



ACCESS

The Role of Courts in Shaping Access to Asylum

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INTRODUCTION: OBJECTIVES OF ACCESS

The research project “Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum” [ACCESS](#) investigates the role of courts in shaping access to asylum. It seeks to understand how courts globally interpret State-developed barriers in light of the Refugee Convention (RC) and other international norms, what socio-legal factors influence asylum access adjudication, and how the emerging jurisprudence shapes international refugee law (IRL) and migration governance.

ACCESS adopts a comparative approach as it relies on data collected from 19 countries, theoretically selected to cover all geographical regions, various legal systems and adjudication models, and different forms of participation in the international refugee law regime.¹

Given the comparative and socio-legal approach of the project, our goal is to collect data through multiple methods that guarantee comparability, comprehensiveness, and reliability of the data.

The data collection template, along with the explanatory guidance used for the preparation of this National Report, can be found at: Lacchei, Alice; Lambertini, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara (2026) National Report ACCESS Project Template. DOI: 10.6092/unibo/amsacta/8984

In addition, the summaries of the judicial decisions analysed in Part II of this National Report and cited throughout this document can be found at: Lacchei, Alice; Lambertini Martinez, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara; Jesudoss, Loretta Mary (2026) ACCESS Mid-Term Dataset: The Role of Courts in Shaping Access to Asylum. University of Bologna. DOI 10.6092/unibo/amsacta/8962. [Dataset]

DEFINING TERMS

‘Asylum’ denotes the protection a state grants on its territory to non-citizens who seek it. It includes a legal status that protects against refoulement and provides a right to stay. In several jurisdictions, e.g. those that do not have domestic asylum legislation, this status might not be labelled ‘asylum’. The research nevertheless includes such equivalent protection under the term ‘asylum’. Similarly, if a national system that includes an asylum status provides additional protection statuses that include a set of rights closely similar to those the 1951 Convention provides for refugees lawfully staying, the research includes those statuses under ‘asylum’.

‘Accessing asylum’ describes using legal and practical avenues to move towards the territory of potential host states, or to enter procedures and other arrangements for obtaining such status (labelled as asylum or not) implemented by a state or on its behalf. Territorial asylum processing (sometimes referred to as refugee status determination or RSD) itself or equivalent practices, however, are not studied here.

‘Barriers to accessing asylum’ refers to measures, arrangements, approaches, implementation practices, or structures that impede access to asylum. They can be implemented by state actors and others (if tolerated by the state); be of a practical or legal character; incorporate socioeconomic and cultural elements; and pertain to administrative or judicial spheres. Barriers implemented after the formal start of territorial asylum processing can be considered, if the processing is conducted as a sham or pretence rather than allowing effective access to asylum.

‘Pushbacks’ denote the removal or non-admittance of individuals trying to access asylum, without a substantive assessment of risks or potential rights violations. They can occur both on land and sea, including on international waters.

¹ Australia; Kenya, South Africa, Tunisia (Africa); Austria, Greece, Italy, Poland, Spain (Europe); India, Malaysia, Pakistan, Turkey (Asia); Argentina, Brazil, Chile, Ecuador, Mexico (Latin America), USA.

‘Pullbacks’ are the dragging back of individuals approaching a destination state to the territory of a state from which they had departed without a substantive assessment of risks or potential rights violations. Such practices are often implemented in cooperation between two or more countries. While typically practiced at sea, such as in the territorial waters of the state of departure, pullbacks can also occur on land.

‘Walls and fences’ include physical barriers that prevent access to territory at or near borders, irrespective of the specificities of the construction or the materials used.

‘Detention’ is the imprisonment or other limitations of the right to liberty and security of person of individuals, territorially or extraterritorially, in connection with their asylum accessing.

‘Externalization of asylum processing’ denotes outsourcing procedures and transferring individuals to other jurisdictions to assess protection claims. Under such a practice, for example, potential destination states disallow asylum procedures on their territory, dismiss the corresponding applications, and deport individuals to cooperating countries. Externalized asylum processes can be based on formal and informal agreements between states.

‘Procedural barriers’ refers to any administrative practice or arrangement which, after individuals (attempt to) claim asylum, impedes the formalization of the application or the commencing of a procedure for obtaining asylum. This barrier can, for example, take the form of sham processes or (fast-track) processes based on the safe third country or safe country of origin concept, or a lack of mechanisms for ensuring appointments at registration offices.

‘Judicial or quasi-judicial body’ is the body that reviews/assesses the legality of the decisions, actions, or omissions of state authorities. This term encompasses the wide range of institutions adjudicating asylum barriers, including government/executive bodies, UNHCR, etc.

‘First instance judicial or quasi-judicial body’ is a court, tribunal, or other quasi-judicial body that hears appeals against administrative or executive decisions. **‘Second instance judicial or quasi-judicial body’** is a court or tribunal or other body that hears appeals against decisions made by a first instance judicial or quasi-judicial body. **‘Third instance judicial or quasi-judicial body’** is a court or tribunal (possibly a constitutional court) or another body that hears onward appeals, i.e., appeals against decisions already made by a judicial or quasi-judicial body of at least a second instance. In some jurisdictions there might be further levels of appeal.

‘Legal system’ refers to deeply rooted, historically conditioned attitudes about law’s nature and role, the legal system’s organization and functioning, and how the law is developed, applied, and interpreted (Merryman, 1985). The most common legal systems are the common law, civil law, Islamic, indigenous and socialist legal traditions (idem).

‘Asylum access adjudication’ refers to judicial examination and review by courts or quasi-judicial bodies of administrative decisions made by executive or immigration authorities regarding asylum.

‘Socio-legal factors’ refer to macro, meso, and micro factors influencing asylum access adjudication in the selected jurisdictions. They can originate at the macro level (state), at the meso level (judicial or quasi-judicial body), and at the micro level (individual). For example, adjudication may be influenced by the level of independence of the judiciary (macro factor) or the specialization of the asylum adjudication system (e.g., specialized courts); or availability of judicial or quasi-judicial bodies resources such as time, funds, human resources (meso factors); or individual characteristics of the actors involved, such as background or gender of adjudicators (micro factors).

‘Judicialization of politics’ refers to the increasing reliance on courts and judicial means for addressing core moral, political, and public policy questions (Hirschl 2013). For an overview of the meanings of judicialization, please refer to Hamlin and Sala (2018), who trace various forms in which judicialization of politics can occur (e.g., expanding the jurisdiction of courts, judicial activism, or due to the large number of cases decided by courts).

‘Forced migration’ refers to ‘a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion’ (IOM, 2019:77). Although it is not an international legal concept and the use of the term is debated because of the controversial dichotomy of voluntary/forced movements, in this report we refer to forced migration including the movement of refugees and asylum seekers, as well as other displaced persons (including those displaced by disasters or victims of human trafficking) who will not attempt to lodge an asylum application. When referring to ‘other displaced persons’, we mean those forced migrants who are not registered as asylum seekers or refugees, etc., despite being present in the country.

1. **Functioning:** What is the barrier’s specific functioning? How does it prevent individuals from accessing asylum?
2. **Time:** What is the implementation period of the barrier? Is it still in use? Is there a time frame for its planned termination?
3. **Place:** Where is the barrier implemented?
4. **Actors:** Who are the key institutional and other actors implementing the barrier? Are there relevant actors from other jurisdictions or international actors?
5. **Interaction:** How does the barrier interact with other barriers and the country’s asylum system?
6. **Development:** What has been the historical and political context for introducing the barrier, and how have its implementation and its character developed over time? (Please consider e.g. corruption, economic or human resources available to implement the barrier, resistance or support by local actors - officials or local community)
7. **Rationale:** What are the stated purposes (e.g., in legislative preambles, government/executive, or judicial statements) the barrier is designed to serve?
8. **Legal Status:** What legal status does the national legal framework provide to individuals prevented by this barrier from accessing asylum? For example, do they fall under a specific (protected or unprotected) category within national law, such as asylum seekers or refugees before formal recognition, or are they treated under the general framework for non-citizens?
9. **Specific Impact:** What is the impact of the barrier on specific groups, such as children, women, LGBTQ+ individuals, or people with disabilities? How does it differ from the barrier’s general impact?
10. **Reach:** How many individuals have been affected by this barrier since 2010, both in absolute numbers and relative to the number of procedures for determining protection status in the same period? Has the barrier contributed to less movement of displaced persons towards the country? Please provide an informed estimate if reliable statistics or studies are unavailable.
11. **Source:** What is the legal basis or source of the barrier? Is it grounded in or approved by domestic, international, or supranational law (even if its legality might be contested)?
12. **Justification:** What justifications have the government/executive branch provided for the barrier? Are there official statements or documents that outline these justifications?
13. **Domestic and International Reactions:** What have been the reactions or interventions from domestic actors, international bodies, or other countries?
14. **Externalization:** How does the barrier outsource migration control functions to actors outside the jurisdiction?
15. **Technology:** How does the barrier draw on technological infrastructure or tools to fulfil its functioning?
16. **Other:** Any further information considered crucial for understanding this barrier to accessing asylum and its relevance.

PART 1: BARRIERS TO ACCESSING ASYLUM

I. IDENTIFYING BARRIERS

This section identifies the barriers to accessing asylum relevant to Italy between 2010 and 2024.

A. Barriers of general relevance

Pushbacks:

Pullbacks:

Detention:

Externalization of asylum processing:

Procedural barriers:

B. Barriers of specific relevance to this jurisdiction

Criminalization of disembarked migrants considered as smugglers: This barrier functions through the immediate arrest and prosecution of migrants who steered vessels or assisted in navigation, charging them under Article 12 of the Consolidated Immigration Act (TUI). It prevents access to asylum because a conviction for smuggling acts as a legal bar to being recognized as a refugee or receiving international protection ([ARCI Porco Rosso and AlarmPhone 2021](#), Patanè, Bolhuis, van Wijk and Kreiensiek 2020).

Prevention of search and rescue operations: The prevention of search and rescue (SAR) operations functions as an indirect but significant barrier to accessing asylum in Italy. Since access to asylum procedures generally requires physical presence on Italian territory or disembarkation at an Italian port, measures that obstruct rescue operations at sea effectively prevent asylum seekers from reaching a place where they can lodge an application for international protection (AIDA, ITALY REPORT 2024). The barrier operates through several interconnected mechanisms. First, Italy has progressively reduced its direct involvement in proactive SAR operations, replacing humanitarian missions with border-control-oriented operations (Rocca 2024). Second, authorities have increasingly restricted the [activities of non-governmental organizations](#) (NGOs) conducting rescues in the Central Mediterranean through administrative sanctions, vessel detentions, burdensome operational requirements, and criminal investigations. Third, distress situations are sometimes classified as law-enforcement operations rather than rescue operations, delaying intervention and reducing the deployment of appropriate rescue assets. The barrier also includes practices such as assigning distant ports of disembarkation, requiring rescue vessels to proceed immediately to port after a single rescue, delaying authorization to disembark rescued persons, and [discouraging humanitarian actors](#) through the threat of criminalization. Together, these measures reduce rescue capacity, increase the time migrants spend at sea, and make access to Italian territory, and therefore, to asylum procedures, more difficult.

II. UNDERSTANDING BARRIERS

A. Barriers of general relevance

Pushbacks

Summary: Italy is responsible for pushbacks, despite modifying some practices and tools used to conduct them. Following the well-known 2011 ECtHR judgment in *Hirsi vs. Italy*, which condemned Italy for pushing back to Libya in Italian waters, Italy modified its practices to avoid direct responsibility for pushbacks in the Mediterranean Sea (see the section “Pullbacks”). Available information suggests summary returns from the Italian Adriatic coasts continue to occur, despite the 2014 ECtHR judgment of *Sharifi*

and Others vs. Italy and Greece. These summary returns are facilitated by a policy tool – the readmission agreement between Italy and Greece, signed in 1999. The same instrument has been used at the border with Slovenia, especially during the COVID-19 pandemic in 2020. More precisely, people were pushed back to Slovenia and exposed to chain pushbacks along the Balkan route under a 1996 readmission agreement with the Republic of Slovenia. In both cases, their readmissions occurred informally, in that they had not received any documents regarding their readmission to Slovenia or Greece, which primarily occurred through exchanges between border police. These summary returns have been conducted without providing administrative decisions or following any formal procedure, resulting in collective expulsions and violating the right to seek asylum. Third, summary returns occur through non-entry measures issued in airport zones, in case people are not guaranteed proper access to asylum. Finally, summary and collective expulsions are documented for people arriving by sea and identified in hotspots. More precisely, available information suggests that the administration issues delayed deportation orders to people disembarked in hotspots, for whom it does not guarantee proper information about their right to access asylum. The so-called practice of “*foglio notiziè*” (see below) resulted, for instance, in collective expulsions of Tunisian nationals, condemned by national and international courts.

1. Functioning:

Summary returns through readmission agreements from Adriatic ports and at the border with Slovenia

According to monitoring by ASGI, No Name Kitchen, Ambasciata dei Diritti di Ancona, and Associazione SOS Diritti, practices of refoulement continue to take place at the Adriatic maritime borders, returning individuals from Italy to Greece under a bilateral agreement signed between the Italian and Greek governments in 1999, which became operational in 2001 despite never being ratified by the Italian Parliament ([AIDA, Italy Country report 2024](#)). The agreement excludes from the informal readmission only those migrants recognized as refugees by the state requesting readmission. Based on this agreement, Italian authorities return migrants arriving in Adriatic ports to Greece, without allowing them to request asylum. An important investigation for the [Lighthouse Reports](#), in collaboration with SRF, ARD Monitor, Al Jazeera, Il Domani, and Solomon, shows evidence that asylum seekers from Syria, Iraq, and Afghanistan, including children, have been informally readmitted to Greece after being illegally detained in unofficial places of detention. More precisely, third-country nationals, including asylum seekers and minors, have been illegally detained in commercial ships at the Adriatic ports of Venice, Ancona, Bari, and Brindisi, in ships' bathrooms, luggage storage areas, and garage areas of commercial ships before being unlawfully readmitted to Greece. The people are also denied their right to seek asylum in Italy. Indeed, fortunately, in some cases, the person was able to contact the network of NGOs operating at Adriatic ports and manage to apply for asylum. In others, the pushback was carried out to Greece, without the possibility of accessing the asylum procedure, despite the intention to seek asylum.

Since May 2020, in response to COVID-19, the government and the prefect of Trieste announced the resumption of fast readmissions to Slovenia, as per a 1996 bilateral agreement. According to NGOs active in monitoring violations along the Balkan route, this practice causes pushbacks at the Slovenian Border and potential chain pushbacks along the Balkan Route ([BVMN 2020](#)). Thanks to the long and active work of [ASGI](#) and [AltraEconomia](#) in shedding light on the practice of informal readmissions to Slovenia, available public material shows how the political tool of the Italy-Slovenia bilateral agreement was used as an instrument for illegal pushbacks at the Slovenian border and chain pushbacks along the Balkan route (Croatia and Bosnia-Herzegovina), as also condemned by recent court rulings (Tribunal of Rome [56420/2020](#), [3938/2022](#)). More precisely, migrants crossing the border, including asylum seekers, as declared by the government itself (Ministry of the Interior, 24 July 2020), were readmitted informally to Slovenia, without any notification of the administrative order and without the possibility to seek asylum in Italy. Some were registered by Italian authorities since the health screening for COVID-19 was conducted before the readmission, which, however, occurred only through an exchange between police.

Summary returns from airport zones

In airport transit zones, people are, in some cases, returned to their countries without the opportunity to seek asylum. In particular, if they do not have a valid entry document and visa, they may be issued an immediate non-entry measure and returned to their country of departure or origin. NGOs express concerns about the actual guarantees for these people to access asylum while in transit zones. Among the people returned in 2022, for instance, there are also persons coming from countries with critical security situations (such as Syria, Palestine, Democratic Republic of Congo, or Pakistan) who did not have access to the international protection procedure” ([AIDA, Country Report Italy, 2024](#): pp. 27).

Summary returns from hotspots

Summary returns occur through deportation orders after arrival in Italy along the Mediterranean route. During the [summary identification process in hotspots](#), individuals after disembarkation are classified as asylum seekers or economic migrants, based on a summary assessment, mainly carried out using questionnaires (*foglio notizie*) completed by migrants at disembarkation or by oral questioning about the reason for their arrival in Italy. These questions are often asked without proper support from interpreters (see procedural barriers). People are often classified solely by nationality. [Migrants coming from countries informally considered safe, e.g., Tunisia](#), are classified as economic migrants, prevented from accessing the asylum procedure, and issued return decisions. After the initial screening, they are often transferred to the mainland and asked to complete a second questionnaire. At that point, a delayed deportation measure is issued, and the person is transferred to a pre-removal center within the territory (see Detention). This practice results in summary returns and collective expulsion of migrants, [targeting mainly Tunisian nationals](#).

2. Time:

Summary returns through readmission agreements from Adriatic ports and at the border with Slovenia

Regarding pushbacks to Greece due to informal readmissions occurring under the bilateral agreement, this is a long-standing practice adopted by Italy, as well as one condemned by the ECtHR in its 2014 ruling, which already criticized Italy for this practice. As shown by investigations and recent rulings, this practice continues.

Regarding summary returns to Slovenia, which occur through the bilateral agreement between the two countries, data show an increase in pushbacks at the Slovenian border during the COVID-19 pandemic, especially from Spring 2020, in response to the increase in arrivals from the Balkan route to Italy. After the decisions of the Tribunal of Rome in 2021 condemning the unlawfulness of informal readmissions to Slovenia and the violation of the principle of non-refoulement, EU asylum law, and the right to seek asylum, the practice of readmissions to Slovenia was suspended but re-started by November 2022, even if involving a limited number of individuals who declared not wishing to seek asylum in Italy. The new government pushed for new readmissions, but in these cases, often, [Slovenia refused to apply the readmission agreement](#) and sent back people to Italy: out of the 190 readmission requests made from December 2022 to March 2023, only 23 were enforced, since the Slovenian government stated that there was no evidence that these people crossed the border from Slovenia.

Summary returns from airport zones:

Regarding summary returns at the airport, no information is available on trends in airport transit zones because, for a long time, access to these areas and attention to what occurred there have been overlooked. ASGI, with the [Project InLimine](#), monitored the situation from 2018-2019.

Summary returns from hotspots:

The practice has been in place since the creation of hotspots in 2015. However, the first documentation regarding this practice of “*foglio notizie*” and subsequent delayed deportation measure dates to 2016/2017.

3. Place: Despite different forms, pushbacks are documented at various Italian borders: in Adriatic Ports (Venice, Ancona, Bari, and Brindisi), at the border with Slovenia, and the transit airport zones of Fiumicino Aeroporto (Rome) and Berlusconi Airport (Milan). Regarding the last practice, the first stage primarily occurs in hotspots, particularly the hotspot in Lampedusa. Then, it continues on the mainland, as the deportation order is often issued while the person is being transferred there. Then, the person can be detained in a pre-removal centre located throughout Italy (see Detention). Consider, thus, that in this case, the summary return can occur not directly at the border, but in connection with the border crossing, due to the continuum of detention from hotspots to pre-removal centres, which will be better explained in the “Detention” section.

4. Actors: As far as summary returns from the border with Slovenia and Adriatic ports are concerned, there is the direct involvement of the Italian border police, as well as the Greek and Slovenian border police. Moreover, the Ministry of Interior is responsible for the practice of readmission. In airport zones for third-country nationals, airport border police are involved, as well as private companies that manage the transit zone rooms. Again, the Ministry of the Interior is responsible for issuing the non-entry measure. Regarding the last practice, which involves delayed deportation orders for those disembarked in hotspots, various actors are involved, including border police, Ministry of the Interior functionaries located in hotspots, and professionals from UNHCR and EUAA. The responsibility for the delayed deportation order lies with the Ministry of the Interior, particularly the police headquarters and immigration offices on the mainland. Finally, since deportation orders require a deprivation of liberty, there is also the involvement of the Justice of the Peace, who, within 48 hours, must validate the detention order functional to the delayed deportation order (see Detention). In Dublin procedures, which can result in chain pushbacks, they

5. Interaction: All these summaries strongly interact (and in a certain sense overlap) with procedural barriers. Indeed, in all these cases, people lack access to proper information about their right to asylum or the possibility of formalizing their asylum application at the border or after crossing it. In the case of Adriatic Ports, airport zones, and hotspots, people also experience illegal and de facto detention, which reduces their ability to obtain legal assistance and access to judicial remedies. For instance, in airport zones, there is also an interaction with de facto detention and procedural barriers, as people are issued a non-entry measure and are immediately returned in a context of restricted personal liberty and challenges to accessing legal assistance. Thus, summary returns, detention, and procedural barriers seem strongly related to each other, and together resulted in a violation of the right to access asylum and the principle of non-refoulement.

6. Development:

Summary returns through readmission agreements from Adriatic ports and at the border with Slovenia

They have remained substantially the same over time, and what made this possible was the existence of the bilateral agreement for informal readmissions, signed in 1999, between Italy and Greece. A different context is represented by the pushbacks with Slovenia, as the bilateral agreement has existed since 1996, but it has not been widely implemented, at least since May 2020. The COVID-19 pandemic, combined with the increased number of people crossing the border, led the government to push for the implementation of the agreement and the informal readmissions (Stierl and Dadusc 2022). The illegal practice received large attention due to the large work of legal associations and NGOs active in the region (e.g., CIR), and it also led to court rulings condemning the practice. In 2021, with the end of the COVID-19 pandemic, the government complied with the court decision and ended this practice. The new right-wing government, which was pushing for immigration policies focused on border control, wanted to restart the informal readmissions. However, in this case, Slovenia was no longer willing to collaborate due to changes in the Slovenian government. Instead, they collaborated on joint activities to monitor the Italian, Slovenian, and Croatian borders, utilizing patrols and IT tools. Moreover, in October 2023, Italy suspended Schengen at the border with Slovenia, and non-entry measures have been issued for a consistent number of people crossing the border, also coming from countries such as Afghanistan and Syria.

Regarding airport zones, there is no available information explaining the trends and developments of pushbacks. The government's efforts to reduce border crossings shifted to other means, utilizing increased human and economic resources in border control through joint patrol services between Italy, Croatia, and Slovenia. More precisely, the Ministry of the Interior announced the creation of Mixed Brigades of Police Forces, building on previous joint patrol efforts. Additionally, a police coordination center involving Italy, Slovenia, and Croatia was planned to enhance border control against irregular migration. As part of these efforts, authorities increased surveillance, including the purchase of 65 Wilnex GDPR WN-42CM mobile cameras for border monitoring in the Trieste and Gorizia provinces, at a cost of €34,710. ASGI and Altra Economia confirmed that these cameras are specifically intended to track irregular borders ([AIDA, Country Report Italy 2024](#)). The most significant change at the Italian-Slovenian border is the reintroduction of border controls, as per Article 28 of the Schengen Border Code, which took effect in October 2023 and remains in place to date. According to information from the Ministry of the Interior given during an interview in April 2024, since 21 October 2023, border police have intercepted 2.613 irregular migrants, and among them, 1.542 have been returned to Slovenia. [ASGI](#) condemned the lack of transparency of these returns, arguing that people are issued non-entry orders at the border without the possibility of seeking asylum.

Summary returns from airport zones:

Regarding summary returns at the airport, no information is available on the trend regarding what occurs in airport transit zones because, for a long time, access to these places and attention to what occurred there have been overlooked. ASGI, with the Project InLimine, monitored the situation from 2018-2019. Little information is available; however, it appears that from 2018 to 2023, the situation remained relatively unchanged, as indicated by the limited data available.

Summary returns from hotspots:

There is no available information about the development. However, further research is needed to understand the developments that occurred after the court rulings (both national and international) condemning this practice in 2023.

7. Rationale: The rationale of pushback changes according to the practice of pushback. For instance, governments do not publicly justify what occurs in airport transit zones, as the topic is not discussed in public debate, especially since numbers are still relevant but not as significant as the number of arrivals by sea. Regarding pushbacks to Greece and Slovenia, they justified the practice by citing the bilateral agreement, arguing that these are two EU member states that guarantee the right to asylum under EU law. Regarding summary returns through delayed deportation orders of people disembarked in Italian hotspots, they justify the practice, arguing that the individuals did not request asylum and are thus irregular migrants who can be deported.

8. Legal Status: In cases of summary returns from Adriatic ports through informal readmissions to Greece, people subject to pushbacks are considered third-country nationals who have not applied for asylum and who do not fulfill entry requirements. The same legal status is provided for those who experienced pushbacks at airport transit zones. Regarding Slovenia, the readmissions in 2020-2021 included third-country nationals who had not applied for asylum and did not fulfill entry requirements, as well as asylum seekers, as mentioned by the Ministry of the Interior in 2020. In this document, the Ministry declared, for instance, that if the conditions for the readmission request are met and accepted by the Slovenian authorities, there is no need to visit the Police Headquarters for the formalization of the application for protection. Following this, the Ministry of the Interior, in a press conference, offered a different (but unofficial) version, stating that the agreement was not applied to asylum seekers in September 2020. However, on many public occasions, the prefect of Trieste specifies that it includes asylum seekers, and the agreement should be seen as “an integration of the Dublin regulation”. In the other two cases, the person's status is that of an irregular migrant, having entered the country without a valid document of stay.

9. Specific Impact: Pushbacks at sea and on land (Greece and Slovenia) also affected minors and vulnerable people. Among those subjected to these conditions are children. For instance, [ASGI](#) has verified three cases where minors under 18 were forcibly returned from Italy to Greece via ferry. Regarding pushbacks at the airport, no information is available. Finally, for summary returns from hotspots, it seems that the practice mainly targeted Tunisians. Considering the high number of deportations to Tunisia compared to other nationalities, there are more chances to be deported, and it could be one of the reasons for targeting mostly this national group ([AIDA 2023](#)).

10. Reach: from 1 January 2022 to 14 November 2022, 1,917 third-country nationals received a return order from the Border Police Office located in the Adriatic ports, and 81 people were informally readmitted to Greece. Among these are 29 Afghan citizens, 15 Iraqi citizens, and 11 Albanians ([Altra Economia 2023](#)). As reported by [Lighthouse reports](#), data provided by the Greek authorities indicate that hundreds have been affected by this systematic practice over the last two years, with 157 people returning from Italy to Greece in 2021 and 74 in 2022. However, experts believe that the actual number is potentially higher, as not all cases are documented. Moreover, it is difficult to capture the percentage of people pushed back, since there are no available data concerning the arrival of migrants in Adriatic ports.

As regards pushback to Slovenia, only to give some numbers, despite land crossing borders representing a limited percentage of migrants' arrivals, migrants arriving in Italy through the Balkan routes have increased over the years. However, the government does not provide official statistics. As reported by ASGI (2023), the IRC, responsible for supporting migrants at the border with Slovenia, offers a picture: in 2020, around 4,100 people crossed the border with Slovenia, while in 2021, the number doubled, reaching 9,400 people. In 2022, [IRC](#) provided support to 13,126 asylum seekers from Slovenia. According to data from the Ministry of the Interior, 1,240 people were returned to Slovenia in 2020, while in 2019, only 300 were ([Altra Economia 2020](#)).

Regarding transit zones, according to data provided by Inlimine ASGI projects, as of 31 October 2022, 909 third-country nationals were not granted access to Italian territory at the airport zones, and only 128 asylum applications were lodged at the air borders.

Finally, regarding summary returns from hotspots, there is no available data about those subject to this practice. As mentioned in the “Detention” section, on March 31, 2023, 22,024 people, including 3,669 minors, entered hotspots, though full-year data was unavailable. In 2022, 55,135 persons – including 10,491 unaccompanied minors – entered hotspots, 46,087 of which – including 6,235 unaccompanied minors – were in Lampedusa. High pressure in the hotspot of Lampedusa continued in 2022, with the centre hosting at times more than 1,000 migrants, despite its much smaller capacity. However, there are no available data on those receiving a delayed deportation order after the hotspot identification.

11. Source: Instead, summary returns to Slovenia before 2021 occurred according to a bilateral agreement (not ratified by the parliament) Italy-Slovenia for the readmission of people at the border, signed in Rome on 3 September 1996, as well as those to Greece, which occurred through a similar instrument signed by Italy and Greece of 1999, also in this case not ratified by the Parliament. Summary returns at the airport occur through a non-entry measure and an immediate deportation order (*respingimento immediato*), as per national law (Article 10 of Law No. 286/1996). The same norm is now used at the border of Slovenia after the reintroduction of the Schengen border. Instead, summary returns from hotspots occur through delayed deportation orders issued in accordance with Article 10-bis of Law No. 286/1998.

12. Justification: On the 13th of January 2021, the ministry stressed that the readmissions in Slovenia are safe since Slovenia is an EU country and respects EU and international norms regarding asylum and other fundamental human rights. For readmissions to Greece, the authorities denied the summary returns or argued that the people readmitted to Greece did not ask for international protection. For the summary returns at the airport, which occurred through non-entry measures, they also justify the provisions, arguing that people did not ask for asylum.

13. Domestic and International Reactions: The legal association ASGI is largely involved in actively condemning the adoption of these practices in public debate and developing projects such as Inlimine and Medea to increase knowledge and public engagement on barriers to asylum access in the country. ASGI also engages in strategic litigation, resulting in court rulings that declare these practices unlawful. The EU seems instead not to express concern about implementing these barriers. Civil society has been active in monitoring the events that occurred both in Adriatic ports and at the border with Slovenia, with grassroots organizations mobilizing to condemn the pushbacks. Courts have also mobilized against the barrier. Regarding pushbacks in Adriatic ports, the European Court of Human Rights (ECtHR) condemned Italy in 2014 for unlawfully returning asylum seekers to Greece through this mechanism, thereby denying them the opportunity to apply for asylum (*Sharifi and Others v. Italy and Greece*). The case involved 32 Afghan nationals, two Sudanese nationals, and one Eritrean national who alleged they were unlawfully returned to Greece after entering Italy, fearing subsequent deportation to their home countries, where they faced risks of death, torture, or inhuman treatment. The Court found multiple violations perpetuated by Italian authorities: Violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion) for deporting asylum seekers without proper procedures; Violation of Article 3 for exposing applicants to Greece's inadequate asylum system.; Violation of Article 13 combined with Article 3 and Article 4 of Protocol No. 4, as asylum seekers in the port of Ancona were denied access to legal remedies. The Court criticized Italy's practice of automatically returning migrants at Adriatic ports, often handing them over to ferry captains for deportation to Greece, stripping them of their rights. It also reaffirmed that the Dublin system, which assigns responsibility for asylum applications within the EU, must comply with human rights standards. Despite Italy's repeatedly claiming that this practice has stopped and has pushed for official monitoring of its border processes at the Adrian port, violations still occur as reported by civil organizations, lawyer associations, such as Asgi e il Network dei Porti Adriatici, and as also condemned by recent court rulings (*Tribunal of Rome, 21667/2023*).

The ECtHR in 2023 also condemned Italy for the collective expulsion of Tunisian nationals, which resulted from the practice of “*secondo foglio notiziè*” and delayed deportation after disembarkation and identification in the Lampedusa hotspot. The same occurred at the national level, with the Italian Court of Cassation (court *decision no. 32070/2023*) condemning this practice (see Part II). However, in other cases, courts adopted decisions that reinforced or did not condemn the practices. This is particularly the case of the Judges of the Peace, who, in some cases, did not question the unlawfulness of delayed deportation measures and based the validation of the detention measures exactly on the practice of the “*foglio notiziè*” (see Part II). Regarding summary returns in airport zones, there have been no relevant court decisions.

14. Externalization: pushbacks at the Adriatic ports and at the Slovenian border occurred through bilateral readmission agreements with other EU countries. We can frame this practice as a form of externalization, which occurs through readmission agreements and cooperation between the police of different countries.

15. Technology: Technology did not play a relevant role in the implementation of these practices.

16. Other: corruption seems not to play a relevant role in these barriers, at least from existing sources.

Pullbacks

Summary: Italy has developed actions to prevent arrivals in Italy through the central Mediterranean route by undermining access to the territory and, consequently, access to asylum. These measures include partnerships with Libya and Tunisia, and must be viewed within the broader EU context. Italy has played a significant role in shaping the EU's externalization policies, particularly in relation to these two countries.

1. Functioning:

Pullbacks to Libya

Italy prevents the entry of migrants attempting to reach Europe along the Mediterranean route by developing agreements with Libya and Tunisia, which aim to reduce departures from the two countries and to intercept migrants at sea before they enter the Italian SAR zone or the Italian territorial waters. The 2017 represents a turning point in this process with Italy creating the “Africa Fund” to support transit nations - including Libya and providing funds for migration management -and signing on February 2, 2017, the Memorandum of Understanding between Italy and Libya - renewed for the second time on February 2, 2023, provides funding, equipment, and technical support to Libyan authorities, particularly the Libyan coastguard, to patrol international waters and conduct rescue operations. The agreement aims to enhance cooperation on Libyan border management to “reduce illegal migration flows”. After adopting the Memorandum, the LCG was equipped to conduct rescue operations and avoid entering Italian territory in this way. This occurs without any effective evacuation mechanism and consequently leaves people subject to severe violations of human rights. Indeed, Libya’s migration management system continues to rely on the indefinite detention of migrants without administrative authorization or judicial oversight, subjecting them to systematic torture and severe human rights abuses. Since 2017, the Italian government has funded Libya’s border control efforts (AIDA, Italy country report, 2024).

Italy has directly financed the Libyan Coast Guard with technical equipment, training, and naval support, including the rehabilitation of patrol boats and the stationing of Italian naval units in Tripoli. For the training and support of the Libyan Coast Guard, the allocation of funds increased from 3.6 million euros in 2017 to 10 million euros, as planned for 2020, and then rose to 10.5 million euros in 2021. A total of 32.6 million euros has been allocated to the Libyan Coast Guard from 2017 to 2022. [Human Rights Watch](#) reports the statement made by Italian Prime Minister Giorgia Meloni during a visit to Libya on January 28, 2023. In this statement, she announced that Italy would provide the Libyan Coast Guard with five fully equipped boats.

Within the same framework of externalization, and under the Memorandum of Understanding signed with Libya, Italy can be considered involved in what is known as “privatized pushbacks” (ASGI, AIDA Country Report 2024). These are pushbacks conducted by private vessels whose captains, responding to provisions of the Memorandum and under coordination with Italian authorities, after sea rescue operations, contribute to pushing people back to Libya by delivering shipwrecked people to the Libyan coast guard. Thus, in this case, there is an intermediate actor (the private vessel) that contributes to the practice of sending people back to Libya.

Pullbacks to Tunisia

The externalization policy also involves Tunisia. According to a [report](#) conducted by organizations active in the field, since 2017, Italy has spent nearly 75 million euros on the equipment and training of Tunisian border guards, first through the so-called Migration Fund and later through the Reward Fund for repatriation policies. Particularly, it reported the following transfer of funds:

- 2017 - 2019: 12 million euros for technical support from the Italian Ministry of the Interior to the relevant Tunisian authorities to improve border and immigration management, including combating migrant trafficking and search and rescue activities. "Migration Fund" (formerly the Africa Fund of the Ministry of Foreign Affairs and International Cooperation). State Police
- 2017-2019: 75,000 euros for Training courses for Tunisian customs, border, immigration, and port and airport security police agencies. "Migration Fund". Guardia di Finanza
- 2018-2020: 20 million euros for the Italian Initiative on Maritime Surveillance Integrated Sea Border Surveillance System in Tunisia. European Trust Fund for Africa (EUTF). Italian Ministry of the Interior
- 2020-2025: 27 million euros for Support to Tunisia’s border control and management of migration flows. Reward Fund. UNOPS.

- 2022 - 2026: 10 million and 850 thousand euros for Enhancing Capacities to Better Manage Movements at Borders Along the Central Mediterranean Route. Reward Fund. IOM.
- 2023: 4.8 million euros for the Refurbishment and transfer of 6 patrol boats. Budget of the Ministry of the Interior. Guardia di Finanza.
- 2023: 9 million euros to be spent on fuel for patrol boats. Budget of the Ministry of the Interior. Direct transfer from the Ministry of the Interior to the Tunisian National Guard.

2. Time: despite externalization occurring since the '90s (Longo and Fontana 2022), externalization of asylum policies has become a relevant issue since 2015, and it took hold in 2017 with the MOU between Italy and Libya, and then it has enlarged since 2023 with the MOU between the EU and Tunisia.

3. Place: Mediterranean Sea (central route), particularly in international waters and Tunisian and Libyan SAR zones.

4. Actors: There is, in principle, the responsibility of the Ministry of the Interior and the Ministry of Public Affairs and International Cooperation (concerning externalization agreements), and it could also be the responsibility of the Ministry of Defense if there is involvement of the Coast Guard. Additionally, there is a large involvement of the [EU](#). For instance, the [EU actively finances](#) Libyan authorities and the Coast Guard. The EU has transferred to Libya euros 700 million since 2015 under the EUTF. Thirteen % of 455 million was dedicated to border management. Regarding Tunisia, on July 16, 2023, the European Union signed a Memorandum of Understanding with Tunisia, with migration management being one of its five key pillars. As part of the agreement, the EU committed an additional EUR 100 million to Tunisia to enhance border control, conduct search and rescue operations at sea, and implement “anti-trafficking” measures to reduce departures from the country. Although the deal is officially intended to “address the root causes of migration,” it primarily risks blocking those needing protection from seeking asylum. Despite its approval and the significant resources allocated, the European Parliament raised concerns about the agreement’s effectiveness just weeks later. At the operational level, there is the direct involvement of the Libyan Coast Guard and the Tunisian Coast Guard. There is also a role of private vessels responding to Italian orders to rescue migrants and then disembarking them to LCG ships to implement the Memorandum of Understanding with Libya, leading to their involvement in privatized pushbacks.

Additionally, there are ongoing investigations into the involvement of Frontex in pushbacks in the Mediterranean. [Journalistic investigations and academic research](#) offer data to demonstrate this collaboration. Frontex has spent over €500 million on aerial surveillance in the Mediterranean region since 2017. Additionally, these investigations and studies show that they actively intervene in intercepting boats at sea, allowing the Tunisian and Libyan coast guards to intervene and rescue people. Particularly, the [Liminal project](#) focused on the data contained in the Joint Operation Reporting Application (JORA), a database where, since 2011, Frontex records all incidents of irregular border crossings of which it becomes aware. The records from September 2016 to September 2021, obtained by journalist Emmanuel Freudenthal, precisely contained the locations where boats were found at the time of detection, and in many cases, the final port of disembarkation. In 197 instances, these operations resulted in pushbacks towards Libya and Tunisia. For the data from 2021 to January 25, 2023, Frontex provided information with even fewer details, particularly regarding the final port of disembarkation.

5. Interaction: While financing sea rescue operations by LCG, Italy adopted several measures to prevent sea rescue operations under Italian authority and criminalize NGOs pursuing this activity. Indeed, the reduced presence of national sea and rescue operations, combined with the presence of NGOs, can be seen as a tool for reducing arrivals on the Italian coasts, efforts that are pushed for by externalization policies involving Libya and Tunisia.

6. Development: Echeverría, Abbondanza, and Finotelli (2024) offer a complete evolution of externalization policies with Libya. Italy's externalization policies regarding Libya have evolved over time in response to its reconstruction. During Berlusconi’s government, informal readmission agreements with

Libya were established, beginning with a bilateral agreement signed in 2000 and reinforced in 2003 (Cassarino 2005). These agreements included financial and logistical support to Libya, as well as Italian naval deployments in the Mediterranean aimed at intercepting and turning back migrant boats through so-called “pushback maneuvers.” However, Italy faced condemnation for these actions, most notably in the landmark 2012 European Court of Human Rights (ECtHR) case, *Hirsi vs Italy*. Under the Monti government (2011–2013), migration agreements with Libya remained in place, but illegal pushbacks were discontinued. Subsequent governments introduced new forms of externalization to block access to Italian territory and prevent crossings along the central Mediterranean route while avoiding direct responsibility for pushbacks and human rights violations.

7. Rationale: to manage migration flows along the central Mediterranean route, as Muller and Slominsky (2021) highlight, in response to the legal constraints imposed by the 2012 *Hirsi* ruling, the EU adopted a strategy of “externalization through orchestration.” This approach minimizes direct EU involvement by shifting maritime border control and search-and-rescue (SAR) operations to external actors. It relies on indirect methods such as helping, offering political endorsement, coordinating efforts, and convening stakeholders. In cooperation with the EU, Italy has played a key role in supporting Libya by supplying material, technological, and financial resources, enabling Libyan authorities to meet international maritime law requirements. Moreover, Italy has legitimized Libya’s border management institutions, reinforcing their position by facilitating interactions with internal Libyan factions and international stakeholders. Through this orchestrated system, the EU frames Libya’s border control and SAR operations as sovereign actions compliant with international law, distancing itself from legal accountability. Rather than facing challenges related to border control capacity, the EU’s primary concern has been navigating the legal restrictions set by the ECtHR. Instead of selecting a capable and cohesive intermediary, the EU has chosen to work with the Libyan Coast Guard, despite its operational limitations and lack of political will to effectively manage outsourced responsibilities.

8. Legal Status: migrants do not have a specific legal status in Italy since they do not enter the Italian territory, and Italian authorities do not register them. This produced large difficulties in obtaining effective remedies for violations of the principle of non-refoulement

9. Specific Impact: the barrier affects indiscriminately vulnerable people, such as children or pregnant women. The UN migration agency IOM reports that the number of interceptions and forcible returns to Libya has increased to 20,839 from 17,000 in 2023. According to the agency’s most recent data, 255 people were returned to Libya in the last week of November 2024, and twenty-four were children.

10. Reach: In 2020, the Libyan Coast Guard, supported by Italy and the EU, intercepted and returned over 12,000 migrants—42% of those attempting to flee. Amnesty International reported a record 32,425 interceptions in 2021, three times higher than the previous year, alongside 1,553 deaths or disappearances in the Central Mediterranean. Between January and October 29, 2022, the Libyan coastguard intercepted and returned 19,308 individuals to Libya, while 1,286 migrants were reported dead or missing at sea. The UN migration agency, IOM, reports that the number of interceptions and forcible returns to Libya increased to 20,839 in the past year, up from 17,000 in 2023. In 2024, the Libyan Coast Guard returned over 21,000 migrants. The International Organization for Migration (IOM) has reported that more than 21,000 migrants and refugees were intercepted and returned to Libya by the Libyan Coast Guard in 2024. These numbers must be read in context, and in relation to the total number of arrivals by sea, which in 2024 was 66,317 people (ISMU 2025).

11. Source: externalization policies in Libya mainly occur through the Memorandum of Understanding signed in 2017 between Italy and Libya, which the Parliament has not ratified. Regarding Tunisia, the partnership occurs informally through political means and within the EU-Tunisia recent Memorandum of Understanding signed in July 2023, which contains a pillar on migration and mobility.

12. Justification: The main justification of the externalization policies is to discourage irregular migration and fight against smuggling and trafficking.

13. Domestic and International Reactions: Externalization with Libya has been documented by various institutions, including IOM and UNHCR. From a legal standpoint, the Criminal Court of Trapani ruled that the agreement contradicts the Italian Constitution and international law. The Memorandum has faced strong criticism from organizations such as ASGI and the Council of Europe's Commissioner for Human Rights. International bodies have raised concerns about the consequences of moving migrants back to Libya, stressing the conditions in Libyan detention centres. For instance, on March 27, 2023, the UN Independent Fact-Finding Mission issued a report raising alarm over Libya's worsening human rights situation, particularly the systematic targeting of migrants. The report provided strong evidence of widespread torture and stated that migrants were likely enslaved in both official detention centres. It further concluded that rape, as a crime against humanity, had been committed in these facilities. The European Court of Human Rights is reviewing the case *S.S. and Others v. Italy*, which challenges Italy's involvement in a 2017 Sea Watch rescue operation disrupted by a Libyan patrol boat provided by Italy. In connection with the externalization of migration policy in Libya and Tunisia, Italy was [under investigation](#) for indirect pushbacks by the European Court of Human Rights in *the case S.S. and Others v. Italy* concerning a rescue operation of the Sea Watch ship hindered in November 2017 by the Libyan coastguard through a patrol boat donated by Italy and with the coordination of the Italian MRCC. The court ruled the case inadmissible since the events occurred outside Italian jurisdiction. The Global Legal Action Network filed a complaint with the UN Human Rights Committee against Italy for outsourcing migrant pushbacks to private vessels. However, the complaint was dismissed due to failure to exhaust legal remedies in Libya. However, as clearly explained by ASGI ([AIDA, Country Report Italy, 2024](#), p. 21), this practice of privatized pushbacks has reached Italian national courts. Since 2021, important cases concerning the involvement of private vessels in coordination with the Italian authorities in pushbacks have been under scrutiny by Italian courts. There is the Asso 29 Case in 2021, regarding five Eritrean citizens, supported by ASGI and Amnesty International, who sued to challenge their forced return to Libya by the Asso 29 ship in 2018, an operation coordinated by Italy and the Libyan Coast Guard. A similar case concerns the Vos Triton case, which lasted from 2021 to 2024 and involved over 270 migrants who were handed over to the Libyan Coast Guard by the Vos Triton ship and then detained in Libya. Referring to this case, [UNHCR and IOM](#) reaffirmed that Libya is not a safe port for disembarkation. The NGO Sea Watch, which documented these pushbacks, had its request for government records denied. In early 2024, new evidence from two Sudanese victims was submitted to the Italian Public Prosecutor in Rome. Finally, the Asso 28 case arrived before national courts in a proceeding that concluded in 2024. The captain of the commercial vessel Asso 28 was sentenced to one year in prison for returning 101 migrants to Libya in 2018. This marked the first conviction of a private vessel for an illegal pushback. The ruling was upheld by the Court of Appeal of Naples (2022) and the Court of Cassation (2024), which confirmed that Libya cannot be considered a safe destination due to systematic human rights abuses.

14. Externalization: externalization characterized the main practice, since pullbacks by Libya and Tunisia occurred through Memoranda of Understanding developed between Italy/EU with these two countries.

15. Technology: More research must be conducted in this direction, and particularly in relation to the use of EU and Italian funds for the LCG and the TCG for IT surveillance systems aiming at patrolling the Mediterranean route to Italy. For instance, research from the [project Liminal](#) shows the importance of surveillance via drones conducted by Frontex in pullbacks to Libya and Tunisia.

Detention

Summary: In the Italian context, detention represents a barrier to accessing asylum for two main reasons: first, as documented by NGOs, legal associations, and court rulings, in both hotspots and CPRs, migrants are affected by a lack of procedural guarantees, which can largely limit their possibility to access asylum. Among them are the lack of proper information on the right to access asylum and the challenges to accessing legal aid. Since 2023, in addition to hotspots, detention for identification purposes can occur in

CPRs but also in other, unspecified “similar facilities”. The law stipulates that the identification of these facilities will be conducted in consultation with the Ministry of Justice.²

Second, deficiencies in procedural guarantees and a lack of proper assessment of individual cases (e.g., the vulnerability of asylum seekers) can negatively impact the asylum procedure for asylum seekers detained in these facilities. Italy has expanded detention mechanisms within the asylum determination procedure and enlarged the grounds for detention for asylum seekers. According to the law, asylum seekers can be detained under various circumstances in pre-removal centres (CPRs - “*Centri di permanenza per il rimpatrio*”) and in centres for identification purposes after arrival in the territory (the hotspots). Moreover, since 2024, according to the Italy-Albania protocol, migrants and asylum seekers can be detained in administrative detention centres on Albanian territory. An important aspect to be emphasized is also that detention in hotspots occurs as de facto detention, despite the law providing for a procedure for detention for identification purposes in these centres. This means that detention occurs without the existing procedural guarantees, especially the judicial validation of the detention order. During COVID-19, de facto detention of asylum seekers also occurred in quarantine vessels, where people were detained without any detention order.

1. Functioning:

De facto detention in border areas

NGOs and legal associations denounced de facto detention, which occurs largely at the borders (see, for instance, de facto detention in Adriatic ports or de facto detention in airport zones, described in the section “Pushbacks”). Concerning de facto detention in ships, it occurred during the COVID-19 pandemic, when migrants were confined during a quarantine period, facing several challenges in accessing their right to formalize an asylum application (AIDA, 2022). It also occurred that, prior to disembarkation after sea and rescue operations at sea, people were de facto detained on ships for days, as the authorities did not provide authorization for disembarkation. Particularly, de facto detention is systematic within the hotspots, where migrants after disembarkation are de facto detained during the identification process, with the privation of their personal liberty without validation by judicial authorities. Despite the law (since 2018) providing for the possibility of detention of asylum seekers for identification purposes, the practice remained informal, without notification of detention measures and access to judicial remedies. If identification is impossible at these facilities, they may be transferred to pre-removal centres. However, the law does not specify the locations for such detention. A 2018 Interior Ministry Circular assigned Prefectures the task of identifying appropriate facilities, but no such sites have been officially designated. As a result, identification-based detention occurs de facto in hotspots, such as Lampedusa or Pantelleria, where migrants are unable to leave due to restricted access and a lack of travel documents. The law also does not outline judicial validation for this form of detention, although the Ministry’s Circular mentions judicial oversight. [Amnesty International](#), ASGI, stresses that migrants — especially Tunisians ([AIDA, ITALY REPORT 2024](#)) — are transferred immediately upon arrival and are effectively denied their right to request asylum and remain free while their cases are processed (see below and section “Summary returns from hotspots”). This can lead to prolonged and unnecessary detention, starting with a de facto violation in hotspots and continuing with detention in CPRs before the deportation order is executed. This means that it can lead to extended periods of detention, in addition to violations of the right to non-refoulement, due to a lack of access to asylum.

