

Unravelling “safety”: a contested notion
undermining access to asylum. **An analysis
of the multilevel legal battlegrounds,
from Sicily to Europe**

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Introduction

On 14th May 2024, a new Pact on Migration and Asylum was formally adopted by the European Parliament and the EU Council¹. It included a set of new rules for the management of migration and the establishment of a common asylum system at the EU level², redefining the previous legal framework on reception, asylum procedure and the qualification of persons in need of international protection. This redefinition was flanked by the introduction of new components, such as the “screening regulation”³, which introduced new border procedures, and the “crisis and force majeure regulation”⁴, in addition to the proposal for a new return regulation⁵.

In the light of the increase in requests for international protection at the border over the last 10 years, several of the novelties introduced by the EU Pact had already been tested in Italy - in particular in Sicily - for several years, as part of an attempt to shrink the spaces to access the right of asylum. What Efthymios Papastavridis defined as *non-entrée* policies⁶ were developed simultaneously on both sides of the Mediterranean, and in parallel with the strengthening of externalisation policies to North African countries and beyond, a restrictive approach to migration and asylum was implemented at the EU’s southern borders.

In 2023, in a substantial continuity of the goals and strategies of the 2015 Hotspot approach⁷ and the measures introduced by the so-called “Salvini Decree”⁸ (Decree Law 113/2018, then turned into Law 32/2018), the Italian government passed the so-called “Cutro Decree”⁹ (Decree Law 20/2023, then turned into Law 50/2023), whose procedures were then extra-territorialised through the Italy-Albania deal.

Cynically named after the shipwreck in Cutro¹⁰, where at least 94 people lost their lives on 26th February 2022, Decree-Law 20/2023, allowed the detention of male asylum seekers in conditions of “non-vulnerability” from so-called safe countries of origin, without a valid passport and unable to provide financial guarantees of more than €4,900¹¹. In such cases, detention was not aimed at repatriation - as in the case of CPRs - but rather “at assessing the person’s right to enter Italian territory” and should have taken place at two dedicated facilities in Pozzallo-Modica (84 places) and Porto Empedocle (70 places)¹².

It is interesting to note that the introduction of the possibility of detaining asylum seekers, subject to judicial validation, in some ways overcame the decade-long practice of detaining them *de facto* in hotspots, in violation of Article 13 of the Italian Constitution. This practice was condemned once again by the European

Court of Human Rights in its decision of 30th March 2023 in the case of J.A. and others v. Italy (application no. 21329/18), when the court found multiple violations of human rights¹³.

Signed on 6th November 2023 and ratified by the Senate on 15th February 2024¹⁴, the Italy-Albania deal included the construction of a hotspot at the port of Shenjin and a multi-purpose facility in Gjader, which included a detention centre for asylum seekers (880 places), a repatriation centre (144 places) and a prison (20 places) which fell formally under Italian jurisdiction¹⁵. They were intended for the confinement of certain categories of migrants, first intercepted in international waters by the Italian Navy, before being selected and transferred by sea to Albania, where they would have to go through the same accelerated border procedures as those stipulated in the Decree Law 20/2023.

In these border procedures - experimented in Southern European border zones where hotspots were established - the notion of a Safe Country of Origin (SCO) progressively became one of the main classification and selection criteria for incoming migrants. While the notion was informally applied from the onset of the Hotspot approach, its use in border procedures would have been introduced by the Salvini Decree (2018) and operationalised in 2019 following the entry into force of the inter-ministerial decree that included a list of safe countries of origin, as foreseen by Decree 28/2008 (art.2 bis), receiving the EU asylum procedure directive¹⁶. Consideration as an asylum seeker coming from an SCO meant going through fast-track procedures that, in the wake of the 2023 Cutro Decree and within the framework of Italy-Albania deal, would have taken place at the border zones, in dedicated detention facilities built in Sicily and Albania. These detention measures were aimed at assessing asylum seekers' right to enter Italian territory and were therefore grounded in a "non-entry fiction", and, pursuant to art. 13 of the Italian Constitution, required a judiciary validation.

In this context, local, national and European courts became battlegrounds. At the core of several decisions, contesting the legitimacy of these accelerated border procedures, lay the notion of the safe country of origin, as well as the SCO list, a key implementing tool. In the light of these developments - and given the growing importance of the legal arena as a forum for dialogue and confrontation on border management policies, search and rescue at sea and the right to asylum - this paper aims to examine the ongoing legal battlegrounds surrounding the notion of the "safe country of origin" at the local, national and European level¹⁷.

Through a socio-legal qualitative research method, including legal ethnography, in-depth interviews with a diversified range of actors involved in these legal battlegrounds and discourse analysis techniques, the article raises the following questions: How did these legal battlegrounds contribute to the contentious understanding and (re)definition of the notion of Safe Country of Origin affect EU

governance of migration? What does the future hold for the achievements of these legal battlegrounds following the entry into force of the EU pact? What is at stake, from a legal and political point of view? This contribution thus reflects on how the notion of SCO is co-constructed and contested by multiple actors. In addition, it highlights how the judicial system is increasingly becoming a platform for political contention¹⁸ and questions the possible consequences of recent key judgements concerning the notion of SCO, in light of the entry into force of the EU Pact, set for 12th June 2026.

In a context of increasingly restrictive EU external border management policies that are shrinking the spaces for accessing asylum at the global level, there is an urgent need to focus on the legal battleground(s) currently in place, as their impact exceeds the legal domain and may well have relevant political and cultural implications. In particular, the paper unravels the strategic use of the notion of “safety” in asylum policies by showing how it has progressively lost its “protective” function to become a conceptual instrument capable of undermining access to asylum. This is developed across five sections. The first traces the genealogy of EU *non-entrée* policies concerning migration and border management, ranging from the Hotspot approach to the Italy-Albania deal. The second section focuses on the notion of safe country of origin (SCO) as a key mechanism of confinement within the right to asylum. The third section unpacks the legal battlegrounds surrounding this notion, from the Courts of Sicily and Rome to the European Court of Justice, by highlighting their key issue from a conceptual, operational and juridical perspective. Section four considers how the Italian government reacted to emergence of judicial obstacles to its border and migration management policies. The final section highlights how the notion of safe country of origin has evolved from a tool of protection into an instrument of exclusion.

The concluding remarks leave an open question regarding the ability of the judicial results, achieved at the local, national and European level, to “survive” the imminent entry into force of the EU pact on migration and asylum and reflect on the implications of these legal battlegrounds at the political level.

From the Cutro Decree to the Italy-Albania deal: steps forward in non-entrée policies

A review of how European Union (hereafter EU) external border management policies have evolved over the past decade reveals a substantial continuity, both in terms of strategies and overall aims. Since 2015, when the so-called « Hotspot approach » was introduced as part of the European agenda on migration, Italy emerged as a key player for experimenting with new devices for the categorisation, selection and exclusion of migrants arriving by sea, in so-called “border zones”. The contested notion of « crisis » was already a cornerstone of the dominant narrative on migration to Europe, to which governments responded with

the Hotspot approach, essentially crisis points, albeit lacking any regulatory grounds¹⁹.

By 2015, it was clear that the “migratory crisis” rather was “a reception crisis”²⁰, dictated by an institutional reluctance both to recognize the structural character of human mobilities to and through Europe and to prepare appropriate interventions. In the following years, it became even clearer that it was the right to asylum itself that was being undermined²¹. Already compressed at the global level, through policies of border externalisation and bilateral agreements that increasingly undermined the universality of the right to leave your country, as well as to access “safe countries” in order to seek asylum, this right was then reduced at the local level, by means of obstacles blocking access to the asylum procedure and the recognition of forms of international protection. In turn, this hindered civil, political and social rights that should have substantiated this procedure²².

Propaganda aimed at « preventing departures, » and « limiting arrivals » by sea, were gradually translated into structured policies of violating what Moreno-Lax termed the « right to flee »²³ on the one hand, and *non-entrée* policies on the other²⁴. As Hirsh pointed out in his analysis of the Australian case, *non-entrée* policies took shape both at the « unilateral » level-through visa requirements, surveillance technologies, interceptions at sea, and expulsions from Australian territory, as well as at the cooperative level-through regional agreements that provided for the deterrence, detention, and deportation of asylum seekers on behalf of Australia by third countries, non-signatories to the Geneva Convention²⁵. In the case of the central Mediterranean, the literature has highlighted the role of bilateral cooperation agreements, such as those between Italy and Libya, later replicated with Tunisia in shaping *non-entrée* policies²⁶. In the face of increasingly structured policies of funding, training and equipping the North African state authorities as part of processes of delegation, and outsourcing, of surveillance of the EU’s external borders, the issue of a possible Italian and European jurisdiction for human rights and asylum violations implicated by operations to intercept migrants at sea and repatriate them to the countries from which they attempted to flee remained essentially unresolved. In particular, Violeta Moreno-Lax and Mariagiulia Giuffré²⁷ hypothesised the existence of a “functional” jurisdiction, of Italy, due to the exercise of a “contactless control”, over those operations. However, these arguments were in general not reflected in national and international jurisprudence, leading to the creation of what Itamar Mann defined “legal black holes”²⁸.

