

## MODULE 4. DETENTION CENTRES

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### Capsule 3. Retention centres for repatriation.

Care, health efficiency, fear, death, poverty. These are the keywords of the public and private discourse during the current global pandemic emergency. This has created new subjective and common senses of interpretation on what is now perceived as a personal and collective risk, redefining the paradigm of social insecurity. Before the spread of the Covid-19 virus and its consequent events, the concepts of risk and insecurity in the Italian public discourse almost always concerned the migration issue. Every day the headlights of the mass media were focused on the migratory phenomenon and its protagonists. A storytelling bordering on the obsessive, in which the words immigrant, asylum seeker, refugee, illegal immigrant often became (even voluntarily) synonyms of thieves, profiteers, parasites, slackers, rapists. The language of political communication was echoed by that of the common narrative, which can also be deduced from the opinions expressed through social networks.

From the nineties to today, the Italian political storytelling on immigration and political asylum has presented itself with two faces (often in conjunction with the enactment of legislative measures). The first one pauses to reflect on the causes that lead to exclusion and marginalization. The second face tells of a welcoming, inclusive country, of the battles for rights, equality, showing the lights but also the shadows of the third sector to which the State contracts the almost total management of services. The migration issue in Italy, in fact, has involved a large part of Catholic and secular associations,

which have long been committed to defending the rights of immigrants through paths of inclusion and active citizenship, public debates, sector magazines, protest or cultural events, anti-racist movements, establishment of information and support desks for basic goods.

Since the 1990 Martelli Law, some regulations have favored the establishment of associations dedicated to the direct management of the migratory phenomenon, especially as regards hospitality. These bodies have been assigned the management of structures such as Roma camps, Reception Centers for Asylum Seekers (CARA), Asylum Seekers and Refugees Protection Systems (SPRAR), Centers for Temporary Stay (CPT), Identification and Expulsion Centers (CIE), Detention Centers for Returns (CPR), Extraordinary Reception Centers (CAS). With the exception of the Roma camps that have not been established by specific national regulations, the acronyms mentioned above represent some of the names that over the years the Italian state has given to define the places of reception but also of detention of migrants. New laws have eliminated or changed some of these acronyms in form, but not in substance.

On the other hand, the same way in which those arriving from another country are defined is not a neutral term: the term migrant itself, in fact, is already an insufficient representation to clarify the variety of human and social problems of these people, categorized as belonging to somewhere else or nowhere. Words, categories and definitions that doesn't actually exist in nature, but seem to be applied to regulate the processes of inclusion or exclusion of that individual in that territory. Thus the vocabulary of migration does not represent the fruit of neutral choices. The word "clandestine", for example, begins to be associated with deviance only starting with the enactment of the Bossi-Fini Law, which for the first time indicated illegal immigration or entry into the Italian state without a regular permit as a criminal offense. The problem of the words to be used is

also the subject of debate in the IOM - International Organization for Migration - which periodically publishes a specific glossary of migrations. The need arises from the fact that not only are there many different languages spoken in nations, but also because even within single nations the same words can have different meanings, positive or negative depending on the contexts.

Instead, international law creates common denominators for refugees and asylum seekers, through definitions provided by shared laws and protocols. IOM and the United Nations High Commissioner for Refugees (UNHCR) place strong emphasis on the words to be used and in what contexts, in order to help place migratory realities in a correct cognitive context, which goes beyond the perception of individuals and beyond the imaginary that language feeds. A perception that becomes all the more negative the more the use of negative or alarmist terms increases in public opinion.

In essence, the words with which we call those who emigrate to Italy as elsewhere are neither casual nor neutral but are determined by the definitions used in the laws that govern the phenomena of immigration and those of humanitarian protection and therefore define precise categories of individuals in a sort of social and political placement scale.

Official data from Eurostat indicate that in 2019 there was a 12% increase in requests for asylum or protection and the countries with the highest requests are Cyprus, Malta and Greece. 65,200 asylum requests were submitted in the EU (Eurostat data collected up to January 2021), an increase of 10% compared to December. In Italy there was a sharp decrease in asylum applications in 2019 due to its restrictive reception policies and the progressive reduction in funding for centers dedicated to protection. On the contrary, there was an increase in arrivals of minors under 14, with an average of 20% of the total arriving migrants compared to 38% in Europe. Furthermore, the

statistics show that the number of migrants leaving Libya for Europe has not changed despite the agreements between Italy and Libya, the creation of hotspots (anything but humanitarian) on the Libyan coasts and the presence (or not) of the ships of the NGOs providing rescue at sea. Between 1 January 2019 and 20 January 2020, the number of irregular migrants departing from Libya every day is substantially identical (source Ispi).

