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The Immigration Limbo: Analysis of Migrant Detention Centers in Italy

Navigating the Legal and Ethical Complexities of CPRs and Hotspots

Author: Giorgia Sanino
Supervisor: Professor Caroline Picheral

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Abstract

This thesis explores the legal, political, and social dimensions of immigrant detention centers in Italy, with a focus on Centri di Permanenza e Rimpatrio (CPRs) and hotspots. It examines the evolution of Italy's immigration policies, especially since the Mediterranean migration crisis, and the resultant human rights implications. The study critically analyzes the legal ambiguities and regulatory gaps surrounding these detention facilities, assessing their compliance with the European Convention on Human Rights (ECHR), particularly Articles 3 and 5. The thesis draws on reports and legal sources to evaluate the conditions of detention and the legality of liberty deprivation in these centers. It highlights the ongoing challenges and violations, such as inadequate frameworks for managing migrant flows, and the tension between national security and humanitarian ethics. By reviewing Italian and European legal developments and political influences, the research underscores the need for a balanced approach to immigration that upholds human rights. The study concludes by advocating for clearer regulations and improved conditions in detention centers, emphasizing the emerging concept of the right to hospitality as a potential legal principle.

Tables of acronyms

CAS	Centri di Accoglienza Straordinaria (Extraordinary Reception Centres)
CIE	Centri di Identificazione ed Espulsione dei migranti (Migrant Identification and Expulsion Centers)
CIE	Centri di Identificazione ed Espulsione (Identification and Expulsion Centres)
CILD	Italian Coalition for Civil Liberties and Rights
CJEU	Court of Justice of the European Union
CPA	Centri di Prima Accoglienza (First Reception Centres)
CPR	Centri di Permanenza e Rimpatrio (Permanence and Repatriation Centers)
CPSA	Centri di Primo Soccorso e Accoglienza (First Aid and Reception Centres)
CPT	Centri di Permanenza Temporanea (Temporary Residence Centres)
CRC	Convention on the Rights of the Child
DL	Decree-Law
DR	Dublin Regulation
EASO	European Asylum Support Office
ECA	European Court of Auditors
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GIEM	International Group of Migration Experts
IDC	Immigration Detention Centers
IPA	International Protection Act
IRC	Reception and Identification Centers
NGO	Non-governmental organization
SAI	Sistema di Accoglienza e Integrazione (Reception and Integration System)
SAR	Search and rescue
SPO	Standard Operating Procedures
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

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1. Introduction

In recent decades, Italy has played an increasing and more prominent role in managing migration across the Mediterranean Sea and into the European Union. The country has emerged as a crucial center for migration flows, given its geographic location close to the African coast and its status as an external border of the union. The challenges involved in this situation are considerable, but it is important to stress that taking action to end the ongoing human tragedy in the Mediterranean, including sharing responsibility for ensuring adequate rescue capacity and relocation of rescued people, is a shared European responsibility.

In the past decade, when migration flows have increased disproportionately, Italy being at the forefront has taken the lead in piloting reception and rescue strategies. In contrast, with their different interests and approaches toward migration, EU member states, have demonstrated a high level of disunity and divisions. It has been observed that since 2015, the "duty of care" through search and rescue (SAR) operations has struggled to emerge as the prevailing approach to be adopted at the European level[1]. However, an increasing number of SAR operations were conducted in those years by commercial vessels and EU operations such as "*Triton*" or "*Mare Nostrum*", before becoming a role mainly played by NGOs. In fact, to cope with the ongoing state of humanitarian emergency in the Channel of Sicily due to the extraordinary influx of migrants, Italy launched the operation called "*Mare Nostrum*" on October 18th, 2013, mainly for humanitarian purposes. This operation ended on October 31st, 2014, to coincide with the start of the new operation called "*Triton",* which, however, had shown a shift of objectives, as it was meant to help Italy manage the external maritime border[2]. After the extraordinary number of arrivals (more than 60,000 in Italy alone) caused by the Arab Springs, numerous arrivals continued in the years of the "Mediterranean migrant crisis" (2014-2017), during which there were about 650,000 arrivals of migrants by sea mainly from Africa but also from Syria, Afghanistan, Pakistan, Iraq, and Iran[3]. The operations, implemented through the personnel and

[1] Stefania Panebianco, 'The Mare Nostrum Operation and the SAR Approach: The Italian Response to Address the Mediterranean Migration Crisis', *EUMedEA Online Working Paper Series* (University of Catania, 2016).
[2] FRONTEX, 'L'UE Lance l'opération "Triton" En Méditerranée Pour Renforcer Les Frontières Extérieures et Venir En Aide à l'Italie Pour Faire Face à l'afflux de Migrants Sur Ses Côtes, Tandis Que Rome Annonce La Fin de "Mare Nostrum" - Europaforum Luxembourg - Octobre 2014', accessed 29 June 2024,
[3] Franco Pittau, 'Politiche dell'immigrazione: la lezione della "Prima Repubblica" | Dialoghi Mediterranei', Dialoghi Mediterranei, n.46 (1 November 2020).

air and naval assets of the Marina Militare (the Italian Navy), the Carabinieri, the Aeronautica Militare (the Italian Air Force), the Port Authority, the Guardia di Finanza, and the staff of the Italian Red Cross, aim to ensure the defense of life at sea and to bring to justice those who profit from the illegal trafficking of migrants[4]. Operation "*Mare Nostrum*" and Operation "*Triton*" act together with the activities of Frontex i.e., the European Border and Coast Guard Agency, founded in 2004, to support EU Member States and Schengen-associated countries in the management of the EU's external borders and the fight against cross-border crime[5]; and also with the activities of Eurosur i.e., a framework for information exchange and cooperation to prevent cross-border crime, to prevent irregular migration, and to contribute to protecting migrants' lives[6]. In 2015, to pursue security policies, the EU launched a military operation called Operation Sophia designed to dismantle the networks of smugglers and, end up being more involved in rescues. However, a 2019 ECA (the European Court of Auditors) special report found that Frontex's support to member states/Schengen-associated countries in the fight against illegal immigration and cross-border crime was not effective enough. It was found that although there is a functional framework for the exchange of information to support the fight against illegal immigration, it has not functioned adequately enough to provide accurate, comprehensive, and up-to-date situational awareness of the EU's external borders. Additionally, in 2019 it was decided to withdraw all the European naval resources; the reduction in search and rescue capabilities has been criticized since then by both the UNHCR and the European Parliament[7]. The lack of institutionalization of an adequate framework for exchanging information on cross-border crime significantly affects the ability of Frontex and member states to monitor external borders and, the insufficiency of resources for joint operations, limits the effectiveness of activities[8].

It is interesting to observe how the free circulation and the creation of the Schengen area, considered one of the biggest achievements of the EU, guarantees free movement to more than 425 million EU citizens and to non-EU nationals visiting as tourists or living in the EU[9], but the same treatment is not guaranteed to immigrants and asylum seekers. The Schengen provisions abolished checks at the EU's internal borders and relocated border enforcement to the external border and other

[4] 'Mare Nostrum - Marina Militare', accessed 7 June 2024.
[5] 'Frontex | European Union Agency', accessed 7 June 2024.
[6] European Commission, 'Eurosur - European Commission', accessed 7 June 2024,
[7] 'European Parliament Resolution of 12 April 2016 on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration (2015/2095(INI))' (2016).
[8] 'Special Report No 24/2019: Asylum, Relocation and Return of Migrants: Time to Step up Action to Address Disparities between Objectives and Results', European Court of Auditors, 11 June 2020.
[9] 'Schengen Area - European Commission', accessed 11 June 2024.

ports of entry, but the codified Schengen Borders Code[10] leaves Member States the capability to reintroduce them exceptionally temporarily if there is a serious threat to public policy or internal security. For years, internal border controls in the Schengen Area were temporarily reinstated only for specific events like political meetings or sports events. However, starting in 2015, Schengen members expanded their use of these controls in response to the refugee influx. Attempts to return to normality have failed, as measures were extended beyond their maximum duration by changing legal justifications[11]. Some countries, currently, benefit from this exception with the reason for controlling and intercepting irregular migration[12]. The Dublin Regulation (DR), signed by EU countries, mandates that refugees are entitled to enter and remain in the first, and only in the first, safe country they enter, without having the possibility to choose, even if they would prefer a different one, and eliminates of non-authorized secondary movements[13]. However, the Dublin system is under strain due to significant national differences in reception policies and living standards, including variations in granting asylum status and access to welfare and the labor market. Italy, being at the forefront, compared to many other member countries, receives many immigrants, who often would like to reach a different country and apply there, but are not allowed to. Despite the intention to create comparable conditions across Europe, national differences persist, factors such as geographical location, immigration policies, asylum processes, welfare rights, integration support, and labor market access create a scale of attractiveness for migrants, directly affecting their aspirations. The Dublin Regulation significantly impacts migrants in Italy, tying them to the country unless they risk moving elsewhere, which often leads to wasted resources[14].

Today, European operations and immigration management lack state-to-state cooperation and community appetite to deal with migrant management, and this deficiency also affects the Italian management system. Yet, as pointed out by the Council of Europe's Commissioner for Human Rights, Dunja Mijatović, in her latest report on Italy, "the absence of a European search and rescue mission does not exempt Italy from its obligations under international and maritime law. Italian authorities

[10] 'Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the Rules Governing the Movement of Persons across Borders (Schengen Borders Code) (Codification)', 077 OJ L § (2016).
[11] Fabian Gülzau, 'A "New Normal" for the Schengen Area. When, Where and Why Member States Reintroduce Temporary Border Controls?', *Journal of Borderlands Studies* 38, no. 5 (3 September 2023): 785–803.
[12] European Commission, 'Temporary Reintroduction of Border Control - European Commission', accessed 11 June 2024.
[13] Djordje Sredanovic, 'Defining Borders on Land and Sea: Italy, the European Union and Mediterranean Refugees, 2011–2015', in *Mapping Migration, Identity, and Space*, ed. Tabea Linhard and Timothy H. Parsons (Cham: Springer International Publishing, 2019), 233–56.
[14] Jan-Paul Brekke, 'Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation | Journal of Refugee Studies | Oxford Academic', accessed 1 June 2024.

must ensure sufficient and adequate search and rescue capacity to provide timely and effective assistance to those in distress at sea, including refugees, asylum seekers, and migrants."[15].

Due to the mentioned policies and the perceived lack of support from the EU, Italy positioned strategically along key migration routes and inherently designated as a reception state, has faced increasing difficulties in managing migration flows over the years. This has led to increasingly heated debates on the issue. The current debate on immigration is shot through with a rupture that evokes an ethical-political dilemma, the opposition between an ethics of welcome and an ethics of security: the universalist view, which dominates the academic discourse and advocates equal legal treatment between citizens and foreigners, is countered by nationalist rhetoric, which finds support in the political discourse and claims a clear divarication of status between the citizen and the foreigner-migrant[16]. Thus, the binomial "migration crisis" has developed in recent years, leading to the implementation, and spread of security and anti-immigration policies by the European Union and Italian governments, and with the internal political changes, Italy has hardened its position more and more[17]. Starting with the migration crisis that has hit Italy since 2011, restrictions are also imposed on the right to asylum, culminating in the enactment of Decree-Law No. 13 of February 17, 2017, on "Urgent provisions for the acceleration of international protection proceedings, as well as for the fight against illegal immigration" which was converted into law on April 13, 2017, and published in the Gazzetta Ufficiale[18] on April 18. The measure advanced by Interior Minister Minniti[19] includes a package of measures aimed at strengthening the legislation on the repression and control of migration in Italy, making some changes, and allowing the reopening and increase in the number of "Centri di Identificazione ed Espulsione dei migranti" (CIE) (Migrant Identification and Expulsion Centers) to strengthen expulsion measures and the simplification of identification measures for migrants when they land on Italian coasts[20]. As various legislatures and governments have changed, Italy's migration policies have become more and more stringent. During the first Conte government, the party Lega kept its election promise to refuse new landings on Italian shores. Interior Minister Salvini introduced

[15] Council of Europe-Commissioner for Human Dunja Mijatović, 'Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic; Report Following Her Visit to Italy from 19 to 23 June 2023 [CommHR(2023)37]', 21 November 2023, Italy.
[16] Giorgio Gomel, 'Migrazioni: Conflitti Fra Diritti e Disunione Dell'Europa ? | CeSPI', accessed 11 June 2024, https://www.cespi.it/it/eventi-attualita/dibattiti/riflessione-sul-futuro-dellunione-europea-0/migrazioni-conflitti-fra.
[17] Mario Savino, 'Il diritto dell'immigrazione: quattro sfide', *IRPA*, accessed 1 June 2024.
[18] The Gazzetta Ufficiale of the Italian Republic is the official source of knowledge of the regulations in force in Italy and an instrument for the circulation, information and officialization of legislative texts, public and private acts.
[19] Marco Minniti was minister of the interior from December 12, 2016, to June 1, 2018, in the Gentiloni government.
[20] 'DECRETO-LEGGE 17 febbraio 2017, n. 13', Pub. L. No. (Convertito Legge 13 Aprile 2017, n. 46, Gazzetta Ufficiale, accessed 12 June 2024.

Security Decree No. 113, which revoked humanitarian protection and limited residence permits to specific cases only[21]. Subsequently, the 2019 "Decreto Sicurezza bis"[22] allowed the banning of ships for reasons of public order. Later, the second Conte government amended the legislation with Decree No. 130 of 2020[23], reducing detention time in return centers and reintroducing the Reception and Integration System ("*Sistema di accoglienza e integrazione*", SAI) for asylum seekers and unaccompanied minors. Finally, the current government of Giorgia Meloni, introduced a Flows Decree (*Decreto Flussi*) to manage the legal entry of foreign workers and tighten the conditions for issuing residence permits. It also increased the contingent of the armed forces and financed the purchase of new equipment for the surveillance and control of landings[24].

The immigration situation in EU, but particularly in Italy, is very complex and it concerns different levels of society and different moments of the immigrant's journey. Italy receives every year tens of thousands of immigrants, the UNHCR sea arrivals dashboard marks that only in the first five months of 2024, 22,787 persons arrived at the Italian coast of which 19.5% were children, and in 2023 were 157,651[25]. When people arrive at the coast, normally there is a procedure to follow to better manage the situation. The migrant reception system in Italy has undergone significant changes in recent years. Since the 1990s, various decrees have been enacted to shape the process of migrant reception in the country. Generally, the system for receiving individuals who enter Italy without a valid visa or residence permit is structured across several levels: entry, initial reception, and secondary reception. In the case of unaccompanied foreign minors, a distinct approach and specific procedures are implemented to ensure their care and proper integration[26]. Those arriving by sea, near the places of arrival, are received in first aid and reception facilities called hotspots (formerly CPSA, *Centri di Primo Soccorso e Accoglienza*) where people undergo health checks and screening and identification and photo identification procedures. Once this phase is over, those who have expressed a willingness to apply for international protection are referred to Centers of First Reception (*Centri di Prima Accoglienza* - CPA) or Extraordinary Reception Centers (*Centri di Accoglienza Straordinaria* - CAS). Finally, asylum seekers and holders of international protection or other forms of protection are placed in the Reception and Integration System (*Sistema di Accoglienza e Integrazione* - SAI), while those who enter the Italian territory irregularly and do not apply for

[21] 'DECRETO-LEGGE 4 ottobre 2018, n. 113', Gazzetta Ufficiale §, accessed 12 June 2024.
[22] 'DECRETO-LEGGE 14 giugno 2019, n. 53', Gazzetta Ufficiale §, accessed 12 June 2024.
[23] 'DECRETO-LEGGE 21 ottobre 2020, n. 130', accessed 12 June 2024.
[24] Fausto Carioti, 'Piantedosi: a settembre un decreto per garantire più sicurezza, con rimpatri più veloci per i soggetti pericolosi', Ministero dell'Interno, accessed 12 June 2024.
[25] ONHCR, 'Mediterranean Situation, Sea Arrivals in 2024 in Italy', accessed 12 June 2024.
[26] 'Sistema di accoglienza sul territorio', Ministero dell'Interno, accessed 13 June 2024.

international protection or have received a denial following the application are placed in the Permanence and Repatriation Centers (*Centri di Permanenza e Rimpatrio* - CPR, formerly CIE)[27].

1.1 Motivation and Research Objective

All the mentioned facilities are part of the multilevel system of migrant reception in the territory designed for immigrants' flow management, they all have different nature and different objectives, but they all should proceed under national and international law and respect the people's rights even if they are not citizen of the country or are in an unfavorable situation. The area of fundamental rights of foreigners constitutes irrefutable proof of the inadequacy of national, European and supranational legal norms to address the needs of those who are seeking more dignified living and working conditions than those in their countries of origin. An example is when the migrants found themselves in the Permanence and Repatriation Centers (CPR) which, in fact, are places of detention for foreign nationals awaiting the execution of expulsion orders[28]. The detention of migrants consists of a deprivation of their liberty, usually of an administrative nature, due to an alleged violation of the conditions of their entry, stay, or residence in the receiving country. Detention of migrants is one of the tools that states can use to manage immigration; each sovereign state has the right and duty to control its borders and set national migration policies. Although they enjoy broad autonomy in managing migration, states must comply with a set of human rights norms and standards imposed by the international organizations to which they belong. Places of migrant detention vary among states and the purposes of detention. Among them, the recently and controversially introduced hotspots are border locations along the coasts of Greece and Italy, created by the European Union to deal with the 2015 "migration crisis". Although the number of migrants arriving in Europe has decreased between 2017 and 2021[29], the use of hotspots and detention practices at European borders has not ceased. On the contrary, recent statistics show that European governments are intensifying mechanisms for detaining foreigners. By detaining and isolating migrants at borders, where asylum claims are processed or return procedures initiated, European policymakers are responding to the growing feeling of aversion to immigration[30]. However, the management of migration flows at borders and

[27] Camera dei Deputati, 'Diritto di asilo e accoglienza dei migranti sul territorio - Cittadinanza e immigrazione', Documentazione parlamentare, 24 May 2024.
[28] 'DECRETO LEGISLATIVO 25 Luglio 1998, n. 286 - Normattiva', accessed 19 June 2024.
[29] 'Statistics on Migration to Europe - European Commission', accessed 29 June 2024.
[30] Kristín Loftsdóttir, 'Majcher, Izabella, Flynn, Michael and Grange, Mariette. 2020. Immigration Detention in the European Union: In the Shadow of the "Crisis". Cham: Springer. 480 Pp', *Nordic Journal of Migration Research* 11 (22 March 2021): 102–4.

treatment in repatriation centers raise serious concerns about respect for human rights. This approach involves generalized forms of detention for people who are often only trying to exercise their right to seek asylum and who have not committed crimes, thus violating international obligations on asylum and personal freedom. The increase in migrant detention has not been accompanied by a corresponding increase in substantive and procedural safeguards, such as legal bases for detention, information tools, and legal mechanisms to challenge deprivation of liberty.