In line with the policies of “preventing departures” implemented on the southern shores of the Mediterranean, a multiplicity of actions were implemented in the Southern European states in order to limit the number of people who – after disembarkation – were in a position to exercise their right to seek asylum, and potentially to be recognised as in need of protection, thereby gaining the « right to

remain on European territory. » Some of these instruments were based on an epistemic fiction aimed at questioning – from a predominantly procedural point of view – the fact that access to Italian territory had taken place. The so-called « non-entry fiction » consisted *de facto* in the « denial » of the presence of undesirable persons in the territory and was configured as an instrument of evasion of a broader responsibility towards them²⁹. Since the early 2000s, and subsequently through the Hotspot approach, the « pretence of non-entry » had materialised in the so-called « deferred rejections » which presumed the temporal placement of the rejection as *ex ante* with respect to actual access to the territory³⁰. Aligned with these policies, and with the procedures of categorising and selecting « non-asylum seekers », channelling them into detention pathways for their ultimate repatriation, were the “fast-track border procedures”, as defined in the Salvini Decree³¹, and renewed by the Cutro Decree³². In particular, detention measures introduced by the article 7-bis of Decree Law 20/2023 (later converted into Law 50/2023), were to « assess » the right of asylum seekers coming from supposedly safe countries of origin to « enter » Italian territory, despite the evidence of their physical presence in it.

Signed on 6th November 2023, the Italy-Albania deal, aimed at “strengthening cooperation on migration matters”, was a step forward in the so-called *non-entrée* policies: through this tool, preventing access to Italian territory was no longer only a symbolic question, but also a reality³³. As a result of the procedures it included, part of the Italian border was relocated first to international waters and then to Albanian territory, with the intention of preventing the « physical » access of migrants to Italian territory³⁴.

However, this delocalisation of the frontier was a mere fiction. According to international maritime law and European jurisprudence³⁵, Italian-flagged vessels, while in international waters, were considered to be part of the national territory for all intents and purposes and were therefore subject to its jurisdiction. Furthermore, disembarkation in Albania occurred *de facto* in an area of Italian jurisdiction that is exclusive to migration issues and concurrent with Albanian jurisdiction regarding the remaining legal issues. The selection criteria of people “eligible” for the transfer coincided partly with those identified by the Cutro Decree for the accelerated border procedures: male gender and adulthood; origin from a safe country of origin (*Safe Country of Origin*, SCO); absence of vulnerability³⁶; and failure to present a valid passport.³⁷ According to the Standard Operating Procedures (SOPs) defined by the Ministry of the Interior, the selection would take place in international waters in two phases: the first on board the Navy ship that intercepted the migrants, and the second on board the vessel that would then take them to Albania.³⁸ Despite the allocation of €13,500,000 for the chartering of private vessels to be used to transfer migrants to Albania, the tender was unsuccessful, and the Italian government decided to use Italian Navy ships for this purpose³⁹.

The protocol came into force on 11th October 2024, the anniversary of the notorious 2013 “children shipwreck”, in which more than 268 people lost their lives⁴⁰. As a macabre coincidence, *The Libra*, the Italian Navy ship which was refused permission to sail just 17 miles to rescue more than 400 people on board the fishing boat that later capsized, and was left on standby for over five hours, would be the first ship to be used for the transfer to Albania⁴¹.

Beyond the fiction regarding the lack of access to territory, the Italy-Albania protocol, in a continuation of past experiences, represented real obstacles to accessing international protection and, more generally, to related fundamental rights. The interception of migrants in international waters by the Italian authorities, either as SAR events or in the context of law enforcement, did not put an end to the crossing, thereby prolonging the migrants’ suffering for several days. The first three trials of the Italy-Albania protocol, which took place between October 2024 and January 2025, highlighted the fact that the overall timing and modalities of the procedure was an unlawful deprivation of personal liberty, and access to procedural guarantees under asylum rules was severely compromised. According to international maritime law, rescue operations were only to be considered concluded following a « timely » disembarkation at a “Place of Safety” (POS), a requirement that the Navy’s arrangements clearly failed to meet.

Conversely, people considered eligible for transfer to Albania remained for days in navy facilities that provided insufficient accommodation conditions. Furthermore, the assessment of selection criteria - including nationality and (non) existence of vulnerable situations - could not take place on the high seas, due to the lack of qualified personnel and the impossibility of equating the naval set-up with a border area. According to the Italy-Albania agreement, SOPs, pre-screening and pre-identification operations were to be carried out in international waters, with the aim of selecting those foreign nationals who were “eligible” to be transferred to Albania, without reaching Italian shores.

In the words of the Ministry of the Interior, « For the purposes of these SOPs, female persons, visibly under-aged and unaccompanied migrants, persons suffering from obvious pathologies or physical impairments, the elderly, and persons who spontaneously surrender their passport or valid equivalent document are considered, during the preliminary assessment » - to be carried out on board Italian naval assets involved in “unspecified activities conducted at sea” - “ineligible in an absolute sense”. Following the interventions of assets referable to the Administrations referred to in the Technical Agreement in the foregoing (namely the Coast Guard and Guardia di Finanza), as soon as the contacts of interest are reached and all the activities of competence aimed first of all at ensuring the completion of operations in safety [...] the operating personnel [...] carry out the transshipment of the same on the intervening assets”. They would then be taken to « an area previously identified for possible *rendez-vous*, with the

hub ship, » which would then make the crossing to Albania.⁴² Finally, pre-screening and even pre-identification activities were supposed to be carried out on board the Navy ships, entailing the filling and signature of info sheets (*foglio notizie*). Yet, as Vassallo Paleologo (2024) highlights from an examination of existing national, European and international case law, such operations violate EU law and the Italian Constitution⁴³. Similarly problematic was the on-board identification of possible situations of vulnerability⁴⁴, as a diriment criterion of exclusion from the possibility of transfer to Albania.

The notion of SCO as key mechanism of confinement of the right to asylum

Over the years, the notion of « safe country of origin » (SCO) had emerged as a key element and criterion in pathways to the right to asylum: from the categorizations operated under the Hotspot approach, to the accelerated border procedures, as well as the various stages of refugee status determination processes, the notion of "safety" lay at the core of several - initially informal and then formal - assessments.

According to Article 37 of the EU « Procedures Directive »⁴⁵, a « safe country of origin » is a state in which « on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is *generally and consistently* no persecution as defined in Article 9 of the EU "Qualification Directive"⁴⁶, no torture or inhuman or degrading treatment or punishment, and no threat due to indiscriminate violence in situations of international or internal armed conflict. » Also applicable to so-called. « *safe third countries* » (STCs), the notion of safety is further clarified in Article 38 of the same directive which establishes its existence if, in the country: (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) there is no risk of « serious harm » as defined in Directive 2011/95/EU; © the principle of non-refoulement under the Geneva Convention is respected; and (d) the prohibition of removal in violation of the right to freedom from torture and cruel, inhuman or degrading treatment, as established under international law, is respected; and (e) it is possible to apply for refugee status and, where applicable, to receive protection in accordance with the Geneva Convention.

According to Goodwin-Gill and Mc Adam, the concept of a « safe country » was initially configured as a « procedural mechanism for transferring asylum seekers to other states » deemed safe⁴⁷. Despite the overt intent to justify, through the qualification of a state of origin or transit as safe, the transfer of asylum seekers to states « other » than the one reached by the asylum seeker, the notion nevertheless retained an important potential for human rights protection⁴⁸. The criteria used to define a country-of-origin or third country-as safe reflexively clarified the conditions of exclusion, further substantiating the principle of

non-refoulement. However, the increasingly restrictive evolution of border regimes, intended to prevent unwanted mobilities, radically affected compliance with this principle. Moreover, where departures were no longer « preventable, » and « arrivals » in Europe were already happening, the same regimes equipped themselves with categorisation and selection infrastructures that were also intended to exclude unwanted nationals⁴⁹. In these infrastructures, which materialised in the execution of so-called « border procedures », the notion of a safe country became a key criterion in the pathways of access to territory, as well as to international protection and related rights⁵⁰.

Even in the face of well-defined European legislation, the transposition of the safe country notion into national laws remains extremely controversial. In particular, it was believed that the spread of « practices » based on this notion could contribute to the dismantling of the right to asylum⁵¹. In a joint report published in 2016, AEDH, EuroMed Rights, and FIDH⁵² highlighted how the « denial of the right to asylum » was the main impact of SCO policies, and was articulated in three ways: i) the presumption of inadmissibility of asylum claims: a heavier burden of proof; ii) the absence of suspensive appeal: raising concerns about the principle of non-refoulement; and iii) expedited or rushed procedures.