Detention in pre-removal centres

Detention in pre-removal centres (CPR – *centri per il rimpatrio*) at the borders is instrumental in executing rapid deportation orders after arrival in Italy (see Summary returns from hotspots). The clearest case is the pre-removal centre of Caltanissetta, where migrants (mainly Tunisians) are detained after disembarkation and identification in hotspots and returned to the country of origin in a very short period (15 days). In these centres, people can see violations of the right to access asylum. Migrants are transferred

² Article 10-ter (1-bis) of Legislative Decree no. 286/1998.

to pre-removal centres immediately after disembarkation and transfer to the mainland, following a brief stay in pre-identification facilities (hotspots). After receiving a deportation order and being detained on this ground, they face several challenges to access asylum, namely due to the lack of proper information about their right to asylum, both in the hotspot and in the CPR (AIDA 2023). Those who can ask for asylum often do so at the hearing for the validation of their detention measure in front of the Judge of the Peace. In the event that the Judge of the Peace agrees to formalize the asylum application, the detention measure can still be validated, considering the request for asylum as instrumental in avoiding the deportation measure with a risk of non-refoulement, without the possibility of applying for asylum according to Article 6.3 of Legislative Decree 142/2015. This is one of the grounds that allows the detention of asylum seekers in pre-removal centres (see sources), which is largely used in Italy and is now also applied in Albania to justify the detention of people seeking asylum after being transferred to Albania (see Externalization of asylum processing). Thus, when the asylum application is accepted, they remain in detention instead of being transferred to open reception centres. [ASGI](#) (2024) also denounced the violation of the right to judicial remedies for those detained in pre-removal centres. In some cases, asylum seekers in detention have been deported immediately after receiving a negative decision on their asylum application, before the expiration of the time for appealing the decision to the court (asylum appeal). This practice risks violating the principle of non-refoulement, especially considering the adoption of a new provision in 2023 that provides that a second subsequent application issued by a person detained in a pre-removal centre can be deemed inadmissible within three days without a proper assessment of the case (see Procedural barrier). Asylum seekers are detained in the same facilities as migrants with irregular status, subject to deportation orders. As for all migrants detained in CPRs, asylum seekers are detained in conditions characterized by severe violations of human rights (with detention conditions, lacking health standards or access to information about their rights), as stressed by the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) in April 2024 and by the [2023 Report to Parliament Annexes to the yearly report of the National Guarantor for the rights of detained persons](#). Despite these conditions being unacceptable and generally condemnable for all detained migrants, for vulnerable migrants who have the intention to seek asylum, and for vulnerable asylum seekers, they can strongly affect their asylum procedures, as they are not in a safe and adequate place for entering and facing the entire asylum procedure.

Asylum seekers' detention within the Italian border procedure

The Italian border procedure was introduced in 2018 and extended in 2023,³ and it provides that those asylum seekers who make an application directly at the designated border areas or transit zones after being apprehended for evading or attempting to evade controls or coming from safe countries of origin can be detained at the border for up to four weeks (see Procedural barriers). NGOs and legal associations also stressed strong concerns about the new Italian border procedure. As regards the right to access asylum, [Amnesty International](#) has raised concerns about the 2023 accelerated border procedure providing for the automatic detention of asylum seekers from countries the Italian government considers “safe countries of origin”, with a lack of individualized assessments. Indeed, according to Law 20/2023, detention could be avoided only by providing a financial guarantee (4,938 euros), and the administration did not conduct any individual assessment of the case. All asylum seekers who cannot provide a financial guarantee, who come from a safe country of origin, and present an asylum application in border zones are detained. Courts suspended these provisions, questioning the financial guarantee mechanism that makes release conditional on monetary means rather than being the default status, and not applying the list of safe countries of origin. The government, in response, changed the amount of the financial guarantee (variable from 2500 to 5000 euros), decided by the administration on a case-by-case basis, according to the individual situation of the asylum seeker (Decree 142/2024). However, the risk still exists. Amnesty International and other NGOs and legal associations, such as [ASGI](#), warn that Italy's expanded list of “safe countries”, including Egypt and Tunisia, despite documented human rights abuses, may further increase the number of asylum

³ Decree law 113/2018 converted into law 132/2018, and Decree law 20/2023 converted into law 50/2023.

seekers subjected to unjust detention. Regardless of when an individual expresses their intent to seek asylum, detention should remain an exceptional measure. The 2023 legal reforms, however, erode asylum protections by allowing authorities to simply re-issue detention orders under different legal justifications instead of releasing detainees. This concretely means that asylum seekers detained under the border procedure, when receiving a negative decision from the authorities, can be immediately detained in pre-removal centres, although they will have the right to appeal the administration's decision. Despite the appeal, it could be released, which would pose challenges for asylum seekers in accessing an effective remedy due to the deficiencies in procedural guarantees in Italian pre-removal centres (see Procedural barriers).

2. Time: The use of detention in asylum policies has been increasingly used, especially since 2015, with de facto detention occurring in the hotspot location. Moreover, as already shown, in 2018 and 2023, grounds for detention of asylum seekers were added (see sources). In 2023, detention in Albania was included.

De facto detention in border areas: Since 2015, in hotspots, and from 2020 to 2022, there was also de facto detention in quarantine ships.

Detention in pre-removal centres: since 1998

Asylum seekers' detention within the Italian border procedure: since 2018

3. Place:

De facto detention in border areas

The [global detention project](#) lists several administrative, criminal, and ad hoc immigration-related detention facilities within Italian territory. De facto detention occurs in Adriatic ports on commercial ships (see Pushbacks) and in airport zones, particularly at the Airports of Fiumicino (Rome) and Berlusconi (formerly Malpensa) in Milan, as they host international flights. Regarding hotspots, formally, four hotspots are dedicated to identification procedures immediately after disembarkation: Lampedusa, Pozzallo, Taranto, and Messina. ASGI has denounced that first-line reception facilities, such as [Monastir](#), in Sardinia, are used as a de facto detention facility for identification purposes. The [Ministry of the Interior](#) communicated to ASGI that in May 2024, the following centres at the border area are in function for identification purposes and border procedures: Augusta (SR) - 250 places; Catania - 650 places, Isola di Capo Rizzuto (KR), 80 places; Lampedusa (AG) - 640 places; Messina - 200 places; Porto Empedocle (AG) - 280 places; Pozzallo-Modica (RG) 489 places; Roccella Jonica (RC) 250 places; Taranto - 293 places; Vibo Valentia - 280 places. ASGI, within the project InLimine, is providing information about what occurs in these centres by mapping hotspots and other first reception centres where detention occurs during border procedures or for de facto identification purposes. Among these centres, they refer to the Crotona First Reception Centre, where de facto detention occurs for identification purposes, including unlawful detention of unaccompanied minors. Legal actions, including appeals to the Italian courts and the European Court of Human Rights (ECHR), have challenged these detentions. A similar situation is also registered in the Contrada Cifali Hotspot, an extension of the Pozzallo hotspot. Even in this case, legal efforts resulted in the minors being moved, and the facility was later found empty and closed for renovations. In the Pozzallo/Modica Hotspot, a new detention facility was built for asylum seekers undergoing border procedures in addition to the facility dedicated to identification. The same occurs in the new facility of Porto Empedocle, where in August 2024, in addition to the hotspot, a detention facility was opened within the Porto Empedocle area to carry out border procedures and for detention for identification purposes. The facility is managed by the social cooperative. Regarding the characteristics of the detention facility, it is located within the larger hotspot area and has an estimated capacity of 50 places (10 people per compound). At the time of the ASGI inspection, it was reported that the maximum number of detainees present at any given time had never exceeded 48. The center is separated from the hotspot area by a double row of steel fences and has a distinctly restrictive and security-focused design. Vibo Valentia Temporary Facility, established under emergency measures, lacks proper legal classification. The

Italian Red Cross manages it and suffers from inadequate conditions, and de facto detention occurs there. The same level of informality also characterizes the Gallico First Reception Center, which, originally a school gymnasium, accommodates families and unaccompanied minors in overcrowded conditions. Identification and processing are conducted inside, sometimes in dining areas. Legal information is provided, but capacity issues persist. Finally, the Catania Facility, a repurposed vaccination hub, now serves as a migrant transit and reception center. It handles arrivals from Lampedusa and military landings, with no reported deportations. Services include healthcare and legal support, though conditions remain under scrutiny, according to ASGI. Finally, the hotspots in Lampedusa and Pantelleria islands represent a strong concern regarding de facto detention. In Lampedusa, organizations such as ASGI report that the center's gate remains closed, and migrants are de facto detained for identification purposes (also receiving a condemnation by the ECtHR in 2023). The same happens in the centre of [Pantelleria](#), where ASGI reported severe violations of human rights and access to asylum. Finally, we should add the first reception center in Albania, working as a detention facility for asylum seekers under the border procedure. A last point concerns de facto detention in ports.

Detention in pre-removal centres

In the CPRs, migrants irregularly present in the territory who are impeded from asking for asylum or asylum seekers can be detained. ASGI (2024) reports that the number of CPRs has increased from five in 2017 to ten in 2020: Restinco in Brindisi, Bari, Caltanissetta, Ponte Galeria in Rome; Turin, Palazzo San Gervasio in Potenza, Trapani, Gradisca d'Isonzo in Gorizia, Macomer, Nuoro (in Sardinia), Corelli in Milan. In 2022, the Guarantor of detained persons refers to the following CPRs: Bari-Palese; Brindisi-Restinco; Caltanissetta-Pian del Lago; Gradisca d'Isonzo (GO); Macomer (NU); Palazzo San Gervasio (PZ); Roma Ponte Galeria; Torino; Trapani-Milo; Milano. Since the end of 2023, the CPR in Turin has been closed due to violent riots. [ActionAid](#) stresses that these facilities exhibit differences in terms of detention time and return rates, which help capture the varied nature and aims of CPRs across the country. They say that CPRs can be divided into what they call "border centers", such as the CPRs (Repatriation Centers) in Caltanissetta and Trapani, and to some extent also in Gradisca d'Isonzo (GO). These facilities are primarily used for the accelerated deportation of individuals who have just arrived in Italy. These facilities are characterized by significantly shorter detention periods compared to the average and a high incidence of returns. To fulfill their role in border containment, these centers are now accompanied by detention facilities for asylum seekers, such as the one that opened in September 2023 in Modica, in the province of Ragusa. Not surprisingly, detention at the Caltanissetta centre primarily concerns Tunisian nationals. It is likely that these individuals have just arrived by sea, passed through the hotspot, and were categorized as economic migrants. As a result, they are transferred to the nearby CPR, from which they are subsequently expelled. Esposito et al. (2022) refer to this process as a "detention-expulsion chain." Secondly, some centers function as an extension of the prison system. These facilities house many detainees, who typically experience longer detention periods and a lower incidence of repatriation. This is the case, for example, in Turin, a typical "metropolitan" CPR, as well as in the CPRs of Macomer (NU) and Brindisi. In Brindisi, this may be attributed to the physical structure of the centre, which is located within a multifunctional complex surrounded by high walls and military surveillance in an open countryside setting. Similarly, the CPR in Macomer is housed in a former prison. In the eyes of the Ministry of the Interior, these characteristics may make them more suitable for accommodating former detainees. Although reliable data to confirm this hypothesis is lacking, ActionAid argues that it is plausible that the CPR in Milan exhibits similar features. Finally, the CPRs in Rome and Palazzo San Gervasio appear to be unique cases, particularly due to the presence of women and the high proportion of asylum seekers. These factors likely explain the high number of releases ordered by judicial authorities recorded in both centres, especially after the decree law 130/2020 article 3, which states that "The foreigner is detained in the centre, at which adequate sanitary and housing standards are ensured, in such a way as to ensure the necessary information regarding his or her status, assistance and full respect for his or her dignity". Since 2024, there has also been an active CPR in Albania, which also hosts asylum seekers (although the numbers are very limited).

Asylum seekers' detention within the Italian border procedure

Extension of existing detention facilities and the construction of new detention facilities are dedicated to asylum seekers under accelerated border procedures, such as those in Porto Empedocle or Pozzallo in Italian territory, and the facility located in Albania, as outlined in the Italy-Albania Protocol (see Externalization of asylum proceedings).

4. Actors: multiple actors are involved, such as border police, private organizations, or third-sector organizations (e.g., Red Cross) to whom CPRs or first reception centres are externalized. Private security forces are in place in CPRs, especially those not located at the border (e.g., Turin, Milan, Rome-Ponte Galeria). In hotspots, other actors such as EUAA, IOM, and UNHCR are also involved in identification processes. The judiciary also plays a significant role, at least for formal detention, as Italian law requires that it be validated within 48 hours by a judicial authority (a Justice of the Peace for those not applying for asylum and/or Civil courts for asylum seekers). In Albania, police officers and detention police are involved, as well as the Albanian police force responsible for security issues outside the centres.

5. Interaction: Detention strongly interacts with procedural barriers. Think about border procedures or information on the right of asylum in detention facilities and access to the right of defence while in de facto detention. Regarding detention in Albania, it is strongly connected not only with procedural issues but also with externalization policies (see section Externalization).

6. Development: Fabini (2024) reported that administrative detention centres have been in place since 1998, and the number of migrants detained has fluctuated over the years. Particularly, she shows that in the first years of the '2000, they reached the highest numbers, arriving in 2002 at 17,469 people in detention. The number decreased, especially since 2010, reaching 2,982 people in 2016. After 2016, the trend changed again, and numbers started to grow again, arriving at 6,383 people detained in 2022, with a reinvention of immigration detention as a political response to the so-called 'migration crisis' (Campesi 2020). As noted by Fabini (2024), since 2015, immigration detention has been gradually extended to asylum seekers, first with the possibility of detaining asylum seekers in the so-called CPRs (Centres for Returns). Temporary forms of de facto detention occurred during COVID-19, for instance, detention in quarantine vessels or in disembarkation points for ten days (Decree no. 1287/2020), since 2021.

7. Rationale: The rationale for increasing de facto detention (in hotspot or de facto detention during immediate non-entry measures) and formal detention (detention of asylum seekers in border procedures or during the execution of delayed deportation orders in CPRs near the border) is to maintain migrants at the border, to restrict their liberty of movement, and to speed up the return procedures. The idea is to facilitate a quick evaluation of the living conditions and, in cases where these conditions are not met, to return the person promptly (Campesi 2020). The privation of liberty appears to be considered a facilitator of this process. Instead, the increased grounds for detention of asylum seekers in CPRs (not only at the border) are completely in line with the long process of securitization of migration, with CPRs, especially in large cities, acting as prisons, where return rates are very low and the time of detention is very long ([Actinoid 2024](#)). This means that the detention of asylum seekers has various rationales depending on the detention location and the reasons for detention (Fabini 2024). Regarding detention in Albania, Italy has obtained jurisdiction over Albanian territory, and detention is functional to maintaining control by Albania of its territory, as well as preventing evasions from centres. Additionally, Italy uses detention to maintain migrants within the space under which it can exercise jurisdiction. In this sense, detention is the unavoidable tool for implementing the Protocol.

8. Legal Status: People subject to formal and de facto detention are under various legal statuses. In hotspots or first reception centres, some are migrants who are irregularly crossing the border and are subject to detention during identification measures. In contrast, others are already asylum seekers (e.g., those detained under the accelerated border procedure). Those in CPRs can be migrants present in the territory who are impeded from asking for asylum or asylum seekers detained in administrative detention centres.

9. Specific Impact: The law explicitly states that unaccompanied minors cannot be detained. However, due to incorrect age assessments, some have been placed in detention centres (CPRs) or held in hotspots. The information below is provided by the ASGI report (2023: 187-188), which explains the conditions of unaccompanied minors in detention. Both unaccompanied and accompanied minors have been subjected to de facto detention in these facilities, as well as on quarantine vessels during the COVID-19 pandemic. Since 2016, over 12,000 minors have entered Italian hotspots. In 2022 alone, 10,491 minors entered, including 7,341 unaccompanied and 3,150 accompanied children. Incorrect or missing age assessments have led to unlawful detention in overcrowded conditions, sometimes alongside adults. Unaccompanied minors have been held in social isolation without access to proper healthcare or psychological support. A 2023 visit to the Pozzallo hotspot confirmed these issues. The European Court of Human Rights (ECHR) condemned Italy in a 2023 ruling (*A.T. and Others v. Italy*) for unlawfully detaining unaccompanied minors in the Taranto hotspot in inhumane and degrading conditions without appointing guardians or informing them of their legal rights. Despite the ruling being based on events from 2017, similar issues persist today. There is no official data on minors detained in CPRs due to wrongful age assessments. Cases have been reported where minors were held for extended periods while undergoing assessments without Juvenile Court involvement. Initially misidentified as adults in Lampedusa, some declared their minor status upon arrival at other facilities but remained detained for weeks. Reports indicate that minors have also been detained at border areas in Southern Italy (e.g., in Crotone First Reception Centre, where ASGI denounces that unaccompanied minors have been unlawfully detained, facing social isolation and restrictions on personal freedom, or Contrada Cifali Hotspot, an extension of the Pozzallo hotspot, which has housed [unaccompanied minors](#)). Moreover, detention of unaccompanied minors is also registered at the Italy-Slovenia border. In violation of legal safeguards, police have been given broad discretion to determine age based on visual assessments, leading to minors being identified as adults and placed in adult facilities. Regarding vulnerable groups, ASGI (2024:188-190) provides a comprehensive description of their detention conditions, which is summarized in the following paragraph. The detention of children in families within the CPR (Repatriation Centres) is not explicitly prohibited, allowing minors to stay with their parents if requested and approved by the Juvenile Court. However, in practice, child detention is rare. While the law prohibits the detention of vulnerable individuals, inadequate identification and age assessment processes in hotspots sometimes fail to enforce this protection. Periodic assessments for vulnerable individuals requiring special assistance are mandated, but legal and psychological support in CPRs remains inconsistent despite being outlined in the Ministry of Interior regulations from 2018 and 2021. As of March 2024, no formal protocol exists for identifying and assisting vulnerable individuals or referring them to specialized services and reception centres. CPR service standards, though regulated nationally, are generally inadequate, particularly for vulnerable groups, and vary between facilities. The Guarantor has raised concerns about the lack of proper protection for individuals with special needs in detention, emphasizing the need for better referral mechanisms and consistent health monitoring. ASGI's monitoring highlights that vulnerabilities in CPRs are often ignored, with minors, people with disabilities, victims of abuse, asylum seekers, and individuals accused of serious crimes housed together, increasing tensions and risks. From a gender perspective, the temporary closure of the women's section at Rome's CPR in 2021 led to a sharp decline in the number of detained women. In 2022, only 57 women were held in CPRs, compared to 223 in 2020. Most of these women came from China, Nigeria, Morocco, Tunisia, Ukraine, and Georgia. Many were released due to judicial non-validation of detention orders or identification issues. By March 2023, only nine women had been detained in CPRs, with most being released rather than deported. Concerns persist about the heightened vulnerability of detained women and the poor conditions in Rome's CPR women's section. Women also represent a minority in hotspots, making up just 10% of detainees in 2021. The largest groups came from Côte d'Ivoire, Guinea, Tunisia, Cameroon, Syria, and Nigeria. Reports in 2021 highlighted severe issues at Lampedusa's hotspot, including overcrowding, lack of privacy, inadequate female personnel, and absence of safe interview spaces. These conditions increased the risk of violence against women and could deter survivors of gender-based violence from seeking asylum.

10. Reach: According to [recent research](#) conducted by ActionAid, asylum seekers detained in CPRs (regardless of whether they had applied for asylum before or after the detention order and the eventual deportation order) were around 7732 from 2018 to 2023. Around 1500 have been detained before receiving any deportation order, and while waiting for their first asylum application. The percentage of asylum seekers in the total migrant population in administrative detention has increased over the years, from 15.4% in 2018 to 33.9% in 2023. 9,6% of people in administrative detention are first-entrance asylum seekers who applied for asylum and did not obtain a deportation order. Based on the dataset produced by ActionAid and Uniba, here is a table summarizing the entrance of asylum seekers in Italian CPRs from 2018 to 2024:

Asylum seekers in CPRs	2018	2019	2020	2021	2022	2023	2024
Total asylum seekers in CPRs	78	41	27	202	322	214	273
% asylum application while in the CPRs/total detainees	9%	2%	2%	19%	38%	24%	33%
% asylum seekers already at the entrance in the CPRs/total detainees	1%	4%	2%	12%	13%	12%	17%

Sources: dataset [Trattenuti](#).

Most asylum seekers detained are from Tunisia, Egypt, Morocco, and Nigeria. 47% of detained asylum seekers at the first entrance into the territory are from Tunisia. We do not have precise available data on detention in pre-removal centres. According to the National Guarantor's data for detained persons registered in 2022, 6,326 individuals were detained.

Regarding hotspots, as of March 31, 2023, 22,024 people, including 3,669 minors, entered hotspots, although full-year data was unavailable. In 2022, 55,135 persons – including 10,491 unaccompanied minors – entered hotspots, 46,087 of which – including 6,235 unaccompanied minors – were in Lampedusa. High pressure in the hotspot of Lampedusa continued in 2022, with the centre hosting at times more than 1,000 migrants, despite its much smaller capacity.

Regarding de facto detention in Adriatic ports, no statistics are available. For de facto detention in airports, data show that 6,120 persons received refusals of entry at the borders (3,869 at the air border and 2,224 at sea borders) in 2023. [The National Guarantor](#) reported that 187 individuals were detained at the transit zones. Regarding detention in Albania, none of the detention measures has been validated by the judicial authority to date.

11. Source:

De facto detention in border areas

Regarding detention in hotspots, Law 50/2023 extended the detention period in hotspots or first reception centres for identification purposes, which was already provided for in 2018. A 2018 amendment to the Reception Decree has already included the possibility of asylum seekers in hotspots or first reception centres verifying their identity or nationality using fingerprinting and database checks. However, the practice continues to be that of de facto detention.

As regards detention in CPRs, based on a complete analysis of the Italian legal framework, ASGI (2024) well explain that according to amendments introduced by Decree Law 130/2020 (converted into Law 173/2020) and Decree Law 20/2023 (converted into Law 50/2023), detention can occur in the following situations: *i*) If the asylum seeker falls under the exclusion clauses of Article 1F of the 1951 Refugee Convention, following a decision by the CNDA (National Commission for the Right of Asylum), or under Articles 12(1)(b)(c) and 16 of the Qualification Decree; *ii*) the person submits a new asylum request while

a removal order is already being executed (as per Article 29 bis of the Procedure Decree); *iii*) If the individual has been issued an expulsion order due to being considered a threat to public order or state security or is suspected of involvement in mafia-related activities, terrorism, arms smuggling, or other habitual criminal activities; *iv*) If the person has committed specific serious offenses outlined in Article 12(1)(c) and 16(1) (d bis) of the Qualification Decree; *v*) If detention is necessary to gather essential information for assessing an asylum claim that cannot be obtained otherwise, and there is a risk that the person may evade authorities. This risk is determined based on past behaviour, such as providing false information to avoid expulsion or failing to comply with alternative measures to detention (e.g., residence restrictions or periodic reporting to authorities); *vi*) Repeated refusal to comply with fingerprinting procedures at hotspots or within Italian territory may be considered an indicator of a risk of absconding, justifying detention. Finally, under Article 6.3 of Legislative Decree 142/2015, authorities can continue detaining individuals who apply for asylum after their transfer to CPRs if they believe the request was made solely to delay expulsion. Detention of asylum seekers in CPRs is assessed individually, and detention should only be applied when necessary. Detention of asylum seekers in CPRs can last a maximum of 18 months. In the CPR in Albania, the same rules apply.

Concerning detention under the border procedure, Law 50/2023 extended detention to applicants in the so-called accelerated border (see procedural barriers). More precisely, those asylum seekers subject to the border procedure - since they make an application directly at the designated border areas or transit zones after being apprehended for evading or attempting to evade controls or coming from safe countries of origin – can be detained at the border for up to four weeks. Asylum seekers can be detained if they fail to surrender a valid identification and provide a suitable financial guarantee. Detention can occur in hotspots and in the case of a large influx of asylum seekers in CPRs. Finally, Law 50/2023 also allows for the possibility of detaining asylum seekers during the Dublin procedure in hotspots and first reception centres (ASGI 2024: 183). This legal basis also allows for detention in Albania (see Externalization of asylum processing).

12. Justification: Detention is considered a means to process more effectively the needed procedures (e.g., non-entry measures and deportation orders, asylum procedures, etc.). The authorities deny de facto detention. For instance, regarding de facto detention in hotspots, authorities argue that people can exit the centres after identification has occurred.

13. Domestic and International Reactions: Italy has been condemned by various authorities monitoring the respect of the right of personal liberty of migrants and for the degrading conditions of formal and de facto detention. Among these, reports condemning violations arrived from international bodies such as the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) and at the national level by the [National Guarantor for the rights of detained persons](#). Italy was recently condemned by the ECtHR in 2023 (as mentioned in Pushbacks), which, in addition to condemning collective expulsion, found that Italy violated fundamental human rights in its treatment of four Tunisian claimants who were de facto detained in the Lampedusa hotspot. According to the court, “the applicants were subjected to inhuman and degrading treatment during their stay in the Lampedusa hotspot in violation of Article 3 of the Convention.” Moreover, “the limitation on the applicants’ freedom of movement amounted to a deprivation of their personal liberty under Article 5 of the Convention, all the more so if one considers that any law or regulation did not define the maximum duration of their stay in the crisis centre”. Several NGOs, such as Antigone, Amnesty International, and the legal association ASGI, are actively involved in documenting violations related to detention and how it can serve as a barrier to accessing the right to asylum. Several bodies and experts have questioned the detention provisions under the Italy-Albania Protocol, particularly regarding the risk of automatic detention. Indeed, the protocol provides that all migrants in Albania are detained.

Recently, in 2025, the Judge of the Peace of Rome made a preliminary reference to the Italian Constitutional Court, asking about the constitutional conformity of the entire system of administrative detention for migrants in Italy. The Constitutional Court, despite rejecting the claim of unconstitutionality

of the existing legislation, argues for its inadequacy and requests that the legislator intervene to ensure full conformity of the legislation with Article 13 of the Italian Constitution (Corte Costituzionale n. 96/2025). Despite not being directly connected to access to asylum, this line of jurisprudence shows the limits of the current administrative detention, characterized by severe violations of human rights due to detention conditions and strong procedural deficiencies, which can also result (as shown) in undermining the right to access asylum.

14. Externalization: detention in Albania occurs through an externalization policy.

15. Technology: There is no significant use of technology in detention.

Externalization of asylum processing

Dublin returns

Summary: Individuals are processed under the Dublin Regulation and removed to EU states, where they may face chain refoulement, thereby denying them full access to asylum in Italy and potentially across the EU. Individuals affected can be detained pending deportation and are treated as asylum applicants without undergoing full protection assessments. The measure is justified by assigning responsibility to another EU Member State. Note that this barrier is specifically about chain refoulement under the Dublin mechanism and that the general issue of Dublin processing or transfers is addressed only indirectly.

1. Functioning: Individuals are subjected to a safe third country processing mechanism under the Dublin Regulation and, on that basis, removed to EU Member States where they risk chain refoulement to non-EU Member States. Therefore, individuals are prevented from accessing a substantial asylum procedure in Italy, and potentially also within the EU. Particularly, in Italy, the Dublin procedure often lacks thorough personal interviews for asylum applicants, except for the initial application lodged with the *Questura*. This means that critical details—such as family ties in other EU countries or risks in the designated responsible state—are frequently overlooked. The standard application form does not address these issues, and the information leaflet is often not provided in a language the applicant understands. This procedural deficiency can prevent applicants from presenting relevant arguments that might alter the responsibility determination or highlight risks of inhuman or degrading treatment in the receiving country (ASGI 2025, p. 96-97).

2. Time: No reliable information available as regards the issue of chain refoulement. The legal basis for this type of safe third country processing has existed since 1990 (Convention implementing the Schengen Agreement).

3. Place: The measure is applied throughout the country.

4. Actors: Dublin Unit, within the Italian Ministry of the Interior

5. Interaction: Individuals subjected to this barrier can be detained pending deportation (ASGI 2025). Additionally, it can interact with procedural barriers, for instance lack of proper information.

6. Development: since 2016, and particularly between 2020-2022, national courts started to block returns according to the Dublin procedure due to a lack of procedural guarantees for returnees and as well as risk for violation of the right of asylum (access to the asylum procedure, reception conditions, and risk of chain pushbacks). However, this trend is not characterized by standardized interpretations, and different courts' interpretations have been developed over the years (ASGI 2025). Regarding transfers

7. Rationale: The responsibility of the other Member State according to the Dublin Regulation.

8. Legal Status: Affected individuals are considered asylum applicants who are not yet admitted to the procedure for substantially assessing their protection claims.

9. Specific Impact: As reported by ASGI (2025, p.97) “the Dublin Unit may not be informed about vulnerability by *Questura*. This could be due to the applicants only disclosing their vulnerabilities at a later

stage (for example, during the hearing), or the vulnerabilities may emerge after the submission of the protection request.” This is particularly important considering the deficiencies in personal interviews for Dublin returnees (which are often lacking, or they sometimes miss all (ASGI 2025, p.99-100).

10. Reach: Currently, no reliable information is available regarding the issue of chain refoulement and a comprehensive assessment. According to ASGI (2025, p.19)⁴, “in 2024, a total of 7,926 requests were sent in the outgoing procedure, of which 47 were transfers. These transfers included 3 for family procedure, 28 for the humanitarian clause under Article 17(2), and 13 in the take-back procedure”.

11. Source: Dublin Regulation

12. Justification: presumption of safety of Member States in the Common European Asylum System

13. Domestic and International Reactions: as better developed in part II of the report, and well described by ASGI (2025, pp.102-103) Italian courts have blocked transfers to several EU countries due to systemic deficiencies in asylum procedures or reception conditions, citing risks of inhuman or degrading treatment under Article 3(2) of the Dublin Regulation and Article 4 of the EU Charter of Fundamental Rights. In particular, in Greece, no Dublin transfers were carried out between 2020 and 2024, reflecting ongoing concerns about reception conditions and procedural fairness. In 2016, the Council of State annulled a transfer, citing Hungary’s anti-immigrant policies, detention practices, and risk of discontinuing asylum applications for minor infractions. For transfers to Romania, there are multiple annulments due to systemic deficiencies in reception, exacerbated by the Ukrainian refugee crisis. The courts ruled that Romania’s reception system could not guarantee fundamental rights, thereby violating Article 3(2) of the Dublin Regulation and Article 4 of the EU Charter. In 2023, transfers to Slovenia and Croatia were cancelled due to pushbacks, detention conditions, and obstacles to legal representation, all of which posed risks of inhuman treatment. Courts also did not validate the transfer to Germany for the risk of chain pushbacks to Afghanistan

14. Technology: The processing under the Dublin Regulation heavily relies on technology for comparing fingerprints, as implemented in connection to Eurodac, a fingerprint database, providing information to identify which country an asylum seeker first irregularly entered the EU (Source: 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)

15. Other: no further information

The Italy-Albania Protocol

Summary: The Italy-Albania Protocol shifts asylum processing to Albania, raising concerns about access to asylum. It involves transporting rescued individuals to Albania, potentially violating the principle that asylum claims should be processed in Italy with full guarantees. The Protocol lacks clear procedures for transport, detention, and judicial validation, leading to arbitrary detentions. A significant issue is the compromised right to defence. Applicants have only seven days to appeal negative decisions, a challenging timeframe, especially for those detained in Albania. They face obstacles in securing legal representation due to logistical and communication barriers, as well as language differences. This lack of proper legal defence risks violating the principle of non-refoulement. Initially limited by judicial interventions, the Protocol’s scope was expanded to include migrants detained in Italian pre-removal centres, with the aim of transferring them to Albanian detention centres. This change, not originally planned, creates legislative gaps that could impact asylum seekers. The lack of a specific legal framework for this procedure raises concerns about its implementation and effects on asylum access.

⁴ https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_IT_2024update.pdf

1. Functioning:

Asylum offshore

The Italian-Albanian protocol represents a novel approach to externalization, aiming to prevent access to Italian territory while ostensibly guaranteeing access to asylum procedures under Italian jurisdiction, albeit in a third country, Albania. Unlike traditional externalization policies, Italy retains authority over processing asylum for asylum seekers in Albania. According to Article 4 of the Protocol, asylum and return procedures in these facilities fall under the jurisdiction of Italy. Despite the possibility for people transferred to Albania to access an asylum procedure under Italian jurisdiction, this externalization policy can affect the right to access asylum. First, it undermines access to territory. The Protocol involves transporting individuals who are already under Italian jurisdiction, having been rescued at sea by Italian vessels, to Albania. Some [legal experts](#) note that Italy has the right to be responsible for collective expulsions, as the Protocol does not have a clear legal status and Albania is formally outside Italian jurisdiction. Thus, Italy transports migrants in Italian boats (already considered Italian Territory) to Albania. This action potentially violates the principle that individuals rescued by Italian ships are on Italian territory and should have their asylum claims processed in Italy with full procedural guarantees. Instead, their asylum application is processed in Albania, and this has consequences on the procedural side. The Protocol does not clearly outline the procedures and legal basis for the transport and detention of individuals, nor does it specify the conditions for judicial validation of detentions and deportations. This lack of clarity can lead to [arbitrary and unlawful detentions](#), for instance, in transport activities. Another concern pertains to the compromised right to defence. In this regard, [ASGI](#) points out that under changes introduced by Decree Law 145/24, converted into Law 187/24, applicants under the border procedure have only seven days from the notification of a negative decision to file a jurisdictional appeal. After this period, they face repatriation procedures. This short time frame is particularly challenging for those detained in Albania. Detainees in Albania face significant obstacles in securing legal representation. They must identify and contact a lawyer in Italy, provide all necessary information for the appeal, and grant power of attorney within a very limited time. This process is nearly impossible given the logistical and communication barriers. The process for obtaining state-funded legal aid is cumbersome and likely ineffective due to documentation deficiencies. This lack of support further hinders detainees' ability to mount a proper defence. The modalities for exercising the right to defence are not regulated by law, and this discretion can lead to inaction or poor decisions by administrative officials, potentially prejudicing the exercise of a fundamental right and conflicting with the constitutional guarantee of a fair trial. Asylum seekers typically do not speak Italian and often lack access to linguistic assistance in finding and communicating with a lawyer. This language barrier severely compromises their ability to take legal action. The lack of the right to defence in this context risks severe violations of the principle of non-refoulement. In January, [43 asylum applications](#) (in the accelerated procedure) were decided upon in less than 7 days, all of which were rejected. The procedure and the practice make it very difficult to challenge these decisions of rejection on behalf of the court.

Return hub

Since the implementation of the Protocol was strongly limited by judicial interventions (See Development and International and national reactions), the government extended the application of the Protocol to the detention of migrants already detained in CPRs within Italian territory. This means transferring migrants from pre-removal centres in Italy to detention centres in Albania. Regarding the new use of administrative detention centres in Albania, which will commence in April 2024 for individuals transferred to the country after receiving a validation order to be detained in a pre-detention centre (CPR), further investigation is necessary to understand the concrete implementation of these transfers and their impact on access to asylum. What is possible to anticipate is that the lack of a specific legal framework governing this procedure, which was not previously planned in the Protocol, clearly created some legislative and procedural gaps that could affect migrants who claim asylum while being transferred to Albania or already in the Albanian territory. Regarding those who claim asylum after the transfer, the current practice is to

prolong their detention, arguing that the request for asylum is instrumental in avoiding the deportation measure (Article 6.3 of Legislative Decree 142/2015). This practice, in combination with the asylum border procedure (characterized by limited procedural guarantees – see the paragraph below and “procedural barriers”), risks significantly undermining the right to asylum of migrants transferred to Albania from pre-removal centres and seeking asylum in Albania. [Recent news](#) provided by journalistic sources has enlarged these concerns, reporting that a group of Egyptian nationals has been deported directly from Albania to Egypt, despite no official information being available. Monitoring possible direct returns from Albania is essential to understand how and to what extent this practice represents a barrier to asylum.

2. Time: Externalization in Albania started in October 2024.

3. Place: Albania, and particularly the port of Shengjin and the centres located in Gjadër. There, the Italian government oversees three types of facilities: a penalty detention centre with 20 places for precautionary custody measures, an administrative detention centre with 144 places serving as a Repatriation Detention Centre (CPR), and an administrative detention centre with 880 places for asylum seekers awaiting the outcomes of their asylum applications.

4. Actors: Italian authorities who are involved in the asylum procedure (border police, Territorial commission, and judicial authorities responsible for validating detention in the Albanian facilities). There is also an involvement of Albanian authorities, which remain responsible for instances of security issues outside the facilities (with the involvement of Albanian security forces). At disembarkation, OIM, UNHCR, and EUAA are present during the screening and identification process. However, the extent of their role should be further investigated. A role is also played by lawyers, who, however, face several challenges in accessing facilities and encountering asylum seekers in Albania. Regarding bilateral agreements for readmission procedures, see the section on Pushbacks.

5. Interaction: It mainly interacts with detention and procedural barriers.

Detention in Albania according to the Italy-Albania Protocol:

The Protocol between Italy and Albania allowed for the automatic detention of all migrants and asylum seekers transferred to Albania (see barrier Detention). All migrants in Albania were in detention facilities, although they differ from each other: a) a penalty detention centre with 20 places, which is used for the application of precautionary custody measures for disembarked migrants who have been arrested or detained; b) an administrative detention centre with 144 places, which serves as a Repatriation Detention Centre (CPR); and c) an administrative detention centre with 880 places for asylum seekers and waiting for their protection claim to be decided by Italian authorities, detained under the conditions provided by the border procedure (see the paragraph above on detention in border procedures). The lack of clear mechanisms for releasing individuals who have successfully appealed against a detention order could further prolong their detention, which risks continuing even after a judicial decision due to the time required to arrange their transfer to Italy. Finally, it is worth mentioning the risk of severe human rights violations that could occur in administrative detention centres, especially due to the remoteness of these centres and the peculiarities of Italian jurisdiction in a third country, which may raise conflicts with the responsibilities for human rights violations in these centres. Regarding specific barriers to accessing asylum related to detention in Albania of individuals already subject to a deportation order in Italy and subsequently transferred to Italy (Decree Law 37/2025), further investigation is necessary to monitor the developments in the coming months.

Procedural obstacles during border procedure in Albania: it may be challenging to provide adequate interpretation service, which already suffers from deficiencies in Italy, to asylum seekers during the various stages of the asylum procedure due to the long distance, videoconferences, lack of interpreters, and additional economic costs. As already pointed out, difficulties in gaining legal representation (see point 4) may undermine the right to an effective remedy, reducing the possibility of lodging an asylum appeal. Third, differences in procedural guarantees in practice in the centres in Albania and Italy could also lead to discrimination between those applying for asylum in Albania and those in Italy, undermining the

principle of fairness in asylum procedures. Although the law provides for the right to legal representation on paper, migrants will be assisted by lawyers based in Italy through online meetings or WhatsApp. The Protocol provides that, in those cases where communication is not feasible due to, for instance, technical reasons, the lawyer can reach their client in Albania. Given the long-distance journey that the lawyer should carry out to commute from Italy to Albania and to reach the remote areas where those centres are located, this mechanism risks strongly undermining legal representation and, consequently, access to an effective remedy, especially considering the short time limits to lodge appeals both for administrative detention measures and asylum procedures. In addition, the Protocol foresees a reimbursement of up to 500 euros for lawyers' travel costs, which may not be sufficient to cover all expenses. Finally, the Protocol risks undermining the right to access asylum in several ways. First, asylum seekers' applications may be rejected without an in-depth scrutiny of the case, due to the short time frame inherent in the accelerated asylum procedure. For instance, the first 12 asylum claims lodged by migrants transferred to Albania were all rejected in around 24 hours by Italian administrative authorities as manifestly unfounded solely because they were migrants from third countries included in the Italian list of safe countries of origin. Second, there is a risk of violating asylum procedural guarantees for asylum seekers transferred to Albania. As for specific barriers to accessing asylum related to procedural barriers in Albania, particularly for people already subject to a deportation order in Italy and subsequently transferred to Italy (Decree Law 37/2025), further investigation is needed to monitor the situation in the coming months.

6. Development: On February 22, 2024, the Italian Government passed Law no.14/2024, which ratifies the Protocol between Italy and Albania to strengthen cooperation on migration matters, signed in Rome on November 6, 2023. The Protocol grants Italy the right to use certain areas located in the Albanian territory - the port of Shengjin and an area located in Gjadër - for the construction of three facilities where to carry out border and return procedures for specific categories of asylum seekers intercepted by the Italian authorities in international waters while intending to reach the Italian coasts. According to Art. 4 of the Protocol, asylum and return procedures in these facilities are under Italian jurisdiction. More precisely, the Italian government has jurisdiction over three facilities: a) a penalty detention centre with 20 places, which is used for the application of precautionary custody measures for disembarked migrants who have been arrested or detained; b) an administrative detention centre with 144 places, which serves as a Repatriation Detention Centre (CPR); and c) an administrative detention centre with 880 places intended to accommodate asylum seekers while waiting for the outcome of their asylum applications. The implementation of this peculiar externalization of the asylum processing process was strongly limited by judicial intervention, which did not validate the orders of asylum seekers rescued at sea and transferred to Albania, while subject to the border accelerated procedure (see Detention and Procedural barriers). Due to the difficulties in implementing the deal, the government adopted Decree Law No. 145/24, which was subsequently converted into Law No. 187/24. This decree reduced the time limits for the appeal against a negative decision of the asylum application under the border procedure, also with the aim of limiting the right to defense to people in Albania and expediting removals. Finally, Decree Law 37/2025 was issued in May 2025. Paragraph 1 of the first article of the Decree, by intervening on Law 14/2024 that ratified the Rome-Tirana Protocol of November 6, 2023, extended precisely the category of people who can be taken to facilities in Albania to include recipients of validated or extended detention orders. They include both asylum seekers and migrants subject to a deportation order (see Detention). This means that Albanian centres are now primarily used as CPRs (see Detention). This leads to additional, yet similar, concerns regarding deficiencies in procedural guarantees, such as the possibility of accessing information to seek asylum and access to legal aid, which can limit access to asylum (see Procedural Barriers and Detention).

Regarding the Protocol with Albania, it represents an exceptional and very recent form of externalization. Despite the short timeframe, the development is very interesting in the context of the project. Indeed, the role of courts was crucial to limit the effective implementation of the externalization of asylum processing as planned by the government. In 2024, judicial rulings did not validate almost all the asylum seekers' detention orders in Albania, under the accelerated border procedure. Instead, they argue that the border procedure could not be applicable since the countries of origin cannot be considered safe countries of

origin. To guarantee the functioning of the centre, the government transferred its migrants, including asylum seekers, already detained in CPRs in the Italian Territory. After some rulings not validating some detention orders (16 over 41 transferred at the end of April) modified Law no.14/2024 with a Decree Law (37/2025), which enlarged the target of migrants and asylum seekers who can be transferred in Albania, including, as already mentioned, those already receiving a validation order for detention in Italy. The Decree Law will be converted into law in the next few weeks.

7. Rationale: The protocol aims to reinforce bilateral cooperation between the two countries in the field of migration from third countries, in line with international and EU law (Art. 2 of the Protocol). This protocol can be read within a socio-political context of Albania's dependency on Italy, also in connection to its colonial past, or better framed as a neo-colonial dependency. In this sense, it could be compared (despite differences) to Australian externalization policies in Pacific islands, such as Nauru. An important aspect is that, unlike other forms of externalization (e.g., Libya or Turkey), it does not provide economic compensation.

8. Legal Status: migrants who can be transferred to Albania are registered people rescued at sea who can register their asylum application upon arrival in Albania. After the extension provided in the new Decree in 2025, it also includes migrants subject to a deportation order or detained asylum seekers, whose detention order was already validated in Italian territory before the transfer (Decree 37/2025).

9. Specific Impact: Neither the Protocol nor the Law references vulnerable migrants for whom the Protocol would not apply. This means that, in principle, accelerated border procedure and related detention can be applied to all migrants transferred to Albania, these being migrants who have or have not claimed asylum, those who are considered dangerous or who come from safe third countries, as well as vulnerable migrants, such as unaccompanied minors, who cannot be detained or expelled according to Italian law (Art. 19 of the Italian Consolidated Act on Immigration). Yet, some sort of vulnerability check is undertaken in practice (such as age assessment), although further clarity is urgently needed. Indeed, according to ECRE, a vulnerability screening should be carried out at the port of Shëngjin. Not only do both the Protocol and the Law lack clear provisions on vulnerability checks, but there are also no indications as to where this screening should take place, what professional figures should be responsible for carrying it out, what skills and qualifications are needed for such an assessment, and what standards must be respected. This lack of clarity could result in vulnerable individuals being subject to prolonged detention and delayed access to asylum, violating their rights under Italian, EU, and international law. Additionally, despite the government's declaration that vulnerable individuals and minors will not be detained in Albania, the tender includes expenditure items relating to the reception of women and minors.

10. Reach: Numbers remained limited. Currently, only 25 people are detained in Albania under the Protocol. 73 migrants were disembarked in Albania after sea and rescue operations in three waves (October, November, January). 66 migrants were instead transferred from pre-removal centres in the territory to the pre-removal centre in Albania from April to June 2025.

11. Source: It occurs under the Protocol between Italy and Albania signed in Rome on November 6, 2023, and ratified on February 22, 2024, by Law no.14/2024, signed in Rome on November 6, 2023. In Albania, border procedures (see procedural barriers) and return procedures apply to Italian law. The Protocol is a bilateral agreement, ratified by the parliament in a simplified procedure.

12. Justification: The government justifies the measure as an instrument to prevent irregular migrants from disembarking in Italy. Thus, the justification was the fight against irregular migration. The new justification, after the reform in 2025, is to use the centres in Albania to house people who will be deported (as the so-called return hubs proposed by the EU).

13. Domestic and International Reactions: The Protocol with Albania captured the attention of many Member States and the EU Commission, which declared to look at the Italian experiment with great interest and considers the possibility of adopting some of the provisions within the Protocol to develop return hubs in third countries. At the same time, the Protocol raised concerns among UNHCR, asylum

experts, and organizations, such as ECRE, as well as legal associations and NGOs, including ASGI and Amnesty International. In the last year, court decisions have intervened, not validating detention orders in Albania, but not questioning the legality of the practice of externalization in itself. Recently, in June 2025, the [Massimario of the Court of Cassation](#), in a commentary on the Italy-Albania Protocol, pointed out serious concerns about the constitutional conformity of the protocol. Particularly, it highlights the potential incompatibility with national, EU, and international legislative frameworks. Among the other concerns, the commentary highlights the risk of:

- disparity of treatment (Article 3): There is a potential conflict with Article 3, first paragraph, of the Italian Constitution due to the Protocol's broad definition of "migrants," which may lead to unequal treatment between migrants brought to Italy and those transferred to Albania.

- right to asylum (Article 10): Critics highlight a violation of the legislative reserve on the legal status of foreigners (Article 10, paragraph 2, Constitution) and asylum conditions (Article 10, paragraph 3, Constitution). This is due to the Protocol's vague phrasing regarding the applicability of Italian and European law "insofar as compatible," failing to precisely define the primary legislative acts applicable to "migrants". Additionally, the equivalence of Albanian areas to "border or transit zones" for accelerated procedures raises concerns about the difficulty of rapidly identifying vulnerable individuals, such as victims of human trafficking. Significant obstacles to the constitutional right to asylum (Article 10, paragraph 3, Constitution) are noted, specifically regarding the right to enter state territory, the place of international protection application, and the conduct of procedures outside Italian borders. The Protocol's mechanism may constitute a "deviation from the ordinary process" for asylum applications.

- default detention: The Protocol seems to make detention the only alternative, violating personal liberty safeguards (Article 13 of the Constitution), rather than being an *extrema ratio* as required by European directives. Furthermore, the law of ratification does not precisely define the "modes" of limitation on personal liberty. Concerns exist that, due to the time required for transferring individuals back to Italy if their retention title ceases, migrants might experience periods of detention *sine titulo* (without legal basis) lasting several hours or even days

- compromised right to defence: The provision for lawyers' participation from the judge's courtroom rather than the client's location significantly compromises the right to defence (Article 24, paragraph 2, Constitution). There's also a lack of legislative clarity on how migrants will be informed about their right to defence, how lawyers will be appointed, or how physical and psychological conditions compatible with detention will be assessed. Limitations also arise from the lack of provisions for state-funded legal aid, appointment of trusted defenders, or visits from family members or specialised organisations.

- compromised right to health: The Protocol's stipulation that Albanian authorities collaborate to provide "indispensable and unavoidable medical care" only if Italian authorities cannot, raises serious concerns about the right to health (Article 32 Constitution), given that Albania's healthcare standards are not comparable to Italy's.

14. Externalization: It clearly occurs through mechanisms of externalization policy.

15. Technology: Technology does not play a particular role.

Procedural barriers

Summary: Italy experienced the implementation of several procedural barriers that undermine access to asylum. First, these barriers concern obstacles to presenting and formalizing asylum applications in transit zones, at the border, and in pre-removal detention centres (see also Detention). Second, there are several obstacles for people already in the territory who want to formalize an asylum application. Moreover, procedural barriers exist, especially after reforms in 2018 and 2023, for people presenting a subsequent asylum application while they are in a pre-removal centre, whose application can be considered inadmissible without a merits-based assessment. Especially for asylum seekers subject to certain

accelerated procedures, a risk of violations of the right to an effective remedy has arisen (see also Externalization of asylum processing).

1. Functioning:

Obstacles in formalizing the asylum application:

A. At the border and in detention (see Pushbacks and detention)

The law mandates that people arriving at borders or transit zones must receive information on the asylum process through services established under Article 11(6) TUI. These services, managed by NGOs, provide social counselling, interpretation, and assistance at official border points. Article 10ter TUI requires that third-country nationals intercepted at borders or arriving via rescue operations be informed about asylum rights, EU relocation programs, and voluntary repatriation options. Decree Law 130/2020 ensures detained foreign nationals are promptly informed of their rights in a language they understand. Despite these legal provisions, the quality of assistance has declined since 2008 due to cost-focused service allocation, which affects asylum seekers' access to essential information, despite organizations such as UNHCR and IOM overseeing the asylum process. The Reception Decree requires that detained foreigners receive relevant information on asylum, including their rights, facility rules, and application procedures. Information is provided in the detainee's preferred or commonly understood language, such as English, French, Spanish, or Arabic. However, several organizations and bodies monitoring violations of rights at the border and in detention, as also confirmed by judicial rulings, highlight systemic failures in providing accurate asylum information. In hotspots, for instance, as already described in the section "Detention", persons after disembarkation Migrants are categorized as either asylum seekers or economic migrants based on a preliminary evaluation. This assessment is typically conducted through questionnaires (*fogli-notizie*), which migrants complete upon arrival, or through verbal interviews about their reasons for coming to Italy. In many cases, classification relies solely on the individual's nationality. For instance, those from countries informally deemed safe, such as Tunisia, are often labelled as economic migrants, denied access to the asylum process, and subjected to return orders. Following the disembarkation of foreign nationals, an administrative practice emerged to limit, block, or withdraw a migrant's expressed intent to seek asylum. This involved signing an 'information sheet' or a subsequent 'news sheet,' which could result in a deferred rejection decree and eventual detention in a *CPR* (AIDA, ITALY REPORT 2024).

