

**INPUT FROM THE ASSOCIATION FOR JURIDICAL STUDIES ON IMMIGRATION (ASGI) ON
CASES AND SITUATION THAT COULD ENTAIL SHORT-TERM ENFORCED DISAPPEARANCE OF
'PERSONS ON THE MOVE' IN ITALY**

**Response to the Call for Input by the Committee on Enforced Disappearances and the
Working Group on Enforced or Involuntary Disappearances¹**

August 2023

Introduction

The Association for Juridical Studies on Immigration (ASGI)² is a membership-based association operating from Italy and focusing on all legal aspects of immigration. Since several years, ASGI runs specific projects focusing on different aspects of possible human rights violations of people on the move that take place in border areas³.

By using descriptions of specific cases or circumstances, ASGI will in particular respond to question b) by providing some specific examples of practices (and legal frameworks) that could directly amount or lead to the risk of enforced disappearances or incommunicado detentions, placing persons on the move outside the protection of the law, even if for short time periods.

1. Forced Readmission Leading to Short-Term Enforced Disappearances

In the attempt to access the national territory, people on the move are exposed to the risk of pushbacks and forced readmissions, which can happen either on Sea borders (e.g. Adriatic ports) or at land borders (e.g. Balkan routes).

Italy signed indeed several bilateral agreements to facilitate cooperation in the readmission process of persons without valid entry documents⁴. Italian and European courts have already

¹<https://www.ohchr.org/en/calls-for-input/2023/call-inputs-view-issuing-joint-statement-notion-short-term-enforced>.

² More information on ASGI, available at <https://www.asgi.it/>.

³ See in particular ASGI Medea project, available at www.medea.asgi.it/ and InLimine project, available at <https://inlimine.asgi.it/categoria/english/>.

⁴ See Communication to the Committee of the Ministers from NGOs (Association for Juridical Studies on

ruled on the illegitimacy of such readmissions, which nevertheless continue to be carried out⁵.

These illegitimate conducts are often characterized by practices which may amount to short-term enforced disappearances, as it will be demonstrated by the following case related to forced readmission at the Italian Adriatic border.

On the morning of Sunday 23 May 2021, through some family members, news has been received of the presence of a group of 7 applicants for international protection, composed of Kurdish and Turkish nationals including a woman, stopped at the port of Bari inside a truck coming from Greece and at risk of being readmitted to Greece. One of them has been able to get in touch by mobile phone with a local NGO for support, where he communicated his personal data and manifested his intention to apply for asylum. During the same call, his mobile phone was confiscated by the authorities. UNHCR was contacted by phone by the NGO and a written report was sent but no response was received.

In the afternoon, information arrived from other relatives who were no longer able to hear from their loved ones. Subsequently, in the same day, from telephone contact with the Border Police, it was confirmed that the 7 foreign nationals had been traced and that 6 of them had been readmitted to Greece⁶.

In the evening, the UNHCR confirmed the readmission of the 6 asylum seekers who, according to the information received from the Border Police, had left with a carrier that left Bari at 1.30 p.m. and arrived in Patras at 7 a.m. the following morning. At 7 a.m. the next day, 24 May, the ferry from Bari arrived at the port of Patras but there was no trace of the 6 applicants

Immigration (ASGI), Ambasciata dei Diritti di Ancona, Lungo la Rotta balcanica, No Name Kitchen and Associazione SOS Diritti) of 07 February 2022 in the case of SHARIFI AND OTHERS v. Italy and Greece (Application No. 16643/09) 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, available at

<https://medea.asgi.it/interrompere-le-riammissioni-verso-la-grecia-e-i-respingimenti-verso-albania-e-croazia/>.

For a more in-depth analysis of the dynamics related to pushbacks from Adriatic ports, refer to Lighthouse Reports, "Detained below deck", January 18 2023, available at

<https://www.lighthousereports.com/investigation/detained-below-deck/>.

⁵ See ASGI Medea, "Right to enter Italy for those who have been unlawfully pushed back to Bosnia", January 22, 2021, available at <https://medea.asgi.it/right-to-enter-italy-for-those-who-have-been-unlawfully-pushed-back-to-bosnia/> and "Balkan route, evidence and testimonies confirm chain readmissions. Ministerial liability for compensation for damages", August 8, 2023, available at

https://medea.asgi.it/?p=34265&preview=true&thumbnail_id=34246.

