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A comparative analysis of Italy, Hungary and France's migration policies through a
necropolitical and biopolitical framework

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*To Aya, Izlan, Nour, Maidu, Carina, Mohammed, Parsa, Omar,
Asiana, Sarah and all the other beautiful children who have crossed my
path and inspired me.*

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List of abbreviations

ASGI: *Associazione per gli studi giuridici sull'immigrazione*

CEAS: Common European Asylum System

CJUE: Court of Justice of the European Union

CMR: Central Mediterranean Route

CR: Channel Route

CRC: Convention on the Rights of the Child

ECHR: European Convention on Human Rights

ECRE: European Council for Refugees and Exiles

ECtHR: European Court of Human Rights

EU: European Union

Eurodac: European Asylum Dactyloscopy Database

Eurojust: European Union Agency for Criminal Justice Cooperation

Europol: European Union Agency for Law Enforcement Cooperation

Frontex: European Border and Coast Guard Agency

HHC: Hungarian Helsinki Committee

ICCPR: International Covenant on Civil and Political Rights

IRC: International Rescue Committee

MoU: Memorandum of Understanding

NGO: Non-Governmental Organization

SAR: Search and Rescue

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

UK: United Kingdom

WBR: Western Balkans Route

Introduction

As migration becomes an increasingly important issue in European and national politics, human rights concerns are raised by civil society and NGOs in regards to changes in migration policies at both levels. The 2015 unprecedented influx of migrants arriving irregularly in European shores was the starting point for a shift in migration and asylum policies, as well as for changes in the border regime increasingly oriented by the securitization paradigm, with a focus on deterrence and containment of the influx of migrants. This shift in policies has cumulated in the approval of the most comprehensive reform of the European system of migration and asylum in April 2024, the New Pact on Migration and Asylum.

With a widening gap between legal dispositions and the *de facto* situation that migrants face in the EU many questions arise. What are the implications of the recently adopted policies on migrants human rights in Europe? The progression towards a common European system of migration and asylum tends to expand or reduce protection of migrants? Is it possible to affirm that migrants face systematic state violence and institutional abandonment? If so, what are the enabling mechanisms of this state of institutional abandonment? Can inaction be considered a form of state violence exercised towards marginalized groups? Does the European system reinforce spatial violence through the institutionalization of the camp-form for migrants from the Global South? How do spatial relations impact migrant integration? These are some of the questions that this thesis aims to answer and explore.

The previous questions could never be addressed denying the centrality of the borders, which will be one of the main arguments of the thesis. As the philosopher and political scientist Achille Mbembe stated in his work “Necropolitics”, “Borders. Everything begins with them, and all paths lead back to them. (...) These dead spaces of non-connection which deny the very idea of shared humanity” (Mbembe 2019, 99). The main aim of this thesis is to analyze the European border regime and the current trends of borderization, securitization and externalization - inserted in wider supranational migration policies - as well as its implications on migrants human rights. The process of borderization is the one in “which the world powers permanently transform certain

spaces into impassable places for certain classes of populations (...) where the lives of a multitude of people judged to be undesirable come to be shattered” (Mbembe 2019, 99). It is the process that has given birth to an unseen contradiction, that of the progressive erasure of internal EU borders, along with an intense fortification of EU’s external borders through financial investments on biopolitical technologies. The analysis of the border regime will be the starting point to explore the exercise of the “sovereign right to exclude” (Amaya-Castro 2015) exercised by “democratic” member states of the EU.

The institutionalization of the “state of exception” in EU member states and the widespread *praxis* of managing migration as a crisis or as a crime, through discriminatory policies of containment, are intertwined with European national identities founded in a racist colonial legacy. A postcolonial framework is necessary in order to analyze the current migration policies that led to numerous lives of migrants from the Global South to be shattered in European territory and in its external borders.

In synthesis, the aim of this thesis is to answer the question: What are the human rights implications of the current European migration policies and border regime? In order to answer this question I will firstly build an overall panorama of the legal framework, which will be analyzed in two levels, the European supranational and the national in three EU member states: Italy, Hungary and France. Secondly I will address the main routes taken to Europe, the migrant flows and the level of risk of the routes - assessed by the death toll and number of disappearances. Finally, I will expose the actual situation that migrants face in regards to access to the territory; access to the asylum procedure; reception and living conditions; detention; authority violence; protection of vulnerable migrants; and possibilities of integration or lack thereof. The choice to analyze the legal framework and the state *praxis* and implications of such policies aims to expose the gap between the situation *de jure* and *de facto*.

The central hypothesis is that there are systematic violations of migrants human rights at both levels, supranational and national. The marginalization and precarity that migrants face in the EU’s external borders and inside its territory are not an “exception” but rather the norm, the institutionalized *praxis*. The violation of human rights is

enacted by states and multi-level institutions through both active and inactive violence - the latter mainly through deliberately withholding care and depriving migrants of the conditions necessary to live.

The relevance of migration in European and national politics has increased since the 2015 unprecedented influx of migrants arriving irregularly in the EU. It is fundamental to analyze critically the new dispositions on migration and asylum when multiple human rights violations have been reported by civil society and NGOs in the EU, which is a signatory of multiple international treaties in human rights; claims to hold elevate standards of human rights protection on its founding treaties; and is an institution formed by states considered democratic, therefore states in which the Rule of Law should prevail regardless of citizenship.

Events such as shipwrecks and drownings in the Mediterranean and in the Channel; collective expulsion of migrants; pushbacks to non-democratic and unsafe countries; the application of dangerous deterrence tactics by border agents; and the submission of migrants to inhuman and degrading treatment, as well as to extremely precarious living conditions are consequences of the European migration policies, and have been found to be in breach of international human rights dispositions by numerous Courts and NGOs. There is a pressing necessity to clarify the connection between these events, often portrayed as fatalities or casualties, and deliberate political choices, in order to request accountability from the authorities. Highlighting the connection between policies and fatal or violent consequences over migrants is the first step to a change in policies, towards a more humane approach that respects international obligations on human rights. As an important strategy of the EU's migration policies is the invisibilization and spatial segregation of migrants, often in closed access facilities, it is important to expose the situation to which migrants are subjected to and bring it to the center of the public debate.

Literature has already focused on demonstrating the reductionist dichotomy that surrounds migration in the public discourse, oscillating between a humanitarian and a securitarian concern, both often depriving migrants of their agency and individuality.

The contributions of Foucault with the concept of “Biopolitics” have also been used to analyze European border technologies and to enlighten how migrant lives are governed through systematic surveillance. The postcolonial contributions of Mbembe’s theory of “Necropolitics”, based on authors such as Fanon, Agamben and Schmitt, with the concept of “State of exception”, have also been used to point out the implications of the European colonial legacy on current migration policies. Case studies have analyzed the lack of Search and Rescue (SAR) operations in the Mediterranean and the institutional abandonment and informality that migrants face in Northern France through the necropolitical framework, however they mainly focused on the period of 2015 - following the closure of the SAR operation Mare Nostrum in the Mediterranean and the dismantling of the “Calais Jungle” in Northern France in 2016. Less literature has been found focusing on the Hungarian-Serbian border, especially since Hungary’s strict anti-immigration policies have taken the country out of the Western Balkans Route.

Overall, literature focuses on specific mediatized events, such as the Memorandum of Understanding (MoU) between Italy and Libya or the EU-Tunisia deal, for example. The comparative analysis of the three case studies in this thesis has emerged from a necessity to portray a comprehensive picture of migrants legal and *de facto* situation; to expose the systematicity of human rights violations in the EU - through demonstrating its different forms of such violations across member states; and to shift back attention to daily violent practices that may not receive media coverage. It is precisely the repetition of some practices that constitute harassment, degrading treatment and authority abuse; and these events analyzed in an insolate manner may seem mere dysfunctions or be attributed to individual agents, not to the system as a whole, precluding the possibility to demand institutional accountability. The aim of this thesis is to evidence that violence and abuse are not a dysfunction of the migration system, it is what the system is designed to produce, to penalize and segregate the “undesired Others”, to deport them when possible and keep them confined in camps when not.

Daily practices such as evictions, pushbacks, pullbacks, biometrical identification, confinement in closed access facilities or in remote inaccessible areas are

forms of violence which have ceased to scandalize and receive attention due to their long-term temporal arrangement, associated with a dehumanizing discourse on migration. In order to re-humanize people migrating to Europe it is necessary to evidence the harmful, often also racist and xenophobic discourse, that has been employed by the media and politicians to gather political consensus. A discourse focused on building national cohesion through the repudiation of an “imaginary enemy” that must be deterred and segregated.

In order to explore the aforementioned aspects this thesis relies on constructivism as a research approach that contributes to evidencing the causes of the current migration system. It further allows me to evidence the multi-level structures of governance that enable this system to persist and the reasons why this system is supported by the public opinion. This thesis is a qualitative comparison of case studies selected through most-similar cases design. The three case studies are Italy, with a specific focus on arrivals from the Mediterranean in the Southern area; Hungary, with a specific focus on the Hungarian-Serbian border; and France, with a specific focus on the Northern area where migrants settle to attempt to cross the English Channel. All three cases are EU member states and have been subjected to EU Courts’ sentences for human rights violations in matters of migration. To different extents all three countries have ignored these EU Courts sentences and failed to provide the necessary changes to guarantee the protection of migrants and respect of European and international obligations.

The central hypothesis of this thesis is that: Both levels - the European supranational and the national level - employ, deliberately and systematically, biopolitical and necropolitical tactics that constitute human rights violations and structural violence - which are operated by institutions and authorities through action as well as through inaction.

The spatial limitation of this thesis is the EU and its externalized borders - with a specific focus on the previously mentioned case studies. The temporal limitation of this thesis is the period from the beginning of 2015 to May 2024. The year of 2015 was

marked by an unprecedented migration influx from the Global South which has been the starting point for reforms on migration and asylum policies, as well as to increasing securitization and externalization of the borders. In April 2024 the most comprehensive reform on the Common European Asylum System (CEAS) - the New Pact on Migration and Asylum - was approved and it marks the other end of the spatial limitation, as the implications of this reform are yet to be seen.

As previously stated, I find it necessary to recur to a postcolonial framework in order to analyze the current migration policies and border regime since much of it is related to Europe's colonial past. This thesis' theoretical framework is based on Mbembe's necropolitical theory and on Foucault's biopolitical theory. This framework allows for an analysis of the "sovereign right to exclude", as well as to the "sovereign right to kill" exercised in contemporaneity not through active killing but rather through a combination of tactics that expose to death and deprive certain populations of the necessary means to live. The institutional abandonment and coercion into informal existence which migrants face in Europe can be explained by Mbembe's analysis on how certain populations "deemed surplus, unwanted or illegal are governed through abdication of any responsibility for their lives and welfare". He exposes the use of a combination of "spatial violence, humanitarian strategies, and a peculiar biopolitics of punishment" to produce "a peculiar carceral space" which subjugates entire populations to "living conditions that confer upon them the status of the living dead" (Mbembe 2019, 92-97).

Associated with the theoretical framework of necropolitics and biopolitics I will also recur to the concept of "state of exception", initially introduced by Schmitt (1921) and further developed by Agamben (2005); the concept of "structural violence", by Galtung (1969); and an intersectional approach that recognizes how race, ethnicity, gender, religion and other factors may combine and produce vulnerability.

By using a postcolonial framework I refute theories that may portray migrants as passive victims in need of Western saving and of education - or colonization - in regards to values and religious beliefs. I recognize the agency of migrants who may have been

rendered vulnerable by migration and border policies, but who are not vulnerable subjects *per se*. They are subjects who have much to contribute to Europe's economic, cultural and social development. Migrants as any persons are entitled to the right to self-determine; to choose where in the territory they should reside - once regularly admitted; to seek asylum and not be penalized for irregular entry; to not be submitted to inhuman and degrading treatment; to practice their religion; to receive an education; to access the job market with the legal safeguards that are given to citizens - therefore to not be exploited or underpaid; and to benefit from the welfare state in order to have their social rights protected. Migrants are entitled to have their human rights respected regardless of ethnicity, gender or legal status - since the sole premise for human rights is to be human and entitled to dignity as such.

I further refute theories that may treat migration entirely as a security concern - portraying migrants as an homogenous category, treated as *a priori* suspects for their race or nationality. Theories focusing on migration as a national security concern often wrongfully conflate distinct categories such as migrants, Arabs, Muslims and terrorists. These terms are often used interchangeably in political speech. I refute this wrongful conflation and recognize migrants as a heterogeneous category, not associated with terrorism, as reinstated by the Europol (2018).

The sources used for this thesis are authors in line with postcolonial thought, who have analyzed Europe's migration system and border regime critically, through the theoretical framework of the authors I previously mentioned: Agamben, Fanon, Foucault, Galtung, Mbembe, and Schmitt. I have also used primary sources such as EU treaties, legislation from the EU and member states, Court sentences, and international conventions - notably the 1951 Refugee Convention. European institution's briefings, reports and statements have also been used - the mainly consulted sources were the European Commission; the European Commission Against Racism and Intolerance (ECRI); the Committee on Migration, Refugees and Displaced Persons; the European Council on Refugees and Exiles (ECRE); the European Asylum Support Office (EASO); the European Parliament; Europol; and Frontex. This thesis also relies heavily on the contributions of civil society and NGOs reporting the *de facto* situation on the

field. I have used reports and statements from widely acknowledged NGOs that work on the field on human rights protection such as the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), International Rescue Committee (IRC), Amnesty International and *Médecins Sans Frontières* (MSF); as well as reports from smaller NGOs working locally with migrants in the areas of the case studies as they have data on situations that are often underreported. The asylum information database (AIDA), in collaboration with ECRE, will also be cited repeatedly with their contributions on the case studies. AIDA recurred to data provided by the *Associazione studi giuridici sull'immigrazione* (ASGI) in the report on Italy; to the Hungarian Helsinki Committee (HHC) in the report on Hungary; and to the *Forum Réfugiés* in the report on France.

As predicted by the central hypothesis, qualitative data from the sources cited above indicates that there is a discrepancy between the *de jure* and *de facto* situation faced by migrants arriving irregularly in Europe. The EU and the three analyzed case studies are found to be in breach of international and European Law on human rights protection. They exercise the “state’s sovereign right to exclude” through an agnopolitical expression of power - by deliberately maintaining ignorance on the precarity of migrants’ situation in order to keep them in a permanent state of injury for political ends. Biopolitical and necropolitical strategies are employed systematically and constitute a form of structural violence towards migrants. Systematic authority violence is found across the EU. The trend towards containment of migrants and securitization of the borders is supported by the public opinion through the instrumentalization of migration and the widespread use of anti-immigration rhetoric by political elites. Migrants' human rights are violated as a consequence of migration policies, through state action as well as through state inaction. The progressive dismantling of the asylum system is enacted more openly in some countries such as Hungary, but also in less evident forms, through the externalization of the borders and privatization of migration management in Italy, and the establishment of a “hostile environment policy” and coercion into informality in France. Trends towards progressive criminalization of NGOs providing support to migrants arriving irregularly; institutionalization of

pushbacks and pullbacks; and establishment of bilateral accords with unsafe countries are also attested in the EU and particularly in the three case studies.