The lack of information to access asylum at the border is reinforced by the lack of information materials in accessible languages or cultural mediators and interpreters in detention facilities and hotspots at the border, as documented by several organizations, such as ASGI, during visits to many of these centres, such as those of [Pantelleria](#) or [Lampedusa](#). For instance, ASGI reported that regarding access to asylum, it has been consistently impossible for migrants to apply for international protection while staying on the island of Pantelleria. The Prefecture of Trapani confirms that asylum requests are only officially registered after full identification, which occurs following transfer to Trapani. This delay results in a significant lack of protection for an uncertain period. At the hotspot, only a symbol appears next to a person's name to indicate their intent to seek asylum, without any clear record of whether this information is properly processed in Trapani. Instead, individuals are required to fill out a second information sheet upon arrival. The procedure is not standardized, making monitoring difficult and prone to omissions or delays. Reports indicate that the activation of the "disembarkation mechanism" and related procedures involving these protection organizations do not always coincide with the transfer to Trapani. This is attributed to the geographical and temporal separation of the disembarkation process, which is split between Pantelleria and Trapani. As a result, migrants arriving from Pantelleria face limited access to legal information before their full identification. Furthermore, the authorities obstruct asylum requests made after completing identification and filling out the information sheet. In addition to the lack of protection during the transfer period, there appears to be significant difficulty accessing the asylum procedure even after full identification.

ASGI wrote two reports on the conditions of airport zones in [Rome](#) and [Milan](#), arguing the risk of severe violations of the right to access asylum and subject to violations of the principle of *non-refoulement*. Thanks

to their visitors in the transit zones dedicated to third-country nationals without valid entry documents, the association questions that officials do not provide adequate information to accessing asylum to people receiving a non-entry measure and an immediate return order to the country of departure. More precisely, in the airport zones, not all migrants can access translators and mediators, who intervene only after the request of the police border after the person expresses the intention to seek asylum. Information on the right to access asylum is not provided individually, and only some UNHCR material is available indirectly using a QR code, without providing additional details. The dedicated offices for those willing to ask for international protection are not immediately accessible to asylum seekers. In addition to this lack of information, there is also difficult access to legal assistance, which contributes to an increase in the risk of pushbacks through non-entry measures, without the right to seek international protection (see Section “Pushbacks”).

Finally, as regards people in pre-removal detention centres (CPRs), access to the asylum procedure is largely restricted due to inadequate legal information, lack of assistance, and administrative barriers (see section “Detention”). According to the Reception Decree, individuals are informed about the possibility of seeking international protection by the centre’s management body. As reported by ASGI, in 2023 - consistent with previous years - many detainees were unaware of their right to seek asylum or the procedure to do so. As a result, they could not express their intent even before the Judge of the Peace (Giudice di Pace) during detention validation hearings. In some cases, detainees could only submit asylum requests through their lawyers after a detention order had been issued. This was primarily possible in CPRs like Gradisca, where mobile phones are not confiscated (ASGI, 2024.)

B. In the territory:

Migrants already in Italian territory face challenges in submitting and formalizing their asylum applications at the police headquarters, where immigration offices are located. These challenges are produced by active practices and/or omissions of the offices, undermining their right to asylum. Most asylum seekers are unable to access the immigration office for the first time to submit their asylum application due to scheduling challenges. Despite laws stating that appointments at the police headquarters (*Questura*) should be granted within ten days, the reality is very different due to bureaucratic obstacles, long waiting times, and arbitrary practices. According to a report written by ASGI, a legal association active in the field of immigration and asylum, officers in six provinces process only a limited number of asylum seekers per day (ranging from 5 to 15) despite long queues outside the offices, as documented by [journalistic sources](#). In this regard, ASGI points out that some lawyers denounce a completely discretionary practice in selecting asylum seekers who access the office, informally setting quotas according to nationality, without using priority criteria such as vulnerability. Additionally, various associations have pointed out that IT portals for accessing asylum appointments in Immigration offices often create digital barriers to formalizing the asylum application (See Technology). The LGBTQ+ Pink Circle, which includes the Pink Refugees group, denounces the extreme delays in renewal appointments for asylum permits, which in Italy have a duration of 6 months and must be renewed several times along the asylum determination procedure, which can last years. This creates a dangerous gap, where individuals risk losing their jobs, as many employers require a valid permit, not just an appointment receipt. It also affects their ability to access healthcare, undermining their possibility of being enrolled in the National Health System.

Another issue highlighted by social workers relates to asylum renewal applications. Those holding a six-month temporary permit (while waiting for the release of their official residence permit) often find themselves unable to book a renewal because the system does not recognize the permit’s codes. This forces them to start over, assuming they are even allowed inside the police station and granted an appointment at the immigration office. Finally, they also question the difficulties of submitting a subsequent asylum application, as the online portal does not provide this option. Finally, the Pink Circle criticized the lack of communication from the authorities. They [report](#) that phone calls and official emails (PEC) go unanswered, a pattern of silence and neglect that mirrors the situation in many other police headquarters across Italy. In this context, getting an appointment for asylum is more difficult, and asylum seekers often

need to be supported by social workers, third-sector organizations, or lawyers. This system is supported by the local police offices, which, according to ASGI, often require that applications be made through lawyers or other intermediaries and not directly by the asylum seekers, who face challenges in accessing asylum if they lack support and resources. In cases in which asylum seekers cannot directly access online registration for the appointment or the local office cannot accept a request via email (PEC), the asylum seeker must stand in long queues in front of the office, sometimes going there the night before to have some chances to get access. Another connected but different bureaucratic obstacle concerns the registration of the asylum application, where the asylum seeker comes to the office with all relevant documentation to formalize the request. According to [ASGI](#), in several immigration offices, long delays occur between the presentation of the asylum application and its formalization (in 18 offices, it takes more than 6 months to formalize the application, and in 3 offices, more than one year). Second, even after obtaining an appointment to formalize the asylum application, some bureaucratic obstacles may still arise, as offices may require additional documents not mandated by law. For instance, authorities in several provinces reportedly impose requirements such as proof of residence (residence registration or declaration of hospitality), which is not mandated by law. According to ASGI, other local offices also require other documents, such as a passport, for submitting the asylum application. In other offices, they ask asylum seekers to complete a pre-filled C3 form (a document that includes identification information and the reasons for applying for asylum). In most cases, the appointment for formalization is postponed several times, citing insufficient space in reception centres, which must be guaranteed to all asylum seekers after their asylum application is formalized. As reported to ASGI, the *Questura* of Bologna refused to formalize an asylum request of a family lacking family documents.

Inadmissibility of subsequent applications:

In the case of a first subsequent application submitted during the execution of an imminent removal order, Decree Law 133/2023 introduced amendments to the Procedure Decree. Under Article 29-bis, the application must be immediately forwarded to the President of the competent Territorial Commission, who must conduct a preliminary assessment of its admissibility within three days. This evaluation also includes an assessment of the risks of direct and indirect refoulement. The application is deemed inadmissible under Article 29(1)(b) if no new relevant elements are presented. [ASGI](#) believes that Article 29-bis of the Procedure Decree likely violates the recast Asylum Procedures Directive, as submitting a subsequent application solely to delay or obstruct removal is not listed as grounds for inadmissibility under Article 33(2). Additionally, the provision does not specify when a removal order is imminent. This issue became more alarming with the introduction of Decree Law 133/2023, which amended Article 29-bis by adding paragraph 1-bis. This amendment grants the Head of the Police Station the authority to determine whether an asylum request is admissible. More precisely, the *Questore* must request an opinion from the President of the Territorial Commission handling the removal. However, the law does not provide if this opinion is mandatory (Gattuso 2024). If no new relevant elements emerge to justify international protection under Article 29(1)(b) or to prevent expulsion under Article 19 of the TUI, the application is declared inadmissible by the *Questore*, allowing removal to proceed. Only if new relevant elements are found can the Territorial Commission further review the case. Furthermore, no automatic suspensive effect is granted to appeals challenging decisions that declare a second or subsequent asylum application inadmissible under Article 29(1)(b) or reject an asylum request under Article 29-*bis* of the Procedure Decree. This means that deportation can be executed even if an appeal is pending, unless a court specifically grants a suspension (see Lack of Effective Remedy). This procedural barrier, which prevents the inadmissibility of subsequent applications, has been introduced in the context of restricting rights to accessing an effective remedy for those who issue a subsequent application in a pre-removal centre (see paragraph “Lack of effective remedy”).

Accelerated border procedure and safe countries of origin

Among the accelerated procedures are the so-called Italian border procedure, introduced with the 2018 reform, confirmed by the 2020 reform, and expanded with the 2023 reform. Individuals rescued by Italian

vessels in international waters and subjected to the border procedure may also, in the latter part of 2024, fall under the process established by the Italy-Albania agreement. Under this arrangement, they could be directly transferred to Albania. The Italian border procedure was established for applicants making an asylum application directly at the border or in transit areas, after having been apprehended for evading or attempting to evade border controls. The reform introduced by Law No. 50 of 5 May 2023, which amended the decree law No. 20/2023, allowed the carrying out of the border procedure also for people coming from countries designated by the government as ‘safe countries of origin’. The list of safe countries of origin was approved by a Decree signed on 4 October 2019 by the Ministry of Foreign Affairs, the Ministry of the Interior, and the Ministry of Justice. This list, expanded in 2023 and then modified in 2024. It now includes 19 countries⁵, with consequences on asylum applications of a large number of asylum seekers. According to [ASGI](#), after introducing the safe countries of origin list, the National Commission of the Right to Asylum issued two circulars on 28 and 31 October 2019, providing guidelines to the Territorial Commissions on implementing the new rules. The National Commission stated that including a country in the safe countries list creates a rebuttable presumption of safety, which can only be overturned if the asylum seeker provides evidence to the contrary. Additionally, it emphasized that applications should always be considered manifestly unfounded in cases of rejection. The practice risks limiting merit assessment of the case and producing substantially sham asylum procedures, with risks for non-refoulement, especially considering the strict deadlines for the decision (the Territorial commissions must decide in 7 days) and the limits for judicial review (only 7 days for appealing the negative decision by the administrative body and non-suspensive effect if the decision is rejected as manifestly unfounded). In most cases, Territorial Commissions cannot decide within 7 days and exceed the time limits. That led judicial authorities at the appeal stage to automatically suspend the appeal because the administration did not respect the deadline provided by law, and thus, the case must be decided through an ordinary procedure (e.g., Tribunal of Milan, 7 July 2025).

Regarding border procedures in Albania, instead, due to the political salience of the issue, the few cases evaluated by the Territorial commission were all rapidly (in 5 days) rejected as manifestly unfounded. The risk for a sham procedure was particularly evident for asylum claims processed in Albania. The strict deadlines for the decision, together with the intention to limit judicial review, must be seen in combination with other relevant procedural deficiencies, such as obstacles in obtaining equal representation (especially in Albania), and the detention condition (default in Italian border procedures). The sum of these procedural constraints risks reducing in-depth scrutiny on the merit and effective remedy. All these concerns have been pointed out by the [Massimario of the Court of Cassation](#). In practice, while looking at the entire territory, various practices emerge. ASGI’s experience shows that Territorial Commissions do not systematically reject all asylum applications from individuals coming from safe countries as manifestly unfounded. Thus, more research is needed to assess to what extent and under what conditions the Italian asylum border procedure can be considered a sham procedure, relying on what is occurring in practice in the Territorial Commissions.

2. Time:

Obstacles to formalizing the asylum application

Information on what occurs at the border or in detention is not available; however, this barrier has been documented at least since 2011, with the increased number of asylum seekers in the country. Regarding the registration of asylum applications, these bureaucratic obstacles have existed since 2011, coinciding with the increase in asylum applications in Italy. However, they have increased over time and become widespread, especially since the end of 2018. Reports of denial of access to the asylum procedure, as recorded by ASGI, continued over the last three years. However, from the early months of 2022 and in 2023, the situation reached unprecedented critical levels, with the widespread implementation of practices

⁵ The list of countries includes: Albania; Algeria; Bangladesh; Bosnia-Herzegovina; Capo Verde; Costa d’Avorio; Egitto; Gambia; Georgia; Ghana; Kosovo; Macedonia del Nord; Marocco; Montenegro; Peru; Senegal; Serbia; Sri Lanka; Tunisia.

and omissions by immigration offices across Italy. The situation has been extremely difficult in the last few months, with long queues in almost all Italian cities.

Subsequent applications and inadmissibility: This barrier was introduced by a legal provision enacted in 2023.

Accelerated border procedure and safe countries of origin

Since 2023

3. Place:

Obstacles to formalizing the asylum application: barriers to accessing proper information to access asylum are mainly documented in transit zones (airport zones) and border zones, in navies concerning hotspots and pre-removal centres at the border (including Albania). As the territory is concerned, in the Police headquarters, Immigration offices

Subsequent applications and inadmissibility: all Italian territory and pre-removal detention facilities.

Accelerated border procedure and safe countries of origin: In border zones identified in 2019

- a) Trieste, Gorizia;
- b) Crotone, Cosenza, Matera, Taranto, Lecce, Brindisi;
- c) Caltanissetta, Ragusa, Siracusa, Catania, Messina;
- d) Trapani, Agrigento;
- e) Città metropolitana di Cagliari, Sud Sardegna.

Additionally, since 2024 in Albania.

4. Actors:

Obstacles to formalizing the asylum application:

In the territory, the actors involved are mainly the Ministry of the Interior and its local administration. More precisely, these barriers result from practices and omissions adopted by the police headquarters, in which the Immigration office is located. The immigration office is responsible for managing the presentation and formalization of asylum applications, as well as renewing residence permits for asylum seekers. In addition, third-sector organizations have increased their involvement, especially in certain provinces, which are responsible for managing the pre-appointment system, thereby contributing to the implementation of this barrier. At the border and in detention, the actors involved include border police and private entities managing the information service in place of Italian authorities (e.g., third-sector organizations responsible for CPRs or first reception centres). International organizations, including UNHCR and EUAA, are also involved in hotspots and border zones to support Italian authorities.

Subsequent applications and inadmissibility: This provision involves the Prefecture, the Immigration office of the police headquarters, and the Territorial Commission.

Accelerated border procedure and safe countries of origin: The actors involved are the Territorial Commissions for International Protection, which are responsible for determining refugee status in Italy. They are territorial offices belonging to the National Commission for Asylum, a body of the Ministry of the Interior.

5. Interaction:

Obstacles to formalizing the asylum application: in the territory, this barrier is not particularly related to other barriers in place. In a certain sense, it can be connected to the challenges of expressing the willingness to apply for asylum. This stage is the previous one, before the presentation and formalization of the asylum application. Asylum seekers are not put in a position to express their intention to seek asylum, or even

when it occurs, this does not lead them to the right to issue an asylum application. This is the case of individuals subject to a return procedure or a deportation order at the border, such as those subject to informal returns with Slovenia or non-entry measures at disembarkation in Lampedusa, followed by a return decision facilitated by readmission agreements (e.g., with Tunisia). In both cases, NGOs and legal organizations denounce the lack of transparency in the procedure concerning the information for migrants crossing the border to seek asylum. This practice of lack of information and limits to the right to express the intention to seek asylum is also violated for migrants already in the territory and subject to deportation orders because of their irregular stay in the country. Also, in this case, the responsibility lies with the local police office, which issues the deportation order. In the other case, that of practices at the border, the main institution responsible is the border police. Concerning what occurs in detention, it is related to detention, as available sources stress that in formal or de facto detention facilities, there is a substantive lack of access to information, exacerbated by the difficulty of communicating with the outside, for instance, with a lawyer.

Subsequent applications and inadmissibility: interaction with detention since it concerns people whose deportation order is being executed and thus in a condition of deprivation of liberty.

Accelerated border procedure and safe countries of origin: This is strongly related to detention, as the person is detained during the border asylum procedure, and externalization of asylum processing, which is the procedure used for detaining and analysing asylum applications in Albania.

6. Development:

Obstacles to formalizing the asylum application in the territory: Although there are no available sources in this regard, it is possible to hypothesize that, in line with literature on similar topics, the barrier is implemented for various reasons. First, there is a chronic lack of resources for public administration in the Italian context, particularly in migration. Asylum policies have been characterized by a consistent cut in resources in certain areas, such as the reception system, and insufficient funds in others, despite the increase in asylum applications. Long delays in getting an appointment can be due to scarce human resources (lack of personnel) and scarce adequate infrastructure (physical offices and digital) in the Immigration offices. Regarding digital barriers, the challenges in the asylum field are similar to those in other areas, where digital tools often create a significant implementation gap, either not being used or producing the same or even worse challenges when implemented due to design problems with these platforms. Additionally, there is a problem of economic resources, as evident in the case of delegating pre-appointments to third-sector organizations without providing adequate funding for these entities, thereby shifting responsibility without resolving the issue. Finally, there is an issue connected to organizational practices. As with other public administrations dealing with asylum, each office develops its own working practices, often at the local level, to perform the work in an environment characterized by scarce resources (Dallara and Lacchei, 2021). It is possible to hypothesize that these dynamics also occur within Immigration offices, which adopt various practices at the national level to manage the large volume of applications. How they do that is informed not only by scarce resources but also by inputs from managers and vertical power through circulars of the Ministry of the Interior, which should be further investigated. On 8 February 2024, the Ministry of the Interior agreed to a stipulation with the UNHCR to intervene in the timing of access to the asylum procedure and reduce the backlog of formalized applications. During the COVID-19 pandemic, these obstacles were particularly evident, especially during the most difficult period, when immigration offices were closed, making it impossible for asylum seekers to formalize their asylum applications. Also, in response to COVID-19, the use of technological tools for appointments increased (See Technology).

Subsequent applications and inadmissibility: it was introduced in 2023.

Accelerated border procedure and safe countries of origin

The border procedure was introduced in 2018, and the first list of countries of origin was approved in 2019. The accelerated procedure was then expanded to include those asylum applications from the safe

countries of origin in 2023. Then, in 2024, it was applied to allow the Italy-Albania protocol to operate. The interpretation of the safe country of origin by national courts was then crucial for undermining the application of this procedure (see national and international reactions and Part II).

7. Rationale:

Obstacles to formalizing the asylum application: In the territory, the State does not provide a rationale for the selected barrier, mainly due to practices adopted at the local level by Immigration offices. However, the main justification is the large number of asylum applications and the consequent delays to register and formalize them within the time limits prescribed by law (3 days for the presentation of the asylum application, prologue to a maximum of 10 days in case of a large volume of applications, and 13 days between the presentation and the formalization). Despite adopting some measures at the national and local levels to address some of the challenges associated with presenting and registering asylum applications (such as the introduction of digital tools, partnerships with third-sector organizations, and collaboration with the UNHCR), unlawful practices persist, as documented by journalists and NGOs. Regarding the obstacles in presenting or formalizing the asylum application at the border, no information is available about the rationale for this barrier.

Subsequent applications and inadmissibility: the rationale behind this barrier is to prevent third-country nationals from applying for asylum instrumentally to avoid a deportation order.

Accelerated border procedure and safe countries of origin: the rational, completely supported, and implemented by the EU New Pact is to expedite asylum procedures at the border and to easily differentiate between those in need of international protection and other migrants. The location at the border is to prevent entrance into the territory and facilitate the immediate return of those without the right to asylum. The list of safe countries of origin is considered by the authorities to be a tool for differentiating between those in need of protection and those who would not benefit from international protection, and to fast-track asylum applications.

8. Legal Status:

Obstacles to formalizing the asylum application: people affected by this barrier are not already formally recognized as asylum seekers, as they struggle to access the procedure and present and/or formalize their asylum application. These are third-country nationals irregularly or regularly staying in the Italian territory. This barrier primarily targets non-country nationals who have entered or are staying in Italy irregularly.

Subsequent applications and inadmissibility: This barrier targets asylum seekers who have submitted a subsequent application.

Italian border asylum procedure and safe countries of origin: they are asylum seekers.

9. Specific Impact:

Obstacles to formalizing the asylum application: These barriers can affect vulnerable people, such as families with minors, pregnant women, or migrants with health problems, in a stronger way because the obstacles in formalizing the application also limit access to fundamental social services, such as health or education. Moreover, it is necessary to get access to the reception. The lack of information at the border can particularly affect unaccompanied minors due to their peculiar condition of vulnerability.

Subsequent applications and inadmissibility: no specific impact

Accelerated border procedure and safe countries of origin: relevant impact for asylum seekers with [vulnerabilities](#), which may not emerge in a fast-track procedure, in detention, and with limited access to legal representation.

10. Reach:

Obstacles to formalizing the asylum application in the territory: There are no available statistics concerning the number of people affected by these barriers. However, especially over the last three years, bureaucratic

obstacles to accessing offices for applying for asylum or renewing permits for asylum seekers have become widespread, affecting several asylum seekers, particularly in major cities such as Milan and Rome.

Subsequent applications and inadmissibility: no information is available.

Accelerated border procedure and safe countries of origin: no information is available since the Ministry of the Interior does not provide data based on the applied procedure.

11. Source:

Obstacles to formalizing the asylum application: In the territory, the barrier does not comply with legal norms, as bureaucratic obstacles result from practices adopted at the local level by immigration offices. Regarding the willingness to access asylum upon arrival at the border, Italian legislation provides the right to be informed about the possibility of accessing asylum. More precisely, provisions are included in Article 11(6) of the TUI and Article 10ter of the TUI. However, what occurs in practice differs from what is provided by law.

Subsequent applications and inadmissibility: Art. 7-bis del Decree-law 20/2023 transformed in law no. 50/2023 (modifying co. 1 e 1-bis of Article 29 law n. 25 del 2008) and Article 3 law 113/2023, modifying law n. 176/2023 adding co.1-bis to article 29-bis.

Accelerated border procedure and safe countries of origin:

Article 28 bis law no. 25/2008 as modified by decree law no.50/2023.

12. Justification:

Obstacles to formalizing the asylum application: In the territory, the government justifies the lack of sufficient resources to process many requests in a timely manner. Regarding the lack of information on the right to asylum and obstacles to accessing asylum at the border, Italian authorities do not provide justification; they only argue that information is provided, and cases before courts or under public debate are presented as exceptions.

Subsequent applications and inadmissibility: Italian authorities do not justify the barrier to access asylum that the introduction of this specific legislative provision produces.

Accelerated border procedure and safe countries of origin: The authorities argue that the accelerated procedures are ruled by EU law, and people have access to the asylum procedure, despite having fewer procedural guarantees, since it is a fast-track process. It is motivated by the presumption that people coming from safe countries of origin do not display the grounds for granting international protection.

13. Domestic and International Reactions:

Obstacles to formalizing the asylum application: the lack of information on the right of asylum at the border and in pre-removal facilities received considerable attention from several bodies, such as national courts (with jurisprudence on Italian authorities' information duties) and the ECtHR. Additionally, as mentioned in the section 'Detention', the lack of information to access asylum in hotspots and detention facilities has raised concerns among bodies monitoring the rights of detained migrants (e.g., the National Guarantor for detained persons) or legal associations such as ASGI. Regarding obstacles to presenting and formalizing asylum applications in the territory, at the national level, this aspect has received media attention, with journal articles denouncing the difficulties of obtaining an appointment at immigration offices, especially in Milan, Turin, Rome, and Naples. Moreover, NGOs and legal associations (e.g., NAGA, ASGI) tried to conduct campaigns and activities to denounce these bureaucratic obstacles. A [recent class action](#) has been proposed by these associations to question the long delays in the formalization of asylum applications in Milan. Finally, Italian lawyers propose some judicial actors who have litigated many cases before Tribunals, which have successfully overcome various bureaucratic obstacles.

Subsequent applications and inadmissibility: ASGI and other legal experts, such as judges, have questioned the legality of this norm (see, for instance, Gattuso 2024). However, it did not receive attention in the public debate.

Accelerated border procedure and safe countries of origin:

This procedure has been largely criticized by academics, legal practitioners, and legal organizations, such as ASGI, as well as international organizations like Amnesty International. The number of critics have increased after the implementation of the Protocol with Albania (see Externalization of asylum processing). The most effective negative reactions came from national courts, which questioned the classification of certain countries listed as safe for entire groups of people (e.g., Egypt, Bangladesh).

14. Externalization: It is only relevant for the Italian border asylum procedure and safe countries of origin because it applies to migrants disembarked in Albania according to the Italy-Albania protocol.

15. Technology: Technology plays a role only when referring to the obstacles to registering the asylum application. Indeed, some immigration offices require the use of IT platforms for scheduling appointments and formalizing asylum applications. Reports suggest difficulties in accessing these platforms. In addition to long queues and access limitations at immigration offices, asylum seekers often struggle to obtain an appointment due to various pre-appointment systems in place, which sometimes include IT systems. First, in certain police headquarters, the administration adopted online pre-appointment systems, which, however, did not obtain positive results according to NGOs and lawyers. [Melting Pot Europe](#) made some examples of these challenges, mentioning that in Verona, an online booking system, “*Prenotafacile.it*,” has been nicknamed “*Prenotadifficile*” due to its many technical failures, making it nearly impossible for migrants to secure appointments for permit renewals to asylum seekers (which last only six months, despite the asylum determination procedure requiring years). This results in risks such as job loss and exclusion from healthcare. In Milan, in April 2023, an online portal was introduced to address the long delays and queues at the immigration office. According to [NAGA](#), an NGO providing legal support to migrants in the city, while the new digitalized system “*Prenota Facile*” has provided some individuals with a way to book an appointment to request protection, it has largely shifted—rather than resolved—the barriers and delays that many asylum seekers continue to face, making them invisible to most people. These new digital barriers include a lack of the necessary skills, tools, and digital literacy to use the online platform, the unavailability of information in many of the languages spoken by asylum seekers, and technical issues with the system itself. Among the 25 prospective asylum seekers interviewed for this report who attempted to use the portal independently, only six successfully booked an appointment at the Police Headquarters. Additionally, since July 17 of the same year, asylum seekers can no longer book appointments autonomously through the “*Prenota Facile*” portal if they have valid identification. Those without IDs must make a pre-appointment at third-sector offices. This has increased the burden on third-sector organizations responsible for managing online registrations. As a result, new physical and virtual queues have emerged at third-sector organizations and trade unions, which have been tasked with assisting individuals in accessing the online system to book an appointment despite receiving no financial support for this role. Despite involving the third sector, delays have worsened. Between April and July 2023, the wait time between an initial appointment and the visit to the police headquarters was approximately two months; however, after July 17, it increased to over four months. Many organizations report being overwhelmed, with some having waitlists of up to 900 people. A recent procedural change means asylum seekers must go through NGOs and unions instead of using the previous online portal. Critics argue this shifts responsibility from the state to the third sector, making access even more difficult, especially during holidays when many offices are closed. Similar issues exist in Trentino, where long delays—sometimes up to seven months—are caused by a pre-appointment system managed by a third-sector organization, Cinfomi, through an online system called FilaVia. Difficulties in pre-appointment occur not only at the initial access of asylum seekers but also in the renewals of their residence permits. In Verona, the online booking system “*Prenotafacile.it*” was quickly dubbed “*Prenotadifficile*” by local organizations due to its inefficiency.

B. Barriers of specific relevance to this jurisdiction

Criminalization of disembarked migrants considered as smugglers

- 1. Functioning:** This barrier functions through the immediate arrest and prosecution of migrants who steered vessels or assisted in navigation, charging them under Article 12 of the Consolidated Immigration Act (TUI). It prevents access to asylum because a conviction for smuggling acts as a legal bar to being recognized as a refugee or receiving international protection ([ARCI Porco Rosso and AlarmPhone 2021](#), Patanè, Bolhuis, van Wijk and Kreiensiek 2020).
- 2. Time:** This practice has been in place since the introduction of the TUI in 1998, but its systemic application against migrants themselves became structural after 2014-2015. It is still in use and has recently been made harsher by Decree-Law 20/2023 (Alagna 2024).
- 3. Place:** Implementation occurs at landing ports (e.g., Pozzallo, Augusta) and in Sicilian and Calabrian courts. Suspects are often immediately transferred to Italian prisons ([ARCI Porco Rosso and AlarmPhone 2021](#)).
- 4. Actors:** Key actors include prosecutors (particularly from Anti-Mafia offices), state police, Frontex Liaison Officers ([ARCI Porco Rosso and AlarmPhone 2021](#)).
- 5. Interaction:** It interacts with procedural barriers to accessing asylum. As reported by Patanè, Bolhuis, van Wijk and Kreiensiek (2020) these prosecuted migrants face many difficulties in their subsequent immigration procedures, including asylum procedures. In particular, they experience serious difficulties in formalizing their asylum applications, and even when they are able to register their applications, upon conviction, their requests are rejected.
- 6. Development:** Initially, trials targeted high-level organizers outside Italy. Since 2014, as smugglers began delegating steering to migrants to avoid arrest, the focus shifted to the migrants themselves. This has been accompanied by a shift in prosecutorial authority to Anti-Mafia offices, even for simple facilitation cases (Alagna 2024).
- 7. Rationale:** The stated purpose is to punish anyone who contributes to illegal entry, regardless of motivation or profit, and to fight against smuggling.
- 8. Legal Status:** Arrestees are held as criminal suspects or convicts. Under Law 132/2018, any conviction under Article 12 precludes refugee status, relegating them to the status of deportable non-citizens regardless of their original protection needs ([ARCI Porco Rosso and AlarmPhone 2021](#)).
- 9. Specific Impact:** Minors are sometimes wrongly identified as adults and held in adult prisons. Migrants from West Africa are frequently coerced into steering through threats or violence in Libya, essentially becoming victims of trafficking who are instead punished as perpetrators.
- 10. Reach:** Approximately 2,500 boat drivers were arrested between 2013 and 2020. In some years, this represents roughly one arrest for every 100 arrivals. It has not reduced movement but has forced migrants to use less experienced drivers, increasing the risk of shipwrecks ([ARCI Porco Rosso and AlarmPhone 2021](#)). In 2024, 106 people have been arrested ([ARCI Porco Rosso 2024](#)).
- 11. Source:** The domestic legal basis is Article 12 of Legislative Decree 286/1998. It departs from the UN Smuggling Protocol, which requires a financial or material benefit for the crime to exist. As reported by Alagna (2024) “the only way in which alleged smugglers can claim their innocence is by demonstrating they acted out of a state of necessity, provided for by Article 54 of the Italian Penal Code, which exempts from punishment those who commit an offense ‘to save themselves or others from the actual danger of a serious harm to the person ([ARCI Porco Rosso and AlarmPhone 2021](#))’”.
- 12. Justification:** State authorities justify the practice by framing boat drivers as the real culprits and ruthless criminal networks responsible for deaths at sea (Alagna 2024; Patanè, Bolhuis, van Wijk, and Kreiensiek 2020).

13. Domestic and International Reactions: International bodies like the OHCHR have noted that the treatment of these individuals often disregards their rights and protection needs ([ARCI Porco Rosso and AlarmPhone 2021](#)).

Prevention of search and rescue operations

1. Functioning: The prevention of search and rescue (SAR) operations functions as an indirect but significant barrier to accessing asylum in Italy. Since access to asylum procedures generally requires physical presence on Italian territory or disembarkation at an Italian port, measures that obstruct rescue operations at sea effectively prevent asylum seekers from reaching a place where they can lodge an application for international protection (AIDA, ITALY REPORT 2024). The barrier operates through several interconnected mechanisms. First, Italy has progressively reduced its direct involvement in proactive SAR operations, replacing humanitarian missions with border-control-oriented operations (Rocca 2024). Second, authorities have increasingly restricted the [activities of non-governmental organizations](#) (NGOs) conducting rescues in the Central Mediterranean through administrative sanctions, vessel detentions, burdensome operational requirements, and criminal investigations. Third, distress situations are sometimes classified as law-enforcement operations rather than rescue operations, delaying intervention and reducing the deployment of appropriate rescue assets. The barrier also includes practices such as assigning distant ports of disembarkation, requiring rescue vessels to proceed immediately to port after a single rescue, delaying authorization to disembark rescued persons, and [discouraging humanitarian actors](#) through the threat of criminalization. Together, these measures reduce rescue capacity, increase the time migrants spend at sea, and make access to Italian territory, and therefore, to asylum procedures, more difficult.

2. Time: The gradual reduction of SAR activities began after the termination of Operation Mare Nostrum in 2014. Restrictions on NGO rescue operations intensified from 2017 onwards, following the introduction of the Minniti Code of Conduct. Further restrictions were introduced through legislative measures adopted in 2019 and expanded under Decree-Law No. 1/2023, later converted into [Law No. 15/2023](#).

The barrier remains in force. No official timeframe for its termination has been announced.

3. Place: The barrier is implemented primarily in the Central Mediterranean Sea, including international waters, Italian territorial waters, and Italian ports. It affects rescue operations conducted in Italian, Maltese, and Libyan Search and Rescue Regions (SAR zones).

Significant examples include events occurring in the Maltese SAR zone, the waters off Libya, the Calabrian coast near Cutro, and ports such as Catania, Brindisi, Salerno, and Lampedusa.

4. Actors: The principal actors involved include the Italian Ministry of the Interior; the Italian Coast Guard (Guardia Costiera), the Guardia di Finanza; port authorities; the Ministry of Transport; Italian prosecutors and courts involved in investigations and judicial proceedings (AIDA, ITALY REPORT 2024).

Relevant international and supranational actors include Frontex, the European Border and Coast Guard Agency; The European Union through maritime operations such as Triton, Themis, Sophia, and Irini; The Libyan Coast Guard, whose role has expanded in recent years; and international organisations, including United Nations human rights bodies. NGOs affected by these measures include Médecins Sans Frontières (Geo Barents), SOS Humanity, SOS Méditerranée, Sea-Watch, Open Arms, and Jugend Rettet (AIDA, ITALY REPORT 2024).

5. Interaction: This barrier interacts closely with other migration-control measures. It is linked to pushbacks and pullbacks carried out by Libyan authorities, denial of disembarkation policies, externalization of border control, and the criminalization of migrant smuggling. The reduction of rescue capacity increases the likelihood that migrants will be intercepted by the Libyan Coast Guard and returned to Libya rather than reaching Europe. Delayed disembarkation further postpones access to asylum

procedures even after individuals have been rescued. The barrier, therefore, forms part of a broader deterrence strategy designed to reduce arrivals through the Central Mediterranean route.

6. Development: The barrier emerged within the broader transformation of Mediterranean migration governance. Following the humanitarian-oriented Mare Nostrum operation (2013–2014), Italian and EU policy gradually shifted towards border control and anti-smuggling objectives. Operations such as Triton, Themis, Sophia, and later Irini progressively reduced the importance of SAR activities. The replacement of Operation Sophia with Operation Irini in 2020 moved operational assets away from major migration routes, significantly reducing the likelihood of encountering boats in distress (Rocca 2024).

Politically, the barrier developed amid growing anti-immigration sentiment and increasing support for restrictive migration policies. Although different governments adopted different methods, restrictions on NGO rescue activities persisted across administrations led by both centre-left and right-wing coalitions.

The evolution of the barrier can be summarised in four phases (AIDA, ITALY REPORT 2024):

1. Minniti (2017): Introduction of the NGO Code of Conduct.
2. Salvini (2018–2019): Closed-port policies, security decrees, and criminalization rhetoric.
3. Lamorgese (2019–2022): Increased reliance on administrative sanctions and vessel detentions.
4. Piantedosi (2022–present): Institutionalization of restrictions through Law No. 15/2023 and operational protocols requiring single rescues and distant ports.

7. Rationale: Officially, these measures are presented as instruments to combat migrant smuggling networks; ensure compliance with maritime regulations; improve coordination of rescue operations; and prevent alleged “pull factors” encouraging migration towards Europe. Government representatives have repeatedly argued that NGO rescue vessels facilitate irregular migration and indirectly support smuggling operations (Cusumano and Villa 2020).

8. Legal Status: Individuals affected by this barrier remain potential asylum seekers under Italian, European Union, and international law. However, before disembarkation, they are frequently treated as irregular migrants or persons rescued at sea rather than as asylum applicants. As a consequence, access to procedural safeguards attached to asylum status is often delayed until they are physically allowed to enter Italian territory and formally submit an application for international protection.

9. Specific Impact: The barrier has particularly severe consequences for vulnerable groups. Children, including unaccompanied minors, face heightened risks of death, trauma, and prolonged exposure to dangerous maritime conditions. Women, pregnant persons, survivors of trafficking, torture victims, and individuals with disabilities may experience additional physical and psychological harm due to delayed rescue and prolonged confinement on vessels. The consequences are illustrated by major shipwrecks. In the October 2013 tragedy, 286 people died, including at least 60 children. In the February 2023 Cutro shipwreck, 94 people died, including 35 minors. Delays in rescue coordination and the classification of the situation as a law-enforcement operation rather than a rescue mission have been identified as contributing factors (AIDA, ITALY REPORT 2024).

10. Reach: Precise figures are difficult to establish because the barrier operates through multiple mechanisms. Nevertheless, its impact has been substantial. Since the restriction of NGO activities intensified, the share of rescues conducted by civil society organisations has significantly declined. In 2022, NGOs carried out approximately 15.2% of rescue operations in the Central Mediterranean. By mid-2023, this figure had fallen to around 4.2%, and by the end of 2023, NGOs had rescued fewer than 9,000 people, representing less than 6% of all rescues (AIDA, ITALY REPORT 2024). The barrier has therefore affected tens of thousands of migrants and asylum seekers attempting to reach Italy since 2017. While it may have altered migration routes and rescue patterns, available evidence does not conclusively demonstrate that restrictions on SAR operations significantly reduced departures from Libya or overall migratory movements.

11. Source: The barrier is grounded in a combination of legislative, administrative, and operational measures.

Key legal and policy instruments include the 2017 NGO Code of Conduct; Ministerial directives issued in 2018 and 2019; the 2019 Security Decree; Decree-Law No. 130/2020; Decree-Law No. 1/2023, converted into Law No. 15/2023; Operational protocols governing rescue activities and disembarkation (AIDA, ITALY REPORT 2024). At the European level, changes in the mandate and geographical focus of operations such as Triton, Sophia, and Irini also contributed to the reduction of SAR activities (Rocco 2024).

12. Justification: Italian governments have justified these measures primarily on grounds of migration management and national security. Official statements frequently argue that rescue operations create incentives for irregular migration and that stricter controls are necessary to combat human trafficking.

Authorities have also claimed that limiting NGO autonomy ensures better coordination with state authorities and compliance with maritime regulations. Public discourse has often portrayed NGO vessels as “sea taxis” allegedly facilitating irregular entry into Europe (Cusumano and Villa 2020).

13. Domestic and International Reactions: The barrier has generated significant criticism from domestic and international actors.

Italian courts have repeatedly annulled vessel detentions, rejected allegations of human trafficking against rescuers, and recognised the primacy of the duty to save human life at sea. The Rome Court, while dismissing the 2013 shipwreck case due to limitation periods, acknowledged the criminal responsibility arising from failures to coordinate rescue operations.

International bodies have also expressed concern. The UN Human Rights Committee condemned Italy and Malta for violations linked to failures to rescue migrants at sea. UN Special Rapporteurs, human rights organisations, and civil society groups have criticised the criminalisation of humanitarian actors and called for the protection of rescue operations.

NGOs have consistently challenged restrictive measures before domestic and international courts, arguing that they violate maritime law, refugee law, and fundamental human rights obligations.

PART 2: CASE LAW ANALYSIS

I. IDENTIFICATION OF BARRIERS IN THE CASE LAW

A. Description of the barriers in the case law

Pushbacks:

1. Summary returns through readmission agreements from Adriatic ports and at the border with Slovenia

Courts have declared summary returns at the Adriatic ports (to Greece) and the Slovenian border unlawful. The Tribunal of Rome (Case 21667/2023) ruled that informal procedures at Adriatic ports are illegitimate because they occur without the issuance of individual measures or assessments of personal circumstances. For the Slovenian border, courts have highlighted the risk of chain pushbacks to Croatia and then Bosnia-Herzegovina, where individuals face inhuman treatment.

Type of body: Civil Court of Rome (specialized section on migration and asylum)

2. Summary returns from hotspots

The Court of Cassation has ruled that these practices, often involving the use of standardized questionnaires known as “*foglio notizie*” (information sheet), violate both constitutional and international law. A major point of judicial contention is the use of informational sheets, resulting in preventing migrants from accessing international protection. The Court of Cassation (*judgment no. 18189/2020*, see also *judgment no. 19322/2020*) ruled that signing a second “information sheet” cannot affect a person's legal status as an asylum seeker or revoke a previously submitted application. The court declared the validation of detention adopted by the Judge of the Peace based on these summary forms to be illegitimate. In *judgment no. 32070/2023*, the Court of Cassation emphasized that authorities have a positive, mandatory obligation to provide clear, complete, and comprehensible information about the right to seek international protection. This duty exists even if the migrant does not explicitly express an intent to request asylum. The same court ruled that a generic, formulaic statement in a rejection order claiming a person was fully informed is legally insufficient. The information sheet must detail the actual timing, procedures, and methods provided to the migrant, requiring the presence of a cultural mediator or interpreter. The Court of Cassation identified that issuing nearly identical, standardized deportation orders to groups (such as Tunisian nationals) without individualized consideration constitutes a collective expulsion, violating Article 4 of Protocol No. 4 of the ECHR. These national rulings align with the ECHR's March 2023 decision in *J.A. and Others v. Italy*, which condemned Italy for violating Articles 3, 5, and 13 regarding treatment and detention at the Lampedusa hotspot.

Type of body: Judge of the Peace (first instance, validation of detention orders) and Court of Cassation

Pullbacks:

Italian courts have scrutinized these practices, focusing on the legality of the MoU, the role of commercial ships in privatized pushbacks, and the rights of those pulled back to Libya. As reported by AIDA (2024) National courts have challenged the 2017 MoU (renewed in 2023), which provides funding and technical support to Libyan authorities. In the *Vos-Thalassa* case, the Court of Trapani found the memorandum invalid under both international and Italian law. The court ruled that it violates the non-refoulement principle by facilitating forced returns to a territory, as Libya, where individuals face documented human rights abuses, torture, and inhuman treatment. The court also noted that the MoU was improperly ratified, as it bypassed the required parliamentary approval, rendering it non-binding and lacking legislative authority. Despite this decision has been overturned at the appeal stage (Court of Appeal of Palermo *no. 1525/2020*), the Court of Cassation has affirmed the right of migrants to physically resist being returned

to Libya. In judgment no. 15869/2021 the court ruled that migrants who protested and used force to prevent a commercial ship from returning them to Libya were acting in legitimate defense. The court also established that resisting a public official is justified when it is done to assert the right against refoulement to an unsafe location and to oppose a return that would violate the right to life and freedom from inhuman treatment. Jurisprudence has addressed the practice of Italian authorities instructing commercial vessels to return rescued migrants to Libya. In 2024, in the *ASSO 29* case (judgment no. 4782/2021), the Civil Court of Rome ruled that the existence of a Libyan Search and Rescue zone does not exempt Italy from its international obligations. The court found that because the Italian military ship *Duilio* coordinated the operation, Italy had de facto control over the migrants. The court concluded that authorities should have directed the ship to Italy rather than Libya, regardless of Libyan instructions. As a result, the Prime Minister's Office, the Ministry of Defence, and the ship-owning company were ordered to pay compensation to the victims. In some cases, courts have recognized that affected individuals have a positive right to enter Italy to seek asylum. In the same case, the Court of Rome (*judgment no. 25889/2023*) also ordered the issuance of a regular entry visa to an applicant who had been pulled back to Tripoli, ruling that this was necessary to remedy Italy's violation of its non-refoulement obligations.

Detention:

1. De facto detention in border areas

Courts have scrutinized the practice of holding individuals in airport transit areas for extended periods without formal detention orders. The Civil Court of Rome (*Judgment no. 64653/2021*) ordered the Ministry of the Interior to pay damages to a Congolese citizen detained for six days in the Fiumicino Airport transit area. The court found the detention unlawful because it lacked formal authorization and took place under degrading conditions. The Regional Administrative Court of Lazio (*judgment no. 3392/2023*) ruled that transit zones are comparable to administrative detention centres (like hotspots or CPRs). Consequently, detainees in these zones must enjoy the same rights as those in formal centres, including the right to communicate with civil society organizations, and access to a legal representative must be guaranteed. Courts have also challenged the use of ships as sites of de facto detention. The Justice of the Peace in Siracusa in 2022 (*judgment 1152/2022*) ruled that detaining a migrant on a quarantine ship for 14 days without any confirmed COVID-19 cases constituted an unauthorized deprivation of liberty, undermining constitutional guarantees. In judgment no. 14231/2025, the Court of Cassation found that the Italian government committed an inexcusable error by delaying the disembarkation of migrants from the vessel *Diciotti*. This delay, ordered informally by the Ministry of the Interior, was recognized as unlawful.⁶ In *Case 21667/2023*, the Tribunal of Rome noted that an Afghan minor was detained in a ship at the port of Brindisi before being informally readmitted to Greece, a procedure the court declared illegitimate. The court condemned the practice not only for the consequences of summary returns but also for unlawful de facto detention.

Type of body: Civil Tribunal (specialized court section on asylum and migration), Court of Cassation, Judge of the Peace, Administrative regional court (TAR).

2. Detention in pre-removal centres

As highlighted in the section "Pushbacks", courts have invalidated detention orders in Centri Per il Rimpatrio (CPRs) that rely on the hotspot approach and particularly summary information sheets. In judgment no. 18189/2020, the Court of Cassation ruled that validating the detention of a Tunisian asylum seeker in a CPR based on a "second information sheet" was unlawful. It established that signing such a form cannot revoke a person's status as an asylum seeker or overcome a previously expressed wish for international protection. In judgment *no. 32070/2023*, the Court of Cassation, in a case involving a

⁶ This jurisprudence is relevant also for the special barrier "Prevention of sea and rescue operations".

Tunisian citizen detained in the Turin CPR, the court found the detention unlawful because the underlying deportation order was a standardized, group-issued measure lacking individualized consideration. A recurring theme in the case law is that no detention procedure in a CPR can be validated if the individual was not properly informed of their rights. The Court of Cassation underscored that authorities have a positive, mandatory obligation to provide clear, complete, and unequivocal information about the right to seek international protection. This information must be provided in a language the migrant understands, typically requiring a cultural mediator or interpreter. Generic claims in a detention order that a person was “fully informed” are insufficient without details on the timing and method of that information. Especially through the jurisprudence of the court of cassation, criticisms emerge in the judicial scrutiny made by the Judge of the Peace, responsible for validating detention orders at first instance for irregular migrants. The Court of Cassation mentioned on several occasions the apparent and routinised decisions of validation of detention measures by the Judges of the Peace.

Type of body: Judge of the Peace, Court of Cassation

3. Asylum seekers’ detention within the accelerated border procedure

Courts have repeatedly struck down the automatic detention of asylum seekers solely because they originate from a designated safe country of origin. The Tribunal of Catania (*judgment no. 10459/2023*) ruled that an asylum seeker cannot be detained merely to examine their application. Each detention order requires a motivated decision assessing the necessity and proportionality based on the applicant's specific circumstances. Such detention restricts personal freedom under Article 13 of the Italian Constitution, meaning it cannot be validated if the reasoning is superficial. The same ruling has challenged the high costs provided by law for asylum seekers from safe countries to provide a financial guarantee as an alternative measure to detention. The Tribunal of Catania found that this requirement did not serve as a genuine alternative to detention but was instead the only way to avoid it. Border procedures are generally limited to the actual point of entry or transit zones. The Tribunal of Catania (*judgment no. 9375/2024*) ruled a detention order unlawful not only because Tunisia, the country of origin of the asylum seeker, cannot be considered safe according to country of origin information, but also because the procedural criteria for border procedures had not been adhered to. Specifically, the border procedure, defined by the so-called “fiction of non-entry”, applies only when the application is adjudicated directly “at the border or in transit zones of the Member State”, as Article 43 of Directive 2013/32 specified. In this instance, the individual had entered a border area (Lampedusa, under the jurisdiction of the Agrigento police commissioner) and submitted a request for international protection there. However, the detention was ordered by the Ragusa police commissioner after the individual was transferred, contrary to the provisions of Article 43, which regulate the relocation of border procedure applications (see also Tribunal of Palermo for the detention centre of Porto Empedocle: R.G. 10239/2024, R.G. 10240/2024).

Type of body: Civil courts (specialised sections on asylum and migration) since 2024/Court of Appeals from 2025 – criminal and civil sections); Court of Cassation (civil section since 2025; criminal section from 2025)

Externalization of asylum processing:

1. Dublin chain pushbacks

Italian courts have addressed Dublin transfers primarily in the context of preventing refoulement and ensuring that transfers to other EU Member States do not lead to migrants being returned to unsafe countries of origin. A landmark ruling by the Tribunal of Milan (*judgment no. 27034/2020*) addressed the transfer of an Afghan asylum seeker under the Dublin III Regulation. The court ruled that, due to escalating violence in Afghanistan, there was a serious risk the applicant would face inhuman or degrading treatment if they were returned from Germany to Afghanistan. This risk justified applying Article 3(2) of

the Dublin III Regulation, which allows a Member State to take responsibility for an application if a transfer to the normally responsible state is impossible. Consequently, the court designated Italy as the responsible Member State for processing the asylum claim, effectively blocking the transfer to Germany to prevent potential chain refoulement. Authorities have occasionally attempted to frame informal readmissions at the border as being consistent with the Dublin framework, a view the courts have rejected. At the Slovenian border, the Prefect of Trieste argued that informal readmission agreements should be viewed as an “integration of the Dublin regulation”. As mentioned in the pushback section, the Tribunal of Rome (*judgment no. 56420/2020*) disagreed, ruling that these summary procedures actually violated the Dublin III Regulation (specifically Articles 4, 5, and 27) by bypassing the formal criteria and procedural guarantees required for determining the state responsible for an asylum claim.

Type of body: Civil Tribunal (specialized court section on asylum and migration); Court of Cassation.

2. Asylum offshore in Albania

A central legal argument invoked by Italian courts does not pertain specifically to the Italian protocol but more broadly to asylum border procedures, since asylum seekers were detained based on this procedure. Particularly, as mentioned in “Detention”, civil courts have questioned the executive list of designation of the asylum seekers' countries of origin as safe. The Tribunal of Rome (judgment no. 42251/2024) ruled that for a third country to be designated as safe, safety must apply to its entire territory and to all categories of people. In cases involving citizens from Egypt and Bangladesh detained in Albania, the court found that these countries could not be considered safe due to documented exceptions for political opponents, dissidents, and human rights defenders. In this context, the Tribunal of Rome referred questions to the European Court of Justice to determine if a national legislator can directly designate a country as safe through primary legislation, bypassing established EU criteria and procedures. Additionally, the Court of Appeal of Rome in November 2025 referred critical questions to the ECJ regarding the protocol's compatibility with EU law: The court questioned whether the European Union holds exclusive competence to conclude such international agreements, which could preclude a Member State like Italy from entering into a bilateral protocol for managing migratory flows. The court also asked the ECJ to clarify if EU law precludes the transfer and continued detention of asylum seekers in areas located outside the territory of the European Union.

