions, 26-5-1997 n. 4674; Court of Cassation, Joint Divisions, 17-12-1999, n. 907. Deserving of mention is the decision handed down by the Court of Rome on 1-10-1999, which recognised the right of asylum of Ocalan (leader of the Kurdistan Workers' Party - PKK) pursuant to Art. 10, para. 3 Const., though he was no longer in Italian territory.

[35] Cf. Court of Cassation, 25-11-2005 n. 25028 and Court of Cassation, 2-12-2005 n. 26278.

[36] Court of Cassation, Joint Divisions, 26 May 1997 n. 4674. For a general overview of the case law, see M. Benvenuti, *op. cit.*, pp. 39 f.

[37] Dir. 2001/55/EC of 20-7-2001 on temporary protection; Dir. 2003/9/EC of 27-1-2003, so-called Reception Directive; Dir. 2004/83/EC of 29-4-2004, so-called Qualification Directive; Dir. 2005/85/EC of 1-12-2005, so-called Procedures Directive.

However, States were and are left with the option of introducing or maintaining more favourable provisions; in this regard, as early as 1993[38] the Italian legal system embraced a provision, contained in the law authorising the ratification of the Schengen Convention, which prohibited the denial of a residence permit where there were serious grounds of a humanitarian nature or reasons deriving from constitutional or international obligations which precluded such a denial. This provision was reaffirmed in the Turco-Napolitano law of 1998 and then transposed into Article 5, paragraph 6 of Consolidation Act no. 286, according to which: "the denial or revocation of a residence permit may also be adopted on the basis of international conventions or agreements, rendered executive in Italy, when a foreign national does not fulfil the conditions of residence applicable in one of the contracting States, except where serious grounds exist, in particular of a humanitarian nature or resulting from constitutional or international obligations of the Italian State".

An explicit connection between this provision and issue of asylum was made only ten years later with Legislative Decree no. 25 of 2008, implementing the so-called "Procedures Directive", which established [39] that in cases where the territorial commission rejected an application for international protection, but judged that there might be serious concerns of a humanitarian nature, it should send the relevant documents to the police commissioner, who had the option of issuing a residence permit pursuant to Article 5, paragraph 6 of Consolidation Act no. 286.

Three forms of protection came to be defined as a consequence: refugee protection, subsidiary protection and humanitarian protection.

Could it finally be said that the constitutional provision (Article 10, paragraph 3) was duly implemented?

Although the issue continued to be debated among legal commentators, the courts confirmed that the right of asylum could be considered "entirely implemented and regulated through the definition of the final situations envisaged with the three forms of protection in the comprehensive provisions of Legislative Decree no. 251 of 2007… and Article 5, paragraph 6 of the Consolidation Act…, hence there appears to be no margin of residual direct application of the constitutional provision".[40] Therefore, the idea that the legislative framework

[38] Art. 14, l. 30-9-93 n. 388, which supplemented Art. 4, para. 12 of l. 28-2-1990 n. 39.
[39] Art. 32, para. 3, d.lgs. 28-1-2008 n. 25.
[40] Court of Cassation, 26-6-2012 n. 10686 and Court of Cassation, 4-8-2016 n. 16362. This reconstruction, agreed with and supported by some legal commentators (P. Bonetti, *Il diritto d'asilo in Italia dopo l'attuazione della direttiva comunitaria sulle qualifiche e sugli status di rifugiato e di protezione sussidiaria*, in *Diritto, immigrazione e cittadinanza*, 1, 2008, 13 f.), was criticised by other authors, who doubted that the legal systems at the various levels – international, European, national – had been successfully harmonised or reciprocally completed one another, such as to contribute to the joint construction of an asylum system and full implementation of Art. 10, para. 3 Const. It was highlighted that legislation conceived in supranational contexts with different aims did not reflect the principles inspiring the constitutional provision and the legal scope thereof (M. Benvenuti, *Andata e ritorno per il diritto di asilo costituzionale*, in *Diritto, immigrazione e cittadinanza*, 2 2010, 39). See also M. Benvenuti, *La forma dell'acqua*, in *Questione giustizia*, 2 2018, 19 f.

deriving from the transposition of European directives and the provision for humanitarian protection represented an effective implementation of the constitutional provision increasingly gained ground. And precisely the open and not wholly standardisable nature of the conditions for the recognition of entitlement to humanitarian protection appeared clearly consistent with the broad scope of the right of asylum contained in the constitutional provision.[41]