I find it necessary to note that this thesis will not concern itself with the particularities of two important events that took place between 2015 and 2024: the Covid-19 pandemic and the influx of Ukrainian refugees due to the ongoing war. I will not focus on the particular issues linked to Covid-19 as the aim of this thesis is to highlight the long-term systematicity of violence and human rights violations of migrants - that started before the pandemic and have lasted long after - therefore the closure of borders due to the health emergency and the particularities of restriction of freedom of movement in that period will be not be of my concern, as it constituted an exception. The influx of Ukrainian refugees in the EU will not be of my concern since this thesis focuses on migrants from the Global South arriving irregularly. The Ukrainian emergency has had different policy approaches than the ones directed to migrants from the Global South. In the English Channel, for example, since 2022 no Ukrainians have been reported crossing irregularly due to the presence of safe legal routes (The Migration Observatory 2023). The differential policies applied to Ukrainians and to migrants from the Global South can partly be reconducted to racism, which will be one of the main arguments of this thesis - as the containment policies in place are for those considered Others, considered non-European, and ultimately non-white. The choice to not address these two events does not deny their importance, as they have both had significant human rights implications, it is merely not within the scope of this thesis.

The structure of this thesis departs from the supranational panorama and framework to later analyze the case studies, which are to a certain extent conditioned by the EU's legal framework, policies and funding. Before the analysis the following section "Methodology" will detail the research design; the dimensions and indicators of the analysis; the theoretical framework; and provide conceptual clarification.

The first chapter "Migration governance at a supranational level" will detail the European legal framework as well as the routes and flows to Europe. I will address the international obligations on matters of human rights, refugees rights, migrants rights and

children's rights which the EU, and therefore its member states, have to comply with. I will then highlight the founding principles of the EU that are relevant for the analysis of migrants human rights violations. After clarifying the international and European legal framework, within which migration and asylum policies are inserted, I will address the Common European Asylum System (CEAS) - starting by explaining its phases and evolution and finalizing with a detailed description of the New Pact on Migration and Asylum, approved in April 2024. I will briefly address the EU's most relevant accords with third countries in the matter of migration; notably the EU-Turkey deal, the deals with Balkan Countries and the recent EU-Tunisia deal.

As a final section of the chapter on the supranational level I will address the migration phenomenon in Europe, explaining briefly the seven main migratory routes to Europe and then entering in detail on the three routes that the case studies of this thesis are concerned with: the Central Mediterranean Route (CMR), in Italy's case; the Western Balkans Route (WBR), in Hungary's case; and the Channel Route (CR), in France's case. For each route I will provide key statistics and demographics of the population as well as the level of risk of the route, and case-specific data on vulnerabilities, such as the presence of unaccompanied minors.

The second chapter "Arrivals from the Central Mediterranean in Southern Italy" will initially provide an overview of the situation in Italy, addressing briefly the situation at the borders with key statistics on arrivals and asylum claims. Secondly, I will address the main national legal dispositions in the matter of migration and asylum, notably the Cutro Decree. In regards to external relations, I will address the Italian "safe countries list". To evidence the lack of respect for EU obligations I will provide the main sentences of the ECtHR condemning Italy in regards to migration - mostly on inhuman and degrading treatment in the hotspots. Finally, I will address the *de facto* situation of migrants in Italy - analyzing the access to rights in Italian territory; the privatization of migration governance, with particular focus on the conditions of CPRs; the externalization of the borders and abandonment of migrants at sea through the accords with Libya, and the almost complete delegation of SAR operations in the Mediterranean

to Northern African countries; lastly, I will address the political speech in Italy surrounding migration, notably the instrumentalization of migration by the far-right.

The third chapter “A slow dismantling of the asylum system: Hungary’s management of the border with Serbia” will follow the same order as the Italian chapter. Initially I will address the key statistics at the borders, the situation of access to the territory and to the asylum procedure. Then I will address the legal framework in Hungary, which has relied on an extension of a “state of crisis due to mass migration” over the past nine years, constituting a *de facto* suspension of the right to asylum with the new Embassy Procedure. In regards to external relations, I will provide the Hungarian “safe countries list” and I will highlight the conflictual relationship between Hungary and the EU, due to the refusal to comply with the resettlement quotas and strict anti-immigration policy. I will provide the main sentences of the ECtHR condemning Hungary in matters connected to migrants rights, mostly in regards to unlawful pushbacks and collective expulsion of aliens. Finally I will detail the *de facto* situation of migrants in the Hungarian-Serbian border evidencing the institutionalization of violent pushbacks; the lack of provisions for vulnerable migrants; and the widespread xenophobic anti-immigration discourse which strongly impacts Hungarian policies outcomes.

The fourth chapter “Coerced into informality: the situation in Northern France” will follow the same order as the other case studies. Initially I will describe the overall panorama in France by providing key statistics on irregular entries, irregular departures in the CR and asylum claims; demographics of the migrant population, especially in Northern France; and evidencing the increased securitization of the Channel and of the external border with the UK. Afterwards I will describe the current legal framework in regards to migration in France, with particular focus on the Darmanin Law - which had many of its initial dispositions ruled as unconstitutional by the French Constitutional Court. I will also provide France’s safe countries list; and cite the main sentences of the ECtHR condemning France, mostly in regards to the lack of protection of children's rights, due to prolonged and unsuitable detention of minors as well as lack of state provisions and adequate safeguards, amounting to inhuman and degrading treatment.

The next section regards the *de facto* condition of institutional abandonment of migrants in Northern France. I will initially concern myself with the dangerous pullbacks and deterrence tactics applied by the French coast guard in the Channel. Secondly I will focus on the access to rights in French territory, mainly on the insufficient capacity of the reception system - which leads to the following section, concerned with the informal living conditions in which migrants are coerced into. I will evidence the extreme marginalization of migrants due to state practices and policies such as the “no fixation points” or the “hostile environment policy”, and provide key statistics on evictions and police violence in Northern France. Finally I will address the systematic violations of migrant children’s rights.

The final chapter “The European border regime” will combine literature contributions with the data provided in the case studies in order to analyze the current migration policies and border regime. This section will be divided in the main points of European migration governance, drawn as conclusions from what was found in the case studies. The main points are: firstly, the borderization of Europe, interlinked with processes of securitization, privatization, externalization of the borders, which have become more fluid and immaterial due to the increased use of biopolitical technologies; secondly, the territorialization of Europe in regards to migration - subdivided into the return of the camp-form to the geographical and political landscape, and spatial violence as a result of hostile urban policies, which significantly impact migrants integration; thirdly, the reductionist dichotomous discourse around migration, oscillating between a humanitarian and a securitarian concern; lastly, a reflection on Europe’s colonial legacy and how it is visible on hostile migration policies towards migrants from the Global South - who despite providing essential labor force and contribute to the EU’s economy are often still regarded as an “unwanted surplus” who must be managed and controlled through a combination of biopolitics and necropolitics.

In the conclusions I will summarize the aims of this thesis, its hypothesis and its main findings; then I will point out possible changes in policies which could diminish the gap between the EU’s *de jure* protection of human rights of migrants and the *de facto* situation, by recurring to recommendations provided by NGOs; and finally I will

propose future research directions, after asserting the potential of the application of the theories of biopolitics and necropolitics for migration policy analysis.

Methodology

Research design

This section will detail the methodology for this research. Initially I will explain the research design and process of selection of cases. Secondly I will address the research approach and theoretical framework. Finally, I will present the table of dimensions and indicators of the analysis.

This thesis is a qualitative comparison of case studies. The cases were chosen and analyzed through a most-similar cases design. The analyzed cases are three EU member states: France, Italy and Hungary. The fundamental similarity between the cases is that all three countries are EU member states and, therefore, operate under the EU legal framework and are conditioned by the same obligations in regards to human rights.

The spatial limitation of this thesis is the EU and its external border areas, mostly the areas concerning Italy, Hungary and France. As for the temporal limitation, I concern myself with the period between January 2015 until May 2024. This period was chosen since 2015 was the year in which the EU reached the peak number of irregular arrivals of migrants. Since then the EU's approach towards irregular migration drastically changed, officially setting migration as a securitarian concern over a humanitarian one. In this period a series of anti-immigration policies started to take shape. Policies that have been reinforced over the past years, with its latest development being the approval of the New Pact on Migration and Asylum in April 2024, which marks the other end of the temporal limitation.

As EU member states, the case studies legislation and approach towards migration is highly conditioned by EU's regulations and directives. The three countries' national policies are embedded with anti-immigration sentiment and rising nationalism. Immigration flows have gained centrality in the public national debates. The progressive securitization and militarization of the national border is not only a top-down request, from the EU bodies to the member states, but also as a bottom-up request, from the local

populations to their governments. Irregular immigration and national identity have been key topics shaping national politics in all three countries.

The three countries are republics. Italy and Hungary have a parliamentary system, whereas France is semi-presidential. Italy and Hungary are both governed by parties that place themselves at the far-right of the political spectrum and openly employ anti-immigration rhetoric, emphasizing the need to protect national identity and national security from immigration. France is governed by a party that places itself as the center of the political spectrum, but is currently facing a divided political arena and the rise of the far-right.

As for the countries overall profiles, Italy and France were founding members of the EU, and have been member states since 1958, whereas Hungary joined only in 2004. The first of the countries to enter the Schengen Area was France in 1995, followed by Italy in 1997 and Hungary only ten years later, in 2007. All the three countries have borders which are the EU's external confines, with countries that are not a part of the Schengen Agreement. In regards to Italy, the primary concern of this thesis will be the Southern area that receives the influx from the CMR. In Hungary, the focus is on the Hungarian-Serbian border, with the influx from the WBR. In France, the primary concern is the Northern area that borders the UK through the Channel, which gained more importance since Brexit in 2020.

In the matter of migrants' human rights and governance of irregular migration all three countries have been subject to sentences of the CJEU and the ECtHR for violations of fundamental rights established in the EU Charter. In all of them migrants who are irregularly present in the territory are subjected to informality, marginalization and systematic denial of access to their fundamental rights. Civil society and human rights organizations have reported authority abuse and police violence against displaced persons, especially from the border police and authorities in closed access facilities.

In regards to the research approach this thesis was conducted through a constructivist approach that focuses on the centrality of social interactions and the cultural context in shaping human experiences and individual beliefs, interpretations and

actions. The approach acknowledges reality as subjective since it is socially constructed, and therefore also acknowledges the possibility of multiple perspectives on the same phenomenon. It emphasizes contextual understanding when analyzing a phenomenon to avoid generalizations. It requires qualitative methods of research that explain the phenomenon in that given society at that given historical period.

Regarding the theoretical framework, this thesis is oriented by a postmodern and postcolonial framework, based mostly on the work of two authors. The main authors are Michel Foucault, with the concept of “Biopolitics”, and Achille Mbembe, with the concept of “Necropolitics”. Both theories reference previous authors, amongst which Schmitt with the concept of “state of exception” that will also be a key concept for this thesis. The theory of the aforementioned authors will be summarized in the following section “Conceptual clarification”.

This thesis aims to answer the main question: What are the human rights implications of the current European migration policies and border regime? It further aims to explore a central hypothesis: Both levels - the European supranational and the national level - employ, deliberately and systematically, biopolitical and necropolitical tactics that constitute human rights violations and structural violence - which are operated by institutions and authorities through action as well as through inaction.

The hypothesis can be subdivided into three intertwined affirmations:

- 1) There is a systematic employment of biopolitics and necropolitics in migration policies, in both levels, supranational and national;
- 2) Institutions and authorities, in both levels, operate through a combination of active violence and violent omission, which constitute violations of migrants human rights;
- 3) The violation of rights is not the exception, it is rather the norm - they are structural and systematic - enabled by both levels through funding, international accords, political discourse and other strategies that preclude accountability.

The research question will be answered, and the central hypothesis will be explored through the analysis of two main dimensions - a supranational dimension and a national dimension. The national dimension will be analyzed for each of the case studies: Italy, Hungary and France. The two dimensions, supranational and national, will allow me to provide a broad panorama of the situation of human rights of migrants in Europe and to explore the hypothesis of deliberate systematic violations.

For each of these dimensions three macro-indicators will be analyzed: the situation *de jure*, which corresponds to the legal framework; the routes and flows, which corresponds to the demographics of the phenomenon and data on the population; the situation *de facto*, which corresponds to the actual situation faced by migrants. The comparison between the *de jure* and the *de facto* situation will allow me to evidence the gap between rights established by law and the protection of these rights in practice.

The macro-indicators are subdivided into indicators which are represented in the following table:

Dimensions	Macro-indicators	Indicators
Supranational	<i>Situation de jure</i>	International obligations
		EU's founding principles
		Common European Asylum System
		Cooperation with third countries
	Routes and flows	Main routes
		Level of risk of the route
		Demographics of the flow
		Humanitarian specificities
	Human rights' <i>de facto</i> situation	Border trends in the EU
		Conditions for integration
		Public discourse and anti-immigration sentiments
National	<i>Situation de jure</i>	Main legal dispositions
		National specificities
		Asylum system and vulnerable applicants
		Reception system and social rights
		Safe countries list and external relations
		EU Courts' sentences
	Flows and demographics	Borders and population demographics
		Asylum claims
	Human rights' <i>de facto</i> situation	Entry in the territory
		Pushbacks and pullbacks
		Access to the asylum procedure
		Reception system
		Administrative detention
		Informality
		Abuse of authority and state violence
		Criminalization of NGOs
		Public discourse
	Case-specific vulnerabilities	

The macro-indicator situation *de jure* will be analyzed in the supranational dimension through four indicators: 1) The EU's international obligations in connection with migrants human rights; 2) The EU's founding principles in connection with migrants human rights; 3) the Common European Asylum System; 4) The relationship of the EU with third countries for cooperation in matters of migration governance.

The macro-indicator routes and flows of this dimension will be analyzed through four indicators: 1) Main routes established by Frontex; 2) Level of the risk, assessed with data on deaths and disappearances; 3) Demographics of the flow in each of the routes; 4) Humanitarian concerns specific to each of the routes. These indicators will be analyzed for each of the three routes that concern the case-studies, the CMR in regards to Italy; the WBR in regards to Hungary; and the CR in regards to France.

The macro-indicator situation *de facto* of migrants human rights in the EU will be analyzed in the final chapter of this thesis, after the analysis of the case studies. It consists of three main indicators: 1) Border trends in the EU - mainly external borders - and their impacts on human rights; 2) Conditions for integration, concerning both material and immaterial conditions - explored through analyzing spatial relations, the camp-form, and hostile urban policies towards migrants, as well as their impacts on migrant integration; 3) The public discourse and anti-immigration sentiments, in regards to Europe's colonial past and its impact on migrants situation.

The macro-indicator situation *de jure* in the national dimension consists of six indicators: 1) Main legal dispositions on migration and asylum for each of the case-studies; 2) National specificities which may render migrants situation more precarious; 3) The asylum process, access to the procedure and vulnerable applicants; 4) The reception system and access to social rights; 5) The institution of the national "safe countries list" and main bilateral agreements for migration management; 6) EU Courts main sentences in the matter of migrants human rights protection to evidence the gap between the legal disposition and the state's *praxis*.

The macro-indicator flows and demographics will be assessed through two indicators: 1) Overall situation at the borders and demographics of the population present - mainly the nationality, age, gender and presence of unaccompanied minors; 2) Data on asylum claims, to assess the effective access to the right to asylum, with data on the population - mainly the nationality, age, gender and presence of unaccompanied minors.

The macro-indicator *de facto* situation of migrants human rights is subdivided in ten indicators: 1) Access and entry into the territory; 2) Presence of pushbacks or pullbacks; 3) Access to the asylum procedure; 4) Conditions of the reception system; 5) Conditions of administrative detention; 6) Condition of informality which leads to marginalization and vulnerability; 7) Reports of abuse of authority and state violence, through action and inaction; 8) Criminalization of NGOs providing essential services to migrants - assessed by legal dispositions impacting NGOs activities and by indirect forms of blocking NGOs work, evidenced through informal interactions between NGOs and the state authorities; 9) Public discourse surrounding migration and the presence of a widespread anti-immigration, anti-Muslim, racist or xenophobic rhetoric - which impacts migrants experience and access to rights such as the freedom of religion; 10) Vulnerabilities and critical points in regards to migrants human rights protection that are specific to that national context.

