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Meeting: 1501<sup>st</sup> meeting (June 2024) (DH)

Communication from NGOs (Association for Juridical Studies on Immigration (ASGI) and Association Maldusa) (17/04/2024) concerning the group of cases J.A. and Others v. Italy (Application No. 21329/18).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1501<sup>e</sup> réunion (juin 2024) (DH)

Communication d'ONG (Association for Juridical Studies on Immigration (ASGI) et Association Maldusa) (17/04/2024) relative au groupe d'affaires J.A. et autres c. Italie (requête n° 21329/18) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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## COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the Association for Juridical Studies on Immigration (ASGI) and the Cultural Association Maldusa *J.A. and Others v. Italy* (application no. 21329/18)**

### I. Introduction

This submission is made in accordance with Rule 9.2. of the Rules of the Committee of Ministers with regard to the implementation of the judgment *J.A. and Others v. Italy*. The aim of this submission is to describe the ongoing violations of the right to liberty in light of the arbitrary detention in Italian hotspots and obstacles to the exercise of the right to asylum and the presence of grounds for non-expulsion under the hotspot approach.

The Association for Juridical Studies on Immigration (ASGI) is a membership-based association focusing on all legal aspects of immigration. As a group of lawyers, academics, consultants and civil society representatives, ASGI's expertise relates to various areas of immigration and migrants' rights, including antidiscrimination and xenophobia, children's and unaccompanied minors' rights, asylum, statelessness and citizenship.

Maldusa is a cultural association that works on freedom of movement and supports the already existing infrastructure for solidarity with migrant people, and set up two research and documentation "stations" in Palermo and Lampedusa. The association is made up of individual activists who have been engaged for years in activism at sea, in solidarity with people on the move and in transnational network building processes for freedom of movement.

### II. Case Summary

On March 30, 2023 the European Court of Human Rights (First Section) delivered its Judgment in the case *JA and Others v. Italy* (application no. 21329/18). The Judgment has become definitive under Article 44 § 2 of the Convention on 30 June 2023. The case concerned four applicants, who together with other Tunisian nationals, had been rescued and transferred to the Lampedusa hotspot after risking shipwreck in an attempt to reach Italy. There, they had been effectively detained for ten days, without receiving information about their legal status or right to seek asylum, in conditions of serious violation of their fundamental rights. Subsequently, having been informally classified as 'irregular' migrants, they had been taken from the hotspot, forced to sign the notification report of a deferred rejection order of which they had not received a copy nor understood the meaning, transferred to Palermo airport, handcuffed, and taken back to Tunisia

the same day. The European Court of Human Rights found a violation of Articles 3 and 5 of the Convention and of Article 4 of Protocol n. 4. The government submitted an [Action Plan](#) on 27 March 2024, arguing that the nature of the Lampedusa hotspot is not that of a detention place, without taking any position regarding the violation of Article 4 of Protocol No 4, referring only to the regulatory reforms and the organisational and management measures adopted.

### III. General measures

#### 1. The de facto detention at the Lampedusa hotspot

The Lampedusa hotspot continues and has continued over time to be an informal detention facility, where migrants are *de facto* deprived of their personal liberty for indefinite period of time, in the absence of legal bases, nor written order, without any judicial control, and without any indication of the guarantees available to detained persons.

Detention has been and is widely implemented, informally, within the hotspot centres, as it is considered functional to the procedures of identification, determination of legal status and biometric data collection. In some circumstances, and in the specific case of Lampedusa, it is prolonged even further, i.e. until the transfer either to reception facilities, if people are applicants for international protection, or to formal detention centres when people classified as irregular foreign nationals and channeled to the procedures for repatriation. A condition of *de facto* detention denounced on several occasions also by the National Guarantor of the rights of persons deprived of their liberty<sup>1</sup>.

Over the years, and still today in the context of the broader monitoring activities carried out by ASGI's [In Limine project](#) and the [Lampedusa station](#) of the Maldusa association, it has been noticed that the hotspot continues to lack a exit and re-entry regulation system. During the [visit](#) carried out by ASGI delegation in March 2022, the personnel on site and in particular the soldiers guarding the entrance reported that ***those entering the Hotspot were not allowed to leave the facility***. This circumstance is further confirmed during the legal inspection carried out in June 2023, by students of the [School of Advanced Training for legal practitioners specialising in international protection](#) (Scuola di Alta Formazione per operatori legali specializzati in protezione internazionale), promoted by ASGI and the Association Spazi Circolari<sup>2</sup>. With reference to the Lampedusa hotspot, the [Report](#) states that *'during the interview with the Police Headquarters and the Prefecture of Agrigento, it was stated that the centre is closed. The detention of people in the Lampedusa hotspot is justified by the fear that people escape if the centre was left open'*. The [Internal Regulations of the Lampedusa hotspot](#) itself, published only on 4.11.2022, provides only for the reference to the right of foreign citizens to circulate within the Centre once the identification procedures have been completed by the competent authorities. In December 2022, ASGI sent an [open letter](#) to the Police Headquarters and Prefecture of Agrigento asking confirmation of the circumstance that foreigners at the Lampedusa hotspot are subject to a *de facto* deprivation of personal liberty. The Police of Agrigento [replied to the letter](#) in an extremely vague manner, without clarifying the legal configuration of the centre, i.e. whether it is an open or closed centre, but limiting itself to state that no one is subject to

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See: <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4dca4f9c.pdf>; <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/29e40afb6b6e5b608916cad716836dfe.pdf>; <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/a5fa1a499fdaf9e241f537006675c158.pdf>; <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/c8c57989b3cd40a71d5df913412a3275.pdf>.