It should in any case be pointed out that a residence permit on humanitarian grounds could either be granted following an international protection request procedure or directly issued by the police commissioner irrespective of the existence of a situation in some way tied to asylum, provided that there were serious grounds, in particular of a humanitarian nature or resulting from constitutional or international obligations of the Italian State.[42]

When it came to humanitarian protection, therefore, it was left up to the territorial commissions and police departments and, in the event of an appeal, to the ordinary courts to lend substance to a provision having such broad legal scope. It is thus worth pointing out, solely by way of example, some of the most innovative trends in case law regarding the interpretation of Article 5, paragraph 6 of the Consolidation Act.[43]

One interesting and debated issue regarded the degree of social integration achieved by the asylum seeker: for example, it was highlighted by the ordinary courts that the refusal to grant a permit for humanitarian reasons could result in an abrupt interruption of a process of social inclusion or a work activity already engaged in, with serious repercussions on a person's life,[44] or else emphasis was laid on the risk of breaking emotional bonds that had come to be created.[45] The Court of Cassation, in its judgment no. 4455/2018, ruled that the social integration of an asylum seeker in our country, though it could not become an exclusive factor for making an assessment, should be considered in comparison with the social, political or environmental context of the country of origin in order to evaluate the risk associated with a possible repatriation. Repatriation that might result in the denial of the exercise of core human rights below a level necessary to guarantee personal dignity as compared to the situation of integration reached in the host country.[46]

However, the possibility of relying on the parameter of social integration was again called into question within the Court of Cassation itself, once it was observed to have a very fragile legislative basis in the absence of provisions that made express mention of this aspect. The comparative evaluation was itself vague and indefinite

[41] See Court of Cassation, 23-2-2018 n. 4455, § 4.4.
[42] N. Zorzella, *La protezione umanitaria nel sistema giuridico italiano*, in *Diritto, immigrazione e cittadinanza*, 1, 2018, 7 f.
[43] On the developments in case law on the subject of humanitarian protection, see M. Acierno, *La protezione umanitaria nel sistema dei diritti umani*, in *Questione Giustizia*, 2, 2018, 104 f.
[44] *Ex multis* cf. Court of Trieste, 22-12-2017 (https://bit.ly/2Fyw9fr).
[45] Court of Appeal of Florence, 17-9-2018 (https://bit.ly/2JCMxf8). C. Favilli, *La protezione umanitaria per motivi di integrazione sociale. Prime riflessioni a margine della sentenza della Corte di Cassazione n. 4455/2018*, in *Questione giustizia*, 14 March 2018.
[46] Cf. also the Court of Cassation, 15-5-2019 nn. 13079 and 13096; 20-1-2020 n. 1104.

in terms of content.[47] But in a recent important judgment, the Joint Divisions of the Court of Cassation[48] arrived at the conclusion that, for the purpose of recognising entitlement to humanitarian protection, it was necessary to make a comparative assessment of the applicant's subjective and objective situation in the country of origin versus the current situation of integration in the host country. This comparison would in fact enable whoever was interpreting the case to verify whether repatriation was likely to result in the deprival of the ability to exercise core human rights below the level necessary to guarantee personal dignity, without giving relevance solely to the degree of social integration in Italy.

Another issue that was debated among legal scholars and in the courts was the possibility of granting humanitarian protection on the grounds of a condition of severe poverty and social marginalisation in the country of origin, where the severe compression of rights in the economic and social spheres could be considered an infringement of the fundamental rights of the individual.[49] The previously mentioned Court of Cassation judgment no. 4455 of 2018 affirmed that a situation of vulnerability could arise not only from conditions of political and social instability that exposed individuals to situations endangering their personal safety, but also from a very severe political and economic situation resulting in extreme impoverishment due to the lack of basic necessities or a geopolitical situation offering no guarantee of life inside the country (drought, famine, etc.).

In conclusion, what needs to be highlighted is that whereas the recognition of refugee status or granting of subsidiary protection requires an individualisation of the denial of fundamental rights (associated with persecution and serious harm) and thus a specific infringement, this requirement is not so strict in the case of recognition of the right of asylum (and to humanitarian protection, which was an

[47] Cf. interim order 3-5-2019 n. 11750.