In the case of Italy, where civil society has highlighted SCO-related obstacles in accessing asylum procedures for several years, three clearly differentiated phases can be identified.

During the first of these phases, which lasted approximately from 2015 and the implementation of the Hotspot approach to 2018, when the Salvini decree introduced the obligation to channel asylum seekers coming from SCO into accelerated procedures, the notion was applied informally at border zones. People who managed to cross the sea were already categorised and selected at the disembarkation - based on an initial and frequently superficial assessment of each person's country of origin. People from North African countries - primarily Tunisia, but possibly also Algeria, Morocco and sometimes Egypt, were isolated in a different group and often failed to receive appropriate legal advice regarding asylum. Only Syrian citizens were automatically considered asylum seekers.

The second phase began with the Salvini Decree, which fast-tracked procedures for asylum seekers coming from supposedly safe countries of origin. According to ASGI, this decree “exploited the margins left open by the European legislator in the Procedures Directive, and partly went further, introducing rules that conflict with European law, the legitimacy of which will have to be assessed in the near future by the EU Court of Justice and the Constitutional Court”⁵³. While Legislative Decree 25/2008 (28-*bis* paragraph 3), transposing the EU procedure directive, already included the application of accelerated procedures as a hypothesis, Law 113/18 introduced border procedures, the concept of safe countries of origin and

detention for identification purposes (art. 10) at the border for the first time and broadened the scope of manifestly unfounded cases, grouping everything under the umbrella of fast-tracked procedures. In other words, by accelerating RSD processes and providing for the detention of applicants for identification purposes⁵⁴, these border procedures severely limited their ability to prepare for the hearing, gather useful material and exercise their right of defence. Access to asylum was hindered from a spatial point of view – as applicants were deprived of the opportunity to communicate with the outside world – as well as from a temporal perspective.

The concept of safe country of origin therefore became an essential criterion for exclusion and was implemented through an inter-ministerial decree containing the ‘list of SCOs’⁵⁵.

The third and final phase began in 2023 with the issuance of so-called “Cutro Decree” and proceeded with the signing and implementation of the Italy-Albania agreement, which entailed the extra-territorialised application of the new measures introduced by the Cutro Decree. Amongst others, Law 50/23 affected accelerated border procedures and introduced new detention measures for asylum seekers from supposedly safe countries of origins, in dedicated facilities (art. 6-bis) in Sicily and later in Albania. As highlighted by the Italian National Council for Refugees (CIR), this accelerated border procedure – applicable to those seeking asylum directly at the border or in transit zones “after having being identified for evading or attempting to evade controls” – halved the time allowed for lodging an appeal and removed the automatic suspension of the expulsion order linked to the refusal⁵⁶. In addition, cases of inadmissibility of asylum applications were extended to those where the applicant had not submitted new evidence regarding their personal circumstances or the situation in their country of origin, introducing a strict burden of proof that had not previously existed in RSD proceedings. Finally, the decree substantially changed the grounds for detention of asylum seekers in the newly introduced dedicated facilities – from the identification purposes (Law. 113/18) to the “need to assess the right to enter the Italian territory” – by exacerbating the strategic use of the non-entry fiction. These detention measures, which required validation by a judge, could also continue in ordinary detention facilities (CPRs), “in order to determine the elements on which the application for international protection is based and those for whom there is a risk of absconding”.

In sum, we can observe how, over the years, the notion of a safe country has been epistemically and functionally reversed: from an instrument for the protection of human rights, it became an instrument for the defence of borders, conversely implying the debasement of the rights of those who intended to cross them. Yet this contested notion would become increasingly central to the multi-level legal battles described in the following section, from the Sicilian courts to the civil court

of Rome and the Court of Justice of the European Union in Brussels.

The multiplication of legal battlegrounds from the local to national and even European level

After the Cutro Decree became Law 50/2023, the Italian government, under article 6-bis, created two facilities on Sicilian territory, intended for the systematic detention of asylum seekers from SCOs, with the purpose of « verifying their right to access Italian territory. » The first, located in Pozzallo-Modica, and with 87 places, became operational in September 2023. Nevertheless, the first experimental detention of asylum seekers had an unexpected outcome: Catanese judges, responsible for validating detentions measures in that facility requested by Ragusa police authorities (*Questura*), issued 17 « non-validation » orders. Apart from emptying the facility, these decisions became opportunities to highlight the illegitimacy of accelerated border procedures from diverse perspectives.

The media and political prominence of the affair was immense: the government launched a smear and intimidation campaign against Judge Apostolic –the first not to validate –which led to the opening of a protection procedure by the Superior Council of the Judiciary⁵⁷. The forms of criticism deployed by the government, which included the unlawful use of audio-visual materials in possession of the secret service showing the judge’s presence at demonstrations against Minister Salvini at the time of the « closed ports » policy, was a clear threat to the autonomy of the judiciary, which in the view of the executive branch should not have « got in the way » of its political choices.

At the same time, the state was also legally challenging the decisions adopted by the Catanese court: the State Bar had appealed to the Supreme Court against the first set of 17 non-validation decisions issued by the Catanese judges. After suspending the decision, the Court of Cassation sought an opinion from the European Court of Justice on the legitimacy of the financial guarantee requirement as established by the « Cutro Decree ». Perhaps fearful of an adverse decision, the Italian government anticipated any possible ruling by reformulating the legislation on the subject, enabling the police to set the guarantee at between 2,500 and 5,000 euros, depending on the applicants’ nationality.

A second attempt to apply the same procedures occurred the following year, at the end of August 2024. Following the opening of a new detention facility with a capacity for 70 inmates, adjacent to the Porto Empedocle Hotspot, and the reactivation of the Pozzallo-Modica facility, Sicilian courts were called upon to rule on the legitimacy of detention measures. The findings revealed a 90 percent non-validation rate in Palermo, compared to the 100 percent observed in Catania.

Non-validation decisions were grounded on a twofold conceptual contestation: on

the one hand, they challenged the non-entry fiction into Italian territory, by contesting the notion of border zones⁵⁸, and on the other, contested the Italian interpretation of the notion of SCO, based on information already included in the Ministry of Foreign Affairs (*Ministro degli Affari Esteri e della Cooperazione Internazionale*, MAECI) country sheet, and - in some cases - advocated for its disapplication.

Regarding the notion of « border zone”, several rulings determined its inapplicability in the cases assessed - pursuant to the decree of 5th August 2019⁵⁹ - to detention measures adopted at a considerable distance from the first border of entry. For example, if a migrant arrives in Lampedusa, that is the border that counts - not the Sicilian »mainland" where he or she might be transferred at a later stage. In a ruling issued on 17th September 2024 by the Catanese court, regarding the non-validation of detention measures in the Pozzallo-Modica centre taken against a Tunisian citizen who had disembarked in Lampedusa, the judge writes:

In other words, it is intended to state that - pursuant to Directive 2013/32 and Articles 6a and 28a of Legislative Decree 25/2008 cited above - it is certain that detention as part of border procedures can only be carried out at the border itself (Art. 2 of Regulation 2016/399/EU defines external borders as 'land borders, including river and lake borders, sea borders and airports, river, sea and lake ports of the Member States, which are not internal borders" and 'border crossing point' as any crossing point authorized by the competent authorities for the crossing of external borders), and the BORDER in our case is Lampedusa, the place where the disembarkation took place and where the request for protection was made, and not the province of Ragusa where the detention took place."**

On the issue of « safe country of origin, » however, several Sicilian judges highlighted the incompatibility between the "Country Sheets" (*schede paese*) compiled by the MAECI with the presence of certain countries, such as Tunisia, Egypt and Bangladesh, on the list of safe ones.

As in the case of Egypt and Bangladesh, recent rulings by the Specialized Section of the Catania court to (non)validate the detentions of Tunisian nationals seeking asylum ordered by the Ragusa police under article 6-bis of the Cutro Decree, have highlighted a substantial incompatibility between the same Country Sheet drawn up by the MFA on Tunisia and its classification as a safe country. Judge Escher argued the following, after examining the Country Sheet on Tunisia:

This being the case, the irreconcilable contrast between the MAECI decree 07.05.2024, read in conjunction with the Country Sheet, and the primary law norm, namely the aforementioned art. 2 bis of D.lgs 25/2018, since it cannot in any way be defined as a country that protects dissidents and minorities from persecution within a democratic framework, a country that, like Tunisia, as assessed by the Ministry of Foreign Affairs and International Cooperation itself (on its list of safe countries of origin, and on the Country Sheets): 1) Fails to respect the ban on arbitrary arrests and detentions; b) Practices arrests with no supporting evidence; 3) Applies precautionary measures without judicial scrutiny; 4) Closes down television networks opposed to the government; 5) Represses freedom of association with arbitrary detention of protesters; 6) Discriminates against LGBT rights by prosecuting homosexuals with the possibility of prison sentences of up to three years; 7) Tolerates widespread violence against women by not adequately combating the phenomenon of rape, and women discriminated against in a widespread and systemic manner; 8) Allows torture in police stations and prisons; 9) Does not provide sufficient guarantees that asylum seekers (sub-Saharan migrants) will not be turned away even though they fall under the refugee claim"⁶⁰.