It is good to clarify that asylum and humanitarian protection are governed primarily by the rules of international law but differ in their articulation on the territories according to the internal laws of the individual states. The Geneva Convention can be considered the first international legal document guaranteeing individual freedoms. Art. 1 establishes that the "refugee" is "anyone who is outside the State of whose citizenship he / she cannot or, for this fear, does not want to ask for the protection of that State". 144 states have now joined this convention which, in addition to establishing the status and roles of refugees, aims to define the rights and legal obligations of protection by the governments of nations.

In Italy, asylum has never had its own organic law but has been disciplined within the state immigration rules. Yet, it is the Italian Constitution itself which in its article 10 reads: "The foreigner, who is prevented in his country from the effective exercise of the democratic freedoms guaranteed by the Italian Constitution, has the right of asylum in the territory of the Republic, according to the conditions established by law".

On 18 December 2020 the decree of 21 October 2020, n. 130 (so-called immigration and security decree) has been converted into law. As can be read from the official website of the Chamber of Deputies, the provision contains some urgent arrangements in matters of immigration and international and complementary protection: amendments to articles 131-bis, 391-bis, 391-ter and 588 of the

criminal code, measures regarding the prohibition of access to public establishments and places of public entertainment, to combat the distorted use of the web and the regulation of the Guarantor national rights of persons deprived of personal liberty. This provision intervenes to mitigate some of the restrictions on immigration and asylum brought under the previous decrees, known as the Minniti and Salvini decrees (named after the Ministers of the Interior who issued them). Some of the consequences of these previous decrees were: modification of the feature and names of the places of identification and repatriation; limitation and complication of residence regularization procedures such as stay in the centers; establishment of coastal hotspots in Mediterranean countries, such as the Libyan ones, which have stood out as places of violence and constant violation of human rights. By reducing the already inadequate economic resources destined for reception, these decrees had also weakened a system that had proved effective up to now: the SPRAR. SPRAR is a reception system that aims to insert migrants, asylum seekers and refugees in territorial communities, hosting them in shared homes and located in different urban centers. In order to have greater control over migrants, however, it was preferred to finance large centralized reception centers.

Reading the dedicated section of the website of the Italian Ministry of the Interior clarifies the framework of the current migrant reception system and also its premises: "Foreign citizens who have entered Italy illegally are housed in centers where, if they request international protection, they are welcomed for the time necessary for the procedures for ascertaining the relative requirements, otherwise, they are detained for expulsion" (<https://www.interno.gov.it>). Basically, the current Italian model of identification / reception / expulsion is organized into three different types of intervention and related structures: hotspots, CPAs and CASs, CPRs.

The hotspots have been defined by the D.L. n. 13/2017, the so-called Minniti decree, later converted into Law no. 46/2017. They were established near the places of access by sea to the Italian territory and have a containment and control function. Rescue, pre-identification, photo-signaling, health screening and transfer to other spaces are delegated to other structures, depending on the type of individual request, whether for political asylum or not. The hotspots currently active in Italy are four and are located in the cities of Lampedusa (AG), Pozzallo (RG), Messina and Taranto.

The CPAs (First Reception Centers) and the CAS (Extraordinary Reception Centers) are defined as first level reception structures. There are nine CPAs still existing as of January 2021 and located in various Italian regions.

The CAS are structures assigned by the Prefects following specific calls for tenders, established pursuant to ex art. 11 Legislative Decree no. 142/15. Currently there are more than 5,000 CAS active on the Italian territory, with a capacity of more than 80,000 places (data from the Ministry of the Interior).

Foreigners who do not meet the international protection requirements are detained for the purposes of expulsion in the CPR, the Repatriation Detention Centers (pursuant to Article 14 of Legislative Decree 286/1998). ). The repatriation detention centers are currently ten and are located in the cities of Bari, Brindisi, Caltanissetta, Gradisca d'Isonzo (GO), Macomer (NU), Palazzo San Gervasio (PZ), Rome, Turin, Trapani and from October 2020 the center of Milan was reopened for a number of seats equal to about 800 in conditions of non-overcrowding. The residence time in the CPRs should be functional to the identification procedures and to the subsequent expulsion and repatriation procedures (30 days) but it is often longer (60-90-120 days and beyond) and the stay is in conditions of environmental discomfort and psycho-physical for the

guests. It is an issue denounced several times over the years also following the serious and numerous episodes of violence that have occurred in these places since their establishment as CPT (Temporary Detention Centers, established by the Turco-Napolitano law) and then CIE (Identification and Expulsion Centers, established by the Bossi-Fini law). The pandemic emergency has even increased these times of stay in the structures due to the closure of the borders of some countries and the interruption of international connections. Nonetheless, the people to be repatriated continue to enter the centers and stay there longer than they should.