[48] Court of Cassation, Joint Divisions,13-11-2019 n. 29460. See also Court of Cassation, Division I, 20-1-2020 n. 1104. Despite the fact that Art. 5, para. 6 of the Consolidation Act was repealed by the Security Decree, there is still a great deal of case law on the subject of humanitarian protection, given that the provisions of the decree were not retroactively applicable; therefore, applications submitted prior to the entry in force of the Decree-Law are dealt with on the basis of the previous rules.

[49] E. Castronuovo, *Il permesso di soggiorno per motivi umanitari dopo la sentenza della Corte di Cassazione n. 4455/2018*, in *Diritto, immigrazione e cittadinanza*, 3, 2018, 8: "some judges have ordered the issuance of permits on humanitarian grounds to citizens of countries in which a current situation of a major natural disaster or famine or a severe food emergency certified by international bodies explained their fleeing from the country or would have in any case placed the life and food security of the person in concrete danger in the event of repatriation, which would have also constituted a violation of the right to life or inhumane treatment prohibited by Arts. 2 and 3 ECHR". Cf. Court of Appeal of Bologna, 9-4-2019 n. 1194 (https://bit.ly/2Vrkgya), which, in recognising humanitarian protection, underscored that "the difficult experiences of life that the appellant had to endure above all in Chad and Libya enable us to affirm without a doubt that it was the situation of poverty and the need to find means of subsistence that drove him… to leave his country, as the situation which Guinea Conakri was and is still experiencing did not offer him other alternatives". A different ruling was reached by the Court of Cassation, no. 23757/2019, according to which "situations of even extreme economic and social difficulty are not sufficient in themselves, in the absence of specific situations of vulnerability, to justify the issuance of a residence permit on humanitarian grounds".

implementation thereof); and although the case law of the Court of Cassation has been divided on this point,[50] precisely the fact that Article 5, paragraph 6 was like "an open catalogue, not necessarily founded on *fumus persecutionis* or the threat of serious harm to one's life or mental and physical integrity"[51] made it possible to argue that Article 10 of the Constitution had been implemented.

As is well known, the residence permit on humanitarian grounds was abolished with the introduction of the "security decree".[52] According to the report accompanying the draft text of the law converting the decree, the Government deemed it necessary and urgent to intervene in order to counter the anomalous disproportion between the number of cases in which forms of international protection were granted and the number of residence permits issued on humanitarian grounds.[53] This disproportion was allegedly due to the legislative definition of humanitarian protection, "of uncertain scope, which left ample margins for an extensive interpretation that was in contrast with the aim of providing temporary protection". Following the repeal of Article 5, paragraph 6 of the Consolidation Act, the legislator introduced some specific resident permits for victims of a calimity,[54] for acts of civic valour[55] and for health reasons, as well as a permit for special protection, which simply confirms, however, the prohibition of *refoulement* already provided for in Article 19 of the Consolidation Act[56] (practically speaking, therefore, no new type of residence permit was introduced). Permits for victims of violence or severe exploitation, victims of domestic violence and labour exploitation remained unchanged.[57]

Many of these "special residence permits" already existed in our legal system and were not introduced by the security decree. Even the permit for health reasons does not add much, as the obligation to receive and prohibition against expelling foreign nationals with serious health conditions has long been established.[58] The

[50] Cf. N. Zorzella, "Nota, in Rassegna Asilo e protezione internazionale", in *Diritto, immigrazione e cittadinanza*, 2, 2019.
[51] Court of Cassation, Div. VI, 27-11-2013 n. 26566.
[52] D.l. 4 October 2018 n. 113, converted, with amendments, by l. 1-12-2018 n. 132.
[53] Court of Cassation, Joint Divisions, 13-11-2019 n. 29460.
[54] When the country a foreigner is supposed to be returning to is experiencing a contingent, exceptional calamity that precludes his or her re-entry and stay in conditions of safety, the police commissioner issues a residence permit on grounds of calamity (art. 20-*bis*).
[55] If a foreign national has performed exceptional acts of civic valour, the Ministry of the Interior, on a proposal from the competent provincial authority, will authorise the issue of a special residence permit.
[56] Article 19, Consolidation Act: 1. In no case whatsoever may an alien be expelled or rejected towards a State in which he might be subjected to persecution due to race, gender, language, citizenship, religion, political opinions, or personal or social conditions, or may risk being sent to another State in which he is not protected against persecution. 1.1. Rejection, expulsion or extradition of a person to a State is not allowed when there are reasonable grounds to believe that that person is at risk of being subjected to torture. The assessment of reasonable grounds shall also take into account the existence, in that State, of serious and systematic human rights violations.
[57] Cf. Articles 18, 18-*bis*, 22-*quater* and 19 of the Consolidation Act.
[58] C. Corsi, *Il diritto alla salute alla prova delle migrazioni*, in *Le Istituzioni del Federalismo*, 1, 2019, 45 f.

only "new" residence permits, therefore, are the ones granted to persons fleeing a calamity and for outstanding acts of civic valour (the latter reflects a different logic, however, being a form of reward).