<sup>2</sup> See: <https://www.spazicircolari.it/>.

‘administrative detention’. That is evidently referring to the fact that the centre is not one of the formal detention facilities provided for by the legislation, nevertheless the Police did not address the question of the lack of an entry and exit regulation systems. This response merely confirms the permanent absence of a legal basis and judicial control over detention.

On the 10th of May, 2023, the [Agrigento Police Headquarters](#) , stated that they did not hold "*administrative documents containing numerical data on the daily exits and entrances, granted or refused, from and to the centre, by foreign citizens present at the Lampedusa hotspot*".

Lastly, the circumstance that people cannot leave the centre is corroborated by the fact that the Mayor of Lampedusa himself, by order No 49 of 06.08.2020, ordered the closure of the hole in the hotspot fence through which the migrants were able to leave and reach the town "*Having regard to the photographic documentation attached, from which it emerges that the perimeter fence of the area belonging to the local hotspot has been damaged and that the damage entails the indiscriminate exit of the guests of the facility as indicated in Article 3 of Ordinance No 28 of the President of the Sicilian Region, which prescribes the adoption of 'special control areas' designed to prevent hotspot guests from leaving the structure in an uncontrolled manner; whereas the free movement of migrants in the area has caused alarm among the locals and the many tourists currently on the island, [...], on several occasions the Prefecture of Agrigento has been asked to take immediate action to restore the perimeter fence around the hotspot, but to date no action has been taken to resolve the problem. It is necessary to take immediate action to restore the efficiency of the perimeter fence around the hotspot*".

With respect to the **length of stay** in the centre, the government represents the improvement of the transfer system from the hotspot by boat and plane and the strengthening of the first reception facilities for migrants arriving on Italian territory, both in terms of the activation of new centers and the extension of existing centers. However, there are no guarantee that those measures stop the practice of detaining citizens (adults and minors) who have landed on the island and are received at the hotspot in the event in which the transfers should not be immediately implemented (due to too high numbers of arrivals, unavailability of places on the mainland, etc.), .

## **2. Material conditions at the Lampedusa hotspot**

Concerning the reception conditions, the Lampedusa hotspot is cyclically subject to periods of overcrowding. For example, it can be observed that the center hosted [up to almost 6,000](#) people during the days of mid-September 2023; in previous periods, even 2,000 people were present<sup>3</sup>, forced to lie on the ground, outside, without sleeping facilities, with an insufficient supply of food and insufficient health care, in promiscuous conditions and in degrading sanitary conditions compromising the protection of individual and collective health. Some [press reports](#) show that 1800 migrants arrived from 3 to 5 April 2024, and on 5 April the Lampedusa hotspot, which according to what is represented by the Government can reach a maximum capacity of 640 places, housed 1270 people, including 87 unaccompanied foreign minors. Even in the following days, as monitored by Maldusa, the facility consistently accommodated more people than its current capacity, even around 1,200.

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<sup>3</sup> See: Hotspot di Lampedusa: sempre più un luogo di confinamento, chiuso anche il “buco nella recinzione”, 2 InLimine, 18 agosto 2021. Migranti, la foto dell'ex sindaco di Lampedusa: «Hotspot come la Libia: 2.100 in condizioni disastrose». Il Viminale: «600 trasferiti domani», Corriere della Sera, 8 luglio 2022; Un traghettone per svuotare hotspot, in mille su navi Ong, ANSA, 28 luglio 2022.

**The transfer system appears central to the Action Plan. The Government indicates that** *“in light of the exceptional influx of migrants registered in Lampedusa at the time of the first fifteen days of September 2023”* a contract for on-demand travel has been defined with a transporter that guarantees the availability of a catamaran on the Lampedusa-Pozzallo route for about 800 people. These rapid transfers correspond, in any case, to emergency management. This does not allow a concrete solution to the situations of structural overcrowding and it is not suitable to prevent the recurrence of degrading detention conditions in violation of Article 3 of the Convention.

To date, it is reported that **unaccompanied minors (UAMs)**<sup>4</sup> continue to be the ones who stay the longest periods at the Lampedusa hotspot due to the lack of centres for minors. Minors are deprived of their personal freedom during this time and do not receive adequate medical screening (nor appropriate age verification), legal assistance, or adequate access to legal remedies. Moreover, they share spaces with adults in promiscuous conditions (See [ASGi's Communication](#) in the case of *Darboe and Camara v. Italy* from 6.11.2023, par. 1.1.). The Action Plan presented by the Government indicates that the *Intervention plan for emergency activities available for the first assistance and for the reception of migrants* at the Lampedusa hotspot provides specific measures, including recreational ones (for children, adolescents and unaccompanied minors), this is an explicit confirmation that minors of all ages are usually detained in the hotspot.