Theoretical framework

Achille Mbembe is a cameronite philosopher and political scientist, reference in postcolonial studies, who developed the concept of “Necropolitics”. The concept was initially introduced in 2003 and further developed in 2016 in his book *Politiques de l’inimitié*, translated to english as *Necropolitics* (2019). Mbembe further develops the Foucaultian concept of “Biopolitics” stating that “the notion of biopower is insufficient to account for contemporary forms of the subjugation of life to the power of death” (Mbembe 2019, 92). Both Mbembe and Foucault analyze the exercise of State power and their theories are in a relation of complementarity. The prefixes *necro* and *bio*, might initially seem to indicate two opposing poles - life and death - but they are not understood here in a relation of contradiction, rather in complementarity.

Foucault’s concept of biopower is summed up as the “domain of life over which power has asserted its control” (Mbembe 2019, 66). Biopolitics concerns the management and control of life through surveillance and regulation, including the “control over relations between the human race (...) and their environment” (Obradovic-Wochnik 2018). Necropolitics explains how certain populations are

governed through their direct and indirect exposure to death, sustaining that “the ultimate expression of sovereignty largely resides in the power and capacity to dictate who is able to live and who must die” (Mbembe 2019, 66).

Necropolitics as a postmodern and postcolonial theory assigns a central role to racism and the colonial legacy as processes that shape the world and its institutions. As Mbembe stated (2019, 122) “colonialism, fascism and nazism are all connected by the belief of superiority of Western culture” and such a belief is neither dead nor latent in the Western imaginary, but vivid and shaping the current political arena. The centrality of the Western superiority fantasy is observed in connection with nationalism and anti-immigration sentiments that arise in face of the crisis that Western liberal democracies currently face.

Mbembe points out the contradictions of the liberal order, opposing freedom and security, concluding that the West currently lives in a “society of security and enmity” in which the “confidence in democracy is eroded”. He further expands his analysis from the West to a planetary scale, affirming that “democracy is in crisis almost everywhere” and that “paranoia is increasingly becoming the dominant language” in a world in which the “social state of warfare” is normalized (Mbembe 2019, 103-181). Much of the necropolitical theory focuses on the conditions that dictate who the sovereign power will kill, let live, or expose to death (Mbembe 2019, 66). Three concepts are central when explaining necropolitical power: the “relation of enmity”, the Other and racism as a technology of power.

The concept of “relation of enmity” is fundamental as it is “the normative basis of the right to kill” associated with the concept of “state of exception”, since “power appeals to exception, emergency, and a fictionalized notion of the enemy”. Interesting reflections arise from the question that Mbembe poses “what is the relation between politics and death in those systems that operate only through a state of emergency?” (Mbembe 2019, 70). The use of emergency measures that constitute a *quasi* state of exception in Europe has become the main feature of migration governance. This system

was built in association with a discourse that portrays the immigration flows as a crisis, as an exceptional event that therefore requires measures out of the ordinary.

The necropolitical theory makes referrals to two concepts developed by Lacan in the psychoanalytic field, the “imaginary” and the “Other”. The “imaginary” refers to a state in which there is no distinction between the “I” and “Others”, or the “Us” and “Them”. It is a childish state prior to the understanding of culture, language, morality and law in which there is no conflict or segregation. It is marked by wholeness and coherence to which one can return only in fantasy (American Psychological Association 2023). The concept of “Other” designates alterity and otherness, it is the person or the object with which I do not identify. It remains outside of what is identified as “I” or “Us”. The position of the Other, according to Mbembe, is an unstable one in which one “must each time prove to others that he is a human being, that he merits to be taken for a fellow human being”. The Other is constantly on alert and lives in the expectation of repudiation. This concept is particularly relevant to explain the experience of racialized subjects. Racism is a way of ascribing to the racialized Other the shame, the inferior elements and the fault. Through racism a culture “denies (...) its inferior elements and its drives” ascribing them “to an evil genius (the Negro, the Jew, the Arab)” (Mbembe 2019, 131-132). Through the externalization of evil and the assigning of fault onto the racialized Other the culture creates an internal enemy for itself. The society of enmity creates coherence between its members that come together with the aim of destroying, keeping away or deporting this imaginary homogenous evil.

Foucault assigned to state racism the status of “essential characteristic of the modern biopolitical state” (Adams 2017). He attributed to racism the function of “regulating the distribution of death” and “rendering acceptable the condition of putting to death”. The exercise of biopower “presupposes a distribution of human species into groups, subgroups and a biological ceasure between these groups”. Racism as a technology is what creates the division between “who must live and who must die”, it is what enables the sovereign to exercise the “old sovereign power to kill” (Mbembe 2019, 71).

According to Mbembe (2019, 180), the appeal to a biological reasoning is no longer necessary, civilizational and religious differences are the new basis for racism and nationalism. The author enlarges the role of racism, evidencing that modern “democratic” states often do not exercise the power to kill actively, but recur to inaction as a form of violence. Ultimately, racism dictates not who will be killed but who will be left to die. Through abandonment to informal existence, deliberately withholding of care, and blocking assistance from privates, the modern states dictate who must die. This violent inaction is evidenced when authorities “turn a blind eye” and enable inhumane living conditions to persist. They, directly or indirectly; actively or inactively; but always deliberately, create the conditions to maintain specific populations in a permanent state of suffering and marginalization. Such a form of exercising state power is not directed at the entire population, but at marginalized groups, people “deemed surplus, unwanted or illegal” who are “governed through abdication for any responsibility for their lives and welfare” (Mbembe 2019, 97).

Based on Schmitt’s theory of state of exception, Mbembe talks about a “planetary scale of the state of exception”. The state of exception is linked with the relation of enmity and this enemy is crafted based on the Other, perceived as “an attempt to my life, a mortal threat or absolute danger whose (...) elimination would strengthen my security” (Mbembe 2019, 72). This explanation is central for the understanding of the current trend of securitization of borders through a discourse focused on national security.

The biopolitical theory also brings important contributions for the analysis of migration policies and the increasingly militarized border regime. The focus of the theory on surveillance and control for the management of life is transported to the context of borders and management of migrants. Borders, wired fences, concrete walls, checkpoints and other security barriers have dominated the landscape of EU borders over the past ten years. The role of borders, more than sites to cross, is to be lines that separate and keep away “enemies, intruders, and strangers - all those who are not one of us” (Mbembe 2019, 3).

How and why certain spatial relations are delineated are fundamental for the understanding of the current situation of migrants in Europe. Racial violence is linked with measures of spatial division and segregation and the willingness of a renewal of the separation between an “Us” and a “Them” is the main condition for the reproduction of colonial and racist-type violence (Mbembe 2019, 138-139). Racism is contemporaneously the cause and the consequence of a specific setting of spatial relations based on segregation and territorial fragmentation, the latter as one of the major characteristics of necropower with two main goals, rendering movement impossible and implementing a model of separation in the form of an “apartheid state” (Mbembe 2019, 80).

Two processes are intertwined with this topic, the process of territorialization and the process of borderization. Territorialization regards the process of “writing new spatial relations” that produce “boundaries and hierarchies, zones and enclaves” based on “differential classification of people” that have different rights despite “existing within the same space” (Mbembe 2019, 79). Borderization regards the process of reducing the borders permeability by strengthening controls through technological developments and externalization. It is the process through which “world powers permanently transform certain spaces into impassable places for certain classes of populations” (Mbembe 2019, 99).

Mbembe mentions the return of an “Europe of camps”, making a historical referral to the concentration camps. He relies on Agamben’s work analyzing the “camp-form” as “a prevailing way of governing unwanted population” (Pele 2020). The camp-form is found in examples such as prisons, suburbs, favelas, refugee camps and detention centers. Agamben explains that the “political-juridical structure of the camp” is so that in which “the state of exception ceases to be a temporal suspension of the state of law and acquires a spatial permanent arrangement that remains outside the law’s normal state” (Agamben 2000 quoted on Mbembe 2019, 67). In this context Mbembe questions the democratic status of Western states when they increasingly have political regimes in which the suspension of law and freedoms is no longer an exception (Mbembe 2019, 33).

Conceptual clarification

This thesis concerns itself with the inflows of migrants from the Global South towards Europe. Migrants that arrive irregularly in the EU due to the “unequal mobility regime between the Global North and Global South” that has been increasingly strengthened (Talbayev 2023). Global South migrants who arrive irregularly in Europe are within mixed migration flows. These flows are constituted of persons migrating for a number of different reasons, with different legal statuses and different needs. They may include “asylum-seekers, refugees, stateless persons, victims of trafficking, unaccompanied or separated children and migrants in an irregular situation” (UNHCR 2018). The people in mixed flows come mostly from the Global South, also referred to as developing countries, mainly from Latin America, Africa and Asia. The variety of subjects in these flows creates a high level of complexity and challenges.

In recognition of the importance of the language used when addressing migration and in order to clarify the terminology used in this thesis I will address what four categories mean: asylum seekers, refugees, forcibly displaced persons and migrants.

Asylum-seeker is a person who has left their country and is looking for international protection in another country. Legally, it is someone who has filed an asylum claim and is awaiting a decision, therefore this person is not yet a refugee. Often the terminology “asylum seeker” is used not only for those who have already filed an asylum claim but also for those who have the intention of doing so. People on the route to Europe with the intention of claiming asylum upon arrival will also be referred to as asylum seekers in this thesis.

As previously mentioned, a refugee is the person whose asylum claim has been accepted. The rights regarding asylum and the refugee status are elaborated in the 1951 Geneva Convention on the Status of Refugees. The legal dispositions of the convention will be addressed further, however, the terminology “refugee” will not be the preferred one for this thesis since much of what will be discussed takes place before one has had the chance to claim asylum, after the claim was rejected, or with people who do not

have the intention to claim asylum and seek other trajectories. The legal status of “refugee” is also not the determining factor for establishing whether a person must have their human rights protected. The universality of human rights applies regardless of the person’s legal status and this will be the premise to analyze migration policies in Europe and migrants human rights violations.

Forcibly displaced persons are those who have been “obliged to flee or to leave their homes or places of habitual residence” with the aim of escaping the negative consequences of “situations such as armed conflict, generalized violence, human rights abuses, natural or man-made disasters, and/or development projects” (UNHCR 2010). This terminology concerns both, being coerced into fleeing or being forcibly removed, evicted or relocated to a place that they have not chosen nor consented. This terminology encompasses internally displaced people, asylum seekers, refugees and people in need of other types of international protection.

Migrant is a broad terminology that designates anyone whose residence is in a country different from their country of origin. The reasons why a person chooses to migrate are multiple. Migrants can seek regularization in the arrival countries through different forms, including international protection and other types of residence permits. They are “entitled to have all their human rights protected and respected , regardless of the status they have in the country they moved to”. They must be protected from “racist and xenophobic violence, exploitation and forced labor” and they should not be “detained or forced to return to their countries without a legitimate reason” (Amnesty International 2016).

Belonging to neither of these categories constitutes a felony in any country, therefore expressions such as “illegal asylum-seekers” and “illegal migrants” are incorrect despite being widely used in the public discourse. Being an asylum seeker, a refugee or a migrant is not illegal. Conducts such as irregularly entering the territory of a country may be illegal according to national legislation but the person who committed the action is not an illegal individual, therefore “illegal migrants” is an incorrect term. Furthermore, entering a country to seek asylum, even if irregularly, is a right established

by the 1951 Geneva Convention and the individual must not be penalized for the irregular entry.

The terminology that I will use to broadly define the persons in the “mixed flows” will be “migrant” since all the above mentioned categories have left their origin countries and are residing or seeking residence in a different country. The migrants concerned in this thesis are those from the Global South, arriving in a situation of irregularity, who have migrated for a number of different reasons but have taken one of the seven migratory routes to Europe established by Frontex. The category is heterogeneous but overall concerns migrants with a higher degree of vulnerability due to their unclear or unstable legal situation; due to a lower socio-economic status; due to the violations reported in these routes; and due to the interaction with smuggling and criminal networks in the transit countries. The vulnerability is not necessarily intrinsic to the subjects but also created or reinforced by migration policies, for example when the lack of safe legal routes coerces a person into taking dangerous routes in which they must pay high sums to the smugglers; risk their lives in crossings and in transit countries that violate human rights; arrive in Europe irregularly and await in detention a long process for regularization. Specific terminology, such as “asylum seekers”, “refugees” or “forcibly displaced persons” will be used when referring to legislation that explicitly concerns one of these categories.

Other terms that will be mentioned multiple times are “pushbacks” and “pullbacks”. Pushbacks are a central feature of the EU border regime and they are understood as informal expulsions, without due process. They are in contrast with the term “deportation”, which is within a legal framework (Border Violence Monitoring Network 2024). Pushbacks indicate expelling people to the other side of the border of the territory they are in and pullbacks indicate bringing people who are trying to leave the territory back to it. They are both mostly enacted by border authorities, against the individual’s consent and often with violence.

Chapter I – Migration governance at a supranational level

1.1 International obligations on asylum and migration

The EU as a supranational institution, as well as its member states, have responsibilities on human rights protection, asylum and migration that derive from international treaties and conventions. The key instruments are the Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations (UN) in 1948, and the UN Refugee Convention from 1951, also known as the Geneva Convention - with its additional 1967 Protocol relating the status of refugees. The EU Treaties establish that EU Law develops based on “strict observance and development of international law, including the respect for the principles of the UN Charter”. As reinstated by Zamfir (2018) on the European Parliamentary Research Service (EPRS) the EU treaties also assign great importance to international instruments, particularly to the UDHR, as fundamental in guiding the EU’s external policies.

The A14 of the UDHR is central to the right to asylum, it establishes that “everyone has the right to seek and to enjoy in other countries asylum from persecution”. The first articles are also relevant when analyzing migrants' human rights. The first and second articles state that all human beings must be equal in dignity, rights, and freedoms, “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The third article establishes the right to “life, liberty and security”. The fourth and fifth reinforce the prohibition of torture, slavery, and other forms of cruel, inhumane, or degrading treatment. The following A6, A7 and A8 regard the right to be recognized everywhere as a person before the law, therefore, to be protected and seen equally by the law and have access to effective remedy for acts that violate fundamental rights. The A9 states “no one shall be subjected to arbitrary arrest, detention or exile”. Finally, A13 states the “freedom of movement and residence within the borders of each state” and the “right to leave any country and return to it”, including their own country (United Nations General Assembly 1948).

The Geneva Refugee Convention in 1951 was created as a response to the displacement that took place in Europe in the XX century following the first and second world wars. A total of 146 states are parties to it, including Italy, France, and Hungary. The goals were to define the term “refugee” to be able to define the rights that derive from such a status and establish the standards that the international community should comply with for their protection. This Convention was supplemented by the 1967 Protocol. The Protocol expands the applicability of the Convention by removing the temporal and geographic limitations connected with the Second World War, making its contents applicable for all persons fleeing conflict and persecution. The term “refugee” is defined as a person who

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it” (United Nations General Assembly 1954, 1967).

The cornerstone of the 1951 Convention, the 1967 Protocol and, therefore, the right to asylum, is the right to *non-refoulement*, established in A33. This article prohibits “expulsion or return whenever the territory in which the refugee is being sent their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion”. The same article establishes the exceptions in which such right could not be claimed by the refugee, which are when there are “reasonable grounds for regarding (the refugee) as a danger to the security of the country” or when they have been “convicted by a final judgment of a serious crime” and constitute a “danger to the community of that country”. Other relevant articles to later analyze the EU migration management are A31, the “right to not be punished for irregular entry into the territory” and A32 right to not be expelled, except under strictly defined conditions. The other articles establish the right to access social welfare, such as education, housing, social protection; and to civil rights, such as

freedom of movement within the territory, access to justice, to non-discrimination and to freedom of religion (United Nations General Assembly 1954, 1967).