The abolition of a provision that had been viewed as implementing a constitutional principle, precisely by virtue of its open and residual character, thus clearly raises some doubts regarding its legitimacy. As the Court of Cassation pointed out, "the protected interests cannot remain constrained by rigid rules and strict parameters which limit the possibilities of their mobile, elastic adaptation to constitutional and supranational values". And, again in the view of the Court of Cassation, it is the horizontal nature of human rights that "promotes the evolution of the elastic principle of humanitarian protection to a general provision of the system, capable of favouring human rights and laying roots for their implementation".[59]

For their own part, legal scholars have highlighted their doubts as to the compatibility of the reform with Article 10 of the Constitution and with international humanitarian law and have proposed an extensive interpretation of the new residence permits introduced with the security decree, suggesting that the task of providing a constitutionally oriented interpretation of the new provisions should be entrusted to above all to the ordinary courts.[60]. Moreover, the Constitutional Court itself has underscored that the interpretation and application of the new residence permits are necessarily bound to strict observance of the Constitution and international rules, notwithstanding the elimination of the explicit reference to them previously contained in Article 5, paragraph 6 of the Consolidation Act.[61] Therefore, we may conclude that either the new provisions eliminating humanitarian protection are constitutionally illegitimate, or that forms of protection

[59] Court of Cassation, Joint Divisions, 13-11-2019 n. 29460. Cf. also Court of Cassation, Div. I, 15-5-2019 n. 13079: "it is not correct to 'standardise' the subjective categories in which to place individuals deserving of 'humanitarian' protection, which, on the contrary, has an atypical and residual character, in that it covers a whole series of situations, to be identified case by case, where, although the prerequisites for the grant of typical protection (refugee status or subsidiary protection) are not met, no order of expulsion may be given and, therefore, an applicant who is in a situation of 'vulnerability' must be granted reception". Cf. also Constitutional Court, 24 July 2019 n. 194, para. 7.6.

[60] M. Benvenuti, *Il dito e la luna. La protezione delle esigenze di carattere umanitario degli stranieri prima e dopo il decreto Salvini*, in *Diritto, immigrazione e cittadinanza*, 1, 2019; S. Curreri, *Prime considerazioni sui profili d'incostituzionalità del decreto legge n. 113/2018 (c.d. 'decreto sicurezza')*, in *Federalismi*, 22, 2018, 7**;** S. Pizzorno, *Considerazioni, anche di costituzionalità, su alcune delle principali novità introdotte dal decreto legge n. 113/2018 (c.d. decreto sicurezza) in tema di diritto d'asilo*, in *Forum di Quaderni costituzionali*, 2018; A Masaracchia, *La protezione speciale sostituisce il permesso per motivi umanitari*, *Guida al diritt*o, 45, 2018, 21 f.

[61] Cf. the letter sent by the President of the Republic to the Prime Minister at the time the decree-law was enacted: "the constitutional and international obligations of the State continue to apply, even if not expressly mentioned in the legislative text, including, in particular, what is directly provided for in Article 10 of the Constitution and the obligations ensuing from the international commitments undertaken by Italy".

still remain in any case (beyond the special cases provided for), as a result of constitutional obligations (including asylum) and international obligations.[62]

I shall not delve further here into the possible conflicts of the 2018 decree with the constitutional provision and supranational law,[63] or the spaces for an extensive interpretation of the new permits, because I am interested in focusing on a more global assessment.

On the one hand, in fact, our legislators appear never to have taken Article 10 of the Constitution seriously: they have never really been concerned about comprehensively defining the "conditions established by law" referred to in the article in question. And, with the provisions contained in the security decree, they have "dismantled" a legal framework that seemed in some respects, and with great delay, to have implemented the right of asylum. And also the decree-law no. 130 of 21 October 2020 (approved pending publication of this essay) which has restored the explicit reference to "the constitutional and international obligations of the Italian State" in the art. 5, par. 6, has non restored the reference to the serious grounds of a humanitarian nature. The new provision which recognizes the permit for special protection in the cases in which an expulsion results in a violation of the right to respect for private and family life (although it is certainly appropriate) does not seem to fill the gap following the abolition of the humanitarian protection with reference above all to art. 10, paragraph 3 of the Constitution.