Concerning the reception conditions of other foreign nationals, it is noticed that, starting from the testimonies collected by Maldusa, the sharing of sleeping spaces between men and women persists, with the exception of those with health problems who are accommodated in the infirmary.

During periods of overcrowding, people are forced to sleep on the ground, even occupying places designated for prayer or leisure, since there are not enough places for everyone to stay. Similarly, a systematic shortage of food is observed during these periods, also exacerbated by the inability of people to obtain food in the village due to the ban on leaving the hotspot. Moreover, in this context, the most vulnerable foreign nationals coming from Libya and Tunisia are subjected to re-victimisation processes given the detention hotspot structure, surrounded by gates and barbed wire, and the massive presence of military personnel.

**3. Informal status determination practices: obstacles to the exercise of the right to asylum and to the individual evaluation of grounds for non expulsion under the hotspot approach. The repetition of collective expulsions and refoulements in violation of Art. 4 Prot. 4.**

The Court found that the refusal-of-entry and removal orders issued in the applicants' case had not had proper regard to their individual situations and those decisions had thus constituted a collective expulsion of aliens within the meaning of Article 4 of Protocol No. 4

This practice has not been changed. Although access to asylum procedure must be guaranteed at the border, the classification of foreign nationals into asylum seekers and irregular migrants at the Sicilian hotspots, particularly at the Lampedusa centre, continues to be affected by the shallow conduct of the

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<sup>4</sup> To illustrate, according to data from the Report of the National Guarantor of the Rights of Persons Deprived of their Liberty, in 2022 6235 unaccompanied minors (UAMs) transited from the Lampedusa hotspot for an average presence of 8 days and in the first three months of 2023 3669 minors transited from Italian hotspots. See: <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/24447ddb0b3093d479d7da93ebcda98.pdf>.

public security authorities and other actors operating at the hotspots, which results in restrictions on access to full and correct information to foreigners on their legal status.

According to the testimonies of the detained persons collected by ASGI<sup>5</sup> over the years, t at the **Lampedusa hotspot** information was and still is often totally absent or inadequate. People receive information on immigration and asylum legislation only in paper form, a method that may amount to discriminatory treatment towards those who, for various reasons, do not have the possibility to understand the information provided in writing. A visit carried out by an ASGI delegation in March 2022<sup>6</sup> confirms that only a mere information sheet (one brochure intended for minors and one for adults) is distributed the entrance of the center, at a stall set up in front of the police gazebo, in the presence of a mediator and Save the Children and UNHCR staff (one staff member for each of these organisations respectively). The location chosen to deliver the information was inappropriate for large groups of people. In addition, sometimes in conditions of high number of arrivals, as recently observed, the information is given orally and generically in the phase immediately following the disembarkation and the transfer to the hotspot.

This is very worrying since this information represents the only opportunity for the foreign citizen to learn about the legislation, receive information on his or her legal status and the possibility of applying for international protection before the interview with the authorities, as part of the filling process of the so-called "information sheet" ("foglio notizie"). A document devoid of any informative content, merely consisting of a listing of the personal data declared by the foreigner and generic reasons underlying migration (such as work, reuniting with family, fleeing poverty, tourism, asylum, and 'other'). This document is usually drawn up a few minutes after disembarkation, filled in by the police, where the indication of one of the options will determine the entire course of the person within the territory, up to and including potential removal. Through this bare document, the juridical condition of the foreign citizen is so defined: he or she acquires the status of asylum seeker, and transferred to a reception center, or as 'irregular' migrant, transferred in this case to a return centre (or recipient of a deferred refoulement order). In addition, a copy of this "foglio notizie" is never issued to the person concerned, making it impossible for them to know their legal status.

Theoretically, according to the *Standard Operating Procedures applicable to Italian hotspots* (SOPs)<sup>7</sup> on the functioning of the Hotspots: "*within the hotspot, the intention to apply for international protection, expressed by the person, should be recorded in the information sheet for which a receipt is issued*". Formally it is possible to express the will to seek asylum also afterwards the identification procedures, the request must be recorded on the "foglio notizie" and the person concerned should receive a copy. From what has been monitored over the years, none of the persons subjected to pre-identification was ever given a copy of the information sheet and above all, was never informed of this possibility.

With reference to the **Taranto hotspot**, in the [Report on the Taranto hotspot](#) centre elaborated within the framework of the project *Jean Monnet Lab: Monitoring human rights in border areas* of the University of Bari "Aldo Moro", it is reported that legal information are given on the pier during the time between disembarkation and the signing of the "foglio notizie", while migrants are still waiting to receive basic goods and first aid. Often the information is given through the distribution of brochures in various languages (not necessarily all those needed by the disembarked persons) and without leaving a sufficient amount of time to the migrant to understand the situation before answering the questions on the so-called "foglio notizie".

<sup>5</sup> See: <https://inlimine.asgi.it/wp-content/uploads/2022/08/Report-Lampedusa-2022.pdf>.

<sup>6</sup> See: <https://inlimine.asgi.it/wp-content/uploads/2022/08/Report-Lampedusa-2022.pdf>.