There are many other relevant international conventions that discipline matters connected to migrants' human rights and that the EU, as a signatory, should comply with. Amongst the most relevant ones to be cited, there is the 1926 Slavery Convention; the 1966 International Convention on Civil and Political Rights; the 1966 International Convention on Economic, Social and Cultural Rights; the 1967 Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; and the 1999 Convention on the protection of the rights of all migrant workers and their families.

The 1989 Convention on the Rights of the Child (CRC) establishes the “best interests of the child” principle and disposes in article 3.1 that all actions concerning children, taken by public or private institutions, courts, administrative authorities or legislative bodies should always have this principle as a primary consideration (United Nations General Assembly 1990). Another important disposition to cite is the “right to family life and reunification” that has been reiterated in different treaties, including in the CRC, the ICCPR and EU directives.

1.2 Founding principles of the EU

The Treaty on the European Union (TEU) establishes the EU's founding values in the second article: “human dignity, freedom, democracy, equality, the Rule of Law and respect for human rights, including the rights of persons belonging to minorities”. In the following article, the objectives of the Union towards the rest of the world include “protection of human rights, in particular the rights of the child”. It also establishes “the observance and the development of international law” including the UN Charter (European Union 2012). The EU Charter of Fundamental Rights contains articles of the UDHR and other additional dispositions that expand the protection of human rights.

Amongst many other dispositions the EU Charter expresses its commitment to the protection of the right to life in A2, the prohibition of torture and other inhuman or degrading treatments in A4, the principle of *non-refoulement* and the prohibition of collective expulsion of aliens in A19 (European Union 2012). These rights are often not respected by EU member states and this will be detailed further.

Regarding the EU's external action, the A6 of the TEU foresees that the Charter and the European Convention on Human Rights (ECHR) must be respected not only in the EU's law and in its institutions, bodies, and member states; but also, in relations with third countries. This applies for relations between the EU and a third country and also in bilateral or multilateral agreements between member states and third countries. The principles that inspire the EU's external action are disciplined in the A21 of the TEU: "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the UN Charter of 1945 and international law". The EU Parliament precises that in this disposition economic and social rights are considered of equal importance to civil and political rights. The mandatory character of these principles in guiding the EU's external action is reinforced in A205 of the TFEU (European Parliament 2023).

Other than what is established in the EU's founding documents, the human rights policy is also shaped by regulations, directives and frameworks. The Strategic Framework and Action Plan on Human Rights and Democracy was adopted by the Council in 2012. By 2022 the goal was to improve the "effectiveness and consistency" of EU human rights policy. In 2020 the third version of the Action Plan was adopted and it sets the priorities for the period between 2020 and 2024. The five main areas concern the protection and empowerment of people; the construction of inclusive and democratic societies; the promotion of human rights and democracy at a global scale; cooperation; and development of new technologies. The Council also adopted guidelines on the theme of human rights. Amongst the guidelines the most critical ones in relation to the topic of Europe's migration management and border regime are: "non-discrimination in external action", "protecting children in armed conflicts", "the rights of the child",

“combating violence against women and girls” and “action against torture and other cruel treatment” (European Parliament 2023).

According to the European Parliament, human rights protection policies follow a bottom-up approach. The policies also include continuous dialogue and cooperation with third countries and regional organizations. The centrality of “respect for human rights” is a clause that justifies the suspension of cooperation agreements in the event of “grave violations of human rights and democratic principles” by the partner country. The Parliament has a Subcommittee on Human Rights (DROI) that is responsible for issues that are linked to the human rights principles mentioned above. It works alongside the Committee on Foreign Affairs (AFET) with the declared objective of “ensuring coherence between EU external policies and its human rights policy” (European Parliament 2023).

All the previously mentioned legislation and policies, as well as principles, goals, and guidelines, were described based on what is officially declared by the European Union. In this thesis the actual situation will also be discussed, to compare the situation *de jure* and *de facto*.

1.3 The Common European Asylum System: changes brought by the “New Pact”

1.3.1 The Common European Asylum System

The EU’s asylum policy must be, according to the A78 of the TFEU, in respect of the 1951 Geneva Convention and the 1967 Protocol. It must be a common policy, not only on asylum but also in regards to other types of international protection, such as subsidiary protection and temporary protection. It is clearly stated that the principle of *non-refoulement* must be ensured when developing a common policy. Uniformity amongst all EU member states must be ensured in regards to: the status for third country nationals applying for asylum and subsidiary protection; temporary protection for displaced persons in the event of a massive inflow; and procedures for granting and withdrawing asylum or subsidiary protection.

The common system must contain the “criteria and mechanisms for determining which member state is responsible for considering an application”, the “standards of conditions for the reception of applicants” and “partnership and cooperation with third countries” for the management of inflows (European Union 2008). The common system that was developed has received criticisms as an instrument that serves more to the control and containment of migrant flows than to the protection of human rights (Orav 2015), despite the binding dispositions of A78.

The Common European Asylum System (CEAS) was established in 1999, a reform was proposed in 2020 by the European Commission, and what is now known as the “New Pact on Migration and Asylum” was approved by the European Parliament on the 10th of April of 2024. The CEAS consists of five main legislative instruments and one agency. The legislative instruments are the Asylum Procedures Directive; the Reception Conditions Directive; the Qualification Directive; the Dublin Regulation; and the Eurodac Regulation. The agency in charge of implementing the CEAS is the EU Agency for Asylum (EUAA).

The development of CEAS can be divided into four phases. The first phase concerns the period between 1999 and 2005 in which the first laws and regulations were adopted. The second phase concerns the period between 2008 and 2013 in which the first reforms took place. The third phase starts in 2015 and comes as a response to the unprecedented number of arrivals. The historical peak of irregular arrivals shifted the debate regarding migration to the center of the political agenda, and discussions about more comprehensive reforms started. The EU Commission proposed a reform in 2016 which was partially adopted in the following year, reviewing the previously mentioned central directives and the role of the EUAA. Two major regulations, the Dublin System and the Asylum Procedure Regulation, were not altered at that time since the EU Council did not reach consensus, which led to another Commission proposal in 2020 - the “New Pact on Immigration and Asylum”. The fourth phase is the phase in which Europe recently entered with the approval by the EU Parliament of the “New Pact” in April 2024.

1.3.2 The “New Pact”

The “New Pact” is the most comprehensive reform on the CEAS since its adoption in 1999. The discrepancy between the EU’s official discourse and what civil society and human rights NGOs report on the field has been highlighted for years and is only expected to increase with the adoption of this new system. The EU’s official discourse portrays the key elements of the New Pact as “improved and faster procedures”, “cooperation with the countries of origin and transit” and “return of those with no right to stay” through a package of instruments (Directorate-General for Migration and Home Affairs 2024). Meanwhile, NGOs that assess the *de facto* situation of human rights in Europe predict that the dispositions of the New Pact will reinforce mechanisms focused on detention, deportation, collective pushbacks, and non-fulfilment of international obligations. The international obligations in question mostly concern the right to *non-refoulement*; the right to not be deprived of liberty unlawfully; the right to individual case analysis; the right to information; the right to effective remedy; and the right to not be submitted to torture or inhumane and degrading treatments. The key elements of the approved New Pact are the screening regulation; the asylum procedures regulation; the asylum and migration management regulation; the crisis and force majeure regulation; and the Union resettlement framework.

The Screening Regulation reinforces the use of biopolitical technologies of control and surveillance that have been increasingly present in the borders. It establishes that screening is mandatory for all people that arrive at the EU’s borders. The screening consists of four assessments: a preliminary health check; an identity check; a security check; and a vulnerability check. In this process persons with vulnerabilities, such as children, unaccompanied minors, people with disabilities, and other specific vulnerabilities should be identified (IRC 2023). This phase also sets fingerprinting and biometric registration as mandatory. The collected data is registered in Eurodac, a database originally created in 2000 and reviewed in 2013. This database stores biometric data and fingerprints of people seeking international protection and of migrants that cross the EU’s borders irregularly. Eurodac is a fundamental tool for the application of the Dublin Regulation. Multiple NGOs reported that people have been

coerced through threat and use of force to register their fingerprints. The New Pact raises concerns on whether border authorities will be further enabled to apply violence and coercion to proceed with the biometric identification.

Concerns also regard the established timeline for the screening procedure. According to the International Rescue Committee (IRC, 2023) the timeline is unrealistic. Only seven days are assigned to the screening procedure, with an additional five days in the case of a “massive influx”. The lack of a correct and thorough screening can lead authorities to not identify vulnerable people and place them in categories subjected to “fast-track asylum procedures” that do not guarantee adequate protection. Through the period of the screening procedure a fiction of non-entry in the EU will apply - which means that despite a *de facto* presence in EU territory, people will legally not be considered to have entered the EU. This regulation establishes a transit area that weakens protection and creates a limbo situation. The lack of clarity increases risks of human rights violations and diminishes safeguards. The main risk is that of a *de facto* situation of “mass detention at the borders, including for children” (IRC 2023) in countries of first arrival.

There are two types of procedures predicted after the screening initial phase. The “normal” asylum procedure and the “accelerated procedures”, also called “border procedures” which offer less protection by establishing a shorter timeline and fewer safeguards. The main opposition to the accelerated procedures came from countries at the EU's external borders, since they would be the ones mainly impacted by the regulation. They are assigned the responsibility to manage the border procedures and set up the centers in which they will take place. The establishment of these centers often faces opposition by local populations (European Council on Refugees and Exiles 2023). Often the zones of first arrival are geographically small and have low population density, therefore there is a significant impact of the migrant influx. The impact is even higher over a long period of time - which is a risk that increases with the new regulation. This is mostly the case of islands in the Mediterranean and in the Aegean, which receive a significant inflow from the sea routes. In Greece the examples are Lesbos and Moira, in Italy they are mainly Lampedusa and Sicily, and in Spain it is mainly the Gran Canaria.

The accelerated procedures imply a shorter timeline, which is less time to receive legal advice and to exercise the right to appeal to a rejection and to access effective remedy. Furthermore, in accelerated procedures people can only apply for asylum, not for other forms of protection. If the asylum claim is rejected, the person will be returned even if they would classify for other forms of international protection. Certain nationalities are automatically assigned to accelerated procedures, and often have their cases overlooked or not thoroughly analyzed. The migrants concerned with this disposition are those from countries “where less than 20% of the asylum applications in the EU have their claims approved” (IRC 2023).

The reduction of the time for the procedures also concerns returns and deportations. In case of an appeal to a rejection of the asylum claim the time of the entire process is no longer paused as it was in the previous version of CEAS. The maximum time established for the entire process - including returns and appeal - is of 12 weeks, therefore a migrant could be deported while awaiting in the appeal process that they had already logged. The Return Directive establishes a long period for detention: people awaiting deportation can be detained from three to six months, or in extreme cases even 12 months. Accelerated returns are realistically not possible in most of the cases due to inability to return the person (under the A33 of *non-refoulement*) or to unwillingness of the origin country to take back their nationals. The low return rates create a situation of prolonged detention.

Border procedures, detention and deportations also concern families with children. According to the IRC (2023) only few additional safeguards are foreseen for them. As for unaccompanied minors, the border procedures are precluded, except in cases deemed of “national security or public order”. Overall unaccompanied minors should be granted legal access to the territory of the country, as well as access to the normal asylum procedure. Despite the legal guarantees, the *de facto* situation at the EU’s borders demonstrates that often unaccompanied minors are subject to collective pushbacks, violence and detention, in disregard for international and EU law. Minors, families, and other vulnerable subjects often are not granted access to the additional protection and safeguards that they are legally entitled to.

The Dublin III Regulation (2013) is the legal document that represents the cornerstone of the right to asylum in the EU. It establishes to which member state of the EU lies the responsibility of examining the asylum application. The hierarchical order through which the responsibility is asserted takes in consideration firstly, family connections with an EU member state; secondly, the possession of a visa or residence permit in an EU member states; and finally, whether the entry in the EU was regular or irregular, and through which member state it took place (Directorate-General for Migration and Home Affairs 2020). For most of the asylum claims the criteria applied is that the first country of entry is the responsible one for examining the asylum application. This disposition disproportionately impacts countries that are the EU's external borders - mainly Italy and Greece. The country responsible for examining the application is also the country in which the asylum seeker will be forced to live if asylum is granted since the right to freedom of movement and residence between EU member states does not apply for people with international protection.

In the New Pact, the main dispositions of the Dublin Regulation are kept, but a mandatory solidarity mechanism is inserted. A mechanism that aims at relieving pressure from first arrival countries in situations of unprecedented influxes and migratory pressure. The reduction of times for the procedures also concerns the procedures that assert which member state is responsible for examining the asylum application, which could, according to the IRC (2023), lead to less success in family reunifications since there would be less time for applicants to submit requests for reunion in other EU countries. Since freedom of movement and residence in the EU does not apply for people with international protection, the lack of thorough evaluation and shorter timeline can negatively impact family reunification and create a situation in which a migrant has to live in a country different from their family. Other than a disregard for the right to family reunification this also significantly impacts the migrant's integration and mental health since community ties are an important protection factor.

The shortening of the timeline of the procedure goes along with the EU's main strategy to manage migratory flows as an exception and as a crisis. The "Regulation on

exceptions in cases of crisis, instrumentalization and *force majeure*” amplifies the number of people that can be assigned to “border procedures” in periods of “crisis”. The derogation of asylum law, and therefore, the derogation of rights and safeguards - characteristics of the state of exception - becomes the “norm rather than the exception” at the borders (IRC 2023). In this regulation it is predicted that in times of crisis, *force majeure* or instrumentalization, asylum seekers can be left in a legal limbo for longer, with their rights suspended and an unclear status. The asylum application can be delayed, prolonging the time in detention facilities. The two key points of the New Pact are: shortening the timeline of the procedures and therefore reducing legal safeguards; and expanding the categories that can be subject to such accelerated procedures.

An important pillar of the European migration management strategy is the “hotspot approach”. It was introduced in the 2015 European Agenda on Migration, adopted by the European Commission. The “hotspots” are processing centers and first reception facilities, located in the frontline countries. These centers are where processes such as identification, registration and fingerprinting of newly arrived migrants take place on a large scale; and where multiple law enforcement agencies and other actors “intervene in an integrated manner”, combining national and European authorities (Lilyanova 2016). The role of Frontex - the European Border and Coast Guard Agency - was reinforced with the institution of this approach. Frontex is assigned the role of assisting EU countries in enforcing returns and identification procedures. The biometric data of migrants is stored in Eurodac and institutions such as Europol and Eurojust have access to it. These agencies also conduct investigations in cooperation with the member states in the hotspot areas, focusing on dismantling smuggling and human trafficking networks (Radjenovic 2023).

When the hotspot approach was initially designed it aimed at facilitating the enforcement of an emergency relocation mechanism that transferred asylum seekers from Greece and Italy to other EU member states. The hotspots facilitated the identification of potential candidates for relocation. The mechanism was in place between September 2015 and September 2017, and it temporarily derogated the Dublin Regulation. It was legally binding, however, Czechia, Poland and Hungary refused to

comply with the relocation scheme prioritizing their national anti-immigration policy. They were subjected to a sentence of the CJEU in 2020 that ruled that the non-compliance with the relocation mechanism was in violation of EU Law (Radjenovic 2023). In 2020 a voluntary relocation scheme was proposed for vulnerable groups, such as unaccompanied minors, from Greece to other EU member states. The scheme ended in 2023, but before that a declaration on solidarity was signed by EU countries, in which they “cooperate” with frontline countries through financial contributions.