The continuous riots, deaths, acts of self-harm, suicides, and daily harassment and abuse, all amply documented by the Guarantor of Persons Deprived of Liberty, associations, and activists in numerous reports and publications, confirm that the CPRs and hotspots are wholly inadequate, both structurally and functionally, to guarantee respect for fundamental rights and unnecessarily wasteful. Considering the problematic nature of the increasingly widespread use of the instrument of detention in the management of migration flows, it seems imperative to examine new trends in migration management through the critical lens of respect for human rights. This work aims to show how the absence or inadequacy of regalements and laws impacts the guarantee of human rights for the people detained in the CPR and in the hotspot on the Italian territory. It is proposed an analysis of the existence of a juridical ambiguity of these centres and the consequences of it, by focusing on the respect of articles 3, 5, and 8 of the European Convention on Human Rights.

1.2 Methodology and Structure

This thesis has legal, political, and social perspectives. Legal because it analyses the international Human Rights Law, specifically the rights to liberty and security (Article 5), the prohibition of torture or degrading treatment (Article 3), and the right to respect for private and family life (Article 8) provided by the European Convention on Human Rights (ECHR) and various European Court of Human Rights decisions. The political perspective is justified in examining the Italian political evolution and its influence on migration flow management and public opinion. Finally, the social perspective is founded in analyzing the challenges *de facto* immigrants face in their access in the Reception and Integration System and in the debating about the new idea of the right to hospitality. Due to the time constraints for developing and completing this academic work, qualitative data was not generated but instead drawn from primary research sources, particularly reports. Additionally, the thesis relies on legal sources and secondary literature on the topic. The research question will be answered by using the following structure.

Chapter Two aims to elucidate the concept of hotspots, examining the violations occurring within them and highlighting the absence of clear legal frameworks governing their operation. Initially approved by the European Commission, hotspots have transitioned from mere border entry points into facilities lacking detailed regulations. By comparing hotspots with Centri di Permanenza per il Rimpatrio (CPRs), which have established legal bases, this chapter will delve into their creation, operation, and management. The focus will be on the ambiguity and regulatory gaps surrounding hotspots in contrast to the more structured CPRs. The Third Chapter aims to delve into the juridical ambiguities surrounding hotspots and CPR and examine their significant consequences. Building on the previous chapter's exploration of these ambiguities, this chapter will focus on the impacts on human rights, particularly under Articles 5, 3, and 8 of the European Convention on Human Rights (ECHR). It will be structured into two subchapters: the first will analyze the legality of the deprivation of liberty (Article 5 ECHR), and the second will evaluate the conditions of detention (Articles 3 and 8 ECHR). Through this approach, the chapter will provide a comprehensive understanding of how the absence of clear legal frameworks affects the rights and treatment of migrants in hotspots and CPRs. Finally, the last Chapter explores the evolution of Italian litigation before the European Court of Human Rights (ECtHR) and its broader implications. It analyzes the interplay between internal pressures from Italian human rights authorities and external pressures from the ECtHR, highlighting how these forces drive legal and policy changes. Examining parliamentary reports and Italian legal developments, the chapter assesses the impact of political power relations and the complexity of policy implementation in a more decentralized state. Additionally, it addresses the emerging concept of the right to hospitality and its challenges in becoming a recognized legal principle.

2. Immigrant Detention Centers: Hotspots and CPRs

The multi-faceted system of immigration detention exemplifies the problematic intersection between immigration and criminal law, forming a critical part of today's punitive framework influenced by populism, symbolism, and security demands. This systematic fusion of immigration and security concerns has been a consistent feature of migration policies over the past decade, often leading to detention becoming a primary tool for managing migration flows. Modern criminal policies on illegal immigration, characterized by hostile social and political attitudes towards immigrants, primarily address societal security needs, often at the expense of the freedoms and rights of immigrants. The phenomenon of 'crimmigration' describes this intertwining of criminalization and administrative efficiency aimed at excluding undesirable foreigners from many Western countries[31]. Within this framework, immigrants face various political-criminal strategies, including imposing criminal penalties for immigration law violations, combining administrative consequences with criminal convictions, and implementing measures that restrict personal liberty. The administrative detention system for migrants falls within this context, where the overlap between state penal authority and liberty-restricting measures complicates the delicate balance between managing migration orderly and upholding fundamental human rights[32].

The detention of foreigners subject to return is regulated by Directive 2008/115/EC (Return Directive)[33], which allows member states to detain illegally staying third-country nationals to prepare their return if less coercive measures are not applicable. Detention may be lawful if there are flight risks or obstacles to return, or in other specific cases as if the immigrant is considered to be a threat to public order[34]. The Directive requires detention to last the minimum necessary and no longer than six months, extendable up to 18 months in specific cases. However, the discretion granted to states raises concerns about the punitive nature of detention. Detention conditions must ensure respect for human dignity and provide for special facilities other than prisons. The Reception Directive

[31] Licia Siracusa, 'Sulle Tracce Della Crimmigration in Europa: L'espulsione Dello Straniero in Un Confronto Fra Spagna, Italia e Francia' RIVISTA TRIMESTRALE DI DIRITTO PENALE DELL'ECONOMIA(1-2/2019 (n.d.): 273–325.
[32] Filomena Pisconti, 'The Detention of Migrants and the Debate on Criminality, Deceitful Descriptions and Underlying Guarantees', vol. Criminal Justice in the Prism of Human Rights, 2023, 167–77.
[33] 'Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals', 348 OJ L § (2008).
[34] Association Avocats pour la défense des droits des étrangers (ADDE) e a contro Ministre de l'Intérieur, No. Causa C-143/22 (Corte di giustizia 21 September 2023).

2013/33[35], concerning asylum seekers, introduces more detailed rules than its 2003 predecessor. It claims that Asylum seekers should not be detained solely for having applied for international protection, but detention should be a measure of last resort. This directive guarantees the right to free movement unless exceptions are made and regulating the circumstances of detention. It stipulates that grounds for the detention of asylum seekers include verifying the applicant's identity or nationality, determining elements of the asylum application that cannot be obtained without detention, addressing threats to national security or public order, preventing absconding to ensure compliance with a removal order, and awaiting transfer to another Member State under the Dublin Regulation. The guarantees laid down in Directive 2013/33 also apply to detentions based on the Dublin Regulation because both contexts involve the detention of asylum seekers and migrants during the process of examining their situation. The Directive aims to protect the fundamental rights of detained asylum seekers, regardless of the specific reason for their detention, by ensuring that they are treated in a humane and dignified manner and that detention conditions meet the minimum standards set to ensure respect for their dignity and fundamental rights. The Dublin III Regulation[36] stipulates that transfer detention can only occur where there is a significant risk of absconding and must be proportional and time limited. Although there are safeguards for vulnerable people, the overall system has critical issues related to prolonged detention and lack of uniformity in enforcement rules.

The deceptive use of terminology by States masks the strict essence of measures that effectively deprive individuals of their liberty, solely based on their status as irregular migrants or asylum seekers, or for administrative reasons related to managing migration flows. Detention, akin to other custodial measures, serves as a direct response to domestic security concerns, addressing both the perceived criminal risk posed by migrants and the administrative imperative of state control over migration. In the legal sphere, the term "detention" is strategically used to conceal the measure's impact on personal freedom, distancing it from criminal law considerations. In Italy, terminology such as "*trattenimento*" instead of "detainment" in immigration laws reflects an attempt to mitigate the perception of detention power, complicating interpretations within the criminal law sphere. The conceptual distinction between restraint and deprivation of liberty is crucial for analyzing atypical

[35] 'Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying down Standards for the Reception of Applicants for International Protection (Recast)', 180 OJ L § (2013).
[36] 'Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast)', 180 OJ L § (2013).

forms of administrative detention, which occur in unconventional coercive settings not typically recognized as places of confinement.

The Permanence and Repatriation Centers (*Centri di Permanenza e Rimpatrio* - CPR) and hotspots persist as places of detention where there are no constitutional guarantees and basic human rights are violated daily. The 2024 opens with new assaults on detainees, new government regulations to punish those who riot in the Centers for Return, and further condemnations by the European Court of Human Rights (ECtHR). This chapter aims to explain the legal bases of these centers and highlight gaps in the legislation, bringing evidence of violations from numerous reports and publications by the Guarantor of Persons Deprived of Liberty, associations, and activists.

2.1 Legal Bases

2.1.1 CPR – Centri di Permanenza e Rimpatrio

The deprivation of freedom of migrants in Permanence and Repatriation Centers remains a problematic issue, which challenges different levels and heterogeneous responsibilities: legislative deficiencies, regulatory gaps, structural criticalities, systematic opacities, and management inadequacies. The establishment and evolution of Immigration Detention Centers (IDCs) in Italy have been intricately tied to the country's immigration policies, reflecting a series of legislative amendments and adaptations over the years. Initially introduced in 1998 under the name Centri di Permanenza Temporanea (CPT), these facilities were later rebranded as Centri di Identificazione ed Espulsione (CIE) in 2002, and finally renamed Centri di Permanenza per i Rimpatri (CPR) in 2017.

In 1998, Italy revised its national immigration regulations with Legislative Decree 286/98, known as the Turco-Napolitano Law[37] from the names of then Ministers of Social Solidarity Livia Turco and Interior Giorgio Napolitano. The legislation replaced the previous law with numerous changes regarding the rules for immigration to Italy. The same implementing regulation assigned the public security authority the task of regulating the manner of detention, ensuring safety and order within the facility, and the provision of essential services to guests, thus introducing detention centers for immigrants for the first time in the country. These centers serve as administrative detention facilities where non-EU citizens lacking valid residency permits or subject to expulsion orders are confined. The regulatory structure of IDCs is outlined in the Consolidated Immigration Act

[37] 'DECRETO LEGISLATIVO 25 luglio 1998, n. 286' (1998).

(Legislative Decree 286/1998), in article 14.1 specifying the conditions under which individuals can be detained pending deportation:

> "*When deportation cannot be carried out with immediacy by accompaniment to the border or refoulement, because it is necessary to proceed to the relief of the alien, to additional ascertainments as to his identity or nationality, or the acquisition of travel documents, or because of the unavailability of carrier or other means of transport suitable, the Questore shall order that the alien be detained for the time strictly necessary at the nearest center of permanence temporary stay and assistance nearest, among those identified or established by decree of the Minister of the Interior, in consultation with the Ministers of Social Solidarity and of the Treasury, Budget and of economic planning."*[38]

The legal framework governing these facilities has undergone multiple amendments, the factor that changed more often and always created public debate was the maximum detention period. In fact, since their establishment, detention centers in Italy have been a source of debate among political forces, human rights activists, and legal experts on immigration issues. In 2002, the Bossi-Fini[39] law that renamed CPTs in CIE, it was extended the period of detention from 30 to 60 days, which was extended to 180 days by the fourth Berlusconi government. In 2017, the Gentiloni government, Interior Minister Marco Minniti, had increased the capacity of the CIEs, which until then could accommodate 400 people. Recent legislative changes, such as those introduced by the Lamorgese[40] Decree in 2020 and subsequent reforms under the Meloni government[41], have further impacted the operation and scope of IDCs. These include provisions for extended detention periods based on nationality-specific agreements, highlighting a growing emphasis on bilateral cooperation for deportation purposes. Decree-Law No. 130 of Oct. 21, 2020, the so-called Lamorgese Decree[42], amended some provisions, including reducing the maximum detention period from 180 to 90 days,

[38] DECRETO LEGISLATIVO 25 luglio 1998, n. 286 - Normattiva.
[39] Law No. 189 of July 30, 2002, better known as the Bossi-Fini law, is a piece of legislation of the Italian Republic regulating immigration, so called by its first signatories Gianfranco Fini and Umberto Bossi, who in the Berlusconi II government held the positions of vice-president of the Council of Ministers and minister for Institutional Reforms and Devolution, respectively.
[40] Luciana Lamorgese, from September 5, 2019, to October 22, 2022, served as minister of the interior in the Conte II (2019-2021) and Draghi (2021-2022) governments.
[41] The Meloni government is the 68th executive of the Italian Republic in office since October 22, 2022. It is supported by the component parties of the center-right coalition and has as its first minister Giorgia Meloni, leader of the Fratelli d'Italia party that emerged victorious in the 2022 general election.
[42] DECRETO-LEGGE 21 ottobre 2020, n. 130.

but extendable by an additional 30 days if the foreigner is a citizen of a country with which Italy has signed repatriation agreements. Based on these agreements, an even more pronounced element is introduced with respect to the ethnicity of foreign nationals, giving preference to the detention of those from third countries with which agreements on cooperation or other arrangements on repatriation are in force. The most obvious example is the agreement with Tunisia and the mechanism for identification upon disembarkation, detention and subsequent repatriation aimed at Tunisian nationals. New provisions, however, intervened with the Meloni government, which imparted a new security and repressive grip on migration and asylum seekers first with DL March 10, 2023, No. 20[43] (so-called Cutro Decree[44]) converted into law, then with Decree Sept. 14, 2023, by Interior Ministry Piantedosi[45], and finally with DL No. 124 Art. 20 and 21 of Sept. 19, 2023: a sequel of regulations that brought back the detention period to 18 months (initial 6 months, followed by 3-month extensions)and re-proposed the dastardly hypothesis of realizing "at least one CPR in each region,". In 2022, 6,383 people were detained in Centers, but only 3,154 were actually deported. In total, there were 3,916 deportations. The length of stay, extended to 18 months by the current decree, has proven ineffective in improving deportation rates. Historically, the deportation rate has remained around 50%, regardless of whether the stay was 18 months, 90 days, or 180 days. Successful deportations depend on factors unrelated to detention duration, such as repatriation agreements with third countries and the safety of these countries for returnees. There is no evidence that extending detention to 18 months will increase deportations; rather, it often results in long-term, unjustified detention for many individuals, without any prospect of deportation[46]. A major problem is that entry and stay in CPRs are not regulated by what is called "primary sources of law," i.e., laws or acts having the force of law (such as decree-laws, for example), but are determined by "secondary sources" such as administrative regulations issued by ministries, which have wider mesh. The most delusional proposal was to expand administrative detention in new centers (CPRI) to those asylum seekers from so-called "safe third countries" who do not have economic resources equal to 4,938 euros. *De facto* asking immigrants to pay for their freedom, an amount of money which the government estimates would be enough to

[43] 'TESTO COORDINATO DEL DECRETO-LEGGE 10 marzo 2023, n. 20', accessed 22 June 2024.
[44] The Cutro decree, so called because it was passed by the Council of Ministers that met in Cutro after the massacre of migrants that occurred a few meters from the beach of Cutro (Crotone), where on February 26 more than one hundred migrants lost their lives in a shipwreck caused by the collapse of the boat, coming from Turkey, that was transporting them. The government's response was to introduce, a few days later, a decree that places further obstacles in the path of asylum seekers.
[45] Matteo Piantedosi is minister of the interior in the Meloni government from Oct. 22, 2022.
[46] Antigone, CILD, 'Commento al Decreto-Legge N. 124 DEL 2023, Recante Disposizioni urgenti in materia di politiche di coesione, per il rilancio dell'economia nelle aree del mezzogiono del paese, nonché in materia di immigrazione.', accessed 22 June 2024.

cover four weeks' stay, including adequate housing, minimum livelihood, and repatriation costs[47]. This provision has already been found illegitimate by the court by disapplying it for three Tunisian asylum seekers[48].

Despite efforts to ensure humane treatment and respect for detainees' dignity, concerns persist regarding the coercive nature of these facilities, limiting detainees' rights to legal defense and restricting visits. In addition to the legal and operational aspects, IDCs have faced scrutiny over their humanitarian impact. Regardless measures aimed at safeguarding detainees' rights, including provisions for access to legal counsel and complaints mechanisms, challenges persist in ensuring consistent adherence to these standards across all centers. Moreover, demographic trends within IDCs reflect broader migration patterns and geopolitical dynamics, with significant numbers of detainees originating from countries like Tunisia, reflecting bilateral agreements facilitating deportation procedures.

Initially, the management of the centers was entrusted to the Red Cross, but it was later privatized, involving every aspect of internal management: from health care to regulatory information services and language mediation. Moreover, even the few regulations that assign tasks to public authorities are often not complied with. The regulations on detention, which are unclear and contained in secondary sources, leave ample room for discretionary practices and have a high level of ineffectiveness. In the process of privatization, two perverse trends have emerged: the minimization of costs by the public sector and its unaccountability; and the pursuit of profit maximization by private parties. These two trends are closely interrelated. Today, in fact, management of IDCs typically involves private entities contracted by the Prefect, with oversight from law enforcement agencies. Administrative detention has become a highly profitable sector in our country as well, marked by two concerning trends: on one side, companies managing the centers aim to maximize their profits; and

[47] Pagella Politica, 'La cauzione da 5 mila euro per i migranti "ce la chiede" l'Europa?', *Pagella Politica*, accessed 22 June 2024.

[48] The recent decree by the Meloni government has been deemed illegitimate by Judge Iolanda Apostolico of the Catania court. In a ruling issued on September 29, the judge ordered the release of a young Tunisian who had challenged his detention, which occurred after his mid-September arrival in Lampedusa and subsequent transfer to the Pozzallo detention center. The judge determined that the decree contradicts both European Union regulations and the Italian Constitution. According to the ruling, the requirement for migrants to pay a five-thousand-euro deposit without the possibility of assistance from third parties, violates Articles 8 and 9 of the EU's 2013 Reception Directive. Article 8 prohibits the detention of asylum seekers solely on the basis of seeking asylum, while Article 9 mandates that detention should be as short as possible. Furthermore, the court found that the decree runs counter to the third paragraph of Article 10 of the Italian Constitution, which guarantees the right to asylum to foreigners whose exercise of democratic freedoms is hindered in their country of origin. According to the judge, the government should have conducted a "case-by-case" evaluation of the requests and conditions of migrants, an individual analysis that was not carried out for the four migrants involved in the case.

on the other, the state persistently seeks to minimize costs, increasingly distancing itself from the responsibility of managing these facilities. [49].