This practice continues despite numerous rulings by the Court of Cassation in individual cases, which has declared illegitimate the drafting of the “foglio-notizie” and therefore the total absence of legal information, from which have resulted in illegitimate pushback decrees and detentions in the CPRs (Centres of Permanence for Repatriation). Hence the violation of Article 4 prot. 4 is persistent and systemic.

**Recently, judgment 12592/2023 of the Court of Cassation establishes that** *"if there are indications that foreign citizens or stateless persons, present at border crossings and entering the national territory, wish to submit an application for international protection, the competent authorities have the duty, (...) to provide them with information on the possibility of doing so, also guaranteeing interpreting services to the extent necessary to facilitate access to the asylum procedure, otherwise the resulting decrees of refusal and detention shall be declared invalid, with the court also having to rule on the alleged unlawfulness of the first decree caused by such failure to provide information"*.

Finally, the **Court of Cassation, section I, with decision no. 5797 of 5 March 2024**, specifies that pursuant to art. 10 ter of the Legislative Decree. 286/98 must be ensured to all foreigners taken for rescue and first assistance at the appropriate “crisis points” (the hotspot) a complete and effective information on the international protection procedure, on the relocation programme in other EU Member States and on the possibility to access assisted voluntary repatriation programs, since this is an obligation aimed at ensuring the accuracy of the identification procedures and reducing the margins of operational error. Again: ***"It is not sufficient, in order to consider that the obligation to provide information referred to in Article 10 ter T.U.I. is fulfilled that the refusal of entry or detention order generically states that the person has been fully informed, if, in the interested party's objection, nothing emerges, as regards the information, from the information sheet or from other acts, documents or means of proof offered by the administration; and in particular, if the times and the manner in which the information was given do not emerge, with specific regard to the language used, in the presence of an interpreter or cultural mediator and this in order to allow verification of the comprehensibility of the information provided"***.

#### 4. The case of the Pantelleria hotspot

The island of **Pantelleria** seems to have a conformation which turns out to be useful in the approach to migration, in a very similar way to Lampedusa, but it is undoubtedly receiving less attention.

The analysis carried out by ASGI over the last few years with reference to Pantelleria as an access route to Italian territory has highlighted, even in this border location, the existence of serious criticalities with regards to the respect of the rights of foreigners arriving on the island. Among the most critical profiles are the practices of unlawful detention and the obstacles to access to the right of defense; the inadequacy of information and the total absence of legal assistance; the practices of obstructing access to asylum applications; the violation of freedom of telephone correspondence, in the light of the unlawful seizure of the telephone of incoming persons, who remain, therefore, in a condition of total isolation<sup>8</sup>.

On 15 April 2024, the Prefecture of Trapani confirms once again the deprivation of personal liberty of the persons who remain at the hotspot in Pantelleria, despite the absence of legislative provision and judicial review; in fact, the Prefecture states that pending their transfer to Trapani, as they have not yet been photo

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<sup>8</sup> See as an example:  
<https://inlimine.asgi.it/report-sul-punto-crisi-di-pantelleria-implicazioni-sulla-privazione-della-liberta-personale/>;  
<https://inlimine.asgi.it/sospensione-del-diritto-il-report-su-pantelleria/>;  
<https://inlimine.asgi.it/pantelleria-interrogazione-parlamentare-sulle-violazioni-dei-diritti-dei-cittadini-stranieri/>;  
<https://inlimine.asgi.it/report-sopralluogo-giuridico-pantelleria-una-sospensione-del-diritto/>.

fingerprinted a, *'the migrants must be supervised and cannot leave the facility, except for health reasons'*. Moreover, the Prefecture confirms the absence of instruments to regulate the entry and exit of migrants hosted inside the hotspot, which is constantly controlled by security forces.

With reference to the times of restriction and stay, the Prefecture states that people remain inside the centre for 2/3 days, except in the event of adverse weather conditions that do not allow transfer by sea. Again, according to the [Prefecture's](#) description, in the period from 4 August to 18 April 2023, there were moments of increased flow affluence that resulted in a number of people present exceeding the maximum capacity (40 places) for durations that are reported, generically, as 'relatively short'. According to what is represented, again by the Prefecture of Trapani, in the period from 11 August 2023 to 18 March 2024, the number of foreign citizens who stayed at the Pantelleria Center reached 416 on 20 September 2023, compared to a capacity of 40 places<sup>9</sup>. Above all, the Prefecture specifies that *"when the numbers of migrants welcomed allow it, the reception of men is distinguished from women and unaccompanied minors and each group is provided with a toilet"*, confirming the permanence of minors and women in conditions of promiscuity<sup>10</sup>.

According to what was reported during the [visit carried out by an ASGI delegation in May 2023](#), peaks of 400 people, present at the same time, were reached in August 2022. A condition that was also represented by the current managing body, Cooperativa Sanitaria Delfino, in relation to the second half of September 2023, where, compared to the capacity of 40 people, **more than 400 people were hosted** because, according to what was represented, the transfer vehicles were all involved in the Lampedusa "emergency"<sup>11</sup>.