⁶ Medical intervention was required during the readmission procedures for one of them. On 24 May, coincidentally, the seventh asylum seeker, who had been placed under the care of health officers at the Bari General Hospital the day before, while awaiting notification of an expulsion order, was located.

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readmitted from the port of Bari.

As it was not known where the six persons had stayed, the regional office of the Ombudsman for Detainees was asked for assistance to verify the arrest or detention of six foreigners with Turkish nationality. Only during the night of 24 May, one of them managed to communicate with his family that he had been violently disembarked at the port of Igoumenitsa and that he was being held in a facility near the port and was unable to communicate with the outside. As it later emerged, immediately after tracking them down, their mobile phones, documents and some essential medicines were confiscated. They were deprived of personal freedom and held inside a cold and damp technical room with no windows or toilets, so small that they could only take turns sitting on the floor.

After arriving in the port of Igoumenitsa, they were further detained for 24 hours in a small place, without being able to tell their families and associations where they were and without the UNHCR receiving any information from the Italian authorities.

During these readmission procedures, individuals are often held in border police facilities and later on board of vehicles or ferries. According to numerous testimonies, mobile phones are confiscated or destroyed along with other personal belongings⁷. In addition, readmission procedures do not always conclude in the first country where individuals are readmitted⁸ and individuals are often abandoned in isolated locations far from inhabited areas.

2. Detention in Hotspots and Short-Term Enforced Disappearances

The “Hotspot” approach is generally described as providing “operational solutions for emergency situations”, through a single place to swiftly process asylum applications and enforce return decisions. In Italy the hotspot approach is implemented beyond the physical

⁷ With regards to the topic of the destruction of personal belongings, see Protecting Rights at Borders project (PRAB) report, “Human dignity lost at the EU’s borders”, pag. 12 and 21, December 2021, available at https://pro.drc.ngo/media/o22gi4ft/prab-iii-report-july-to-november-2021_final.pdf and ASGI Medea, “ASGI’s third party intervention in S.B. and others vs Croatia: strategy and content”, February 9 2021, available at <https://medea.asgi.it/asgis-third-party-intervention-in-s-b-and-others-vs-croatia-strategy-and-content/>.

⁸ Throughout 2020, many individuals readmitted from Italy to Slovenia were subsequently readmitted from Slovenia to Croatia and then from Croatia to Bosnia and Herzegovina. See Protecting Rights at Borders project (PRAB) report, “Pushing back responsibility”, April 2021, available at https://pro.drc.ngo/media/y3zieyvm/prab-report-january-may-2021- final_10052021.pdf.

places of hotspots centers.

With reference to the type of individuals who can be placed in hotspot facilities, unaccompanied minors are not supposed to be placed in these kinds of facilities but in reality, they often remain in the hotspots (in a *de facto* detention situation) for several days⁹. The following case may serve as an example of common administrative practice, especially experienced in hotspots in Italy:

Mrs. F.S. had news that her younger brother (minor) arrived in Italy in the Lampedusa Hotspot on 15.7.2023. The minor was able to contact her sister through the telephone of another minor present in the Hotspot. On 19.7.2023 after a few days of total absence of contact and news, a first request for information was sent by certified email (with the help of an Italian lawyer) to the Lampedusa Hotspot, to the Prefecture of Agrigento, to the Police Headquarters of Agrigento and to the Red Cross. No one responded to the requests for information. On 24.7.2023, Mrs. F.S. delegated her lawyer (who was allowed to visit the hotspot) to ask for news of her brother. On the same day, the lawyer sent a new request for information to the Prefecture of Agrigento, the Police Headquarters of Agrigento and the Italian Red Cross. In addition, a report was sent to the tracing service of the Italian Red Cross on the same day. On 25.7.2023, when the delegated lawyer reached the Hotspot in Lampedusa, no one was able to locate the minor nor to provide any kind of information with regards to his whereabouts: several telephone calls to the Immigration Department of the Agrigento Police Headquarters and conversations with the offices present at the hotspot or the police officers present at the entrance also failed to lead to the minor. It was reported that they were unable to locate the minor, partly due to the exceptional overcrowding of the hotspot in those days (about 3,000 people). On 26.7.2023, the minor was finally able to contact his sister, but was unable to state where he was. He was only able to give this information on 27.7.2023 when he reported that he was in Genoa, in a reception center.