The facilities are strategically dispersed across Italy to facilitate efficient deportation processes and are subject to periodic operational and regulatory updates: as of February 2023, ten CPRs (Milan, Turin, Gradisca d'Isonzo, Rome, Palazzo San Gervasio, Macomer, Brindisi-Restinco, Bari-Palese, Trapani-Milo, and Caltanissetta-Pian del Lago), with a theoretical capacity of about 1,105 places, were active. However, in March 2023, the Turin CPR (capacity 144 places) was closed, following protests staged by detainees against the conditions of detention, which made the facility completely unfit for use[50]. As seen, while CPRs play a crucial role in Italy's migration management strategy, their evolution underscores ongoing debates surrounding migrants' rights and the humanitarian implications of administrative detention. Legislative adjustments continue to shape the landscape of migration policy, balancing security imperatives with international human rights standards. As Italy navigates these complexities, ongoing dialogue and scrutiny remain essential in fostering a balanced approach to immigration governance[51].

As observed, the “Centri di Permanenza per i Rimpatri” (CPR) were established over 25 years ago in Italy as detention centers for irregular immigrants. Despite the numerous issues reported within these facilities, the law mandates this form of detention, referred to as *trattenimento* (withholding); they are the only officially recognized detention facilities in the country. Unfortunately, CPRs are not the only locations where immigrants face detention. Various reports and organizations have documented violations of freedom in hotspots as well, facilities legally not designed for detention.

2.1.1 Hotspots

The "hotspot" approach, announced by the European Commission in its 2015 European Agenda on Migration, was one of the EU's priority tools to address the "unprecedented" migration crisis that the European Union (EU) was experiencing. The term "hotspot" was not new to EU policy discourse. It had been used to designate various critical border sites targeted for security, military, and humanitarian interventions. Before its deployment in migration contexts, "hotspots" referred to

[49] Antigone, CILD, ‘Commento al Decreto-Legge N. 124 DEL 2023, Recante Disposizioni urgenti in materia di politiche di coesione, per il rilancio dell’economia nelle aree del mezzogiono del paese, nonché in materia di immigrazione.’
[50] CILD staff, ‘L’affare CPR, Un Sistema Che Fa Gola a Detrimento Dei Diritti - Cild.Eu’, June 2023.
[51] Antigone, CILD, ‘Commento al Decreto-Legge N. 124 DEL 2023, Recante Disposizioni urgenti in materia di politiche di coesione, per il rilancio dell’economia nelle aree del mezzogiono del paese, nonché in materia di immigrazione.’

areas of illicit transfers of people and goods and smuggling activities[52]. To understand the development of the Hotspot System, it is essential to explore its historical and political background, as well as the internal tensions among Member States, the EU, and various European agencies; different political and legal pathways led to the establishment of hotspots: migration smuggling hubs, asylum seeker hosting systems, and Member States' resistance to EU identification standards. For instance, the 2012 Frontex Risk Analysis described the Eastern Mediterranean route as a significant hotspot for illegal entries into the EU, contributing to the securitization narrative surrounding hotspots; this underscored the security-centric approach of the hotspot concept[53]. Italy's 2014 restructuring of its asylum seeker reception system, including the creation of temporary reception centers, also influenced the EU's hotspot approach, serving as a filter for migrant access to the Italian hosting system. Furthermore, friction between Greece, Italy, and the EU regarding migrant identification procedures highlighted the EU's effort to enforce compliance with identification standards through the hotspot system[54].

Established in the latter part of 2015, the hotspot approach created a common platform for EU agencies—namely, the European Asylum Support Office (EASO), Frontex, Eurojust, and Europol—to intervene in frontline Member States facing specific and disproportionate migratory pressures rapidly and cooperatively at their external borders. The rationale behind the hotspot approach is evident[55]. As the European Commission noted in its report on implementing the priority actions identified by the European Agenda on Migration:

> "*Well-functioning and effective migration management at the external borders which are under most pressure is key to restoring confidence in the overall system, and in particular in the Schengen area of free movement without internal border controls. Central to the EU's strategy and credibility is to demonstrate that the migration system can be restored to proper functioning [...]".* [56]

[52] M. Tazzioli & Garelli G., 'Containment beyond Detention: The Hotspot System and Disrupted Migration Movements across Europe. Environment and Planning D: Society and Space, 38(6), 1009-1027.
[53] Frontex, 'Frontex, Press Pack on the General Migratory Situation at the External Borders of the EU', September 2015.
[54] Europol, 'European Migrant Smuggling Centre - EMSC | Europol', February 2016.
[55] Federico Casolari, 'The EU's Hotspot Approach to Managing the Migration Crisis: A Blind Spot for International Responsibility?', SSRN Scholarly Paper (Rochester, NY, 2015), https://papers.ssrn.com/abstract=2800537.
[56] EU Commission, 'Managing the Refugee Crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration' (COM (2015), 4 October 2015), 510 final, p.3.

The goal was to reduce border pressure in the most affected Member States to normal levels while ensuring proper reception, identification, and processing of arrivals. Additionally, the hotspot approach was intended to facilitate the implementation of the emergency relocation mechanism, established in parallel by the Council under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU)[57]. This mechanism aimed to transfer individuals in clear need of international protection from Italy, Greece, and other directly affected Member States to other EU countries. Both, the hotspots, and the relocation scheme reflect a pragmatic and flexible approach to managing the massive influx of migrants. Thus, hotspots were originally conceived as reception and registration centers, designed to expedite all stages of administrative processes for new arrivals—including identification, reception, asylum procedures, or deportation—within their framework. The support offered under the hotspot mechanisms depended on the needs and development of the situation in the concerned Member State. However, the implementation of these tools did not unfold as expected. The hotspot approach also faced significant delays and attracted criticism from NGOs[58] and international actors due to concerns about protecting migrants' fundamental rights, including inadequate reception and detention conditions, insufficient personal safeguards during registration, lack of information on asylum procedures, and limited access to asylum based on nationality rather than individual assessments.

The establishment of hotspots can be viewed as an EU strategy to enforce compliance with identification standards and ensure the sharing of collected fingerprints in the EURODAC database[59]. The European Commission used hotspots to reassert EU control over immigration and the migrants themselves, countering Member States' assertions of national sovereignty with EU technocracy and biopolitics. The European Commission's 2015 agenda described the hotspot approach as providing operational solutions for emergency situations. Despite their intended benefits, the implementation of hotspots faced operational challenges, such as insufficient infrastructure and poor organization provided by the national authorities, compounded by the poor support provided by other member states especially in terms of sending national experts required for the training of migration management support teams. Another substantial problem is the lack of binding legal frameworks[60].

[57] 'Treaty on the Functioning of the European Union | EUR-Lex', accessed 19 June 2024.

[58] 'Amnesty International Annual Report 2015/2016', 24 February 2016, where concerns about the possibility that migrants may be subject to arbitrary detention, dire reception conditions, and forced fingerprinting in both the Italian and Greek hotspots have been clearly expressed.

[59] Eurodac, 'Eurodac: European System for the Comparison of Fingerprints of Asylum Applicants | EUR-Lex', accessed 21 June 2024.

[60] Felici – Gancitano, 'La detenzione dei migranti negli hotspots italiani: novità normative e persistenti violazioni della libertà personale', *www.sistemapenale.it* 1/2022, no. Sistema Penale, accessed 19 June 2024.

The “hotspot approach” was not formally established through EU secondary law, but instead, it was conceived by EU institutions as a method to reshape existing legal frameworks, specifically the founding instruments of involved EU agencies. The Agenda on Migration simply described the system under consideration in vague terms, and in two soft law acts that followed shortly thereafter, non-binding specifications. However, with the Regulation (EU) 2016/1624, the European Parliament and Council tried to partially fill this regulatory gap. The regulation provides a clear definition of the hotspot, lists several activities that must be carried out within it, and also stipulates in n. 25 that:

> *“Where a Member State faces specific and disproportionate migratory challenges at particular areas of its external borders characterised by large, inward, mixed migratory flows the Member States should be able to rely on technical and operational reinforcements. This should be provided in hotspot areas by migration management support teams. These teams should be composed of experts to be deployed from Member States by the Agency and by EASO and from the Agency, Europol or other relevant Union agencies. The Agency should assist the Commission in the coordination among the different agencies on the ground.”*[61]

But instead, gaps are wider in the national legislature. These deficits are particularly relevant considering that despite the significant practical contribution of European agencies in terms of support and coordination, national authorities remain fully responsible. They must operate in accordance with the principles established by international, European, and national law. Initially, the only document provided by the government on hotspots was an operational guide for activities to be carried out within hotspots: "Standard Operating Procedures applicable to Italian hotspots"[62] (SOP). This document, however, failed to define in a binding way the operating procedures of the hotspot system, it only provided the guarantees that should be ensured to all those in such places. The first formal legislative reference to hotspots in Italian law appeared in the 2017 law decree n.13, converted into Law No. 46/2017 (Minniti-Orlando)[63], and one year later appeared again in the Law n. 132/2018[64] which addressed detention for verification of the identity and citizenship of asylum seekers in the

[61] ‘Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and Amending Regulation (EU) 2016/399 of the European Parliament and of the Council and Repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC’, 251 OJ L § (2016) p.4.
[62] Ministero dell’Interno, ‘Procedure Operative Standard (SOP) - Hotspot | Dipartimento Libertà Civili e Immigrazione’, accessed 21 June 2024.
[63] ‘LEGGE 13 aprile 2017, n. 46’, Gazzetta Ufficiale §, accessed 21 June 2024.
[64] ‘LEGGE 1 dicembre 2018, n. 132’, Gazzetta Ufficiale §, accessed 21 June 2024.

hotspots[65]. However, these laws left many aspects of hotspot operations and detainee rights unregulated.

It is important to highlight that, Greece, unlike Italy, has enacted specific legislation to manage these hotspots, with the primary legal framework being Law 4686/2020, which amends Law 4636/2019 – the 'International Protection Act' (IPA) – and Law 4375/2016. These laws govern the functioning and monitoring of the hotspots in Greece, also known as Reception and Identification Centers (RICs). Initially, five RICs were established on the Aegean islands of Lesvos, Chios, Samos, Leros, and Kos[66]. Despite the existence of detailed legislation and binding legal frameworks, the conditions within these hotspots have been consistently criticized. Reports indicate that the living conditions in the overcrowded hotspots on the Eastern Aegean islands are critical and incompatible with human dignity.

As it was explained, Italian legislation left numerous aspects of hotspot operations and the rights of detainees without regulation. Considering the legislation regarding hotspot detention, although this is rather general and so far, never enforced, it is clear that numerous aspects of the hotspot system still remain without clear regulation. There is no provision requiring an act of judicial authority to legitimize the detention of migrants in these places, nor is there a regulatory procedure for detainees to legally challenge their detention and its conditions. Even the European Court of Human Rights, starting from the case "Khlaifia and Others v. Italy" (Application no. 16483/12)[67], condemned Italy for the treatment of migrants in the Lampedusa hotspot, focusing on issues such as detention conditions and lack of clear legal basis for detention. Therefore, hotspots continue to be areas with undefined boundaries, where migrants are detained for various reasons and for different periods of time. Despite the gaps and regulatory uncertainties, the increasingly important role that hotspots play in migration management in Italy is indisputable[68]. As of today, in Italy, there are four official hotspots: in Lampedusa, Messina, Pozzallo (in Sicily), and Taranto (in Puglia). During the

[65] Article 17 of Decree Law No. 13 of February 17, 2017: "*The foreigner traced on the occasion of irregular crossing of the internal or external border or arrived in the national territory as a result of rescue operations at sea shall be conducted for the needs of rescue and first assistance at special crisis points set up within the facilities referred to in Decree-Law No. 451 of October 30, 1995, converted, with amendments, by Law No. 563 of December 29, 1995, and the facilities referred to in Article 9 of Legislative Decree No. 142 of August 18, 2015. At the same crisis points, photo fingerprinting and signal detection operations are also carried out, including for the purposes referred to in Articles 9 and 14 of EU Regulation No. 603/2013 of the European Parliament and of the Council of June 26, 2013, and information on the international protection procedure, the relocation program in other EU member states and the possibility of recourse to assisted voluntary return is ensured."*

[66] European Parliament, 'The Hotspot Approach in Greece and Italy | Think Tank | European Parliament', accessed 22 June 2024.

[67] 'Khlaifia and Others v. Italy [GC]', 15 December 2016.

[68] Felici – Gancitano | 'La detenzione dei migranti negli hotspots italiani'.

pandemic, these centers were temporarily partially, or completely converted into quarantine facilities, with varying capacity and conditions. After been non-operational for a while, the Messina's hotspot reopened in December 2022[69].

2.2 Actual situation from reports

The analysis of the current situation reveals the complexities and challenges of implementing the hotspot approach and CPR management. The historical and political context, including their discursive and operational development, highlights the intricate dynamics between EU agencies, Member States, and international actors. This subchapter wants to give a panoramic about the actual situation in the CPRs and in the hotspots in Italy, focusing on its implications for human rights.

In addressing the issues related to administrative detention in Italy's CPR, it is essential to examine the current system's shortcomings. Firstly, there are notable regulatory deficiencies that impact daily operations within these centers, affecting both the staff and detainees. The constitutional guarantees outlined in Article 13[70] raise concerns about the primary legislative framework governing the detention of foreigners and its judicial oversight, highlighting the inadequacy of current protections to ensure full respect for individual dignity. The 2020 report on CPRs highlighted that the current legal framework provides insufficient safeguards, allowing for significant discretionary practices in management, by saying:

> *"The sparse and fragile regulatory framework does not offer sufficient protections and guarantees to ensure full (Article 14, paragraph 2 of the Immigration Act) and absolute respect for human dignity (Article 19, paragraph 3 of the decree-law of February 17, 2017, no. 13) and risks leaving wide margins of discretion to public authorities and those responsible for their management."*[71]

Although Decree-Law 130/2020 introduced the possibility for detainees to file complaints with the National and Territorial Guarantors regarding alleged rights violations during detention, the absence

[69] European Parliament, 'The Hotspot Approach in Greece and Italy | Think Tank | European Parliament'.
[70] Italian Constitution, Titolo I - Rapporti Civili, article 13: "Personal liberty is inviolable. No form of detention, inspection, or personal search, nor any other restriction of personal liberty, is permitted except by a reasoned order of the Judicial Authority and only in the cases and manner provided by law."
[71] Garante nazionale dei diritti delle persone private della libertà personale, 'RAPPORTO SULLE VISITE EFFETTUATE NEI CENTRI DI PERMANENZA PER I RIMPATRI (CPR) (2019-2020)', accessed 23 June 2024.

of binding judicial oversight remains a significant issue. The persistent "weak regulation" regarding administrative detention severely limits guarantees in a context of liberty deprivation, which, although not criminal, should minimize its impact on detainees. The variable management practices among different CPRs reflect the lack of a cohesive legislative framework, making a legislative reform urgent to harmonize operations and strengthen constitutional protections.

Secondly, there is a chronic shortage of effective healthcare services within CPRs, despite the tasks assigned to the National Health Service by ministerial regulations. The National Guarantor[72] has repeatedly raised concerns about the monitoring of hygienic and sanitary conditions and the adequacy of services provided, emphasizing the need for a systematic review of living conditions in the centers. Sanitary facilities, particularly showers, are often problematic, and detainees face restricted access to lawyers. In some cases, minors have been detained despite declaring their underage status. Tragic incidents, such as detainee suicides, highlight the poor handling of mental health issues and lack of psychiatric care. Monitoring bodies have identified significant variations in the conditions of pre-removal centers (CPRs), highlighting common critical issues. Firstly, the aforementioned sanitary conditions often lead to severe health problems. These facilities, often resembling prison designs, are overcrowded and lack common areas. Protests and arson have been reported due to inadequate sleeping arrangements, the absence of communal spaces, and unresolved structural damages, resulting in injuries. Reports indicate a lack of privacy in rooms without doors or curtains and lighting control issues, with some centers characterized by constant light that can never be turned off. Inspections have noted the lack of recreational options such as soccer fields, televisions, and Italian language courses, as well as limited or problematic services like the cafeteria. Even in centers where these issues were not found, concerns were raised about the detention of migrants upon arrival for identification, the management of female detainees, and the improper detention of unaccompanied minors[73]. The situation is problematic also inside the hotspots. In fact, hotspots in Italy, designed for the rapid identification and processing of arriving non-citizens, often face severe criticism for their poor conditions. As the CPRs, many facilities suffer from inadequate communal spaces, poor sanitation, and insufficient resources for proper hygiene. Reports from monitoring bodies highlight overcrowding, lack of basic amenities, and unsanitary conditions, which led to temporary

[72] Garante nazionale dei diritti delle persone private della libertà personale: Many European countries provide for a figure to guarantee the rights of people deprived of their liberty. In Italy a path started since 1997 led to the establishment of the National Guarantor of the rights of persons deprived of personal liberty at the end of 2013, but the appointment of the Board and the establishment of the Office, which allowed effective operation, are which occurred only in the first months of 2016.

[73] CILD staff, 'Buchi neri. La detenzione senza reato nei CPR', 15 October 2021

closures and critical incidents. In some hotspots, the lack of common areas for social interaction exacerbates the harsh living conditions. Additionally, the use of tents in certain hotspots, although noted for cleanliness, presents challenges such as inadequate communication facilities, further impacting the well-being of detainees[74].