4. Rigidity and uncertainty: two sides of the same coin.

Order, security, lawfulness, the fight against irregular immigration: these words have been bandied about to justify the legislative policy choices of the past few decades, but in an ideological and abstract manner,[64] relying on the rigidity of rules to uphold logics of political rhetoric rather than of good government.[65]

It is clear that lawfulness and an orderly civil existence are essential values that should be shared by the various political actors and should be duly pursued by lawmakers and governments, but when legislation, rather than channelling a complex reality replete with social tensions towards paths of legality, brandishes these values, transforming them into slogans, and unreasonably tightens rules, it ends up only creating uncertainty, insecurity and marginality.

---

[62] Cf. C. Favilli, *Il Re è morto lunga vita al Re! Brevi note sull'abrogazione del permesso di soggiorno per motivi umanitari*, in *Riv. dir. int.*, 2019, 164 f.

[63] See C. Corsi, *The Right of Asylum after the 'Security Decree'. The Abolition of Humanitarian Protection*, in *Italian journal of public law*, vol. 11, 2, 2019, 574 f.; A. Algostino, *Il decreto sicurezza e immigrazione (decreto legge n. 113 del 2018): estinzione del diritto di asilo, repressione del dissenso e diseguaglianza*, in *Costituzionalismo.it*, 2, 2018, 176 ff.

[64] Cf. A. Guariso, *Le incrollabili ipocrisie in tema di lavoro immigrato*, in *D&L. Rivista critica di diritto del lavoro*, 2006, 35.

[65] Cf. M. Ambrosini, *L'invasione immaginaria*, Bari, 2020, 131: "the measures in respect of immigration, especially those that go in the direction of closure, generally have high political resonance and a low economic cost. They can even convey the idea of savings for the State treasury. They thus offer an ideal subject for governments that need to show themselves to be effective and strengthen consensus, but have few resources to draw on in the coffers".

As has been pointed out, "irregular immigration, like regular immigration, is the outcome of a process of political construction, which implies the identification of a boundary and the conditions for physically or metaphorically crossing it. Not coincidentally, the growth of irregular migration has historically gone hand in hand with the increasing rigidity of the criteria for crossing the borders of nations."[66]

Entry into a State's territory must certainly be regulated, but in the past decade there has been a substantial closure of the legal channels for entry for work reasons, and requesting asylum was the only possible way to obtain a resident permit.[67] We should also take into account that today the distinction between "economic migrants" and "seekers of protection" is not always that clear: many flee from situations of extreme poverty, war, or unliveable environmental conditions, and the phenomenon of "mixed flows" is increasingly frequent,[68] so much so that "the bipartition seems no longer to regard the different manifestations of the phenomenon, but rather to regard their regulation."[69]

As has been noted, this policy of restricting access to work has sparked a vicious cycle: in the countries of origin it does not incentivise the development of selection and training processes, and in the destination countries it produces illegality (in terms of both the irregular presence in a country's territory and work relationships).[70]

It would have thus been desirable to restore the routes of entry for work reasons by replacing the present "rigid and cumbersome" regime; however, the first Conte government deemed it necessary and urgent to intervene to combat the anomalous numerical disproportion between the grants of forms of international protection and the issuances of residence permits on humanitarian grounds;[71] in reality, from the data published in the dossier prepared by the Senate Research Service,[72] it emerges that although it may be true that, among the major forms of protection, our country has seen a significant percentage of permits granted on humanitarian grounds, the percentage of recognition of refugee status and the right to subsidiary protection, which offer much more solid guarantees and safeguards to the applicant, is on average much lower than in other European countries.