In the same ruling, the judge also stated:

That being said, we agree with the orientation that the administrative act" - that is, the MAECI ministerial decree that updated the list of safe countries of origin - « must be disapplied [...]. Such disapplication is mandatory since the decree affects both the right to asylum (by yielding to the expedited border procedure) and the fundamental subjective right to personal freedom, limiting it ».

In line with other ruling adopted in different contexts (see, for example, the Court of Florence), there were at least two key issues from a conceptual point of view. On the one hand, the notion of a safe country and the classification of countries as safe were contested, as was that of "frontier", calling into question the very applicability of the procedures. On the other hand, local judges were able to proceed with the non-application of acts deemed unlawful, such as the ministerial decree and the later law, containing the list of safe countries. Although the new accelerated border procedures were in practice disapplied by Sicilian judges through the multiplication of non-validation decisions, the Italian government decided to implement them within the framework of the Italy-Albania deal in three stages between October 2024 and January 2025. In all three phases, cases of

severe vulnerability and the presence of minors were only detected following the transfer by sea to Albania, which resulted in the need for their immediate transfer back to Italy. In the first trial, of the 16 people selected in international waters and transferred, four were found to be ineligible⁶¹ ; in the second trial, of the nine people selected, one was identified as vulnerable and immediately re-transferred to Italy⁶²; and in the third trial, this occurred in the case of six people out of a total of 49⁶³. Re-transfers to Italy by sea exposed individuals already identified as vulnerable to further suffering and hardship.

For those still deemed eligible to undergo accelerated border procedures in Albanian centres, Rome's civil court allegedly failed to validate a single detention within the Gjader CPR, and consequently they were all returned to Italy. As posited by numerous experts and jurists, this procedure of selection at sea and subsequent transfer was essentially an illegitimate deprivation of personal freedom: it took place for well over 48 hours, in the absence of the requirements of judicial validation imposed by Article 13 of the Constitution.

However, the structural obstacles to accessing asylum and the right to defence following the introduction of the Hotspot approach did not disappear, despite the return to Italy of those taken illegally to Albania. « Returning » migrants and their lawyers reported difficulties in communication and interaction⁶⁴.

Decision making processes behind decisions issued by Rome court on people detained in Albania – as well as the many others issued at local level on specific case – were on the one hand in line with those previously adopted in Catania and Palermo, and on the other, deeply interrelated with the legal dispute before the European Court of Justice in the frame of what has been defined as a “judiciary saga”⁶⁵.

Initially solicited by Czech Republic in the CV case, the Grand Chamber of the European Court of Justice had issued a first decision on the 4th October 2024⁶⁶, clarifying the proper interpretation of Article 37 of the EU Procedures Directive.

Article 37, of Directive 2013/32/EU, must be interpreted as meaning that [...] it precludes a third country from being designated as a safe country of origin where certain parts of its territory do not meet the substantive conditions for such designation set out in Annex I to that directive."

As Favilli and Marin point out, in the CV case, the Court stressed that “the concept of SCO must be interpreted strictly, since it introduces a presumption on the basis of which a derogation from the ordinary rules for examining applications applies, which has a significant impact on procedural and judicial guarantees”. In other words, “to allow a country to be classified as safe while excluding parts of its territory would be to extend the scope of the derogation resulting from the classification as safe beyond what the legislator intended”⁶⁷.

Furthermore, the judgement included some additional remarks concerning the “legality review” to be applied by judges encountering acts in contrast with EU law and principles:

When a court is seized of an appeal against a decision rejecting an application for international protection examined under the special regime applicable to applications made by applicants from third countries designated as safe countries of origin, it must find, on the basis of the elements of the file as well as those brought to its attention in the course of the proceedings before it, a violation of the substantive conditions of such designation, set forth in Annex I of that directive, even if such a violation is not expressly relied upon in support of such an appeal".

Therefore, while the ECJ was challenging the restrictive approach to the concept of safe country of origin that, by allowing the notion of safety to exclude specific parts of the territory, had become an essential element in policies of the “misrecognition” of asylum, as well as effective repatriation⁶⁸, it also enabled the judicial disapplication of measures that contradicted EU law and principles. In the case of Italy, these included the inter-ministerial decree listing the safe countries of origin, which was then made law (the so called “Flussi Decree”).

While “legality review” powers concerning the application of the SCO notion had been exercised by local judges since 2023, including the courts of Florence⁶⁹ and Catania⁷⁰ concerning the designation of Tunisia as an SCO - the ECJ ruling on the CV case encouraged more judges to take a stand in this direction concerning cases related to the Italy-Albania deal and beyond.

Despite the radical questioning of the « safe country of origin criterion” (first by the specialized sections of the Catania and Palermo Tribunals - the former of which went so far as to call for the disapplication of MAECI’s ministerial decree of the safe countries list, deeming it »an act incompatible with the primary law norm governing the case, " which, "affects, by compressing it, both the right of asylum [...] and the fundamental subjective right to personal freedom”, and despite the

CJEU's decision adopted on 4th October, the Italian government upheld its decision to implement the Italy-Albania Protocol. This game forcing was an attempt to use "facts" to overcome any pending legal issues regarding the legitimacy of accelerated procedures at the border, and their extra-territorialisation in Albania. However, judges once again played an important role in the eventual outcome.

On 18th October 2024, the Court of Rome refused to validate twelve detention orders, and contextually disapplied the ministerial decree that qualified Egypt and Bangladesh as SCO "with the exclusion of some groups of people", by directly referring to the principles affirmed by the ECJ decision on the CV case⁷¹.

Nevertheless, shortly after the last of the three unsuccessful implementations of the Italy-Albania protocol, which once again ended with the Court of Rome's decision not to validate the detentions of asylum seekers in late January, the debate before the EU Court of Justice was relaunched, as part of the reunited Alace and Canpelli cases, following the preliminary ruling proposed by the Court of Rome in its decrees of 4th and 5th November, 2024⁷². In that case - concerning the four Bengali citizens transferred to Albania in the second round - the CJEU was called upon to re-argue the notion of safe country of origin, as well as the role of judges at the local level in the possible disapplication of domestic regulatory acts, potentially in conflict with European Union law.

That hearing, in which the previous Commission's position on the notion of a safe country was reversed, provided a further opportunity to debate the judicial review of the designation of countries as safe⁷³, as well as accelerated border procedures. As the lawyer Dario Belluccio highlighted in his speech:

Accelerated and border procedures, detention, presumption of manifest unfoundedness, difficult access to the right of defence: these, in a nutshell, are the consequences of designating a country as safe with a high probability, if not certainty, of a rejection of the application for protection"⁷⁴.

The final decision on the above-mentioned case would also prove extremely relevant for the more than 60 preliminary rulings to the European Court of Justice, submitted by Italian courts, and was finally issued on 1st August 2025.

As Favilli and Marin emphasise, despite following in the footsteps of the CV ruling and sharing its basic approach, the ECJ's decision on Alace and Canpelli "deepened its scope, offering a further piece in the construction of a coherent body of case law on the issue of procedural guarantees and judicial review in relation to safe countries of origin"⁷⁵. While recognizing full discretionary power to Member

states concerning the designation system of SCOs, the ECJ underlined as a provision of the EU procedures directive, “substantial requirements” that this system must comply with, and that determine “technical limits” to this autonomy. This meant that “the substance” (of EU law) prevails on “the form” (of designation) and, therefore, that national legislative acts – including those concerning designation of SCOs – “are not exempt from checks on compatibility with supranational law”⁷⁶.

An additional point addressed by the ECJ in *Alace and Canpelli* case was that of “transparency obligations for states”, in reference to the information sources on which the designation of SCOs were based. This was particularly relevant for Italy, which had a record of violations, obliging civil society organisations to submit Freedom of Information Acts in order to obtain the Country Sheets the designation of SCO was grounded on.⁷⁷ Finally, the ECJ decision dealt with the possibility of proceeding with the designation of SCO “with the exclusion of groups of people”, by stating its inadmissibility.

As both the national and international media observed, the ECJ’s decision clearly challenged the legitimacy of Italian border management and asylum policies, and their extra-territorialisation in Albania. Nevertheless, the imminent entry into force of the new EU procedure directive (2024/1348/EU), under the EU pact for migration and asylum, could have potentially overcome these “achievements” by laying the foundations for an increasingly restrictive approach, further hindering access to asylum, by diminishing legal guarantees for applicants and strengthening the connection between rejected asylum claims and returns.