The management model of CPRs, a hybrid between internal security and repatriation responsibilities, has shown significant deficiencies in coordination and accountability, compromising overall governance quality. The lack of transparency and communication with the outside world has further undermined the system's legitimacy and effectiveness, preventing the integration of educational and recreational activities that could enhance detainees' daily lives.[75] In addition, the persistent ineffectiveness in repatriating detained individuals raises questions about the justification for liberty deprivation. Despite legislative changes aimed at improving material conditions and procedural guarantees, the lack of judicial oversight and systemic issues highlight the need for a thorough legislative and operational review. Italy's administrative detention system in CPRs presents significant deficiencies that require urgent legislative intervention to ensure full respect for constitutional rights and improve the living conditions of those involved.[76]

In this uncertain and inadequate legal framework, hotspots and CPRs, along with border and transit zones, are sites where regular violations of fundamental rights occur. These include systematic and arbitrary deprivation of personal liberty without clear legal provisions or justified detention orders, obstacles to legal assistance and judicial protection of fundamental rights, and living conditions deemed inhumane or degrading by numerous national and international observers. Additionally, there are inadequacies or absences in the procedures for rejection, leading to repetitive decrees, and deficiencies in communicating the contents of such provisions.

[74] Global Detention Project, 'Italy: Complicit in Grave Human Rights Abuse?', 15 October 2019.
[75] Garante nazionale dei diritti delle persone private della libertà personale, 'Documento di sintesi sui Cpr, anche alla luce dell'attività di monitoraggio realizzata dai Garanti territoriali nell'esercizio della delega di visita loro conferita dal Garante nazionale nel periodo gennaio-marzo 2023', accessed 23 June 2024.
[76] CILD staff, 'Buchi neri. La detenzione senza reato nei CPR'.

3. Consequences in Terms of Violations

In July 2021, the Italian Coalition for Civil Liberties and Rights[77] (CILD) released a significant report on the detention conditions of migrants in CPRs titled "Black Holes: Detention without Crime in Repatriation Centers (CPR)"[78]. The fourth chapter specifically analyzed the protection of human rights for detained migrants, focusing on the right to health, the right to defense and information, and the rights to family relationships and communication. The analysis highlighted that the detention conditions in CPRs could violate human rights standards, particularly those established by the European Convention on Human Rights (ECHR)[79]. Article 5 of the ECHR guarantees the right to liberty and security, allowing for restrictions on this right under specific conditions. The European Court of Human Rights (ECHR) has repeatedly addressed the administrative detention of irregular migrants, aiming to define the limits within which contracting states can operate without exceeding their margin of appreciation. States must adhere to the minimum standards of rights protection outlined in the Convention, as the setup of CPRs and hotspots may lead to violations of rights such as Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), and Article 13 (right to an effective remedy).

Migrants have two judicial remedies available in case of rights violations under the Convention. First, individual applications under Article 34 ECHR allow individuals to bring their cases before the Strasbourg Court, alleging violations by the contracting state of the rights protected by the Convention. However, the case cannot be referred to the European Court of Human Rights before all domestic remedies have been exhausted (see Art. 35§1 ECHR[80]). In other words, migrants must first submit their complaints to domestic courts, otherwise they will be inadmissible before the Court. Thus, often limited financial resources, ineffective legal representation, and language barriers hinder the detainees' ability to effectively fight for their rights. The second remedy involves provisional measures under Article 39 of the Court's Rules, which can be requested when there is an imminent risk of irreparable harm to a fundamental right protected by the Convention. Nevertheless, few migrants independently appeal to the Strasbourg Court, making the work of NGOs and human

[77] Established in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a formalized collaborative initiative between civil society organisations working to defend and promote fundamental rights through communication campaigns, legal action, training and organisational support activities. Officail website: https://cild.eu/en/
[78] CILD staff, 'Buchi neri. La detenzione senza reato nei CPR'.
[79] Council of Europe, 'European Convention on Human Rights - The European Convention on Human Rights - Www.Coe.Int', accessed 25 June 2024.
[80] Council of Europe.

rights activists crucial. This chapter aims to analyze the consequences of the juridical ambiguity of hotspots and CPRs, to see how immigrants' human rights are affected; in particular, the focus will be on the rights enshrined by articles 3, 5, and 8 of the European Convention on Human Rights (ECHR).

3.1 The Legality of the Deprivation of Liberty

Having outlined the main characteristics and objectives of the hotspot system, it is crucial to examine whether and under what conditions the various forms of detention within these centers are in line with international principles, particularly those established by the European Convention on Human Rights (ECHR), to which Italy has been bound since its ratification in 1955. Despite the broad sovereign prerogatives that states possess in managing migration, the detention of migrants does not occur in a total legal void. States that deprive migrants or refugees of their liberty must adhere to a comprehensive set of human rights standards and norms. The detention of so-called irregular migrants, who have no legal status to reside in a particular state, is particularly controversial. Unlike criminal detention, which serves to ensure the proper conduct of a trial or execution of a sentence, the detention of migrants cannot be justified on similar grounds because these individuals are not involved in criminal proceedings. Nor can it be justified as a preventive measure since the mere status of an irregular migrant does not entail an inherent risk of committing crimes[81].

Article 5 § 1 (f) of the ECHR occupies a prominent place in the framework of norms that protect the rights of aliens deprived of their liberty. It is in this article that we find the justification for such detention that allows for the detention of individuals to prevent their illegal entry into a state or to detain those against whom deportation proceedings are pending. It states that:

> *"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."*[82]

[81] Matteo Villa, 'Sbarchi in Italia: il costo delle politiche di deterrenza', *ISPI* (blog), accessed 25 June 2024.
[82] Article 5 of European Convention on Human Rights (ECHR): "Right to liberty and security".

Any deprivation of liberty must, in all cases, respect the guarantees of information, the right to appeal the decision, and the right to compensation in the case of unlawful detention, as outlined in the subsequent paragraphs of Article 5 of the Convention. Therefore, although the hotspot system operates within a legal framework that allows for some forms of detention and CPRs to legally provide for detention, they must still respect fundamental human rights enshrined in international law. Ensuring these rights is essential to preventing abuses and maintaining the integrity of the legal system in migration management.

The provisions in paragraph f) of Article 5 imply that the European Convention acknowledges the inherent authority of states to regulate the entry of foreigners into their territories, potentially even through the deprivation of liberty. This has been repeatedly stated and upheld by the Court. Particularly, in the judgment *J.R. and others v. Greece*[83] where at paragraph 108, the Court notes that the authority of States to detain prospective immigrants who have applied for entry through asylum requests or other means is an essential aspect of their sovereign right to regulate the entry and residence of foreigners within their borders. This power, which addresses security and public order concerns related to migration flows, does not conflict with our Constitution. Therefore, it would be unrealistic to expect national legal systems to relinquish such authority, especially in the current historical context. However, this does not mean that detention can be used indiscriminately. Such detention must comply with the general purpose of Article 5 and adhere to its requirements, including substantive and procedural norms of domestic law. The Court also highlight, in the judgment *Ilias and Ahmed v. Hungary*[84], that it is especially important to acknowledge the right of States, provided they adhere to their international obligations, to manage their borders and implement measures against foreigners who circumvent immigration restrictions.

However, compliance with domestic law alone is not sufficient. The ECtHR has declared the requirement of legality unsatisfied in cases where detention was based on an administrative circular, where the legal basis was not publicly accessible, or where no maximum period of detention was established by legislation. The Court has repeatedly clarified the conditions under which detention is acceptable, setting out a series of requirements that, together with the guarantees provided by Article 13 of the Constitution, shape the *habeas corpus*[85] rights of foreigners.

[83] J.r. and Others v. Greece, No. 22696/16 (ECtHR 25 January 2018).
[84] Ilias and Ahmed v. Hungary, No. 47287/15 (ECtHR 14 March 2017).
[85] *Habeas corpus:* the set of rules that guarantee, in the Constitutions of various countries, the personal freedom of the citizen; in 1679 it became the law of the English state ("*Habeas corpus act*"), enshrining the principle of personal inviolability that it still protects today.

To eliminate any suspicion of arbitrariness and thus consider a measure that restricts personal liberty as legitimate, it is first necessary to verify the existence of a solid and clear legal basis for such deprivation of liberty. Any restriction on the fundamental right to personal freedom cannot be deemed legitimate if it is not founded on an indisputable legal basis. Hence, there must be a legal basis for detention: the deprivation of liberty must be prescribed by national law, which must be easily accessible to everyone. This might seem like a fundamental guarantee that shouldn't need to be stated, yet it continues to be violated.

Once the existence of this legal basis is confirmed, another crucial step to exclude the arbitrariness of a detention measure involves verifying that the public authority has correctly and precisely recorded all details of the measure. A detention measure cannot be considered compliant with Article 5 of the European Convention on Human Rights (ECHR) if it is not preceded by an accurate recording of the detainee's identity, the start date of the detention, the place where it is carried out, the identity of the authority ordering the measure, and the reasons for the detention[86]. According to the Court, legality under domestic law, both substantively and procedurally, is a primary and indispensable requirement to assess compatibility with Article 5 of the ECHR for a measure restricting personal liberty. A measure is considered non-arbitrary and compatible with the Convention only if it meets these legal requirements. Therefore, the relevant domestic law must be clearly defined and predictable in its application. Ambiguities or contradictions in the law can lead to the deprivation of liberty being deemed illegal. Hence, detention must not be arbitrary. The law must clearly explain when and how detention can be applied, so that it can be foreseen before it occurs.
Finally, there must be judicial oversight to ensure that the conditions for detention are met, preventing the deprivation of liberty from being solely at the discretion of administrative authorities. In Italy, the regulatory framework concerning the detention of migrants in hotspots is far from clear and predictable, making it problematic for these measures to meet the legality requirements of Article 5 of the Convention.

Returning to Article 5 of the convention, the European Court of Human Rights has long since peacefully ruled that the list of exceptions to the right to liberty in Paragraph 1 is exhaustive in nature and that only a restrictive interpretation of it accords with the purpose of the provision: to ensure that no one is arbitrarily deprived of his or her liberty. Hot spots fall under this first part of paragraph (f) and CPRs under the second. The first part of the provision from Article 5 §1 allows for the detention of the migrant before he or she is allowed to enter the territory. A delicate point in this process is the

[86]Cf. Anguelova v. Bulgaria, No. 30344/18, 31236/18 (ECtHR 13 June 2002). para. 154.

question of when this part ceases to apply, as the individual has been granted formal authorization to enter or stay and depends largely on national law. Detention must align with the general objectives of Article 5 and comply with its established requirements, including the obligation to follow the substantive and procedural rules of national law. However, as with other cases of detention addressed under Article 5, compliance with national law alone is insufficient for the detention of migrants. For instance, the Court has ruled that detention is not legitimate if based on an administrative circular, if the legal basis is not accessible to the public, or if no maximum detention period is specified by law.

Detention must be strictly necessary to complete a specific procedure concerning the migrant's situation, such as deportation or the granting of international protection, and this procedure must end within a reasonable time. Detention must end when there is no longer a real possibility that the procedure will achieve its purpose. If there are less invasive alternatives that can achieve the same goal, these should be preferred, particularly in extreme vulnerability situations.[87] European jurisprudence has emphasized that detention must be legally defined and not arbitrary, respecting international and national law. This practice clashes with the principles of the rule of law in liberal democracies, where prolonged detention and limitation of the rights of foreigners without legal status raise serious concerns. The central issue concerns the balance between the right to national security and the protection of human rights, emphasizing the need for strict legal regulation and judicial review of migration policies[88]. Strasbourg judges have made it clear that detention need not be used to prevent the foreigner from absconding or committing crimes. However, it is essential that it be based on concrete situations and clearly linked to the purposes pursued. For non-vulnerable adults, detention under Article 5 §1, letter f) does not necessarily need to be proportionate. This means that national authorities are not required to seek less coercive measures before detaining such adults. Nevertheless, the detention must never be arbitrary. In this context, the absence of arbitrariness means that detention must be carried out in good faith, strictly connected to the purpose of preventing unauthorized entry into the country and conducted in appropriate places and conditions. It is important to remember that this measure applies to people who have not committed crimes but often fled their country fearing for their lives. Additionally, the duration of detention must not exceed the time reasonably necessary to achieve the intended purpose.

[87] Unlike EU law, Article 5§1 ECHR does not generally make deprivation of liberty conditional on a condition of necessity (cf. dissenting opinion of the European Court of Human Rights, 4 April 2017, *Thimothawes v. Belgium*, No. 39061/11)
[88] Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press, 2011).

Further safeguards against arbitrary detention apply to children and vulnerable individuals[89]. For these groups, detention will not comply with Article 5 §1, letter f) if the purpose of detention could be achieved through less coercive measures. Therefore, national authorities must consider alternatives to detention based on the specific circumstances of each case[90]. Recently, in a ruling on November 23, 2023 (*A. T. and others v. Italy* case)[91], the European Court of Human Rights condemned Italy for violating Article 3 ECHR resulting from the illegal detention of unaccompanied foreign minors at the Taranto hotspot.

The second scenario for detention under Article 5 §1, letter f) of the Convention pertains to the detention of foreigners who are subject to deportation or extradition. This form of detention does not require the presence of a flight risk or the potential for committing crimes. However, the sole purpose of this detention being deportation or extradition mandates that it does not become unjustified, especially during ongoing criminal proceedings, rather than for the execution of a final sentence.

Article 5 also outlines procedural safeguards that must be ensured for anyone deprived of their liberty, including foreigners detained under Article 5 §1, letter f). According to Article 5 § 2, individuals who are detained must be promptly informed, in simple language and in a language, they understand, of the essential factual and legal reasons for their deprivation of liberty. Adequate information is necessary for exercising the right to appeal to a court as provided by Article 5 §4 of the Convention. This provision grants anyone whose liberty has been restricted, regardless of the reason and legal basis, the right to appeal to an independent judge, separate from the executive and the parties involved, to review the procedural and substantive conditions essential for the "lawfulness" of their deprivation of liberty under Article 5 §1. The Court has found that when detainees were not informed of the reasons for their deprivation of liberty, their right to appeal against the detention order was rendered ineffective[92]. This has also been the case when detainees were informed of the available means of appeal in a language they could not understand and were not given the opportunity to contact a lawyer[93].

Finally, Article 5 §4 guarantees persons arrested or detained the right to have the lawfulness of their detention decided " promptly " by a court and their release ordered if the unlawfulness of the detention

[89] Under the European Convention of Human Rights (ECHR), states are required to take adequate measures to provide care and protection to the most vulnerable, such as children, victims of torture, violence or human trafficking, persons with health issues and others in a vulnerable situation.
[90] In addition to reference to Art. 5 para. 1(f), the detention of the vulnerable may raise issues under Art. 3 of the Convention, with particular attention to the conditions of detention, its duration, the particular vulnerabilities of the person, and the impact of detention on the person.
[91] A.t. and Others v. Italy, No. 47287/17 (ECtHR 23 November 2023).
[92] Cf. Khlaifia and Others v. Italy [GC] (ECtHR [GC] 15 December 2016).
[93] Rahimi v. Greece (ECtHR [GC] 5 April 2011).

is established. Only detention that is thus founded on a clear and well-defined legal basis, that complies with both domestic and conventional law, and that ensures respect for the guarantees of information and effective recourse to a judge, can be said to comply with Article 5 of the Convention and thus respect the human rights of persons deprived of their personal liberty.

Several judgments of the European Court of Human Rights found that Italy violated this article and its provisions. In the *Khlaifia v. Italy* case[94], several migrants were detained for days under poor conditions first on the island of Lampedusa and then aboard a ship based on a bilateral agreement (between Italy and Tunisia) whose text was not publicly disclosed but merely referenced in a press release by the Italian Ministry of the Interior (which merely mentioned a strengthened border control and the possibility of immediate expulsions under a simplified procedure). Called upon to give an opinion on the matter, the European Court found a violation of Article 5 of the ECHR, noting that such "legislative ambiguity" led to numerous de facto situations of deprivation of liberty without judicial oversight[95]. First, the Grand Chamber determined that Italy's detention of migrants breached Article 5, stating that migrants cannot be held in emergency accommodations without a clear legal justification. The Court explained that Article 5 "is concerned with a person's physical liberty and its aim is to ensure that no one should be dispossessed of such liberty in an arbitrary fashion" (para. 64). Although recognizing the difficulty in differentiating between deprivation of liberty and restrictions on freedom of movement, the Court concluded that Italy indeed deprived the migrants of their liberty (para. 65). The Court referred to the Italian Senate Report to support the migrants' claims that they were effectively detained in the reception and aid center (*Centro di Soccorso e Prima Accoglienza* - CSPA) and on the boats. The limitations on their freedom of movement and the surveillance preventing access to the outside world, for instance, made the confinement equivalent to detention. The fact that Italy was attempting to assist the migrants did not change the application of Article 5, because "even measures intended for protection or taken in the interest of the person concerned may be regarded as a deprivation of liberty"[96].

Although the considerations in the *Khlaifia* judgment, as mentioned before, about a specific time and situation, it is important to highlight that the significant issues within the Italian migration management system, highlighted by the Strasbourg judges in that decision, have not only persisted but have been exacerbated by the policies adopted by the Italian government in the years following

[94] 'Khlaifia and Others v. Italy [GC]', 15 December 2016.
[95] Cf. Khlaifia and Others v. Italy [GC], ECtHR [GC] 15 December 2016.
[96] Jill I. Goldenziel, 'Khlaifia and Others v. Italy', *American Journal of International Law* 112, no. 2 (April 2018): 274–80.

the Court's ruling. Since the end of 2015, the unlawful detentions identified by the European Court in the Khlaifia case have become systematic practices, deeply embedded in what has come to be known as the hotspot approach. Examining the Grand Chamber's decision and its application to the current implementation of the hotspot approach provides an opportunity to outline a continued and significant pattern of substantial and procedural violations of personal liberty for numerous foreigners who remain unlawfully detained at Italy's borders. Over the four years of supervisory proceedings, the Committee of Ministers repeatedly emphasized the inadequacy of the Italian hotspot system and the insufficiency of the resources allocated by the State to address the issue. The Committee pointed out the inefficiency of the Italian system, both in terms of the lack of a legal basis justifying the detention of foreigners in hotspots and in terms of procedural guarantees. The Committee condemned the practices of failing to adequately inform migrants about the reasons for their detention and preventing them from filing an effective judicial appeal against the detention order, as guaranteed by paragraphs 2 and 4 of Article 5 of the Convention[97]. The legislative updates, including the most recent ones, while significant and seemingly decisive, have not completely addressed the shortcomings of the migrant detention mechanism in Italy, as highlighted in the Khlaifia judgment. Despite attempts to standardize the management of the migration phenomenon through detention and confinement practices at the border, this new legislation has not provided any substantial assurance of a clear legal basis or effective safeguards to challenge detention measures in an optimal manner.