⁹ Recently Italy has been condemned by the European Court of Human Rights in the decision J.A. vs Italy, precisely for the violation of art. 3 of the European Convention of Human Rights (ECHR) regarding the reception conditions within the Lampedusa Hotspot and art. 5 ECHR due to deprivation of liberty entailed by the *de facto* detention condition of people on the move placed in the center. For more information, “Trattamenti inumani e degradanti nell’hotspot di Lampedusa: definitiva la condanna della CEDU all’Italia”, July 4 2023, available in italian at <https://www.asgi.it/notizie/lampedusa-hotspot-sentenza-cedu-definitiva/>. The Court decision is available at <https://hudoc.echr.coe.int/#%7B%22respondent%22:%5B%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-223716%22%5D%7D>.

The case describes very well a general problem that especially minors, as particularly vulnerable persons, are exposed to in Italy. More generally, it is noted that lawyers are systematically prevented from accessing hotspots to speak with their clients who are held there. As regards the assistance of human rights organisations, their staff can enter only if they receive an authorization. Furthermore, there is a general lack of possibilities for these persons to inform their relatives and friends in a timely manner. The case makes it clear that even lawyers are unable to help adequately in such situations. Authorities are either unwilling or unable to provide information over persons deprived of these persons who are however deprived of their liberty (and even moved around) by those very same institutions.

3. Detention in CPR leading to short-term Enforced Disappearance

This case is one of the extreme examples, where the short-term enforced disappearance of a person even leads him to suicide. This case highlights the difficulties to obtain information, to provide much needed support and the (often experienced) unwillingness of public authorities to support the friends/relatives in their search for persons who disappeared.

The case was about MB, a Guinean citizen who arrived in Italy in 2016 and has no family ties on Italian territory, who was the victim of an assault by two men in the city of Ventimiglia (close to the French-Italian border) on 9 May 2021. On that occasion, the police intervened and took him first to the police station in Ventimiglia and then to the hospital in Bordighera. The next day he was discharged from the hospital and taken directly to the Imperia Police Headquarters where he was notified an expulsion order from the Italian territory (as he did not have a residence permit) and an order to detain him in the immigration detention facility in Turin (the so-called "Centre of Permanence for Repatriation" or simply "C.P.R."; a facility where immigrants are detained with a view to their deportation), where he was taken the same day, after a short visit to the Imperia hospital to verify his suitability for detention. On 12 May, he was then brought before the competent judicial authority to confirm the detention order. A publicly appointed lawyer was assigned to the proceedings, but without intervening meaningfully in the proceedings.

The sequence of events became clear only days after. From 9 May 2021, the day of the assault, until 17 May 2021, the young man's acquaintances had no news of him. After 9 May, friends searched for information about his fate and whereabouts without success. Suspecting that, as he did not have a valid residence permit, MB had been taken to the immigration detention

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facility in Turin, the Municipal Ombudsman for the rights of detained persons was informed and tried to verify the presence of the young man, whose exact full name and date of birth were unknown, at the immigration detention facility, describing him as a foreigner who had hypothetically arrived on 10 May 2021 from Ventimiglia with signs of a recent assault. On 17 May 2021, a lawyer from Turin, at the request of MB's acquaintances, also asked the immigration detention facility managers by phone if the young man was there, but did not obtain any confirmation. Only on 19 May 2021, by pure chance, the lawyer found out that MB was actually detained in the Turin immigration detention facility since 10 May 2021. On 20 May, he went to visit him and found him in very precarious conditions. He also learnt that he had been placed in an isolation cell for an alleged health risk. On 22 May, MB's body was found lifeless in the isolation cell. The authorities concluded that it has been suicide.

The following issues may be highlighted from this case in relation to MB's enforced disappearance: from the notification of the expulsion order and up to seven days later, no one was able to verify MB's whereabouts. Not even an institution, such as the Ombudsman, was able to obtain information about a person's presence at the immigration detention facility.

This risk is particularly real when the detainee's exact personal details are not known, a circumstance which in the case of foreign nationals can frequently recur since they are often identified by incorrect names and dates of birth upon arrival in Italy and there are no family members to facilitate their identification. In addition, in some of the Italian immigration detention facilities detainees are deprived of their mobile phones, so that it becomes impossible for them to access their own telephone contacts and contact the outside world except by means of fixed telephones located in the common areas of the detention facility and functioning with a prepaid card. Finally, it must also be noted that in the case presented there was actually judicial control (exercised in Italy within the CPR system by the "Giudice di Pace"). In addition, a publicly assigned lawyer was present. However, as the case exemplifies, this system of judicial control does not work in practice. The judge is actually obliged to make sure that the person has had the opportunity to contact his or her relatives in the outside world. Experience shows, however, that these judicial control procedures are designed in such a way that the problems of the persons concerned are not adequately taken into account.

