

MODULE 2. INSULARISATION. CONSTRUCTION OF SPACE, “HOT SPOTS”

Capsule 3. Borders at sea

1. How "Hotspots" (Crisis Points) are born

Faced with the growing phenomenon of migration, the European Commission decided to consider the management of migrants mixed flows as one of the ten political priorities of the EU. To manage these flows, in 2015 the European Agenda on Migration was adopted. It established diverse measures to support the activities of Italy and Greece, two countries with first entry for migrants who eventually seek international protection in Europe.

The procedure for relocating people in need of international protection (the so-called “Relocation”) was reworked. Partially derogating from the "Dublin III" Regulation (604/2013), this procedure provides that applicants for international protection who are stateless or belonging to nationalities for which the recognition rate of international protection is equal to or greater than 75%, can formalize the request for international protection (form C3) after their identification and their photo-signaling and then are relocated to a member country in which their application will be examined, according to the quotas established in the context of the Decisions of the European Council.

For the launch of the Relocation, the European Commission asked Italy to draw up a Roadmap indicating the measures for improving the capacity, quality and efficiency of the Italian system of asylum, initial reception and repatriation. The organizational measures envisaged in the Italian Roadmap included the designation of specific Hotspots.

2. Purpose of Hotspots

These are structures usually located near a landing place, where people can arrive safely, in the shortest possible time and compatibly with the Italian regulatory framework. Here they are subject to medical examinations, receive a first paper information on immigration and asylum legislation and are then checked, pre-identified and photos reported. They are informed about their status as irregular migrants and the possibility of applying for international protection. They then receive accurate information on the international protection procedure, the relocation program and assisted voluntary return, thus starting the relative paths with specific measures for people with special needs for whom there is a repatriation ban.

Police forces, health personnel and international and non-governmental organizations work closely in the hotspots, in full cooperation with the European support teams, composed of professionals appointed by Frontex, Europol, EUAA - European Union Agency for Asylum (formerly EASO - European Asylum Support Office). The aim is to ensure a standardized and fully efficient management of the activities, to guarantee the most sustainable solutions for the entrants. Other subjects, such as non-governmental organizations, can access hotspots with specific authorizations issued by the DLCI for the provision of specifically requested services, without any prejudice to police activities.

The implementation of these procedures will lead to a first distinction between the different categories of people entering. A specific discipline applies to unaccompanied foreign minors as well as to subjects with specific needs, such as victims of international trafficking of human beings.

Italian hotspots operational and not:

- Lampedusa (AG) from 01.10.2015;
- Pozzallo (RG) from 19.01.2016;
- Taranto (TA) from 02/29/2016;
- Messina (ME) from the end of 2017;
- Trapani (TP) turned into CPR and then definitively closed;
- Porto Empedocle (AG) definitively closed;
- Augusta (SR) definitively closed.

3. Disputes

- **Entitled to Protection or Unwanted Guests?**

This is the crucial point and source of debate about the use of the hotspot approach, requested by the European Commission in 2015 to Italy and Greece.

Through a sample of 170 interviews with migrants and refugees, Amnesty International Italia highlighted the gaps in this procedure in a November 2016 Report: "The hotspot approach requires new arrivals to Italy to be examined in order to separate asylum seekers from those considered irregular migrants. This means that people who are often exhausted and traumatized by travel and with difficulties in accessing adequate information on asylum procedures, must answer questions that may have profound implications for their future".

How can it be so aseptically established who is entitled to Protection and who is not?

How can a migrant who has faced such a long and difficult journey have the lucidity to be able to answer all the questions necessary to obtain International Protection?

"Since the refugee status is not determined by why a person arrived in a country but by the situation they would face in case of return, this approach is fundamentally flawed".

All foreign citizens have the right to apply for international protection regardless of national origin. Only the territorial commissions and the judicial authority have the power to assess the application on the merits, based on the context of origin and the personal circumstances of the applicant. No competence in this regard is attributed to the police. Unfortunately, hotspots today represent a moment of informal, summary and extralegal differentiation between forced and economic migrants. The hotspot centers are also conceived as places of first reception: the term used is CPSA, standing for first aid and reception center / hotspot.