In fact, just a few years *after Khlaifia and others v. Italy*, the European Court returns to rule in the case *J.A. and others v. Italy*[98] concerning the arrival of Tunisian claimants on the island of Lampedusa and the violation of some of their rights enshrined in the European Convention on Human Rights, One of the grievances complained by the applicants concerned the deprivation of liberty during their stay at the Lampedusa hotspot "*in the absence of any clear and accessible legal basis*" (para. 68) and they invoked the operation, in this case, of Article 5 §1, 2 and 4 of the European Convention. The Court's decision found a violation of Article 5 in that the applicants were arbitrarily deprived of their liberty because their ten-day detention at the Lampedusa hotspot took place in the absence of any clear and accessible legal basis and specific measure. The European Court of Human Rights, under Article 5 §1 (f) of the Convention, states that an exception to personal liberty is permissible to control immigration by allowing the arrest or temporary detention of individuals to prevent unauthorized entry into the country. However, it pointed out that hotspots such as the one in Lampedusa have been

[97] Felici – Gancitano, 'Felici – Gancitano | La detenzione dei migranti negli hotspots italiani'.
[98] J.a. and Others v. Italy, No. 21329/18 (ECtHR 30 March 2023).

unanimously described by independent observers and international organizations as closed places with metal fences, where migrants are detained without adequate legal basis and without legal recourse against their detention. The court found that despite clarification of the migrants' status, they were detained for prolonged periods without a legally defined time limit, in inhumane and degrading conditions. Therefore, it concluded that there was a lack of clarity and procedural guarantees in Italian law regarding the detention of foreigners in hotspots, thus violating Articles 5 §1, 2, and 4 of the Convention[99]. In addition to the fact that the problem of the absence of a legal basis for the detention of foreigners in hotspots has not been solved, Law 132/2018 and the subsequent decrees law have not introduced new instruments necessary to guarantee the procedural rights and judicial review required by Articles 5 §2, 4 and 5 of the European Convention on Human Rights. Currently, the detention of every migrant in Italian hotspots is decided without a formal act adopted by the competent authority and without the approval of a judge, no maximum limit of detention is defined, and there is a lack of adequate information on the reasons for deprivation of liberty. Without an official document limiting their freedom, migrants cannot submit the legality of their detention for review by a court[100].

The lack of sufficient regulation for the detention of foreign nationals in hotspots does not indicate a residual or underutilized practice in the management of the migration phenomenon in Italy. On the contrary, situations in which foreign nationals are detained in the country are increasing, with more and more individuals suffering arbitrary deprivation of personal freedom. These cases do not guarantee fundamental human rights, to which Italy is bound under the European Convention on Human Rights. This persistent violation has led to numerous appeals to the European Court of Human Rights by foreign nationals detained in Italian hotspots. Some of these cases have already been declared admissible and are currently pending before the court.

As explained earlier, there are cases where the law allows states to deprive a person of his or her liberty, particularly in migration, we are talking about CPRs. These current EU and national laws are difficult to understand because they consist of a complex web of regulations that refer to many others, making it difficult to clearly understand the criteria for deprivation of liberty. However, the power of the state to detain foreigners with a view to deportation is not without limits. The yet-mentioned provision requires legality and compliance with the "manner prescribed by law." In terms of content, a judicial review of deprivation of liberty exists, but it is insufficient. The detention of migrants undergoing deportation is decided by the quaestor and supervised by the justice of the peace

[99] Matteo Bassetti De Angelis, 'Nota a Sentenza CEDU. J.A. e Altri c. Italia, Del 30 Marzo 2023', accessed 27 June 2024.
[100] ASGI, 'Trattenimenti illegittimi: l'Italia non si è ancora adeguata a quanto stabilito dalla CEDU nella sentenza Khlaifia', *Asgi*, 26 February 2021.

while the detention of migrants who have applied for international protection is subject to the control of the specialized immigration court. An analysis proposed by Professor Marcello Daniele[101] concerning the latest law-decrees in migrant subjects highlights the main problems related to the prerequisites of incarceration, marked by at least three flaws: the first two are present in the system from the beginning, and the third is the result of the security decree.

The first problem concerns the detention of migrants in detention centers for return (CPRs) during deportation when deportation cannot be carried out immediately. These conditions should include detention only to prepare for return, the impossibility of less coercive measures, a short and necessary duration for return, a prompt judicial review, and immediate release when there is no longer a prospect of return as enshrined in Article 15 of the Return Directive[102]. However, the rules take an illustrative approach, allowing detention in cases such as the risk of absconding or hindering preparation for return. This approach leaves room for the interpreter to identify additional situations to justify detention, even if irrelevant to deportation[103]. The Court of Justice, in the *El Dridi*[104] judgment, made it clear that deprivation of liberty is justified only if the conduct of the person concerned compromises repatriation. The French Council of State reviewed a challenge against the legislative section of the Code on the Entry and Residence of Foreigners. On February 24, 2022, it postponed one of its decisions, awaiting a ruling from the Court of Justice of the European Union on whether, during the temporary reintroduction of internal border controls, a foreign national could be denied entry under Article 14 of the Schengen Borders Code[105] without applying the 2008/115/EC Directive[106]. In its ADDE (*Association pour le droit des étrangers* - Association for the Right of Foreigners) ruling on September 21, 2023, the CJEU clarified that Member States can refuse entry to third-country nationals at internal borders during reintroduced controls. However, they must apply the 2008/115/EC Return Directive, ensuring procedural guarantees like issuing a return decision, allowing time to leave, forced removal as a last resort, access to appeals, and using administrative detention only when necessary. By accepting the threat to public order as a justification for detention,

[101] Marcello Daniele, 'La detenzione come deterrente dell'immigrazione nel decreto sicurezza 2018' Diritto Penale Contemporaneo, no. 11/2018 (14 November 2018).
[102] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
[103] More rigorous appears, for example, the Greek discipline, which exhaustively lists the situations capable of justifying deprivation of liberty.
[104] Hassen El Dridi, alias Soufi Karim, No. Case C-61/11 PPU (ECJ 28 April 2011).
[105] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification).
[106] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

it shows that the impact of the person's behavior on the execution of the removal is not in reality the only reason and consequently relativizes the *El Dridi* jurisprudence. National practice still sees discriminatory use of detention, based on varied assessments, and often conditioned by practical reasons such as the availability of repatriation centers. This interpretive flexibility extends even to the most rigid parts of the rules, such as Article 14 paragraph 4 of the Testo Unico (t.u.) sull'immigrazine[107], which requires that the justice of the peace must verify the requirements of deportation before validating detention.

National jurisprudence tends to state that the justice of the peace can only find that the deportation is manifestly unlawful, generating unequal treatment. Validation of detention often takes place before the decision on the appeal against deportation, risking causing unjustified deprivation of liberty.

The second issue, ignored by the security decree, concerns the detention of foreigners who have applied for international protection (asylum) because they fear persecution in their country on grounds of race, religion, social or political affiliation. This detention is regulated by Article 8 of the European Reception Directive and, at the national level, by Articles 6 et seq. of Legislative Decree 142 of 2015[108]. These regulations appear, at first glance, to be more respectful of the right to personal freedom than those on the detention of migrants undergoing deportation. They specify that detention cannot be based on asylum claims alone, lest it become a form of punishment. They say that detention must be strictly necessary and that less restrictive alternative measures should be preferred (as also specified in the EU Directive 2008/115). They avoid using generic examples, stipulating that deprivation of liberty can only take place in cases expressly provided for. However, a closer look at the criteria for detention reveals that not all are described with the same precision. Some are well delineated, such as the need to determine the identity or citizenship of the foreign, or to verify the facts supporting the asylum claim. In contrast, the criterion for detention for "reasons of national security or public order" is vague and can include very different behaviors.

Such a requirement does not clearly define what behaviors warrant detention. It is reminiscent of vague conditions such as "propensity to commit crimes," which have already been criticized in the past by the Constitutional Court, and "habitual dedication" to criminal activities, recently stigmatized by the European Court. To be constitutional, the requirement should clearly specify the danger of committing crimes, using objective parameters such as the expected penalty or the legal good

[107] Testo Unico sull'immigrazione, known as t.u. sull'immigrazione: Consolidated text of provisions concerning the regulation of immigration and norms on the condition of foreigners" (Legislative Decree No. 286 of July 25, 1998).
[108] 'DECRETO LEGISLATIVO 18 agosto 2015, n. 142', accessed 27 June 2024.

violated, following the example of Article 274 of the Code of Criminal Procedure[109] for the application of precautionary measures.

The third major problem stems from Article 3 of the security-decree, which enhanced the detention of asylum seekers by adding paragraph 3a) to Article 6 of Legislative Decree No. 142 of 2015. This paragraph allows the asylum seeker to be detained "for the time strictly necessary, and in any case not more than 30 days," "for the determination or verification of identity or citizenship," at the facilities indicated in Article 10b §1 of the Consolidated Act on Immigration. This introduces a new form of detention at "crisis points" (hotspots). An initial detention that, in other cases, applies to all non-EU nationals who have irregularly crossed borders or arrived in Italy after being rescued at sea. This detention is considered by the legislature as a simple restriction on freedom of movement and is justified by "the needs of rescue and first assistance" and for the "photodactyloscopic and mugshot operations" necessary to identify the foreigner.

In practice, however, it results in de facto detention without defined modalities and judicial review. These problems are also found in the new hypothesis introduced by the security-decree, turning out to be clearly unconstitutional. An even more worrisome aspect is the possibility of converting detention in hotspots of asylum seekers into detention in CPRs (Centers of Permanence for Repatriation) which has a much longer duration. According to paragraph 3 of Article 10a, this conversion normally occurs when the foreigner repeatedly refuses to be identified. However, the security decree also provides for conversion when the identity or citizenship of the foreigner cannot be determined or verified, regardless of his or her conduct, perhaps because of discrimination suffered in the country of origin. In contrast, police detention to identify Italian citizens, provided for in Article 11 of Decree-Law No. 59 of March 21, 1978, is limited to twenty-four hours and is linked to the will of the person concerned (who refuses to provide his or her personal details or presents false documents)[110]. In short, we are faced with an even more arbitrary deprivation of the freedom of foreigners than those that already exist. The only positive aspect is that it clearly reveals the government's intent, namely, to discourage landings in Italy and asylum claims, even at the cost of harming those who would be fully entitled to seek international protection.

Migrant detention in Italy's hotspot system and CPR (even if there the law provides detention) continue to face critical scrutiny under international human rights law, particularly under Article 5 of the European Convention on Human Rights (ECHR). The European Court of Human Rights has

[109] Gazzetta Ufficiale, 'Codice Di Procedura Penale DECRETO DEL PRESIDENTE DELLA REPUBBLICA 22 Settembre 1988, n. 447', accessed 27 June 2024.
[110] Daniele, 'La detenzione come deterrente dell'immigrazione nel decreto sicurezza 2018'.

repeatedly found Italy in violation, citing arbitrary detention practices lacking clear legal basis and procedural safeguards. Legislative updates have not sufficiently addressed these shortcomings, highlighting the urgent need for Italy to reform its policies to ensure compliance with Article 5 of the ECHR. Effective reforms should prioritize legal clarity, procedural fairness, and robust judicial oversight to protect the rights of migrants detained in Italy's hotspots while aligning with the principles outlined in the Convention.

3.2 Conditions of Detention

As seen, in Italy, facilities such as hotspots and Centers for Repatriation (CPR) for migrants are at the center of heated debates concerning their legitimacy in restricting the freedom of immigrants and the way they do so. Beyond legal and legitimacy issues, these facilities are often criticized for the highly problematic living conditions faced by the individuals inside. Numerous declarations and accusations from civil society and organizations working in the field of immigration, along with many cases brought before the European Court of Human Rights, condemn these inhumane and degrading situations. These places are scenes of severe human rights violations, particularly of Articles 3 of the European Convention on Human Rights (ECHR). This subchapter aims to highlight the severe violations of this article, demonstrating how such facilities should not exist in their current form.

The European Convention on Human Rights (ECHR) does not explicitly mention the right to asylum. However, the European Court of Human Rights (ECtHR) has extended protection to asylum seekers primarily through its interpretation of Article 3 of the Convention, which prohibits torture and inhuman or degrading treatment. While Article 3 does not specifically reference non-refoulement, the Court has interpreted it to encompass this principle. Consequently, the ECHR has become a crucial legal instrument for safeguarding asylum seekers in Europe, largely because the non-refoulement principle under the Convention includes protection against inhuman and degrading treatment[111]. Today article 3 of the ECHR is about both non- refoulement and material conditions, and it states:

[111] TanTrung Nguyen Quoc, 'Article 3 ECHR and Its Case-Law: The Hand of Midas', SSRN Scholarly Paper (Rochester, NY, 16 January 2019).

> *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."*[112]

Among the various cases presented to the European Court of Human Rights regarding the management of migration in Italy, particularly in hotspots and CPRs, the Court has consistently identified common violations of Article 3 of the ECHR.

In the case of *J.A. and Others v. Italy*[113], the applicants claimed that their stay conditions were inhumane and degrading, citing the 2017 report from the Guarantor for the Rights of Persons Deprived of Liberty[114] and subsequent documents which confirmed the poor sanitary and living conditions at the hotspot, with stays lasting several days or weeks (paras. 51-53). The Italian Government argued that the conditions were humane, noting the good state of the kitchen, the provision of kits to foreigners, a separate interview room, and the distribution of small sums of money. The applicants provided extensive evidence, including photographs, to document the severe deficiencies in the material conditions at the Lampedusa hotspot. Various national and international sources corroborated these issues for the relevant period, particularly highlighting the center's overcrowding, dilapidated state, lack of cleanliness, and insufficient services and spaces, especially in terms of available beds[115]. However, the Court found that the Government failed to demonstrate the adequacy of the conditions, while several national and international reports highlighted severe deficiencies (paras. 58-64). The Court concluded that, at the time of the events, the Lampedusa hotspot, where the applicants had stayed for ten days, had such poor material conditions that they constituted inhuman and degrading treatment. Consequently, the Court recognized a violation of Article 3 of the ECHR for a detention period of 10 days (para. 66). This ruling was innovative. Previously, the Court had found violations of Article 3 of the ECHR only in cases of long-term detention, vulnerability, or asylum seeker status. For instance, in *J.R. and Others v. Greece*[116], a one-

[112] Council of Europe, European Convention on Human Rights - The European Convention on Human Rights - www.coe.int.
[113] J.a. and Others v. Italy.
[114] This is a video interview given by the Garante's president in January 2018, which had attested to the lack of action by Italian authorities to improve the inadequate conditions at the Lampedusa hotspot since the previous year and provided photographs showing the center's critical hygienic conditions and lack of space, as well as the Garante's 2020 report, which attested that in 2019 there were only two bathrooms shared by forty people in the Lampedusa hotspot, that some migrants had to sleep on mattresses outside the Center, and that the rooms were either excessively cold or excessively hot.
[115] Francesco Buffa, 'La sentenza J.A. c. Italia condanna l'Italia per la gestione dell'immigrazione', *Questione Giustizia*, 16 June 2023, sec. Diritti senza confini, http://www.questionegiustizia.it/articolo/la-sentenza-j-a-c-italia-condanna-l-italia-per-la-gestione-dell-immigrazione.
[116] J.r. and Others v. Greece.

month detention was not considered sufficient to breach Article 3. However, in some judgments, the Court recognized violations for shorter detentions when conditions were particularly harsh. In *J.A. and Others v. Italy*, the Court found a violation of Article 3 despite the "short" duration of the stay, the absence of vulnerability, and the fact that the applicants were not asylum seekers, solely based on the quality of the detention. The Court reiterated that the obligations under Article 3, like those under Article 2, are absolute and that states must provide acceptable conditions even during mass influx situations (para. 65).

In the case of *A.S. v. Italy*[117], involving a young Tunisian citizen who survived a shipwreck and was detained at the Lampedusa hotspot from October 7 to October 25, 2018, the Court once again focused on the overcrowding and the poor sanitary conditions of the hotspot. These issues were underscored by various reports filed by non-governmental organizations and the National Guarantor for the rights of persons deprived of personal liberty. The Court dismissed the Italian Government's preliminary objections, affirming that the applicant had been subjected to inhuman and degrading treatment, in violation of Article 3 of the Convention.

In *A.B. v. Italy*[118], the Court found a violation of Article 3 based on reports from the Guarantor, detailing inadequate conditions at the Lampedusa Center[119], poor hygiene, and insufficient facilities, similar to those in *J.A. and Others v. Italy*. In *A.E. and Others v. Italy*[120], the applicants alleged inhumane or degrading treatment during their arrest, transfer, and detention at the Taranto hotspot. They also claimed that, if repatriated to Sudan, they would face inhumane treatment. The second applicant reported being beaten during a removal attempt. The Court found a violation of Article 3 due to the lack of food and water during a hot period, the forced undressing for ten minutes without privacy, and the inadequate explanation of their destination. Despite the Government's argument that medical reasons justified the undressing, the Court ruled that the lack of privacy and the prolonged state of undress were unjustified[121]. Here we can see how Article 3 it is not only about the material conditions in which immigrants live in hotspots but also about the principle of non-refoulement, even if the court finds that the plaintiffs are no longer at risk of removal.

[117] A.s. v. Italy, No. 20860/20 (ECtHR 19 October 2023).
[118] A.b. v. Italy, No. 13755/18 (ECtHR 19 October 2023).
[119] Marilù Porchia, 'Condizioni di detenzione e respingimenti collettivi: l'hotspot di Lampedusa al vaglio della Corte EDU', *ADiM Blog* (blog), 30 April 2023.
[120] A.e. and Others v. Italy, No. 18911/17, 18941/17, 18959/17 (ECtHR 16 November 2023).
[121] Roberto Cherchi, 'L'approccio Hotspot e i Diritti Umani: Le Condanne Dell'Italia Nella Sentenza Della Corte Europea Dei Diritti Dell'uomo J.A. e Altri c. Italia e Nelle Successive A.E. e Altri c. Italia, A.B. c. Italia, A.S. c. Italia, W.A. e Altri c. Italia, M.A. c.Italia' Diritto, Immigrazione e Cittadinanza, no. 2024/1, accessed 29 June 2024.