4. Detention in Prison and Short-Term Enforced Disappearances

As soon as migrants are in prison, contact with family members becomes very difficult. Even hosting centers/foster carers are not informed as will be described by the following case:

On Friday 21 April a report of the disappearance of a young man was received by ASGI through friends in Italy and relatives in Tunisia. Since the previous Saturday or Sunday (either April 15 or 16), there has been no news of the young man. The young man had arrived in Italy as an unaccompanied minor a few years before and had been hosted in a reception center for minors and later transferred to a reception center for adults in Bari. On the day of his disappearance, the young man was supposed to return from Ancona, where he worked regularly on the weekly working days. His employer reported that he never returned back to work without any justification. When the report of his disappearance arrived, the foster social service¹⁰ has been contacted, but neither the organization in charge of his reception nor the social worker of reference had any information on what had happened and where the young person was. A report was made to the Regional Office of the Ombudsman of Detained Persons of Apulia Region and after a few days it was learned that the young man had been arrested and was in detention (prison). On Friday 28 April it was confirmed that the young man was detained in Bari prison, even if there were no news about his whereabouts for a couple of weeks. Another month passed before the young man managed to get in touch with relatives in Italy.

The case highlights the lack of communication to the reception center, the foster social service or to family members in Italy. As this particular case shows, contacting family members from prison is very complicated due to the nature of the procedures, especially for foreign nationals. There has to be an authorisation from the prison administration, but in order to get it, the relative's name, and telephone number must be given, and the family member must submit the telephone contract. Once approved, the prisoner must have a balance in the prison account in order to make a call.

In addition, in the presence of persons who have just arrived in Italy and have been incorrectly identified, it is also impossible for family members to obtain information, even after reports to the competent authorities and guarantee bodies. There are many cases of reports of

¹⁰ The young person has an administrative continuation, an order from the Juvenile Court to foster him with social services beyond the age of majority to continue his integration process. Art. 13 par. 2, Law 47/2017. For more information related to the reception system of former minors, Intersos - ASGI, "L'ACCOGLIENZA DEI MINORI NON ACCOMPAGNATI DOPO IL COMPIMENTO DEI 18 ANNI", July 1, 2019, available at <https://www.asgi.it/wp-content/uploads/2019/07/Scheda-accoglienza-MSNA-dopo-i-18-anni.pdf>.

disappearances without any outcome.

5. Proliferation of Places of Detention and Risks of Short-Term Enforced Disappearances

The Italian decree law 20/2023, converted into law 50/2023, represents the last step of a tendency towards a proliferation of detention, which involves the amplification of both places and situations in which individuals, and especially asylum seekers, can be subjected to it.

On the basis of the new Italian law, migrants and asylum seekers can be detained not only in CPRs and hotspots but also in other types of places. In particular, L. 50/2023 introduces - without defining them - 'similar facilities' to hotspots that can be used for the "optimal execution of identification procedures" and subsequent border procedures.

These 'new places of detention' are characterised by the same problems of lack of transparency and limited access by lawyers and civil society actors as other places of detention such as hotspots, airport transit zones and the so-called 'suitable places' ("luoghi idonei").

Airport transit zones¹¹ are the areas between the landing point of the aircraft coming from abroad and the passport controls. Persons who are denied entry at airports are forced to wait for repatriation to their country of origin in transit zones. In some cases, this waiting period can take several days before they are returned by the same company they traveled with to Italy¹². Persons detained in airport transit zones have extremely limited possibilities of getting in touch with organisations, family members and lawyers. On numerous occasions foreign nationals are informally deprived of their mobile phones and, on several occasions, appointed lawyers have been denied entry on the basis that these areas are considered as 'sterile', meaning that only certain categories of persons may have access.

Another problems are the so-called 'suitable places' ("luoghi idonei"), which are locations identified by the local Police Headquarters, where persons can be detained following an

¹¹ For more information with regards to the concept of airport transit zones and the related human rights risks, see ASGI, "Le zone di transito aeroportuali come luoghi di privazione arbitraria della libertà e sospensione del diritto", January 2021, available in Italian at https://www.asgi.it/wp-content/uploads/2021/01/Report-zdt_sintesi_InLimine.pdf.

¹² See

<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bd7f54bd65017466409fc01acfe4b376.pdf>.

identification stop and also after the adoption of a removal order from the Italian territory ordered by the judge. Albeit these places are not secret per se, it could be difficult to identify where they are¹³.