1.4 EU’s external relations and the “safe countries” concept

Cooperation with third countries is also a key feature of the EU’s migration policies and it consolidates the pillar of externalization as one of the main ones in the EU’s border regime. Other than EU policies for internal management of migration between member states, the EU has also concluded agreements with third countries in Europe, Africa, and Asia to “cooperate” on migration - countries whose regimes are “increasingly at odds with European values” (Costache 2020). The measures in place focus on increased surveillance, control, deterrence, militarization, and externalization of border controls. Member states also conclude bilateral or multilateral agreements with third countries for the “management of migration flows”.

The EU has established several important accords with third countries to deter the migration influx since 2015. The EU-Turkey deal was concluded in 2016 in response to the unprecedented influx that arrived in Europe in that period, mainly from Syria but also other countries in Asia such as Afghanistan and Iraq. Due to this agreement the inflow of migrants from these countries is now “hosted by an increasingly authoritarian regime in Turkey” who is now “generating asylum seekers of their own” (Costache 2020).

The EU has also established significant accords with Western Balkan countries that are non-EU members, such as the 2019 EU-Serbia agreement. Under criticism and humanitarian concerns the EU also finalized a deal with Tunisia in July 2023. Under this new accord the EU will provide funding and equipment for the Tunisian Coast Guard to deter migrants from crossing the Mediterranean. The goal of the accord became clear

when, despite the technological equipment provided by the EU, in the first semester of 2023 more than 600 people were reported dead or missing in the Tunisian coast (IRC 2023). This data is further indication that equipment is not intended to be used with the scope of protection of migrants and their rights but with the scope of deterrence, regardless of the deadly consequences.

Overall, the cooperation relationship that is established between the EU and third countries has as its main objective diverting the migrant influx from coming to Europe, usually in exchange for financial support under the cover of development aid. The officially stated objective of such accords is to “secure the borders with third countries, better manage arrivals and ensure timely and efficient information exchange” (Lilyanova 2016), the consequences that such policies entail are very different from the official speech.

Under the New Pact the definition of “safe third countries” is amplified, allowing more discretion for EU member states to designate a country as “safe” and therefore deport migrants to it. To transfer responsibility from an EU member state to third countries a “meaningful connection” must be asserted, between the asylum seeker and the third country. Currently, the “meaningfulness” of such a connection has been almost erased since having transited through a “safe country” or temporarily resided in it is enough to allow EU member states to deport people back to it. Examples of countries on this list that are widely known for human rights violations, especially of irregular migrants transiting through, are Turkey and Tunisia. The risk of chain *refoulement* is increased through the changes approved in 2024.

Countries are considered safe based on the analysis of four dimensions, according to the European Council on Refugees and Exiles (ECRE). The dimensions are: the presence of legal and regulatory provisions for protection against persecution or ill treatment; compliance with the ECHR and the ICCPR, more specifically in regards to rights established in the Convention against Torture and CRC; respect of the 1951 Refugee Convention, and precisely the *non-refoulement* principle; and presence of a system of effective remedies against the violation of these rights. It must be asserted that “generally and constantly” there is no torture or presence of other forms of cruel

treatment, no increased risk to be submitted to this kind of treatment and no increased danger to life “due to indiscriminate violence in internal or international armed conflict” (Associazione per gli studi giuridici sull'immigrazione 2023).

The list of safe countries is periodically updated and reviewed on a national basis; such updates must be communicated to the European Commission. Specificities such as “safe for certain nationalities”, “safe except for certain categories”, or “safe except in certain areas” can be inserted in the national lists. Even if the review is national, it must be founded in an assessment provided by trustworthy sources, such as EU member states, the EUAA and other international organizations with asserted competence in the matter.

Concerns regarding the “safe countries of origin” list were raised by ECRE already in 2015. Criticisms were voiced regarding the addition of countries in the Western Balkans in the list, by considering solely if they fulfilled the requirements of the Asylum Procedures Directive and the Copenhagen criteria for EU membership. The countries concerned were Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Montenegro, Serbia, and Turkey. ECRE expressed its concern that this criteria was not sufficient and that there should be an assessment based on multiple sources, including reports of civil society and NGOs concerned with human rights protection and migration (Lilyanova 2016).

1.5 Routes and flows to Europe

1.5.1 The migration phenomenon

Migration is a natural human phenomenon and borders are an artificial creation of states, intrinsically linked with concepts of state sovereignty and power. The “sovereign right to exclude” exercised through borders and immigration controls are often believed to be inherent to states, almost natural. They are however not “age-old” and not inherent to states, “immigration control is a relatively recent phenomenon”. The increase or decrease of controls and fortification of borders are policy choices linked with demographic conditions, economy, and national priorities. The desire to limit

immigration is often also motivated by racist considerations that transformed “the passport regime” into “the new normal” (Amaya-Castro 2015).

The artificial demarcation of borders is “continuously challenged by human action”. Migrants moving irregularly through borders “reinforce regimes of bordering while concurrently subverting the exclusive spatial effects they enact” (Talbayev 2023). Despite “subverting the border regime” being a consequence of migration it is not the cause. People migrate not to challenge State sovereignty purposefully but to guarantee survival and better living conditions when conditions in the environment of origin change. Migratory flows and routes are in constant change in response to conditions in the place of origin, in the place of destination and on the route. Wars, famine, natural disasters, persecution, lack of civil, political, and social rights are some of the many push factors that can lead people to emigrate in search for safety and better living conditions.

Flows change according to push factors that lead to emigration and also according to pull factors that lead to immigration in the destination countries. These two factors interact between them and are also linked to changes in routes and in migration policies. Migratory routes change in response to migration policies and border regimes. The interaction goes in both directions since border policies also change in response to changes in migration trends. Increased securitization and stricter border policies have a direct link with the professionalization of migrant smuggling and increased risk in the routes.

Europe shifted from being a continent characterized by mass emigration in the beginning of the XX century to a continent of immigration since the 1950s “as a destination for labor and post-colonial migrants” (Castro-Martin and Cortina 2015). From the 1990s Europe noted an increase in asylum migration. Mixed flows arriving in Europe have taken a central spot in the public debate, however, the number of migrants arriving in Europe irregularly is a very small portion of the total of people that flee their countries of origin. Out of the 108.4 million forcibly displaced people in the world, only

24% of them are hosted in high-income countries. Most of the flow of forcibly displaced persons settle in neighboring countries located in the Global South (UNHCR 2023).

In 2023, the total number of irregular arrivals in Europe surpassed 290.000 and more than 4.000 people died or went missing in the routes. The main origin countries were Syria (13%), Morocco (10%), Senegal (8%), Guinea (8%) and Ivory Coast (6%). More than 27.800 people were not able or willing to identify their nationality (IOM 2024). Frontex identifies seven main migratory routes that lead to Europe. The routes are the Western African Route; the Western Mediterranean Route; the Central Mediterranean Route; the Western Balkans Route; the Eastern Mediterranean Route; the Eastern Borders Route; and the Channel Route (Frontex 2023). The routes that are the main concern of this thesis and that will be analyzed in detail are: the Central Mediterranean Route, the Western Balkans Route and the Channel Route.

1.5.2 The Central Mediterranean Route

The Mediterranean Sea area has a long history of migration. Sea crossings by boat have increased in that area since the 1990s, coming from North Africa and Asia. Since then the Mediterranean has increasingly been “incorporated into a fluid borderscape mediating a form of ‘liquid violence’” and turned into an “area of insecurity” (Talbayev 2023). Currently, the migrant presence in the Mediterranean is much higher than in the 1990s. In 2023 a total of 158.000 arrivals were reported, representing an increase of 50% in comparison to 2022 (Frontex 2023). The year of 2023 reported the highest number of arrivals since 2016, the peak of the so-called “migrant crisis”. The main departure country from 2017 to 2020 was Libya, where multiple human rights violations were reported, and in 2023 Tunisia replaced Libya as the main departure point. A smaller number of crossings also departs from Egypt and Algeria. The first arrival countries in Europe are mainly Italy but also Malta.

In the previous two years the main nationalities reported on the CMR departing from Libya were Egyptians, Bangladeshis, and Syrians. Departing from Tunisia, the main nationalities were Tunisians, Ivorians, Guineans, and Cameroonians. The

percentage of children reported in the CRM remained constant in the past years, around 15%, which raises concerns for children's rights violations (UNHCR and IOM 2022).

The CMR has been, since the IOM has started to report in 2014, the most dangerous and deadliest migration route in the world in terms of number of dead and missing persons. The "EU's security-based approach to migration" turned the Mediterranean "into a space of death and disappearance", a place where necropower is enacted. The water "has been weaponized, "enabling a form of killing without touching"" (Talbayev 2023). In the past ten years nearly 30.000 people lost their lives in the CMR. More than 27.000 of those died by drowning following shipwrecks and lack of SAR operations. For all routes leading to Europe 2016 was the deadliest year, in which more than 5.000 people died or went missing, amongst them 175 children. In 2023 more than 4.000 people lost their lives in the CMR, including 161 children. In the first trimester of 2024 (January to April) more than 700 people lost their lives or disappeared trying to reach Europe and 490 of these were on the CMR, including 29 were children (IOM 2024).

Data provided by the IOM indicates that the number of migrants arriving in Italian shores is directly linked to the number of SAR operations conducted by the Libyan and Tunisian coast guards. If the number of SAR operations by North African countries increases, the number of migrants arriving in Italian shores decreases. Between 2016 and 2018 the percentage of SAR operations in the CMR conducted by Libyan and Tunisian coast guards increased from 8% to almost 50%, which also led to an increase in the number of migrants returned to North African countries (IOM 2024).

Humanitarian concerns have been raised regarding SAR operations conducted by the Libyan and Tunisian coast guards. International organizations are increasingly precluded from being present in disembarkation points in Libya to provide assistance and to identify individuals with specific vulnerabilities and international protection needs. As reported by both, the IOM and the UNHCR (2022), Libya does not constitute a safe country for people to be returned to, and persons who are rescued by the Libyan coast guard disembark in unsafe conditions and are transferred to "official and unofficial

places of detention without recourse to judicial review”. Other than constituting unlawful detention, the places of detention do not comply with international standards on detention.

The increase of SAR operations by North African countries is a consequence of the EU’s changes in migration policies after the 2015 influx. EU agreements and bilateral agreements with member states have provided the Libyan and the Tunisian coast guards with funds, equipment, and training. The EU, and mostly Italy and Malta, have fully delegated the responsibility to carry out SAR operations in the Mediterranean to Libya and Tunisia. Contemporaneously Europe ended its SAR operations, notably the operation Mare Nostrum in 2014. Italy decreased maritime patrolling of the Mediterranean deliberately by replacing its vessels with drones, that provide surveillance only and have no utility for saving lives at sea (IOM 2024). Europe proceeds to an increasing criminalization of NGOs that conduct SAR operations despite the UNHCR recommendation for states to “refrain from measures that may hinder the rescue work of SAR NGO vessels, which provide much needed rescue capacity” (UNHCR and IOM 2022).

1.5.3 The Western Balkans Route

The Western Balkans Route has been one of the main routes to Europe since 2015. In 2021 it was the second busiest route in Europe. The number of people reported in this route peaked in 2015, surpassing 760.000. The peak was followed by a decrease over the next two years, recording less than 6.000 crossings in 2018 - a number similar to the ones recorded prior to the so-called “migrant crisis”. In 2019 the number started to increase again in response to policy changes (Frontex 2023).

The departure country of the route is Turkey, afterwards most of the flow follows to Bulgaria or Greece. The arrivals in Greece are either by sea, through the Southern islands or by land, arriving through the north-eastern border with Turkey, often crossing the Evros River. The flow then proceeds to the Western Balkans to then try to reach the desired destination in Europe. In 2024, according to the IOM (2024), most of the migrants’ intended destination was Germany (57% of those interviewed in the WBR).

The countries involved in this route are the Republic of Macedonia, Croatia, Slovenia and Hungary, which are EU member states; as well as Serbia, Albania, North Macedonia, Montenegro and Bosnia and Herzegovina, which are not EU member states. In 2023 there was a shift of the pressure from the Serbian borders to the EU border with Bosnia and Herzegovina.

Currently, the EU has agreements with Albania, North Macedonia, Montenegro and Serbia. These agreements are a fundamental piece in the EU's strategy of externalization of the borders. The agreements in place establish that third country nationals who have transited in one of the partner countries and then entered the EU irregularly must be readmitted by the country of transit (Council of the European Union 2023).

The IOM (2024) reported that in 2023 the majority of the migrants along the WBR were of unknown nationality (38%). Amongst those of whom nationality was established, the majority was from Afghanistan (20%), followed by Morocco (9%), Turkey (6%), Syria (5%), Pakistan (5%) and Bangladesh (3%).

The WBR is the area in Europe in which the highest number of dead and missing migrants has been reported. Over the past ten years, more than 1.145 migrants have died or disappeared in Europe, including at least 110 children. The WBR accounts for 371 of these lives. The peak year for migrant deaths in Europe was 2022, when 164 people died. Most of the deaths are due to vehicle accidents or hazardous transport, often when trying to cross borders hidden; the second main cause of migrant death in Europe is drowning; the third cause is harsh environmental conditions and lack of adequate shelter, food and water; and the fourth cause is violence (IOM 2024).

The Western Balkans have been a part of the European trend of increased securitization and militarization of the borders and the changes in the border regime led to changes in the route. The construction of fences along the Greek-Turkish border in 2012 and then in Bulgaria in 2014 initially shifted the flow from land to sea routes. After the 2015 EU-Turkey deal the flow shifted again. Migratory routes are constantly

changing in response to EU migration policies, often diverting towards more dangerous paths (Lilyanova 2016).

As previously mentioned, drowning is the second main cause of death of migrants in Europe. The cases concern mostly the crossings in the Channel, which will be addressed further, but also crossings in the Evros river between Turkey and Greece. Due to increased securitization in the area and implementation of stricter border controls, attempts of crossing at night have become more common despite increased risks. Violence is the fourth main cause of death of migrants in Europe and it is often committed by border authorities. The land border between Greece and Turkey is particularly violent and also throughout the WBR there have been multiple reports of violent pushbacks and authority violence (IOM 2024).

1.5.4 The Channel Route

The Channel Route (CR) is less known since it concerns a small geographic area, Northern France, the Channel and the South-East corner of the UK. The route departs mostly from Calais but also Dunkirk, some other points in the coast of Northern France and to a much lesser extent, the coast of Belgium. The final destination is the UK, mainly arriving in Dover or other ports in the South. The two forms of crossing are via Eurotunnel, by hiding in trains, lorries or other types of vehicles; or by water, through small boats and dinghies, usually inflatable rubber ones that are provided by smugglers.

The area has reported migrant crossings since the 1990s but has seen a significant increase after 2015, and then again since the official withdrawal of the UK from the EU in January 2020. In 2023 there were 62.000 crossings, including attempts and successful ones, which represents a decrease of 12% in regards to 2022. The decrease is a result of bilateral agreements between France and the UK that have been under criticism of NGOs concerned with human rights protection. The agreements do not seem to be a sustainable long-term measure for decreasing arrivals since provisional data from the UK Home Office indicates that in the period between January and April

2024 the number of crossings have reached its highest, with more than 4.600 arrivals in a trimester (ECRE 2024).

The majority of the people that cross through the Channel by boat claim asylum when arriving in the UK. According to the Home Office, from 2018 to 2023 around 92% of the people who arrived from this route claimed asylum. Since 2020 migrants arriving by boat represent an increasingly higher fraction of asylum claims in the UK, reaching almost half of the total claims in 2022. In 2023 the majority of the people who received a decision in their asylum claim were granted asylum or other types of protection or permission to stay in the UK (76% of the decisions were positive) (The Migration Observatory 2023).