The Italian government’s responses to judicial obstacles: compulsive law-making, undermining the principle of legal certainty

As both ‘non-validation’ decisions and preliminary referrals to the CJEU multiplied, the government reacted with various strategies aimed at overcoming these judicial obstacles to its political plan. On the one hand, prominent politicians proceeded with the systematic defamation and delegitimation of the judges who had issued the “contested” measures. From Judge Iolanda Apostolico in Catania to Judge Silvio Albano in Rome, magistrates were accused of being “communists” and of attempting to “hinder the government’s priority of defending the country’s borders”. In addition to a media backlash, they became the target of serious threats. This led Judge Iolanda Apostolico to resign and Judge Silvia Albano to continue working under police protection.

In addition, the government embarked on a continuous series of new legislative measures. While the attack on the judiciary had jeopardised the “separation of powers”, this form of “autocratic law-making” ultimately undermined the principle of legal certainty. Among the measures enacted in this regulatory tug of war was

the transformation of the ministerial decree containing the list of safe countries into the more authoritative form of a decree-law, and the exclusion of the Specialised Sections of the Civil Courts from decision-making processes on accelerated border procedures⁷⁸.

In practice, those who had challenged the legitimacy of the government's immigration policies were silenced, while the matter was passed on to the non-specialised Courts of Appeal. As emerged from the interviews, civil society lawyers felt discouraged and bewildered by these changes to the regulatory framework. "We have gone back ten years", said a Sicilian lawyer in an interview⁷⁹. "Shifting the jurisdiction for validating detentions to the courts of appeal means trying to bypass the entire process of specialisation in immigration and asylum undertaken over the years by the civil courts." Those specific competences had evidently become inconvenient and dysfunctional in the context of political and legal processes aimed at increasingly undermining the right to asylum, limiting as far as possible the guarantees and protections it provides.

At all events, legal expertise in immigration and asylum matters in a region such as Sicily - which has been affected by sea migration for decades - was certainly not limited to specialised sections but was increasingly part of a local legal culture. This allowed the Courts of Appeal to organise themselves in response to the transfer of powers to them, asking judges with specific expertise in the field to make themselves available in the validation processes for detention.

Another element of the Italian government's response to the outcome of the ongoing legal battles was the transformation of the intended use of detention centres in Albania. Following the latest implementation of the agreement in February 2025, which once again ended with the Rome Court failing to validate the detentions ordered there and with their transfer back to Italy, on 29th March 2025, the Italian government extended their intended use by decreeing the possibility of transferring people already detained in Italian CPRs to Albania without the need for further judicial validation (Law-decree 37/2025, converted into Law 75/2025)⁸⁰.

With regard to this issue - and in particular to the possibility of (illegitimate) repatriation procedures directly from Tirana - there has been a proliferation of legal disputes, which remain ongoing⁸¹.

Finally, a further element of governmental reaction to these legal battles was sheer political pressure, assigning responsibility for European repatriation policies to a European judicial authority. On 17th February 2025, before the conference of Italian prefects and police chiefs, the Italian premier reportedly expressed the hope that "the Court of Justice of the European Union will avert the risk of compromising repatriation policies, not only in Italy, of course, but in all Member

States of the European Union”⁸². This statement overturned the framework of ordinariness whereby it is the primary responsibility of member states to plan policies that do not clash with sources of international and European law. Of those same sources, Article 10 of the Italian Constitution enshrines respect as the foundation of our rule of law, thereby ruling out subordination to political ends of any kind, in a logic of « border defence ». This is completely inappropriate in a context not of war, but of ordinary, structural and necessary human mobility.

More widely, government reaction to these events consisted of the continuous production of new immigration rules that undermined the principle of legal certainty. As Attorney Belluccio argued in his intervention before the CJEU on 25th February:

What legal certainty can there be when the government adopts more than 20 pieces of legislation in two years on immigration and asylum and, in particular, four pieces of legislation in just four months specifically on the notion of a safe country?⁸³

The notion of safe country of origin: from tool of protection to an instrument of exclusion?

Despite its longstanding marginal status, the notion of safe country of origin (SCO) has progressively become a key instrument in shaping - by hindering - access to the right of asylum. Since 2015, its strategic use has been used politically to select and categorise asylum seekers, limiting access to asylum and its recognition, and facilitating the repatriation of unwanted migrants. 2023 was set to become one of the key moments for the reconfiguration of these policies, in the face of growing challenges to their legal legitimacy.

After tracing the genealogy of post-2015 *non-entrée* policies in Europe and Italy, and highlighting how the notion of SCO was firstly informally and then formally applied as a diriment criterion in accessing asylum, this article considers the legal battlegrounds that developed at local, national and European level concerning the notion of SCO and the judicial exercise of “legal review” for its designation. Examining these deeply interrelated legal battlegrounds - labelled a “judiciary saga” - and the related court decisions, fosters a deeper understanding of how key notions such as SCO are constructed, contested and possibly redefined.

Moreover, the article sheds light on the relationship between politics and the judiciary, as well as more generally on the resilience of our rule of law in the face of growing *non-entrée* policies. The need to « defend borders » lies at the heart of

the current Italian government's political narrative, amplified by the media, and implies an untrue assumption: namely that the state's borders are somehow « under attack » and that non-judges were "the enemy". Through that narrative, the government exercised »symbolic control" over its territorial borders⁸⁴, even in the absence of any immigration-related emergency, as evidenced by a combined reading of data on arrivals by sea and the availability of places in the reception system.

Informal human mobilities by sea must be understood within an increasing cancellation of legal escape routes from countries where fundamental rights are systematically violated and within the increasing structuring of border surveillance policies aimed at preventing departures. While access to the territory of safe countries is increasingly hindered, the principle of the non-criminalisation of asylum seekers enshrined in the Geneva Convention and European asylum directives appears to be definitely undermined by the systematisation of detention measures for asylum seekers. As highlighted by Ghezelbash⁸⁵, border procedures become instruments of exclusion, which - to use Judge Escher's words in the aforementioned decision, "affect the right to asylum by compressing it". Therefore, the relevance of SCO notion would appear evident, as it becomes an increasingly essential tool in the management of the EU's external borders and asylum access policies.

Nevertheless, its "correct interpretation" was not the only matter at stake in the multilevel legal battlegrounds addressed in this article. Another key issue was that of the discretionary power of judges in exercising "legal control" on normative sources in possible contrast with EU law standards and principles, and to possibly contesting them through disapplication measures.

On the first point, the multiple discrepancies between the labelling of countries of origin as safe, and their respective human rights situations, and the impossibility of considering safe countries in which the protection of these rights excludes entire geographic areas or categories of people, were highlighted from the Sicilian courts to the European Union Court of Justice.

Regarding the second point, the ongoing legal battles highlighted the essentially political nature of this labelling process - materialising in the SCO lists - as a tool to combat immigration. Against this state of affairs and the government's responses to the emergence of legal obstacles to its migration policies, the judiciary stances of contesting these processes, and their outcome, also acquired political relevance.

In addition, the implementation of the Italy-Albania protocol generated further profiles of illegitimacy, related not only to the determined extra-territorialisation of procedures already contested in the national territory, but also to the procedures

for selecting eligible migrants, whose vulnerability could not be assessed at sea, and the provision of transfers by sea to places over a thousand kilometres away, depriving them of their personal liberty.

In this sense, the government's consideration of judicial decisions as "inconvenient" raises a number of concerns. Indeed, it evidences a clear political intent to delegitimise the work of the judges, through continuous personal attacks, and illegitimate portrayals of their work as « politically oriented. » Moreover, it undermines the principle of the separation of powers.⁸⁶ As recalled by Margherita Cassano, the Chair of the First Session of the Cassation Court in a press release dated 7th March 2025 concerning the "mudslinging machine" launched by the government against judges regarding the « Diciotti » affair⁸⁷, "the decisions of the courts can be subject to criticism; however, insults that question the division of powers on which the rule of law is based are unacceptable"⁸⁸.

Conclusions

After briefly reviewing the political processes and practices that led to the concept of SCO becoming a key concept in the paths to accessing the right to asylum, I have sought to focus on the main challenges it poses.

In particular, through a socio-legal approach, I have examined the main legal battles surrounding the concept of SCO, which first developed at the local level (in Sicily), before extending to the national level in Italy and the EU Court of Justice.

Finally, I have raised a series of questions regarding the future of these battles: while, on the one hand, decisions issued by judges of various ranks have succeeded in "suspending" a political project and subsequently forcing the government to modify it, only for it to be suspended again, the imminent entry into force of the EU Pact seems to have the potential to demolish the previous achievements, creating new challenges.

At the time of writing, the implementation of border accelerated procedures and related detention measures introduced by the so-called Cutro Decree and then extra-territorialised in the frame of the Italy-Albania protocol has been suspended *de facto*. The multiple rulings against detention measures for asylum seekers coming from SCOs emptied the two new facilities created in Sicily and obliged the Italian government to transform the nature of facilities in Albania, by allowing them to transfer detainees from Italian CPRs there.