Type of body: Civil Tribunal (specialized court section on asylum and migration), Court of Appeal (civil/criminal section), Court of Cassation (criminal section)

Procedural barriers:

1. Obstacles to formalizing of the asylum application

Italian courts have condemned Italian authorities for practices that restricted and prevented the substantive manifestation of willingness to apply for asylum at border zones. For instance, as already mentioned in Pushbacks, the Court of Cassation (*judgment no. 18189/2020*) ruled that signing a summary form cannot affect a person's legal status as an asylum seeker or revoke a previously submitted application. The court in Case 32070/2023 emphasized that the obligation to inform migrants of their rights exists even if they do not explicitly express an intent to seek protection; information must be clear, complete, and provided in a comprehensible manner. In the cases concerning summary returns to Slovenia, the Tribunal of Rome (*judgment no. 56420/2020*) condemned the authorities also for the lack of proper consideration of the intention to seek asylum. The court points out that there was “no invitation to the Police Headquarters for the formalization of the application for protection,” even if the individual intended to apply. Similarly, informal readmissions to Greece at Adriatic ports often occur without the issuance of individual measures, effectively undermining the right to formalise an application (judgment no. Jurisprudence has established that if a manifestation of intent is made but formalisation is blocked by illegal state acts (like a pushback),

the state has a positive obligation to ensure entry. In *Case 22917/2019*, the Tribunal of Rome ruled that individuals who express a desire for protection but are illegally turned back have a right to enter Italian territory to formalise their application. This right is based on Article 10, paragraph 3 of the Italian Constitution and the compensation for the violation of this fundamental right is the issue of a humanitarian visa to enter the territory.

Formalisation is the official registration of an asylum request by the Police Headquarters (*Questura*), a process that is often unlawfully delayed or denied through administrative hurdles. *Questuras* frequently refuse to register applications because migrants lack documents not required by any regulation, such as a “declaration of hospitality” or the host’s financial records (see Part I). As extensively reported by AIDA (2024), Italian courts have condemned such practices. For instance, the Tribunal of Turin (*Case 5428/2020*) ruled such denials illegitimate, as well as other courts, including those in Bologna, Ancona, and Milan, have affirmed that applications cannot be rejected due to a lack of available accommodation (See also: Trib. Firenze 21.12.2020, Trib. Torino 18.05.2020, Trib. Bologna 18.01.2023. Similarly, Trib. Ancona 14.01.2023). The rulings stated that the formalization of an application for international protection cannot be denied due to a lack of available accommodation or the applicant’s inability to declare a residence address. The Tribunal of Milan (Judgment no. 36446/2019) clarified that the *Questura*’s role is a purely administrative activity and this means that they have the sole obligation to receive and forward applications to the competent authority and cannot enter into the merits or refuse formalisation even if they consider an application inadmissible. Courts have also challenged the IT portals to register the application, and particularly “*Prenotafacile*” online platform. The Civil Court of Milan found it ineffective when it requires identification documents, like passports, that many asylum seekers do not possess, thereby blocking their right to request an appointment.

Type of body: Judge of the Peace, Civil Courts (specialised sections on asylum and migration); Court of Cassation

2. Inadmissibility of Subsequent Applications

The Italian Court of Cassation (*judgment no. 2453/2021*) has established several critical principles to ensure that repeated requests are not summarily dismissed without due process. The Court explicitly rejected the idea of automatic inadmissibility for subsequent applications. It ruled that each case must be individually evaluated to determine if new elements or findings have emerged that justify a new examination, as required by EU Directive 2013/32/UE. The responsibility for assessing the admissibility of these new elements lies with the Territorial Commission (specifically its President under recent reforms), rather than the police authorities. A major point of judicial concern is the definition of the “execution phase” of a removal order. The Court emphasized that this phase requires a restrictive interpretation to protect an individual’s right to asylum and to prevent the state from imposing “unjustified limitations” on that right. The court clarified that the rules regarding subsequent applications (under Article 29-bis TUI) apply based on the date of the first repeated application, not the date of the very first asylum request the individual ever made.

Type of body: Judge of the Peace, Court of Cassation

3. Accelerated Border Procedure and Safe Countries of Origin

This barrier applies to asylum seekers from countries designated as safe in the list of safe countries adopted by the executive, who are subjected to fast-track procedures and detention. Courts have consistently struck down the automatic detention of asylum seekers from safe countries, exercising in-depth judicial scrutiny in the actual safeness of the country for the claimants. As mentioned in “Detention”, many court rulings disregarded the ministerial decree designating some countries (especially Tunisia, Bangladesh and Egypt) as safe countries, finding a fundamental conflict with primary legislation because the country fails to protect dissidents and minorities. Additionally, courts have ruled that accelerated border procedures are

only valid if conducted at the actual point of entry. Transferring an applicant from their entry point to a detention centre in a different jurisdiction before a detention order is issued renders the detention unlawful and the accelerated border procedure inapplicable.

Type of body: Civil Tribunal (specialized court section on asylum and migration), Court of Cassation

Criminalization of disembarked migrants considered as smugglers

Under Article 112 of the Italian Constitution, prosecutors are obligated to initiate criminal proceedings whenever a crime is reported. Because every unauthorized landing is legally a report of human smuggling, Sicilian prosecutors argue they have no discretion but to prosecute anyone who played a role, even a marginal or forced one, in steering or navigating the vessel. As reported by existing research on the topic (Paranè et al. 2020 and Alagna 2024), Jurisprudence varies significantly across Sicilian districts based on their specific prosecutorial approach. In recent years, courts in Palermo often treat smuggling cases through the District Anti-Mafia. This district is known for a harsher approach, frequently applying severe charges such as murder or criminal association (Art. 416), leading to long pre-trial detentions and, in some cases, life imprisonment. In Syracuse, prosecutors historically acknowledged that occasional alleged smugglers are forced and used by smugglers. They frequently applied the minimum participation clause (Art. 114 of the Criminal Code), which, combined with expedited trials, allowed for 2-year suspended sentences that prevented immediate incarceration (Patanè et al. 2020). In Catania, in late 2016, the Prosecutor's Office issued a directive to cease requesting pre-trial detention for occasional boat drivers, arguing there was no risk of re-offending because they were randomly selected migrants. However, this does not prevent the criminal investigation and even the conviction (Alagna 2024). An interesting point emerging from the literature is the increasing application of Article 54 of the Penal Code (state of necessity/duress) to exonerate migrants forced to steer at gunpoint in Libya. In 2016, the court of Palermo issued a landmark ruling (see Part II), acquitting a person, with the judge stating that the situation in Libya created a well-founded doubt that the migrants acted under duress. Following this, several courts in Trapani, Messina, Ragusa, and Agrigento issued acquittals, framing defendants as an "improvised crew" recruited under life threats by armed paramilitary forces (Patanè et al. 2020). However, as Alagna (2024) points out, proving the required evidence for the application of article 54 is extremely challenging. Moreover, different approaches also occur at the higher courts. For instance, the Italian Supreme Court has sometimes been more restrictive, ruling that duress must be an insurmountable coercion and questioning its validity once a boat reaches open water and the armed smugglers have departed (Alagna 2024).

B. Institutional settings

Pushbacks:

1. Summary returns through readmission agreements from Adriatic ports and at the border with Slovenia

- **First instance judicial or quasi-judicial body:** Civil Court – section specialised on asylum and migration (*Tribunali Civili - Sezione Specializzate Immigrazione*)
- **Second instance judicial or quasi-judicial body:** Court of Cassation (civil section)

2. Summary returns from hotspots

- **First instance judicial or quasi-judicial body:** Judge of the Peace
- **Second instance judicial or quasi-judicial body:** Court of Cassation (civil section)

In principle, criminal courts could also be involved in cases of criminal allegations. However, current jurisprudence does not see criminal court decisions.

Pullbacks:

- **First instance judicial or quasi-judicial body:** Tribunale Civile (Sezione Specializzata immigrazione) e Tribunale penale + Tribunale Amministrativo Regionale
- **Second instance judicial or quasi-judicial body:** Corte di Appello Civile e Penale (Court of Appeals – civil and criminal sections) + Consiglio di Stato (High Administrative court)
- **Third instance judicial or quasi-judicial body:** Court of Cassation (civil or criminal court)

Detention

- **First instance judicial or quasi-judicial body:** judge of the peace, civil courts (specialised section of migration and asylum); Court of appeal (civil or criminal sections since 2025); Administrative regional court (TAR)
- **Second instance judicial or quasi-judicial body:** Court of Cassation (civil up to 2025; criminal section since 2025), High Administrative Court (Consiglio di Stato).

Externalization of asylum processing

- **First instance judicial or quasi-judicial body:** Tribunale civile (sezione specializzate asilo e immigrazione) - validation of detention of asylum seekers before December 2024, evaluation of asylum appeals at first instance; Dublin returns at the first instance
- Corte d'Appello (sezione civile e penale) - validation of detention of asylum seekers in the second instance from October to December 2024 and at first instance after December 2024.
- **Second instance judicial or quasi-judicial body:** Corte di Cassazione (sezione penale e civile) - validation of detention of asylum seekers in the third instance from October to December 2024 and the second instance after December 2024. Corte di Cassazione (sezione civile) - evaluation of asylum appeals at second instance; Dublin returns at the second instance.

Procedural barriers:

1. Formalization of the asylum application:

- **First instance judicial or quasi-judicial body:** Civil Court – section specialised on asylum and migration (Tribunali Civili - Sezione Specializzate Immigrazione); Judge of the Peace
- **Second instance judicial or quasi-judicial body:** Court of Cassation

2. Inadmissibility of subsequent applications:

- **First instance judicial or quasi-judicial body:** Civil Court – section specialised on asylum and migration (Tribunali Civili - Sezione Specializzate Immigrazione); Judge of the Peace
- **Second instance judicial or quasi-judicial body:** Court of Cassation

3. Accelerated border procedure and safe countries of origin

- **First instance judicial or quasi-judicial body:** Civil Court – section specialised on asylum and migration (Tribunali Civili - Sezione Specializzate Immigrazione)
- **Second instance judicial or quasi-judicial body:** Court of Cassation

Criminalization of disembarked migrants considered as smugglers:

- **First instance judicial or quasi-judicial body:** Judge of Preliminary Investigation (GIP); Judge of Preliminary Hearing (GUP), first instance criminal court
- **Second instance judicial or quasi-judicial body:** Appeal Court
- **Third instance judicial or quasi-judicial body:** Court of Cassation

Executive bodies involved in asylum access adjudication

No executive bodies are responsible for asylum access adjudication. They are instead involved as parties in the procedure. Regarding the entrance to the territory, the representatives of the Ministry of the Interior (in its various bodies, and particularly the border police) are clearly involved. It occurs both in formal and informal procedures, which can lead to pushbacks and procedural barriers. Consider the role of border police both in the readmission agreement with Slovenia and Greece, as well as in *respingimento immediato* and the lack of the right to access asylum. For procedures that concern access through the sea, the Italian Coast Guard is also involved, and in some cases, military ships are also involved in sea and rescue operations (Ministry of Defence). Additionally, the Ministry of Infrastructures and Transport can be involved since it is responsible, together with the Ministry of the Interior, for controlling ports and disembarkation procedures. In airports, there is the involvement of both the Ministry of the Interior and the Ministry of Infrastructures and Transport. In hotspots at the border, the Ministry of the Interior is responsible for the involvement of the border police.

Concerning what occurs in the territory, the responsibility for what occurs is of the Ministry of the Interior, with involvement of various bodies. The police and, particularly, the immigration office are directly involved in the registration of asylum applications. In some cases, it also includes externalization of the third section (e.g., in the case of Milan). Externalization to the third sector is a major issue for pre-removal centres, where security issues are also managed by the private sector. However, the Ministry of the Interior is responsible for pre-removal centres, as well as for detention centres where asylum border procedures are conducted. Finally, regarding the obstacles to effective remedy and non-automatic effects, the Territorial Commissions for International Protection, the body of the Ministry of the Interior, is involved.

The state parties that can intervene in access to asylum adjudication in principle are:

- Ministry of the Interior (responsible for all aspects concerning migration and asylum)
- Ministry of Infrastructures and Transportation (responsible for managing the function of ports and involved in disembarkation procedures)
- Ministry of Defence (responsible for military navies involved in sea and rescue operations and actions of the Italian Coast Guard (Specialized Military Corps, which is responsible for the control of national and international waters).

Executive bodies are instead involved as parties in the procedure. The authorities responsible for implementing the barriers presented in part I are also the same actors from the executive that are involved in asylum access adjudication, since their responsibility and possible violations are assessed by judicial bodies, thus they are parties in the proceeding. More precisely:

Regarding **pushbacks**, the Ministry of the Interior is involved. It has been involved in asylum access adjudication.

Regarding **pullbacks**, there is, in principle, the responsibility of the Ministry of the Interior (concerning externalization agreements), and it could also be the responsibility of the Ministry of Defence if there is involvement of the Coast Guard. Regarding detention, de facto detention in ships is the joint responsibility of the Ministry of the Interior, the Ministry of Defence, and the Ministry of Infrastructures and Transport. All these authorities have been involved in pullback cases.

Regarding detention, de facto detention in airports or ports is the responsibility of the Ministry of the Interior and the Ministry of Infrastructure and Transport. In the case of ports, the Ministry of Defence could also be involved, depending on the involvement of the Coast Guard and military navies. De facto detention in hotspots is the responsibility of the Ministry of the Interior, such as detention in pre-removal centres in Italy and Albania, as well as centres for conducting asylum border procedures. All these authorities have been involved in proceedings related to detention.

Concerning the **externalization of asylum processing**, the Ministry of the Interior is involved. Transport to Albania occurred with the involvement of the Coast Guard and through military navies, thus involving the Ministry of Defence. However, these two authorities are not directly involved in existing asylum access adjudication. As far Dublin returns are concerned, the responsible authority is the Dublin unit within the Ministry of the Interior.

Regarding **procedural barriers**, the main actor involved from the executive is the Ministry of the Interior and its offices dealing with migration: 1) police headquarters where immigration offices are located; Territorial Commissions responsible for asylum claims (21 local offices referring to the National Commission for Asylum). They have been involved in asylum access adjudication.

International organizations often have indirect involvement. This means that judges, when deciding on cases, refer to materials produced by some organizations, especially the EUAA and UNHCR. In cases related to pushback and pullbacks, UNHCR also provided documentation (e.g., photos) used as evidence (e.g., case *Vos Thalassa*, Court of Cassation no. 15869/2022).

In each court, there are also some experts from EUAA, despite their roles changing among the local courts. Nowadays, in some lower courts, they mainly conduct the coordination and organization of events and training, while in others, they also conduct some research on dockets. EUAA experts are located in court sections specializing in migration and asylum, as well as in the civil sections of the Court of Cassation. For now, there is no information available about their direct involvement in court cases related to asylum access (although further research is needed – interviews could be particularly important).

Regarding **criminalization of disembarked migrants considered as smugglers** police forces (specifically the *Polizia di Stato*, *Guardia di Finanza*, and *Carabinieri*) serve as the frontline executors of these policies, focusing on the identification and arrest of “culprits”. A primary role of the police is to identify boat drivers immediately after rescue or landing. Police gather statements from rescued migrants to use as evidence. Sources report controversial methods, such as offering incentives (e.g., residence permits for “justice causes”) to migrants who identify the driver. Investigators often fail to ask if the driver was forced to take the helm under threat ([ARCI Porco Rosso and AlarmPhone 2021](#)).

The indirect involvement of these organizations seems more relevant in cases regarding pushbacks and pullbacks, as well as the externalization of asylum processing. Instead, for procedural barriers and detention (Especially formal detention), the involvement of these actors in judicial proceedings seems less prominent. However, this does not mean that they are not relevant, especially considering the relevant presence of UNHCR and EUAA in hotspots. Interviews could be important in investigating a possible indirect role in adjudication.

C. Legal context and legal system

Courts extensively refer mainly to the 1951 Refugee Convention. Additionally, in cases concerning pushbacks and pullbacks at sea, other international conventions are considered. Among them are the Montego Bay Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS), and the International Convention on Maritime Search and Rescue (SAR). When interpreting the principle of non-refoulement, they also refer to the UN Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR).

The EU legal framework has a major impact on asylum adjudication. It is directly applied by asylum judges, who refer to EU asylum law and EU asylum jurisprudence in their rulings. The area in which Italian

judges have been recently engaging more with the CJEU is that of the concept of safe countries of origin, sending a large number of preliminary references from June 2024 to March 2025. From the court of Florence and Bologna), specifically when it comes to access to asylum. The first relevant preliminary rulings were sent by the Tribunal of Firenze (*C-388/24* and *C-389/24*) and then the Tribunal of Bologna (*C-750/24*). With the implementation of the Protocol with Albania, this line of jurisprudence becomes particularly relevant to access to asylum. The Tribunal of Rome, while not validating the detention order of the second group of migrants disembarked in Albania on 5 and 6 November, sent two preliminary references to the CJEU on the interpretation of the concept of safe countries of origin (*C-758/24* and *C-759/24*). Then, the courts responsible for validating orders in detention centres at the Italian border for asylum seekers, according to the Italian accelerated border procedure, sent a preliminary reference to the CJEU. There were two preliminary references from the Tribunal of Palermo (*C-763/24* and *C-764/24*) on 6 November 2024, and finally, seven other references by the Tribunal of Rome concerning other asylum seekers in Albania on 13 November 2024. After the change of competence from the Tribunals to the Courts of Appeals, they sent other preliminary references: in January, 43 preliminary references from the Court of Appeal in Rome, referring to the third asylum seekers disembarked in Albania, and in February, a preliminary reference from the Court of Appeal of Palermo on the same issue. Finally, on 20 June 2024, a last preliminary reference was sent to the CJEU by the Court of Cassation, despite focusing on a different subject rather than that concerning the safe country of origin. It relates to the new use of the centre in Albania as a pre-removal centre and concerns the transfer of migrants already in pre-removal centres in Italy to the pre-removal centre in Albania and its conformity with EU law.

Obviously, apart from the preliminary ruling, EU law plays a prominent role in shaping asylum access adjudication in Italy. In recent decisions on pushbacks, for instance, the court ruling states that informal readmissions to Slovenia and Greece (Tribunal of Rome, *judgment no. 56420/2020, no. 3938/2022, no. 21667/2023*) are contrary to EU law, and particularly to the Dublin Regulation. In cases of risk of violation of non-refoulement under Dublin procedures, the court also mentioned EU Regulation No. 603/2013 (EURODAC) in addition to Dublin. Regarding detention, the recent decision of 2023, which stated the unlawfulness of the provision ruling the detention of asylum seekers according to the Italian asylum border procedure, in accordance with EU law and EU jurisprudence (financial guarantee for asylum seekers' detention). For transfers of migrants from pre-removal centres in Italy to those in Albania, important reference is made to the Return Directive; however, the preliminary reference on this matter, sent by the Court of Cassation on 20 June 2025, is currently pending.

More broadly, the ECHR and the related court also play a relevant role. This is particularly true for decisions on detention conditions in pre-removal centres, as well as decisions concerning pushbacks and pullbacks. Additionally, there is also frequent reference to Protocol No. 4 of the Charter of Fundamental Rights of the EU, especially in cases of pushbacks and pullbacks.

However, in detention decisions, there is a consistent difference between the Justice of the Peace and the other bodies of the judiciary involved. The Justice of the Peace usually does not cite the international and EU legal framework. However, it is possible to notice some exceptions, for instance, the recent preliminary ruling to the Constitutional Court made by the Judge of the Peace of Rome, who questioned the constitutionality of the actual legal framework of administrative detention for migrants, decided by the Constitutional Court in the judgment no. 96/2025.

The selected decisions do not refer to foreign cases.

It occurs extensively, especially in recent years, and particularly references to the CJEU and ECtHR. They also have a direct dialogue with the CJEU due to the use of preliminary references (see above). However, they have been used more in some areas than in others, namely preliminary references referred to the risk of non-refoulement and chain pushback in Dublin Transfers and regarding the interpretation of the safe country of origin, especially about the externalization of asylum processing in Albania. In my opinion, it seems that preliminary references are adopted for two reasons: 1) when judges think that a decision must contribute to the legal debate across the EU, since it is a question that does not concern only Italy but

many EU countries; 2) when the conflict with the government is very high and they want legitimation by the EU court, as in the case of the concept of safe countries of origin. Again, when it comes to detention decisions, there is a consistent difference between the Justice of the Peace and the other bodies of the judiciary involved in the use of international and supranational jurisprudence.

D. Laws and norms at the domestic level

Italy signed the Refugee Convention, which has an important role in asylum access adjudication, especially concerning the non-penalization of irregular migration for seeking refuge (art. 31), the right of non-refoulement (Art. 33).

The principle of non-refoulement is openly recognized in the immigration law (art. 19 *Testo Unico Immigrazione*). Despite not being directly provided in the constitution, the judicial interpretation of article 10 (constitutional right to asylum) and article 117 (respect of international treaties), the principle of *non-refoulement* finds space in the constitution.

Article 10 of the Italian constitution says that “The Italian legal system conforms to the generally recognised principles of international law. The legal status of foreigners is regulated by law in conformity with international provisions and treaties. A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence.”

Consolidated judicial interpretation of Article 10 argues that the scope of asylum in Italy is larger than that of EU asylum law, and it protects from non-refoulement when migrants risk violations of personal and family rights protected by the Italian constitution.

These are the norms that translate into national legislation, the right to asylum as regulated by international, EU, and Italian Constitution:

- Legislative Decree no. 286/1998 “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms”
- Legislative Decree no. 251/2007 “Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection, and the content of the protection granted”
- Legislative Decree no. 25/2008 “Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status”
- Legislative Decree no. 142/2015 “Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection.”

In Italy, there is no national provision that has concretely put into force the specific right to asylum. Consolidated jurisprudence has held that the constitutional right to asylum is fully incorporated into existing national legislation on asylum. Particularly, the right to asylum as ruled by the constitution is protected by international protection ruled by the EU (as transposed at the national level) – refugee status and subsidiary protection status. Additionally, the right to asylum as guaranteed by the constitution also includes the recognition of a national form of protection (formerly humanitarian protection – before 2018), now referred to as special protection. Regarding entitlements, people with international protection have access to several rights. Refugees cannot be expelled or returned to a country where their life or freedom could be threatened (*non-refoulement*), and they have the right to a residence permit for asylum. Those obtaining refugee status are granted a residence permit for asylum for a period of 5 years, which is renewable. Renewal is generally automatic, unless there are reasons to revoke refugee status. Regarding the subsidiary protection status, the residence permit for subsidiary protection has a duration of 5 years. Renewal is subject to verification that the conditions that led to the recognition of subsidiary protection still exist. Concerning rights, they can work both as an employee and as a self-employed individual, they

are enrolled in the National Health Service, they have access to public education at all levels, to social services and social assistance, they can reunite with family members, and they can travel, although with some limitations.

The “special protection” residence permit in Italy is regulated by Article 32, paragraph 3, of Legislative Decree No. 25 of January 28, 2008. This permit is issued when the Territorial Commission does not grant refugee status or subsidiary protection to an asylum seeker but finds that the conditions outlined in Article 19, paragraphs 1 and 1.1, of the Unified Immigration Act are met. These conditions involve cases where there is a prohibition of rejection, and the Commission forwards the case to the Chief of Police for the issuance of a two-year residence permit labelled “special protection.” The special protection permit is issued by the Chief of Police if the conditions specified in Article 19 of the Unified Immigration Act are met. This article protects individuals from expulsion or rejection to a state where they might face persecution based on race, sex, sexual orientation, gender identity, language, citizenship, religion, political opinions, or personal or social conditions. It also covers situations where there is a risk of torture or inhuman treatment, or where Italy has constitutional or international obligations. Before the amendment by Law No. 50/23, Article 19 also considered the right to respect for private and family life, preventing the expulsion of foreigners if it violated these rights. This provision has been removed, and now the evaluation no longer considers the respect for private and family life. Following the changes introduced by Law No. 50/23, it seems no longer possible to apply for a special protection permit without having first applied for international protection. Previously, foreigners could apply directly to the Chief of Police, but this option appears to have been eliminated. A transitional provision extends the previous regulations to applications submitted before the effective date of Decree-Law 20/23. Permits issued under the previous conditions can be renewed once for a duration of one year. These permits can also be converted into work permits if the legal requirements are met. The special protection residence permit is valid for two years. Its renewal depends on a re-evaluation by the Territorial Commission. Holders of a special protection residence permit can work, either as employees or self-employed. However, following the changes introduced by Law No. 50/23, these permits can no longer be converted into work permits, except in specific cases where the permit was issued before May 5, 2023, and meets certain conditions. Additionally, permits issued after May 5, 2023, due to a court ruling declaring the administration's denial of special protection as illegitimate, can also be converted.

Asylum seekers have the right to non-refoulement, the right to legal aid, and access to social services, work, the health system, and school. In practice, some difficulties emerge in accessing these rights. For instance, it is challenging to work regularly with a permit for asylum seekers, especially if they have only received the receipt for their asylum request (*cedolino*). Due to long delays in the administration to access these services, asylum seekers remain with the *cedolino* for years, and this limits their access to work in practice. Regarding social services and social health, they have access to these services despite difficulties related to obtaining civic registration in the municipality, which is connected to the possibility (difficult, especially in large cities) of having a regular housing contract.

Italy has ratified the 1951 Refugee Convention and its 1967 Protocol, integrating their provisions into national law. This includes the recognition of refugee status, rights of refugees, and the principle of non-refoulement. Italian Law No. 722 of 1954, which ratified the 1951 Convention, and Legislative Decree No. 251 of 2007, which implements EU directives on asylum procedures.

Human rights obligations from:

- **European Convention on Human Rights (ECHR) and Protocol No. 4 Additional to the ECHR.** The ECHR is directly applicable in Italy, and its provisions are enforced through national courts and the European Court of Human Rights. Italy has also ratified Protocol No. 4, which provides additional rights and freedoms. The Italian constitution provides protection to these rights. For instance, in cases concerning detention, Italian judges (except for the Judge of the Peace) largely use the ECHR and particularly Article 5 (Right to liberty and security), Article 6 (Right to a fair trial), and Article 13 (Right to an effective remedy). In cases concerning pushbacks

and pullbacks, judgements often refer to article 3 of the ECHR and the protocol No. 4 Additional to the ECHR (see for instance *Court of Cassation 15869/2022*), which is also mentioned in cases of summary returns under the practice of “*secondo foglio notizie*” within Italian hotspots, which led to delayed deportation orders and subsequent detention orders in pre-removal centres within the territory (see *Court of Cassation no.32170/2023*).

- **Charter of Fundamental Rights of the European Union:** The Charter is directly applicable in Italy as part of EU law. It has been integrated into Italian legislation through various EU directives and regulations, ensuring that fundamental rights are respected and upheld in national law. The Italian constitution provides protection to these rights. Particularly, in cases concerning pushbacks and pullbacks, large references are made to articles 4 and 19 (e.g. *Tribunal of Rome 21667/2023*). Regarding cases concerning both externalization of asylum processing and detention, it is used to stress the right to an effective remedy and judicial control, referring to articles 6 and 47 (e.g., *10459/2023*). Finally, for procedural barriers, and particularly when it comes to access to the formalization of the asylum procedure, which is also connected to some basic rights, such as the right of reception, the judges refer to Article 1 of the Charter, stressing the right of human dignity.
- **UN Convention against Torture:** Italy ratified the UN Convention against Torture in 1989 and has incorporated its provisions into national law, criminalizing torture and ensuring that acts of torture are prosecuted under Italian law. It is sometimes mentioned in cases concerning detention when it comes to detention conditions, and often mentioned in pushbacks/pullbacks jurisprudence, referred to as non-refoulement.
- **International Covenant on Civil and Political Rights (ICCPR):** Italy has ratified the ICCPR, and its provisions are integrated into Italian law, ensuring the protection of civil and political rights, including the right to life, freedom of speech, and freedom from torture. The Italian constitution provides protection to these rights. It is often mentioned in pushback/pullback jurisprudence and referred to as non-refoulement.
- **Montego Bay Convention on the Law of the Sea (UNCLOS):** Italy ratified UNCLOS, and it entered into force on 16 December 1994. The convention is directly applicable in Italy, and its provisions are integrated into national maritime law and policies, particularly concerning maritime boundaries and environmental protection. Italian Law No. 689 of 1994 incorporates UNCLOS provisions into national legislation. These legal norms are extensively used in cases concerning both pullbacks.
- **International Convention for the Safety of Life at Sea (SOLAS):** Italy has implemented SOLAS through national legislation, ensuring compliance with international maritime safety standards. This includes regulations on ship construction, equipment, and operation to enhance safety at sea. Legislative Decree No. 271 of 1999 implements SOLAS regulations in Italy. These legal norms are extensively used in cases concerning pullbacks.
- **International Convention on Maritime Search and Rescue (SAR).** Italy has incorporated the SAR Convention into its national legal framework, establishing search and rescue regions and coordinating with international bodies to ensure effective maritime search and rescue operations. Law No. 147 of 2013 addresses maritime safety and search and rescue operations. Recent modifications to the law occurred in 2019 and 2023.
- **The Convention on the Rights of the Child:** Italy ratified the Convention on the Rights of the Child on May 27, 1991. By ratifying the CRC, Italy committed to aligning its domestic laws and policies with the principles and provisions of the Convention. Law No. 176/1991: This law ratified the CRC and made it part of the Italian legal system. It ensures that the principles of the Convention are legally binding and can be directly applied by Italian courts. Italian courts are required to interpret and apply domestic laws in a manner consistent with the CRC. This includes ensuring that children's rights are protected in judicial proceedings and that the best interests of the child are a primary consideration in all decisions affecting children. This convention is often mentioned in cases concerning conditions of de facto detention of minors in hotspots and first

reception centres used for identification purposes. This is, for instance, the case of the Tribunal of Catania's decision about the unlawful detention of minors in the first reception of *contrada Cifali*, issued on 5/02/2024 (anonymized decision).

Constitutional obligations have a particularly relevant role. Article 10 of the Constitution allows for large protection from *refoulement*, according to consolidated jurisprudence (see above). Additionally, when it comes to judicial remedies, it was the instrument allowing judges to order the issue of humanitarian visas for people subject to pushbacks.

Asylum access adjudication in Italy is also strongly shaped by Article 13 of the Constitution, in conjunction with international and regional instruments protecting *habeas corpus*. In Italy, according to judicial interpretation, administrative detention in migration requires judicial scrutiny for detention within 48 hours for migrants and asylum seekers. This allowed the court to play a relevant role in aspects concerning detention or when detention is characterizing the procedure, such as in the case of externalization of asylum processing in Albania. However, relevant differences emerge between the Justice of the Peace and Civil Courts regarding the impact of the validation orders.

When it comes to procedures concerning appeals against the so-called “*respingimenti immediati*”, administrative procedures are applied. The same for what concerns measures criminalizing NGOs conducting sea and rescue operations. The Italian government has introduced various policy measures to restrict the activities of SAR NGOs. This includes a code of conduct that NGOs are required to sign, which imposes restrictions on their operations, such as prohibiting rescue activities in Libyan territorial waters and mandating immediate departure from the area of operation after a rescue. NGOs that do not comply with these regulations face fines and the potential confiscation of their vessels. For instance, NGOs risk fines of up to €50,000 and the seizure of their ships if they disobey Italian rules. These procedures follow administrative procedures.

Civil law is involved, particularly civil procedural law, when civil courts are responsible for the protection of fundamental rights related to migration and asylum (at first instance, specialized court sections).

Criminal law also comes into play. While irregular entry itself is not a criminal offense, certain actions related to immigration can be considered criminal. For example, human trafficking, smuggling of migrants, and providing false information or documents to immigration authorities are criminal offenses under Italian law. Individuals who enter Italy irregularly but intend to seek asylum are protected under international and European law. They have the right to apply for asylum and cannot be penalized for their irregular entry if they are genuinely seeking international protection.

In Italy, NGOs involved in search and rescue (SAR) operations in the Mediterranean have faced increasing scrutiny and legal challenges. NGOs conducting SAR operations have been accused of aiding and abetting illegal immigration. This is considered a criminal offense under Italian law. The legal basis for these accusations often revolves around allegations that NGOs facilitate the irregular entry of migrants into Italy. Violations of regulations related to SAR activities can result in significant administrative fines, ranging from 150,000 euros to 1 million euros. Additionally, ships involved in these activities can be confiscated if violations are repeated. Criminal proceedings have been initiated against crew members of NGO vessels. For example, in 2022, preliminary criminal proceedings were opened against 21 individuals, including members of the *Iuventa* search and rescue crew, for alleged collaboration with smugglers. All the accusations have been discharged.

Finally, issues concerning asylum can be addressed by criminal courts when it comes to validation of detention measures, and in this case, the criminal procedural code comes into play. The same occurs for criminal allegations against migrants or private ships and their crew at sea, when pullbacks are put into place.

Several national laws govern asylum in the country and are relevant for asylum access adjudication:

Legislative Decree no. 286/1998 “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms”	Decreto legislativo 25 luglio 1998, n. 286 “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”	TUI
<i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017	<i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46	Decree Law 13/2017
<i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018	<i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132	Decree Law 113/2018
<i>Amended by:</i> Law no. 238 /2021 Provisions to comply with EU obligation - European Law	Modificato: LEGGE 23 dicembre 2021, n. 238, Disposizioni per l’adempimento degli obblighi derivanti dall’appartenenza dell’Italia all’Unione europea - Legge europea 2019-2020	LAW 238/2021
Legislative Decree no. 251/2007 “Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”	Decreto legislativo 19 novembre 2007, n. 251 “Attuazione della direttiva 2004/83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta”	Qualification Decree
<i>Amended by:</i> Legislative Decree no. 18/2014 <i>Amended by:</i> Legislative Decree 220/2017	<i>Modificato:</i> Decreto Legislativo 21 febbraio 2014, n. 18 <i>Modificato:</i> Decreto legislativo 22 dicembre 2017, n. 220	LD 18/2014 LD 220/17
Legislative Decree no. 25/2008 “Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status”	Decreto legislativo 28 gennaio 2008, n.25 “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato”	Procedure Decree
<i>Amended by:</i> Legislative Decree no. 142/2015	<i>Modificato:</i> Decreto legislativo n. 142/2015	Reception Decree
<i>Amended by:</i> Decree Law no. 13/2017, implemented by Law no. 46/2017	<i>Modificato:</i> Decreto Legge 17 febbraio 2017, n. 13, convertito con modificazioni dalla Legge del 13 aprile 2017, n. 46	Decree Law 13/2017

<i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018	<i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge del 1 dicembre 2018, n. 132	Decree Law 113/2018
<i>Amended by</i> Decree Law no. 130/2020, Implemented by Law no. 173/2020	<i>Modificato</i> da Decreto Legge n. 130/2020, convertito con modificazioni dalla Legge 173/2020	Decree Law 130/2020, Law 173/2020
<i>Amended by:</i> Law no. 238 /2021 Provisions to comply with EU obligation - European Law. Amended by Decree Law 20/2023, Implemented by L. 50/2023. Amended by Decree Law 133/2023, Implemented by L. 176/2023	<i>Modificato:</i> LEGGE 23 dicembre 2021, n. 238, Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2019-2020 Modificato: Decreto Legge 20 marzo 2023 convertito in L. 50/2023 Modificato: Decreto legge 133/2023 convertito in L. 176/2023	Law 238/2021, Decree Law 20/2023L. 50/2023, DL 133/23 Converted into L 176/2023
Legislative Decree no. 142/2015 “Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection.”	Decreto legislativo 18 agosto 2015, n 142 “Attuazione della direttiva 2013/33/UE recante norme relative all’accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale.”	Reception Decree
<i>Amended by:</i> Legislative Decree 220/2017	<i>Modificato:</i> Decreto legislativo 22 dicembre 2017, n. 220	LD 220/2017
<i>Amended by:</i> Decree Law no. 113/2018, implemented by Law no. 132/2018	<i>Modificato:</i> Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge di 1 dicembre 2018, n. 132	Decree Law 113/2018
<i>Amended by</i> Decree Law no. 130/2020, Implemented by Law no. 173/2020. Amended by Decree Law 20/2023, Implemented by L. 50/2023	<i>Modificato</i> da Decreto Legge n. 130/2020, convertito con modificazioni dalla Legge 173/2020 Modificato: Decreto Legge 20 Marzo 2023 convertito in L. 50/2023	Decree Law 130/2020Law 173/2020Decree Law 20/2023L. 50/2023
Legislative Decree no. 24/2014 “Prevention and repression of trafficking in persons and protection of the victims”, implementing Directive 2011/36/EU.	Decreto legislativo 4 marzo 2014, n. 24 “Prevenzione e repressione della tratta di esseri umani e protezione delle vittime”, in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime”	LD 24/2014

Law no. 47/2017 “Provisions on the protection of foreign unaccompanied minors”	Legge di 7 aprile 2017, n. 47 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati”	L 47/2017
Decree Law no. 20/2023 Urgent provisions on the legal entry of foreign workers and fight against irregular migration; Converted with amendments by Law 50 of 5 May 2023	Decreto Legge 20/2023 Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all’immigrazione irregolare. Convertito con modificazioni dalla Legge 50 del 5 maggio 2023.	DL 20/2023L 50/2023
Decree Law no 133/2023, Urgent provisions on immigration and international protection, as well as for security policy support and the functionality of the Ministry of the Interior. Converted into L. no. 176/2023	Decreto legge 133/2023 Disposizioni urgenti in materia di immigrazione e protezione internazionale, nonché per il supporto alle politiche di sicurezza e la funzionalità del Ministero dell’interno. Convertito con modificazioni dalla Legge 176 del 1 dicembre 2023	DL 133/23Converted into L 176/2023
Decree Law no. 124/2023 Urgent provisions on immigration and international protection.	Decreto Legge n. 124 del 27 dicembre 2023 (c.d. “Decreto Immigrazione”)	DL 124/2023
Law no. 22/2024 conformity of the Italian legislation to the New Pact on asylum and migration	Decreto Legislativo n. 22 del 2024 (Riforma del sistema di protezione internazionale). Adeguamento della normativa italiana al nuovo Patto UE su migrazione e asilo.	L. 22/2024
Legislative Decree no. 14/2025	Ratification of the Italy-Albania protocol	
Legislative Decree no. 37/2025	Decreto Legislativo no. 37 del 2025 (relevant for detention in CPRs in Albania)	

Source: based on the authors’ elaboration on the basis of the AIDA (2024) report on Italy.

The European Union has a significant influence on asylum rules in Italy. The CEAS is implemented in national legislation, and EU jurisprudence is directly binding in the jurisdiction. The EU legal framework has a major impact on asylum adjudication. It is directly applied by asylum judges, who refer to EU asylum law and EU asylum jurisprudence in their rulings. The area in which Italian judges have recently been engaging more with the CJEU is that of the concept of safe countries of origin, having sent a large number of preliminary references from June 2024 to March 2025. from the court of Florence and Bologna), specifically when it comes to access to asylum. The first relevant preliminary rulings were issued by the Tribunal of Firenze (*C-388/24 and C-389/24*), followed by the Tribunal of Bologna (*C-750/24*). With the implementation of the Protocol with Albania, this line of jurisprudence becomes particularly relevant to

asylum access. The Tribunal of Rome, while not validating the detention order of the second group of migrants disembarked in Albania on 5 and 6 November, sent two preliminary references to the CJEU on the interpretation of the concept of safe countries of origin (*C-758/24 and C-759/24*). Then, the courts responsible for validation orders in detention centres at the Italian border for asylum seekers, according to the Italian accelerated border procedure, sent a preliminary reference to the CJEU. There were two preliminary references from the Tribunal of Palermo (*C-763/24 and C-764/24*) on 6 November 2024, and finally, seven other references by the Tribunal of Rome concerning other asylum seekers in Albania on 13 November 2024. After the change of competence from the Tribunals to the Courts of Appeals, they sent other preliminary references: in January, 43 preliminary references from the Court of Appeal in Rome, referring to the third asylum seekers disembarked in Albania, and in February, a preliminary reference from the Court of Appeal of Palermo on the same issue. Finally, on 20 June 2024, a last preliminary reference was sent to the CJEU by the Court of Cassation, despite focusing on a different subject rather than that concerning the safe country of origin. It relates to the new use of the centre in Albania as a pre-removal centre and concerns the transfer of migrants already in pre-removal centres in Italy to the pre-removal centre in Albania, as well as its conformity with EU law.

Obviously, apart from the preliminary ruling, EU law plays a prominent role in shaping asylum access adjudication in Italy. In recent decisions on pushbacks, for instance, the court ruling states that informal readmissions to Slovenia and Greece are contrary to EU law, and particularly to the Dublin Regulation. In cases of risk of violation of non-refoulement under Dublin procedures, the court also mentioned EU Regulation No. 603/2013 (EURODAC) in addition to Dublin. Regarding detention, the recent decision of 2023, which stated the unlawfulness of the provision ruling the detention of asylum seekers according to the Italian asylum border procedure, in accordance with EU law and EU jurisprudence (financial guarantee for asylum seekers' detention). For transfers of migrants from pre-removal centres in Italy to those in Albania, important reference is made to the Return Directive; however, the preliminary reference on this matter, sent by the Court of Cassation on 20 June 2025, is currently pending.

More broadly, the ECHR and the related court also play a relevant role. This is particularly true for decisions on detention conditions in pre-removal centres, as well as decisions concerning pushbacks and pullbacks. Additionally, there is also frequent reference to Protocol No. 4 of the Charter of Fundamental Rights of the EU, especially in cases of pushbacks and pullbacks.

However, in detention decisions, there is a consistent difference between the Justice of the Peace and the other bodies of the judiciary involved. The Justice of the Peace usually does not cite the international and EU legal framework.

Regarding UNHCR guidelines or statements, they are often cited in court rulings. However, it strongly depends on barriers. Particularly, it is largely used in decisions on pullbacks and, in some cases, related to pushbacks. In these judgments, UNHCR is cited as a source of information, for instance, the UNHCR position on returns to Libya (Update II), September 2018, stressing that Libya cannot be considered a safe country (e.g., case *Vos Thalassa, Court of Cassation no. 15869/2022*) or it directly provide relevant evidence to the parties, which can work as evidence in the case. This occurs in limited cases, such as, for instance, the case *Asso 29*, providing photos as evidence in the case (*Tribunal of Rome, no. 4782/2021*)

In detention cases and for procedural barriers, they are not cited and seem not to have a large influence. Instead, references to documents from the EUAA are widespread, especially when it comes to the case law on externalization of asylum processing, which is focused on the concept of the safe countries of origin. More broadly, they are cited in cases of validation of detention according to the asylum border procedure by civil courts both in Italy and Albania.

Soft law can play a relevant role in the implementation of barriers to accessing asylum, having a direct effect on asylum access adjudication. For instance, courts are asked to deal with instruments that often are not publicly available (such as the Memoranda of Understanding with third countries like Libya and Tunisia, or readmission agreements with Greece and Slovenia).

E. Legal standing

Litigants who want to bring cases before judicial bodies in Italy have access to various remedies. First, there are legal remedies associated with habeas corpus, which enable litigants to access justice and judicial remedies in cases of deprivation of personal liberty and detention. As mentioned, migrants and asylum seekers' detention orders must always be validated by the judicial authority within 48 hours. This guarantees scrutiny for cases concerning formal detention. As explained below, different judicial bodies are involved in this scrutiny.

Litigants can also access judicial remedies before the Civil Courts under the Italian Code of Civil Procedure (c.p.c.), which governs a specific type of proceeding known as “*procedimento di ingiunzione*” or “injunction proceeding.” This legal mechanism allows a creditor to obtain a court order for the payment of a sum of money, the delivery of a certain quantity of fungible goods, or the delivery of a certain quantity of specific goods, without the need for a full trial. These procedures are used within the asylum determination procedure, where asylum seekers have access to a judicial remedy after receiving a first instance negative decision from the administration. They are also used to guarantee other compensations. For instance, it has been used to access justice for people who experienced pushback by Italian authorities but were able to arrive in the territory.

Another way litigants can access judicial bodies is through interim relief procedures (*misura cautelare*). In Italy, there is a possibility of going through an emergency interim relief, a procedure faster than the standard one. People experiencing pushback can go to the court to complain about the violation experienced, whether they are in or outside the territory. In this second case, the procedure used was that of the interim relief. The violation has often been referred to lower civil courts specialized in asylum, which are responsible for assessing violations of the principle of non-refoulement. This procedure has also been used by appellants who want to bring violations such as pushbacks or impossibility to formulate the asylum procedure in the territory before the court.

Finally, courts can also be involved through criminal proceedings, in case of investigations for crimes (e.g., in cases of death at sea or other criminal allegations against migrants crossing the border, especially in pullback and pushback cases). Criminal courts can also be involved in cases pertaining to aspects related to the criminalization of NGOs conducting sea and rescue operations, when, for instance, disembarkation is not allowed by authorities or activists are subject to criminal proceedings. Concerning the criminalization of NGOs, administrative bodies are also involved when ships for sea and rescue operations are confiscated.

To allow judicial scrutiny regarding the conformity of the legislation regulating a barrier to access asylum (e.g., the Protocol between Italy and Albania, or legislation ruling detention measures) with constitutional rights, it is possible to follow an appeal concerning Constitutional conformity (legitimate Costituzionale).

A more detailed analysis of legal remedies is provided according to barriers:

Pushbacks:

- **First instance judicial or quasi-judicial body:** civil courts, and particularly court sections specialized in asylum and migration, can be responsible for assessing pushback violations and can be asked by migrants to receive compensation for these violations, which usually concerns monetary compensation and/or having access to the territory through a humanitarian visa. The same occurs for lower criminal courts, when there are criminal investigations concerning the responsibility of national or private actors. For instance, in cases of shipwrecks, criminal charges can be alleged against the government and individuals such as ministries or captains of private navies, who are indirectly involved in the pushback.
- **Second instance judicial or quasi-judicial body:** the decisions at first instance can be challenged in front of the higher court (the Court of Appeal – civil or criminal sections).

- **Third instance judicial or quasi-judicial body:** the decisions at first instance can be challenged in front of the higher court (the Court of Cassation – civil or criminal sections).
- **Constitutional Court:** violations of fundamental rights (as is the case with pushbacks) can also be challenged in front of the Constitutional Court.

Pullbacks:

- **First instance judicial or quasi-judicial body:** civil courts, and particularly court sections specialized in asylum and migration, can be responsible for assessing pushback violations. The same occurs for lower criminal courts, which can be indirectly involved in cases of pushbacks. First, administrative courts (Regional administrative courts) could be involved in questions regarding the functioning of the memorandum of understanding, particularly regarding funds and the sharing of patrols and other instruments for conducting pullbacks.
- **Second instance judicial or quasi-judicial body:** the decisions at first instance from civil and criminal tribunals can be challenged in front of the higher court (the Court of Appeal). Regarding administrative courts, their decisions can be challenged in front of the high administrative court (the Council of State).
- **Third instance judicial or quasi-judicial body:** the decisions at first instance from civil and criminal tribunals can be challenged in front of the higher court (the Court of Cassation).
- **Constitutional Court:** violations of fundamental rights (as is the case with pushbacks) can also be challenged in front of the Constitutional Court.

Detention:

According to Italian legislation, administrative detention of migrants must always be validated by judicial authorities. However, courts intervene in a different configuration depending on whether they are irregular migrants (1) or asylum seekers (2). Additionally, courts can intervene in allowing civil society organizations and lawyers access to de facto detention places (3) (e.g., hotspots and airports).

- First instance judicial or quasi-judicial body:
 1. Validation of detention orders for irregular migrants who have not already issued an asylum application: it is under the jurisdiction of the Judge of the Peace (a lower court composed of lawyers acting with judicial functions in first-instance criminal tribunals).
 2. Validation of detention orders concerning asylum seekers: they were under the jurisdiction of the first-instance civil tribunals–specialized sections of migration and asylum up until April 2025. Then, a reform changed the competence and gave it directly to the Court of Appeals. However, the law did not provide a specific indication about civil or criminal courts. The reference to Article 5, paragraph 2 of Law No. 69/2005 for identifying the competent magistrate in the Court of Appeal remains vague and unclear whether the competence is attributed to the criminal sector, which typically handles MAE (Measures of Alternative Execution). According to interpretations by both the Supreme Court’s case law (see report No. 1/2025) and the Court of Cassation (see ruling by the First Criminal Section on January 24, 2025, *No. 2967*), the legislator assigned the matter to the criminal sections of the Court of Appeal (as well as to the Criminal Sections of the Court of Cassation). However, as highlighted by the resolution of the CSM (Italian High Council for the Judiciary) on March 19, 2025, various organizational measures have been adopted by the Courts of Appeal. These measures mostly assign the new matter exclusively to the civil sector and, where established, to the section already handling immigration and international protection matters. In some cases, criminal sector judges are involved either through assignment, inclusion in the validation rotation, or by attributing the matter to criminal sections following the MAE rotation system. The First President of the Court of Cassation, through a tabular variation measure adopted on January 16, 2025, assigned the handling of appeals to the First Criminal Section. The CSM has provisionally approved all tabular variations and is awaiting a consolidated jurisdictional interpretation regarding the attribution of the matter to either the civil or criminal sector. Thus,

within the Courts of Appeal, there are diverse organizational systems where the matter is assigned exclusively to civil sector judges, exclusively to criminal sector judges, or to both. This is despite the procedure for validation following the civil telematic process as per Article 6, paragraph 5 of Legislative Decree No. 142/2015, which refers to Article 14 of Legislative Decree No. 286/1998, using civil judges' platforms. Additionally, the pretorial institute of the review of the detention of foreigners (Cass. civ., sez. I, September 29, 2017, *No. 22932*) must not be overlooked. The application for this review is introduced in the form of the chamber procedure, as provided in Article 737 of the Code of Civil Procedure. Therefore, by the principle of concentration of protections, competence must be referred to by the judge of validation and extensions. Given the shift in competence, such an application must necessarily be directed to the Court of Appeal for foreigners requesting international protection, further complicating the attribution of the matter to either the civil or criminal sector.

3. Access to formal and de facto detention places: It could be relevant to add the importance of administrative courts, regarding access of legal associations for monitoring and legal aid in de facto detention places (such as airport zones and hotspots). Access to these closed spaces is decided by the administrative courts – TAR.
- **Second instance judicial or quasi-judicial body:**
 1. Validation of detention orders for irregular migrants: When the migrant argues for a violation of the right to access asylum, the decisions of the Justice of Peace are appealed at the Court of Cassation (civil section).
 2. Validation of detention orders concerning asylum seekers: The same occurred for decisions of detention of asylum seekers from the first-instance civil tribunals—specialized sections of migration and asylum since October 2024, where the government reintroduced an appeal in front of the Court of Appeal (within 5 days and to be decided in 10 days). However, after the competence of first-instance appeals was given to the Court of Appeal (not clear if to criminal or civil Court of Appeals) in December 2024, these first-instance decisions are appealed to the Criminal section of the Court of Cassation (according to Decree of the President of the Court of Cassation on 17 January 2025).
 3. Access to formal and de facto detention places: Concerning administrative courts, first instance decisions can be decided at the appeal stage by the Council of State.
 - **Third instance judicial or quasi-judicial body:** Only from October to December 2024, a third instance was inserted for asylum seekers in detention (see the paragraph above).
 - **Constitutional Court:** The constitutional court is responsible for deciding on possible violations of constitutional rights, especially - but not limited to – those connected to deprivation of liberty and conditions of detention (art. 13 of the Italian Constitution).