With reference to the exercise of **the right of asylum**, over the years, the information has been found to be completely inadequate, the legal assistance for foreigners completely absent and the systematic impossibility of submitting a request for international protection during the stay on the island emerged as highly critical from the testimonies collected. Should a foreign citizen express this will or the fear of returning to his/her country of origin, he/she will be sent back to Trapani<sup>12</sup>. It should be noted that according to what was reported by the Prefecture of Trapani *"The expressions of willingness to request international protection are registered only after the migrants have been fully identified which takes place when they arrive in the capital at the local offices Police Headquarters"*, therefore not during the stay at the Pantelleria hotspot center but only after the transfer to Trapani, resulting in a serious lack of protection for a variable time<sup>13</sup>.

## 5. Deprivation of liberty at other hotspots

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See:

<https://inlimine.asgi.it/wp-content/uploads/2024/04/Riscontro-Pref-Trapani-hotspot-di-Pantelleria-15.05.2024.pdf>.

<sup>10</sup> See:

<https://inlimine.asgi.it/wp-content/uploads/2024/04/Riscontro-Pref-Trapani-hotspot-di-Pantelleria-15.05.2024.pdf>.

<sup>11</sup> With reference to the duration of the "reception", see also the Internal Regulations, where it is reported that: "...ends after obtaining the certificate of the state of health and the subsequent disposition by the Prefecture which through the forces of Order provides for transfer by ship. Therefore, the transfer dates will be affected by adverse weather conditions that would not allow for safe travel and/or any other unforeseeable conditions that prevent the immediate transfer".

<sup>12</sup> See: [https://inlimine.asgi.it/wp-content/uploads/2022/08/REPORT-PANTELLERIA\\_def.pdf](https://inlimine.asgi.it/wp-content/uploads/2022/08/REPORT-PANTELLERIA_def.pdf).

<sup>13</sup>

See:

<https://inlimine.asgi.it/wp-content/uploads/2024/04/Riscontro-Pref-Trapani-hotspot-di-Pantelleria-15.05.2024.pdf>.



As already seen, the Government's regulatory and procedural response was to provide for the creation of similar structures that could allow the opening of hotspots in various areas of the country and at the same time the transfer of foreign citizens from Lampedusa to these structures.

However, this has simply led to the reproduction of illegitimate practices and behaviors also towards foreign citizens present in these structures and in particular: the *de facto* detention, without title and without judicial control, the lack of legal information, which is key to ensure they benefit from an effective individual assessment before being issued with refusal-of-entry orders, the situation of promiscuity between men and women and minors, the inadequate material conditions and often overcrowding.

In the area of Porto Empedocle (Agrigento), a hotspot center has recently been active, used for first aid and identification of foreign citizens entering Italian territory and, as represented by the Prefecture of Agrigento, aimed at "*ensuring more effective and efficient management of migrants arriving from Lampedusa*"<sup>14</sup>. On 18 January 2024, the Agreement was stipulated and signed between the prefecture of Agrigento and the Italian Red Cross (CRI) for the management of the new hotspot for the provision of reception, assistance and integration services for migrant people present in the hotspot. Following generalized civic access, the [Prefecture of Agrigento](#), on 15 March 2024, specified that as provided for by the *Standard Operating Procedures applicable to Italian hotspots* (SOPs), except for exceptional influxes which require the adoption of different initiatives, foreign people at the Porto Empedocle facility can leave the hotspot center only after the biometric data collection "*in accordance with the provisions by the regulations in force, if the security checks in the national and international police databases have been completed*". This provision leaves the security forces with a wide margin of discretion, above all due to the lack of a certain and knowable deadline on the duration of the above mentioned operations and, in any case, due to the lack of control by a judicial authority on the deprivation of personal liberty which could therefore also last for longer periods of time.

In the **Reception Centre (Centro di Accoglienza-CDA)** of Isola Capo Rizzuto (Crotone), migration control techniques and informal entry management mechanisms inherent to the hotspot approach are reproduced. Based on contingent needs, from time to time, the structure has been, and continues to be used, to carry out various and multiple functions, sometimes changing its legal configuration, other times, however, in a completely informal manner. Currently, in addition to being a reception center for asylum seekers and unduly receiving and accommodating unaccompanied minors, it simultaneously carries out a "hotspot function", although the Prefecture also specifies that the center cannot be included among the structures referred to in the art. 10 ter of the Legislative Decree 286/98<sup>15</sup> and therefore cannot be legally classified as a *proper* hotspot<sup>16</sup>. The [Prefecture of Crotone](#) represents that the procedures connected to the hotspot activity involved 6182 foreign people in the period from July 2022 to 21 March 2023. According to reports following generalized civic access, the activities are carried out by police officers immediately after the guests' entry and should be completed within a few hours. However, in periods in which there are significant arrivals, they can even last for a few days. They represent in the FOIA access feedback that people are free to go out as there is no restrictive status against them. However, interviews during the [visit](#)

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<sup>14</sup> See: <https://inlimine.asgi.it/wp-content/uploads/2023/10/Prefettura-di-Agrigento-riscontro-27.10.2023.pdf>.