This route reports many nationalities. In 2022 more than 50 different nationalities were reported, mainly from the Middle East, the Horn of Africa and Albania (Frontex 2023). In 2023 the main nationalities reported were Afghans, Iraqis and Syrians. Amongst the main nationalities over the past years there are also Albanians, Iranians and Indians (The Migration Observatory 2023).

Amongst the dead and missing migrants in Europe, the CR is the second route with the highest number, following the WBR. According to the IOM out of the total 1.145 missing migrants in Europe since 2014, 225 of them have lost their lives in the CR. The deaths are either by vehicle accidents and hazardous transport - the main cause of death of migrants in Europe - or by drownings in the Channel - the second main cause. NGOs on the field in Northern France reported that from 1999 to 2020 at least 290 people, including 39 children, lost their lives trying to cross the Channel as a consequence of the hostile border policies between France and the UK. The Channel is yet another example of how, through borderization, the sea is turned into a necropolitical space. The migrants who lose their lives at sea are further dehumanized by being “excluded from the usual social practices surrounding death” such as the repatriation of bodies to the home country for a funeral (Talbayev 2023).

This route reports a considerable number of children and families. Despite the majority of the people present in the route being young solo men, in 2019 and 2020

there was a significant increase of unaccompanied children and families attempting to cross by boat. According to the Migration Observatory (2023) the proportion of children remained constant over the last years, around 16% of the arrivals in the UK. In 2023 roughly 7.000 people arriving by boat were later identified as potential victims of modern slavery and referred to the national institution in charge of the matter - the National Referral Mechanism. After individual case analysis it was established that in more than 80% of the cases there were reasonable grounds to believe that the individuals were modern slavery victims (The Migration Observatory 2023). This represents a significant portion of the people in the flow who would have been entitled to additional protection and special needs throughout their trajectory and were denied this right.

Chapter II – Arrivals from the Central Mediterranean in Southern Italy

2.1 The overall panorama in Italy

Italy has several land borders and constitutes one of the EU's external borders at the South, sharing the Mediterranean sea with North Africa. By land Italy borders Switzerland, France, Austria, Slovenia, San Marino and Vatican City. Most of the irregular migrant arrivals take place in the Southern area, receiving the influx from the CMR. A smaller number arrives through the border with Slovenia, coming from the WBR. According to the IOM in 2023 more than 150.000 irregular migrant arrivals were reported in Italy, 50% higher than in 2022. This was the third highest number registered, falling behind 2016 and 2015, the years of the “migrant crisis”.

Italy established transit areas in several provinces for an initial triage of the asylum claims and for accelerated procedures to be carried out. The provinces of Trieste and Gorizia handle the influx coming from the WBR. The influx coming from the CMR is divided amongst many provinces in the South, such as Crotone, Cosenza, Matera, Lecce and Brindisi, as well as Caltanissetta, Ragusa, Syracuse, Catania, Messina, Trapani and Agrigento in the island of Sicily and Cagliari in the island of Sardinia.

In regards to the demographics of requests of international protection, in 2022 there were 77.200 applications submitted in Italy (combining asylum claims, with subsidiary protection and special protection). The total rejection rate was around 51.5%, whereas amongst the granted applications, 14% were of refugee status, 13.5% of subsidiary protection and 20.5% of special protection. The first nationality in number of claims was Pakistan, followed by Bangladesh, Nigeria, Afghanistan and Egypt. Other nationalities reported were from Tunisia, Senegal and Morocco, which were designated as safe countries in 2022, therefore the citizens of these countries are subject to accelerated procedures. The majority of applicants were male (80%) and 1.655 minors were unaccompanied, representing almost 2% of the applicants in 2022 (Associazione per gli studi giuridici sull'immigrazione 2023, 9-10).

2.2 Cutro Decree: recent changes in the legal framework

The main legal document on asylum and migration in Italy is the “Consolidated Act on provisions concerning the immigration regulations and foreign national condition norms” (TUI - *testo unico sull’immigrazione*) from 1988. Since then many decrees have been adopted to enact migration policies and to implement European directives. In 2015 in light of the unprecedented influx a legislative decree introduced a single reception system for asylum seekers and beneficiaries of protection. This provision was overturned by the 2018 Salvini Decree or “Security Decree”, and later partially restored by the 2020 Lamorgese Decree.

The most recent change in the Italian legal framework was the conversion into law of the decree “Urgent provisions on the legal entry of foreign workers and fight against irregular migration” in 2023, the so-called “Cutro Decree”. The decree was adopted following the shipwreck near the coast of Cutro, which led to the death of at least 94 people. It was adopted in response to civil society requests, but not precisely with the scope of expanding protection. The Cutro Decree restores an overall securitization approach, similar to the Salvini Decree in 2018.

It expands the cases in which border accelerated procedures are applied, hence expanding the use of detention. They are now automatic for asylum seekers from the “safe countries list”. Despite the institutionalization of border procedures only in 2024 with the approval of the New Pact, Italy has carried out this type of procedure since a national reform in 2018. The Decree also contains rules of conduct for SAR operations, which have been carried out by NGOs since the closure in 2014 of Mare Nostrum - a humanitarian and military operation launched by the Italian government that rescued migrants in the Mediterranean sea.

The “hotspot approach” remains a pillar of migration governance in Italy. The “hotspot” is a place designated to concentrate multiple procedures and actors. It is the place where asylum seekers are initially directed to be identified, registered and informed about the asylum procedure, relocation schemes and voluntary returns. It is also where they file their asylum application and in some cases where the application is

processed, where return decisions are enforced and also where the prosecution of organizations and persons supposedly connected to smuggling networks takes place. The asylum seekers that are not subject to accelerated procedures are transferred to first-level reception centers to wait for their application to be processed. Other than national authorities and institutions, there is also the presence of European actors such as the EUAA, Frontex, Europol and Eurojust (ASGI 2023). Hotspots are often set in border areas and close to arrival points for logistical reasons. Most of them were set on preexistent structures and facilities, despite the increase in numbers of asylum seekers and the inability of the facilities to accommodate them - leading to overcrowding and undignified living conditions. Local populations often oppose the setting of these centers in their areas and tensions between locals and migrants have been reported, as well as cases of violence, xenophobia and racism. There were four operating hotspots in Italy by the end of 2023. They were located in the region of Apulia, more precisely in Taranto, and in the region of Sicily, more precisely in Lampedusa, Messina and Pozzallo (Radjenovic 2023).

In regards to the Italian reception system, there are three types of facilities. The first type of facility are the “first aid and reception centers” (CPSA), for first aid and identification purposes. They are currently functioning as “hotspots” in the arrival areas. The second type are first assistance centers instituted by ministerial decrees. They are divided into different types: governmental reception centers for asylum seekers (CARA), reception centers (CDA) and temporary reception centers (CAS). The third type of facility is the “reception and integration system” (SAI). According to ECRE more than 66% of the asylum seekers in Italy are in extraordinary and temporary centers (CAS) since the chronic insufficiency of the SAI makes it inaccessible. Local prefectures which activate the CAS have lowered the budget and standards for these structures, favoring the creation of large centers, whose management is often delegated to multinationals and for-profit organizations.

Changes by Decree Law n.130/2020 and n.20/2023 (later converted into Law n. 50/2023) precluded the access to SAI to the majority of asylum seekers, restricting access only to protection holders, vulnerable asylum seekers and those who entered

Italian territory regularly through initiatives led by the government or humanitarian organizations. The essential services provided in CAS and CARA were also abolished by the latest decree. Health care, social assistance and linguistic-cultural mediation are no longer amongst the services provided in these structures in which the majority of asylum seekers are placed (ASGI 2023).

Another type of structure is the Permanent Return Center (CPR - *centri di permanenza per i rimpatri*), an administrative detention facility, where people who do not apply for international protection or have their application rejected are detained awaiting deportation. This type of structure was initially established by Legislative Decree n.286/1998. The functioning and the categories who may be detained in these structures were established by Decree Law n.113/2018 later turned into Law n.132/2018. Recent amendments introduced that people whose nationality can not be determined are also held in this type of facility for “identification purposes”. The latest change dates to 2023 in which the use of these detention facilities was further expanded for those in a hotspot, awaiting the decision on their application through “accelerated procedures”.

The overall tendencies are to restrict access to structures that provide adequate reception and promote integration, while amplifying the use of extraordinary facilities, such as CAS, and detention facilities, such as CPRs. The access to essential services and to SAI is restricted mostly to protection holders, whereas the majority of people awaiting identification, a decision in their application or deportation, lack access to rights as basic as being provided with a linguistic-cultural mediator in order to understand their legal situation. The categories that can access SAI are reduced meanwhile the categories that can be detained in CPRs are expanded.

NGOs and specialized organizations are progressively excluded from the reception system, and SAI facilities are shutting down while multinationals manage increasingly bigger CAS and more CPRs are built across the Italian territory. The paradigm leading the “reception system” is detention rather than integration. The approach is to segregate migrants from Italian society, deny them access to the territory,

to dignified living conditions while awaiting decisions or their enforcement, and to the possibility of integration (ASGI 2023).

2.3 External relations

2.3.1 Safe countries list

The “safe country of origin” was introduced in Italian Law in 2018. The overall requisites necessary for a country to be considered safe are established at the European level but the list is national. The criteria concerns the level and stability of democracy, overall safety, and respect for human rights in the country. The list was established through a decree of the Ministry of Foreign Affairs, adopted in 2019. The list consists of: Albania, Algeria, Bosnia and Herzegovina, Cape Verde, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Senegal, Serbia, Tunisia and Ukraine.

The list was updated following the Russian invasion and beginning of the war in Ukraine in 2022. In this updated version, Ukraine’s status of safe was suspended and new countries were included, such as: Ivory Coast, Gambia, Georgia and Nigeria. No distinction has been made between areas and groups of people, the countries were considered safe in the entire territory and for all the population. There was a disregard for regional conflicts and minorities in the country to whom the “overall safety” of the country may not apply. Despite information having been provided about the unsafety in certain areas and for certain groups the decree was adopted. Another point of criticism is that no reason or criteria for the insertion of the countries was officially provided (ASGI 2023).

The notion of “safe country” is relevant because it automatically assigns nationals of these countries to accelerated procedures. Applicants from these countries must provide additional proof that their particular situation is unsafe in a shorter timeline, since the decision on the application is made by the Territorial Commission in nine days. The premise is that the application is unfounded and the applicant must present arguments of the contrary. When the application is rejected the motivation is solely that the applicant did not demonstrate serious reason to believe that the country is

unsafe in their particular situation. In practice, the Commission often refuses applications as unfounded since the origin country is in the “safe countries list” despite the applicant belonging to a region or to a group in a situation of unsafety. An example was set by the Civil Court of Florence in 2020 when the application of a national from Senegal was refused being considered unfounded since the country is on the safe countries list. The individual, however, belonged to the LGBTQI+ community, whose safety in the country can not be assured (ASGI 2023) therefore his claim should not have been considered unfounded.

2.3.2 Bilateral accords

Bilateral accords between countries in the EU external borders and third countries are one of the main features of the current migration policies. Italy’s bilateral agreements are also in close connection with the “safe countries list”, connected with the policies of returns and repatriation. Italy also has important bilateral agreements with the scope of externalizing its borders.

As a clear example of the policy of externalization, Italy and Albania concluded, at the end of 2023, an accord for the creation of two detention centers in Albania. People that were rescued at sea by Italian authorities will be transferred to these centers, which are currently in construction, to await the asylum procedure (Amnesty International 2024). Several NGOs raised concerns regarding a risk of human rights violations due to this policy.

In the same scope of externalizing borders and abdicating the responsibility to provide international protection for people in need, Italy holds long-lasting agreements with Libya. In 2017, Italy and the UN-supported Government in Libya concluded a Memorandum of Understanding (MoU), renewed in 2022 for three more years. The agreement also relies on the EU’s support despite it being against European standards for member states external policy and bilateral agreements. The main scope of the agreement is deterring migrants from arriving in Europe.

Libya is not a signatory of the 1951 Refugee Convention therefore the risk of chain *refoulement* is high. It has, furthermore, been widely reported that torture and inhuman treatment take place in Libyan detention. The official statement of the agreement is “securing national borders, eliminating irregular migration and human trafficking, and strengthening cooperation in development” (Ceretti 2023), however, the *de facto* situation is that the EU and Italy provide financial and operational support for returns to where people face what the UN found to be crimes against humanity (Médecins sans frontières 2022). Italy is in breach of dispositions of EU Charter, mainly the duty to *non-refoulement* and prohibition of collective expulsion of aliens, set by article 19 (European Union 2012). The conditions in Libya and the *de facto* consequences of the accords will be detailed further on the *de facto* section.

2.3.3 EU Courts’ sentences

The Italian legal framework and migration policies are conditioned by its membership in the EU, notably due to the Dublin Regulation - which pressures first arrival countries. Since 2015 the EU has put in place internal measures to assist the member states most affected by the refugee influx. The EU has tried to take action in a coordinated manner, with shared efforts (Lilyanova 2016), but not all member states have been cooperative or accepted the EU’s relocation quotas.

Italy as a part of the EU is subjected to the authority of the ECtHR and the CJEU. In 2023 Italy was condemned by the ECtHR in the case *J.A. and Other v Italy*, concerning the inhuman conditions to which migrants were subjected when detained in the overcrowded Lampedusa hotspot. Italy was found in violation of A3 “prohibition of torture” and other forms of inhuman or degrading treatment; A5 “right to liberty and security” concerning unlawful detention; and A13 “right to an effective remedy” (Radjenovic 2023). In the same year the ECtHR judged two other cases brought by Sudanese migrants who arrived in 2016 that also found, unanimously, that were violations of A3 and A5 (*W.A. and Others v Italy*; and *A.E. and T.B. v Italy*).

2.4 A widening gap between the legal framework and the *de facto* situation of migrants

2.4.1 Access to rights in Italian territory

In 2022 systematic denial of access to the asylum application was reported by the competent authorities, the *Questure*. Some cases reached national courts, which ordered the *Questure* to respect the rights of asylum seekers, established by Italian, European and international law. The *Questure* denied access through different forms in different regions, asking for unlawful requirements, setting limits on the number of applications to be filled or enforcing the use of the electronic procedure to access the asylum procedure, which is not viable for all (ASGI 2023, 17).

In mid 2023 the Italian Government declared a state of emergency due to the increase in the number of arrivals through the CMR. In the end of 2022 Italy had already declared the suspension of transfers to Italy by the Dublin System, for lack of places in the reception system (ASGI 2023, 124). In that same year the registered number of people in the reception system surpassed 107.000 (ASGI 2023, 18). Instead of expanding the capacities of the reception system after evaluating that it was not apt to handle the influx in order to comply with international law and give asylum seekers access to their rights, the changes by decree diminished the categories that have access to reception and integration facilities (SAI).

National and international human rights organizations have repeatedly criticized the conditions to which people are subjected in Italian hotspots and reception facilities (Radjenovic 2023). The concerns are in regards to the material conditions of the facilities, the overcrowding, the delays in the asylum application process and *de facto* detention (ASGI 2023, 47-48). As previously mentioned, the ECtHR found, in line with what was reported by ASGI, human rights violations in the Lampedusa hotspot. In this facility there were not enough beds therefore people were sleeping on the floor, food was insufficient, sanitary conditions were compromising individual and collective health, and there was no access to healthcare and sanitation.