Externalization of asylum processing

Dublin chain refolement

According to the Procedures Decree, an applicant may appeal the transfer decision before the Civil Court within 30 days of the notification of the transfer. Then, their decision can be challenged in front of the Court of Cassation.

Italy-Albania protocol

Courts intervene in two different stages:

1. **Validation of detention:** Since all migrants transferred in Albania must be detained, both asylum seekers disembarked in Albania after sea and rescue operations, and migrants transferred from

pre-removal centres in the territory to those in Albania, and those seeking asylum while in the Albanian pre-removal centre are under detention. Thus, courts intervene in the validation of detention orders for asylum seekers detained in Albania (see detention lett. 2). Particularly, they are asylum seekers subject to the accelerated border procedure, to which people disembarked in Albania after sea and rescue operations (according to law 14/2024) or returnees who are transferred from pre-removal centres in Italy (usually while they were irregular migrants waiting for the deportation measure) to the pre-removal centre in Albania, where they claim for asylum, becoming asylum seekers there. In this case, due to the change of status, a new validation order for the detention of the asylum seeker must be issued. It can occur that the Justice of the Peace is involved in Albania, although it has not already occurred: indeed, detention orders of irregular migrants transferred in Albania who do not ask for asylum are under their jurisdiction (see Detention lett. 1).

2. **Evaluation of asylum appeal:** Additionally, while in Albania, asylum seekers can wait for their asylum application to be evaluated. Thus, if the detention order is validated and the asylum seeker remains in Albania, courts intervene in a second phase, in case of appeals against negative decisions of the first-instance body on their asylum application.
 - **First instance judicial or quasi-judicial body:**
 1. Validation of detention: See Detention (point 1 “Validation of detention orders for irregular migrants” and 2 “Validation of detention orders for asylum seekers”)
 2. Evaluation of asylum appeal: lower civil tribunals -specialized sections on asylum and migration are responsible for first instance appeals against the negative decision of the administrative body on the asylum application.
 - **Second instance judicial or quasi-judicial body:**
 1. Validation of detention: See Detention (point 1 “Validation of detention orders for irregular migrants” and 2 “Validation of detention orders for asylum seekers”)
 2. Evaluation of asylum appeal: The Court of Cassation (civil section) is responsible for appeals regarding the asylum procedure in the second instance.
 - **Third instance judicial or quasi-judicial body:** only from October to December 2024, a third instance was inserted for the validation orders of asylum seekers’ detention (see Detention).
 - **Constitutional Court:** The constitutional court is responsible for deciding on constitutional rights. In particular, it could be involved regarding the concept of jurisdiction/extra-territorial control, violations connected to deprivation of liberty and conditions of detention in Albania (article 13), the right to asylum (article 10), and the legality of the protocol itself.

Procedural barriers:

Migrants at the border can receive two types of deportation orders: 1) a non-entry measure with immediate deportation; 2) a delayed deportation (*respingimento differito*). In both cases, this decision can result in summary returns. These non-entry measures can be challenged in court, but through different procedures and with different judicial authorities involved. Then other procedural barriers detected are: 3) bureaucratic obstacles in expressing intention to seek asylum in the territory; 4) risk of lack of scrutiny of the merit and refoulement for people submitting a subsequent asylum application while their deportation order is being executed. 5) Finally, accelerated border procedures combined with the non-suspensive effect of the appeal can represent a barrier to asylum access, especially in Albania, where access to legal representation is undermined. The competent authorities are civil courts for all these last three procedural barriers. An in-depth description of judicial scrutiny is as follows:

First instance judicial or quasi-judicial body:

1. Delayed deportation (*respingimento differito*). It occurs that migrants - often from Tunisia (considered highly deportable) – argued that they had no possibility and the right information to access asylum. As regards judicial control over these violations, it is important to stress that prior to 2018, the law did not provide specific provisions concerning judicial remedies for both types of procedures. The idea was that these were mere acts of the police. In 2018, the law introduced the judicial remedy for delayed deportations in front of the Justice of the Peace (after the Court of Cassation decision no. 275/2017). However, there is no judicial scrutiny for the deprivation of liberty, and judicial scrutiny occurs only after this deprivation of liberty has occurred. Moreover, this legislative choice goes in contrast with jurisprudence, giving competence to the ordinary judge (Civil judges and not Justices of the Peace) – see Court of Cassation no. 15115/2013.

This procedure is different from the immediate deportations at the border (*respingimento immediato alla frontiera* – usually applied in airports). Jurisprudence intervened, saying that it could be appealed in front of the ordinary judges (Council of State no. 4543/2013. Despite different jurisprudence, especially from administrative courts, the new legislation in 2023 specified in the law the competence of administrative courts (first instance, Regional Administrative courts, and second instance Council of State) on immediate deportations at the border.

2. Other procedural barriers concern access to the asylum procedure in the territory and, particularly, obstacles for expressing the intention and formalizing the asylum application in immigration offices: the competence is of the civil court, specialized in migration and asylum.
3. The same courts are also responsible for subsequent applications considered inadmissible for people in pre-removal centres (see procedural barriers).

- **Second instance judicial or quasi-judicial body:**

1. When migrants are subject to *respingimento differito*, they argue that their right to access asylum has been violated; they can appeal the decision only in front of the Court of Cassation (civil section). Instead, when migrants are subject to immediate *respingimento*, they could challenge the decision at the first instance to the Council of the State.
2. In case of access to the asylum procedure in the territory and limited effective remedies in case of non-automatic suspensive effect of the appeal, the higher court responsible is the Civil Court of Cassation.
3. The Civil Court of Cassation (civil section) is also responsible for subsequent applications considered inadmissible for people in pre-removal centres (see procedural barriers).

- **Third instance judicial or quasi-judicial body:** no

- **Constitutional Court:** The constitutional court can be competent in all aspects at stake.

F. The influence of international Courts

Supranational courts have a relevant influence on asylum access adjudication in Italy, especially in some areas, which are rulings concerning the barriers of pushbacks and externalization of asylum processing. Regarding pushbacks, Italian courts largely cite jurisprudence of the CJEU, and particularly *C 163/17 Abubacarr Jawo* and *C 578/16 PPU C.K., H.F., A.S. v. Slovenia*, stressing the need for protection from refoulement. Pushback cases also rely on the ECHR jurisprudence, particularly on the *Hirsi* case, which had a strong impact on the country. After the ruling, Italy was no longer directly conducting “traditional” pushbacks in the Mediterranean and started to develop practices of pullbacks to avoid direct responsibility. Other judgments largely mentioned are *Ilias and Ahmed v Hungary* of 2017, *Sharifi and others v. Italy and Greece* of 2014, *Tarkel v. Svizzera* of 2014, *M.S.S. v. Belgium and Greece*. For instance, the *Sharifi and others v. Italy and Greece* of 2014 is mentioned by the Tribunal of Rome in its decision about summary returns occurring at the Adriatic ports in 2023 (*Tribunal of Rome, no. 21667/2023*).

CJEU jurisprudence had also been central in shaping Italian jurisprudence concerning the externalization of asylum processing in Albania. Indeed, based on the CJEU decision *C-406/22* on 4 October 2024, the

Tribunal of Rome has adopted a restricted interpretation of the safe country of origin concept, claiming that the list of safe countries of origin could not contain countries with territorial and group exceptions for security. The decision of the CJEU joined cases *C-758/24 [Alace]* and *C-759/24 [Campelli]*, which will be released in the following months, will probably have a large impact on the jurisprudence.

Regarding Dublin transfers, Italian civil courts, including those in Rome and Florence, had previously suspended decisions on transfers under the Dublin Regulation pending a preliminary ruling by the Court of Justice of the European Union (CJEU). The core legal question was whether national courts could compel the application of the sovereignty clause (Article 17(1)) in cases where transferring an asylum applicant to another Member State could expose them to a risk of indirect refoulement—i.e., eventual return to an unsafe country of origin. The cases involved Afghan applicants who had appealed against transfers to Germany and Sweden, where their asylum claims had already been rejected. They argued that their transfer would ultimately lead to their repatriation to Afghanistan, where they faced irreparable harm (ASGI 2025).

On 30 November 2023, the CJEU issued its judgment, reaffirming the principle of mutual trust among EU Member States. The Court clarified that differences in assessments between the requesting and responsible Member States regarding the conditions for international protection do not, in principle, justify a review of the validity of a transfer decision. The CJEU held that the Dublin III Regulation and the EU Charter of Fundamental Rights must be interpreted as precluding national courts from examining the risk of refoulement in the responsible Member State unless systemic flaws exist in that state’s asylum procedure or reception conditions. The Court further specified that disagreements between authorities on the interpretation of protection criteria do not, by themselves, establish systemic deficiencies.

However, the CJEU made a critical distinction regarding the sovereignty clause (Article 17(1)): 1) The CJEU ruled that Article 17(1), read in conjunction with Articles 27, 4, 19, and 47 of the EU Charter, does not require a national court to declare the requesting Member State responsible if it disagrees with the responsible Member State’s assessment of the risk of refoulement. 2) Due to the optional nature of Article 17(1), the CJEU also held that national courts cannot compel a Member State to examine an asylum application itself based solely on the court’s assessment of a risk of refoulement in the responsible Member State—unless systemic flaws are identified (ASGI 2025).

Legal scholars have noted that the CJEU’s wording—using “not requiring” in the first hypothesis and “cannot compel” in the second—implies that while courts cannot force a Member State to apply the sovereignty clause, they retain the discretionary power to do so. This interpretation is significant because it explicitly recognizes the role of the judiciary in triggering the application of Article 17(1), rather than leaving it solely to the executive branch (ASGI 2025).

Following the CJEU’s decision, Italian civil courts resumed their examination of the suspended cases, adopting divergent approaches. As reported by ASGI (2025), the Civil Court of Bologna granted the Dublin Unit additional time to consider applying the sovereignty clause, given the extraordinary delay caused by the pending CJEU ruling, and postponed its decision accordingly; the Civil Court of Rome applied the sovereignty clause and declared Italy responsible for examining the asylum application, citing the applicant’s integration in Italy and the prolonged procedural delay; the Civil Court of Trento similarly applied the sovereignty clause, considering the applicant’s long stay in Italy during the suspension period and his personal vulnerabilities, which had not been adequately addressed in the initial assessment; the Civil Court of Florence recognized the applicant’s social integration and the procedural delays—contrary to the Dublin Regulation’s requirement for expeditious processing—as grounds for applying the discretionary clause. In a subsequent ruling, the court upheld an appeal, declaring Italy responsible for examining the application due to the unreasonable length of the procedure.

In a landmark decision, the United Sections of the Italian Court of Cassation (*Decision No. 935/2025*) clarified that the right to national protection can serve as a basis for challenging a transfer decision under the Dublin Regulation. The Court held that if an applicant demonstrates grounds for national protection—

such as a risk of persecution, torture, or inhuman treatment—the judge can order the State to exercise the discretionary clause under Article 17(1). This ruling underscores that the judiciary has the authority to intervene when the State’s refusal to apply the sovereignty clause could violate an applicant’s rights.

Finally, in *Decision No. 11713/2025*, the Court of Cassation reiterated that national protection must be ensured if expulsion would expose the applicant to persecution, torture, or inhuman treatment, or if constitutional and international human rights obligations apply. The Court emphasized that if an applicant raises valid grounds for national protection in their appeal, the judge can assess whether the State’s tacit refusal to apply the sovereignty clause constitutes a violation of their right to such protection. As mentioned, the *Hirsi* case had a strong impact on the country. After the ruling, Italy was no longer directly conducting “traditional” pushbacks in the Mediterranean and started to develop practices of pullbacks to avoid direct responsibility.

Additionally, as mentioned, CJEU jurisprudence had also been central in shaping Italian jurisprudence concerning the externalization of asylum processing in Albania. Indeed, based on the CJEU decision C-406/22 on 4 October 2024, the Tribunal of Rome has adopted a restricted interpretation of the safe country of origin concept, claiming that the list of safe countries of origin could not contain countries with territorial and group exceptions for security. The decision of the CJEU joined cases C-758/24 [*Alace*] and C-759/24 [*Canpelli*], which will be released in the following months, will probably have a large impact on the jurisprudence.

Regarding pullbacks, it could be relevant to monitor how, in the following years, the decision of the EtCHR in the case *SS and others v. Italy* will affect national jurisprudence, which had developed an expansive interpretation on this subject, for instance, stating Italian authorities’ responsibility for indirect involvement of privatized pushbacks outside Italian waters (Tribunal of Rome, no. 4782/2021).

G. Comparative insights

First, there is no convergence concerning the new use of pre-removal centers in Albania and the transfer of migrants already detained in pre-removal centers in Italy. The legal issue under discussion concerns the detention of asylum seekers in Albania. While migrants are transferred to Albania, they might ask for asylum. In this case, since migrants transferred to Albania can stay in the center only in detention, the detention of asylum seekers must be based on existing legal grounds. According to the Protocol, asylum seekers in Albania are subject to the so-called Italian border procedure. Indeed, the initial plan of the government was to apply this procedure (which provides for the detention of asylum seekers – see Tribunal of Catania, Judgment no. 10459/2023 – in part II). Instead, the protocol does not provide any reference regarding irregular migrants in pre-removal centres, who ask for asylum after their transfer to Albania. The government's practice was to confirm the detention of asylum seekers according to Article 14 of the law. 286/1998, which allows for detention of asylum seekers during the determination process, when the application is considered as instrumental in avoiding a deportation order. According to part of the jurisprudence, this practice is unlawful since it is not prescribed by the protocol, and since deportation is not executed directly from Albania, Article 14 could not apply in this case. Other judgements instead argue that since the pre-removal centres in Albania are equivalent to pre-removal centres in Italy, the same legal provisions must be applied, despite not being directly specified in the protocol.

Additionally, partially connected to externalization in Albania, different jurisprudence concerns the deadlines required by the administration to ask for a validation order for asylum seekers asking for asylum while already detained in a pre-removal centre. Some jurisprudence argues for the limits of 48 hours for the administration to transmit the information to the judiciary and 48 hours following for the judiciary to decide. A new jurisprudence (which will facilitate the implementation of the externalization of asylum processing in Albania – see part II) instead argues that there are no strict time limits for the administration to transmit the communication to the judiciary responsible for validating the detention order of the asylum seeker.

No uniform jurisprudence also exists regarding pullbacks, particularly in the *Vos Thalassa* case, which concerns a criminal proceeding regarding criminal allegations against migrants opposing the captain and the crew of a private vessel to be transferred to the Libyan Coast Guard (see Part II). In the first and last instance, the court excuses the conduct of the migrants, arguing that they did it in self-defence because the return to Libya would be unlawful and would involve severe violations of human rights, including the principle of non-refoulement. Instead, the Court of Appeal (second instance) argues that this would not constitute elements to be evaluated and to excuse the conduct of the migrants, especially because the crew has only respected existing legal provisions of the state and international law regarding the first safe port (SAR zone regulation). Here we find different interpretations of international norms (particularly international law of the sea and international human rights). Additionally, there is a different consideration about the Memorandum of Understanding with Libya, which was considered unlawful in the first and last instance, but not condemned by the Court of Appeal. It is also important to consider that this area has been under judicial scrutiny of both criminal courts and civil courts, which seems to confirm a more expansive interpretation, largely considering Libya not a safe port. Different legal procedures displayed, required evidence, and

Another area in which judicial interpretation is not uniform is the criminalization of NGOs. Criminalization of NGOs started in 2017, and as shown by Alagna (2024), it was an area in which the judiciary has played a relevant role despite a contradictory role. As Alagna mentioned, a big difference concerns the active engagement of some Persecutor offices (e.g., Agrigento) to start criminal proceedings against activists and requests for confiscation of NGOs' ships, especially since 2024. However, when proceedings are decided by ordinary judges, they are always dismissed or, in a few cases, decided in favour of the activists.

Finally, there are different interpretations concerning validation orders of detention of migrants receiving a delayed deportation order, after their disembarkation and identification in hotspots (practice of *foglio notizie*). As will be mentioned in part II, jurisprudence of the Judges of the Peace is not often uniform, and there are decisions not questioning the legality of the practice and stating the lack of judicial scrutiny on these issues, considered as a discretionary power of the administration. These interpretations are not uniform among Judges of the Peace and diverge from the jurisprudence of ordinary civil judges (Court of Cassation and Civil Tribunals), emphasizing the central aspect of providing proper information on the right to asylum (see Part II). The differences (in terms of institutional arrangement, professionalism, professional culture, available resources, bureaucratization, and routinization) between the Justice of the Peace and the ordinary judiciary deciding on validation orders merit further investigation, as they can explain the different approaches of these bodies and the varying asylum access adjudication.

Connected to the last issue mentioned in the previous question, some jurisprudence of the judge of the Peace is different from the recent jurisprudence of the ECtHR in 2023 (*J.A. and others v. Italy*, Application no. 21329/18). This jurisprudence condemned the practice of the “*foglio notizie*” in the Lampedusa hotspot and the consequent deportation orders, resulting in the collective expulsion of Tunisian nationals from Italy (see Part II).

Despite the practices in hotspots, which have been under scrutiny of the ECtHR and helped to enhance national jurisprudence in this area, in other fields, national jurisprudence has often developed more expansive interpretations than international courts, especially on pullbacks and responsibility of private ships in pushbacks, and on the concept of safe country of origin, or humanitarian visas.

Particularly, Italian civil jurisprudence (see Part II – pushback) has developed a stream of court rulings allowing people subject to pushbacks to receive monetary compensation, as well as “legal compensation”: the right to enter the territory through a humanitarian visa. The national asylum constitutional right has played a relevant role in developing this jurisprudence.

Additionally, in cases concerning pushbacks to Libya (see part II), Italian courts – criminal and civil courts – have recognized the unlawfulness of the Memorandum of Understanding as resulting in violating the non-refoulement principle, assessing the Italian responsibility also outside Italian jurisdiction (different

from the recent *S.S. and others vs Italy* decision of the ECtHR in 2025). The effect of this decision on national jurisprudence must be investigated in the future.

Jurisprudence on humanitarian visas as a compensation after pushbacks and jurisprudence attesting the responsibility outside the jurisdiction of the state, also considering its indirect involvement of private actors in pushbacks, chain refoulement, judicial control over the list of safe countries, with a limited interpretation of the concept.

H. Role of expert testimony

A major function of expert entities is providing authoritative data on whether a country is truly "safe" for return. Courts frequently rely on reports from Amnesty International, Human Rights Watch, and the U.S. Department of State (US-DOS) to challenge government "safe country" designations. In the *Vos Thalassa* case, the judge specifically requested information from the UNHCR to determine if Libya qualified as a Place of Safety (POS). The UNHCR's expert response concluding that Libya did not meet the criteria was central to the court's decision. In cases involving summary returns along the Balkan route, individuals with specialized field experience provide essential factual context, such as journalists and activists. They provided photographic evidence and direct testimony regarding the extreme deprivation and sub-zero temperatures in Bosnian informal camps, which helped the court establish the concrete damage suffered by the applicant following an informal readmission. Medical experts also provide certificates regarding the applicants' state of health, which were used to determine conditions for validating detention orders.

I. Future Directions

The situation is evolving rapidly, particularly regarding the externalization of asylum processing and the jurisprudence related to the concept of safe countries of origin, which impacts the externalization of asylum processing and the detention of asylum seekers during border procedures. In the following months, a decision of the CJEU regarding the several preliminary references sent to the court by Italian judges on the concept of safe countries of origin will likely have a significant impact on the jurisdiction. Moreover, it would be interesting to monitor the influence of the preliminary reference to the CJEU sent by the Court of Cassation on 20 June 2025. Finally, we must see how the recent judgment of the ECtHR (*S.S. and Others v. Italy* (application no. 21660/18) concerning pullbacks in the Mediterranean Sea will affect the expansive interpretation developed in recent years in the jurisdiction.

II. IDENTIFICATION OF LEADING DECISIONS

This Section allows for a deeper analysis of the relevant decisions on barriers to accessing asylum in this jurisdiction.

Identification information of the selected decisions (e.g. number and/or name of the case):

Pushbacks:

1. Summary returns through readmission agreements from Adriatic ports and at the border with Slovenia

Tribunal of Rome, *Judgment no. 3938/2022*

2. Summary returns from hotspots

Court of Cassation, *Judgment no. 32070/2023*

Pullbacks:

1. Pullbacks to Libya

First instance criminal court (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

Detention:

1. De facto detention in border areas/pre-removal centres

Judge of the Peace of Siracusa, *1152/2022*

2. Asylum seekers' detention within the Italian border procedures

Tribunal of Catania, Judgment no. *10459/2023*

Externalization of asylum processing:

1. Asylum offshore

Tribunal of Rome, Judgment no. *42251/2024*

2. Return hub

Court of Cassation, Judgment no. *17510/2025*

Procedural barriers:

1. Obstacles in formalizing the asylum application

A. in the territory

Tribunal of Milan, Judgment no. *36446/2019*

B. at the border (see also Summary returns from hotspots)

Judge of Peace of Agrigento, Judgement no. *2527/2022*

2. Accelerated border procedure and safe countries of origin

Tribunal of Catania, judgment no. *9375/2024*

Criminalization of disembarked migrants considered as smugglers

Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no 4114/16*

A. Description of the barriers in the selected decisions*Formality or informality of the barrier***Pushbacks:**

1. Tribunal of Rome, *Judgment no. 3938/2022*

According to the judicial body, the barrier was formally implemented through a political tool, and particularly a readmission agreement with Slovenia, signed in 1996. The government used this bilateral agreement, which had not been used for a long period, to push back asylum seekers and migrants to Slovenia. Despite the formal tool used for these pushbacks, the practice was characterized by large informality. For instance, no written decision has been issued and given to the people readmitted to Slovenia. Additionally, the Parliament has not ratified the readmission agreement. The responsible actors for implementing the barrier are the Ministry of the Interior, the Italian border police, and the Slovenian authorities, including the Ministry of the Interior and the Slovenian border police.

2. Court of Cassation, *Judgment no. 32070/2023*

The court argues that Italian authorities unlawfully released delayed deportation orders (*respingimenti differiti*) to a group of Tunisian nationals without allowing them to access asylum. This practice resulted in collective expulsions (pushback). The rejection orders issued to Tunisian nationals were nearly identical and included a generic, formulaic claim that the recipients had no intention of requesting protection, despite being fully informed. The court argued that it was a violation of the right to asylum, as the appellants lacked proper information about the Lampedusa hotspot. This occurred again when the person was transferred to the mainland, where the non-entry measure was released. The responsible authorities are the Ministry of the Interior, particularly its functionary personnel in hotspots, primarily the border police and local police (*Questura*) on the mainland.

Pullbacks:

GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

According to the judicial body, the barrier was established using the political tool of the Memorandum of Understanding with Libya (*Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana*), which has not been ratified by the parliament. The judgment states that the conduct of the *Vos Thalassa*, which was asked by the Coast Guard to lead the migrants rescued at sea back to the Libyan coasts, and the subsequent transfer of this group of people on a vessel to the Libyan Coast Guard, must be read in the context of the Memorandum with Italy and Libya. It also states that this conduct puts migrants at serious risk of refoulement migrants. Libya cannot be considered a safe place of disembarkation since various sources document severe violations of human rights for migrants, such as torture and inhuman and degrading treatment. The main actors involved are a private ship, the *Vos Thalassa* ship, and the Italian Coast Guard and the Libyan authorities, with relevance of the Libyan Coast Guard, and private ships involved in sea and rescue operations in international waters and particularly in Libyan SAR zones.

Detention:

1. Judge of the Peace of Siracusa *1152/2022* (relevant also for pushbacks and procedural barriers)

The case is closely related to the Court of Cassation's Judgment *No. 32070/2023* and the Judge of Peace of Agrigento's Judgment *No. 2527/2022*. Indeed, it pertains to a lack of proper information on the right to international protection for people disembarked in Italian hotspots, as well as the practice of the so-called *foglio notizie*, in which the person is asked to declare the reasons for their migration. If international protection is not mentioned, the administration states that the person did not express an intention to seek asylum, and a delayed deportation order is issued. This practice intersects with pushbacks (risk of collective expulsion - Judgment *no. 32070/2023*) and procedural barriers (possibility of asking for asylum after a delayed deportation order is issued - Peace of Agrigento, Judgment *no. 2527/2022*). It is also connected to de facto detention and the procedural rights (such as the right to information) guaranteed in hotspots or, as in this case, in quarantine ships. In this case, the Judge of the Peace of Siracusa decided on the right to

asylum access of a Tunisian migrant disembarked in Lampedusa and immediately transferred to a quarantine ship. It does not refer to formal barriers, but rather to informal barriers, a practice developed during the COVID-19 health emergency in Italy. The Judge of the Peace argues that, based on the documentation provided by the Administration, the person was immediately granted a delayed deportation measure and subsequently transferred to a quarantine ship, during which it is possible to assume that improper information was given. In a hotspot, no interpreter was provided to support the asylum seeker to fill out the so-called “*foglio notiziario*”. This barrier pertains thus to more informal practice from the administration. The judgment is connected to the growing body of jurisprudence protecting the right to proper information to access international protection.

2. Tribunal of Catania, Judgment no. 10459/2023

According to the judicial body, the barrier was established formally by a national law (Decree Law no 133/2023), which provided for detention in accelerated border procedures, with few alternative measures for detention, which are contested in the ruling. The actors involved in the implementation are the Ministry of the Interior and the Parliament, as the Decree Law was subsequently converted into a law. Regarding the concrete implementation of the measure, the police office (*Questura*) and the Territorial Commission are involved.

Externalization of asylum processing:

1. Tribunal of Rome, Judgment no. 42251/2024 (relevant also for detention)

The judiciary did not directly address the externalization of asylum processing, but rather validated detention orders for asylum seekers in Albania, subject to the asylum border procedure (see also the decision above regarding detention in accelerated border procedures). In this case, at the centre of the ruling is the list of safe countries of origin established by the government through a ministerial decree and subsequently (after 2024) by law (Decree Law no. 124/2023). The list is a formal instrument adopted in collaboration between the Ministries of the Interior, Foreign Affairs, and Justice. The actors involved are the Italian border police in Italy and officials from the Ministry of the Interior based in Albania. UNHCR and EUAA professionals are also involved, but only in the first stage of screening procedures after disembarkation.

2. Court of Cassation, Judgment no. 17510/2025 (relevant also for detention)

The judiciary refers to a formal barrier. It expressed its views on the scope of the Italian-Albanian Protocol, ratified by the parliament (law no. 14, 21 February 2024). Particularly, the Court of Cassation rules that there is no violation by Legislative Decree 37/2025 of the Italy-Albania Protocol, particularly with reference to its Article 4, paragraph 2, because the Protocol does not preclude detention under Article 6 of Legislative Decree 142/2015 but rather specifies that individuals subject to border and repatriation procedures can be transferred to Albania without the need to an additional validation order, since the centres in Albania are compared to pre-removal centres in Italy. By equating the Gjader CPR with the CPRs present on Italian territory, the Criminal Court of Cassation deems it irrelevant that the Gjader CPR is in Albanian territory, outside the borders of the European Union, beyond the legal fiction of being under Italian jurisdiction. It also states that even if a migrant requests asylum in Albania, their detention remains possible under the conditions prescribed by law, particularly in this case, Article 14 of the law. 286/1998, which allows for the detention of asylum seekers during the application process, has been instrumental in avoiding a deportation order. The instrument for implementing this barrier to asylum, which, however, the court did not consider as such, is thus formal: national legislation. The actors include the Ministry of the Interior, Italian border police in Italy, and officials from the Ministry of the Interior based in Albania.

Procedural barriers:

1.A Tribunal of Milan, Judgement *no. 36446/2019*

The court deals with an informal barrier. In April 2023, the *Questura* of Milan decided to allow access to the asylum procedure through a telematic system (*Prenotafacile*), which, however, requires the possession of a valid passport or identification document for use. On 9 May 2023, the Civil Court of Milan upheld the urgent appeal submitted by another Egyptian asylum seeker, ordering the *Questura* to process his asylum request, evaluating the inadequacy of the *Prenotafacile* system as it did not allow people to request an appointment. The court issues an order for an appointment to formalize the asylum application, stating that the practice of police officers does not impede the right to access asylum. It also argues that the online platform introduced by the administration is inefficient. The actor involved in implementing the barrier is the Milan Police headquarters (*Questura di Milano*).

1.B Judge of Peace of Agrigento, Judgement *no. 2527/2022*

Here, the court states that the Judge of the Peace does not have jurisdiction over the discretionary administrative power of issuing delayed deportation orders. The barrier pertains to a lack of proper information on the right to international protection for people disembarked in Italian hotspots, as well as the practice of the so-called *foglio notizie*, in which the person is asked to declare the reasons for their migration. If international protection is not mentioned, the administration states that the person did not express an intention to seek asylum, and a delayed deportation order is issued in accordance with Article 10-bis, D.Lgs. 286/98. It is thus a mix of formal and informal barriers.

2. Court of Cassation, judgment *no. 2453/2021*

The barrier is a formal barrier, and it pertains to the special procedure applied in case of subsequent asylum applications (second asylum application) while the person is in the process of being expelled (Article 29-*bis* law 25/2008).

Criminalization of disembarked migrants considered as smugglers

Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no. 4114/16*

The barrier to accessing asylum described in this judgment is a formal barrier, as it involves the initiation of a formal criminal proceeding and the subsequent pre-trial detention (*custodia cautelare in carcere*) of the individuals involved. The individuals were not processed as asylum seekers upon arrival but were instead charged with crimes under Art. 12 of D.Lgs. 286/1998 (aiding illegal immigration) and multiple counts of manslaughter. This formal legal status as defendants in a criminal trial takes precedence over their status as potential refugees.

Administrative obstacles faced by the applicant(s)

Pushbacks:

1. Tribunal of Rome, Judgment *no. 3938/2022*

The entire procedure of readmission was conducted informally, without any written decision issued to the asylum seekers pushed back to Slovenia. This led to difficulties in providing evidence of the individualized return. In this case, the appellant was able to provide detailed evidence. This was not the case of the previous case also pertaining to pushbacks to Slovenia, in which, by reviewing a first instance decision, the Tribunal of Rome argued that the person had not provided enough individual evidence for assessing that he experienced the pushback (Tribunal of Rome, *Judgment no. 5992/2021*).

2. Court of Cassation, Judgment *no. 32070/2023*

The applicant faces administrative failure in providing proper information about their right to access asylum. The administration adopts the practice of “*foglio notiziario*” to speed up the identification process and distinguish between those who have the intention to seek asylum and those who can be classified as irregular migrants and who can be returned. However, this “screening” practice has manifested in a way that largely violates asylum seekers’ rights to access asylum, since it has important consequences in the following phases of the procedure (the issue of a delayed deportation order and validation of the detention order by the Judge of the Peace) without having the possibility to seek protection. Even though in the case at stake the Court of Cassation recognized this practice as unlawful, it often occurred that the Judge of the Peace (as in this case, who appealed before the Court of Cassation) relied on this “*foglio notiziario*” to validate the detention order functional to the delayed deportation order, with severe risks of non-refoulement.

Pullbacks:

1. GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

Asylum seekers were under criminal accusation, with a criminalization of their actions to resist the actions of the vessel to push them back to the Libyan authority. For the judgment, it does not indicate the presence of administrative obstacles.

Detention:

1. Judge of the Peace of Siracusa, *no. 3569/2022* (relevant also for pushbacks and procedural barriers)

The person was de facto detained in the hotspot of Lampedusa and immediately transferred and de facto detained in a quarantine ship. There, he had no access to an interpreter to receive proper information about his right to asylum. This was evaluated as a reason to consider that the person did not receive sufficient information on the right to access asylum, and thus, the delayed deportation order is considered unlawful.

2. Tribunal of Catania, Judgment *no. 10459/2023*

Regarding asylum seekers in detention under the border procedure, the administration is not responsible for any additional obstacles other than those already provided by law concerning the conditions for the financial guarantee. The asylum access adjudication has not been affected by administrative obstacles.

Externalization of asylum processing:

1. Tribunal of Rome, Judgment *no. 42251/2024* (relevant also for detention)

Even in these cases, there are no administrative obstacles emerging from this case. However, when it comes to asylum procedures and detention procedures in Albania, the two main issues are the short deadlines of the border asylum procedure, in combination with strong obstacles to accessing proper legal representation. Reimbursement for lawyers’ travel to Albania is very limited (500 euros). Despite the possibility of meeting the lawyer through an online meeting, this limits proper access to legal representation, especially in combination with the very strict limit to appeal the decision against a validation order in front of the Court of Cassation (only 5 days).

2. Court of Cassation, Judgment *no. 17510/2025* (relevant also for detention)

Even in these cases, there are no administrative obstacles emerging from this case. See the reply above.

Procedural barriers:

1. A Tribunal of Milan, Judgment *no. 36446/2019*

In this case, the asylum seeker experienced strong administrative obstacles to registering their asylum claim. In large cities, there are long delays in obtaining an appointment to express the intention to seek asylum at the *Questura* (Police headquarters). This body of jurisprudence states that administrative obstacles and impediments cannot be valid as justification for violations of fundamental rights, such as the right to asylum. However, the person experienced many difficulties in getting an appointment, especially through the online platform introduced by the administration to speed up the process and avoid long queues in front of the police office. The proofs for the malfunction of the online portal were brought in court as evidence, and the judge relied on them to decide in favour of the asylum seeker.

1. B Judge of Peace of Agrigento, Judgment *no. 2527/2022*

See Judgment *no. 39745/2020* and Judgment *no. 32070/2023* for the widespread practice of issuing delayed deportation orders to people, especially Tunisian nationals, in the Lampedusa hotspot.

2. Court of Cassation, judgment *no. 2453/2021*

The judgment did not refer to administrative obstacles.

Criminalization of disembarked migrants considered as smugglers

Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no. 4114/16*

A major obstacle was the inadequacy of interpretation during formal proceedings. One defendant, a Senegalese citizen who spoke Mandingo and Wolof, was provided with an interpreter who spoke a different mother tongue. This led to documented misunderstandings and linguistic impropriety; for example, the judge noted the defendant was forced to answer using verbs only in the infinitive because he could not properly communicate with the interpreter. Additionally, the defence submitted a formal request to the *Questura* to obtain the full list of the 106 individuals transported on the vessel. This was necessary to identify additional witnesses who could corroborate the defendants' claim that they were coerced. However, this administrative request remained completely unanswered, obstructing the defence's ability to gather exculpatory evidence.

Challenges related to their legal standing or capacity

Pushbacks:

1. Tribunal of Rome, Judgment *no. 3938/2022*

In this case, not particularly. However, in other similar cases, yes, particularly when the appellants were outside the territory (after the pushback) and lodged an appeal not from Italy. This produces many challenges to access justice. In this case, not particularly. However, in other similar cases, yes, particularly when the appellants were outside the territory (after the pushback) and lodged an appeal not from Italy. This produces many challenges to accessing justice.

2. Court of Cassation, Judgment *no. 32070/2023*

From the judgment, this information does not emerge. However, people affected by this barrier can experience difficulties in accessing justice. This is because often the Judge of the Peace validates the detention order, and thus, appellants can only challenge this decision in front of the Court of Cassation, which, however, is the highest court that decides only on cases of law and not on the merits of the case. Additionally, the decree law *no.145/2024*, transformed into law in January 2025, provided for a very stringent time for appealing the decision at the Court of Cassation (only 5 days), asking the Court of Cassation to decide within 10 days in a very expedited process. The law intervened in modifying Article

14 (6) of Law 286/1998, ruling on the appeal before the Court of Cassation. The constitutional court no. 39/2025 stated that this procedure could not guarantee proper judicial scrutiny and the right to a proper adversarial procedure. The legal aid is provided by law, and this can facilitate access to justice, but the intention is to reduce judicial scrutiny on the subject of validation of detention orders (also in function of the implementation of the Italy-Albania Protocol).

Pullbacks:

GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

From the judgment, this information does not emerge. It can be addressed in interviews, especially with lawyers.

Detention:

1. Judge of the Peace of Siracusa, no. 3569/2022 (relevant also for pushbacks and procedural barriers)

The person was de facto detained in the quarantine ship. During this period, it could not access judicial review. More research could be done reflecting on access to legal representation in these detention facilities.

2. Tribunal of Catania, Judgment no. 10459/2023

No challenges emerge in bringing the case in front of the court; it automatically reaches the courts according to Article 6 of Law No.142/2015, which regulates the validation of the detention order of the asylum seeker, which must occur within 48 hours.

Externalization of asylum processing:

1. Tribunal of Rome, Judgment no. 42251/2024 (relevant also for detention)

No challenges emerge in bringing the case in front of the court; it automatically reaches the courts according to Article 6 of Law No.142/2015, which regulates the validation of the detention order of the asylum seeker, which must occur within 48 hours.

2. Court of Cassation, Judgment no. 17510/2025 (relevant also for detention)

The case arrived at the Court of Cassation since the decision of the Court of Appeal of Rome, in favour of the asylum seeker, was appealed by the government. Regarding the first instance, no challenges arise in bringing the case before the court; it automatically reaches the courts according to Article 6 of Law No. 142/2015. As mentioned, the law stipulates that the validation of the asylum seeker's detention order must occur within 48 hours.

However, a recent interpretation (for now, a minority view) must be considered in combination with this decision. Particularly, the decision no.15747/2025 of the Court of Cassation, confirming a previous interpretation of the Court of Appeal of Palermo, argues that, in case the migrant is in a pre-removal centre and asylum for international protection, but the detention order is confirmed because the application is considered instrumental for avoiding a deportation order, then in this case the administration has not strict limits for informing the Court of Appeal of the new detention order and asking for its validation. This waiting time could be used in Albania to prevent judicial scrutiny over the validation orders of asylum seekers. Indeed, with a very short asylum adjudication process (as it was for the asylum applications processed, only 5 days for issuing a decision), the administration can wait a negative reply on the application after issuing a validation order, impeding in this way that the validation order is rejected and the person must be returned to Italy as it occurred in previous cases (see for instance the Court of Appeal

rulings on 19 April 2025 and 5 May 2025). The evolution of this jurisprudence must be carefully considered in order to understand what challenges asylum seekers will experience in their legal standing.

Procedural barriers:

1.A Tribunal of Milan, Judgment no. 36446/2019

No challenges emerge in bringing the case in front of the court. The support of an NGO extremely active in the field could have favoured the process of bringing the case to court.

1. B Judge of Peace of Agrigento, Judgment no. 2527/2022

No challenges emerge in bringing the case in front of the court.

2. Court of Cassation, judgment no. 2453/2021

From the judgment, no challenges to legal standing emerge. However, more research could be done to understand the extent to which people subject to this procedure have access to judicial scrutiny and the possibility of accessing the judge.

Hearing

Pushbacks:

1. Tribunal of Rome, Judgment no. 3938/2022

No, there was no hearing.

3. Court of Cassation, Judgment no. 32070/2023

No, there was no hearing.

Pullbacks:

GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

Yes, there were criminal hearings.

Detention:

1. Judge of the Peace of Siracusa, no. 3569/2022 (relevant also for pushbacks and procedural barriers)

There was a hearing, but the decision does not mention whether the migrant was heard by the court.

2. Tribunal of Catania, Judgment no. 10459/2023

Yes, online

Externalization of asylum processing:

1. Tribunal of Rome, Judgment no. 42251/2024 (relevant also for detention)

Yes, online

2. Court of Cassation, Judgment no. 17510/2025 (relevant also for detention)

No

Procedural barriers:**1.A Tribunal of Milan, Judgment *no. 36446/2019***

Yes

1. B Judge of Peace of Agrigento, Judgment *no. 2527/2022*

No

2. Court of Cassation, judgment *no. 2453/2021*

No

Criminalization of disembarked migrants considered as smugglers**Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no. 4114/16***

Yes

Legal aid

In all cases, legal aid was provided.

Applicant's vulnerability**Pushbacks:****1. Tribunal of Rome, Judgment *no. 3938/2022***

The claimant was exposed to police violence in Croatia and lived in extreme deprivation in informal Bosnian camps in sub-zero temperatures

Pullbacks:**GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized**

Victims of severe physical and sexual violence in Libya. Faced a risk of torture or death if returned

Detention: no

Externalization of asylum processing: no

Procedural barriers: no

Criminalization of disembarked migrants considered as smugglers**Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no. 4114/16***

Accused migrants' capacity to provide accurate initial statements was compromised by a state of strong emotional stress and shock. Having just survived a cruel shipwreck in which 12 of their companions died, the judge observed that they lacked the lucidity and serenity of judgment required to accurately recount the threats they had faced when first questioned.

B. Impact of the judicial or quasi-judicial body's decision

Pushbacks:

1. Tribunal of Rome, Judgment *no. 3938/2022*

Yes, it has substantially influenced (together with previous decisions) the practice at the border with Slovenia. Now, pushbacks at this border are no longer put into practice. The jurisprudence developed for pushbacks at the border with Slovenia also contributed to the jurisprudence on pushbacks from Adriatic ports, also occurring through the bilateral agreement with Greece (*Tribunal of Rome no. 21667/2023*).

2. Court of Cassation, Judgment *no. 32070/2023*

The judgment has made an important contribution to the jurisprudence, framing the practices occurring at the hotspot and mainland as collective expulsions. The following jurisprudence influenced the following rulings, such as the Court of Cassation decision 5797/2024. However, no information is available regarding the consequent changes in practices in hotspots. Additionally, this decision must be read in connection with the ECtHR ruling condemning Italy for collective expulsions (*J.A. and others v. Italy*, Application no. 21329/18). However, more research is needed to understand if the national proceedings had an impact on the ECtHR judgment or vice versa. Finally, it would be relevant to understand what impact it had on the practice in the hotspots, especially after the ECtHR.

Pullbacks:

GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

This case had no significant effect on policy. The memorandum of understanding is still in place, and this year, it has been renewed. Regarding legal interpretation, it enforced the growing jurisprudence arguing the violation of non-refoulement connected to the externalization policy in Libya and the fact that Libya cannot be considered a safe port for migrants rescued at sea. More broadly, it had a relevant public impact due to its condemnation of the Memorandum of Understanding with Libya, considering Libya not a safe port to return migrants intercepted at sea. Additionally, it is relevant since it condemns the government (particularly the Ministry of the Interior, Transport, and Defence) for their indirect involvement in the pullback. Thus, it represents a relevant precedent for interpreting the responsibility of the State outside its territorial jurisdiction and its direct involvement in the pullback expansively. It gives space to all the following jurisprudence concerning private pushbacks (e.g., *Tribunal of Rome no. 4782/2021*, *Court of Cassation no. 4557/2024*).

Detention:

1. Judge of the Peace of Siracusa, *no. 3569/2022* (relevant also for pushbacks and procedural barriers)

It had no large impact on policy or legal interpretation and jurisprudence. It contributed to enhancing the jurisprudence on the proper information to the right of asylum, especially coming from the Judge of the Peace (see also Judge of the Peace of Cagliari *no. 3684* and *3729/2022*).

2. Tribunal of Catania, Judgment *no. 10459/2023*

The case was very relevant for two main reasons. First, it led the government to change the law, which was in contrast with EU law. After the decision, the government modified the criteria for the financial guarantee. Second, it was very important in understanding the ongoing conflict between the executive and the judiciary and the attacks on individual judges, since the judge of the case was strongly attacked by members of the executive, and, after these attacks, she decided to leave the judiciary.

Externalization of asylum processing:

1. Tribunal of Rome, Judgment *no. 42251/2024* (relevant also for detention)

The case was very relevant for two main reasons. First, it was the first ruling that developed this jurisprudence concerning the safe country of origin, which led courts not to validate detention orders of asylum seekers in Albania. The result was the failure of the initial plan of the Albania-Italy Protocol. It is also very interesting since this jurisprudence led to preliminary references to the CJEU, whose decision will come shortly. Thus, it will be extremely interesting to understand what will happen after this decision.

2. Court of Cassation, Judgment *no. 17510/2025* (relevant also for detention)

This case is interesting to consider since the jurisprudence is not consolidated on this point, and divergent interpretations are being developed. Moreover, lower courts contradict jurisprudence from higher courts. The issue is currently very politicized, and depending on what courts do, court rulings could contribute to finding a new way to implement the protocol between Italy and Albania or to contribute to its failure. A CJEU preliminary ruling has been submitted by the Court of Cassation on 20 June 2025 to solve these conflicts. Further developments must be considered.

Procedural barriers:

1.A Tribunal of Milan, Judgment *no. 36446/2019*

Despite previous jurisprudence on the topic emerging from 2018 (e.g., Tribunal of Bologna and Tribunal of Trieste), the decision has contributed to developing a body of jurisprudence concerning access to international protection through proper access to the police headquarters – immigration office. A similar decision was issued in Naples in 2019, and the following decisions were made by other Tribunals, such as Turin (*no. 5428/2020*) and Bologna (*no. 14333/2023*). This body of jurisprudence states that delays and administration backlog do not excuse the administration from not guaranteeing proper access to the fundamental right of asylum and connected rights (e.g., reception – Tribunal of Bologna *no. 14333/2023*).

1. B Judge of Peace of Agrigento, Judgment *no. 2527/2022*

As far as is known, it has not largely influenced legal practice or caselaw.

2. Court of Cassation, judgment *no. 2453/2021*

As far as is known, it has not largely influenced legal practice or caselaw. In this regard, it is important to mention that the norm to which the Court of Cassation refers was modified in 2023.

Criminalization of disembarked migrants considered as smugglers

Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no. 4114/16*

The decision represents a landmark turning point in the judicial treatment of migrants accused of smuggling in Italy. The most significant impact of this decision was its successful application of Article 54 of the Italian Penal Code (state of necessity) to exonerate “forced smugglers”. The judge ruled that the pervasive violence, torture, and unlawful detention in Libya created a well-founded doubt regarding the migrants’ free will, making their claims of being forced to steer at gunpoint highly believable. The ruling established the principle that the defence of necessity must be granted even if there is merely a doubt about its existence, as judicial reasoning must always favour the accused. The Palermo decision opened the door for a wave of similar acquittals across Sicily. Following this precedent, courts in Trapani, Messina, Ragusa, and Agrigento began to acquit defendants by framing them as an “improvised crew” recruited under life threats by armed paramilitary forces in Libya.

C. Consistency with previous jurisprudence

Pushbacks:

1. Tribunal of Rome, Judgment *no. 3938/2022*

This decision is in line with previous decisions of the same court (*Tribunal of Rome 56420/2020*), pertaining specifically to the agreement with Slovenia. It is also in line with previous jurisprudence regarding what occurred in the Mediterranean Sea prior to 2011, with pushbacks through the bilateral agreement with Libya (*Tribunal of Rome no. 22917/2019*).

2. Court of Cassation, Judgment *no. 32070/2023*

When it comes to proper information on the right to international protection, the decision is in line with previous jurisprudence (See, for instance, *Court of Cassation, 18189/2020* and *19322/2020*). Regarding what concerns collective expulsions consequent to the delayed deportation orders, this was a leading case, and, as far as known, this was a new line of national jurisprudence.

Pullbacks:

GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

It was something new to be addressed by the GIP, so we can classify it as a new stream of jurisprudence. More research is needed to understand if, before this judgment, the criminal lower courts decided on similar issues. Different decisions instead are issued by the higher court (the Court of Appeal), which overturned the decision at the first instance. Then, this decision was again overturned, confirming at the Court of Cassation what was stated at first instance (see below).

Detention:

1. Judge of the Peace of Siracusa, *no. 3569/2022*

This decision is in line with previous jurisprudence concerning the right to proper information on access to asylum (see *Judgment no. 32070/2023*). However, no specific information is available concerning the Judge of the Peace of Siracusa and their previous interpretation about the issue at stake. Interviews could allow for better investigation of this aspect. Indeed, decisions are not public, and it is not possible to understand the whole jurisprudence of this body from available data.

2. Tribunal of Catania, Judgment *no. 10459/2023*

This decision was not in line with previous jurisprudence because it intervened in questioning a new provision introduced in 2023.

Externalization of asylum processing

1. Tribunal of Rome, Judgment *no. 42251/2024* (relevant also for detention)

The decision was the first decision on asylum seekers' detention under the border procedure in Albania under the Italy-Albania protocol.

2. Court of Cassation, Judgment *no. 17510/2025* (relevant also for detention)

The Court of Cassation's decision was the first ruling from the court on this matter.

Procedural barriers:

1.A Tribunal of Milan, Judgment *no. 36446/2019*

As far as I know, the Tribunal of Milan was not used to issuing these types of proceedings. Indeed, delays and problems accessing the *Questura* have increased since the end of 2018.

1. B Judge of Peace of Agrigento, Judgment *no. 2527/2022*

Available information states the different interpretations adopted by the same court on the issue at stake. For instance, the Judge of the Peace of Agrigento, in a similar case, stated the opposite of what was ruled in this decision. The judge of the Peace argues the power of the court to question the delayed deportation order if proper information about the right to asylum is not guaranteed, in line with what is stated by higher courts (Judge of the Peace of Agrigento *no. 3499/2022*).

2. Court of Cassation, judgment *no. 2453/2021*

No information available on court decisions in contrast to this jurisprudence.

Criminalization of disembarked migrants considered as smugglers

Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no. 4114/16*

The ruling is not consistent with previous jurisprudence, which had not applied article 54 (state of necessity) to acquittal the case.

Reasons and extent of these differences

Pushbacks:

1. Tribunal of Rome, Judgment *no. 3938/2022*

Although there are no divergences about the legal reasoning, it is worth stressing that in a previous decision from the Tribunal of Rome, after reviewing a decision from the same tribunal (decided by a single judge), the court decide at the appeal in a configuration of three judges, and, differently from the first instance decision (Tribunal of Rome, judgement *no.7045/2021*), the court states that there are not enough individualized evidence to argue that the violation of human rights has been experienced by the appellant. Thus, the evaluation of proofs was the main difference.

2. Court of Cassation, Judgment *no. 32070/2023*

There are no substantial divergences.