In addition, the date for the supposed implementation of the new EU pact on migration and asylum is approaching, bringing with it new measures that will partially overcome the achievements of the latest ECJ judgement on the Alace and Canpelli case. As Favilli and Marin highlight, the re-introduction of the possibility

of classifying a country of origin as “safe” with the exclusion of parts of the territory and categories of people under the new Procedure Regulation comes as no surprise, given that the use of exceptions is fairly widespread and consolidated amongst member states⁸⁹. Nevertheless, in line with the 2005 directive, the new agreement renews the auspices for the harmonisation at EU level of standards and approaches used in the designation of countries, and their convergence in a common list.

It is clear that achievements in terms of local, national and European jurisprudence, underpinning state obligations to comply with EU principles and standards concerning human rights and asylum, will not be completely lost. They represent a crucial legacy for future strategic litigation, with a view to promoting less restrictive approaches to the definition of “safety” and contrasting trends of bordering that undermine the right to asylum.

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1. European Commission, « Pact on Migration and Asylum », URL: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en, 21 May 2024, accessed on 20 November 2025. ↵
 2. European Commission, « Managing migration responsibility », URL: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyen-commission/managing-migration-responsibly_en, 9 July 2024, accessed on 20 November 2025. ↵
 3. Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, URL: <https://eur-lex.europa.eu/eli/reg/2024/1356/oj/eng>, accessed on 20 November 2025. ↵
 4. Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, URL: <https://eur-lex.europa.eu/eli/reg/2024/1359/oj/eng>, accessed on 20 November 2025. ↵
 5. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0101>, accessed on 20 November 2025. ↵
 6. Papastavridis, E., Recent « *Non-Entrée* » Policies in the Central Mediterranean and Their Legality: A New Form of "Refoulement", in *Human Rights and International Law*, Vol. 3, 2018, pp. 493-510. ↵
 7. Loschi, C. and Slominski, P., « The EU hotspot approach in Italy: strengthening agency governance in the wake of the migration crisis? », in *Journal of European Integration*, Vol. 44, n. 6, 2022, pp. 769-786. ↵
 8. Mentasti, G., « Il decreto sicurezza diventa legge. Le modifiche introdotte in sede di conversione », in *Diritto Penale Contemporaneo*, 21 December 2018, URL: <https://archiviodpc.dirittopenaleuomo.org/d/6393-il-decreto-sicurezza-diventa-legge-le-modifiche-introdotte-in-sede-di-conversione>, accessed on 20 November 2025. ↵
 9. ASGI, *Analisi giuridica del D.L. 20/2023 nella legge 50/2023* », 19 June 2023, URL: <https://www.asgi.it/allontamento-espulsione/analisi-giuridica-d-l-20-2023-schede/>, accessed on 20 November 2025. ↵

10. ANSA English, « Cutro shipwreck death toll rises to 90 », 25 March 2023, URL: https://www.ansa.it/english/news/general_news/2023/03/25/cutro-shipwreck-death-toll-rises-to-90_4d14de23-665a-49fc-9170-0b9d18e569bc.html, accessed 20 November 2025. ←
11. Following the appeal lodged by the State Attorney’s Office against the 17 non-validations of detentions by the judges in Catania, the Court of Cassation referred the assessment of the legitimacy of the financial guarantee provided for by Law 50/2023 to the Court of Justice of the European Union. Subsequently, the same government amended the legislation on this point, conferring the police commissioners with discretion to decide on the amount based on the country of origin. For Tunisia, the financial guarantee still required of Tunisian citizens amounts to around €2,500. ←
12. Action Aid and Università degli Studi di Bari Aldo Moro, « Trattenuti. Una radiografia del sistema detentivo per stranieri », URL: <https://trattenuti.actionaid.it>, accessed on 20 November 2025. ←
13. ECtHR, *J.A. and others v. Italy*, Application no. 21329/18, First Section, 30 March 2023. In particular, concerning the case of Tunisian citizens illegitimately detained at the Lampedusa Hotspot in 2017, the ECHR found the violations of Article 3 of the European Convention on Human Rights: prohibition of inhuman or degrading treatment Article 5 §§ 1, 2 and 4: right to liberty and security, Article 4 of Protocol No. 4 annexed to the European Convention on Human Rights: prohibition of collective expulsion of foreigners. ←
14. Ministero degli Affari Esteri e della Cooperazione Internazionale, « Protocollo tra il Governo della Repubblica Italiana e il Consiglio dei Ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria », 6 November 2023, URL: https://www.esteri.it/wp-content/uploads/2023/11/Accordo-Italia-Albania_compressed.pdf, accessed on 20 November 2025. ←
15. See note 12. ←
16. See Decree of 4th October 2019, “Individuazione dei Paesi di origine sicuri, ai sensi dell’articolo 2-bis del decreto legislativo 28 gennaio 2008, n. 25. (19A06239) (GU Serie Generale n.235 del 07-10-2019)”, URL: <https://www.gazzettaufficiale.it/eli/id/2019/10/07/19A06239/SG>, accessed on 20 November 2025. ←
17. Pijnenburg, A. and Van Der Pas, K., « Strategic litigation against European migration control policies: the legal battleground of the Central Mediterranean migration route », in *European Journal of Migration and Law*, Vol. 24, n. 3, 2022, pp. 401-429; Denaro, C., « La « battaglia legale » nel Mediterraneo centrale: Dal « reato di solidarietà » alla (de)criminalizzazione della disobbedienza civile », in *Studi sulla questione criminale*, Vol. 23, n. 1, 2024, pp. 79-104. ←
18. Passalacqua, V., « Who mobilizes the court? Migrant rights defenders before the Court of Justice of the EU », in *Law and Development Review*, Vol 15, n. 2, 2022, pp. 381-405. ←
19. Vassallo Paleologo, F., « Approccio Hotspot in Italia ed “habeas corpus” delle persone migrant », in *Giustizia Insieme*, URL: <https://www.giustizainsieme.it/it/diritti-umani/2636-approccio-hotspot-in-italia-ed-habeas-corpus-delle-persone-migranti-di-fulvio-vassallo-paleologo>, accessed on 20 November 2025. ←
20. Lendaro, A., « A ‘European Migrant Crisis’? Some Thoughts on Mediterranean Borders », in *Studies in Ethnicity and Nationalism*, 2016, pp. 149-157. ←
21. Boswell, C., « European values and the asylum crisis », in *International Affairs*, Vol. 76, n. 3, 2000, pp. 537-557; Sciarba, A., « Misrecognizing Asylum: Causes, Modalities, and Consequences of the Crisis of a Fundamental Human Right », in *Journal of Philosophy of Law*, Vol. 6, n. 1, 2017, pp. 141-164. ←
22. Trucco, L., « The amendments to Law No. 189/2002 on asylum », in *Law, immigration and citizenship*, Vol. 3, 2002, pp. 1000-1012; Sciarba, A., *Campi di forza*, Verona, Ombre Corte, 2009; Mastromartino, F., « Diritto di asilo. Funzione, contenuti e garanzie di un diritto soggettivo », in *Parolechiave*, Vol. 19, n. 2, 2011, pp. 47-60; Denaro, C., « I rifugiati siriani sulle rotte via mare verso la Grecia. Riflessioni sul transito e sullo svuotamento del diritto d’asilo », in *Mondi migranti*, Vol. 1, 2016, pp. 97-119. ←
23. Moreno-Lax, V., « Intersectionality, Forced Migration, and the Jus-generation of the Right to Flee: Theorising the Composite Entitlement to Leave to Escape Irreversible Harm », In Çalı, Bianku and Motoc (eds), *Migration and the European Convention on Human Rights*, Oxford, Oxford University Press, 2020. ←
24. See note n. 6. ←