The Court acknowledges reports from various national and international bodies documenting the deteriorating and unsanitary conditions at the Lampedusa hotspot, highlighting overcrowding, inadequate facilities including beds, and overall poor hygiene. These findings underscore the crucial role of independent oversight and effective collaboration among lawyers, NGOs, and activists. Such synergies bring individual cases to the Court's attention, particularly due to the challenges in accessing detention facilities, which often result in inadequate protection[122]. It is important to recall established case law emphasizing that the absolute nature of Article 3 does not exempt Council of Europe member states, especially those on the EU's external borders, from their obligations amid increased arrivals of migrants and asylum seekers. The ruling exposes Italy, especially given the rising number of detainees at the Lampedusa hotspot, to potential future convictions.

Related to the non-refoulment principle it is important to highlight that the EU law provides a significant directive related to asylum and international protection, the Directive 2013/32, which regulates the situation of migrants at the state border and ensures access to international protection procedures. Known as the Procedures Directive[123], it establishes common procedures for granting and withdrawing international protection across EU Member States. It also ensures access to the right to information, legal assistance, and interpretation. The directive outlines specific safeguards for vulnerable groups and sets time limits for decision-making. It aims to harmonize standards to improve the quality of asylum decisions and ensure consistency in treatment across the EU. Additionally, it addresses the conditions under which applications can be deemed inadmissible or accelerated. Article 6 of Directive 2013/32 allows any third-country national or stateless person to apply for international protection, including at the borders of a member state, by expressing a desire to benefit from international protection to one of the authorities specified in the article, without administrative formalities. This right must be recognized even if the person is staying illegally in the territory of the member state and regardless of the chances of success of the application. Moreover, article 43 establishes the specific provisions that apply to asylum procedures at the borders. In fact, Member States must thoroughly examine applications for international protection, unless it is likely that another country will examine the application or provide adequate protection. If another country has already granted refugee status or provided protection to the person, the Member State is not obligated to examine the application.

[122] Porchia, 'Condizioni di detenzione e respingimenti collettivi'.
[123] 'Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (Recast)', 180 OJ L § (2013).

In the case of *European Commission v. Hungary* [124](C-823/21, 22 June 2023), the Court of Justice of the European Union (CJEU) applied Article 6 of Directive 2013/32 to migrants at the State border. The CJEU found Hungary in breach of its obligations under Article 6 because it required certain third-country nationals or stateless persons in Hungary or at its borders to first submit an intention declaration at a Hungarian embassy in a third country and obtain a travel document before applying for international protection. Essentially, these individuals had to leave Hungary and return with documents issued by a Hungarian embassy abroad before being able to seek international protection.

The CJEU's decision rested on several key points. Firstly, Article 6 of Directive 2013/32 grants any third-country national or stateless person the right to apply for international protection, including at Member State borders, without administrative formalities. Secondly, Hungary's requirement contradicted the Directive's aim of ensuring accessible and prompt access to international protection procedures. Thirdly, this obligation denied migrants their right under Article 18 of the EU Charter of Fundamental Rights to effectively seek asylum. Fourthly, Member States cannot unduly delay the opportunity for individuals to seek international protection. Lastly, Hungary's justifications related to public health, public policy, and security were deemed unfounded. Simultaneously, the European Court of Human Rights (ECtHR) addressed a similar issue in *M.K. and others v. Poland*[125], concerning migrants turned away by Polish border authorities. The Court determined that the Polish authorities did not fulfill their procedural obligations to review the applicants' requests for international protection, violating Article 3 of the ECHR. Additionally, by not permitting the applicants to stay in Poland while their applications were being examined, the authorities knowingly put them at serious risk of chain refoulement and prohibited treatment under Article 3 of the ECHR in Belarus.

In conclusion, both rulings underscore the necessity for migrants at borders to have effective access to apply for international protection. However, while the CJEU approached the matter through Directive provisions, the ECtHR emphasized migrants' fundamental rights against refoulement or collective expulsion. This approach highlights the enduring protection provided by fundamental rights, distinct from the technical provisions of EU law[126].

[124] European Commission v. Hungary (Déclaration d'intention préalable à une demande d'asile), No. C-823/21 (CJEU 22 June 2023).
[125] M.k. and Others v. Poland, No. 40503/17, 42902/17, 43643/17 (ECtHR 23 July 2020).
[126] johan-callewaert, 'Migrants at the Border: Fundamental Rights at Stake or Just Another Breach of Secondary Law? Comparing "European Commission v. Hungary" with "N.D. and N.T. v. Spain" | Prof. Dr. Iur. Johan Callewaert', 7 November 2023.

3.3 Focus on Unaccompanied Minors.

This subchapter will present a focus on the legal responsibilities regarding vulnerable individuals, specifically unaccompanied minors seeking international protection, reviewing ECtHR rulings on Italy's treatment of minors, aiming to ensure adequate protection for migrant children's rights in the country; integrating the developments on both article 3, article 5 and article 8 by distinguishing the problem of determining age then that of confinement. Article 3 and 5 were largely analyzed in the precedent chapters, but also Article 8 of the ECHR is relevant when discussing of migrant detention. Despite the absence of specific references to immigration in the ECHR, numerous cases brought before the European Court of Human Rights have asserted the right of a national or legally established migrant in the host country to be reunited with non-national family members, as well as the right of a migrant not to be expelled from the territory of the host state in defense of established family ties. These rights are established by Article 8 of the ECHR, which guarantees the right to respect for private and family life; but often these rights are violated for asylum seekers.

Under Article 3 of the European Convention on Human Rights (ECHR), states are obligated to implement effective measures to safeguard and support vulnerable individuals. This includes ensuring robust vulnerability assessment procedures are in place to identify vulnerabilities early on, along with providing clear information to individuals about these procedures. Similarly, under EU law, Member States are required to consider the specific needs of vulnerable individuals seeking international protection (Reception Conditions Directive 2013/33/EU Article 21, and Directive 2013/32, Article 24 and 25) or undergoing a return process (Return Directive, 2008/115/EC, Article 3.9)). It is important to highlight that the recognition of an applicant's particular vulnerability has resulted in a more lenient approach to admissibility rules, the strengthening of positive obligations, a narrower margin of appreciation for the State, and a reduction of the "minimum level of gravity" threshold under Article 3 of the ECHR. However, despite its increasing use and the multiple effects that have already been widely illustrated[127], the concept of vulnerability remains somewhat vague in the Court's case law, without an actual provided abstract definition. In fact, the Court has yet to define vulnerability explicitly, and its application of the concept is marked by inconsistencies in identifying vulnerable individuals and but at least, with regard to unaccompanied minors, the case law is imbued with a certain consistency.

[127] Caroline Boiteux-Picheral, *La vulnérabilité en droit européen des droits de l'homme*, accessed 13 July 2024.

The condition of vulnerability has been delineated by the Court, with a casuistic approach and based on different normative materials (international sources of hard and soft law, European Union law, law of member states), in a broader scope than that inherent to aliens and asylum seekers. The Court has recognized this status for members of the Roma and Sinti minorities (*D.H. and others v. Czech Republic*), minors (*Juppala v. Finland*), women (*Opuz v. Turkey*), prisoners (*Salman v. Turkey*), persons with disabilities (*M.B. v. Romania*), defendants (*Salduz v. Turkey*), asylum seekers (*Tarakhel v. Switzerland*), those with HIV (*Kiyutin v. Russia*), people with unpopular views (*Bączkowski and others. v. Poland*). Without claiming to be systematic, three categories of vulnerable individuals or groups can thus be distinguished: those belonging to minority and disadvantaged groups who have a history of oppression or who suffer prejudice, hostility, and discrimination (such as Roma minorities, the mentally ill, and the bearers of unpopular ideas); individuals who by personal characteristics are in a condition of disability (due to age, health, disability, or gender); individuals who are in a dependent relationship, or under the control of authority, or who are dependent on state support (such as victims of domestic violence, prisoners and persons in custody, victims of torture, asylum seekers). As explained children are considered vulnerable persons[128].

This subchapter wants to focus specifically on unaccompanied minors, who arrive in significant numbers, including at Lampedusa and elsewhere in Italy, after enduring dramatic journeys. Italy has established comprehensive legislation[129] on accommodating these individuals, but effective protection is not always guaranteed due to practices that blatantly violate prescribed safeguards, particularly at border locations. Regarding the treatment of unaccompanied minors, there exists a well-established jurisprudence from the European Court of Human Rights (ECtHR), although the number of cases addressed is not particularly high[130], and arrests are not uncommon. The Court consistently emphasizes that when fundamental and non-derogable values protected by Article 3 of the ECHR are at risk, the status of being an unaccompanied minor must prevail over that of the irregular foreigner. Central to any assessment is the paramount interest of the child. It has explicitly ruled out the possibility that states may deprive unaccompanied minor foreigners of their due protection due to border management needs.

[128] Roberto Cherchi, 'L'approccio Hotspot e i Diritti Umani: Le Condanne Dell'Italia Nella Sentenza Della Corte Europea Dei Diritti Dell'uomo J.A. e Altri c. Italia e Nelle Successive A.E. e Altri c. Italia, A.B. c. Italia, A.S. c. Italia, W.A. e Altri c. Italia, M.A. c.Italia'.
[129] 'LEGGE 7 aprile 2017, n. 47 Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati.' (2017).
[130] Press Unit, ECHR, 'Factsheet – Accompanied Migrant Minors in Detention', August 2023.

Here, it will analyze the ECtHR jurisprudence involving Italy as the respondent state. For instance, in the case of *Darboe and Camara v. Italy*[131], Darboe who arrived on the Sicilian coast in 2017, Italy was found to be in breach of its obligations under the Convention. The delay in appointing a legal guardian resulted in several adverse consequences: the minor was housed for four months in an overcrowded migrant center for adults, with severe service deficiencies. But the main issues are concerning the age determination, that often provokes delays in access to asylum procedures. The Court rigorously assessed Italy's compliance with both substantive and procedural guarantees established by international and EU law to protect the best interests of the child. It concluded a violation of Article 8 of the ECHR, noting that the state authorities failed to apply the presumption of minority, "an inherent element of the protection of the right to respect for private life of a foreign unaccompanied individual declaring to be a minor" (para. 153). It is important to highlight the existence of the three positive procedural obligations that the Court then attached to respect for Article 8 in age determination procedures: appoint a guardian, provide access to a lawyer and ensure informed participation of the minor declared to the procedure. These procedures are extremely essential, since they determine the benefit of the guarantees; if the self-declared minor is identified as an adult he will not be entitled to any specific guarantee. Due to this oversight, the applicant was housed inappropriately, only moved after the ECtHR's interim measure, under Article 39 of its Rules of Court. Considering the duration and conditions of the stay, the Court deemed the treatment as inhuman and degrading, hence a violation of Article 3 of the Convention.

Recently, in the case of *M.A. v. Italy*[132], the Court unanimously found Italy in violation of Article 3 of the ECHR for housing an unaccompanied minor for eight months in an adult center in Como. The applicant, identified as a minor upon arrival, had initially been accommodated in a minor center in Calabria. However, upon transfer to Como, she was housed in the Osvaldo Cappelletti center in overcrowded conditions alongside adults, clearly breaching the ECtHR's established standards for accommodating unaccompanied minors. Established case law requires Contracting States of the ECHR to provide adequate protection to unaccompanied minors given their extremely vulnerable condition. Notably, in this case, gender-based vulnerability compounded the situation, as the applicant, as documented by Doctors Without Borders, had experienced gender-based violence in her country of origin and during transit, particularly in Libya. The Court did not explicitly reference gender but emphasized the psychological fragility resulting from the experienced violence, stressing

[131] Darboe and Camara v. Italy, No. 5797/17 (ECtHR 21 July 2022).
[132] M.a. v. Italy, No. 13110/18 (ECtHR 19 October 2023).

the need for appropriate assistance under such circumstances. Furthermore, not only was the accommodation inadequate, but legal guardianship also failed. Initially appointed guardians proved inadequate, resulting in the applicant's inability to timely file for international protection or be transferred to a suitable facility. Only through the ECtHR's intervention, using an interim measure under Article 39 of its Rules of Court, was the applicant transferred, nearly eight months after entering the center. Given the severity threshold required to establish a violation of Article 3 of the ECHR, Italy was found liable for failing promptly to fulfill its positive obligations under this provision, particularly concerning an unaccompanied minor who required psychological support[133].

Moreover, in the *Diakité v. Italy*[134] case, the Strasbourg judges found Italy liable for violating Article 8 of the ECHR due to insufficient diligence in respecting the child's best interests. The applicant arrived by sea and was accommodated in an adult center despite possessing a certificate confirming minority status. Italian authorities relied on a wrist X-ray, indicating an age of around 18 years. According to the Court, authorities should have applied the presumption of minority in cases of doubt and ensured appropriate accommodation and protection reflecting vulnerability.

Lastly, in its judgment of November 23, 2023, in the case of *A.T. and Others v. Italy*[135], the European Court of Human Rights condemned Italy for violating Article 3 of the European Convention on Human Rights (ECHR) due to the illegal detention of unaccompanied foreign minors at the Taranto hotspot. The Rescue and First Reception Center (CSPA) in Taranto was designated as a hotspot under 2017 Decree Law. The applicants arrived on the Italian coast by sea when they were still minors. Upon arrival in Italy, they were all transferred to the Taranto hotspot, where fingerprinting and identification procedures were carried out. The applicants requested international protection the day following their arrival in May 2017. On July 13, after submitting a request to the Court for interim measures under Article 39 of the Court's Rules of Procedure, applicants I.C., M.J., and K.I.S. were transferred to facilities for unaccompanied minors. A.T. was transferred to a similar facility a few days later. In their complaints, the applicants, who remained in the Taranto hotspot for about one month and twenty days, alleged violations of Articles 3, 5, 8, and 13 of the ECHR. *Defence for Children International*[136], acting as a third-party intervener, highlighted the difficult living conditions of minors in hotspot centers, referencing the United Nations Convention on the Rights of

[133] Adele Del Guercio, 'La Dignità Dei Migranti Alle Frontiere Europee' BIOLAW JOURNAL, no. 4 (1 January 2023): 151–71.
[134] Diakitè v. Italy, No. 44646/17 (ECtHR 14 September 2023).
[135] A.t. and Others v. Italy.
[136] Defence for Children International is a worldwide movement for children's rights with National Sections and Associated Members active across four continents. Each of DCI's National Sections works on those child rights issues that are the most relevant to their respective national contexts.

the Child, particularly the principle of the best interests of the child, the right to life, and the child's right to express their views. Specifically, invoking Articles 3 and 8 of the Convention, the applicants pointed to the poor conditions at the Taranto hotspot, which was overcrowded and unsanitary. The Court decided not to consider Article 8 ECHR, examining the complaint solely under Article 3 ECHR[137]. Noting the Italian Government's failure to contest the poor conditions at the Taranto hotspot during the applicants' stay, the Court found that the applicants had been subjected to inhuman and degrading treatment, in violation of Article 3 ECHR. The Court also found violation of Articles 5 (arbitrary detention in Taranto hotspot), and 13 (combined with Articles 3 and 8, for failing to appoint a legal guardian, thereby denying the ability to challenge their situation before a judge).

The jurisprudence explains that there are in reality two different series of obligations implied by the vulnerability of an unaccompanied migrant minor: those relating to the identification of the minor (which concern both Article 3 and Article 8) and those which concern its management. As seen in several cases, a serious problem in the immigrant system and to ensure that the children immigrants' rights are respected, is the age determination. Accurate identification of minors is crucial, as the detention of minors, especially when unaccompanied, can lead to mental and emotional distress, self-harm, and illegal behavior. Ideally, the determination of chronological age should be based on documentation. However, due to the circumstances, origins, and journeys undertaken by migrants to reach Europe, many refugees and asylum seekers often lack documentary evidence of their age. Age assessment procedures, therefore, fall to forensic experts, but there is no common EU regulation. Currently, each country employs different procedures, mostly relying on X-rays or observations of sexual maturation, with only two countries using psycho-social assessments. This variety of approaches raises ethical issues regarding migrants' right to be properly informed about the procedures. There are not many EU laws regulating the standards of evidence required for age assessment decisions, leaving almost everything to the national interpretation of the ethical principle of beneficence. Only the Directive 2013/32 establishes, in Article 25§5, specific guarantees required when States intend to use medical examination. There is no agreement within the EU on the use of radiological exams for age assessment, and the scientific accuracy of the methods varies: some approaches rely solely on physical and skeletal maturation, while others also include psycho-social evaluations. The UN Committee on the Rights of the Child has stated that age assessments should consider not only physical appearance but also psychological maturity, social history, family

[137] UFDU-Admin, 'La Corte di Strasburgo condanna l'Italia per la detenzione di minori non accompagnati in un hotspot', *Unione dei Diritti Umani* (blog), 1 December 2023.

composition, education, and self-care skills. Moreover, the European Committee of Social Rights, which monitors compliance with the European Social Charter, in its decision on the merits of the complaint European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France (no. 114/2015)[138], has expressly concluded that bone tests are incompatible with Article 17§1 of this text. According to the Italian legal framework, new laws prioritize age determination through documents and psycho-social interviews, relegating medical procedures to a last resort in cases of persistent doubt. However, in most cases, these procedures are conducted quickly upon the refugees' arrival and lack precision[139].

The safeguards guiding age assessment procedures are based on the presumption of minor age. The Court emphasized that accurate identification of minors is crucial, as misidentifying them as adults can lead to serious rights violations. This presumption means treating the individual as a child until proven otherwise. However, in practice, this presumption is often denied based on appearance, contradictory statements, or EURODAC[140] data, leading to individuals being treated as adults without further assessment. The Court did not address the conditions under which this presumption can be denied, as the applicant's minor status was not contested and was confirmed by the government through a healthcare card. The Court left the interpretation of "unfounded or unreasonable" claims to the states. The presumption of minor age should be broadly applied, given the importance of protecting children's rights under domestic, European, and international laws. This presumption is vital for safeguarding unaccompanied minors, as recognized by international consensus. Therefore, states should have a limited margin of discretion in this regard. Furthermore, soft law supports a wide application of this presumption. The Human Rights Committee stated that even if a person initially falsely claims to be an adult, the presumption of minor age should not be automatically denied. Applicants should be allowed to explain, as many unaccompanied minors are instructed to lie about their age, which may itself be indicative of their minor status[141].