The problem which may lead in such cases to conducts amounting to short-term enforced disappearances arises with respect to the 24-hour time limit for detention provided by law for identification purposes and strictly relates to what happens during this lapse of time: in fact, Italian authorities do not release information on the detained person and there is no possibility for a lawyer or his/her family to have access to talk to him/her, often not even by telephone as personal devices are usually taken away during the 24-hour detention period¹⁴.

In the 24 hours, often protracted for a further day or two (in extreme cases), the public authority takes action to figure out what measure to adopt and how to execute it: the practice results in postponing the issuance of a formal expulsion measure so as to leave more time for the authority to plan a possible repatriation, which goes beyond the strict period provided for by law¹⁵.

Every information about the person involved is only learnt during the possible subsequent validation hearing on the accompaniment to the border of an expelled non-EU citizen. The lawyer is notified only after the hearing has been set - usually just over an hour before the hearing - and reconstructing what happened during the hours (often 24h or more) of detention is not always easy, because there are no measures and records relating to that period.

Conclusion

Taking into consideration the above-mentioned cases and practice which describes concrete examples of possible short-term enforced disappearances, ASGI would like to put forward some final remarks/reflections, with the hope to provide useful inputs for the internal

¹³ See Garante Nazionale dei diritti delle persone private della libertà personale, Relazione al Parlamento 2023, p. 192, <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/fc13013de38c3ba97c6d0357fe21b941.pdf>.

¹⁴ See *"Il punto sulle strutture idonee nella disponibilità delle autorità di pubblica sicurezza per il trattenimento dei cittadini stranieri in attesa dell'esecuzione del rimpatrio: il monitoraggio di ASGI presso la Questura di Milano"*, ASGI, <https://inlimine.asgi.it/wp-content/uploads/2022/11/Luoghi-donei-report-monitoraggio-ASGI-Milano.pdf>.

¹⁵ 48 hours to transmit the acts to the Judge for validation and subsequent 48 hours for the Judge to validate or not the measure, to be executed in these same 48 hours.

discussion within the Committee and the WGEID aimed at issuing the joint statement on enforced short-term disappearances. In particular:

1. In the context of migration enforced disappearances of short-term are strictly entangled with enforced disappearances properly so called as traditionally understood, and may sometimes even be prodromal to lengthier disappearances.

2. In particular, given the identity of their constitutive elements, also short-term enforced disappearances have the effect of placing a person outside the protection of the law, even though for a few hours only; this in turns translates in very similar - if not wholly identical - problems with regard to the risks the persons concerned undergo while being detained with no contacts with the outside world, as well as with regard to the hardship to know, understand, and ultimately prove what happens to those persons while their whereabouts are unknown.

3. A critical issue, exacerbated in the context of migration and especially for detentions lasting for a few hours / days only, is what happens if nobody from the outside is looking for the person concerned. If such a person is detained without being granted the right to communicate with the outside, while his or her loved ones do not look for him or her because of practical hindrances, lost communications or simply because the concerned person has not been "off the grid" for an unusual period of time, then there will be no occasion for State authorities to deny his or her detention or to refuse to disclose information concerning his or her state or whereabouts, thus depriving the authorities' conduct of one of the constitutive elements of a "traditional" enforced disappearance. Yet, the disvalue of the incommunicado detention would seem to be, for its direct victim at least, much of the same. ASGI believes that this kind of scenario too should be considered tantamount to an enforced disappearance (even a short-term one).

4. As the cases briefly reported in the present submission well exemplify, even an enforced disappearance lasting for a few hours or days only could lead to the most detrimental outcomes for the persons subjected to them who, invariably and at any rate, are exposed by such practices to severe risks for their lives and limb. If this is the case, then the definition of "short-term enforced disappearance" seems to be useful in a descriptive fashion rather than taking up a technical significance. In other words, it would seem appropriate to evaluate the (un)lawfulness or (il)legitimacy of State authorities' behavior not in connection with a pre-determined, mandatory, time window, but rather having regard to the time that, depending on the concrete circumstances of every case, turns out to be strictly necessary for the

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authorities' to carry out in practice all the procedures needed to book in the persons deprived of their liberty, before affording them a chance to contact their loved ones on the outside and make their fate and whereabouts known to them. It is our submission that the State's conduct should be qualified accordingly and that, as a consequence, no strict divide can (nor should) be identified between a short-term enforced disappearance and lengthier ones.

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