It was chosen to increase the rigidity of a legislation that had – precisely in the repealed Article 5, paragraph 6 of the Consolidation Act – an elastic provision that allowed protection to be granted in situations where protection was

[66] L. Zanfrini, *Introduzione alla sociologia delle migrazioni*, Bari, 2016, 21.
[67] Cf. M. Savino, *Le condizioni per una credibile politica europea dell'immigrazione e dell'asilo*, in *Per una credibile politica europea*, cit.; the author highlights the circuit of illegality and crime that is created in the absence of legal channels of entry.
[68] L. Zanfrini, *op. ult. cit.*, 25. S. Bontempelli, *Da 'clandestini' a 'falsi profughi'. Migrazioni forzate e politiche migratorie italiane dopo le primavere arabe*, in *Meridiana*, 86, 2016, 169 f. and 178: "the economic and political reasons constantly intertwine and overlap".
[69] M. D'Onghia, *Immigrazione irregolare e mercato del lavoro. Spunti per una discussione*, in *Riv. trim. dir. pubbl.*, 2019, 465.
[70] M. Savino, *Il diritto dell'immigrazione: quattro sfide*, in *Riv. trim. dir. pubbl.*, 2019, 391.
[71] Cf. Illustrative report accompanying the draft law converting d.l. 4-10-2018, n. 113, downloadable at: http://www.senato.it/service/PDF/PDFServer/BGT/01076594.pdf.
[72] Downloadable at: http://www.senato.it/service/PDF/PDFServer/BGT/01076617.pdf.

warranted.[73] Article 5, paragraph 6 was conceived, therefore, as a safeguard clause within the rigid system delineated by the Consolidation Act in respect of foreigners' stay and expulsion. Its repeal has certainly not resulted in a more certain or well-ordered framework: paradoxically, it has opened the doors to a more uncertain and confused situation. The measures taken, besides raising issues of compatibility with the constitutional and supranational frameworks, have ended up increasing distress and, also taking into account the difficulties tied to the effectiveness of repatriation measures, favoured an increase in the number of individuals without a residence permit, who will be denied access to any legal channel for obtaining residency status, and will be forced to survive by obtaining employment in the informal economy.[74]

Many studies have highlighted the relationship between immigration and the shadow economy. It is no coincidence that the problem of irregular immigration regards above all countries traditionally more inclined to tolerate undeclared work.[75] To this we may add the paradox that the current rules, seemingly aimed at combating irregular immigration and undeclared work, in reality – due to their abstractness and rigidity – end up narrowing the scope of action of regular immigration.[76]

Moreover, migrants (including those holding resident permits) are frequently employed in sectors where the circumventions of labour protection laws are greatest, that is, in the realm of so-called 3DJobs (dirty, dangerous and demanding). This is also favoured by some of the rules regarding, for example, social security rights, which are not conducive to legality and actually represent a deterrent to the establishment of a regular employment relationship. We need only consider the social security regime for seasonal workers and the failure to refund the contributions paid by foreign workers in the event of repatriation.[77]

Civil society itself is rife with contradictions: as one author has observed "citizens who fear and reject the immigrant, understood as an abstract and threatening figure, then hire the immigrant, a concrete person, without worrying too much about the possession of permits.[78] It is clear that the migratory phenomenon

[73] See M. Balboni, *Abolizione della protezione umanitaria e tipizzazione dei casi di protezione: limiti e conseguenze*, in F. Curi (cur.), *Il Decreto Salvini. Immigrazione e sicurezza*, Pisa, 2019, 30, on the need for a flexibilization clause.

[74] N. Zorzella, *Editoriale. Il disordine sociale del decreto sicurezza*, in *Diritto, immigrazione e cittadinanza*, 1, 2019.

[75] L. Zanfrini, *Introduzione alla sociologia delle migrazioni*, cit., 107: "it is not irregular immigration that causes undeclared work to grow, but rather the possibility of engaging in undeclared work which attracts irregular immigration".

[76] W. Chiaromonte, *Regolazione del lavoro immigrato e diffusione del lavoro sommerso*, cit.

[77] M. D'Onghia, *op. cit.*, 470-471. In relation to seasonal work, only some forms of mandatory social security and welfare are applied to foreign nationals; family allowances and insurance against involuntary unemployment, contributions for which – in any case due from the employer – are paid to the INPS (National Social Security Institute), and are expressly intended for social security and welfare measures in favour of foreign workers.