<sup>15</sup> "In accordance with Article 10ter of Legislative Decree 286/1998, for the first time in Italian legislation, the term 'hotspots' is introduced, stipulating that foreigners apprehended during irregular border crossings or upon arrival within national territory as a result of sea rescue operations are to be escorted for rescue and initial assistance needs at designated crisis points. Here, fingerprinting and identification operations are carried out, along with providing information about international protection procedures, relocation programs to other European Union member states, and the option of assisted voluntary return."

<sup>16</sup> See: <https://inlimine.asgi.it/wp-content/uploads/2022/09/Prefettura-Crotone-del-18.8.2022.pdf>.

[carried out by an ASGI delegation in January 2023](#), revealed that the deprivation of personal liberty is a concrete and systematic practice. The practice has been confirmed until the identification and biometric data collection procedures have been completed and, for people who do not intend to ask for asylum, even after, at least until their transfer to a CPR or notification of a push back order.

Also with reference to the **Taranto hotspot**, in the [Report on the Taranto hotspot](#), already mentioned, it is noted that although the regulation provides for a detention period of a maximum of 72 hours during which identification procedures are carried out, in reality people remain deprived of their liberty for a much longer time. It is also specified that, at the total discretion of the authorities involved, *"at least some categories of guests are still allowed to leave the center during daylight hours once the registration and photo-signaling procedures have been completed. However, the Taranto facility is not equipped for long-term stays, which is why it would be advisable to guarantee rapid internal turnover."*

The Government cited other hotspots or so-called similar structures referred to in art. 10 ter, c. 1-bis, of Legislative Decree no. 286/98 or even emergency structures such as the "temporary structure" of Vibo Valentia and the "very first reception and aid" center of Gallico in Calabria<sup>17</sup>, the Catania structure<sup>18</sup>, and the same hotspots of Pozzallo<sup>19</sup>, Porto Empedocle and Trapani<sup>20</sup>. These often take the form of places of transfer from the Lampedusa hotspot. These are places where migrant people find themselves accommodated and/or detained. These are places where monitoring activities continue and critical profiles are identified with respect to the material conditions of overcrowding and promiscuity, *de facto* detention, the absence of health care, the shortcomings in the asylum procedures, the condition of isolation which will be the subject of further study over time.

## **6. The deprivation of liberty of unaccompanied foreign minors in hotspots in inadequate material conditions**

As reported in the communications sent as part of the procedure for supervising the execution of the judgment [Darboe e Camara v. Italy](#)<sup>21</sup>, the systematic nature of some critical profiles, detrimental to the rights of foreign citizens restricted to the hotspots, takes on an extremely serious character in the case of minors as to their rights. In the repetitive cases *A.T. and others v. Italy* (Application No. [47287/17](#)) and *M.A. V. Italy* (Application No. [13110/18](#)) applicants were minors.

Italian law expressly forbids the detention of unaccompanied minors (UAMs). According to the provisions of the Legislative Decree 142/2015, art. 19, par. 4: *"Unaccompanied minors cannot be detained or received in*

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<sup>17</sup> See: <https://inlimine.asgi.it/mappatura-dei-luoghi-di-frontiera-monitoraggio-e-azioni/>. By way of example, in the case of the Gallico structure, which lends itself to multiple functions, including carrying out identification and photo-signalling procedures directly within the centre, with the space usually intended for the canteen being used as a detachment of the immigration office, according to what was represented by the Prefecture of Reggio Calabria on 02.14.2024, people would be authorized to leave only upon completion of police activities.

<sup>18</sup> See: <https://inlimine.asgi.it/mappatura-dei-luoghi-di-frontiera-monitoraggio-e-azioni/>.

<sup>19</sup> See: <https://inlimine.asgi.it/a-12-anni-nellhotspot-dedicato-ai-minori-report-da-pozzallo-e-cifali/>. Even recently, according to the testimonies collected, moments of overcrowding have been monitored, periods of stay that have reached up to ten days, during which leaving the facility is permitted at the discretion of the authorities involved, and difficulties in accessing adequate healthcare.

<sup>20</sup>The CPR of Trapani, in addition to being a place of administrative detention functional to repatriation, carries out functions attributable to the hotspot approach, in continuity with the procedures implemented in Pantelleria. See par. 3, <https://inlimine.asgi.it/violazioni-di-diritti-fondamentali-nel-cpr-di-trapani-il-monitoraggio-di-asgi/> and also <https://www.blogsicilia.it/trapani/sbarco-migranti-pantelleria-marettimo/1001035/>.

<sup>21</sup> See: [https://hudoc.exec.coe.int/#{%22execidentifier%22:\[%22DH-DD\(2023\)1395E%22%22\]}](https://hudoc.exec.coe.int/#{%22execidentifier%22:[%22DH-DD(2023)1395E%22%22]}); [https://hudoc.exec.coe.int/#{%22execidentifier%22:\[%22DH-DD\(2024\)149E%22%22\]}](https://hudoc.exec.coe.int/#{%22execidentifier%22:[%22DH-DD(2024)149E%22%22]}).