25. Hirsh, A.L., « The Borders Beyond the Border: Australia's Extraterritorial Migration Controls », in *Refugee Survey Quarterly*, Vol. 36, n. 3, 2017, pp. 48-80. ↵
26. See note n. 6. ↵
27. Moreno-Lax, V. and Giuffrè, M., « The rise of consensual containment: from 'contactless control' to 'contactless responsibility' for forced migration flows », in S.S. Juss (eds.) *Research Handbook on International Refugee Law*, U.S., Edward Elgar Publishing, 2017. ↵
28. Mann, I., « Maritime legal black holes: Migration and rightlessness in international law », in *European Journal of International Law*, Vol. 29, n. 2, 2018, pp. 347-372. ↵
29. ASGI, « Le zone di transito aeroportuali come luoghi di privazione arbitraria della libertà e sospensione del diritto », *Report del Progetto In Limine ASGI*, January 2021, URL: https://www.asgi.it/wp-content/uploads/2021/01/Report-zdt_sintesi_InLimine.pdf, accessed 20 November 2025. ↵
30. Vassallo Paleologo, F., « Il respingimento differito disposto dal questore e le garanzie costituzionali », in *Diritto Immigrazione e Cittadinanza*, Vol. 2, 2009, pp. 15-29; Cherchi, R., « Respingimento alla frontiera e respingimento differito: presupposti, tipologie ed effetti », in *Diritto, Immigrazione e Cittadinanza*, Vol. 3, 2019, pp. 37-85. ↵
31. Progetto In Limine ASGI and A Buon Diritto Onlus, « Le nuove ipotesi di procedure accelerate e di frontiera », in *Questione giustizia*, 9 January 2020, URL: https://www.questionegiustizia.it/articolo/le-nuove-ipotesi-di-procedure-accelerate-e-di-frontiera_09-01-2020.php, accessed on 20 November 2025. ↵
32. Praticò, A., Le procedure accelerate in frontiera introdotte dall'articolo 7-bis del decreto legge n. 20 del 2023 convertito con legge n. 50 del 2023, *Diritto, Immigrazione e Cittadinanza*, Vol. 3, 2023, pp. 1-20. ↵
33. The Protocol between Italy and Albania was ratified and implemented by Law No. 14 of 21 February 2024. ↵
34. See note n. 14. ↵
35. ECtHR, *Hirsi, Jamaa and others v. Italy*, Application no. 27765/09, Grand Chamber, 23 February 2012. ↵
36. According to Article 17 of Legislative Decree 142/15, which transposed the EU Reception Directive (2013/33) ↵
37. Decree-Law of 10 March 2023, n. 20, « Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare », URL: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2023-03-10:20!vig=2023-03-12>, accessed on 20 November 2025. ↵
38. ASGI, « Le SOP sulle "attività condotte in mare" nell'ambito dei trasferimenti forzati in Albania », in *Progetto InLimine*, 18 November 2024, URL: <https://www.asgi.it/inlimine/le-sop-sulle-attivita-condotte-in-mare-nellambito-dei-trasferimenti-forzati-in-albania/>, accessed on 20 November 2025. ↵
39. Ministero dell'Interno - Dipartimento di Pubblica Sicurezza, « Consultazione preliminare del mercato. Per l'affidamento del servizio di noleggio di unità navale/i per il trasporto di migranti presso le strutture di accoglienza previste dal Protocollo Italia-Albania in materia migratoria », 30 May 2024, URL: <https://www.poliziadistato.it/statics/16/consultazioni-preliminari-di-mercato-noleggio-navi-protocollo-italia-albania.pdf>, accessed on 20 November 2025. ↵
40. Bagnoli, L. « The children's shipwreck: a "disaster of bureaucracy"? », in *Open Migration*, 10 January 2018, URL: <https://openmigration.org/en/analyses/the-childrens-shipwreck-a-disaster-of-bureaucracy/>, accessed on 20 November 2025. ↵
41. ASGI, « Naufragio dei bambini: niente assoluzione per chi ha ritardato i soccorsi », 27 June 2024, URL: [\[https://www.asgi.it/asylum-and-international-protection/shipwreck-of-children-no-acquittal-for-those-who-delayed-rescue/#:~:text=shipwreck%20of%20children%20\(mainly%20Syrians,shipwreck%20of%20Lampedusa\)\(https://www.asgi.it/asylum-and-international-protection/shipwreck-of-children-no-acquittal-for-those-who-delayed-rescue/#:~:text=shipwreck%20of%20children%20\(mainly%20Syrians,shipwreck%20of%20Lampedusa\)](https://www.asgi.it/asylum-and-international-protection/shipwreck-of-children-no-acquittal-for-those-who-delayed-rescue/#:~:text=shipwreck%20of%20children%20(mainly%20Syrians,shipwreck%20of%20Lampedusa)(https://www.asgi.it/asylum-and-international-protection/shipwreck-of-children-no-acquittal-for-those-who-delayed-rescue/#:~:text=shipwreck%20of%20children%20(mainly%20Syrians,shipwreck%20of%20Lampedusa)), accessed on 20 November 2025. ↵

42. When SOPs were conceived, the Ministry of Interior still imagined that hub ships, could be private, and therefore in point 5 clarified the characteristics of the agreement. ←
43. Vassallo Paleologo, F., « Il “pre-screening” a bordo di nave Libra viola il diritto dell’Unione europea e la Costituzione italiana », in *ADIF*, 15 October 2024, URL: <https://www.a-dif.org/2024/10/15/il-pre-screening-a-bordo-di-nave-libra-viola-il-diritto-dellunione-europea-e-la-costituzione-italiana/> accessed on 20 November 2025. ←
44. These categories include, minors, unaccompanied minors, the disabled, the elderly, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses or mental disorders, persons determined to have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, and victims of genital mutilation. See Article 17, Legislative Decree 142/15. To these categories, UNHCR has added by convention LGBTIQ persons, and persons who have survived shipwreck. ←
45. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), URL: <https://eur-lex.europa.eu/eli/dir/2013/32/oj/eng>, accessed on 20 November 2025. ←
46. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), URL: <https://eur-lex.europa.eu/eli/dir/2011/95/oj/eng>, accessed on 20 November 2025. ←
47. Goodwin-Gill, G. S., McAdam, J., and Dunlop, E., *The refugee in international law*, Oxford, Oxford University Press, 2021, p. 392. ←
48. Giuffré, M., Denaro, C. and Raach, F., « On ‘Safety’ and EU Externalization of Borders: Questioning the Role of Tunisia as a ‘Safe Country of Origin’ and a ‘Safe Third Country’ », in *European Journal of Migration and Law*, Vol. 24, n. 4, 2022, 570-599. ←
49. El-Enany, N., « The EU asylum, immigration and border control regimes: Including and excluding: The « deserving migrant » », in *European Journal of Social Security*, Vol. 15, n. 2, 2013, pp. 171-186; Ghezelbash, D., « Fast-track, expedited, and expedited asylum procedures as a tool of exclusion ». In C. Dauvergne (eds.) *Research Handbook on the Law and Politics of Migration*, U.S., Edward Elgar Publishing, 2021, pp. 248-261. ←
50. Hailbronner, K., « The concept of ‘Safe Country’ and expeditious Asylum Procedures: a western European perspective », in *International Journal of Refugee Law*, Vol. 5, n. 1, 1993, pp. 31-65; Hunt, M., « The safe country of origin concept in European asylum law: Past, present and future », in *International Journal of Refugee Law*, Vol. 26, n. 4, 2014, pp. 500-535; Cornelisse, G., « Territory, procedures and rights: Border procedures in European asylum law », in *Refugee Survey Quarterly*, Vol. 35, n. 1, 2016, pp. 74-90. ←
51. Shacknove, A. E. and Byrne, R., « The Safe Country Notion in European Asylum Law », in *Harvard Human Rights Journal*, Vol. 9, 1996, pp. 185-226; Costello, C., « The Asylum Procedures Directive and the proliferation of safe country practices: deterrence, deflection and the dismantling of international protection? », in *European Journal of Migration & Law*, Vol. 7, n. 35, 2005; Costello, C., « Safe country? Says who? », in *International Journal of Refugee Law*, Vol. 28, n. 4, 2016, pp. 601-622; Vogelaar, F., « The Presumption of Safety Tested: The Use of Country of Origin Information in the National Designation of Safe Countries of Origin », in *Refugee Survey Quarterly*, Vol. 40, n. 1, 2021, pp. 106-137. ←
52. EuroMed Rights, AEDH, FIDH, « “Safe” countries: A denial of the right of asylum », May 2016, URL: https://euromedrights.org/wp-content/uploads/2016/10/AnalysePaysSurs-FINAL-EN-12052016_final.pdf, accessed on 20 November 2025. ←
53. Fachile S., Massimi, A. and Leo L, Le nuove procedure accelerate: lo svilimento del diritto di asilo, in *ASGI*, 3 November 2019, URL: <https://www.asgi.it/asilo-e-protezione-internazionale/le-nuove-procedure-accelerate-lo-svilimento-del-diritto-di-asilo/>, accessed on 20 November 2025. ←
54. Asylum seekers’ detention for identification purposes could have taken place in *facilities referred to in Art. 10, para. 3, of Legislative Decree 286/98 (the so-called hotspots and first reception centres, i.e. the so-called hubs) for up to 30 days and subsequently for up to 180 days in a CPR, whenever it is necessary to verify or determine their identity or nationality: a dangerously broad wording that could in fact affect all new arrivals in Italy.* ←