The overlapping and mixing of humanitarian practices (rescue, reception and refreshment) and police practices (identification, initiation of procedures for defining status, rejections and repatriation) create a basic ambiguity that makes it necessary to open a reflection. This ambiguity, in fact, pollutes the delicate dynamics that develop in the helping relationship, which are already intrinsically characterized by an imbalance of power between those who give and those who receive. Combining this relationship with practices of control and status definition tend to generate confusion - in operators, migrants, police officers, mediators, etc. - with respect to the roles, powers and functions of each.

In the absence of an organic and clear legal basis, discretionary and potentially illegitimate behaviors can develop on the part of the actors in the field. The role of migrant assistance and protection organizations should be clearly distinguished from that of the public administration. Even in situations characterized by a cooperative relationship, they must be able to operate in defined spaces, distinct from the places where control and status definition functions are exercised. In a significant number of cases, violations have emerged, such as the application of arbitrary selection practices between asylum seekers and economic migrants. These violations are often based on the nationality of migrants, the lack of or insufficient orientation to rights, the issue of deportation or deferred refoulement and the implementation of forced returns in the absence of a case-by-case assessment in the presence of any cause for not being expelled.

This remains an open debate yet with no solution.

- **Freedom deprivation**

"Without a clear regulatory definition and considering the extreme variety of activities that take place within them and the heterogeneity of vocations and tasks of the various actors, hotspots risk generating gray areas, becoming open or closed structures from time to time according to the needs of the public safety authority and the procedures implemented. The legal ambiguity of these places thus end up affecting the personal freedom of the guests, who moreover cannot enjoy judicial protection".

This was reported in 2018 by the National Guarantor of the rights of persons detained or deprived of personal liberty.

Asylum seekers are expected to be detained in hotspots for a maximum period of 30 days (and up to a total of 180 days in detention centers for repatriation) in order to verify or determine their identity.

It appears extremely serious that the conditions for detention are not attributable to a conduct of the asylum seeker (such as the refusal to be identified) but to a condition - the absence of a valid identification document - which is common to most people arriving in Italy by sea. The detention thus risks becoming a generalized measure that affects, by sanctioning it, the very condition of the asylum seeker. Furthermore, the vagueness of the formulation and circumstances of the detention appear to be in contrast with the provisions of art.13 of the Italian Constitution, which establish the legal reserve regarding the cases and methods of detention.

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Sources

- DEPARTMENT FOR CIVIL FREEDOMS AND IMMIGRATION:
<http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/hotspot>
- Amnesty International Hotspot Italy Report:
<https://www.amnesty.it/rapporto-hotspot-italia/>
- Amnesty International Hotspot Italy Report:
https://d21zrvtkxtd6ae.cloudfront.net/public/uploads/2016/11/18155810/Report_Hotspot_Italia.pdf
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Council): <https://rm.coe.int/09000016807b73b8>
- DINAMO PRESS: <https://www.dinamopress.it/news/de-jure-de-facto-la-reclusione-etnica-italia/>

- ASGI: <https://www.asgi.it/allontamento-espulsione/25675/>
- ASGI: <https://www.asgi.it/wp-content/uploads/2018/07/Khlaifia-hotspot-Lampedusa-Progetto-In-limine-ITA-giugno-2018.pdf>
- ASGI: <https://inlimine.asgi.it/hotspot-litalia-continua-a-violare-il-diritto-alla-liberta-personale-dei-migranti/>
- ASGI: <https://cild.eu/wp-content/uploads/2018/04/Dossier-Lampedusa.pdf>
- NATIONAL GUARANTOR OF THE RIGHTS OF INDIVIDUALS OR PRIVATE PERSONS OF PERSONAL FREEDOMS:
<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/57b1e146ccbbf7c68c2a2536fab6fbe4.pdf>