The “hotspot approach” , characterized by *de facto* detention, is used beyond actual hotspots, in first assistance and reception facilities as well. This situation was reported in Sardinia in 2020 and also in Pantelleria in 2021 (ASGI 2023). The detention of people in hotspots and other reception facilities is in breach of law since detention can only take place in the designated places, prisons and administrative detention centers (CPRs).

2.4.2 Privatization of migration governance: human rights violations in the CPRs

The Pre-Removal Detention Centres (CPR) have been increasingly criticized for human rights violations. Evaluations concluded that the detention conditions in these centers are below the standards of the European Committee for the Prevention of Torture (Marzano 2022). In Italy there are currently ten active CPRs with an official capacity to detain 1.359 people. The CPR’s with higher numbers of people detained are Potenza, in the South; Turin and Gorizia, in the North (ASGI 2023).

The CPRs are managed by for-profit private entities. The wellbeing of the people detained is submitted to the financial interests of these social cooperatives and international corporations. As Mbembe (2019, 116) alerted, in a world in which everything is sacrificable in the name of profit, “the erasure of the political by the capital is a real threat” and people detained in CPRs are enduring the consequences of the “transformation of the political into business”. Several managing entities of CPRs have been investigated for the inhumane living conditions in the facilities. The managing entity of the CPR in Bari is the Social Cooperative Baldia Grande, which was involved in criminal investigations for serious malpractices. In 2022 the cooperative was excluded from management in Bari however continued to manage the CPR in Trapani (ASGI 2023). In April 2024 there were two ongoing judicial investigations, one regarding a CPR in Milan and one the CPR in Potenza.

The CPR in Turin was closed in 2023 following riots protesting the inhuman living conditions. In 2021 the isolation section had already been shut down after the National Guarantor’s visit attested that the conditions were classified as “degrading and inhumane treatment”. The visit took place after Moussa Balde committed suicide in

isolation. He was a 23-year old migrant from Guinea who was taken to the CPR in Turin after being severely beaten by the authorities. His physical and psychological conditions were not assessed before detaining him and placing him in isolation (ASGI 2023), which ultimately assigns to the authorities the responsibility for his suicide, for lack of due diligence. During the period in which the inhuman conditions were attested in the Turin CPR, it was managed by Gespa, one of the biggest multinational societies in the field of detention of immigrants.

The conditions in the CPRs are undignified. Testimonies report overcrowding, “expired food, showers and toilets without doors, lack of heating, lack of sheets, lack of recreational spaces, mold, cockroaches and the systemic administration of drugs to keep them sedated and severe beating from the police” (Pugliese 2024). The people detained lack adequate healthcare for both physical and psychological conditions. The lack of assessment of mental health conditions, the use of isolation and the administration of psychotropic drugs and anxiolytics (Marzano 2022) are serious violations of rights that have been systematically reported in these facilities.

Other than previously mentioned Moussa Balde, at least 14 more people committed suicide in CPRs over the past five years, leading NGOs to call it a “migrant suicide crisis” (Pugliese 2024). More recently, in February 2024, Ousmane Sylla committed suicide in the CPR in Rome. He was 21 years old from Guinea and was set to leave the detention facility in January, but the far-right led Piantedosi Decree extended detention time to up to 18 months. In 2020 Orgeest Turia, a 28-year old man from Albania died from overdose of methadone in the CPR in Gorizia, the question that remains is how he would have accessed the drug inside the detention facility - raising the doubt on whether it would have been administered by the authorities. Several other deaths in CPRs have been reported for deliberate withholding of medical care. The common feature among all of those is that they were preventable deaths, they were not unexpected tragedies, the choice to not prevent them is political and deliberate. These deaths were, therefore, not “fatalities” but “murders of state” (Pugliese 2024).

The inhuman conditions often lead to protests that are “violently repressed by the police or with the excessive administration of tranquilizers” (Marzano 2022). Overall, these facilities “resemble incarceration on penal grounds” but have “far less procedural protection with that little available in the criminal justice system” (Pugliese 2024). The guarantee of basic rights is even more challenging with the restricted access of NGOs to CPRs. Despite the legitimate interest of monitoring the conditions to ensure the protection of fundamental rights some prefectures have attempted to preclude access from NGOs (ASGI 2023). The competent administrative tribunals overall reinforced that access should be granted, but effective access remains a challenge.

The structure of the CPRs fits into what Mbembe described as “the camp-form”, a place in which perpetrators of violence will never be held accountable for their aggressions against the victims who were “expulsed of common humanity”. The scene of a crime is doomed to remain a secret and is “doomed to oblivion, since everything conspired, from the outset, to erase its traces” (Mbembe 2019, 123). These are places “characterized by institutional violence and a structural state of exception” where people considered “surplus” and “intruders” are confined separately from the rest of society. Migrants, who are considered undeserving of dignity and are kept in “humiliating and alienating conditions”, deliberately deprived of the necessary conditions to live by a necropolitical state that pushes them towards death, as attested by the high suicide rates inside CPRs. Suicide also seen, inside the necropolitical theoretical framework as “an extreme act of self-determination (...) to escape a *de facto* non-existence” that results of policies of extreme marginalization (Pugliese 2024).

As stated by Euro-Med Human Rights Monitor (2024), the reason that underlies the existence of the CPRs is not repatriation, since the rates of repatriation remain low, only around 24%. There are two actual reasons for the existence of these structures: the first is to appease the “unrealized genocidal pathos” and “genocidal unconscious” that animates the support of deportation and repatriation (Mbembe 2019, 162). The second is “the political message they send: the criminalization of the migrant only for their choice of migrating (...) especially from certain nationalities” (Pugliese 2024).

The message is clear, the benefits of the globalized world, of freedom of movement and of the decreased border controls in the Schengen area and the EU are only for a few. This freedom of movement is only for Europeans, for those accepted by Europeans and merchandise and goods that will serve the European economy. Meanwhile the Others, the foreigners, the “unwanted surplus” must face increasingly militarized borders. After being detained in camps, placed in limbo and denied the status of possessor of human rights, migrants are turned into objects that can be deported or even destroyed. Migration is a crime only for some. For those non-white, non-Europeans, non-Westerners, ultimately the non-Us, those Others who are “assumed to have illegally broken into certain spaces (...) where they never should have been (...) places that they pollute by their presence alone and from which they must be expelled”. Collective fantasies of “purity and self-separation” (Mbembe 2019, 101-107) underlie the migration system that detains, deports and violates human rights.

2.4.3 State’s violent inaction: the delegation of SAR operations to Libya

While much of the violence of the border regime takes place in the heart of Europe under the public eye, another share of the violence is also offshored. The “solution” to those unwanted migrant flows that Mbembe recovers from the European discourse is

“close the borders, filter who makes it across them, process them, choose who we want to remain, deport the rest, sign contracts with corrupt elites from the countries of origin, third world countries, transition countries. They must be turned into the prison guards of the West, to whom the lucrative business of administering brutality can be subcontracted” (Mbembe 2019, 98).

In 2014 Costache (2020) stated that “for more than a decade Gaddafi played the role of main gatekeeper to Europe and Italy in particular”. Ten more years have passed and Northern African countries, notably Libya and Tunisia remain EU’s main “prison guards” to whom the lucrative business of administering brutality over migrants has been subcontracted.

To “administer brutality” and “externalize violence” the EU has assigned a budget of €57.2 million to Libya under the label of “integrated border and migration management” (Tranchina 2023). This budget serves to deter migrants from arriving in Europe through fully delegating to Libya the responsibility to carry out SAR operations and funding Libyan detention centers that unlawfully imprison migrants.

The EU and more specifically Italy have abdicated responsibility to save lives at sea, which constitutes a form of violent inaction and a murder of state by neglect. Migrants in distress at the Mediterranean are often abandoned to drown. In the beginning of 2023, two shipwrecks near Cutro were examples of how this violent inaction ultimately leads to death. In two weeks, two shipwrecks led to the death of over 100 people in the Mediterranean, including many children.

In the first shipwreck the wooden boat was spotted in the Mediterranean by Frontex’s surveillance aircraft hours before it capsized and it was reported that there were no visible life jackets. The boat was only “meters away from land and safety” in Italy. There was a mayday distress call received by Italian authorities, who took off with two speedboats and quickly returned to base alleging the “rough sea conditions” prevented them from continuing the search (Amnesty International 2023). No particular weather conditions were attested to the level that they would pose danger or prevent a SAR operation. This is an example of the use of physical environments, such as deserts or in this case the sea, as “migration deterrents” and of how they “function to mask workings of social and political power”. Deaths of migrants in these harsh physical environments “can be blamed - by the authorities - on harsh weather conditions and ‘natural causes’, thus allowing them to evade responsibilities” (Obradovic-Wochnik 2018).

An investigation opened up precisely on why the authorities did not deploy SAR vessels immediately and instead deployed only two speedboats that were incapable of rescuing. NGOs have called for adequate investigations to ensure accountability for any action or omission that might have contributed to the death of at least 86 people, including 35 children, the majority under 12 years old (Amnesty International 2023).

The second shipwreck “provided a dramatic example of the failure of Libyan authorities to conduct or coordinate rescues in the central Mediterranean”. Also in this case the wooden boat was located many hours before it capsized. The Italian authorities delegated the coordination to Libya and the Libyan authorities stated that they were not in a position to launch a SAR operation, meanwhile, people in distress waved and desperately called for help to a merchant vessel. The vessel in the vicinity was instructed not to provide rescue but only to shelter the wooden boat from the waves. Only 30 hours after the initial information about the boat in distress was provided to all three authorities - Italian, Maltese and Libyan - a SAR operation was launched. The wooden boat capsized during the operation and only 17 out of the 47 people were rescued, the other 30 presumed drowned (Amnesty International 2023).

The failure of the Libyan authorities is one which Italy is complicit with when it has almost entirely delegated SAR operations to Libya, exempting itself from the international customary and conventional law obligation of providing assistance to any persons in distress at sea and to protect the right to life. It has, furthermore, exempted itself from the obligations established by the SAR Convention that dispose that

“contracting countries are obliged to develop maritime SAR services and to take any urgent steps to ensure that the necessary assistance is provided to any person who is, or appears to be, in distress at sea. This also includes the coordination of SAR operations until those assisted are delivered to a place of safety” (European Commission 2024).

The *de facto* situation is that the EU provides funding, equipment and training to the Libyan Coast Guard to carry out dangerous pullbacks at sea, under the name of “interceptions”. Frontex collaborates by obtaining information on crossings in the Mediterranean with its surveillance equipment and providing the Libyan authorities with it. After being “intercepted” with the aid of EU funding and equipment, migrants are placed in Libyan detention where they are subjected to inhuman and degrading treatment. According to MSF (2022) “virtually everyone intercepted at sea by the Libyan Coastguard ends up in a Libyan detention center”. Virtually it is almost impossible that anyone will transit through Libya without being intercepted by

authorities or militias and placed in detention and hence that people placed in detention will not suffer inhuman and degrading treatment. Italy is, therefore, funding and systematically pushing people back to a place in which they will almost surely suffer inhuman and degrading treatment. As an important note, events and human rights violations that take place during the migratory journey are also relevant for applying for international protection - the analysis of the application is not only restricted to events in the origin country. Many of the survivors of Libyan detention - even if originating from a “safe country” on the list - would be eligible for international protection for what they have endured in Libya - torture, forced labour and trafficking in persons.

In regards to the unlawful detention of migrants in Libya, there are two types of detention. The detention facilities that are government-run and the ones controlled by armed militias, mostly the ones in the Southern part of Libya. In both of them migrants are kept for a lengthy period in detention, without any charges or process, effective remedy or minimum standards of living. They are kept in what are similar to cages, so overcrowded that people are forced to take turns to lie down (MSF 2021). Deprived of water, food and latrines, people are exposed to diseases, also due to unhealed wounds resulting of torture and lack of any basic medical care (Ceretti 2023).

Other than being subjected to detention in unsanitary extremely precarious conditions, migrants are extorted for ransom in order to have the possibility of getting out of detention. In these prisons they also face violence, abuse, torture, exploitation, enslavement, forced labour, sexual abuse and rape. Unlawful killings of detainees by authorities have also been reported, as well as shootings against unarmed migrants who are trying to escape or simply do not have the money for ransom. Detainees are also often victims of trafficking for modern slavery - there are reports of children, including unaccompanied ones, detained and subjected to forced labor. Guards are also reported to often be under the effect of alcohol and other drugs, and to systematically beat migrants with different instruments including guns. Survivors recalled “they (the guards) would beat everyone they touched” and that “every meal was accompanied by a beating” (Amnesty International 2021).

Women face extreme forms of gender-based violence. There have been reports of pregnant women beaten and having their bones broken by guards for something as simple as “going to the toilet without permission”; subjected to other forms of humiliating and degrading treatment such as sleeping in the communal toilet as punishment; being forced to be naked or in underwear; and being systematically raped by intoxicated guards, including while pregnant. A pattern of sexual abuse and harrasment is reported towards women and girls. Guards have coerced women and girls to have sexual acts in turn for essential items such as water, food or permission to use the “toilet”. Women and girls who refuse are often beaten as punishment and raped. Trafficking in persons and forced labor for women and girls mostly regards sexual exploitation as they are often and sold for purposes of sexual slavery (Amnesty International 2021).

As previously stated, virtually everyone intercepted at sea will be sent to these detention centers and subjected to torture and inhuman and degrading treatment. It is Italy’s deliberate political choice to fund Libyan interceptions that will detain people unlawfully, including children, pregnant women and many other vulnerable subjects, and subjected them to this treatment that amounts to torture, inhuman and degrading. In all aspects this sort of detention is in breach of international human rights law and in breach of the legal standards that European Law sets for external relations.

Since Libya is not a signatory of the Refugee Convention and does not respect the customary international law principle of *non-refoulement*, migrants are at risk of being sent back to their origin countries, despite risks to their lives and safety. It is the EU’s and Italy’s responsibility to prevent chain *refoulement*. However they have decided not to prevent it, and have been complicit and responsible for the return of over 108.000 people to Libya between 2017 and 2023. By consequence Italy and the EU are also responsible for the deaths and human rights violations that take place in the origin countries after chain *refoulement* (Tranchina 2023).

Italy and the EU are further responsible for all the deaths in the Mediterranean that happen due to lack of SAR missions - a form of violent inaction - or due to the

delegation of the missions to the Libyan Coast Guard, which applies dangerous tactics when “intercepting” migrants. Furthermore, Italy other than refraining from coordinating SAR operations has also undertaken numerous measures to prevent humanitarian NGOs from doing so.

Over the past years NGOs carrying out SAR operations have faced false accusations, defamation and criminalization in Italy. The prosecutor’s office in Trapani launched an investigation concerning SAR operations by MSF and other NGOs in 2015 and 2016. The unfounded accusations of the organizations “abetting illegal immigration” and “collaborating with smugglers” were dropped and the case was closed in the beginning of 2024. The trend to criminalize NGOs carrying out SAR operations is not restricted to Italy, the EU Fundamental Rights Agency (FRA) reported in 2023 more than 60 legal or administrative cases against humanitarian rescue operations in different member states (MSF 2024).

Italy has also developed other policies with the aim of restricting the essential and life-saving work of NGOs in SAR operations. In 2022 Italian authorities detained humanitarian rescue vessels 21 times, which amounted to 460 days in which the NGOs were not able to carry out life saving missions. Another common practice to delay humanitarian aid is to assign ports to disembark survivors in areas far away from where they were rescued. While the rescues happen in the South, the assigned ports are often in the Center or in the North of the country, adding several days to the journey while there were options much closer. This practice, other than keeping the NGO vessels away from SAR operations for longer, also negatively impacts the health of the survivors on board (MSF 2024).