[78] M. Ambrosini, *Migrazioni*, Milano, 2017, 54. We need only consider immigrant women employed as domestic workers; controls directed at them have long been abolished.

brings out aspects of the political and social organisation of the host country; it becomes a sort of mirror, because it tells us a lot about our societies.[79]

If this is the situation, we should not be surprised if the number of irregular immigrants continues to grow, so much so that, also as a result of the health emergency, the government has felt the need to introduce an urgent measure calling for a new regularisation. As these foreign workers were unable to leave their homes, certain sectors experienced a crisis and, moreover, the conditions of vulnerability of these persons were exacerbated. Decree-Law no. 34 of 19 May 2020,[80] despite being the result of "arduous mediation between different political visions",[81] laid down rules for a procedure of regularisation of undeclared work in reference to some sectors of activity (agriculture[82], livestock and husbandry, fisheries and aquaculture and activities connected to care and domestic work). This is not the right place to go into the details of the numerous questions and inconsistencies arising from the decree, also in relation to the legislator's declared aim to regularise undeclared work and combat exploitation; here I shall limit myself to criticising the restriction of the field of application to only a few sectors, leaving out, for example, the building, textile and restaurant sectors. It would indeed be desirable to regularise many other situations.

Over the years, choices have been made that have increased the phenomenon of irregularity, rather than reducing it: more elastic legislation, in place of the combination of rigidity and uncertainty, could give rise to virtuous and realistic paths of regularisation, without there being any need to wait for the cyclical "amnesties" that have characterised Italian policy, also because (despite the proclamations) the objective difficulties of repatriating people are well known. Moreover, as has been observed in reference to the people likely to be present in the country illegally, "bandying about the numbers of landings, going back in time and making us believe that 600,000 people have remained hidden somewhere in Italy is a gross falsification";[83] many have entered with a proper entry visa, and then, upon the expiration of their permit, which they were unable to renew, they decided to remain.

Reintroducing a permit for job seekers, facilitating the conversion of other types of residence permits into work permits, strengthening the cooperation

[79] M. Ambrosini, *Migrazioni*, *op. cit.*, 68: *"l'immigrazione irregolare trova sponde all'interno della società ricevente"*.

[80] Art. 103, d.l. 19-5-2020 n. 34 "Urgent measures on health, support to employment and the economy, and social policies related to the COVID-19 epidemiological emergency".

[81] M. Paggi, *La sanatoria ai tempi del coronavirus*, in *Questione giustizia*, sez. *Diritti senza confini*, 28 May 2020.

[82] W. Chiaromonte, *'Cercavamo braccia, sono arrivati uomini'. Il lavoro dei migranti in agricoltura fra sfruttamento e istanze di tutela*, in *Giornale del lavoro e di relazioni industriali*, 2018, 321 f.

[83] M. Ambrosini, *L'invasione immaginaria*, cit., 25-26. A further example of a legislative act that is illegitimate on the one hand and "rhetorical" on the other is the "security decree *bis*", cf. F. Scuto, *Accesso al diritto di asilo e altri limiti costituzionali al respingimento. Sovranità statale e pericoli di allontanamento dalla Costituzione*, in *Diritto, immigrazione e cittadinanza*, 2, 2020, 63 f. See also Court of Cassation, 20 February 2020 n. 6626 of regarding the non-validation of the arrest di Carola Rackete.

agreements with third countries, developing a labour immigration policy at a European level,[84] launching effective resettlement programs,[85] exploiting the possibility offered by Article 25 of the Visa Code, which authorises a Member State to issue a visa on humanitarian grounds, for reasons of national interest or because of international obligations, restoring sufficiently elastic legislation that would enable a permit to be granted to persons who have managed to arrive in our country, but are in a situation of particular vulnerability: these are all measures that would lend greater certainty to the legislative framework and would pursue the objective of regulating entries in observance of international obligations and human rights.

Cecilia Corsi
Dipartimento di Scienze Giuridiche
Università degli studi di Firenze
cecilia.corsi@unifi.it

[84] Regarding the failure to adopt the directive concerning the conditions of entry and residence of non-UE citizens who intend to undertake employment and self-employment (Com (2001), 386 def., of 11July 2001), see L. Calafà, *op. cit.*, 107 f.; C. Favilli, *La politica dell'Unione in materia d'immigrazione e asilo. Carenze strutturali e antagonismo tra gli Stati membri*, in *Quad cost.* 2018, 365 f. and F.L. Gatta, *Vie legali economiche e migrazione ai fini lavorativi: il ritardo della politica comune dell'Ue*, in *Dir. pubbl.*, 2020, 33 f.

[85] Cf. M. Savino, *Le prospettive dell'asilo in Europa*, in *Giornale di diritto amministrativo*, 2018, 557 regarding the necessity of a European permanent resettlement programme, binding for Member States and proportionate to the economic and demographic weight of the EU.