[138] European Committee of Social Rights, No. 114/2015 European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France - Social Rights - www.coe.int, accessed 13 July 2024.
[139] Francesco Pradella et al., 'The Age Estimation Practice Related to Illegal Unaccompanied Minors Immigration in Italy', *The Journal of Forensic Odonto-Stomatology* 35, no. 2 (1 December 2017): 141–48.
[140] Eurodac: European system for the comparison of fingerprints of asylum applicants. Eurodac is a biometric database in which Member States are required to enter the fingerprint data of irregular migrants or asylum-seekers in order to identify where they entered the EU, and whether they have previously made asylum applications. Its main purpose is to facilitate the application of the Dublin Regulation, which determines the Member State responsible for processing an asylum claim. The recast Eurodac Regulation has been applicable since 20 July 2015.
[141] Strasbourg Observers, 'Age Assessment and the Presumption of Minority as a Prerequisite for Effective Human Rights Protection of Asylum Seekers: A Discussion of Darboe and Camara v Italy', *Strasbourg Observers* (blog), 4 October 2022.

It is crucial to note that the ECtHR makes no distinctions among minors based on age: all minors must benefit from special protection measures. Italy's most recent legislative measure, enacted as a decree law[142], significantly amends guarantees for unaccompanied minors. However, it includes provisions allowing over sixteens to be housed in extraordinary reception centers for adults in a separate area. This provision is not consistent with EU law, in fact it does not align with the international principle of *favor minoris*[143] guiding international and national orientations. Furthermore, as seen, the ECtHR has already declared this provision incompatible with the ECHR. Additionally, EU law refers to reception, not detention, which must always separate these individuals from adults. Furthermore, with decree-law 133/2023, Italy returns to age-determination procedures based on anthropometric measurements or other medical examinations, including radiographs, previously deemed incompatible with the ECHR by the European Court.

[142] 'DECRETO-LEGGE 5 ottobre 2023, n. 133' (2023).
[143] *Favor minoris* refers to the attitude of the legislature aimed at favoring the position of the child.

4 Evolution in the Subject

This chapter aims to critically examine key aspects of European migration policies and human rights challenges. It focuses on the European Court of Human Rights' role in overseeing Italy's compliance with human rights standards, the implications and controversies surrounding the EU Pact on Migration and Asylum, and the proposal for a "Right to Hospitality" by Marie Laure Morin. By analyzing these topics, the chapter aims to assess the effectiveness of current legal frameworks and propose recommendations for enhancing the protection of migrants' rights within Europe.

4.1 Progress Demanded by National and European Human Rights Bodies

In recent years, the number of appeals at the European Court of Human Rights has been increasing. Italy is among the top five countries experiencing this rise. There are over 74650 appeals, with 68% of them involving five countries: Turkey, the Russian Federation (no longer a party to the Convention), Ukraine, Romania, and notably Italy, which has 2734 appeals. This information is clearly stated in the ECtHR's annual report for 2023[144], authored by the President of the Court. This statistic underscores the significance of the ECtHR's work and highlights the need to strengthen human rights protection, particularly within our own country. Notably, the assessments made by the Court align closely with those of Italian human rights authorities, indicating a convergence in their approaches. Often the same Court uses the National Guarantor's reports to assess the violations. The most striking observation is that the Italian executive now faces dual pressures: internal scrutiny from its own human rights bodies and external oversight from the ECtHR. These forces function as a form of checks and balances, ensuring rigorous adherence to human rights standards. his dynamic interplay between internal and external pressures fosters a robust debate on human rights issues in Italy, highlighting the evolving landscape of Italian litigation before the ECtHR. Despite these positive developments, Italy still grapples with significant human rights violations, particularly concerning migrants in facilities such as CPRs (Centri di Permanenza per il Rimpatrio) and hotspots. The hope is that the reality checks provided by internal authorities, coupled with the sanctions and judgments from the ECtHR, will gradually improve the situation. Through sustained pressure and oversight, there is an expectation that these interventions will, at the very least, mitigate some of the most pressing issues and promote better human rights practices in the future.

[144] ECHR, 'Annual Reports 2023- ECHR - ECHR / CEDH', accessed 13 July 2024.

To adequately address the migration phenomenon, the Guarantor has highlighted three fundamental points that are essential and widely accepted by the most attentive observers. Firstly, migrations to Europe, especially from populations coming from the South and East of the world, are not a temporary event expected to drastically decrease in the medium term. Therefore, destination countries, particularly those most exposed due to their geographical location, must develop long-term plans that include scenarios of dialogue, cohesion, and resolution of integration issues. This planning requires structural policies aimed at addressing challenges and identifying the potential of this process. Secondly, the need to migrate is often driven by conflict scenarios, climate crises, and policies that impoverish the countries of origin, preventing them from exploiting their natural resources. This creates pockets of poverty in otherwise resource-rich territories. Thirdly, the non-episodic or emergency nature of the need to migrate to a potentially better European 'elsewhere' implies the necessity for a shared and responsible European policy[145].

These evident points necessitate more articulated forms of protection and stabilization for migrants, reducing their sense of precariousness. Alongside the traditional protection in the Constitution, Europe is trying to reflect on the definition of "economic immigration" and the responsibilities of market models that contribute to creating the need to migrate. On one hand, there's the promotion of a comprehensive approach to migration that aims to address root causes by supporting economic development and democratization in countries of origin. On the other hand, there's Directive 2009/52/EC of the European Parliament and Council of 18 June 2009[146], which provides for minimum standards concerning sanctions and measures against employers of third-country nationals staying irregularly. Only the risk of criminal elements can justify a defensive policy. Despite these shared premises, the actions taken so far have not reflected the necessary forward-looking vision.

The National Guarantor insists on the importance of three fundamental protections for migrants in CPRs: judicial protection, which must include continuous oversight of detention; health protection, guaranteed by the National Health Service; and relational connection, which prevents isolation and ensures transparency of detention. The absence of these protections creates places characterized by emptiness and a lack of significant activities, fueling anger and frustration. Jurisdiction must cover not only the validation of detention but also continuous oversight of its execution. Health protection must be guaranteed by the National Health Service, which is responsible

[145] Garante nazionale dei diritti delle persone private della libertà personale, 'La Relazione al Parlamento 2023', 10 June 2023.
[146] 'Directive - 2009/52 - EN - EUR-Lex', accessed 13 July 2024.

for maintaining the compatibility of detention with the health status of detained individuals. Finally, relational connection is essential to prevent isolation and ensure transparency, allowing interaction with volunteers and the media. The National Guarantor, while not intervening in political choices, provides data and recommendations to improve the management of migrants. He emphasizes the importance of maintaining a forward-looking vision and adopting measures that reduce situations of irregularity and the risks of criminal connections[147].

Despite the positive evaluations by the Committee of Ministers, even after multiple condemnations by the European Court of Human Rights in Strasbourg and national human rights authorities, substantial doubts remain about the system's compliance with both the European Convention on Human Rights (ECHR) and the Italian Constitution. It is important to highlight the necessity of a coordinated approach at the EU level and the monitoring carried out by the rights defenders on the negotiations of the Pact on Asylum and Migration since September 2020.

4.2. The new EU Pact on Asylum and Migration

The new EU Pact on Migration and Asylum, introduced by the European Commission, appears to reiterate the "hotspot approach," making it essential to closely monitor the execution of upcoming reforms to ensure that the protection of fundamental rights, including the right to personal freedom, is not diminished[148]. The Guarantor closely follows the negotiations on the new Migration and Asylum Pact but expresses concern about the extension of detention at the border and the forced transfer to third countries, ensuring compliance with the Italian Constitution and the responsibility for control and protection. The migration phenomenon requires a structured and articulated approach that acknowledges the complexity of the causes and needs of migrants. Policies adopted must be based on a long-term vision, ensuring the protection of human rights and avoiding unjustified deprivation of liberty. Only through a shared and responsible commitment can the challenges of migration be effectively addressed, promoting integration and social cohesion.

The Pact on Migration and Asylum introduces a new set of regulations for managing migration and creating a unified asylum system at the EU level, ensuring outcomes that align with European values. It builds upon and revises previous reform proposals in the migration sector, presenting a comprehensive strategy that aims to bolster and harmonize key EU policies on migration, asylum,

[147] Garante nazionale dei diritti delle persone private della libertà personale, 'La Relazione al Parlamento 2023'. 2023.
[148] Annalisa Mangiaracina, 'EU Migrant Policies and Human Rights: A General Overview', in *In and Out: Rights of Migrants in the European Space*, ed. Francesco Lo Piccolo et al. (Cham: Springer Nature Switzerland, 2024), 125–34.

border control, and integration. With balanced and just rules, it aims to manage and regularize migration over the long term, giving EU member states the flexibility to address specific challenges and ensuring necessary protections for those in need. On 10 April 2024, the European Parliament approved the new migration rules, followed by their formal adoption by the Council of the EU on 14 May 2024. This should have allowed the EU to address complex issues with resolve and creativity, ensuring robust and secure external borders, the protection of individual's rights, and that no member state faces undue pressure alone[149]. However, the doctrine has strongly criticized these new regulations, particularly regarding the regulation establishing a border screening procedure. In fact, these procedures will only aggravate the human rights situation at borders, just giving the authorization to detain even more migrants[150].

The new migration and asylum policy is structured to enhance the overall framework through several key initiatives. Firstly, securing external borders is a priority, with robust screening procedures to identify and conduct health and security checks on individuals who do not meet entry requirements. The Screening Regulation, Regulation (EU) 2024/1356 of the European Parliament and of the Council[151], establishing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817. It establishes consistent regulations to verify and formally register irregular migrants and asylum seekers upon their entry into the EU, ensuring a smooth transition to subsequent asylum procedures or return processes. The recast of the Eurodac Regulation, Regulation (EU) 2024/1358[152] of the European Parliament and of the Council updates the existing database into a comprehensive asylum and migration database, ensuring clear identification of asylum seekers and irregular migrants. Mandatory border procedures, established by the Return Border Procedure Regulation (Regulation (EU) 2024/1349[153] of the European Parliament and of the Council) will expedite the processing of

[149] 'Pact on Migration and Asylum - European Commission', 25 June 2024.
[150] Gustavo de la Orden Bosch, 'Pre-Entry Screening and Border Procedures as New Detention Landscape in the EU Pact on Migration and Asylum. The Spanish Borders as a Laboratory for Immobility Policies', *Peace & Security - Paix et Securité Internationales. Nº 12 (2024), 1201*, 21 January 2024, https://doi.org/10.25267/Paix_secur_int.2024.i12.1201.
[151] 'Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 Introducing the Screening of Third-Country Nationals at the External Borders and Amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817' (2024).
[152] 'Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the Establishment of "Eurodac" for the Comparison of Biometric Data in Order to Effectively Apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to Identify Illegally Staying Third-Country Nationals and Stateless Persons and on Requests for the Comparison with Eurodac Data by Member States' Law Enforcement Authorities and Europol for Law Enforcement Purposes, Amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and Repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council' (2024).
[153] 'Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 Establishing a Return Border Procedure, and Amending Regulation (EU) 2021/1148' (2024).

asylum applicants who are less likely to need protection and efficient returns with reintegration support will be provided for those ineligible for international protection. To ensure efficiency, asylum, and return processes are more closely linked so that a negative asylum decision is issued alongside a return decision, with appeals for both handled simultaneously. A mandatory 12-week asylum border procedure will be implemented in all Member States under certain conditions: if the applicant intentionally misled authorities or disposed of identity documents, poses a threat to national security or public order, or belongs to a nationality with a low approval rate for international protection. If an asylum application is rejected, the individual will enter a 12-week return border procedure for expedited removal from the EU (Article 7). The effective application of these procedures depends on Member States having adequate capacity, including infrastructure and trained staff, to handle asylum applications and returns. The EU aims for a processing capacity of 30,000 applicants, with specific capacities for each Member State determined by the Commission every three years. Additionally, the Crisis and Force Majeure Regulation, Regulation (EU) 2024/1359[154] of the European Parliament and of the Council, introduces rapid crisis protocols and operational support to handle emergency situations. This Regulation enhances solidarity and allows temporary exceptions in crises. Solidarity measures include relocations, financial contributions, and alternative support. If these aren't enough, "responsibility offsets" require contributing Member States to handle applications usually managed by the crisis-affected state. In crises, all relocation needs must be met by contributing states, potentially exceeding their fair share, with future contributions adjusted. Derogations permit extended timelines for registering protection applications (up to 4 weeks), longer border procedures (up to 18 weeks), and extended deadlines for determining responsible Member States (up to 4 months) in crisis or force majeure situations.

Streamlining asylum procedures is another crucial element. The Asylum Migration Management Regulation, Regulation (EU) 2024/1351[155], establishes clear rules to determine which EU country is responsible for processing asylum applications. The Reception Conditions Directive, Directive (EU) 2024/1346[156] of the European Parliament and of the Council, standardizes living conditions and integration processes for asylum seekers across the EU, while the Qualification

[154] 'Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum and Amending Regulation (EU) 2021/1147' (2024).
[155] 'Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on Asylum and Migration Management, Amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and Repealing Regulation (EU) No 604/2013' (2024).
[156] 'Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 Laying down Standards for the Reception of Applicants for International Protection' (2024).

Regulation, Regulation (EU) 2024/1347[157] of the European Parliament and of the Council, harmonizes criteria for granting international protection. The Reception Conditions Directive sets standards for the reception of persons seeking international protection (recast of Directive 2013/33). It aims to standardize assistance levels across the EU, imposing obligations on Member States to ensure these standards are met. It introduces mandatory contingency plans to manage surges in arrivals effectively. Special provisions enhance protections for vulnerable groups, particularly children, by ensuring swift assessment of specific needs and immediate access to care for victims of violence. The Directive discourages secondary movements by denying material support to applicants found in a Member State other than the responsible one. Flexibility in reception management is increased, allowing for tailored accommodation and geographic allocation, while also permitting limited movement restrictions. Asylum seekers will gain access to the labor market within six months of application, with early access encouraged for those likely to receive protection. Comprehensive integration measures include language, civic education, and vocational training opportunities. Particularly, Article 3 sets the scope, to "*establishe(s) a system for determining the Member State responsible for examining an application for international protection, common standards for asylum procedures, reception conditions and procedures and rights of beneficiaries of international protection*". Article 5 talks about the right to information and Articles 8 to 14 about restrictions on freedom of movement and detention: the Directive mandates a daily expenses allowance for applicants to ensure basic autonomy, which can be provided in monetary form, vouchers, products, or a combination thereof. Applicants present in a Member State other than their designated one under EU Regulation 2024/1351 lose entitlement to material reception conditions, labor market access, language courses, and vocational training upon notification of a transfer decision, except where health care and living standards are ensured following Union law and international obligations. Member States are bound by international law obligations concerning the treatment of applicants. Standardized reception conditions across the EU aim to mitigate secondary movements influenced by varying reception conditions. Member States must promptly inform applicants, including those with special needs, in writing or orally about their rights and obligations under the Directive, including conditions limiting reception to specific areas, consequences of non-compliance, detention possibilities, appeal options, and access to legal assistance. Harmonized Union rules on issuing travel documents aim to

[157] 'Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection and for the Content of the Protection Granted, Amending Council Directive 2003/109/EC and Repealing Directive 2011/95/EU of the European Parliament and of the Council' (2024).

restrict unauthorized movement within the EU, with travel documents issued only for justified humanitarian or imperative reasons, ensuring compliance with EU Regulation 2024/1351.

To prevent abuses within the system, the Asylum Procedure Regulation, Regulation (EU) 2024/1348[158] of the European Parliament and of the Council, sets out cooperation obligations for asylum seekers and outlines consequences for non-compliance. The new regulation introduces simpler and clearer procedures with reasonable time limits for applicants to enter and complete the examination process. It enforces stricter rules to prevent system abuse and secondary movements by requiring applicants to apply in the country of first entry. If an applicant whose application has been decided in one Member State absconds and applies in another, the new application will be considered subsequent. The regulation includes procedural guarantees to safeguard applicants' rights, such as free legal counseling during the administrative stage and free legal assistance during the appeal stage upon request. It empathizes with vulnerable individuals with special needs and establishes a mandatory list of grounds for accelerating application examinations. The regulation also clarifies rules for inadmissibility grounds and the application of safe third country and first country of asylum concepts. In particular, articles from 43 to 54 speak about the asylum procedures at the borders. It emphasizes the importance of timely decisions on asylum applications, aiming for efficiency while ensuring thorough examination. Member States are granted flexibility to prioritize certain applications, especially those involving families or specific circumstances. The concept of inadmissibility is highlighted, allowing Member States to reject applications where applicants can receive adequate protection elsewhere or where applications lack new relevant elements. Criteria for determining safe third countries and first countries of asylum are detailed, focusing on effective protection standards aligned with international human rights norms. Special considerations are noted for unaccompanied minors, ensuring assessments take into account their best interests and appropriate care arrangements. The regulation stresses the need for individual assessments in decision-making processes, balancing procedural efficiency with adherence to fundamental rights and legal obligations under EU law.

A framework of solidarity and responsibility ensures that EU countries receive the necessary support, allowing them to choose their forms of participation, such as relocations, financial contributions, or operational assistance. Relevant EU agencies and dedicated funds provide continuous support to member states. New rules clarify the responsibility for assessing asylum

[158] 'Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 Establishing a Common Procedure for International Protection in the Union and Repealing Directive 2013/32/EU' (2024).

applications and aim to prevent secondary movements by requiring asylum seekers to apply for protection in the first EU country they enter and remain there until their application is processed.

Furthermore, international partnerships are crucial for preventing irregular departures by strengthening border management capacities in key partner countries and reinforcing cooperation with Frontex. Anti-Smuggling Operational Partnerships with partner countries and relevant UN agencies[159] address migrant smuggling in critical areas. Cooperation on return and readmission is bolstered alongside the development of legal migration pathways. An EU Talent Pool and Talent Partnerships facilitate international recruitment, allowing non-EU citizens to work, study, and train in the EU. These comprehensive initiatives collectively aim to create a balanced, fair, and efficient migration and asylum system that upholds EU values and effectively manages migration challenges[160].