Pullbacks:

GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

As far as is known, there are no substantial divergences from the same court. However, different interpretations emerged at the appeal stage. The decision at the second instance was overturned, and the motivation was very different from that adopted by the GIP. The Court of Appeal had considered the asylum seekers responsible for their conduct, and no consideration has been made concerning the unlawfulness of the Memorandum of Understanding. Instead, in the judgment, the judge strongly criticized the colleague deciding the case at the first instance, arguing the politicization of certain statements which should, according to the judge of the Court of Appeal, pertain to asylum policy under the competence of

the executive. Considering the personal statements in the judgment, the judges' opinions on border control and border management seem very relevant and warrant further investigation in interviews.

Detention:

1. Judge of the Peace of Siracusa, *no. 3569/2022*

As mentioned in the case *no. 2527/2022*, the Judges of the Peace sometimes interpret that they do not have the power to question the discretionary power of the administration in issuing a delayed deportation order. Instead, in this case, the Judge annulled the delayed deportation measure, arguing that the administration was unable to provide proper information on the right to international protection to the appellant.

2. Tribunal of Catania, Judgment *no. 10459/2023*

As mentioned, it does not diverge from previous decisions since it is the first decision on the topic.

Externalization of asylum processing

1. Tribunal of Rome, Judgment *no. 42251/2024* (relevant also for detention)

As far as is known, there are no substantial divergences from the same court.

2. Court of Cassation, Judgment *no. 17510/2025* (relevant also for detention)

As mentioned, it is the first decision on this issue. It is possible to state that no uniform approach by the court has been reached, and this is shown by two actions. First, the court of cassation sent a preliminary ruling to the CJEU on this matter on 20 June 2025. In my opinion, this can be seen as a strategy that is consequent to a lack of agreement within the court about the way to proceed with this new legal issue at stake. Second, as mentioned, this disagreement emerges from the fact that *Massimario della Corte di Cassazione*, released on 30 June 2025, is a document pointing out several legal concerns connected to the Albania-Italy deal, stating the risk to the right to asylum and stating the constitutionality of certain provisions. It seems indeed that no consensus within the court of cassation exists on this aspect and other aspects related to the externalization policy in Albania.

Procedural barriers:

1.A Tribunal of Milan, Judgment *no. 36446/2019*

As mentioned, there are no differences.

1.B Judge of Peace of Agrigento, Judgement *no. 2527/2022*

See what is mentioned for the judgement of the Judge of the Peace of Siracusa, *no. 3569/2022*. Differences in this case are also documented within the same court (the Tribunal of Agrigento). For instance, the Judge of the Peace of Agrigento, in the same year (*judgement no. 3499/2022*), annulled a delayed deportation order after the migrant filed an asylum application. It argues that the fact that a delayed deportation order is pending cannot represent a barrier to accessing asylum and formalizing the asylum application. The court underscored that applications for international protection cannot be rejected or excluded from examination solely because they were not submitted promptly (Article 8 of Legislative Decree 25/2008). The barrier was mainly formal and referred to the legal provision ruling delayed deportation orders (art. 10, co. 2, Law 286/1998). The actors involved are the Ministry of the Interior and its functionaries, and particularly the police office.

2. Court of Cassation, judgment *no. 2453/2021*

As far as is known, there are no substantial divergences from the same court.

Divergence establishing binding precedent

The Court of Cassation is binding for future jurisprudence, in the sense that the Court of Cassation states general principles to which lower courts must conform. However, in Italy, there is no strong vertical control, and lower courts can also decide not to comply with higher courts. For instance, the decision of the Court of Cassation regarding the detention of asylum seekers transferred from pre-removal centers in Italy to Albania (Court of Cassation, *Judgment No. 17510/2025*) is, in theory, binding. However, the recent decision of the Court of Appeal does not comply with the jurisprudence of the Court of Cassation.

The Court of Appeals and subsequently the Court of Cassation in 2019 eventually overturned the Palermo acquittal. Higher courts argued that any state of necessity essentially “ceased to exist” the moment the boat reached open water and the armed Libyan smugglers jumped off, a logic that significantly narrowed the scope for future necessity defence (Alagna 2024).

The decision aligns with or differs from resolutions on similar barriers

Pushbacks:

1. Tribunal of Rome, Judgement *no. 3938/2022*

The only court responsible for these aspects is the Tribunal of Rome due to the extraterritorial dimension of pushbacks. Moreover, for now, we don’t have decisions from higher courts (Court of Cassation and Court of Appeal of Rome on this case). However, the decision has been challenged in front of the Court of Appeal of Rome, so this decision must be considered for future research, to understand if the court will confirm the interpretation made by the Tribunal of Rome.

2. Court of Cassation, Judgement *no. 32070/2023*

The Court of Cassation aligns with the jurisprudence of the Tribunals (specialized sections on migration and asylum) about the aspects concerning the proper information on the right to asylum. This is not always the case for the decisions of the judges of the peace, who often adopt a more restrictive interpretation and decide not to favour the asylum seekers. Regarding the specific issue of collective expulsion, as far as is known, no other decisions have been issued on this specific aspect by other bodies. The Court of Cassation instead issued a similar decision in 2024, as already mentioned, confirming the interpretation of the Court.

Pullbacks:

GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized

The interpretation adopted by the court regarding the unlawfulness of the Memorandum of Understanding and the risk of non-refoulement in the pullback practice to Libya aligns with other jurisprudence from civil courts, particularly at first instance (Tribunals – specialized sections on asylum and migration) and the Court of Cassation (civil sections).

Detention:

1. Judge of the Peace of Siracusa, *no. 3569/2022*

Please see the reply of judgement Court of Cassation, Judgement *no. 32070/2023*

2. Tribunal of Catania, Judgement *no. 10459/2023*

It does not differ from other decisions since the law was modified after this decision.

Externalization of asylum processing

1. Tribunal of Rome, Judgement *no. 42251/2024* (relevant also for detention)

This judgement is in line with the jurisprudence concerning the asylum border procedure and safe country of origin. Particularly, this jurisprudence argues for the impossibility of including group exceptions in the definition of the list of safe countries of origin. Similar decisions have been made by several tribunals (e.g., Tribunal of Palermo, Bologna, Catania). The CJEU preliminary rulings have been sent by various tribunals and courts across the jurisdiction (see part I).

2. Court of Cassation, Judgement *no. 17510/2025* (relevant also for detention)

As mentioned, the court of cassation decision does not align with the decisions of the Court of Appeal of Rome. The main difference concerns the possibility of equalizing the pre-removal centres in Italy and Albania, when a migrant is transferred from a pre-removal centre in Italy to the pre-removal centre in Albania and asks there for asylum (see part I).

Procedural barriers:

1.A Tribunal of Milan, Judgement *no. 36446/2019*

The decision is in line with other decisions adopted by other courts. As mentioned, similar decisions have been issued by the Tribunal of Bologna, the Tribunal of Trieste in 2018, by the Tribunal of Naples in 2019, and following decisions were issued by other Tribunals, such as Turin (no. 5428/2020) and Bologna (no. 14333/2023). This body of jurisprudence states that delays and administration backlog do not excuse the administration from not guaranteeing proper access to the fundamental right of asylum and connected rights (e.g., reception – *Tribunal of Bologna no. 14333/2023*).

Evolutionary or restrictive approach

Pushbacks:

1. Tribunal of Rome, Judgement *no. 3938/2022*

Yes, it explains the expansive interpretation of the judiciary (at least civil judges). Indeed, it stated Italy's responsibility for chain pushbacks along the Balkan route, and it provided economic compensation for this violation. This line of jurisprudence is also relevant, as in similar decisions, the person was outside the territory, and the court provided legal compensation, allowing the person to access Italy through a humanitarian visa and request asylum.

3. Court of Cassation, Judgement *no. 32070/2023*

Yes, it explains the expansive interpretation of the judiciary (at least civil judges), stating that the practice of the “*foglio notizie*” can result in collective expulsion.

Pullbacks:**GIP (Judge of the Preliminary Investigation), Case *Vos Thalassa* judgment anonymized**

Yes, it explains the expansive interpretation of the judiciary, stating the responsibility of Italy outside the territory, and it questions the externalization policies implemented through the Memorandum of Understanding.

Detention:**1. Judge of the Peace of Siracusa, no. 3569/2022**

Not particularly.

2. Tribunal of Catania, Judgement no. 10459/2023

It is partially relevant to understand the expansive interpretation of the judiciary, since it relies on EU legislation to question the legality of restrictive legislation adopted at the national level.

Externalization of asylum processing**1. Tribunal of Rome, Judgement no. 42251/2024 (relevant also for detention)**

Yes, it is very relevant to understand the expansive interpretation of the judiciary, since this interpretation of the safe country of origin developed by Italian tribunals includes not only the territorial exceptions, as stated literally by the CJEU, but also group exceptions. Depending on the preliminary references in front of the CJEU, this jurisprudence can, in principle, contribute to pushing for a more expansive interpretation of EU asylum law regarding accelerated procedures based on the concept of safe countries of origin and safe third countries.

2. Court of Cassation, Judgement no. 17510/2025 (relevant also for detention)

The decision is one example of a more restrictive interpretation of access to asylum, if compared to the broader tendency of expansive interpretation characterizing Italian courts. It would be worth investigating the influence of the recent reform (December 2025), which passed the competence to the criminal section of the Court of Cassation. Before, these matters were under the competence of the civil sections of the Court of Cassation.

Procedural barriers:**1.A Tribunal of Milan, Judgement no. 36446/2019**

Yes, it is relevant to grasp the expansive role played by courts in guaranteeing the formalization of the asylum procedure despite administrative obstacles.

1.B Judge of Peace of Agrigento, Judgement no. 2527/2022

No, this decision allows for the showing of the divergent practices of the Judges of the Peace regarding delayed deportation measures and access to asylum. Particularly, this and other decisions of this body show that what occurs in courts can reinforce barriers to accessing asylum. The peculiar institutional setting concerning judicial review in these cases and the organizational and professional constraints must be investigated to understand divergences and the existence of more restrictive interpretations than other courts, and particularly Civil Tribunals and the Court of Cassation.

2. Court of Cassation, judgment *no. 2453/2021*

It is partially relevant to understand the expansive interpretation of the judiciary, since it relies on EU legislation to question the legality of restrictive legislation adopted at the national level.

Criminalization of disembarked migrants considered as smugglers

Tribunal of Palermo, Sezione G.I.P.-G.U.P., *no. 4114/16*

After the judgment, and particularly by 2018, despite not considering rulings at first and higher courts, defence lawyers reported that acquittal rates for those claiming duress had risen to approximately 30 per cent (Patanè et al. 2020).

PART 3: SOCIO-LEGAL FACTORS

This third part of the Report is divided into four sections: I) Procedures in asylum access adjudication; II) Judicial or quasi-judicial bodies in asylum access adjudication; III) Other actors in asylum access adjudication; IV) Socio-political context.

I. PROCEDURES IN ASYLUM ACCESS ADJUDICATION

A. Access to judicial or quasi-judicial bodies

Pushbacks: Formally, people subject to the various forms of summary returns described in Part I can have access to judicial remedies at the national level. However, what emerges from the practice is that practical challenges limit judicial accountability in these cases (see sections below). To briefly summarize, if the appellant is outside the territory (regardless of whether the informal or formal return has already been completed), they may encounter difficulties in formalizing the power of attorney with the lawyer due to the bureaucratic procedures required by the legislation. If the person is in the territory (for instance, in cases of delayed deportation orders, when the person could not claim asylum), they may encounter various challenges, such as obtaining accurate information, language barriers, and access to proper legal representation. For more details, see the replies below.

Pullbacks: Access to justice is like what occurs for pushbacks. Additionally, accountability gaps intervene in assessing Italy's responsibility for activities that occur outside Italian territory, particularly in international waters.

Detention: Despite strategic litigation aimed at assessing the right of lawyers to enter de facto and formal detention facilities (pre-removal centres, hotspots, and airport zones), which is advancing in the country,⁷ difficulties persist. The detention conditions can thus hinder access to courts for refugees and migrants due to difficulties in accessing these facilities for legal representatives. Judicial scrutiny in cases of administrative detention in pre-removal centres or the detention of asylum seekers under the border procedure is, however, automatically guaranteed, since the detention order must be validated by a judge (see Part I). However, some practical arrangements concerning legal representation can hinder the full effective remedy for these individuals, which will be better discussed in the following sections. A different situation concerns de facto detention in hotspots and in airport zones. In these locations, the law does not provide for formal procedures to access judicial remedies. Indeed, as mentioned in part I, what occurs in a hotspot is often outside the scrutiny of judges, unlike all the other types of deprivation of liberty (e.g., detention in pre-removal centres). In this context, difficulties in accessing this facility exacerbate the existing barriers in other detention facilities.

Externalization of asylum processing: the main procedural barriers concern those already cited in the barrier "Detention". Indeed, asylum seekers in Albania are subject to the border procedure and are under detention. Thus, they formally have access to judicial scrutiny, even though, in practice, limits exist for the effective remedy. Among the main challenges, the asylum seekers struggle to have proper information about the procedure they are facing due to difficult access to proper legal support and representation and the short time period of the entire procedure, in which various paths overlap, such as the validation of the detention order, the request of the suspensive effect of the appeal after a negative decision and the appeal against the negative decision of the administrative body on the asylum application (for more details see sections below).⁸ Regarding Dublin decisions, courts have access to scrutinise the practice. As mentioned

⁷ This line of legal actions is particularly pursued by ASGI, within the project InLimine. See the following sources: <https://www.asgi.it/inlimine/il-diritto-di-accesso-ai-luoghi-idonei-di-trattenimento-la-sentenza-del-tar-milano/>; <https://www.asgi.it/inlimine/un-percorso-ad-ostacoli-il-diritto-di-accesso-ai-centri-per-il-rimpatrio-da-parte-della-societa-civile-e-le-resistenze-della-pubblica-amministrazione/>; <https://www.asgi.it/inlimine/i-diritti-umani-devono-entrare-nei-cpr/>.

⁸ <https://www.asgi.it/asilo-e-protezione-internazionale/albania-monitoraggio-diritti-tavolo-asilo/>

by ASGI (2025, p.101), “Article 3 of the Procedure Decree does not unequivocally provide that the transfer is suspended until the time limit for lodging an appeal expires. It states that the lodging of the appeal automatically suspends the transfer if an application for suspension is included in the appeal.⁵¹⁷ According to ASGI, this should be interpreted in the sense that transfers may be carried out only once the time limit for an appeal has elapsed without an appeal being filed or with an appeal not indicating a request for suspension. In practice, to ASGI’s knowledge, in 2024, as in the previous five years, the *Questura* waited for the 30- day deadline for lodging the appeal to expire before proceeding with the organisation of the transfer”.

Procedural barriers: Again, refer to the “detention” section for information regarding the asylum border procedure and safe country of origin. Indeed, they formally have access to judicial remedies. Being in detention can hinder their access to effective legal representation. Additionally, as will be explained below, the string deadlines can affect. Additionally, interpreters may face difficulties in asylum hearings related to country-of-origin and border procedures, as well as short deadlines.

Time as a challenge

Pushbacks: Time can represent a challenge in the sense that long waiting for justice can discourage appellants in two ways. First, if the appeal is lodged outside the territory, the person may be discouraged by the lengthy procedures required before lodging the appeal and the delays in obtaining a decision (for urgent measures, even up to 4 months, as it occurred in one case). Migrants who experience pushbacks often live in precarious conditions (e.g., in encampments at the borders) and long waiting times represent an extremely high cost for them (see *judgment no. 56420/2020* of the Tribunal of Rome).

Pullbacks: See pushbacks.

Detention: Time represents a challenge for an effective remedy due to very short deadlines. These short deadlines can limit proper legal representation in detention order proceedings and deportation orders (e.g., from airport zones or pre-removal centres). Indeed, asylum seekers have a lawyer, but for procedural reasons, they can struggle for a few hours to obtain a lawyer who agrees to represent them under the legal aid framework (see section “Legal aid” for further details).

Externalization of asylum processing: time represents a significant challenge. As mentioned in Part I, in Albania, asylum seekers are subject to the border accelerated procedure, which requires very strict deadlines. For instance, there is the validation of the detention order, which must be adopted within 48 hours, a very short time in which procedural obstacles in obtaining legal representation can occur, especially considering the extra-territorial dimension, which may lead to additional difficulties (see Part I and see the section “Detention” above). Regarding the accelerated procedure, it provides for a decision by the administrative body on the asylum application within 7 days and allows for lodging an appeal within 15 days. This time limit is also required to request the suspension of the negative decision after the appeal (which is no longer automatic and must be requested by the lawyer). Otherwise, despite having lodged the appeal, the person can be deported while waiting for the court's decision, thereby undermining effective access to justice. Lawyers are physically separated from clients during validation hearings (see “Spatial and geographical issues”), and the short notice for appointments hinders the development of meaningful attorney-client relationships. The 7-day deadline to appeal negative asylum decisions is unrealistic, especially given geographical and communication barriers. Regarding Dublin transfers, time does not represent a major challenge according to existing sources when it comes to risk of transfer and chain pushbacks.

Procedural barriers: For accelerated procedures, please refer to the paragraph below, as the procedure is also applied in several border zones, in addition to Albania (see Part I). This means that the challenges faced by asylum seekers in Albania also exist within the Italian territory. Regarding the inadmissibility of subsequent applications while the deportation order is executed, the few hours available for the validation of the deportation order can lead (as in the case of the validation of the detention order described in

“Detention”) to difficulties in obtaining proper legal representation in practice. Finally, regarding delays and obstacles in formalizing the asylum procedure, time does not represent a particular challenge in accessing justice.

Costs for legal representation

Costs for legal representation do not pose a significant barrier to asylum access adjudication in Italy, given the availability of legal aid. However, some practical challenges in accessing legal aid exist, highlighted in the Report of AIDA, written by ASGI (2025, pp. 90-91). In Italy, access to free state-funded legal aid (*patrocinio a spese dello Stato*) for asylum applicants during the appeal phase is governed by a combination of means-testing and merits-testing criteria, as outlined in the Procedure Decree and related legislation. Under Article 16(2) of the Procedure Decree, legal aid is available to applicants whose annual taxable household income is below a specified threshold—€12,838 in 2024—and whose appeal is not deemed manifestly unfounded. This dual requirement ensures that legal aid is both financially accessible and legally justified, though it also introduces potential barriers for applicants with limited resources or complex cases.

The means test evaluates the combined income of all cohabiting family members, which can pose challenges for applicants from larger households or those with informal income sources. For income earned abroad, applicants are typically required to provide certification from their country of origin’s consular authorities. However, recognizing the practical difficulties in obtaining such documentation—particularly for refugees or those fleeing conflict zones—the law permits applicants to submit a self-declaration of income instead. This flexibility is explicitly provided for asylum applicants under Article 8 of Presidential Decree 21/2015, which exempts them from the stricter documentation requirements of Article 79 of Presidential Decree 115/2002.

Beyond financial eligibility, access to legal aid is further contingent on a merits test, conducted by the competent Bar Association. This assessment determines whether the applicant’s grounds for appeal are not manifestly unfounded. While this evaluation has not posed significant obstacles in recent years, including in 2024, it introduces a layer of judicial discretion that can impact an applicant’s ability to secure representation. Importantly, even if an applicant is initially granted legal aid by a Bar Council, the court retains the authority to revoke it if it concludes that the appeal lacks merit. The Court of Cassation has clarified that such revocations must be based on a concrete assessment of the case, ensuring that the appeal is both manifestly unfounded and reflects gross negligence on the part of the applicant. This safeguard aims to prevent arbitrary withdrawals of legal aid, though it does not eliminate the risk of inconsistent judicial interpretations.

Recent legislative changes, particularly Decree-Law 133/2023 (converted into Law 176/2023), have significantly restricted access to free legal aid in several key scenarios. Under the new provisions, judges are required to withdraw legal aid if the court ultimately rejects an appeal against:

- A decision of inadmissibility for a subsequent asylum application due to a lack of new evidence or elements (Article 29).
- A decision of inadmissibility for a subsequent application deemed to have been submitted to delay or avoid removal (Article 29-bis).
- A decision rejecting an asylum request as manifestly unfounded.

However, the law does allow judges to maintain legal aid if they determine that the arguments presented in the appeal are not manifestly unfounded, providing a limited but important exception to the general rule. Decree-Law 133/2023 also introduced additional restrictions, mandating that courts cease free legal aid in cases where:

- An applicant from a designated safe country submits an appeal from a border or transit area, and the court rejects their request for suspensive effect (i.e., a stay of removal).

- An applicant appeals against a refusal issued under an accelerated procedure (Article 28-bis), and the *Questura* (police headquarters) informs the court of an impending removal before a final decision is rendered. In such cases, the restrictions on legal aid apply regardless of the merits of the asylum claim, as the accelerated procedure is triggered by public security concerns rather than the substance of the application.

The evaluation of merits for legal aid at the Cassation stage is notably stricter. A declaration of inadmissibility of the appeal—often due to procedural formalities—frequently results in the revocation of legal aid, leaving applicants without representation during critical stages of their case.

Geographical disparities further complicate access to legal assistance. Applicants residing in large cities benefit from greater availability of specialized NGOs and legal advisors, while those in remote or rural areas face significant challenges in finding qualified lawyers with expertise in asylum law. This disparity underscores the unequal access to justice within Italy's asylum system, where the quality of legal representation can profoundly influence the outcome of an appeal.

Spatial and geographical issues

Pushbacks: Individuals who experience pushbacks in the country encounter practical difficulties in accessing national judicial remedies while they are outside the territory. First, the most difficult aspect is establishing contact with legal representatives to build a case. In Italy, there is only one, despite the presence of a large and experienced legal association that follows these claims (ASGI), with a few lawyers who are experts in these matters. Thus, they experience difficulties in connecting refugees and lawyers due to the limited organizations that can serve as a bridge between refugees in third countries and legal associations (Interview, Italian activist, April 2025). Additionally, several bureaucratic constraints exist, such as the procedures to certify the person's presence in the third country, where they were pushed back. This is the needed evidence for the pushback, but the procedure can be extremely challenging. It must be done in front of a notary if the person is irregularly present in the country where he/she was pushed back, and the document provided must be registered in front of local national authorities. This entails lengthy and complex bureaucratic procedures, often without support for refugees, in addition to the linguistic barrier they face in fulfilling these procedures (Interview with Italian activist, April 2025). Finally, difficulties emerge in having the power of attorney to lodge the appeal: in particular, refugees often experience difficulties in sending a valid ID document, since they may not have one, or contacts in the country of origin are not able to send it to the individual, due to the precarious condition in which refugees leave at the border (Interview, Italian lawyer, May 2025).

Pullbacks: See pushbacks.

Walls and fences: For now, walls and fences are not crucial barriers in the country.

Detention: One of the main difficulties is the inability of lawyers to access detention centres. For instance, access to hotspots is limited in airport zones. Moreover, in detention centres, even if not in remote locations, access is extremely limited. Pre-removal centres and judicial hearings often occur online, with lawyers having few opportunities to meet their clients and migrants having no right to meet their judge in person. This can limit access to full judicial remedies, especially in contexts where there is a lack of interpreters (see Part I of the report) and communication is thus extremely difficult due to linguistic reasons. These communication barriers can be exacerbated in online hearings and brief meetings with lawyers.

Externalization of asylum processing: here, the extra-territoriality of the procedure is crucial. As mentioned in Part I, asylum seekers and migrants in Albania have formal access to legal representation. However, the remoteness of the detention centres leads to serious difficulties for lawyers in visiting their clients in person due to time and cost constraints (the maximum amount of reimbursement is 500 euros). Indeed, the procedure requires very short deadlines (validation of the detention in 48 hours) or 15 days

for lodging the appeal against a negative decision and asking for the suspensive effect of the appeal, which is not automatic. These various barriers pose a significant risk to access to legal representation and judicial remedies.

Procedural barriers: regarding obstacles in accessing the asylum procedure, due to long delays and queues in front of immigration offices, the spatial issue is crucial. Indeed, a large variation occurs in the Italian territory, as mentioned in part I. This mainly occurs in large cities, where the number of asylum claims is extremely high, and offices struggle to process them within a reasonable timeframe. Regarding the inadmissibility of subsequent applications and border procedures, the limits are the same as those of other procedures concerning detention (see detention).

Practices to overcome these challenges

Pushbacks: The Association has, however, acquired considerable experience in lodging claims for refugees outside the territory, and it has encountered violations of non-refoulement in various projects.⁹ Thanks to the consolidated experience, some barriers to access justice have been reduced. For instance, due to strategic litigation in the field, a developing jurisprudence has emerged on the procedural requirements for obtaining a power of attorney when the appellant is outside the territory, often without identification documents and in extremely precarious conditions. This jurisprudence allows the lawyer to have power of attorney prior to obtaining all the required documents, thereby facilitating the first step of the procedure (Interview, Italian lawyer, April 2025).

Pullbacks: See pushbacks. Additionally, in cases concerning pullbacks, collaboration with other actors, for instance NGOs and other monitoring bodies documenting practices in the Mediterranean Sea and externalization policies with Libya and Tunisia, is crucial for building the case and providing sufficient evidence of the indirect involvement of Italian authorities in pullbacks. NGOs and legal associations are involved in strategic litigation on pullbacks to Libya and Tunisia (See the ASGI projects¹⁰). Strategic litigation is also connected to activities of monitoring, for instance, monitoring of funding transfers to the Libyan or Tunisian Coast Guards,¹¹ or monitoring incidents at high sea, such as the activity of Alarm Phone¹² or Forensic Architecture.¹³

Detention: Among the main strategies is strategic litigation to facilitate access to detention centres, airport zones, and hotspots for legal representatives. As mentioned earlier, access to these facilities enhances judicial accountability, as it enables refugees to lodge an appeal in a timely manner before being subject to summary returns (e.g., from the airport or pre-removal centres). Additionally, having access to legal representatives in detention centres for asylum seekers under the border procedure may allow them to lodge an appeal against a negative decision by the administrative body on their asylum claim and, more specifically, to request the suspensive effect of the appeal. As mentioned above, this request must be submitted within 15 days; otherwise, despite lodging the appeal, the person may face severe risks of refoulement.

Externalization of asylum processing: the main activities conducted by legal associations and other civil society organizations pertain to legal representation of asylum seekers and migrants in Albania, public events, and reports to put pressure on Italian institutions and condemn the practice and activity of monitoring in the Albanian detention centres, and need to collect relevant information to mobilize the law and challenge the policy outside and within the court. Particularly in recent months, many organizations

⁹ <https://www.asgi.it/sciabaca-oruka/>, <https://www.asgi.it/medea/>.

¹⁰ <https://www.asgi.it/sciabaca-oruka/>.

¹¹ <https://www.asgi.it/en/news/african-fund-under-examination/>

¹² <https://alarmphone.org/it/chi-siamo/>

¹³ <https://forensic-architecture.org/investigation/seawatch-vs-the-libyan-coastguard>

have been involved in independent monitoring, with ASGI and other organizations providing legal support for migrants and asylum seekers in the country¹⁴.

Procedural barriers: NGOs and legal associations primarily engaged in litigating and monitoring delays and obstacles in the formalization of asylum adjudication. For instance, many local associations, such as NAGA in Milan and Ciac Onlus in the Emilia-Romagna region, challenge these obstacles in court, obtaining significant results in terms of access to justice and access to the asylum procedure¹⁵. They use urgent measures proceedings to ask courts to guarantee access to asylum. They also questioned in court the use of online platforms for formalizing asylum applications, which represented a barrier to the process (see Part I).¹⁶

Implications of difficulties accessing justice

First, the obstacles described above have an influence on asylum access adjudication since they affect the types of cases reaching adjudication

In case of pushbacks and pullbacks, they reduce accountability over these practices. Practical barriers (e.g., bureaucratic hurdles, lack of legal representation, and spatial remoteness) mean that cases involving pushbacks or pullbacks are less likely to be adjudicated. This is especially true when individuals are outside Italian territory, where formal access to remedies exists but is rarely effective. The difficulty in gathering evidence (e.g., certifying presence in a third country) discourages claims, leading to underrepresentation of these cases in courts. National courts have begun to recognize Italy's responsibility for activities outside its territory, but enforcement remains inconsistent due to procedural obstacles in reaching the courts.

Regarding detention, we see a limited judicial scrutiny, firstly when it comes to de facto detention. Cases involving detention in hotspots or airport zones are less likely to be scrutinized because these facilities are often inaccessible to legal representatives, and judicial validation is not binding. The lack of formal procedures for judicial review in these locations creates “legal black holes,” where detention and returns occur without meaningful oversight. This undermines the role of courts in safeguarding fundamental rights. This contrasts with pre-removal centres, where judicial validation of detention orders is mandatory. However, in these cases, other limits exist concerning access to proper legal representation or in-depth scrutiny during hearings by the judges (see the sections below). Short deadlines for validating detention orders (e.g., 48 hours) and deportation orders create a “race against time” for legal representation, often resulting in unchallenged or poorly defended cases. The same for judges – especially judges of the Peace – dealing with validation of detention orders in pre-removal centres as a matter of routine (Asta and Caprioglio 2017). It is also possible to hypothesize that the shift to online hearings (e.g., for detention order validation) exacerbates communication issues, particularly for non-native speakers, and limits the ability of judges to assess credibility or procedural fairness.

Regarding the externalization of Asylum Processing, asylum seekers in Albania face compounded challenges due to geographical remoteness, limited access to lawyers, and accelerated border procedures. This results in fewer appeals and a higher risk of refoulement, as suspensive effects are not automatic and must be requested within tight deadlines. The lack of transparency in the Ministerial designation of safe countries of origin, questioned by the recent CJEU judgement (Alace and Canpelli 2025).

Regarding procedural barriers, and particularly the asylum border procedure, the same aspects highlighted for the Albania case also exist in the Italian territory. 7-day deadline for asylum decisions and 15-day window for appeals (with no automatic suspensive effect) disproportionately affect cases in border zones. The risk of an ineffective remedy is high, with the possibility of lodging an appeal too late or without

¹⁴ <https://www.ciaconlus.org/it/news/dettaglio-news/giurisdizione-senza-diritti-voci-dal-centro-di-gjader>;
<https://www.asgi.it/asilo-e-protezione-internazionale/albania-monitoraggio-diritti-tavolo-asilo/>

¹⁵ <https://ciaconlus.org/downloads/ordinanza-trib-bologna-accesso-procedura-asilo-e-accoglienza-14333-22-rg.pdf>.

¹⁶ <https://naga.it/2023/04/03/riciesta-dasilo-nuova-procedura-con-prenotazione-online-dal-5-aprile-2023/>

adequate legal support, leading to dismissals or deportations before judicial review, especially considering the lack of suspensive effect of the appeal. Regarding the formalization of the asylum procedure, the main difficulties arise from understanding one's rights, finding proper legal representation, and actually reaching the court. In a certain sense, it represents a case of difficulty in reaching the surface of the dispute pyramid, due to the challenge of being aware of one's rights and the possibility of claiming them in court (Miller and Sarat 1981).

B. Legal aid

According to Article 24 of the Italian Constitution, access to legal representation must be guaranteed. This right also includes migrants and asylum seekers, who, at all stages of the procedure, have the right to access to proper legal representation. However, some practical challenges exist to have access to this right.

Pushbacks: People who experienced pushback have the right to legal representation. However, practical arrangements can limit this right. For instance, bureaucratic procedures can obstruct the registration of the power of attorney when the person is outside the territory. In this case, especially when the asylum seeker does not have a valid ID, the procedure becomes complex (Interview 1). However, recent jurisprudence has facilitated this aspect, with the possibility of requesting a power of attorney before completing all formal bureaucratic procedures. This can help reduce waiting times in accessing justice. Additionally, when people are subject to summary returns, the short time in which these procedures occur, often directly from the border, can limit the concrete possibility of accessing legal representation. For instance, due to the very tight deadlines for validating deportation and detention orders, it may occur that the person does not have access to their representatives in time. Indeed, the list of lawyers appointed for legal aid does not correspond to the list of lawyers who accept power of attorney through free legal aid. Thus, the judge can appoint a lawyer, but if the person needs to ask for free legal aid, this lawyer will not represent the appellant, leaving the individual without proper legal representation (Busatta 2017).

Pullbacks: same number of pushbacks.

Detention: In both de facto and formal detention places, interactions between migrants and lawyers can be challenging and may limit access to justice. As far as administrative detention for asylum seekers and migrants in pre-removal centres or in other detention facilities (see the accelerated border procedure, please look at “Pushbacks”). Indeed, migrants and asylum seekers in detention facilities

Externalization of asylum processing: The extra-territorial dimension, in this case, can limit access to proper legal representation. Indeed, as mentioned in Part I, lawyers can be reimbursed for travel in Albania only up to a maximum of € 500. Considering the short deadlines, it is extremely challenging for lawyers to represent asylum seekers and migrants in person. As reported by some monitoring bodies¹⁷, over the course of the three recent missions, serious deficiencies emerged in upholding the fundamental rights of migrants and asylum seekers transferred to Albania under the Italy-Albania Protocol. Protection agencies were unable to make contact with migrants, while lawyers had no access to their clients before the validation hearing, which takes place under extremely tight deadlines and with court-appointed defenders assigned only hours beforehand. The law stipulates that the lawyer must remain with the judge, not the client, reducing the defence to a mere formality rather than a substantive one—despite its impact on personal freedom. Additionally, the mere seven-day deadline to appeal a negative decision from the Territorial Commission makes it nearly impossible to prepare an effective defence, especially given the geographical distance and the lack of guarantees for the confidentiality of remote communications. Asylum seekers also do not receive adequate information about the legal framework governing their application, undermining their ability to properly articulate their need for protection. The selection of lawyers, organized on a voluntary basis by the Rome Bar Association, does not ensure specific expertise in

¹⁷ <https://www.asgi.it/asilo-e-protezione-internazionale/nuova-strategia-per-i-trattenimenti-fuga-dal-giudice-specializzato-e-dalla-corte-di-cassazione/>

immigration and asylum law—neither for validation hearings nor for appearances before the Territorial Commission, where no court-appointed defender is provided. This effectively hollows out the right to asylum and the right to an effective appeal, as required by EU regulations, leaving asylum seekers vulnerable to inadequate and potentially incompetent legal representation.

Procedural barriers: As mentioned before (costs of legal representation), access to free legal aid has been reduced for asylum seekers, especially in cases where the application is rejected as manifestly unfounded, as is often the case for applications based on the concept of safe countries of origin. This means that, for certain groups of asylum seekers (those who receive a manifestly unfounded decision), access to effective legal remedy is influenced by access to legal representation.

Externalization of asylum processing: There is no guaranteed access to qualified legal counsel or protective organizations during asylum proceedings. The selection of lawyers is unclear, and many may lack expertise in immigration and asylum law. Particularly, as reported by the “*Tavolo Asilo e Immigrazione*”,¹⁸ the selection of lawyers for asylum seekers under the Italy-Albania protocol is organized by the Rome Bar Association on a voluntary basis, with a weekly rotation of 20 lawyers every three months—but only for detention validation hearings. No public defenders are provided for hearings before the Territorial Commission, either before or after the session, effectively undermining the right to asylum and the ability to appeal negative decisions as required by EU law.

The criteria for appointing public defenders for validation hearings remain unclear, despite the Bar Association’s voluntary roster. There is no guarantee that these lawyers have expertise in immigration and asylum law. Additionally, for appeals against negative decisions by the Territorial Commission, asylum seekers must secure their own legal representation, with no right to a public defender. The process for providing lawyer referrals is opaque, further compromising the right to a fair defence and risking representation by unqualified attorneys.

In Albania, they encounter additional obstacles related to the extra-territorial dimension as well as practical arrangements such as reimbursement procedures for lawyers’ travels.

C. Lodging the appeal

Pushbacks: One of the main challenges in lodging an appeal for pushbacks pertains to people who are outside the territory. In this case, the procedure for obtaining the power of attorney while not being in the territory could be challenging. The person could not have a valid ID document, which is needed to formalize the request for a power of attorney. Among the most prominent challenges is the formalization of the power attorney outside the territory, due to the need for documentation for lodging the appeal, and particularly a valid ID document, which refugees along the route often do not have or lose. Moreover, they can be in very precarious conditions and sending to lawyers or receiving documentation could be extremely difficult. Additionally, lawyers need to collect evidence to avoid the appeal being judged as inadmissible for lack of proof (Interview 1, Italian lawyer).

For summary returns of migrants who arrived at the Italian borders in hotspots, the main difficulties in lodging an appeal are the short time available, inadequate legal representation, and limited access to information about their rights and adequate interpretation services (See the sections above). Despite judicial scrutiny over these procedures being guaranteed by law, as well as the presence of legal representation, the combination of these factors in practice limits migrants’ ability to challenge detention and deportation measures, risking being returned and violating the principle of non-refoulement.

Pullbacks: see pushbacks if the appellant is outside the territory.

Detention: As mentioned earlier, in the case of detention in hotspots, despite the law providing for a mechanism of detention for identification purposes, in practice, the competent authorities do not

¹⁸ <https://www.asgi.it/asilo-e-protezione-internazionale/albania-monitoraggio-diritti-tavolo-asilo/>

formalize the detention of migrants in these locations. It represents a strategy to overcome judicial scrutiny and respect for deadlines and guarantees provided by Article 13 of the Italian Constitution. This means that in case of violations of the right to asylum occurring in hotspots, where it is not possible to formalize the asylum application, which can be done on the mainland after completing the identification procedure, asylum seekers experience a lack of judicial accountability and extreme difficulties in lodging an appeal. Indeed, violations (e.g. lack of proper information to the right to asylum) are often challenged in a second stage, when potential asylum seekers – wrongly categorized as irregular migrants due to unlawful practices in hotspots – receive a delayed deportation measure and they arrive in front of the judge of the Peace for the validation of the deportation measure, and often the validation of the detention measure in the pre-removal centre (see for instance the case Court of Cassation, Judgement no. 32070/2023 described in Part II). These procedures require de facto judicial scrutiny and legal representation; thus, only on this occasion can asylum seekers challenge the violations of their right to asylum that occurred in the hotspot and upon arrival on the mainland. However, the extent to which this means access to an effective remedy depends on the several constraints and obstacles described above. The same concerns the formal detention of asylum seekers in the accelerated border procedure, or asylum seekers in pre-removal centres, which can access judicial scrutiny automatically, but in practice, their effective remedy can be limited due to strict time constraints and limited in accessing quality interpreters and legal representation, especially because in detention, contacts with lawyers and clients is extremely challenging and often occur in remote.¹⁹

Externalization of asylum processing: the main challenges in lodging the appeal concern the accelerated border procedure under which asylum seekers are subject in Albania. The procedure is so fast (as described below) that accessing proper information and being aware of the different procedures overlapping can be challenging for traumatized migrants, rescued at sea or transferred from Italian pre-removal centres to Albania. For instance, according to the monitoring conducted in February 2025 by associations active in the field,²⁰ asylum seekers were not aware of the difference between the hearing for the validation of the detention order and the procedure concerning their asylum application, and particularly the appeal against the negative decision of the appeal and the request for the suspensive effect of the appeal, which is no more automatic in the accelerated border procedure. Additionally, since the person has only 14 days for lodging the appeal against the negative decision of the first instance decision and the request of the suspensive effect of the appeal - with also required legal representation expert in asylum law, especially related information of the country of origin judicial debate – the person may find it difficult to respect this time frame or to provide a quality appeal against this decision with this time constraints.

Procedural barriers: Please refer to the section on “Externalization of asylum processing” for information on asylum accelerated border procedures in the Italian territory, as asylum seekers in Italy who are subject to this procedure may also face the same challenges described below. However, it is important to notice that, unlike accelerated procedures in Albania, in the territory, the administrative body responsible for assessing the asylum claim does not respect the strict time limits required by law, and they wait even more than four or five months to receive the first instance decision, which will be appealed in front of the court. Regarding the other procedural barriers (inadmissibility of subsequent application under the deportation order), it is possible to assume that the asylum seeker may have difficulties reaching the legal representative to lodge the claim before the deportation order is executed. Regarding access to the appointment and formalization of the asylum application, the formalization of the appeal is not different from other urgent measures in civil proceedings. There are no significant obstacles to accessing the court and lodging the appeal, even if one contacts legal representatives (available for free legal aid) who can pursue this legal claim. The large number of people affected by bureaucratic obstacles has led legal associations and other civil society organizations to develop strategic litigation cases, which can also

¹⁹ Veglio, M. (2023) La bestia tentacolare, *Questione Giustizia*. Available online: <https://www.questionegiustizia.it/articolo/la-bestia-tentacolare>

²⁰ <https://www.asgi.it/asilo-e-protezione-internazionale/albania-monitoraggio-diritti-tavolo-asilo/>

involve selecting the strongest cases, thereby contributing to unequal access to justice, as seen in other migrant rights cases (Bonizzoni and Hajer 2022).

Implications of legal aid

The procedural aspects of lodging an appeal in asylum access adjudication significantly influence whether and how judicial or quasi-judicial bodies consider cases. The challenges vary depending on the context—such as pushbacks, pullbacks, detention, or externalized asylum processing—and often create systemic barriers that limit access to effective remedies.

Individuals subjected to pushbacks or pullbacks are often physically outside the territory, making it nearly impossible to initiate an appeal. The lack of a valid ID document—common among refugees—prevents the formalization of a power of attorney, a prerequisite for legal representation. Lawyers must gather evidence to avoid appeals being dismissed for lack of proof, but communication and documentation exchange are severely hindered by the appellant's precarious conditions and geographical barriers. Even where legal representation is theoretically guaranteed, the combination of short timeframes, limited access to information, and inadequate interpretation services undermines the ability to challenge detention or deportation, risking violations of the non-refoulement principle. The barriers are amplified when the appellant is outside the territory, as procedural safeguards are very difficult to access.

Regarding detention, authorities often avoid formalizing detention in hotspots, bypassing judicial scrutiny and constitutional guarantees (Article 13 of the Italian Constitution). This creates a legal void where violations of asylum rights go unchallenged until later stages, such as deportation validation hearings. In this case, asylum seekers may only challenge violations during deportation validation, but by then, the procedural constraints (time limits, limited legal aid, and remote access to lawyers) reduce the likelihood of an effective remedy. More broadly, in all detention facilities, contact with lawyers is restricted, and the quality of interpretation and legal representation is often inadequate, further limiting the ability to lodge a robust appeal. Despite the challenges in accessing justice existing in both formal and de facto detention, the lack of formal detention in hotspots contrasts with other contexts where detention is formally recorded, allowing for at least nominal judicial oversight.

In the externalization of asylum processing, the accelerated border procedure in Albania – as in the Italian territory – see procedural barriers - allows only 14 days to lodge an appeal, including the request for suspensive effect. This is insufficient for traumatized migrants to understand the process, gather evidence, or secure specialized legal representation. Additionally, the issues regarding detention also arise here since asylum seekers are subject to detention measures under the accelerated border procedure. In the short time frame in which the procedure occurs, asylum seekers often confuse the validation of detention orders with asylum appeal procedures, leading to missed deadlines or poorly prepared appeals, and this can affect the stage of lodging the appeals, undermining the awareness of the applicants towards the claims they are making in front of the judicial authorities. The lack of clear information about rights and procedures, compounded by language barriers and trauma, results in many missing the opportunity to appeal effectively. The externalized procedure in Albania is faster and more rigid than domestic accelerated procedures, where administrative bodies often exceed legal time limits, paradoxically providing more time (though still inadequate) for appeal preparation.

Regarding procedural barriers, asylum seekers face difficulties in reaching legal representatives before deportation orders are executed, especially for subsequent applications deemed inadmissible. These challenges are exacerbated in the context of language barriers and difficulties in obtaining accurate information due to the restricted accessibility of detention centres. When it comes to access to the appeal against violations in the formalization of the asylum application, no strong procedural barriers have been found, despite the common ones (difficulties in obtaining free legal aid and proper information about their rights, also due to linguistic barriers). Regarding other barriers, in the context of barriers (e.g., pushbacks) that affect many people, civil society organizations and legal associations, which often have limited

resources, tend to prioritize “strong” cases for strategic litigation, which can create disparities in access to justice. This approach, while effective for systemic change, may leave many vulnerable individuals without representation. The selection strategies of legal associations and the impact of bureaucratic obstacles on access to justice require further investigation, as current data are limited.

D. Hearing

Pushbacks: For cases concerning summary returns at the border, according to bilateral agreements, at first instance, the law does not impose an obligation on the judge to conduct an oral hearing, especially in the presence of the appellant. Indeed, the judge can decide on a case-by-case basis whether to inquire into the appellant, as well as hear testimonies to acquire additional information beyond that provided in the written documents. Indeed, these are appeals for urgent measures, and they provide for a swift (albeit delayed) process. In practice, in the cases included in this analysis (see Part II), judges have not heard the appellant, both when they were in Italy and outside the territory. Instead, in one case, the judge decides to hear crucial testimonies that were essential for assessing the human rights violations experienced by the appellant in Bosnia after being pushed back from Italy, Slovenia, and Croatia (Tribunal of Rome, *judgment no. 7045/2021*).

Regarding summary returns due to the lack of proper information on the right to asylum in the hotspots, as mentioned, these violations emerge in hearings for the validation of deportation measures and detention orders, which provide for a mandatory hearing with the presence of a legal representative. As mentioned also in “detention”, when the person is subject to detention measures in pre-removal centres, the hearing almost always occurs online. This procedure, with language barriers due to a lack of interpretation services, and obstacles in actual legal representation, as already mentioned in the sections above, can represent a limit to the actual role of the presence of the migrant or asylum seeker at the hearing, who may not be fully aware of the procedures they are experiencing²¹.

Additionally, it displays a standardized and bureaucratic behaviour within a few minutes, at least based on the limited information available on this matter. For instance, research conducted on the hearings concerning the validation orders in the pre-removal centre of Turin shows that 35% of hearings did not exceed 5 minutes, 64% of cases lasted 10 minutes, and only 1% of the hearings lasted more than one hour. The migrant is often present, despite the stress that, in some cases, there is a risk of violating the effective remedy by limiting the person’s ability to appear before their judge. For instance, in some cases, this occurred during the pandemic, when people under sanitary restrictions were not given the opportunity to postpone the hearing by the judge.²²

Pullbacks: In cases of pushbacks, hearings are crucial for assessing evidence. These proceedings often involve testimonies during hearings. Instead, the presence of appellants in hearings varies among cases, and it is not often included. More research is needed to understand the dynamics of the hearings in these complex proceedings, where the collection of evidence is crucial for avoiding the prescription of the case.

Detention: In the formal detention of migrants and asylum seekers (in accelerated border procedures or pre-removal centres), the validation of the detention order requires a hearing, during which the law provides for the presence of a legal representative and an interpreter when the appellant is present. The law does not provide for the mandatory presence of the appellant, but in most cases, the hearing includes the presence of the asylum seeker/migrant. Since the COVID-19 pandemic, a widespread practice has been to transfer all these hearings to the online platform, both in front of the Civil Judge responsible for validating detention orders of asylum seekers and the Judge of the Peace responsible for validating detention orders of migrants. As mentioned before, difficulties in obtaining proper legal representation (especially in the case of the request for free legal aid) produce challenges in the effective representation

²¹ <https://www.asgi.it/wp-content/uploads/2024/05/Lexilium-2024-def.pdf>

²² <https://www.asgi.it/wp-content/uploads/2024/05/Lexilium-2024-def.pdf>

during these hearings. Indeed, asylum seekers and migrants often see directly at their hearing who is appointed just before the hearing, with a limited possibility to get in contact with their client in advance. Despite some similarities in the procedures before the two judicial bodies responsible, relevant differences emerge, especially in the phase of the hearing among the involved parties. Until 2025, as mentioned in part II, the validation of detention orders for asylum seekers was under scrutiny of lower civil courts (their competence has been transferred to the Courts of Appeals at the end of 2024), while the validation for migrants in pre-removal centres was under the scrutiny of the Judge of the Peace. Although further research is needed, scholars have demonstrated that the different practices employed by these bodies during the hearing also had a significant impact on the adjudication stage. Particularly, research conducted in Rome in 2017 on more than 140 proceedings shows that the Judge of the Peace asked very short and standardized questions to the migrant during the hearing, without the possibility to disclose important aspects, such as possible violations of the non-refoulement principle. Instead, in front of the civil judge, the hearing leaves more space for declarations from the asylum seeker, giving them a greater possibility to disclose evidence that can lead to rejecting the validation of the detention order (Asta and Caprioglio 2017). More research is needed in this direction, considering the change in the institutional setting, which transfers the competence for validating detention orders to the Courts of Appeals, in most cases, the penal sections. This means that we now have higher judges, rather than specialized judges, coming from the criminal system, rather than specialized lower-level civil judges. Additionally, it would be relevant to further investigate the situation at the level of the Judges of the Peace, particularly in light of the increasing specialization of these actors and the recent actions of law mobilization, which have questioned the constitutionality of the entire legal system regulating migrants' administrative detention in Italy.²³

Externalization of asylum processing: For the hearing during the validation of the detention order, see the section “Detention” above. Indeed, asylum seekers in Albania are subject to the same rules regarding the detention of asylum seekers under the accelerated border procedure. Examining recent jurisprudence in this regard, hearings were not conducted with the presence of the asylum seeker in all cases. However, in the first decisions of the Tribunal of Rome, the hearing included the presence of the asylum seeker online. The evidence that can be provided during the hearing by the lawyer and the asylum seeker can be crucial, especially regarding the individualized safety situation for the asylum seeker in their country of origin. The knowledge that lawyers can mobilize during the hearing on the appellant's situation and the country's conditions is detrimental, especially considering the limited time available for the lawyer to prepare the case in advance. Additionally, the evidence that the appellant can provide during the hearing regarding their personal safety is crucial for the decision not to validate the detention order, as their country of origin cannot be considered safe for the appellant (see, for instance, Tribunal of Rome, *Judgment No. 42251/2024*). The hearing can also play a crucial role in the appeal against the administrative body's decision and the determination of the suspensive effect of the appeal. Indeed, it is possible to hypothesize that the few days available for lodging an appeal (14 days) lead lawyers to use the hearing to increase the documentation and evidence to strengthen their line of defence, which requires study and time to be collected.

Procedural barriers: Regarding the asylum border procedure, refer to the paragraph below on “Externalization of asylum processing,” as the dynamics are the same when the procedure applies in Italian border zones. Finally, regarding access to the appointment and the formalization of the asylum application, in the selected decisions, the hearing was important for adding evidence to the claim, including the declarations of the asylum seekers made during the hearing. However, more research is needed to better understand the role of the hearing.