*the centres referred to in Articles 6 and 9*", i.e. the detention centres for repatriation, hotspots and governmental reception centres. In practice, however, in several hotspots and governmental reception centres, UAMs are systematically *de facto* detained for long periods, until the children are transferred to other reception centres, without a precise time limit. This often lasts several months, due to the lack of places available in reception centers for minors.

When asked about the reasons for the deprivation of liberty, the authorities usually argue that the UAMs cannot leave the center because they have not been appointed a legal guardian yet or because the center has not enough staff to accompany them outside. It must be stressed that Italian law does not allow the detention of children for protection reasons.

Thus, UAMs are arbitrarily deprived of their liberty, without a legal basis, which further violates the provision that expressly forbids the detention of UAMs. In the absence of a reasoned measure ordering their detention, they cannot be informed of the legal reasons for their deprivation of liberty and cannot challenge the grounds for their *de facto* detention before a court, in violation of Article 5 §§ 1, 2 and 4.

Moreover, usually the material conditions in hotspots and governmental reception centers are seriously inadequate to host UAMs (promiscuity with adults, insufficient sanitary facilities, lack of privacy, overcrowding etc.), and no remedy is provided by Italian law regarding reception conditions, amounting to violations of Articles 3 and 13 of the Convention.

Until October 2023, the placement of UAMs in adult reception facilities was forbidden, even though it happened in practice. Article 5 of the Decree-Law 133/23, converted into Law no. 176/23, established the possibility to place UAMs aged not less than 16 years in a dedicated section of governmental reception centres for adults and in extraordinary reception centres (so-called CAS) for adults, up to 150 days (the provision forbidding the detention of UAMs, however, was not changed). As a consequence of this regulatory change, the number of UAMs *de facto* detained in adult governmental reception centres and suffering violations of the Convention similar to those found in the *J.A. and others* case and in the other judgements included in the group (especially *A.T. and others*), is likely to significantly increase.

The condition of *de facto* deprivation of personal freedom, in inadequate material conditions, without appropriate jurisdictional guarantees, as already reported in the communications cited above, of unaccompanied foreign minors was monitored with reference to different places, beyond the **Lampedusa hotspot** as previously described.

In line with the ongoing monitoring conducted by ASGI over the years, a similar situation is observed at the **Pozzallo hotspot and its detachment in Contrada Cifali**. On the occasion of the visit on 09.10.2023, of the Member of Italian Parliament Laura Boldrini and the ASGI lawyer Riccardo Campochiaro<sup>22</sup> to the **Pozzallo hotspot**, approximately 100 minors were being detained, unable to leave the facility, most of them having been accommodated for four weeks, in unseemly conditions of promiscuity, overcrowding and unhygienic health and in the absence of legal information (See [ASGI's Communication](#) in the case of *Darboe and Camara v. Italy* from 6.11.2023, par. 1.1). In **Contrada Cifali**, a facility informally designated to accommodate UAMs, on the occasion of the visit of a delegation from ASGI and the Association Spazi Circolari<sup>23</sup> in June

<sup>22</sup> See: <https://it.euronews.com/2023/10/09/migranti-boldrini-a-pozzallo-ragazze-con-segni-di-tortura>;  
<https://www.radiortm.it/2023/10/09/laura-boldrini-allhot-spot-di-pozzallo-in-stato-vergognoso/>;  
[https://www.rainews.it/tgr/sicilia/video/2023/10/tgr-sicilia-basso-tgr-14-00i-boldrini-a-pozzallo-09-10-23mxf-985e61e0-20b4-4112-a41e-6186fc7c1cbf.html?wt\\_mc=2.www.wzp.rainews](https://www.rainews.it/tgr/sicilia/video/2023/10/tgr-sicilia-basso-tgr-14-00i-boldrini-a-pozzallo-09-10-23mxf-985e61e0-20b4-4112-a41e-6186fc7c1cbf.html?wt_mc=2.www.wzp.rainews).

<sup>23</sup> See: <https://inlimine.asgi.it/wp-content/uploads/2023/10/Report-La-frontiera-di-Pozzallo-e-le-sue-evoluzioni.pdf>.

2023 more than 100 minors have been effectively denied their personal freedom for several months after being identified and photo-identified at other hotspots, primarily Lampedusa and Pozzallo, unable to make asylum claims, isolated, and, as emerged during the subsequent visit of the aforementioned parliamentarian, also in a serious health situation with very precarious hygienic and medical conditions<sup>24</sup> (See [ASGI's Communication](#) in *Darboe and Camara v. Italy* of 6.11.2023, par. 1.1 and [ASGI's Communication](#) in the case of *Darboe and Camara v. Italy*, 31.01.2024, par. V). In November, ASGI filed an appeal to request the termination of the *de facto* detention status of unaccompanied minors at the Contrada Cifali hotspot. Following the notification of the appeal, the Lawyer's Office announced that it had moved all the minors to the Pozzallo hotspot, a circumstance which, from what has been monitored, has not guaranteed them the right to personal freedom and better reception conditions and effective protection. Since January, the structure has been closed for renovation works. With an order of 5 February 2024, the court of Catania declared the conduct of the Ministry to be illegitimate<sup>25</sup>.