The approval of the Pact was met with numerous protests from civil society organizations and subjected to harsh criticism from both the right and left-wing parties. The former, including the Hungarian government, argue that the reform is not stringent enough and does not adequately address "illegal immigration" in Europe. The latter describes it as a catastrophic reform with unprecedented consequences for asylum rights and human rights. In a joint statement, over 160 civil society organizations urged Members of the European Parliament to vote against this pact[161]. The EU's stance is clear and follows the trajectory of recent years in European migration policies: bilateral agreements with authoritarian governments, funding for the Libyan coast guard, no establishment of legal pathways, militarization, and externalization of borders[162]. All of this will become a stark reality, formalized and normalized by the new legal framework. Outsourcing asylum procedures, softening the concept of safe third countries, and introducing special rules are just a few of the key points of the new Pact. Even families with children have not been exempted from these procedures, contrary to hopes. Exceptions are only made for unaccompanied minors.

The joint declaration from civil society is critical of the new EU Regulations on migration, which are poised to establish a system characterized by several alarming features. It includes de facto detention at borders, encompassing families with children of all ages who will face accelerated and substandard asylum procedures. Additionally, there is a notable emphasis on return procedures with

[159] FRONTEX, Europol, CEPOL, EUDA, EUAA, eu-LISA.
[160] European Commission, 'Legislative Files in a Nutshell - European Commission', accessed 6 July 2024.
[161] Chloe Bouvier, 'More than 160 Civil Society Organisations Call on MEPs to Vote down Harmful EU Migration Pact', PICUM, 13 February 2024.
[162] LILIYA CHORNA, 'Il nuovo Patto UE: una svolta tragica per il diritto di asilo in Europa', Progetto Melting Pot Europa, 15 April 2024.

reduced safeguards, heightening the risk of human rights violations and border pushbacks. The regulations also expand the application of the 'safe third country' principle, leading to more asylum seekers being deemed inadmissible and deported outside the EU, thereby increasing the likelihood of refoulement. Moreover, the absence of safe pathways forces migrants onto perilous routes, contributing to record-high fatalities, particularly in the Mediterranean region. The pact also proposes an increased deployment of surveillance technologies throughout migration and asylum processes, which civil society groups fear will further marginalize racialized communities. These communities have consistently reported systematic violations of their fundamental rights, including denial of shelter and services, and face the criminalization of humanitarian aid efforts. Despite presenting itself as a solution to uneven standards in the Common European Asylum System, the pact fails to address critical migration management issues and does little to ensure the safety of migrants. The rushed negotiations, driven by the European Commission and the Spanish and Belgian Presidencies of the Council, led to the abandonment of minimal safeguards previously upheld by Parliament. Considering these concerns, it argues that the pact threatens the right to seek asylum in the EU and will likely result in widespread human rights violations against migrants across Europe[163].

The concern about the new EU Pact on Migration and Asylum and its regulations is not coming only from civil society but also from experts in human rights: In fact, in December 2023, a group of Special Rapporteurs and some Working Groups shared a communication[164] willing to inform the Member States of the European Union about the details they have received regarding the Pact, along with other legislative proposals included in the new Migration and Asylum Package. Arguing that these measures could potentially have adverse effects on the human rights of migrants and asylum seekers, including children and individuals in vulnerable situations. The communication addresses several key human rights concerns regarding the proposed EU Pact on Migration and Asylum.

Firstly, clarifications are requested on how the proposed Regulation aligns with Article 3 and 14 concerning screening processes and Article 6 of Regulation (EU) 2016/399, which allows entry for humanitarian, national interest, or international obligation reasons. This highlights the need to identify and protect victims of trafficking in persons. The Pact lacks an explicit prohibition on detaining children under 18, including unaccompanied and separated children, and those traveling

[163] Bouvier, 'More than 160 Civil Society Organisations Call on MEPs to Vote down Harmful EU Migration Pact'.
[164] The Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on trafficking in persons, especially women and children, 'Comment Concerning the New Pact on Migration and Asylum of the EU (Hereinafter the Pact), and Other Relevant Legislative Proposals', 15 December 2023.

with their families, contrary to the Convention on the Rights of the Child[165] (CRC), which defines a child as anyone under 18 years old. Migrant children should be treated as children first, entitled to all CRC rights. The CRC Committee has stated that immigration detention of any child is a violation of children's rights and contravenes the principle of the best interest of the child.

Furthermore, the Pact does not guarantee sufficient remedies or the automatic suspensive effect of appeals against immigration orders. Migrants in detention often lack access to legal safeguards such as judicial oversight, prompt access to a lawyer, interpretation/translation services, necessary medical care, and means to challenge detention legality. Judicial review is crucial to ensure the state's powers, including detention, adhere to legal and human rights standards.

The Pact may also risk refoulement, especially without procedural safeguards for individual assessments. Return procedures must comply with the non-refoulement principle under international human rights, refugee, humanitarian, and customary law. Non-refoulement prohibits returning individuals to places where they face risks of death, torture, or other serious harm. This principle applies to all individuals, regardless of their entitlement to refugee status. The communication highlights the need for individual, fair, and independent examinations of each case to prevent serious human rights violations. Additionally, extending screening procedures to individuals within a state's territory raises concerns about racial profiling and the EU's commitment to non-discrimination. Screening must respect the right to equality before the law and non-discrimination, applying these principles to all non-nationals, including migrants, asylum seekers, refugees, and stateless persons.

The Pact should align with international human rights laws, emphasizing the need for safe, orderly, and regular migration pathways. Migration governance measures should not adversely affect the human rights and dignity of migrants. States' obligations under international human rights treaties require that human rights be central in all phases of migration governance. This includes ensuring equality, non-discrimination, non-refoulement, the right to seek asylum, the right to life, the prohibition of torture, gender equality, and the rights and best interests of the child. Unauthorized border crossing is an administrative matter that does not deprive migrants of their human rights.

The communication calls for several amendments to the Pact. Immigration detention should only be used as a last resort for adults, subject to administrative and judicial review, and should explicitly prohibit the immigration detention of children under 18 years old and their families. Human rights-based, non-custodial, community-based reception and care for all migrant and asylum-seeking children under 18 and their families should be ensured. Mandatory and comprehensive vulnerability

[165] 'Convention on the Rights of the Child', accessed 6 July 2024.

checks should be conducted for all migrants, with their consent, to identify and protect those in vulnerable situations, including children, pregnant or nursing women, older persons, persons with disabilities, victims of contemporary forms of slavery and trafficking, and those fleeing conflicts. Appropriate procedural safeguards should be implemented, including individual and objective risk assessments, to prevent irreparable harm and refoulement.

The communication also requests information on consultations with civil society and relevant stakeholders and concrete plans to address the concerns raised, aiming to align the Pact with international human rights and refugee laws. It calls for a human rights-centered approach to migration governance, ensuring the protection of vulnerable groups and adherence to international legal standards. It emphasizes that human rights apply to all individuals, including migrants, irrespective of their nationality, age, gender, or migratory status.

Despite the dedicated and intense efforts behind this final compromise, the Pact lacks crucial elements. This agreement represents a significant missed opportunity for the EU as it does not resolve the issues within the Dublin system. To address these shortcomings and establish a fair EU common asylum system, the EU must advocate for harmonized integration policies and ensure that the highest standards of integration are adopted by its Member States.

4.3 Right to Hospitality

Today there are still many issues related to the cultural and social integration of refugees into host societies, challenges about their employment, and difficulties they encounter upon returning to their home countries. Currently, Europe hosts approximately 600,000 refugees, mainly in the UK, France, and Germany. Despite Europe having a small proportion of the global refugee population (around 10 million), integration is challenging due to coinciding economic crises in many European countries[166]. Marie Laure Morin[167], in her new book "*Faire de l'étanger un hôte. L'hospitalité: un droit fondamental*"[168] proposes making the principle of hospitality a fundamental right in response to the deadly human rights violations faced by exiles at French and European borders. This idea stems from

[166] Danièle Joly, Robin Cohen, *Reluctant Hosts: Europe and Its Refugees*, 2024.
[167] Marie Laure Morin is a French lawyer, former director of research at the CNRS and former adviser to the Court of Cassation in extraordinary service. For ten years she worked as a volunteer in an association supporting migrants.
[168] Marie Laure Morin, *Faire de l'étranger Un Hôte. L'hospitalité: Un Droit Fondamental*, « Arguments et Mouvements », 2022.

the observation that while international law recognizes the right to emigrate and leave one's country, it does not acknowledge the right to immigrate or enter another country.

Currently, international law, as articulated in the 1948 Universal Declaration of Human Rights[169], secures the right to leave any country, including one's own, and to return to one's country. However, unrestricted freedom of movement and settlement has never been established in any international convention. The issue of hospitality is distinct from the right to settle freely; it pertains to the respect for the fundamental rights of individuals throughout their migratory journey. Historically, hospitality has not been recognized as a fundamental legal principle in any country. The phenomenon of large-scale migrations seen today is relatively new. Prior to the 19th century, migrations were typically local, such as Breton people moving to Paris. The significant influx of foreign workers to France began in the early 20th century, leading to the establishment of work authorization systems. By the 1920s, international efforts, like the creation of the Nansen passport for refugees, began to address population movements. France's control over foreign labor dates to decrees from 1936. In the early 2000s, border control within the European Union (EU) became increasingly stringent. The Schengen Agreement, which took effect in 1995, shifted the focus of external border surveillance to internal security rather than foreign policy, effectively making immigration a police matter in Europe. This tightening of immigration control accelerated post-September 2001, leading to enhanced barriers against migrants, even within the EU itself, exemplified by the reactivation of internal borders between countries like France and Italy. This trend has been reinforced by the establishment of Frontex, the European Border and Coast Guard Agency, and ongoing border control measures.

Given this context, Morin argues for the necessity of making hospitality a universal right. Her experience as a volunteer with Cimade[170], an association aiding exiles, revealed daily violations of migrants' fundamental rights, prompting her to advocate for hospitality as a legal principle. This idea, originally proposed by the late jurist Mireille Delmas-Marty[171], aims to balance the right to free movement with security concerns that lead to closed borders. Delmas-Marty highlighted this need for hospitality during the UN Global Compact for Migration negotiations, emphasizing its potential to address the conflicting pressures of migration and security. Although not yet widely claimed, the right to hospitality is gaining traction. Researchers at Columbia University are working on an international convention based on hospitality, and initiatives like the International Group of Migration Experts

[169] United Nations, 'Universal Declaration of Human Rights' (1948).
[170] Cimade is a French organization committed to active solidarity with migrants and refugees. A militant association, it is present in mainland France and overseas thanks to a network of volunteers and salaried teams.
[171] Mireille Delmas-Marty was a French jurist, honorary professor at the Collège de France, and a member of the Academy of Moral and Political Sciences. She was a member of numerous legislative and constitutional commissions.

(GIEM) are exploring similar concepts. Locally, cities practicing hospitality and philosophical discussions, such as those by Catherine Colliot-Thélène, who explored the duty of hospitality, further support this emerging principle. Morin's book seeks to construct a legal framework for this right, suggesting that social evolutions can crystallize into legal rights over time.

To concretely anchor the right to hospitality in international law, Morin envisions multiple approaches. While a universal treaty may be distant, local initiatives by cities could demonstrate hospitality in practice, eventually influencing broader legal recognition. In France, judicial acknowledgment of the principle could also evolve, similar to how the Constitutional Council derived the principle of solidarity from fraternity in 2018. At the European level, a citizen petition could potentially incorporate hospitality into the European Convention on Human Rights. In fact, the difficulty here is that this kind of right lacks a legal bases. Implementing the right to hospitality would significantly impact the lives of exiles, facilitating their movement and integration into new countries. Current policies often condemn migrants to wandering or confinement in refugee camps. Hospitality, as a principle, would ensure dignified reception and recognition of individuals, guaranteeing their fundamental rights. This would necessitate a shift from restrictive border policies to more inclusive measures, such as reforming visa regulations to allow regular entry and access to work, thereby easing integration challenges. Establishing hospitality as a fundamental right would require balancing security concerns with the rights of migrants, ensuring that public order considerations do not override the fundamental human rights of individuals.

Marie Laure Morin's proposal to make hospitality a fundamental right addresses the critical need for human treatment of migrants amidst tightening border controls and rising security concerns. By adopting this principle, nations can better safeguard the fundamental rights of migrants, fostering a more just and inclusive approach to global migration challenges[172].

[172] Marie Laure Morin, *Faire de l'étranger Un Hôte. L'hospitalité: Un Droit Fondamental*.

5 Conclusion

This thesis has explored the complex and multifaceted issue of immigration management in Italy, particularly focusing on the role of migrant detention centers such as hotspots and Centri di Permanenza per il Rimpatrio. By analyzing the legal and political dimensions of immigration policies, this work sheds light on the inherent challenges and human rights implications associated with the current practices. Italy's position as a primary entry point for migrants crossing the Mediterranean makes it a critical case study for understanding broader European immigration dynamics. Over the past decades, Italy's response to increasing migration flows has evolved significantly. The implementation of operations such as *Mare Nostrum* and *Triton*, and the establishment of hotspots and CPRs, reflect ongoing efforts to balance humanitarian concerns with border security. However, these measures have often been reactive rather than proactive, driven by immediate crises rather than long-term strategies.

The legal frameworks governing migrant detention centers in Italy reveal significant ambiguities and inconsistencies. While CPRs have a somewhat established legal basis, hotspots lack clear regulations, leading to substantial human rights concerns. This research has highlighted violations of Articles 3, 5, and 8 of the European Convention on Human Rights (ECHR), which pertain to the prohibition of torture, the right to liberty and security, and the right to respect for private and family life. These legal challenges are exacerbated by the political volatility in Italy, where shifting administrations have influenced immigration policies, often prioritizing national security over humanitarian obligations. The rise of nationalist rhetoric and stringent measures under various governments have further complicated the landscape of immigration management. Policies such as the *Decreto Flussi* and legislative changes aimed at curbing illegal immigration and expediting deportations have been at odds with Italy's international obligations and humanitarian principles. This trend towards the securitization and criminalization of immigration reflects broader European trends and raises significant ethical and legal questions.

Institutional and operational challenges have also hindered Italy's ability to manage migration effectively. The operational capacity of Frontex and other European bodies involved in managing immigration is limited, leading to inadequate responses to migration crises. The withdrawal of European naval resources has reduced search and rescue capabilities, drawing criticism from international bodies and highlighting the need for more robust coordination and resource allocation.

Despite these challenges, Italy has made some progress in aligning its human rights assessments with those of the ECtHR. This convergence underscores a significant evolution in the judicial and administrative approach to human rights, reflecting a deeper integration of European human rights norms into the national legal framework. The Italian executive now operates under rigorous oversight from both internal bodies and the ECtHR, which promotes adherence to human rights standards and fostering a robust debate on human rights issues.

However, the conditions and treatment of detainees in migrant detention centers remain a persistent source of criticism. Detainees often experience prolonged periods of detention devoid of meaningful activities, exacerbating their sense of emptiness and frustration. The National Guarantor has emphasized that discussions surrounding these centers are frequently driven by emotion rather than rational analysis, hindering the development of effective policies. The research underscores the importance of three fundamental protections for migrants in CPRs: judicial protection, health protection, and relational connection. Judicial protection involves continuous oversight of detention, ensuring that the deprivation of liberty is justified and lawful. Health protection, guaranteed by the National Health Service, is crucial for maintaining the health and well-being of detained individuals. Relational connection prevents isolation and ensures transparency, allowing detainees to interact with volunteers and the media, thereby mitigating feelings of emptiness and frustration.

The new EU Pact on Migration and Asylum, introduced by the European Commission, presents a comprehensive strategy to manage and regularize migration over the long term. The pact aims to harmonize key EU policies on migration, asylum, border control, and integration. However, it has been met with significant opposition from civil society organizations and political parties across the spectrum. Critics argue that the pact fails to address critical migration management issues and may lead to widespread human rights violations against migrants. The pact introduces several key initiatives, including robust screening procedures at external borders, the recast of the Eurodac Regulation, and mandatory border procedures for expedited processing of asylum applicants. Additionally, the Crisis and Force Majeure Regulation introduces rapid crisis protocols and operational support to handle emergency situations. These measures aim to ensure efficiency and solidarity among EU member states, but they also raise concerns about the potential for human rights violations, particularly in the context of extended detention and the treatment of vulnerable individuals.

Human rights experts and civil society organizations have expressed significant concerns about the potential adverse effects of the new EU regulations on the human rights of migrants and asylum seekers. Key concerns include the lack of explicit prohibitions on detaining children,

insufficient remedies or automatic suspensive effect of appeals against immigration orders, and the risk of refoulement without procedural safeguards for individual assessments. The communication from human rights experts highlights the need for the EU Pact on Migration and Asylum to align with international human rights laws and emphasize safe, orderly, and regular migration pathways.

In conclusion, this thesis has provided a comprehensive analysis of the evolving landscape of Italian litigation before the ECtHR, focusing on the interplay between internal and external pressures and the resultant impact on human rights practices. While significant progress has been made in aligning domestic human rights assessments with those of the ECtHR, ongoing challenges persist, particularly concerning the treatment of migrants in detention centers. The new EU Pact on Migration and Asylum presents both opportunities and risks, underscoring the need for a balanced and forward-looking approach that prioritizes the protection of human rights. Marie Laure Morin's proposal to make hospitality a fundamental right represents a significant shift towards acknowledging and protecting the dignity of individuals throughout their migratory journeys. This notion resonates with ongoing discussions on the right of hospitality, which seeks to reconcile the balance between migration management and the imperative to uphold universal human rights.

The findings of this thesis underscore the importance of continuous oversight, structural policies, and international cooperation in addressing human rights issues effectively. By maintaining a forward-looking vision and adopting comprehensive measures that address the root causes of migration and ensure the protection of human rights, Italy and the EU can foster a more humane and just migration system. The evolving human rights landscape in Italy serves as a testament to the potential for positive change when internal and external pressures converge to uphold the fundamental principles of human dignity and justice.

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