The actual psychophysical condition or the real risk to the safety of the migrant in his country of origin are almost never taken into consideration in the expulsion measures. These are issued taking into account the entitlement or not to seek asylum by the detained person, or the absence of a residence permit. There are many associations that denounce the violations that take place in these structures. Among the most recent ones is the case of Moussa Balde, a young citizen of Guinea, who committed suicide within the C.P.R. of Turin where he was detained because he did not have a residence permit after he himself had reported having suffered violence by three Italian citizens. The case, which has reached the headlines of national newspapers, is the subject of a legal inquest: it investigates the conditions of the places of stay and the generic nature of the issuance of expatriation measures even when, as in this case, there are no real bilateral agreements with the States of origin that guarantee and protect returning migrants. This revealed a serious general condition: in the same CPR of Turin there were 115 cases of acts of self-harm and attempted suicide in the year 2021. There was, on average, more than one attempted suicide per day in a single month between October and November. But Turin is not an exception and cases of violence and violation of human rights are also reported in the other CPRs. For example, Wissem ben Abdellatif, a 26-year-old Tunisian from Kebili, died in San Camillo hospital after being transferred from

the detention center for repatriation (CPR) in Ponte Galeria on November 28, 2021. B.H.R., a man of Moroccan nationality, took his own life within the CPR of Gradisca on 7 December 2021.

Asgi (Italian Association of Legal Studies on Immigration) writes in a press release: "These tragic events should lead the institutions to question whether such "places of lawlessness" are compatible with the Italian constitutional democratic order and whether it is really necessary in a democratic society to lock up in places of administrative detention people whose fault is being foreigners and not being the holder or no longer holder of a residence permit".

The National Guarantor for the rights of persons deprived of personal liberty, an Italian legal body for the prevention of torture and cruel, inhuman or degrading treatment or punishment, also filed a complaint on the illegitimacy of places and provisions, expressing concern and reiterating its dissent regarding these procedures. In the Report on the visit carried out in the CPR of Turin on June 14, 2021, the Guarantor refers to the adoption of detention measures against migrants. In particular, he points out that even supranational bodies such as the European Court of Human Rights recommend that «the need to detain should be assessed on an individual basis and not based on a formal assessment of the migrant's current migration status. The detention must comply with the principle of proportionality and as such, automatic and/or mandatory detention in the context of migration is arbitrary. [...] The element of proportionality requires that a balance be struck between the gravity of the measure taken, which is the deprivation of liberty of a person in an irregular situation, including the effect of the detention on the physical and mental health of the individual, and the situation concerned. To ensure that the principle of proportionality is satisfied, alternatives to detention must always be considered». In the Italian legal system, the criterion of proportionality is clearly in relation to the method of implementation of the measure for the removal of certain categories of vulnerable

subjects, such as victims of serious psychological, physical or sexual violence, whose expulsion must be carried out pursuant to article 19, paragraph 2 bis of the Consolidated Law on Immigration with methods compatible with individual personal situations.

The report also points out the lack of consideration of the indispensable assumption of the effective possibility of repatriation, repeatedly stigmatized by this Guarantee Authority, and which in fact continues to represent a general element of criticality.

Beyond the reflections on the formal changes of immigration laws in Italy, what emerged in substance starting from 1990 is an increasingly secure vision, aimed more at control and limitation than at reception and socio-working integration. Furthermore, the political discourse has led to a sort of criminalization of solidarity until, for example, even the tacit duty of rescue at sea is no longer valid. A circumstance that has led to paradoxical legal distortions: European prohibitionist policies, agreements with third countries that are anything but safe, the refusal to create humanitarian corridors and protected and legal migration routes have not led to a decrease in migratory routes by sea but to make journeys increasingly risky and, often, fatal.

Amnesty International's recent report on migration estimates that more than 15,000 migrants died in the Mediterranean between 2014 and 2019. The survey shows that in 2019 the ratio between deaths and departures is, unfortunately, strongly increasing: 1 death for every 6 people left while in 2018 the ratio between deaths at sea and departures was 1 in 29 (Amnesty International. Report 2019-2020).

In general, considering the migration policies activated in Italy from the first post-war period to today, the analysis of the trend of contemporary flows and the related governance, it can be said that the Italian case has some peculiar traits within the European context. Beyond the *prêt à porter* storytelling about the absence of a real immigration policy or a defective, disordered, disorganized one, the

concrete facts highlight the existence in Italy of a rigid migratory model that in fact produces a triple and tragic separation: in the life of the immigrant, between immigrant populations, between natives and immigrants.

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