As described below, the law does not mandate oral hearings for appeals against summary returns at the border based on bilateral agreements (with Greece and Slovenia), leaving the decision to the judge's discretion. This discretionary approach can both represent an obstacle for the appellant, who can face difficulties in meeting their judge, but at the same time, it can be an opportunity to speed up the

²³ <https://www.questionegiustizia.it/articolo/nota-sent-96-2025>

adjudication process, especially when the person is located outside the territory in very precarious conditions. For instance, in one notable case (Tribunal of Rome, *judgment no. 7045/2021*), the judge chose not to hear the appellant but to hear the testimonies, which were pivotal in assessing human rights violations. This suggests that hearings, when conducted (even if they do not include the appellant), can significantly influence outcomes by allowing for the presentation of critical evidence. However, as described in part II, this decision was overturned by the same tribunal in a different conformation of judges, arguing that not enough evidence was presented to the court to document the individual violation. Despite assessing the insufficiency of the evidence provided, the jury did not allow for the possibility of adding new evidence or holding a hearing to clarify it, resulting in a negative outcome of the decision. Thus, it is possible to argue that the decision to conduct (and in which way) the hearing can play a role in the adjudication process. The same emerges for summary returns after delayed deportation orders issued to migrants disembarked in hotspots. As shown in part II, these people arrive in front of the judge only after the deportation order is issued – after they have been categorized as irregular migrants. The hearing can play a crucial role, as it is the occasion on which the person can argue that they have not received proper information about their right to asylum in the previous phases and have been wrongly identified as an irregular migrant. In the hearing, many appellants – especially with the support of quality legal representatives – disclose these procedural deficiencies and can thus formalize their intention to seek asylum. However, how the hearing is conducted and how claims during the hearing are evaluated by the judge of the peace make a significant difference in the right to access asylum and in asylum access adjudication, thereby avoiding or favouring summary returns of these migrants.

The same occurs in detention cases, where some structural deficiencies can limit effective remedy: since COVID-19, hearings are often conducted online, while this ensures procedural continuity, it introduces practical challenges; inadequate interpretation services can hinder effective communication; asylum seekers often meet their legal representatives just before the hearing, limiting preparation and the ability to present a robust case. Research indicates that the type of judge (e.g., a Judge of the Peace vs. a civil judge) affects the depth of inquiry during hearings (Asta and Caprioglio, 2017). For example, civil judges tend to allow more detailed testimonies, which can uncover violations of the *non-refoulement* principle, while Judges of the Peace may follow a more standardized, less thorough approach.

Concerning the externalization of asylum processing, Asylum seekers in Albania face similar procedural rules as those in Italy. While hearings sometimes include the appellant's online presence, the limited time for legal preparation and evidence collection can weaken their case. Hearings are crucial for presenting evidence about individualized safety risks in the country of origin within the border procedure, but time constraints and lack of preparation can limit their effectiveness. The lack of suspensive effect of the appeal can risk, in this context, violations of the principle of *non-refoulement*. The same occurs in asylum accelerated procedures within the territory, as well as at the borders.

E. Deliberation

Pushbacks: The decisions on summary returns through the bilateral agreements at first instance occur in a composition of a single judge, and then, if the first instance decision (interim measure) is appealed, the review is made by a panel of 3 judges, from the same court (different composition). No formal dissenting opinions exist in the judgment. Then, the case can follow a regular procedure, passing through the Court of Appeal (with a one-judge panel) and the Court of Cassation, with a panel of 3 or 5 judges. In cases of summary returns that can occur through delayed deportation orders issued to people disembarked in hotspots, the first instance decisions are taken by a “*giudice di pace*” (who is not a professional judge but a lawyer appointed to the function of judges). When a decision is appealed before the Court of Cassation, if decided in normal procedure, the panel is composed of three judges. If the decision is made in the United Sections to solve particularly controversial legal issues, the panel is composed of 5 judges.

Pullbacks: In cases of pullbacks, both civil and criminal courts may be involved. However, in general, at the first instance in both cases, the decision is made by one judge. At the appeal stage, in the case of criminal courts, the appeal is decided again by a single judge in the Court of Appeal. The following appeal was presented to the Court of Cassation by a panel of three or five judges. Regarding the appeal in civil proceedings, for instance, those involving a request for remuneration of damages, it follows the same path described for pushbacks in the paragraph below.

Detention: In formal detention in pre-removal centres for migrants and asylum seekers, the validation of the detention order is made by a single judge's decision (in the case of migrants, by the judge of the peace, and in the case of asylum seekers, by the civil judge, currently a judge of the Court of Appeal). When the decision is appealed, it goes to the court of Cassation (penal section) and is decided by a panel of judges (3/5 judges). Regarding other forms of detention, the procedure applied determines the outcome. Often, these cases are decided by a civil judge, with emergency measures (in the specialized court of migration) being handled by a single judge. They can be appealed before the Court of Cassation and decided by a panel of judges (comprising at least three judges).

Externalization of asylum processing: The procedures in Albania are as follows: the validation of the detention order is now decided by a single judge of the Court of Appeal. In case of appeal, it is decided by a panel of 3/5 judges by the Court of Cassation (penal section). The request for the suspensive effect of the appeal, following the negative decision at first instance in the accelerated border procedure, is decided by the lower civil judge in single-judge formation (Section Immigration and Asylum). Then the decision on the asylum appeal (which pertains more to RSD) is made by a panel of three judges in the same lower-level civil court. However, research suggests that a discrepancy exists between law and practice in some courts, where collegial decision-making is rarely in place, with most decisions being made by a single judge without consultation with colleagues (Lacchei 2024).

Procedural barriers: Decisions concerning emergency measures for guaranteeing access to the formalization of the asylum application are decided by a single judge (civil judge of the specialized section), and the appeal can be reviewed by a jury of different judges (3) in the same court. This review decision can be appealed in front of the Court of Cassation (3/5 judges). Regarding the accelerated border procedure, see the section above on Externalization of Asylum Processing. Finally, for the inadmissibility of subsequent applications, the judge can submit the appeal to a panel of three judges from the civil court specializing in asylum and migration.

F. Review of decisions

In the previous paragraph, the review process has already been described according to the single barriers. However, research on the procedural requirements and discretion between law and practice in this regard is lacking from existing sources.

G. Procedures in decentralized states

Although Italy is not a federal state, procedures apply to all of its territory. The legal and judicial system is strongly decentralized, with significant localism and differences across the territory (Verzelloni 2010). For instance, the requirements for obtaining free legal aid depend on the local association of lawyers (Ordine degli avvocati), which adopts very different practices with consequent variation of recognition rates of free legal aid across the country, which can affect the effective remedy for asylum seekers and migrants often without the economic resources to access legal representation (Busatta 2017).

Differences also occurred concerning the hearings. Existing research on hearings in the civil sections specialized in asylum reveals different practices adopted, with courts asking asylum seekers to intervene and request further clarification from the appellant (Lacchei 2023). How these differences occur also in

other proceedings (e.g., validation of detention orders) should be further scrutinized. More research is needed to understand the extent of this divergence in legal aid approvals and hearings how they affect access to justice in asylum cases.

H. Influence of procedures in practice and the role of courts

As already mentioned, there are some divergences between what is prescribed by the law and how procedures are concretely implemented. For instance, divergences in hearings exist and can affect asylum access adjudication, particularly in cases involving the validation of detention orders for migrants and asylum seekers. The time and scrutiny of the hearing, the discretion judges must decide whether and how to conduct the hearing in the presence of the asylum seeker and the migrant, the fact that they occur online, and with limited access to prior legal counselling by lawyers due to time constraints and difficulties in accessing detention facilities, may have an impact on the decision, also leading to summary returns and violation of the right to access asylum. For instance, migrants obtained a delayed deportation order and a detention order because they did not have the possibility to express the intention to seek asylum after disembarkation in a hotspot, which may arrive in front of the judge of the Peace, where the hearing is very short, not detailed, and the decision is standardized, limiting their effective remedy. This summary of judicial accountability can lead to severe violations of the right to asylum, thereby limiting the possibility for asylum seekers to claim asylum (see Court of Cassation, *Judgment No. 32070/2023*). This risk is amplified by the limitations in proper legal representation and the short time constraints characterizing the procedure for validating deportation orders or detention measures.

Another important divergence between practice and law concerns time and delays. We observe that for certain procedures, the administration advocates for expediting the process, respecting, for instance, the short deadlines introduced within the asylum border procedure. In the asylum, the asylum seekers disembarked in Albania according to the Italy-Albania protocol from Autumn 2024 to the beginning of 2025, the administration respected all the deadlines (48 hours for the transmission of the detention order to the judicial authority and 7 days for the decision of the Territorial Commission). As explained before, this led to great confusion for the asylum seekers just rescued at sea, who in a few days were asked to be involved in several different but interconnected procedures (e.g., the formalization of the asylum application in front of the border policy, the interview at first instance in front of the Territorial Commission, the hearing for the validation of the detention order in front of the civil judge, the appeal with a lawyer – in addition to the procedure for legal aid and free legal aid – then the appeal against the negative decision of the territorial commission and the request of the suspensive effect of the appeal with the lawyer (within 14 days) and finally within other 5 days the hearing for the decision of the suspensive effect of the appeal. In approximately 20 days, asylum seekers are subject to an increasingly complex set of procedures, without sufficient time, instruments, and information to be aware of them, especially considering that de facto legal representation (despite being guaranteed) is very limited due to time and spatial constraints. In this context, we can hypothesize that asylum access adjudication strongly relies on the discretionary power of the judge and their evaluation of individual cases, the information and knowledge they are able to collect autonomously, and their willingness to be mobilized in court decisions and during hearings. In this context, specialization can play a significant role because, in this complex procedure, with few guarantees for the asylum seeker, strict time constraints, and limited legal representation, the specialization of the judge becomes crucial. As demonstrated by the literature, administrative effectiveness and specialization in asylum matters – together with the overall political context – influence asylum determination, increasing recognition rates and guaranteeing respect of human rights guarantees despite pressure to speed it up (Van Wolleghem and Sicakkan 2024). In light of this, it would be worth investigating the impact of the change of competence to civil tribunals to criminal courts of appeals, as well as the impact of the judges of the peace specialization on asylum access adjudication.

In other cases, deadlines are not respected – for instance, in accelerated border procedures, the Territorial Commission often does not respect the timeline, and this has a large effect on asylum access adjudication.

For instance, when deadlines are not respected in the transmission of the detention measure to the judicial authority (within 48 hours), judges consider this detention measure not valid. It is likely for this reason – and to avoid judicial scrutiny – that in hotspots, no detention measures are issued, as this would require additional workload for the administration to respect the time limits prescribed by law (Veglio 2023). Regarding the asylum border procedure, delays also impact asylum access adjudication, as judges consider asylum applications at the appeal stage as no longer accelerated, but rather as a regular procedure when time limits imposed by the administration are not respected. This led to all accelerated asylum procedures arriving in court (after the appeal) being considered *de facto* as regular procedures. Despite discrepancies and different approaches being adopted at the court section level, following the Court of Cassation's decision (*judgment no. 11399/2024*), all courts adopted this approach.

Finally, regarding legal representation, discrepancies exist between the law and practice in the procedure for appointing a legal representative. Despite legal aid being provided by law, some practical arrangements in the appointment (especially for those – the majority – asking for free legal aid) can represent an obstacle to proper legal representation (See Legal Aid).

Regarding national bodies, important actions have been taken to guarantee legal aid to people who have experienced pullbacks and pushbacks and who are located outside the territory. Particularly, strategic litigation pushed forward by the legal association ASGI, and particularly by the projects Sciabaca & Oruka and Medea, facilitates the formalization of the power of attorney for people outside the country. Particularly, this line of jurisprudence assesses the possibility of lodging an appeal for urgent measures even before completing all the formal requirements provided by law, which can be finalized at a second moment. Particularly, in legal cases involving foreign individuals—such as appeals for pushbacks and summary returns—a common issue arises when the person lacks an official ID document. While foreign-issued IDs are valid, questions may emerge about the legitimacy of a power of attorney (*procura alle liti*) if the lawyer does not receive a copy of the client's ID, especially when it is signed remotely via video call. However, according to judicial interpretation, Italian law does not require lawyers to submit their client's ID document to the court. Any formal defects in the power of attorney can be corrected later using standard legal remedies, as provided by Article 182(2) of the Italian Code of Civil Procedure. This ensures that procedural errors do not automatically invalidate the representation.²⁴

Regarding *de facto* detention, the jurisprudence has developed to enlarge the possibility for monitoring bodies and legal representatives to access *de facto* detention places, such as hotspots and airport zones, despite this access continuing to be limited. As explained by Leone (2025), this jurisprudence developed among various judicial bodies, starting from administrative courts and particularly Territorial Administrative Regional courts (TAR). Then the jurisprudence has also enlarged, thanks to interventions from supranational courts, and particularly the ECtHR (*M.A. 17, A.B. 18, and A.S. v. Italy, J.A. and others v. Italy*)²⁵. Recent important decisions also came from civil courts (and particularly the specialized courts on migration and asylum) that, since the beginning of 2025, were responsible for validation of detention orders of minors wrongly detained in hotspots and first reception centres for adults (Tribunal of Catania, 5 October 2024²⁶, again in line with ECtHR jurisprudence (23 November 2023, *A.T. and others v. Italy*).

Regarding formal detention of migrants in pre-removal centres, the Italian Court of Cassation, relying on rulings from the European Court of Human Rights (e.g., *Hokic and Hrustic v. Italy* and *Seferovic v. Italy*), expanded the scope of judicial review in detention validation cases. According to the Court, judges must not only verify the legal conditions for detention but also assess the validity of the underlying expulsion order, as it directly affects the lawfulness of detaining an individual. This approach aligns with the Italian Constitutional Court's earlier stance (*Judgment No. 105/2001*), which emphasized that detention is justified only if the expulsion order is lawful (Veglio 2022). Recent case law further clarifies this principle. For

²⁴ http://asgi.it/wp-content/uploads/2023/06/MANIFESTO-ASGI-2023-13-giugno-2023_VER3.pdf

²⁵ https://rivista.eurojus.it/laccesso-delle-associazioni-agli-hotspot-la-giurisprudenza-amministrativa-come-strumento-di-trasparenza-e-tutela-dei-diritti-dei-migranti/?generate_pdf=9803

²⁶ <https://www.asgi.it/wp-content/uploads/2024/03/sentenza-cifali-.pdf>

example, expulsion orders issued without informing the individual of their right to seek international protection, or without considering family ties or alternative measures to detention, are deemed unlawful. The Court of Cassation now requires judges to conduct a thorough review of the entire expulsion procedure, including the necessity of detention, to ensure that fundamental rights—such as access to asylum—are protected (Veglio 2022²⁷). This jurisprudence increased judicial accountability over non-refoulement in deportation cases.

Concerning the externalization of asylum processing, and more broadly, the application of the accelerated asylum procedure in Albania and Italian territory, recent jurisprudence has strongly shaped procedural guarantees in two ways. First, all the lines of jurisprudence concerning the safe country of origin (see Part II) had a significant impact on asylum access adjudication, substantially leading to the failure, at least for the time being, of the initial plan of externalization. The judges, in validating detention orders, argued that the border asylum procedure was inapplicable to asylum seekers in Albania because their country of origin could not be considered safe. Also in this case, it is possible to trace an important connection with the supranational jurisprudence and particularly with the CJEU on the interpretation of the concept of safe countries in accelerated procedures (see relevance of the CJEU judgement *C-406/22*, quoted also by the Tribunal of Rome Judgement *no. 42251/2024*, mentioned in Part II). The recent joint cases *C-758/24 (Alace) and la causa C-759/24 (Canpelli)* of the CJEU confirm the restricted interpretation of the concept of safe country – excluding countries with exceptions of groups of people in addition to territorial exceptions- at least up to the implementation of the new regulation in 2026. Another important interpretation of the jurisprudence, which substantially reduced the application of border accelerated procedures in the territory, concerns the deadlines for the administration. According to this line of jurisprudence (confirmed by the Court of Cassation, *judgment no. 11399/2024*), the lack of respect for deadlines in the accelerated procedure by the administration automatically transforms the procedure into a regular one, with consequences for new deadlines and procedural guarantees to the asylum seeker, especially regarding the suspensive effect of the appeal, which becomes automatic.

II. JUDICIAL OR QUASI-JUDICIAL BODIES IN ACCESS TO ASYLUM

A. Institutional configuration

- *First instance judicial or quasi-judicial body/bodies*: as mentioned in part II, at first instance, various judicial bodies intervene in asylum access adjudication. First, there is the involvement of lower civil courts (particularly specialized sections on asylum and migration). These bodies were created in 2017 with the idea of having specialized judges dealing with asylum and migration cases. These courts are mainly responsible for the RSD process (at the appeal stage), but they can have a role in assessing the barriers to asylum. First, they are responsible for assessing human rights violations and guaranteeing compensation for these violations in cases of pushbacks and pullbacks. Second, they are responsible for appeals under the asylum border procedure, particularly deciding on the suspensive effect of these appeals. This means that courts are asked to decide if the individual, after receiving a negative decision at the administrative stage and lodging an appeal, has the right to remain in the country while waiting for the court decision at the second instance. This decision is crucial for the effective remedy and the respect of the principle of non-refoulement. Third, these institutions decide on urgent measures concerning obstacles faced by asylum seekers in lodging the asylum application (e.g., delays or obstacles in obtaining an appointment at the police office for asking for asylum). Finally, since 2024, they were responsible for deciding on the validation of detention orders of asylum seekers (e.g., asylum seekers in pre-removal centres or asylum seekers

²⁷https://flore.unifi.it/bitstream/2158/1327194/1/SSM_Quaderno_22%20pagg%20400%20con%20segnalibri%20%281%29.pdf

subject to the asylum border procedure since 2023). This competence was moved to the Courts of Appeals, which are higher courts deciding on first instance matters. This choice is peculiar, since it represents an exception in the judicial system and goes in contrast with the specialization aim. Indeed, the Courts of Appeals are not specialized in migration and asylum matters, and they have not dealt with these issues since 2017 (at least as far as asylum determination is concerned). Criminal courts of appeals were instead accidentally involved in migration issues in criminal cases, at least for cases directly concerning procedural rights of migrants and asylum seekers and asylum law.

However, lower criminal courts are crucial actors in some fields of access to asylum, and particularly, criminal courts have been involved in cases of pullbacks (as described in part II). Additionally, the judge of the Peace is involved in the validation of detention measures of migrants who have not formalized the asylum application and the delayed deportation orders, which may lead to summary returns without the possibility to ask for asylum (e.g., people arrived in hotspots, considered irregular migrants without receiving proper information about their right to asylum – see Part I). Finally, administrative courts can be involved in various ways. First, the TAR (Territorial Regional Administrative court is responsible in case of immediate deportation orders. However, cases in which these deportations resulted in a violation of the right to access asylum have not been included in the report. The same for decisions that refer to access to de facto detention places for legal representatives and monitoring bodies, and for decisions regarding the confiscation of NGOs' ships active in sea and rescue operations, while a broader framework of strong criminalization of these actors (see Prevention of sea and rescue operations)

- *Second instance judicial or quasi-judicial body/bodies:* despite the recent reform in 2025 gave the competence of first instance judicial decision to the Court of Appeals, in all cases of the validation of detention orders of asylum seekers, these courts in the Italian judicial system are usually higher courts, responsible for second instance claims. For example, when lower civil or criminal courts decide on cases on pushbacks and pullbacks, these decisions can be challenged at the higher level, by the Court of Appeal (criminal or civil sections). However, in some cases, the usually applied second instance stage is not provided in some migration and asylum-related cases, representing an exception in the judicial system. For instance, regarding detention measures and delayed deportation orders of migrants, these are direct challenges at the level of the Court of Cassation (usually responsible at the last, third stage). Additionally, in the accelerated procedures, after a first decision at the appeal stage before the lower civil judge, the asylum seeker can appeal only directly to the Court of Cassation. Finally, when administrative courts are involved, the decisions can be challenged in front of the Council of the State.
- *Third instance judicial or quasi-judicial body/bodies:* the third instance exists only in some asylum access cases. Particularly, in criminal proceedings or in civil proceedings, when urgent measures are asked for compensation of severe violations of human rights (e.g., in pushback cases).

The implications of this institutional configuration are firstly the fragmentation, with various courts, with also various levels of specializations involved. The case of the validation of detention orders and deportation orders is emblematic of this fragmentation, with the involvement of the Judge of the Peace, Courts of Appeals, and administrative courts. Additionally, there is the increasing trend of reducing the judicial remedies available, leading to the migration and asylum field exceptions compared to the standard functioning of the judicial system. This is represented by the reduced access to judicial remedies at the third instance.

Competences

- *First instance judicial or quasi-judicial body/bodies:* judicial bodies are always responsible for deciding on the merits of the case, and they directly make the decision.

- *Second instance judicial or quasi-judicial body/bodies:* only when the Court of Appeal is involved in the second instance, there is a decision on the merits of the case, while when the responsibility is to the Court of Cassation, the decision is only on law. The court of appeals always makes a direct decision. The court of Cassation decides directly whether the ground of appeal does not require further findings of fact and whether the matter can be resolved by application of the law alone. Otherwise, if there are radical defects in the trial or it is a question of deciding on the merits, the Court quashes the sentence and sends the documents to another judge.

When administrative justice is involved, the Council of State also decides on the law. In all cases, in certain circumstances, it can refer the case to the judge of first instance (the TAR) only if essential guarantees of the trial have been violated, such as the absence of cross-examination, the violation of the right of defence, or due to nullity of the sentence, jurisdiction, or extinction of the judgment.

- *Third instance judicial or quasi-judicial body/bodies:* the Court of Cassation, when it decides in third instance, only decides on law. It decides directly whether the ground of appeal does not require further findings of fact and whether the matter can be resolved by application of the law alone. Otherwise, if there are radical defects in the trial or it is a question of deciding on the merits, the Court quashes the sentence and sends the documents to another judge.

B. Independence

Italy's judiciary is constitutionally designed to operate independently from political influence, a principle enshrined in the Italian Constitution of 1948. Particularly, the Italian Constitution (1948) guarantees the independence of the judiciary (Article 101), stating that judges are subject only to the law and are not subordinate to any other power. The judiciary's autonomy is safeguarded through a series of institutional mechanisms, including reforms that guarantee the self-governance of the judiciary, especially since the 1990s. The High Council of the Judiciary (*Consiglio Superiore della Magistratura*, or CSM) oversees the appointment, promotion, and discipline of judges. This body, composed primarily of judges elected by their peers, ensures that judicial careers are shielded from direct political interference. Judicial associations have played a significant role in these reforms (Di Federico 2022). Initially focused on improving working conditions, these associations have evolved to advocate for more radical reforms, including the adoption of activist conceptions of the judicial role (Guarnieri forthcoming). In Italy, the *Associazione nazionale magistrati* (ANM) has been particularly influential, with organized groups within the association advocating for progressive reforms (Guarnieri forthcoming).

As is widely known, the Italian political system is, and was, characterized by an enduring conflict between right-wing political parties and the judiciary (Dallara 2015). As analysed in Dallara (2015), a distinguishing feature of the Berlusconi political era (1994- 2013) has undoubtedly been the conflict with the judiciary. Despite repeated efforts by the center-right majority to alter judicial procedures and structures in ways that would benefit Silvio Berlusconi in resolving his legal issues—often referred to as *ad personam* laws—the judiciary ultimately managed to curb these attempts. Many of these laws were either struck down by the Constitutional Court or rendered ineffective during implementation. Furthermore, although reforms aimed at undermining the judiciary's independence were frequently proposed, none were successfully implemented. Nevertheless, the Italian judiciary maintained its role as an effective system of checks and balances, thanks to the robust institutional framework established by the 1948 Constitution. However, Berlusconi's persistent criticism of the judiciary significantly shaped public perception, deepening the divide between opposing views of the justice system (Dallara 2015). His anti-judicial rhetoric resonated strongly with center-right voters, creating a lasting and polarized debate on the issue of justice. Recent scandals involving the Italian High Judicial Council (HJC) have further polarized public opinion (Catino and Dallara 2021; Catino, Dallara, and Rocchi 2022). These scandals revealed deviant practices in the selection of court presidents, highlighting a gap between formal and real judicial career management

(Catino and Dallara 2021). Political parties, particularly from the right wing, have called for judicial reforms to address these issues, but no substantial reforms have been implemented due to various factors, including the COVID-19 pandemic (Catino and Dallara 2021; Catino, Dallara, and Rocchi 2022). The debate over the separation of careers between judges and prosecutors in Italy centres on the need to strengthen judicial impartiality and the appearance of fairness, while addressing concerns about the blurred boundaries between these two roles within a unified judiciary. Proponents argue that separating careers would prevent judges from being influenced by prosecutorial perspectives, ensuring their neutrality and reinforcing the principle of a fair trial—particularly in light of the 1999 revision of Article 111 of the Italian Constitution, which emphasized the judge’s duty to be both independent and impartial. However, the issue has struggled to gain traction among the public, as evidenced by the record-low voter turnout (20.93%) in the 2022 referendum on the matter. Current reform proposals extend beyond mere career separation, targeting broader changes such as the composition of the High Council of the Judiciary (CSM), the obligatory nature of criminal prosecution, and even the elimination of shared disciplinary oversight. Critics caution that these reforms risk creating a system where prosecutors, detached from judicial culture, might prioritize convictions over justice, potentially undermining the balance of power within the legal system. The Constitutional Court has clarified that separation can be achieved through ordinary legislation, provided the judiciary remains a unified order. However, skeptics—including some legal scholars—advocate instead for mandatory rotation between judicial and prosecutorial roles to cultivate a shared legal ethos. While supporters frame separation as a way to restore political control over a judiciary perceived as overly autonomous, opponents warn of unintended consequences, such as weakening the judiciary’s cohesion and fostering a more adversarial, result-driven approach to prosecution. Ultimately, the debate highlights the tension between safeguarding judicial independence and ensuring accountability, with no clear resolution in sight²⁸.

In the field of migration, and particularly access to asylum, these pressures for political and public debate have been particularly evident. Since 2018, a complex interplay has developed between the Italian government and judiciary in the context of asylum policy. Within a general restrictive trend, findings reveal the crucial role played by the judiciary in shaping asylum policy and the increasing tensions between the government and the judiciary, which have led to institutional clashes over the past year, with attacks on judicial independence. First, the executive, with the support of social media, has been responsible for individual targets of asylum judges since 2018. The first attacks occurred in the context of the 2019 Security Decree (*decreto sicurezza*). In 2018, the League Party criticized this provision as “too uncertain” and open to broad interpretation (Geddes and Petracchin 2020). Before the 2018 Security Decree, which abolished humanitarian protection, Interior Minister Matteo Salvini issued a circular urging rigorous examinations of asylum applications, criticizing the expansive interpretation of humanitarian protection by courts, which in the same year had adopted a constitutionally oriented interpretation resulting in expanding the scope of the protection to those which, in addition to serious personal vulnerabilities would demonstrate strong connections with the Italian territory, for instance an integration path in the country. In this regard, the Interior Ministry primarily accuses asylum judges of being politicized. Notably, as reported by journalists, the Ministry criticized asylum judges who “make policy, write books, and go to conferences in favour of open doors for immigration” while deciding on the Ministry of the Interior’s policy. The critics were mainly opposed to asylum judges involved in the activities of the academic journal “*Diritto, immigrazione e cittadinanza*” and its associated events. The journal was created through the collaboration of the *Associazione Studi Giuridici sull’Immigrazione*, comprising lawyers and academics, and *Magistratura Democratica*, a judicial group actively involved in the immigration field, particularly since 2013. These attacks have increased over the years, particularly since 2023, following the adoption of the accelerated border procedure, and again in 2024 with the implementation of the externalization policy in Albania. The designation of a safe country of origin and the use of detention in border procedures have been, since 2023, a crucial battleground between the executive and the courts. The courts of Palermo and Catania did not convalidate most of the

²⁸ <https://www.giustiziansieme.it/it/ordinamento-giudiziario/3250-lindipendenza-della-magistratura-storia-attualita-prospettive-roberto-romboli>

detention orders issued under the asylum border procedure in the territory, and the same occurred for the validation of detention orders in Albania by the Court of Rome. Courts started to decide on the validation of detention orders under the border procedure in late 2023, particularly the Court of Catania and the Court of Palermo, due to their location at the southern border. An important starting point for understanding the tensions between the executive and the judiciary in this context was a decision by the Court of Catania, which declined to validate a detention order by applying national legislation in contravention of EU law. Members of the executive began targeting the asylum judge who had issued the decision. Particularly, the League leader, previously the Minister of the Interior and now in the government as the Minister of Transport, posted on his social channels a video showing the judge participating in a sit-in protest in 2018 against the government, in which Salvini was Minister of the Interior, not allowing migrants to disembark from the *Diciotti* ship that rescued them. This action was primarily criticized by the National Association of Magistrates and the Superior Council of the Judiciary (CSM) as a strategy to target and discredit the judge, also sparking a public and political debate about the origin of this video. The images are taken from behind the police cordon, where journalists are not allowed to be, and are unedited. Some journalists assume that the images were taken from a police officer's camera, but it is unclear how the Ministry came into possession of them. The next question is whether there was an individual targeting of asylum judges, given that the magistrate in the square five years earlier had not been formally identified. The police immediately denied that the video was contained in official records. However, members of the parliament filed a complaint with the prosecutor's office in Rome, where a file has been opened for investigation. In this challenging environment, the judge, after a few months, decided to leave the judiciary.²⁹ The League party commented on the news as such: the judge “has left the judiciary: better late than never. Now she will be able to behave like a Communist Refoundation member without embarrassment”,³⁰ reinforcing again this accusation of leftist politicization of asylum judges deciding against the reforms approved by far-right parties. The conflict is not limited to specialized debates or a few journals this time. Still, it has been widely discussed in the public, with interventions from both sides, including government and judicial representatives from the Council of the Judiciary and the National Association of Magistrates. From the end of 2023, tensions have continued to escalate.

Finally, the near-empty detention centres in Pozzallo and Porto Empedocle, as well as the stalled externalization plan with Albania, are testaments to the judiciary's impact. The judicial interpretation of safe countries of origin effectively hindered the government's efforts to expand detention and externalize asylum processing. Due to political and economic investments in these funds, judicial interventions were seen by the government as impediments to implementing their asylum reforms, leading to attacks on asylum judges and the judiciary as a whole. This conflict has not been confined to courtrooms but has spilled over into the public sphere, both from the side of the government and judicial institutions, involving, for instance, the Superior Council of the Judiciary. The government's attempts to limit judicial oversight, including legislative changes to assign detention cases to specialized judges, have further intensified the clash. Many see these measures as an effort to curtail judicial independence and consolidate executive power over asylum policies. Notably, the government first transformed the decree containing the list of safe countries of origin into law, aiming to stress the binding nature of the instrument for asylum judges. However, this was insufficient due to the direct application of EU law for judges, to which national provisions must also comply. Second, they reformed the competence of validating detention orders, which is now under the jurisdiction of the Court of Appeal. Since 2017, the Court of Appeal has no longer been responsible for migration and asylum matters, which are now decided by specialized court sections within the Civil Courts. These decisions can be appealed directly to the Supreme Court, also known as the Court of Cassation. Thus, competence was intentionally shifted from specialized to non-specialized courts, with the expectation that this would lead to less resistance and more favourable decisions for the government.

²⁹ <https://www.ilpost.it/2024/12/05/giudice-iolanda-apostolico-dimissioni/>

³⁰ <https://www.fanpage.it/politica/la-giudice-apostolico-lascia-la-magistratura-csm-accoglie-le-suedimissioni-salvini-meglio-tardi-che-mai/>

The appointment of judges is governed by CSM, ensuring guaranteed self-governance and institutional independence throughout the process. The High Council of the Judiciary (*Consiglio Superiore della Magistratura*, CSM) plays a central role in safeguarding judicial independence, including financial aspects. The CSM oversees the appointment, promotion, and discipline of judges, and it is involved in decisions regarding the allocation of resources to courts and judicial offices. The CSM's composition—mostly judges elected by their peers—helps ensure that financial decisions affecting the judiciary are made with judicial autonomy in mind, rather than being influenced by political considerations. The selection process primarily revolves around a highly competitive public examination (*concorso pubblico*), open to law graduates who meet stringent academic and professional criteria. Successful candidates enter the Judicial Training School (*Scuola Superiore della Magistratura*), where they undergo theoretical and practical training before being appointed as judges. The selection mechanism is closely linked to judicial independence through several institutional safeguards. The unified career path for judges and prosecutors (though currently under debate) fosters a shared legal culture, reducing the risk of external influence by ensuring that all magistrates adhere to the same professional standards and ethical codes. They can only be removed from office through a disciplinary process overseen by the High Council of the Judiciary (CSM), which ensures that dismissals are based on serious misconduct or violations of professional ethics, rather than political or external pressures. This process is highly regulated and requires clear evidence of wrongdoing, safeguarding judges from undue interference. Judges in Italy can be transferred between courts or judicial offices, but these transfers are regulated to prevent arbitrary or politically motivated moves. The CSM oversees transfer requests and decisions, ensuring they are based on objective criteria such as workload distribution, specialization needs, or personal circumstances (e.g., family reasons) (Guarnieri and Pederzoli 2021).

When it comes to control of higher courts over lower courts, according to previous research on asylum appeals in RSD (Dallara and Lacchei, 2024), it can be said that, despite the importance of vertical accountability, lower civil courts have maintained considerable independence in interpreting rules when adjudicating asylum appeals. In asylum access adjudication, no reliable sources are available. However, it is possible to assume that, depending on the judicial bodies involved, the importance of vertical accountability differs. One example of the lack of strong vertical accountability within the ordinary judiciary is the case of externalization in Albania. As mentioned in Part II, the Court of Appeal of Rome took a different stance from the Court of Cassation regarding the use of centres in Albania as return hubs and detention places for migrants already detained in pre-removal centres within Italian territory. Notably, while the Court of Appeal has ruled the unlawfulness of transferring asylum seekers already detained in CPRs to Albania, the Court of Cassation, in some rulings, has upheld the legality of this practice. However, recent developments have led to divergent interpretations among the High Court, which has also resulted in new preliminary references to the CJEU (*Judgement no. 23105/25*).

Judicial independence is guaranteed in Italy, allowing for independent decision-making in asylum access adjudication. However, there is a significant trend towards increasing pressure on judges and judicial bodies by the executive in this field. As reported by the European Commission³¹, “some stakeholders reported on public statements by politicians being critical of the judiciary. These statements were reportedly made by Government officials and members of Parliament, and they related to ongoing inquiries and judicial decisions, mostly regarding migration, also targeting individual judges and prosecutors”. Not by chance, during the period from July 2024 to February 2025, the High Council for the Judiciary initiated five proceedings aimed at protecting the independence of judges, with most of them concerning asylum judges.

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https://commission.europa.eu/document/download/9ccf6a60-8e2f-4193-868b-30a24c9e37e0_en?filename=16_1_63949_coun_chap_italy_en.pdf

C. Centralization/decentralization

- *First instance judicial or quasi-judicial body/bodies:* regarding first instance decisions, the system is characterized by a strong localization with judicial offices located along the Italian territory. For instance, according to the 2023 data from the Judges of the Peace (see below), there are 136 courts handling immigration cases (with more offices for one district). However, we observe that most of these offices handle migration sporadically. Few offices, instead, process a very large number of cases, and the location of pre-removal centres, as well as being at the border, influences the different roles played by judicial offices. When it comes to civil courts – the specialized sections on asylum and migration, and the Courts of Appeal that, since 2025, decide on the validation of detention orders of asylum seekers at first instance, there are 26 local offices. The lower court sections specialized in migration and asylum are located exactly in the places where there is a court of appeal. Additionally, in this case, there are significant discrepancies in the numbers among these courts. It is relevant to notice that, despite this decentralized system, cases concerning pushbacks and externalization policy in Albania have been centralized in Rome, which is responsible for all cases that concern the extra-territorial dimension, and they have been identified in the Italy-Albania protocol as the responsible court section. This results in a de facto centralization on certain issues relevant for asylum access adjudication.

Criminal courts at first instance also have a decentralized system. Despite criminal courts only marginally dealing with asylum access adjudication, important roles have been played by criminal courts, and particularly the so-called GIPs (District Courts) located in border areas, and particularly in the south. For instance, the District court of Palermo and Agrigento have been involved in cases related to Pullbacks and indirect pushbacks of private vessels (See, for instance, the ASSO Case in Part II).

- *Second instance judicial or quasi-judicial body/bodies:* when Courts of Appeals are responsible, they are decentralized (26 districts). The court of cassation is instead centralized in Rome.
- *Third instance judicial or quasi-judicial body/bodies:* the Court of Cassation is centralized in Rome.

Decentralized asylum appeals concerning RSD procedures have the consequence of relevant differences in rule interpretation among court sections specialized in asylum and immigration (Lacchei 2024). However, there is no available information on the implications of decentralization at first and in some cases at the second instance in asylum access adjudication. However, when it comes to the border accelerated procedure and the concept of safe countries of origin, research conducted in the court sections specialized in asylum and immigration can be applied to asylum access adjudication. As mentioned in Part II, the concept of the safe country of origin and the extent of judicial power over the list of safe countries of origin led to very different interpretations among court sections, resulting in preliminary references before the CJEU to guarantee a uniform interpretation of these procedures throughout the territory.

Another interesting implication, which runs counter to the decentralization characterizing the Italian judiciary, at least at the first instance, is the de facto centralization of certain proceedings relevant to asylum access adjudication. In particular, the Tribunal of Rome and the Court of Appeal of Rome are the only courts responsible for the cases concerning pushbacks/summary returns through bilateral agreements and externalization in Albania (See part II). The consequence is an increasing specialization of these complex matters, which can be interpreted as a positive aspect for the quality of the decision.

D. Specialization

- *First instance judicial or quasi-judicial body/bodies:* the only specialized body on paper is the lower civil court, which has a specialized court section on migration and asylum since 2017. This specialisation involves assigning cases related to migration and asylum to the judges in the section, with the aim

of having specialised asylum and migration judges and court sections. This specialization is also fostered by requiring specialized training.

- *Higher judicial or quasi-judicial body/bodies*: there are no specialized courts at second instance. However, de facto specialisation resulted thanks to organisational practices, especially at the Court of Cassation.

Over the years, there has been an increased specialization of legal professionals working in the field, including judges and lawyers. Regarding judges, training is mandatory only for judges working in the specialized section on asylum and immigration in the lower civil courts. Instead, for other judges working in the field of migration, specialized training is not required. Despite this, which represents a problem in the system, especially considering that asylum law is quite neglected in Law Schools, some important steps have been made, especially from the Superior School of Magistracy (*Scuola Superiore della Magistratura*), which has introduced some training activities for judges, often in collaboration with UNHCR and EUAA.³² Moreover, important moments are the annual trainings for judges organized by EUAA, although they are attended only by motivated judges and not all judges working in the court sections specialized in asylum and migration participate. Further research is needed to determine whether judges from other bodies participate in these activities and to what extent. Judicial networks, particularly *Magistratura Democratica*, play a crucial role in training, collaborating with other actors, such as legal associations like ASGI. They often organize seminars, events, and workshops, which create important opportunities for exchange among professionals and professional development.³³

Specialized sections on asylum and migration aim to be composed of specialized judges. In some cases, it is actually true. However, the fast turnover, the possibility of appointing an extra-territorial judge for a limited period to address the backlog, and the requirement of only one training session per year can limit the actual specialization of these judges. However, over the years, since the creation of these specialized courts, their specialization has increased constantly. Regarding the other bodies, more research is needed to understand the divergence between law and practice. However, some examples can be cited in this regard to illustrate the existing gap between specialization in law and practice. Although the court of appeal does not specialized section on migration and asylum, the court of the appeal in Rome, which has been responsible for the validation of detention measures of migrants and asylum seekers transferred to Albania, at first instance since 2025, adopted an internal organizational arrangement to guarantee that these sensitive issues were decided by specialized judges. Thus, they temporarily appointed the judges working in the specialized section on migration and asylum in the lower civil court of Rome, who have long experience with these decisions, especially since 2017. Another example of this gap is represented by the Court of Cassation in the civil sections. Although there isn't a specialized court for the lower courts, most asylum and migration cases have been assigned to the first chamber in recent years, ensuring a certain specialization among the judges dealing with asylum and migration law. Since 2024, when validation of detention orders have been delegated to the criminal Civil Court, a similar strategy was adopted, allocating all cases to only one section.

E. Human resources

It is not possible to determine the exact number, gender, or other demographic characteristics based on the available online information. Depending on the court to which they belong, they can be civil judges, criminal judges, or administrative judges. They are all professional judges, except for the Judge of the Peace, who is a lawyer performing the functions of a judge in criminal courts.

³²https://www.scuolamagistratura.it/web/portalesm/avvisi?p_p_id=P_AVVISI_INSTANCE_ShwzYUq7z89B&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&P_AVVISI_INSTANCE_ShwzYUq7z89B_javax.portlet.action=dettaglioAvvisoAction&P_AVVISI_INSTANCE_ShwzYUq7z89B_idAvviso=1507&p_auth=b11Ckwh3

³³ <https://www.questionegiustizia.it/articolo/profili-problematici-della-normativa-e-delle-prassi-in-tema-di-contrasto-al-soccorso-in-mare-di-navi-private>

All professional judges are appointed for life after a selective public competition. Then, they are assigned to a lower court. For instance, the assignment to the specialized section on migration and asylum occurs by appointment, and often the judge can decide among a restricted number of options. Some judges decide based on their personal interest in the topic, while others are more concerned with the geographical location of the court due to career or family reasons. During their career path, they are asked to move from tribunals and court sections, with the possibility to remain in the same court/section for a maximum of 10 years. After that, they can be promoted to managerial positions, for instance, becoming presidents of court sections, or move to higher courts, such as the Court of Appeals or the Court of Cassation. To do so, they must apply for an internal public competition. It is possible that judges move from the criminal to the civil sector, especially at the first instance. It is, for instance, that in court sections specialized in asylum, there are also judges who have previously worked in lower criminal courts and then transition to the specialized section of asylum and migration. Finally, the Judge of the Peace represents an exception in the appointment process because they are lawyers nominated to act as judges in certain proceedings, for instance, migration detention cases. They are paid per hearing, and they cannot pursue a career path in the judiciary.

Between July 2024 and April 2025, Italy appointed 849 new administrative staff members in its ordinary courts; however, a 37% staffing shortage persists. To address this gap, four recruitment competitions were launched in 2024, with completion expected by the end of 2025. As part of the Recovery and Resilience Plan, Italy introduced Clerks for the Office of the Trial (*Addetti all'Ufficio del Processo*), a role tailored to the specific needs and size of each court. These Clerks support magistrates by managing cases, preparing hearings, and drafting judgments, which stakeholders report has improved efficiency, enhanced the quality of justice, and contributed to reducing the length of proceedings. However, despite these efforts—including multiple recruitment drives in 2024—a high resignation rate among Clerks remained a challenge throughout the past year. Among the Clerks for the Office of the Trial, some positions were specifically for experts on international protection and migration. They were assigned to the court sections specializing in asylum and migration, as well as the Court of Cassation. This organizational choice was guided by the aim to institutionalize a project, limited in time (from 2020 to 2024), which involved experts hired by the EUAA in the court sections and subsequently in the Court of Cassation to support judges in asylum proceedings. This experiment has led to a significant improvement in the quality of RSD decisions at the appeal stage (Perilli, 2023). The new arrangement with the Clerks for the Office of the Trial has not been studied yet, nor has the role of clerks in other judicial bodies responsible for adjudication of asylum access been examined. Therefore, further research is necessary in this area.

A common feature in asylum adjudication is the linguistic barrier.³⁴ Despite the law providing for the right to have interpreters for migrants and asylum proceedings in all procedures (e.g., deportation, validation of detention orders, criminal proceedings, and the asylum determination process at the appeal stage), the main challenge is represented by the effective presence and quality of interpreters. Indeed, interpreters must be provided at the expense of the state, but on many occasions. For instance, in asylum appeals, in many court sections, they are not present during hearings, and asylum seekers must rely on a party interpreter (often another asylum seeker) (Lacchei 2023). The same applies to procedures regarding the validation of deportation and detention orders. The law requires the presence of both a legal representative and an interpreter. However, the shortage of interpreters in practice can limit the effectiveness of this procedural guarantee. The shortage of interpreters must be added to the communication difficulties between the lawyer and the asylum seeker, as well as with the judge, when the person is difficult to reach. It can occur if the person is outside the territory (due to pushbacks or pullbacks) or in detention centres where access is contingent. For instance, in most cases, validation of detention orders for migrants and asylum seekers occurs through online hearings, which, according to the existing literature in other jurisdictions, may exacerbate communication problems. However, there is no available information

³⁴ <https://boa.unimib.it/handle/10281/138873>

concerning Italy on this matter, as it is a recent practice implemented during the COVID-19 pandemic and subsequently maintained for cases involving migrants and asylum seekers in detention facilities.

Based on the available information, the bodies involved in asylum access adjudication have identified relevant deficiencies in the interpretation service, and they experience a shortage of professionals, particularly judges, to manage the high workload. For instance, the High Council of the Judiciary (CSM) stated that, in court sections specialized in asylum and migration, to address the existing backlog, the number of judges should be increased by 143% (CSM, 2021). Regarding the bodies, no information is available (e.g., Judge of the Peace or administrative courts).

Among the most relevant aspects is that of the interpretation service, which can hinder the quality of asylum access adjudication (Busatta 2017).

F. Tools supporting adjudication

Based on previous research conducted in the field of RSD in migration courts specializing in asylum and migration, it is possible to say that over time, they have adopted some organizational procedures to facilitate the exchange of information between the parties in asylum proceedings. The use of SICID, the only platform, facilitated the exchange of information and documents between the Territorial Commission, the lawyer, and the judge (Dallara, Verzelloni, and Lacchei 2024). However, further research is needed in other courts, such as criminal courts, where, according to the literature, there is more resistance to developing new organizational practices through IT instruments (Vecchi 2025).

G. Management

Over the past twenty years, judicial systems in Southern Europe have undergone significant changes, bringing them closer to quasi-bureaucratic and managerially driven organizations (Biland and Steinmetz 2017; Guarnieri and Pederzoli 2020). These changes have been influenced by New Public Management (NPM)-inspired reforms, which emphasize the conception of justice as a public service (Vecchi 2018; Gualmini 2008). Judicial offices are considered complex organizations characterized by loosely coupled links, where the activity of organizational units tends to be autonomous (Weick 1976; Guarnieri and Pederzoli 2020; Zan 2011; Verzelloni 2019). Each court office represents an organizational reality that may function differently from another formally identical office (Verzelloni 2019). Autonomy is a central feature of these systems, enabling magistrates to exercise broad autonomy in organizing their work (Dallara et al., 2022). A particular role is played by the court presidents, who, for instance, can decide to engage in specific projects (such as the pilot project with EUAA started in 2020 in Italian civil courts). Additionally, the court-section president has an important, despite informal role, in defining organizational practices (Such as procedures for screening asylum cases, or to manage interpreters and hearings) as well as on some occasions an important role in facilitating the development of common legal interpretations at the local level (Dallara and Lacchei 2021). The management of justice has also changed the role of court presidents and heads of public prosecutors' offices (Verzelloni 2020). These new managerial roles require organizational and managerial skills, as well as the ability to dialogue and interact with the territory and stakeholders (Verzelloni 2020). The push towards greater accountability has, in practice, meant increased autonomy in interpreting national regulations and selecting operational tools (Dallara et al., 2022; Dallara & Lacchei, 2021). Recent empirical research has focused on the role of court presidents in interpreting national legislation during the COVID-19 pandemic and converting it into organizational strategies and guidelines (Dallara et al. 2022). Based on the available information, it is challenging to evaluate the impact of managers on asylum access adjudication. The existing research on the topic primarily concerns asylum appeals and RSD (Dallara and Lacchei, 2021), which investigated the important role of the presidents of the court sections specializing in asylum in developing organizational practices and setting a common line for the most difficult and non-harmonized legal interpretations (Lacchei, 2024). On 13 November 2024,

the CSM approved a directive regarding the appraisal of magistrates’ performance, which, inter alia, establishes the magistrate’s professional file. This was followed on 3 December 2024 with a Code of Judicial Management, aimed at enhancing transparency in the assignment of managerial and semi-managerial functions of judicial offices

H. Caseload and delays

- *First instance judicial or quasi-judicial body/ bodies:*

Regarding the caseload and backlog of the Judges of the Peace, this table summarizes the main data available for 2023 on issues concerning migration. However, it is not possible to determine from these data the exact number of cases relevant for asylum access adjudication. However, we observe that the locations of the larger pre-removal centres (Roma and Milan) have a high number of appeals before the judges of the peace. Additionally, Judges of the Peace at the borders, especially the southern border, have the highest number of appeals. Quite interestingly, unlike Rome and Milan, these pre-removal centres have a limited backlog, confirming existing research that in these centres, very fast decisions on detention and delayed deportation are made within a detention-deportation circuit (Fabini 2023), which produces a high risk of summary returns. A clear example is Caltanissetta, which has a significant number of appeals and decisions. The quality of these decisions in this court and in similar ones, such as Gorizia or Trapani, especially when it comes to the right to asylum, needs further investigation.