55. Interministerial Decree of October 4 2019, “Individuazione dei Paesi di origine sicuri, ai sensi dell’articolo 2-bis del decreto legislativo 28 gennaio 2008, n. 25. (19A06239) (GU Serie Generale n.235 del 07-10-2019) at <https://www.gazzettaufficiale.it/eli/id/2019/10/07/19A06239/SG>. ←
56. CIR, « Decreto Cutro è legge: cos cambia in materia di procedure di riconoscimento della protezione internazionale e sul trattenimento dei richiedenti asilo? », 12 May 2023, URL: <https://cir-rifugiati.org/2023/05/12/dl-decreto-cutro-e-legge-cosa-cambia-in-materia-di-procedure-di-riconoscimento-della-protezione-internazionale-e-il-trattenimento-dei-richiedenti-asilo/>, accessed on 20 November 2025. ←
57. Milella, L., « Il Csm apre una pratica a tutela di Iolanda Apostolico, ma il presidente della commissione di Forza Italia si astiene », in *La Repubblica*, 26 October 2023, URL: https://www.repubblica.it/cronaca/2023/10/26/news/il_csm_apre_una_pratica_a_tutela_di_iolanda_apostolico_ma_il_presidente_della_commissione_di_forza_italia_si_astiene-418843179/, accessed on 20 November 2025. ←
58. Decree by the Italian Ministry of Interior, « Individuazione delle zone di frontiera o di transito ai fini dell’attuazione della procedura accelerata di esame della richiesta di protezione internazionale, (19A05525) (GU Serie Generale n.210 del 07-09-2019) », 5 August 2019, URL: <https://www.gazzettaufficiale.it/eli/id/2019/09/07/19A05525/sg>, accessed on 20 November 2025. ←
59. See note 58. ←
60. Court of Catania, 9375/2024. R.G, decision of 17 September 2024, pp. 8-9. ←
61. Vatican News, « Italia, rientrano tutti i migranti trasferiti in Albania », 19 October 2024, URL: <https://www.vaticannews.va/it/mondo/news/2024-10/migranti-albania-italia-rientro-governo-tribunale.html>, accessed 20 November 2025. ←
62. Baraggino, F., « Albania, i sette migranti tornano in Italia. I giudici rinviando alla Corte di Giustizia: “Dubbi di compatibilità del decreto con norme Ue” », in *il Fatto Quotidiano*, 11 November 2024, URL: <https://www.ilfattoquotidiano.it/2024/11/11/migranti-in-albania-tutti-liberi-anche-stavolta-i-giudici-di-roma-sospendono-il-giudizio-e-rinviano-alla-corte-di-giustizia-europea/7763434/>, accessed on 20 November 2025. ←
63. Fassini, D., « Stop dei giudici sull’Albania: i 43 migranti dovranno tornare in Italia », in *Avvenire*, 31 January 2024, URL: <https://www.avvenire.it/attualita/pagine/albania-domande-respinte>, accessed on 20 November 2025. ←
64. Valenti, P., « Sicilia e Albania, frontiere del diritto », in *La via libera*, 2 January 2025, URL: https://lavialibera.it/it-schede-2121-sicilia_e_albania_frontiere_del_diritto, accessed on 20 November 2025. ←
65. Favilli, C. and Marin, L., « Il controllo giurisdizionale sulla designazione di un paese d’origine sicuro dopo le sentenze CV e ALACE », in *RIVISTA DEL CONTENZIOSO EUROPEO*, Vol. 3, 2025, pp.1-58. ←
66. Court of Justice of the European Union, Case C-406/22, *CV v. Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, Judgment of the Court (Grand Chamber) of 4 October 2024 (request for a preliminary ruling from the Krajský soud v Brně - Czech Republic), URL: <https://eur-lex.europa.eu/eli/C/2025/685/oj/eng>, accessed on 20 November 2025. ←
67. See note 65, p.25. ←
68. Sciarba, A., « Misrecognizing Asylum: Causes, Modalities, and Consequences of the Crisis of a Fundamental Human Right », in *Journal of Philosophy of Law*, Vol. 6, n. 1, 2017, pp. 141-164. ←
69. The Court of Florence had found that the list in force in Italy was not, at the time of the decision, up to date with developments in Tunisia, a third country classified as safe and, by applying the general rules in force in the Italian legal system regarding the extension of the ordinary court’s review of the underlying administrative act, had adopted a measure to disapply *in parte qua* the inter-ministerial decree, applying the ordinary procedural rules to the case in question, including the suspensive effect of the appeal. Decisions issued on 20 September 2023 (r.g. 9787/2023) e 26 November 2023 (r.g. 11464-1/2023; r.g. 4988-1/2022; r.g. 3773-3/2023); ←
70. For a complete review of disapplication judgements, see Favilli, C., & Marin, L. (2025). In particular, see the decisions by Florence Court, Catania Court, decision of 3rd October 2024 (r.g. 10003/2024), and others. ←

71. Tribunale ordinario di Roma, r.g. nn. 42256/2024 e 42251/2024, judgements issued on 18 October 2024. ↵
72. Court of Justice of the European Union, *Joined Cases C-758/24 and C-759/24, Alace and Canpelli*, Judgment of the Court (Grand Chamber) of 1 August 2025 (requests for a preliminary ruling from the Tribunale ordinario di Roma - Italy) - LC, CP v Commissione territoriale per il riconoscimento della protezione internazionale di Roma - sezione procedure alla frontiera II, URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62024CA0758>, accessed on 20 November 2025. ↵
73. Savino, M., « Safe countries of origin before the Court of Justice: the February 25, 2025 Public Hearing and the unsolved knot of judicial review », *ADiM Blog*, 2025, URL: https://www.adimblog.com/wp-content/uploads/2025/03/Savino_Editoriale_5.3.25_DEF.pdf __ M, accessed on 20 November 2025. ↵
74. Court of Justice of the European Union, Intervention Adv. Belluccio for the Civil Part, *Joined Cases C-758/24 (Alace) and C-759/25 (Canpelli)*, 25 February 2025, URL: https://curia.europa.eu/jcms/jcms/p1_1477137/en/, accessed on 20 November 2025. ↵
75. See note 65, p.32. ↵
76. See note 65. ↵
77. ASGI, « Accesso civico ASGI: le schede dei Paesi di origine “sicuri” », 19 June 2024, URL: <https://www.asgi.it/asilo-e-protezione-internazionale/accesso-civico-asgi-le-schede-dei-paesi-di-origine-sicuri-2/>, accessed on 20 November 2025. ↵
78. ASGI, « La nuova “lista dei paesi sicuri” e lo svuotamento del diritto di asilo », 5 November 2024, URL: <https://www.asgi.it/asilo-e-protezione-internazionale/la-nuova-lista-dei-paesi-sicuri-e-lo-svuotamento-del-diritto-di-asilo/>, accessed on 20 November 2025. ↵
79. Interview with the ASGI lawyer I.G., in March 2025. ↵
80. DECRETO-LEGGE 28 March 2025, n. 37, « Disposizioni urgenti per il contrasto dell’immigrazione irregolare. (25G00050) », URL: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2025-03-28:37>, accessed on 20 November 2025 ↵
81. ASGI, « Primo rimpatrio da Tirana e nuovi trasferimenti forzati : il “Modello Albania” rompe il perimetro del diritto europeo », 27 June 2025, URL: <https://www.asgi.it/asilo-e-protezione-internazionale/primo-rimpatrio-da-tirana-e-nuovi-trasferimenti-forzati/>, accessed on 20 November 2025. ↵
82. Presidency of the Council of Ministers, « Intervento del Presidente Meloni alla Conferenza dei prefetti e dei questori d’Italia », 17 February 2025, URL: <https://www.governo.it/en/node/27686> , accessed on 20 November 2025. ↵
83. See note n. 73. ↵
84. Bigo, D., « Security and Immigration: Toward a Critique of the Governmentality of Unease », in *Alternatives*, Vol. 27, n. 65, 2002. ↵
85. See note n. 49. ↵
86. The Court of Cassation’s decision, adopted on 6th March, which was the subject of an open defamation campaign by the Meloni administration, concerned the events that occurred in October 2019, when the then interior minister denied disembarkation to the shipwrecked migrants rescued by the Coast Guard’s patrol vessel « Ubaldo Diciotti, » resulting in their unlawful deprivation of freedom for 10 days. The Supreme Court ruled that the state was obliged to compensate the migrants for the moral damage they suffered, as well as denying the possibility of considering the « ban on disembarkation » as a political act and reiterating the need for judicial review. ↵
87. Centro di Ateneo per I Diritti Umani Antonio Papisca, « La Cassazione a sezioni unite dice che nel caso Diciotti l’Italia ha trattenuto illegalmente i migranti e dovrà risarcire il danno non patrimoniale », 8 March 2025, URL: <https://unipd-centrodirittiumani.it/it/temi/la-cassazione-a-sezioni-unite-dice-che-nel-caso-diciotti-litalia-ha-trattenuto-illegalmente-i-migranti-e-dovra-risarcire-il-danno-non-patrimoniale>, accessed on 20 November 2025. ↵

88. ANSA, « La presidente della Cassazione, 'insulti inaccettabili' », 7 March 2025, URL: https://www.ansa.it/sito/notizie/cronaca/2025/03/07/la-presidente-della-cassazione-insulti-inaccettabili_fb3d1575-b82b-4728-9d3e-824610488e59.html, accessed on 20 November 2025. ↵

89. See note n. 65. ↵