A similar situation is found at the **Taranto hotspot**, located in a restricted area of the port far from the city. On 23 November 2023, the European Court of Human Rights in its judgment *A.T. and others v. Italy* (Application No. 47287/17), one of the repetitive cases in this group, condemned Italy for illegally detaining several unaccompanied foreign minors in this hotspot (Art. 5, paras. 1, 2 and 4 of the Convention), for inhuman and degrading treatment in their reception (art. 3) and for failing to appoint a guardian and to provide them with any information on possible remedies (art. 13, in relation to art. 3). At the time the judgment was published, there were 185 unaccompanied minors detained at the Taranto hotspot, some of them being detained since August 2023. Following the Court's judgment, after more than 5 years, the situation did not change and more unaccompanied minors were subsequently placed there (See [ASGI's Communication](#) in *Darboe and Camara v. Italy* of 6.11.2023, par. 1.1 and [ASGI's Communication](#) in the case of *Darboe and Camara v. Italy*, 31.01.2024, par. V). This circumstance is also confirmed in the [Report on the Taranto hotspot](#) mentioned above, where it is reported as *"At the time of our visit, carried out on 12 June 2023, there were 184 guests in the Taranto hotspot, all unaccompanied minors between 14 and 18 years old."* With reference to the deprivation of personal liberty, it is reported that *"(...) minors are not allowed to leave the facility independently. (...) However, the managing body is not able to organize daily accompaniments for minors who wish or need to leave the centre, this means that minors are forced into a condition of de facto detention from which they can only escape by evading the rules and climbing over the fence surrounding the structure."*

Unaccompanied foreign minors are also deprived of personal liberty at the **Reception Centre (Centro di Accoglienza-CDA) in Isola di Capo Rizzuto (KR)**<sup>26</sup>. Minors are not allowed to leave for months, with some remaining in this situation until they reach the age of majority. The condition of deprivation of liberty and promiscuity in which minors remain is also confirmed by the Calabria's Regional Guarantor of Persons Subjected to Measures Restricting Personal Liberty<sup>27</sup> and the **Guarantor Authority for Childhood and Adolescence**<sup>28</sup>. (See [ASGI's Communication](#) in *Darboe and Camara v. Italy* of 6.11.2023, par. 1.1 and [ASGI's Communication](#) in the case of *Darboe and Camara v. Italy*, 31.01.2024, par. V). This situation was also

<sup>24</sup> See: <https://www.asgi.it/allontamento-espulsione/hotspot-pozzallo-cifali/>.

<sup>25</sup> See: <https://inlimine.asgi.it/il-giudice-di-catania-a-cifali-minori-trattenuti-illegalmente-lasgi-e-legittimata-a-tutelarli/>.

<sup>26</sup> See: <https://inlimine.asgi.it/wp-content/uploads/2023/10/Report-Centro-Crotone-Isola-Capo-Rizzuto-2023.pdf>.

<sup>27</sup>

See:

<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/5ab78f47e8dd4f5c30147d0bc15545d1.pdf>;

<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/a2c846e9d36e9b5cb9c0f1345d0b26ce.pdf>.

<sup>28</sup> See: <https://www.garanteinfanzia.org/msna-garlatti-incontra-ragazzi-ospiti-hotspot>.

condemned by the ECtHR in its judgment of 5 December 2023<sup>29</sup>. In light of the monitoring carried out, this condition persists. As of 9 April 2024, there would be around 128 UAMs transferred from the Lampedusa hotspot, deprived of personal freedom.

Furthermore, the conditions under which minors are detained also appear alarming at the **Pantelleria Hotspot**. In fact, the Prefecture of Trapani responded to ASGI with a letter dated 16.04.2024, pointing out that from 11.08.2023 to 18.03.2024 there were 663 unaccompanied minors detained and accommodated at the center, even for very long periods of time when the weather conditions do not allow for transfer. Moreover, by the Prefecture's own admission, spaces for minors are separated from those for adults only when numbers permit<sup>30</sup>.

#### IV. Conclusions

In view of the above, the undersigned NGOs ask the Committee of Ministers to call upon the Italian authorities to:

- **Urgently cease the systematic practices of illegal and informal detention** of foreign nationals in hotspots and other border and initial reception facilities;
- Take the necessary measures to ensure that any person has effective **access to adequate and individual legal information, to the right to asylum and to an adequate assessment of one's individual condition**;
- **Cease the systematic practices of illegal *de facto* detention and the placement of UAMs in hotspot centres and governmental reception centres**, where they live in inadequate and promiscuous conditions, have no or limited access to health care, psychological support, legal assistance as well as to the asylum procedure, in violation of Articles 3, 5 and 8.

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<sup>29</sup>

See:

<https://inlimine.asgi.it/crotone-minore-straniero-solo-trattenuto-da-5-mesi-nel-centro-di-accoglienza-la-cedu-condanna-nuovamente-litalia/>. A minor, contrary to what should be the case, has been detained in degraded and totally inadequate conditions since 24 June 2023, in a situation of severe isolation, without any real possibility of claiming respect for his rights.

<sup>30</sup> <https://inlimine.asgi.it/hotspot-di-pantelleria-i-riscontri-della-pubblica-amministrazione/>