SEDE	APPEALS	DECISIONS	BACKLOG
ROMA	2.340	2.197	998
ROMA	1.913	2.144	751
MILANO	1.827	1.617	864
TRAPANI	1.621	1.458	93
CALTANISSETTA	1.466	1.470	17
GORIZIA	1.405	1.344	5
MILANO	1.372	1.188	554
CALTANISSETTA	1.335	1.016	4
BARI	1.018	987	54
MELFI	1.012	1.386	9
MELFI	930	927	27
GORIZIA	754	748	12
BARI	692	680	58
TRAPANI	580	657	115

TORINO	446	317	426
BRESCIA	437	384	120
MONZA	395	380	127
MONZA	362	296	85
TORINO	357	433	274
PERUGIA	332	261	167
BRESCIA	318	276	78
VARESE	285	203	197
BERGAMO	274	266	175
COMO	271	250	70
AGRIGENTO	262	268	10
BOLOGNA	262	277	110
ORISTANO	245	232	37
BOLOGNA	237	317	98
AGRIGENTO	231	683	2
FIRENZE	229	151	108
FIRENZE	223	195	149
ORISTANO	221	184	19
NAPOLI	218	184	213
COMO	213	199	36
NAPOLI	200	178	148
BERGAMO	194	132	152
VARESE	193	227	161
PERUGIA	188	200	79
RAGUSA	188	192	28
ANCONA	186	173	111

FERRARA	177	165	36
BRINDISI	177	167	30
MODENA	172	147	79
PRATO	166	149	53
FERRARA	165	150	15
PALERMO	164	165	12
PRATO	150	135	34
PISTOIA	146	123	13
PALERMO	144	271	5
IMPERIA	131	106	61
CATANIA	131	126	28
MODENA	129	102	44
ANCONA	128	109	91
SALERNO	122	99	17
REGGIO CALABRIA	121	126	5
SALERNO	121	152	9
NOVARA	115	114	32
PISTOIA	114	128	13
VERONA	112	97	112
PADOVA	111	108	19
GENOVA	108	103	153
RAGUSA	106	83	11
TREVISO	105	97	38
VERONA	104	106	101
L'AQUILA	104	100	40
IMPERIA	101	83	89

PADOVA	100	206	6
REGGIO CALABRIA	99	115	4
SIRACUSA	98	355	12
VENEZIA	98	108	72
RAVENNA	91	80	16
FOGGIA	91	82	23
UDINE	90	142	38
NOVARA	89	61	26
VENEZIA	88	36	81
CREMONA	88	74	31
MACOMER	87	105	19
GROSSETO	87	51	54
PIACENZA	85	85	24
LATINA	82	35	59
TRIESTE	80	66	56
TRENTO	79	74	23
PIACENZA	78	123	16
SIRACUSA	78	83	26
RIMINI	78	90	23
RIMINI	77	71	28
FROSINONE	77	97	18
BRINDISI	76	97	19
AREZZO	76	69	24
PAVIA	76	62	46
FROSINONE	74	63	26
TRIESTE	74	49	34

SAVONA	74	78	6
UDINE	73	81	41
FORLI'	70	71	16
PESARO	70	59	26
VICENZA	69	73	35
FORLI'	68	64	26
COSENZA	67	54	46
VITERBO	66	17	9
ALESSANDRIA	66	66	9
CUNEO	65	53	39
CASERTA	63	39	46
COSENZA	59	65	27
TREVISO	58	66	26
LODI	58	60	12
PISA	57	45	20
REGGIO EMILIA	56	59	8
RAVENNA	56	73	6
REGGIO EMILIA	56	51	17
TRENTO	56	59	11
TARANTO	56	53	11
LIVORNO	55	48	27
VITERBO	55	59	12
CUNEO	53	43	22
BOLZANO/BOZEN	53	53	6
ASTI	53	38	23
GROSSETO	52	41	12

LECCE	52	63	21
MACERATA	52	52	17
MANTOVA	51	18	93
AREZZO	50	40	14
GENOVA	50	58	127
PISA	50	54	23
LIVORNO	49	40	17
TERNI	48	46	24
CREMONA	48	37	11
LECCE	48	43	31
CAGLIARI	47	45	2
CAMPOBASSO	47	48	14
L'AQUILA	46	64	30
PARMA	46	45	30
PARMA	44	53	25
VICENZA	44	66	35
SAVONA	43	54	4
ASCOLI PICENO	43	39	7
CATANIA	42	272	15
BIELLA	40	29	28
BIELLA	40	39	32
ALESSANDRIA	39	30	6
CASERTA	39	24	21
CAGLIARI	39	38	8
VERBANIA	39	27	24
SIENA	38	33	10

BOLZANO/BOZEN	38	34	8
MATERA	38	14	32
MANTOVA	37	14	62
LODI	36	32	10
CATANZARO	36	33	10
MACERATA	35	33	16
TARANTO	35	29	7
MESSINA	34	52	4
RIETI	34	23	24
TERAMO	34	32	8
PESARO	33	37	14
VERCELLI	32	25	7
TERNI	31	22	36
CROTONE	31	29	23
AOSTA	30	23	6
POTENZA	30	30	0
CAMPOBASSO	29	23	10
TERAMO	29	31	5
ENNA	28	24	0
SASSARI	27	31	47
LECCO	26	12	6
PAVIA	26	29	25
FOGGIA	26	18	6
SASSARI	25	29	46
ASTI	25	22	9
VERBANIA	25	12	9

MATERA	25	21	6
ROVIGO	25	27	1
AVELLINO	25	22	3
LUCCA	23	22	7
SIENA	23	19	14
LECCO	23	24	7
BELLUNO	22	19	6
VERCELLI	21	26	5
PORDENONE	20	16	19
POTENZA	20	21	0
PORDENONE	20	20	17
BENEVENTO	20	8	17
ENNA	19	19	0
LA SPEZIA	18	22	6
LUCCA	17	19	5
LATINA	17	12	14
CROTONE	16	30	21
PESCARA	16	14	0
PESCARA	16	15	2
RIETI	15	12	10
ROVIGO	15	11	0
CHIETI	15	15	1
VIBO VALENTIA	14	10	7
VIBO VALENTIA	14	15	7
FERMO	13	18	16
AOSTA	13	9	13

NUORO	12	6	19
AVELLINO	12	15	0
NUORO	12	29	4
CATANZARO	11	15	6
LA SPEZIA	11	10	8
MASSA	11	8	12
ASCOLI PICENO	10	25	3
MESSINA	10	13	1
MASSA	9	7	10
BENEVENTO	8	15	4
SONDRIO	7	6	0
ISERNIA	7	6	4
CHIETI	7	12	0
FERMO	6	9	20
BELLUNO	6	8	3
SONDRIO	6	6	1
ISERNIA	6	11	0
BARCELLONA POZZO DI GOTTO	4	4	0
PATTI	4	4	0
BARLETTA	3	4	0
PATTI	2	2	2
TERMINI IMERESE	2	1	0
SCALEA	2	0	2
TRANI	2	1	1
TERRACINA	1	0	1

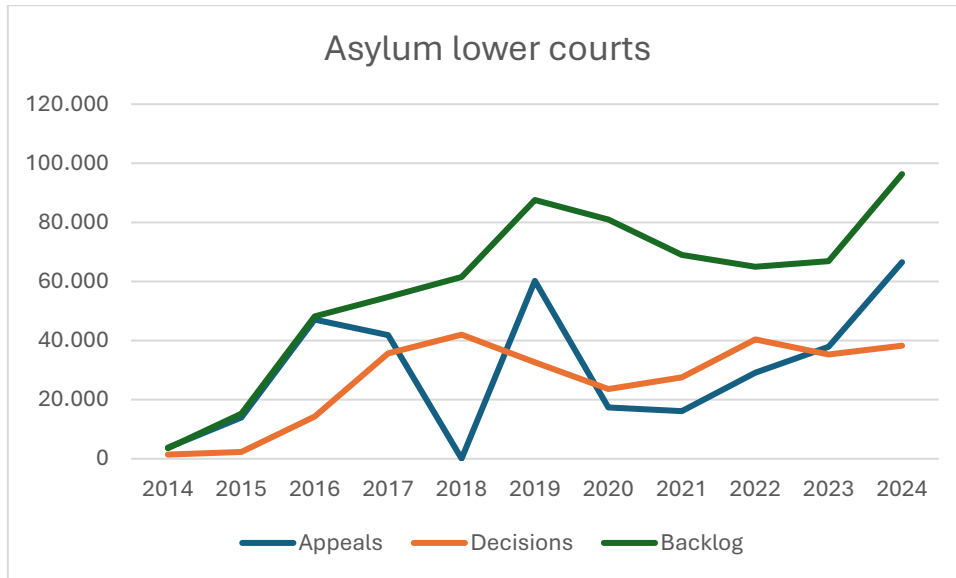
MODICA	1	1	0
BARCELLONA POZZO DI GOTTO	1	0	0
SANT'ANGELO DI BROLO	1	1	0
BARLETTA	1	2	1
TRANI	1	1	0
NOLA	1	0	0
NASO	1	1	0
NAPOLI NORD	1	0	1
BUCCINO	1	0	1
SENIGALLIA	0	0	1
CIVITAVECCHIA	0	0	2
VELLETRI	0	0	1
SENIGALLIA	0	0	1
CIVITAVECCHIA	0	0	2
TERRACINA	0	0	1
VELLETRI	0	0	1
SANT'AGATA DI MILITELLO	0	0	2
SCALEA	0	0	2
NOLA	0	1	0

Source: Elaboration by the author based on data from the Ministry of Justice.³⁵

When it comes to the civil lower courts specialized in asylum, it is important to note that most proceedings concern RSD at the appeal stage. For this reason, it is difficult to separate these general data from the specific data regarding asylum access adjudication and the barriers described in Part I. The significant increase in asylum applications and, consequently, in first-instance decisions since 2015 has had a profound impact on the appeal stage, which, prior to 2014, was often overlooked due to the limited number of appeals registered. Not by chance, the Ministry of Justice has been collecting some data on asylum appeals since 2014. However, public data are extremely limited, and they do not provide, for example, information on the outcome of asylum proceedings. As mentioned, Italy has experienced a rapid rise in asylum appeals

³⁵ <https://dati statistiche.giustizia.it/page/it/flussi-dei-giudici-di-pace>

since 2015. The significant increases in 2015 (+270.0%) and 2016 (+237.1%) can be partially explained by examining first-instance decisions, which considerably grew in those years. Moreover, reducing positive decisions at the first instance could partially contribute to this trend at the appeal stage. A notable increase in asylum appeals was also registered in 2018 and 2019, with 48,799 and 60,196 appeals lodged, respectively. Even in this case, this increase corresponds to the rise of first-instance decisions and the decrease of TCRIPs’ recognition rates. The trend was temporarily reversed by COVID-19, which led to a decrease in asylum applications, first-instance decisions, and asylum appeals in 2020 and 2021. In 2022 and 2023, a new increase was noticed, with 29,110 appeals in 2022 and 37,869 in 2023. Finally, in 2024, a significant increase occurred, with 66517 new appeals. The graphic below summarizes the data from 2014 to 2024 in Italian court sections specialized in asylum and migration in civil courts.



Source: Elaboration of the author based on available data from the Ministry of Justice.

Regarding the lower civil courts, it is impossible to provide exact numbers, as detailed information on migration and asylum is not available in statistics or administrative justice proceedings.

Regarding the Court of Appeal, at least in the civil sections, cases concerning asylum remained limited, at least since 2025, when they acquired the competence of validation of detention orders.

Year	Surpassed	Defined	Pending
2021	317	3.901	3.468
2022	170	2.410	1.233
2023	44	1.095	250
2024	64	196	60

Source: Elaboration of the author based on available data from the Ministry of Justice.

Other relevant data on asylum access adjudication are not public.

Regarding the Court of Cassation, it is possible to provide the following data on international protection cases based on information available online:

Year	Appeals	Decisions	Waiting months
2021	3.673	9.349	19,5
2022	1.494	6.332	20,5
2023	1.081	2.610	18

Source: Elaboration of the author based on available data from the Ministry of Justice

The Italian justice system continues to face significant challenges, particularly in the length of civil, commercial, administrative, and criminal proceedings, despite some improvements. While civil courts maintain a clearance rate above 100%, resolution times remain among the highest in the EU. In 2019, disposition times decreased at the first and second instances in civil courts; however, the Court of Cassation experienced a reversal due to a surge in international protection and tax dispute cases. Administrative courts have also shown progress, although their disposition times remain above average. Criminal proceedings, while improving at the first instance and Court of Cassation levels, still face delays at the appeal stage. Italy remains under enhanced supervision by the Council of Europe for the length of both administrative and criminal cases. Reforms are underway to address these inefficiencies, including a 2020 change to halt the statute of limitations after a first-instance ruling. Parliament is discussing comprehensive reforms for both civil and criminal procedures, focusing on digitalization, simplified processes, stricter timelines, and broader use of single judges. However, proposals to introduce disciplinary measures for judges due to excessive delays must strike a balance between efficiency and judicial independence, in line with Council of Europe recommendations.³⁶

I. Influence of judicial or quasi-judicial bodies on access to asylum

Recently, case law has only influenced legislation in some cases. One example concerns the accelerated procedure, particularly the 2023 decision of the Tribunal of Catania, analysed in Part II, which assessed the non-conformity of national legislation regarding detention measures for asylum seekers under the accelerated border procedure with EU law. Despite the attacks on the executive against this judge, the judgment influenced the legislation. Indeed, following this decision, the government modified the conditions for asylum seekers' detention through Decree Law, specifically the mechanisms for which it lowered the financial guarantee as an alternative to detention (AIDA, ITALY REPORT 2024). International jurisprudence on human rights violations and de facto detention, as established by the ECtHR, has had an impact on legislation, leading to the introduction of a procedure for validating detention orders for individuals in hotspots. This aims to ensure judicial accountability. However, this legislation does not apply concretely, and people continue to be de facto detained in hotspots.

Implications

Although national jurisprudence influenced legislation on only a few occasions, it had a greater impact on policy. For instance, the summary returns to Slovenia according to the readmission agreement (see Part I), which has been interrupted after the practice was condemned by the courts. The readmission agreements still exist, but the practice has been stopped. The result was a change in the policy, with the reintroduction of the Schengen border to guarantee border management control and reduce arrivals from the Balkan

³⁶

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020SC0311&from=EN#:~:text=The%20justice%20system%20continues%20to%20experience%20serious%20challenges%20relating%20to%20the%20length%20of%20proceedings.>

route. Additionally, the government increased international cooperation with the border police of Slovenia and Croatia. Another area in which judges have had a significant impact on policy is the use of accelerated procedures, particularly those related to the border accelerated procedure. First, as shown in Part II, judicial action in this area has led to significant consequences in asylum policy implementation. Notably, it substantially contributed to the failure of the accelerated border procedure, as evidenced by the almost empty detention centres at the border (Pozzallo and Porto Empedocle) and the initial externalization plan in Albania. Indeed, the clash between Italian judges and the government over the detention of asylum seekers extended to the controversial agreement with Albania. This deal, aimed at transferring asylum seekers to Albania after sea rescue and processing their asylum claims while in detention under the border procedure, faced significant judicial resistance. In line with the majoritarian jurisprudence deciding on detention validation in the territory, the court of Rome consistently refused to validate detention orders in Albania. This judicial stance was rooted in the rule interpretation of what constitutes a “safe country of origin.” These decisions of non-validation argue that asylum seekers do not come to safe countries of origin – especially those from Egypt and Bangladesh – and for this reason, border procedure cannot be applied, and they cannot be detained. Since in Albania, according to the deal, reception is possible only under detention, these people returned to Italy after the judicial decision, leaving Albania’s new centres empty. Judges employed two primary strategies that substantially led to resisting the government’s policies. The first was the direct disapplication of procedures deemed incompatible with EU law, a more substantial and more immediate form of resistance, and the second involved making preliminary references to superior courts at the national and EU levels, a softer approach that sought higher judicial intervention. This latter strategy became more prevalent as tensions between the judiciary and the government escalated. Both strategies, however, exposed judges to severe criticism and personal attacks from government officials, who accused them of political bias and undermining national security. Attacks also came from government members, and declarations were made by judiciary representatives. These actions have been at the basis of the changes in policy, and particularly the transformation of the scope of the Albania-Italy protocol, not only a place to process asylum applications (externalization of asylum processing) but also a return hub, transferring there also migrants already detained in pre-removal centres in Albania (See Part I).

J. Judicialization of politics

As mentioned in the section “Independence,” the executive has recently criticized the judiciary’s intervention in some crucial matters concerning asylum access adjudication. The judiciary has replied adopting some measures in protection of individual judges under attack and representatives of self-judicial bodies, such as the President of the High Judicial Council, as well as the representative of the National Association of Judges publicly condemned the executive attacks to the judiciary.

Regarding the competence, two major reforms have been made in recent years in the field of access to asylum to restrict the competence of judicial bodies. First, the government introduced the non-automatic suspension of the appeal in accelerated procedures. This means that submitting an appeal against a negative decision of the Territorial Commission, at the first instance, does not mean automatic protection from non-refoulement. Instead, judges are asked to decide on the suspensive effect, which, since 2024, must be requested by the appellant. This means a risk for judicial accountability and a reduction of the automatic competence of judicial bodies. Second, despite not reducing the competence, the executive intervened in changing the competence of validation of detention orders of asylum seekers from specialized lower courts to the non-specialized courts of appeal. This choice represents an exception in the institutional design of the Italian judiciary, and experts in the field have considered it a move to change the courts to aim at receiving more favourable decisions on detention orders in the Albanian centres. There has been an expansion of judicial accountability over detention in hotspots, but, as already mentioned, the law is not applied concretely, and de facto detention without proper judicial oversight persists.

For sure, since almost all cases within the border accelerated procedure, as well as all cases of asylum seekers and migrants’ validation of the detention order and the deportation order are subject to judicial

scrutiny, in this area, the role of the judiciary can be particularly relevant to shape the policy outcome. The case of the externalization policy in Albania is a clear example of this role.

There are relevant studies on this matter, especially since the '90, depicting the Italian case as an example of the judicialization of politics (Pederzoli and Guarnieri 2008; Guarnieri 2016). This influence in politics emerged especially after the so-called “Mani Pulite”, with the anti-corruption judicial actions which contributed to strongly increasing the role of the judiciary in the political arena, especially the Constitutional Court (Rullo 2025). However, this literature has not specifically investigated the field of asylum.

III. OTHER ACTORS IN ASYLUM ACCESS ADJUDICATION

A. Bodies of the executive branch in asylum access adjudication

There is no direct involvement of the executive in asylum access adjudication as an adjudication body. They only intervene through their representatives as one party in the litigation (see Part II).

B. International or regional organizations

In a few relevant cases, UNHCR became a relevant actor in the litigation. For instance, in the *Vos Thalassa* case the judge specifically requested information from UNHCR to determine if Libya could be considered a “Place of Safety” (POS). The court cited UNHCR reports on the situation in Libya and UNHCR’s “Guidelines on the Treatment of Persons Rescued at Sea” to interpret international maritime law. UNHCR is identified as a mandatory reference point when it comes to the assessment of safe countries. The Tribunal of Catania in judgment no. 9375/2024 noted that the legal assessment of whether a non-EU country is safe must be based on information from qualified sources, explicitly listing UNHCR alongside the European Union Agency for Asylum (EUAA) and the Council of Europe. These sources are not often used by Judges of the Peace, despite a few rare exceptions, as in the judgment *no. 2527/2022*, where the judge of Agrigento explicitly used information provided by UNHCR regarding the situation in Tunisia to evaluate whether the applicant faced a risk of persecutory treatment or indiscriminate violence.

C. NGOs and bar associations

The main legal association involved in asylum access adjudication is ASGI.³⁷ The *Associazione per gli Studi Giuridici sull’Immigrazione* (ASGI) is a prominent Italian legal association founded in 1990, dedicated to protecting the rights of migrants, asylum seekers, and vulnerable groups. ASGI operates as a social promotion association, combining research, training, and advocacy to address the complex legal challenges faced by foreigners in Italy. ASGI’s expertise is rooted in its interdisciplinary approach to immigration and asylum law. The association brings together a diverse group of professionals, including lawyers, academics, legal operators, and researchers, who specialize in various aspects of migration law. This collective expertise allows ASGI to address a wide range of legal issues, from individual cases of discrimination to systemic challenges such as border management, administrative detention, and access to social rights. The association’s work is characterized by a strong focus on legal analysis, strategic litigation, and advocacy. ASGI’s members actively monitor legislative developments, analyse administrative practices, and develop legal strategies to challenge violations of migrants’ rights. This expertise is further enhanced by ASGI’s engagement in research projects, publications, and training initiatives, which contribute to the dissemination of legal knowledge and best practices in the field of migration law. ASGI is composed of 624 members, including lawyers, academics, legal operators, and researchers, who contribute to the association’s activities on a voluntary basis. This diverse membership reflects ASGI’s commitment to

³⁷ <https://www.asgi.it/wp-content/uploads/2025/07/relazione-attivita-2024.pdf>

inclusivity and collaboration, as members come from various professional backgrounds and regions across Italy. ASGI also benefits from the contributions of its regional sections and thematic working groups, which focus on specific areas of migration law and policy. These groups facilitate the exchange of knowledge and the development of targeted strategies to address local and national challenges. ASGI's composition is further enriched by its partnerships with civil society organizations, legal clinics, and international networks, allowing the association to leverage a wide range of expertise and resources. ASGI's resources include a combination of human, financial, and institutional assets that enable the association to carry out its mission effectively. ASGI relies on the voluntary contributions of its members, who provide legal expertise, research, and advocacy support. The association also employs a small team of paid staff to coordinate projects, manage communications, and handle administrative tasks. It obtains financial resources through membership fees, donations, and funding from public and private institutions. These funds are used to support its projects and activities, including legal assistance, research, and advocacy campaigns. ASGI has established partnerships with universities, research centres, and public authorities, which provide access to legal databases, research facilities, and training opportunities. The association's collaboration with NGOs and international organizations further enhances its capacity to monitor human rights violations, develop advocacy campaigns, and engage in strategic litigation at both the national and international levels. ASGI employs strategic litigation as a core method to challenge discriminatory practices and illegal actions by public authorities. This involves using legal actions to address systemic issues, such as discriminatory access to social services, illegal detention practices, and violations of the right to asylum, supported by a network of lawyers, researchers, and activists who collaborate to identify and address systemic violations. The association's legal actions often result in landmark decisions that set important precedents for the protection of migrants' rights. For example, ASGI has successfully challenged the legality of administrative detention in hotspots and CPRs (Permanence Centres for Repatriation), leading to the release of individuals unlawfully detained. ASGI operates within a broad network of collaborations, including humanitarian organizations, research institutions, public and private entities, and international organizations. These partnerships are essential for monitoring, developing common strategies, and amplifying the impact of ASGI's actions. The association is part of several national and international networks, such as the European Council on Refugees and Exiles (ECRE) and the Protecting Rights at Borders (PRAB) initiative, which focus on advocacy, monitoring, and defending migrants' rights. ASGI's collaborative approach extends to legal clinics, universities, and civil society organizations, enabling the association to leverage diverse expertise and resources. This network-based strategy enhances ASGI's ability to address complex legal and humanitarian challenges, ensuring that its advocacy and litigation efforts are both effective and sustainable. As described in the paragraph above, ASGI is a specialized association that has at the core of its action litigation in the field of asylum access adjudication along the national territory. ASGI uses strategic litigation to challenge systemic barriers (e.g., access to detention centres, pushbacks, and externalization). This has led to jurisprudential developments, such as recognizing Italy's responsibility for extra-territorial actions and simplifying power-of-attorney requirements for refugees outside the territory. While strategic litigation has improved access in some areas (e.g., pushback claims), its effectiveness varies. For example, it has had limited success in addressing the remoteness of Albanian detention centres or the criminalization of sea rescues. Thanks to the widespread network, ASGI was also able to act transnationally, and it offers the material and legal resources to gain evidence and support from other organizations outside the territory, for instance, in cases of pushbacks along the Balkan route. The collection of evidence that was made possible thanks to the actions of the legal association allowed for guaranteed strategic litigation against the summary returns along the route through the bilateral agreement with Slovenia (See Part II).

Activities of various NGOs, activist groups, and other movements are used to document the barriers and are used in the litigation. For instance, in cases of pushbacks and pullbacks, activities of monitoring bodies are fundamental for the litigation strategy, such as for instance the BMVN, Lungo la Rotta Balcanica, Alarm Phone, JLPProject. In cases concerning procedural barriers, important elements are provided by organisations supporting migrants at the local level in bureaucratic procedures, such as, for instance, the Diaconia Valdese cited in the case of the Tribunal of Milan. Amnesty International is also an important

actor, since it is frequently cited as a “qualified source” of information regarding human rights violations, specifically for documenting violence by Croatian police and systematic pushbacks from Slovenia. In some cases, it also participates as a third party in proceedings, as in the recent criminal proceedings of the Cutro shipwreck.³⁸ The same for other important NGOs in the field, such as EMERGENCY, Louise Michel, Mediterranea Saving Humans, Sea-Watch, SOS Humanity, and SOS MEDITERRANEE.³⁹

D. Supranational courts

Relying on Part I, international courts have been crucial in two main areas of intervention that relate to asylum access adjudication and the barriers to asylum identified in Part I. First, the jurisprudence of the CJEU on the concept of safe country of origin has been crucial in the adjudication concerning the border accelerated procedure and the externalization of asylum processing in Albania. Indeed, the first judgment, which did not validate the detention order in Albania, referred to the CJEU decision of 4 October (C-406/22). Second, national jurisprudence on the detention of migrants and its potential to represent a barrier to access asylum is shaped by international jurisprudence, particularly the jurisprudence of the ECtHR on hotspots or CJEU jurisprudence on returns from Albania (Case C-414/25 *Sedrata* pending).

IV. THE SOCIO-POLITICAL CONTEXT

A. Migratory routes and entry points

From 2011, internal and external factors have contributed to a progressive reconfiguration of the foreign resident population in the country. The reduction of quotas for foreign workers and the less attractive labour market after the 2008 economic crisis led to a decline in the number of work permits released (ISMU 2016). Meanwhile, the number of migrants coming to Italy for family reasons has increased because of the stabilization of the phenomenon of immigration in Italy (Petrovic 2020). However, this population was completely ignored by public and political debate, which has rapidly shifted from restrictions on migrant workers to the criminalisation of unauthorised migrants and asylum seekers, because of the rapid increase in people arriving for humanitarian reasons and claiming asylum in the country (Caponio and Cappiali 2018).

Although the 1948 Italian Constitution has already provided for a right of asylum, it is possible to speak about Italian asylum policies only since the 1990s, when it entered public debate, and politics began to address the issue. The late intervention is mainly due to the little relevance of the phenomenon, since asylum applicants remained extremely low until the early 1980s. Between 1980 and 1989, Italy received 31,405 asylum applications, especially from Poland (Petrovic 2020). At the end of the ‘80s, the government realised the necessity to intervene to rule asylum at the national level. Before that moment, neither the Constitutional right to asylum nor the 1951 Geneva Conventions had been implemented through legislative measures, leaving large regulatory gaps. Although the law no. 39 approved in 1990 has the merit to implement at the national level the refugee status as defined by the Convention and to abolish the geographical limitation excluding extra-Europeans from this protection, but it did not fill those gaps (Petrovic 2020). Thus, in the following years, governments adopted emergency measures to overcome the limits of the Italian asylum policy and legislation, to respond to the periodic arrivals of people asking for protection. Thus, scholars argue that Italian asylum policy has been characterised by an emergency approach (Castelli Gattinara 2017, Campomori and Ambrosini 2018, Fontana 2019), in line with its broader immigration policy.

This is, for example, the case of the management of the first consistent influx of asylum seekers in the country, which occurred in March 1991, when 27,000 Albanian migrants landed in the port of Brindisi. As a response, emergency measures have been adopted, releasing permanent permits to people asking for

³⁸ <https://www.amnesty.it/due-anni-dal-naufragio-di-cutro/>

³⁹ <https://sos-humanity.org/it/stampa/parte-civile-al-processo-di-cutro/>

protection, since the instruments provided by the Geneva Convention and the limited 1990 legislation were insufficient (Petrovic 2020). However, contradictory tensions have been raised since the issue started to strongly affect public opinion and political debate, also causing the first anti-immigrant sentiments (Colombo & Sciortino, 2004), and, as a consequence, restrictive measures such as pushbacks (Petrovic, 2020).

The 1991 seemed an exception, with 28,400 people asking for asylum (Ministry of the Interior 2020), since in the following years the numbers considerably decreased, at least until the end of the 1990s, when the strong instability of the Ex-Yugoslavia, the outbreak of the Kosovo war, and other conflicts in non-European countries, such as Iraq, led to a consistent increase in asylum applications. In 1999, they reached 37,318 units, mainly from ex-Yugoslav countries (22,718), but also from Iraq and Turkey (Ministry of the Interior 2020). Even in these cases, Italy adopted an emergency approach, and asylum policy was characterised by conflicting tensions between humanitarian and restrictive measures (Petrovic 2020).

Between 2002 and 2013, the number of asylum seekers remained more or less constant, not exceeding 20,000 units, except in 2008 and 2011 when they were more than 30,000 (Ministry of the Interior 2020). However, during this decade, many changes occurred, mainly due to the influence of the European Union in this area of policy, which has a strong impact on the implementation and development of the Italian asylum policy (Fontana 2019). Moreover, in these crucial years, the composition of asylum seekers according to nationalities changed, becoming more diversified. As an example, in 2008, the majority of asylum seekers came from Nigeria, Somalia, Eritrea, Ghana, and Afghanistan, while in 2011, they came from Nigeria, Tunisia, Ghana, Mali, and Pakistan.

Between 2014 and 2016, almost 500,000 migrants arrived on the Italian coasts, mainly from Nigeria, Gambia, and Senegal, and others entered the country from the Balkan route, especially Pakistanis (Petrovic 2020). The increase in arrivals corresponded to an increase in asylum applications at first instance, so that between 2014 and 2016 they doubled from 63,000 to 123,000, reaching 130,119 applications in 2017 (Ministry of the Interior 2017). By and large, people asking for asylum from 2015 to 2018 mainly came from Nigeria, Pakistan, Bangladesh, Senegal, and Gambia, and most of them were men. As an example, among 130,119 asylum seekers submitting an application in 2017, 84% were men and only 16% were women (Ministry of the Interior 2020). More broadly, female asylum applications remained extremely low, not exceeding 22%, except in 2019 when they arrived at 27%.

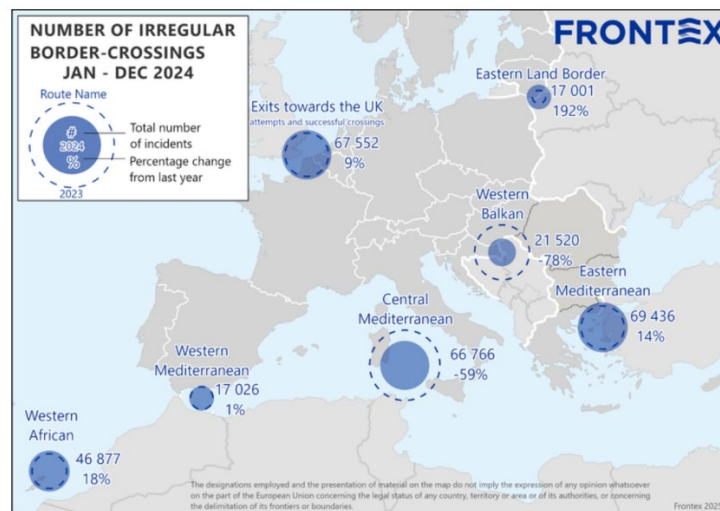
After 2018, applications began to decrease, and in 2019 they reached 43,783 units. As regards nationalities, the majority of asylum seekers came from Pakistan, Nigeria, Bangladesh, El Salvador, and Peru (Ministry of the Interior 2020). The significant increase in asylum applications since 2015, and especially in 2017, led Italian governments to adopt some changes, again following an emergency approach (Gattinara 2017), in order to speed up asylum adjudication procedures and reduce the consistent delays. Moreover, they adopt restrictive measures, also in line with the EU asylum policy, with the aim of responding to anti-immigrant sentiments in public debate (Fontana 2019).

With the Covid-19 pandemic, the number of asylum seekers became even more limited, especially in 2020, when asylum seekers were only 26,963, even though this trend seems only contingent. Indeed, in 2021, they doubled again: among the 53,609 applications, most of them were submitted by people from Pakistan, Bangladesh, Tunisia, Afghanistan, Nigeria, and Egypt (Ministry of the Interior 2021).

According to the data of the Ministry of the Interior (2022-2024), between 2022 and 2024, the number of people arriving by sea has notably changed. In 2022, 105,131 arrivals were recorded, a figure that rose sharply in 2023 to 157,651. However, 2024 saw a significant decrease, with arrivals dropping to 66,317. Comparing the data year by year, it is clear that 2023 experienced higher arrivals in every month compared to 2022, with the most significant increases in July and August. The nationalities of those arriving in 2024 were diverse, with the largest groups coming from Bangladesh (13,779), Syria (12,504), Tunisia (7,677), Egypt (4,296), and Guinea (3,542). Together, these five nationalities accounted for over 41,000 arrivals, representing more than 60% of the total for the year. Another critical aspect is the number of unaccompanied minors arriving in Italy. In 2022, there were 14,044 unaccompanied minors, a number that

rose to 18,820 in 2023—a 34% increase. However, 2024 saw a significant decline, with 8,043 unaccompanied minors arriving. Despite the decrease in 2024, as reported by UNHCR, “Italy welcomed the highest number of sea arrivals in Southern Europe, with a total of 41,617 people arriving by sea. This represented a 64 percent decrease compared to the same period in 2023. However, the proportion of deaths and missing (over 1,000 in the first eight months of 2024) to arrivals increased by around 30 per cent, making the Central route the deadliest in the Mediterranean. Around 4,000 arrived by land, reflecting a downward trend compared to 2023, likely linked to Italy’s temporary reintroduction of Schengen’s internal border controls with Slovenia”⁴⁰ (UNCHR 2025). Regarding data of 2025, since September 2025, 49,312 migrants arrived on the Italian coast, most of them from Bangladesh, Egypt, Eritrea, and Pakistan, showing a slight change in the composition of nationalities and thus migration routes.

Italy has experienced a significant number of arrivals of unaccompanied migrants since 2011. According to Save the Children, 127,662 unaccompanied migrants arrived in Italy by sea. In Italy, there are 19,215 unaccompanied foreign minors in the reception and protection system. Over 75% are between the ages of 16 (23.75%) and 17 (52.15%), 13.66% are between 7 and 14 years old, and only 1.65% are in the 0–6 age group. Sicily, once again, is the region with the highest number of unaccompanied foreign minors (4,555 minors as of October 31, 2024, accounting for 24.78% of the total). Nationwide, the vast majority are male (87.70%), while girls represent 12.30%—a proportion consistent with previous years. The most represented nationalities are Egyptian (3,849), Ukrainian (3,631), Gambian (2,224), Tunisian (1,973), and Guinean (1,515)⁴¹. In July 2025, 16,497 unaccompanied migrants were in the Italian territory, with a peak in 2023 (23,336 minors). However, the number of new unaccompanied migrants is decreasing, with 6,295 unaccompanied migrants arriving in the first half of 2025 (ISTAT 2025). Most migrants arriving in the Italian territory arrive from the Central Mediterranean Route, a few from the Balkan route, and the Eastern Mediterranean Route to Europe.



The main route is the central Mediterranean, with departures from Libya and Tunisia and arrival in Southern Italy, especially in Sicily (including the islands such as Lampedusa and Pantelleria) and Calabria. Other people arrive from the Balkan route, especially since 2022, and it involves especially people from Pakistan and Afghanistan. Finally, a few people arrive from the Eastern Mediterranean Route, arriving in Adriatic Ports. There are also some reported arrivals in Sardinia, especially from Algeria.

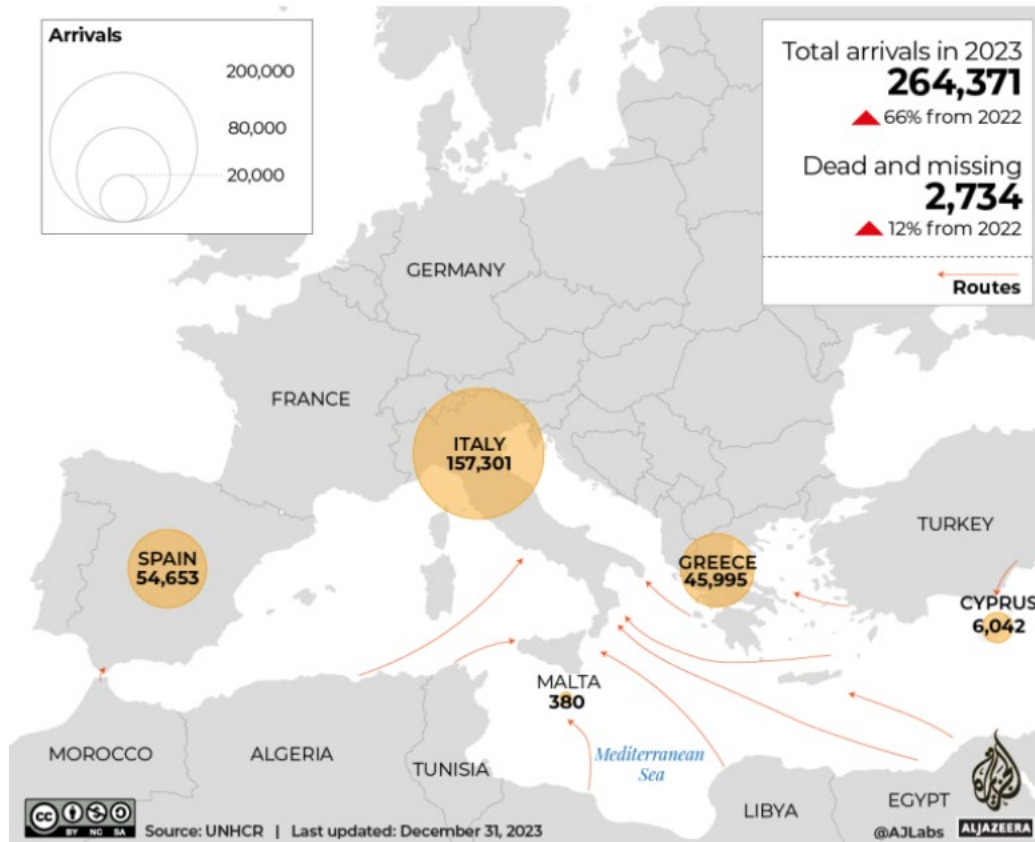
⁴⁰ <https://www.unhcr.org/europe/sites/europe/files/2024-10/bi-annual-fact-sheet-2024-09-italy.pdf>

⁴¹ <https://www.savethechildren.it/press/migranti-dal-2014-sono-arrivati-italia-mare-127662-minori-stranieri-non-accompagnati-con-una>

MIGRATION

Asylum seeker arrivals in Europe in 2023

More than 264,000 asylum seekers crossed the Mediterranean, by both land and sea, to Europe this year. By far, most travelled by boat and arrived on Italian shores.



As mentioned before, the main entry points by sea are in the south of the islands, and particularly Lampedusa, where, according to UNHCR data, 71% of migrants who arrived in Italy in 2024 disembarked. Other ports include Sicilian and Calabrian ports, such as Pozzallo, Reggio di Calabria, Porto Empedocle, and the Adriatic ports of Ravenna, Taranto, Ancona, and Ortona. In Sicily, in the ports of Lampedusa, Porto Empedocle, and Pozzallo, there are the identification centres (hotspots). In Porto Empedocle and Pozzallo, there are also first reception centres and administrative detention centres conceived for the detention of asylum seekers under the accelerated border procedure. Regarding the pre-removal centres, they are not near the ports, and people are thus transferred there. They are in Caltanissetta and Trapani. Regarding people arriving in Calabria, there is a first reception centre, recently opened to function as an identification centre, at the port of Reggio Calabria. There is also a pre-removal centre. In Sardinia, we have the first reception centre of Macomer, which has been informally used as a hotspot. In the main hotspots, additionally, a relevant entry point is the border between Slovenia and Italy, and particularly the city of Trieste, where borders are now closed with the interruption of the Schengen code since 2023. The police and the army monitor the border. Finally, the Adriatic ports (e.g., Ancona, Bari) are entry points, and the authorities present there are the border police. In hotspots, in addition to the border police, there is the presence of officers of the Ministry of the Interior, as well as experts from UNHCR monitoring disembarkation procedures and officials from EUAA to support Italian authorities with the identification process.

There are two main implications. On the side of the Balkan route and the Eastern Mediterranean, the judicial bodies needed to decide on the unlawful practice of readmission agreements and externalization policies, which are thus non-binding instruments, characterized by informality. When it comes to pullbacks and externalization policy along the Central Mediterranean Route, the informality of the implementation

of externalization (and cooperation with Libya and Tunisia) impact on asylum access adjudication. Courts are indeed asked to decide on the indirect responsibility of the state for what occurs outside the territorial waters of Italy, and this raises legal and practical challenges in judicial accountability (Moreno Lax 2024).

As far as is known, the main implication of the entry points concerns the hotspot approach, and particularly the hotspot located in Lampedusa. As mentioned in parts I and II, what occurs in the hotspots, especially in terms of proper information on the right to access asylum, can have serious implications in the asylum access adjudication. As already decided by the Court of Cassation, the lack of this proper information can result in summary returns of migrants, whose right to access asylum is not guaranteed, with violations of non-refoulement. Additionally, entry points are important after the approval of the accelerated border procedures. People asking for asylum at certain border zones (See part I) and in Albania, after the Italy-Albania Protocol, are subject to a fast-track procedure and administrative detention at the border, which, as described in part II, has important implications in Italian jurisprudence, due to the significant engagement of courts in interpreting the extent of the application of the accelerated border procedure and asylum seekers' guarantees in that procedure (e.g. detention, suspensive effect of the appeal, respect of deadlines).

B. Composition and spatial distribution of forced migration population

In the report provided by the [Ministry of the Interior](#), there are relevant data concerning asylum applications in the country from 1990 to 2020. The Ministry also published on the same website some data up to 2022. Instead, for data in 2023 and 2024, the Government did not release public data, which, however, is available in the Eurostat database. Based on the collection of this data, these are the numbers of asylum applications from 2010 to 2024 in Italy:



Source: elaboration by the author.

Regarding the country of origin, the asylum applications in 2024 mainly came from people from Bangladesh, Pakistan, and Egypt. In the past years, especially in 2016-2017, flows were slightly different, with most asylum seekers coming from Pakistan and Nigeria (Ministry of the Interior).

From the data available, we see that a significant number of applications have challenges with asylum access. Particularly, the arrival of a significant number of people leads to overcrowded hotspots and first reception centres, which also results in proper information about the right to asylum in these centres. Additionally, the increasing number of applications has produced delays and backlogs in asylum courts. for asylum courts, at least regarding asylum appeals.

Among the implications is that of nationality when it comes to accelerated border procedures. As explained in Part II, adjudication concerning this procedure mainly relies on the concept of safe countries of origin.

The Ministerial sources listing these countries of origin mainly included in the list all the most common nationalities in the arrivals, including, for instance, Bangladesh and Egypt, despite important violations of human rights in the country and in particular, exceptions to safety for groups of people, which, according to the recent judgment of the CJEU *Alace and Canpelli* 2024, is a reason for not considering these countries as safe countries of origin according to the current EU qualification directive. The aim of including in the list of countries of origin the countries of nationalities that are mostly represented in arrivals is connected to the goal of adopting fast-track procedures at the border to accommodate the larger number of asylum seekers arriving in Italian territory. Judicial accountability can limit this instrumental use of the list of safe countries of origin. Additionally, nationality can be relevant, especially when it comes to return procedures; nationals from countries with which Italy has return agreements (e.g., Tunisia) can be more easily subject to summary returns, since returns can be easily and rapidly implemented, risking violations of the principle of non-refoulement (AIDA Report Italy, 2024).

The spatial dimensions are relevant, especially when it comes to summary returns through delayed deportation orders issued to people disembarked in hotspots (especially in Lampedusa) and then transferred to the mainland, where they receive a delayed deportation order. In most cases, the people remain in the Sicilian region, although in some cases they can also be transferred to other pre-removal centres across the territory (e.g. Torino, Milano). However, in most cases, they arrive for the first time before the Judge of the Peace in Sicily. For this reason, in some districts, such as Palermo, Trapani, Agrigento, and Catania, a large number of hearings are being held for the validation of detention orders and deportation measures for migrants. However, public data are not available. More research is needed to understand whether the geographical location of these courts affects their workload or impacts asylum access adjudication.

C. Political and public debate in the country

Between 2015 and 2019, migration became increasingly salient in Italian politics. During this period, the percentage of Italians who considered immigration one of the two most important issues facing their country rose significantly, from around 5 percent to over 40 percent in May 2017, before slightly declining but remaining relatively high (Geddes and Petracchin 2020). This trend in Italy followed a similar pattern to Europe's until 2016, when concern about immigration began to rise again. The perception of a 'migration crisis' has lasted longer in Italy compared to other European countries (Geddes and Petracchin 2020). Additionally, research on the Italian case also suggests that the increase in support for these parties – particularly the Lega party - has followed the growing salience of immigration (Geddes and Petracchin 2020, Magistro and Wittstock 2021), a trend observed in other EU countries (Kustov, Laaker & Reller Citation2021; Mader & Schoen 2019, Dennison and Geddes 2019). While in government in 2018, in coalition with the Five Stars Movement, the League party started a rapid succession of restrictive reforms on migration and asylum, with Matteo Salvini (Federal Secretary of Italy's Lega party) appointed as Minister of the Interior (Dennison and Geddes 2021). Particularly, a First Security Decree (converted into Law No. 132/2018), among the main aspects, intervened in the asylum determination procedures (the process for determining asylum applications) by including faster processing of asylum applications – accelerated procedures (ruled at the EU level and now implemented in the national legislation) and border accelerated procedures. The Second Security Decree, adopted in 2019 and implemented by Law 77/2019, mainly focused on access to territory to deter the activities of NGOs involved in migrant rescues in the Mediterranean Sea (Geddes and Petracchin 2019). It included the authority of the Interior Minister to restrict or prohibit the entry, transit, or docking of ships in Italian territorial waters for reasons of order and security, as well as in cases where they are suspected of aiding illegal immigration. Additionally, it introduced measures criminalizing NGOs active in the Mediterranean: Captains of NGO ships involved in search and rescue operations who enter Italian waters without authorization face severe penalties, including arrest, fines up to €1 million, and confiscation of their ships, and additional funds to National Prosecutors' Offices are dedicated to enhancing their efforts in tackling activities that facilitate irregular

immigration. With the change in government and the new red-yellow coalition, a new reform concerning immigration has been issued. After the 2022 elections, the actual right-wing government adopted several reforms, pushed by anti-immigration goals pursued by Fratelli d'Italia and Lega. Among them, Decree Law No. 20 of 2023, converted into Law No. 50/2023, is also known as the problematic name of 'Cutro Decree'. Indeed, it was approved immediately after the shipwreck, which occurred during the night between February 25 and 26, 2023, causing the death of at least 94 people, including 34 children. It is near the coast of Steccato di Cutro, in the Calabria region. Among the main changes, it enlarged the cases for applying the accelerated border procedure by including all asylum seekers from the list of safe countries of origin approved by Decree signed on 4 October 2019 by the Ministry of Foreign Affairs, the Ministry of the Interior, and the Ministry of Justice. This list, expanded in 2023 and 2024, now includes 19 countries,⁴² with consequences on asylum applications of a large number of asylum seekers. It reduced the procedural guarantees for people under this fast-track procedure at the border, such as the suspensive effect of the appeals against negative decisions on their applications, which substantially means that asylum seekers do not have an automatic right to stay in the country if they appeal a negative decision of the administrative court, despite the suspension of the negative decision being validated on a case-by-case basis by a judge case by case. Finally, it provided for the detention of asylum seekers under the border procedure, unless they paid a financial guarantee of 5000 euros, a provision that was then partially modified, introducing a guarantee that can vary depending on individual circumstances. The modified and extended border procedure, including widespread detention measures, was functional for the implementation of the Albania-Italy Protocol between the Government of the Republic of Italy and the Council of Ministers of the Republic of Albania on Strengthening Cooperation in Migration Matters, signed in Rome on November 6, 2023. The protocol, aiming at externalizing asylum applications in the Albanian territory, despite being under Italian jurisdiction, states in article 3 that asylum seekers transferred to Albania would follow the accelerated border procedure and be detained in the reception centres, which are considered Italian border zones. The populist far-right movement in government since 2023 has quickly enacted strict immigration policies, reflecting its campaign promises and garnering voter support. This shift away from human rights and refugee protection was particularly evident concerning asylum, for both what concerns access to territory and the asylum procedures and rights once in Italy (Ambrosini 2025). It occurs in a regional context in which those restrictive policies align with broader European Union trends towards stringent border control and increased repatriation of unauthorized immigrants. From this summary of the main policy interventions, it appears clear that curbing migrant arrivals as well as reducing guarantees for asylum seekers has been at the centre of far-right and anti-immigration parties in government from 2018 to 2020 and from October 2022 up until today. However, it is important to stress that, due to the salience of migration since 2015, also other parties (central-wing ones) have adopted restrictive measures regarding access to asylum. For instance, pullbacks started from 2017, with externalization policies with Libya developed from a central wing government.

The discussion surrounding access to asylum is inextricably linked to media representations of border control and restrictive barriers, frequently presented as an urgent priority for Italy. In Italian media, the theme of borders—especially the maritime border—is central to the representation of migration. The “need” to build walls, barriers, and restore boundaries to restrain “waves” of refugees and migrants is portrayed as urgent. Particularly, media representation often articulates the migratory phenomenon through the frame of a “landing emergency” (Bruni 2016). Flows are regularly depicted as an “invasion” and described as a “crisis” (Musarò and Parmiggiani 2017). Moreover, media portrayals of border access often feature a coexistence of discourses regarding control and care, known as the “military-humanitarian spectacle of the border”. Even the consequences of this border regime are often framed as a “humanitarian” crisis. For example, the Italian operation *Mare Nostrum* was represented through the coexistence of humanitarian narratives of saving lives and the spectacle of militarised borders (Musarò and Parmiggiani 2017). Scholars argue that this depoliticized framing—using emotional and technocratic

⁴² The list of countries includes: Albania; Algeria; Bangladesh; Bosnia-Herzegovina; Capo Verde; Costa d'Avorio; Egitto; Gambia; Georgia; Ghana; Kosovo; Macedonia del Nord; Marocco; Montenegro; Peru; Senegal; Serbia; Sri Lanka; Tunisia.

language—legitimizes a “compassionate repression.” Migrants and asylum seekers are depicted simultaneously as vulnerable objects needing salvation and as threats to security, rather than as agents of their own destiny (Musarò and Parmiggiani 2017). Furthermore, analysis of the language associated with “immigration” in social media (2018–2020) shows associations with negative terms such as “uncontrolled,” “mass,” “problem,” and “risky,” portraying migration as a difficult-to-manage phenomenon and strongly associated with irregularity (Ambrosetti and Miccoli 2025). Research on Italian public opinion reveals that, although general divergence toward two extreme poles may not be highly dispersed, there is significant alignment along consistent views. For instance, Iannelli, Biagi, and Meleddu (2021) show that 40.3% of Italians were divided in a balanced way between two consistently opposite “poles” on immigration: consistently closed views and consistently open views. Traditional and digital news media practices play a significant role in constructing these polarised positions. Heavy use of Television news is strongly related to the probability of holding extremely unfavourable positions toward immigrants across cultural, security, and economic issues. It is also related to consistently holding closed views on immigration. This robust effect of television confirms its centrality in fostering perceived polarization, especially in media systems characterized by high “political parallelism,” such as Italy. Frequent use of social media reinforces positions that are extremely unfavourable to immigrants, specifically by viewing them as economic and security threats. Higher social media use increases the likelihood of having positions that are extremely favourable to the association between immigrants and the risk of terrorist attacks (Iannelli, Biagi, and Meleddu, 2021).

D. Corruption

As far as is known, corruption does not play a particular role in the jurisdiction when it comes to asylum access adjudication.