In 2023, under Prime Minister Giorgia Meloni, a Decree Law (n.1/2023) concerning SAR was approved, the so-called “anti-rescue decree” by human rights advocates. The most problematic disposition in this decree is the prohibition for a vessel to carry out more than one rescue by mission. Once a rescue is completed the vessel should request a safe place to disembark and proceed “without delay” to the assigned port. This precludes NGOs from rescuing other possible cases of distress at sea “on the

way” (Border Criminologies 2023). Civil society and NGOs have called for the end of the criminalization of solidarity and denounced the policies of death in the Mediterranean that invest national and European resources in blocking humanitarian action, instead of opening safe legal routes (MSF 2024), and guaranteeing SAR in order to stop deadly shipwrecks, pullbacks to a place of systematic torture and degrading treatment, and to reduce the risk of chain *refoulement*.

2.4.4 Colonial legacy and public discourse surrounding migration

Reflections arise on whether Europe, and more specifically Italy, ever overcame the colonial system. The “colony” is understood as the space to which the violence that has been banished from the metropole is exteriorized. The current “democracies” are dependent on keeping this originary violence latent; on suffocating any awareness of this latency; and on “removing any chance of interrogating its foundations” (Mbembe 2019, 27). “Democracies” that were built on the fortunes made of slavery and exploitation of the colonies who now claim to be the guardians of universal values such as democracy, dignity and human rights.

The accords between Italy and Libya are just another example of the externalization of violence that is required for the fantasy of European democracies to hold still. The relationship between the two states can be understood in terms of colonial relations. Libya in this case can be understood as the “colony”, the place to which the brutality that was banished from the metropole is offshored to. Italy is the “metropole” that maintains the order by sublimating its originary violence to other places, or more specifically, to other “nonplaces” (Mbembe 2019, 27). It can maintain its status of a democratic country that respects the Rule of Law and human rights only through the externalization of its violence.

Also inside the national territory there are spaces designed to fulfill the same functions of the colony. These “third places” or “nonplaces” are where the violence is externalized to. Historically these places were the plantation, the colony and now inside national territory they are the camp and the prison (Mbembe 2019, 27). The entire structure of the migration system in Italy is dependent on camps. Different forms of

camps but all closed access facilities with the scope of segregation in which “surplus” populations are confined. The CPRs, where migrants considered undeserving of protection and unwanted are confined, are much similar to prisons but with less procedural safeguards. Inside these places there is a *de facto* different normative framework where Rule of Law and rights are violated by the State authorities that have the duty to protect them.

The accords between Italy and Albania are another example of the same concept, exteriorization of violence. The metropole’s order must not be disturbed even if this requires betraying its own founding principles by inflicting and funding violence. The important thing is that this violence must be kept away from the public’s eye. This violence must be kept latent and must never be questioned, therefore walls are built to keep the public eye out and NGOs and civil society are precluded from access. The violence and “the scene of a crime” are doomed to secrecy and “to oblivion, since everything conspired, from the outset, to erase its traces” (Mbembe 2019, 123), since the only witnesses are the perpetrator and the victim, who has no access to the exterior world, who is confined in detention and has contact only with the perpetrators and other victims.

The final tool for this violence to be kept latent, other than keeping it away from the public eye is the “expulsion of its victims of common humanity” (Mbembe 2019, 123). The victims must be dehumanized so that if and when walls fall, and the crimes committed in these places come to public knowledge, they do not create outrage, they do not disrupt the order created by the myth of democracy and civilness. If and when the crimes come to public knowledge the victim must be discredited, portrayed in the public discourse as somehow deserving or to blame for the crime. This discursive derealization makes “the victims responsible for the violence whose victims they are”. Accountability here becomes impossible as the perpetrator “bears no responsibility” for the crime, the blame is assigned to the victim as “the only possible initiator”. In discourse, when victims have suffered violence from state authorities “it is owing to who they are. To avoid (...) they only have to not be who they are” (Mbembe 2019, 138). In regards to

migrants the typical discourse is that they had only not to come to Europe, not to leave their home, they should only go back to their countries.

The most dangerous thing one could do for the myth and for society's order is to identify with either of the figures - the victim or the perpetrator. This is why the conception of Other is fundamental. Violent events and crimes must be kept at a distance - if not a geographical distance through exteriorization - a subjective distance. The public must feel that whatever took place is unrelated to them, it is far from their realm of responsibility and possibility - even if it takes place in the heart of their cities. If one identifies with the victim, if one can see themselves in the position, they can not keep the outrage latent. If one identifies with the perpetrator and with that subconscious violence, they can not keep it latent either. Latency is the basis of the democratic order and the Rule of Law. In order to live in a pacified society certain passions, such as brutality, must be "if not banished (...) at least brought under control" or externalized. The truth is brutality has not been banished, it "has simply been swept under the carpet. (...) modern democracies (...) have integrated forms of brutality into their culture" (Mbembe 2019, 16).

Immigration policy's discriminatory origins are hidden under the term "civilization", as a "clear euphemism for race and ethnicity" (Amaya-Castro 2015). The myth of European democracies and of the West as a gatekeeper of human rights is interlinked with the myth of white supremacy, and requires the belief in a fantasy of civilness. It requires the belief in a distinction between the "savage", associated with the colony, and the "civil", associated with the metropole, but never in history has Europe been more civilized than other parts of the world, it has merely sublimated its violence to other geographical areas. Historically "civil peace in the West depends on inflicting violence far away". Europe is "sanctuarized" while "fomenting chaos and death far away in the homes of others" (Mbembe 2019, 19-40). Europe has colonized in order to unleash all its "savageness" and violence in the colony, over the indigenous and the enslaved populations. As Mbembe (2019, 212) evidenced

"The colony served as a pressure relief valve for all the undesirables, for the categories of the population 'whose crimes and debaucheries' could have been

‘rapidly destructive’ or whose needs would have driven them toward prison or forced them to beg, while rendering them useless for the country”.

Violent anti-immigration policies are sustained by a discourse that focuses on the national economy, the religious homogeneity, the national identity, and national security. A discourse that claims that all of these would be disturbed by the arrival of Others. Others who contest the status quo between the metropole and the colony, the unequal mobility rights between the center and the periphery, and most of all, the fantasy of democratic Europe by challenging it to look at its colonial past. The presence of those transgressing Others in the metropole reminds “the Continent of its imperial past and neo-colonial present”, migrants contest borders both physically and ideologically (Gouvias, Petropoulou, and Tsavdaroglou 2019, 61).

For social order and the *status quo* to remain still, the Others must be kept away, even if through the betrayal of society’s own founding principle - the repudiation of violence. Violence that Europe claims to repudiate yet funds on the other side of the Mediterranean. Such violence must not be associated with the EU “democratic” member states so it is inflicted far away or in close hidden spaces within the territory, over populations that have little voice and little contact with the external world due to extreme isolation and marginalization. The continuity of this violent system relies heavily on the power of discourse. As previously mentioned the creation of a “discursive derealization” and of a “discourse cut out of history” that blurs the distinction between victims and perpetrators, often portraying the victim as an enemy, as the one to which ultimate responsibility for their own precarious situation is assigned.

Anti-immigration sentiments are openly present in the Italian political and public debate and nationalist speeches rely heavily on discourses against immigration of Muslims, Arabs and black migrants from Africa. Italy, following trends in Europe, took an ideological shift after the 2015 unprecedented migrant influx. A rise in anti-Muslim hatred has been reported online and offline, connected to an overall anti-immigration sentiments rise, since Muslim people or are often perceived as immigrants even if they are not. In the public and political speech immigrants and Muslims are often used as

interchangeable terms. In 2019 a survey conducted with non-Muslim Italians found that 55% of the respondents have an unfavorable opinion of Muslims; 57% would not accept a Muslim as a member of their family; and 35% do not want Muslims as neighbors (Altomonte 2021). The ideology behind hatred is that of a distinction between an “Us” and “Them”, the latter considered as the foreigner, the Other, only for being perceived as not European, regardless of their actual nationality and citizenship. Perpetrators of hate speech and hate crimes are not aware of the legal status of the victim when committing crimes, the hatred is motivated solely by perceiving the victim as a foreigner, as someone who does not belong in the territory, who is not a part of the “Us”, an intruder, an immigrant.

Anti-immigration instances gained a bigger role on the political arena in Italy especially with Matteo Salvini from the far-right party Northern League (*Lega Nord*), who replaced his previous main targets of hate speech - Roma people and southerners - with immigrants. These new targets are held responsible for the social insecurity and economic crisis (Altomonte 2021), fulfilling the role of a scapegoat. The use of foreigners for the purpose of scapegoating has been widely used in Europe since before the Second World War. Foreigners since the Vichy regime are often portrayed as enemies, defects that threaten national safety and identity (Mbembe 2019, 125-126). Contemporaneously accused of stealing jobs and of being economically useless, therefore weighing on the welfare state. Successful far-right populist speeches such as Salvini’s claim the need to protect the national culture and identity - the “Us” - against multiculturalism - the “Other”. Political adversaries are painted as those who have sacrificed national interests - economy, security and culture - for the protection of the rights of immigrants.

Chapter III – A slow dismantling of the asylum system in Hungary

3.1 The overall panorama in Hungary

Hungary borders several countries, amongst them countries part of the WBR such as Slovenia and Croatia, which are both EU member states, and more critically Serbia, which is not a member state. In September 2015 a 175 km long barbed wire fence was built along the Hungarian-Serbian border, along with the institution of the so-called “transit zones”. This is yet another example of the trend of securitization and militarization of the borders in Europe led by a “coalition of businesspeople-turned-politicians who believe that erecting all kinds of walls and giving a new lease on life to apartheid-like formations is a good way to help society and the economy” (Mbembe 2019, 112). The transit zones are just another institution that evidences how Europe “welcomes” the survivors that after having endured “a horrific exodus (...) get confined in camps and zones of exception” (Mbembe 2019, 86).

The transit zones are no longer in operation since 2020, following a CJEU sentence, and were replaced by the “Embassy Procedure” in that same year. According to the Hungarian Helsinki Committee (HHC 2023, 13) the numbers of asylum seekers are very low since few people are able to access Hungary due to its strict anti-immigration policies. Overall the Hungarian border regime is characterized by the criminalization of irregular border crossings, securitization, cooperation with Serbia and systematic violent pushbacks.

Furthermore, the Serbian government has taken a series of measures to try to deter the migrant flow from reaching the Northern borders with Hungary, as well as with Croatia and Romania. Accommodation facilities in the Northern area are closed and migrants apprehended in that area are relocated to the South. The combined policies have “almost completely stopped the migratory route towards Hungary” (Border Violence Monitoring Network 2024).

Most of the flow that attempts to cross the border to Hungary comes from Syria, Iraq and Afghanistan, all countries either at war, in a situation of generalized violence or

under authoritarian regimes. They are internationally recognized as “unsafe”, nevertheless nationals from these countries are denied the right to claim asylum due to illegal pushbacks. In 2022 more than half of the pushbacks were against Syrians, while 16% were against afghans (HHC 2023, 23).

A striking decrease in asylum and protection applications is observed from 2015 to 2022 as a result of the strict anti-immigration policy. In 2015 more than 170.000 asylum applications were reported, whereas in 2022 this number fell to only 44 applications in the entire year. The applicants were mainly male from Afghanistan. The acceptance rate of the applications was 72% (30% of the applicants were granted asylum and 42% were granted subsidiary protection) (HHC 2023, 7-9).

These numbers need to be understood considering that in the same year more than 158.000 people were pushed back to Serbia. Illegal pushbacks explain why only a very limited number of people are able to request for international protection. The number of pushbacks doubled compared to the previous year (2021), despite sentences of both the CJEU and the ECtHR, finding them unlawful. The right-wing government of Viktor Orbán, however, continues to ignore these sentences and other international obligations regarding human rights protection (HHC 2023, 98).

3.2 State of exception and the Hungarian “legal” framework

The cornerstone of the Hungarian legal system is the “Fundamental Law of Hungary” of 2011. The main document on the right to asylum is the 2007 “Asylum Act”, in combination with the “Act on the Entry and Stay of Third-Country Nationals” and the “Act on the State Border”. The implementation of the acts was regulated by government decrees, as well as the regulation on safe countries and on “crisis situations caused by mass migration” (HHC 2023, 13).

The Hungarian Asylum Act was suspended in parts in 2015 when a “state of crisis due to mass migration” was introduced. Hungary is not an isolated case as the management of migration as a crisis has become a central feature of EU member states migration policies. This leads back to the logic of differentiation. The distinction

between the “Us”, a free and equal political body, from the “Other”, subjected to a “state of exception (...) which in the ongoing timeframe of crisis reaches long term status” (Talbayev 2023). The state of crisis was extended to the entire territory of Hungary 13 times since 2015, as the validity of government decrees is of only six months (HHC 2023, 19). This “*quasi* state of exception” has lasted the past nine years, despite the fact that there is no actual state of crisis due to mass migration, since there is virtually no irregular immigration in Hungary.

In 2020, through an Interior Minister Decree (n.16/2020) a new asylum system was introduced. The “Decree on the procedure concerning the statement of intent for the purpose of lodging an asylum application” is the so-called “Embassy Procedure”. The system was criticized by NGOs and ruled as in breach of Hungary’s obligations by the CJEU, since it reduces protection and access to the right to asylum for all migrants, including those regularly present in the territory .

The state of crisis allows the establishment of special rules to third-country nationals irregularly entering or staying in Hungary. It allows a *de facto* suspension of parts of the Asylum Act. The police are authorized by national dispositions to carry out illegal pushbacks without legal procedures or access to remedies (HHC 2023, 13). Pushbacks are carried out not only against those who would only transit through Hungary but also against those who intended to claim asylum there. Accelerated procedures are introduced for all those who seek judicial review of asylum rejection, establishing a maximum of three days to apply for a review (HHC 2023, 47).

The Asylum Act has had numerous amendments over the years, amplifying the discretionality of police forces and reducing protection. Amendments in 2016 allowed the Hungarian police to pushback anyone apprehended within 8km of the border with Serbia or Croatia, without allowing access to an asylum application. In 2017, amendments established that when the “state of crisis due to mass migration” is in place, pushbacks are legalized in the entire national territory, not only within 8km of the external area of the borders. Since the “state of crisis due to mass migration” has been continuously extended over the past years, people irregularly present at any part of the

country can be escorted to the external side of the border with Serbia. This includes asylum seekers who have not transited through Serbia, who have arrived at the airport or other land borders. These removals are not through the readmission agreement with Serbia and do not involve notifying Serbian authorities, therefore the people “escorted out of Hungary” are *de facto* forced by Hungarian police to enter Serbia irregularly (HHC 2023, 23). In 2018, amendments also added grounds for termination of the asylum procedure.

The “Embassy Procedure” establishes that asylum applications can only be filled in Hungarian embassies in Belgrade, in Serbia and Kyiv, in Ukraine. Applications can no longer be made at the borders or with any other authority in Hungarian territory. This disposition applies for all migrants except beneficiaries of subsidiary protection in Hungary, family members of refugees or beneficiaries of subsidiary protection in Hungary, and people subject to measures affecting personal freedom who have legally entered the territory (HHC 2023, 27). Upon acceptance of the pre-asylum application submitted in one of the embassies the applicant is issued a single-entry permit that allows access to the territory to file the asylum claim and continue the process. Rejections are sent via email and do not present justification or legal grounds. During 2021 a total of eight applicants, all from Iran, were granted the single-entry permit after applying in Belgrade. In Kyiv there were no applications in 2021 or 2022 (HHC 2023, 20). According to ECRE (2023) this system corresponds to a *de facto* suspension of the right to asylum in the country and there are no resettlement or relocation programs in place.

The concept of “transit zones” was key in the Hungarian asylum system from 2015 until 2020, when the dispositions in the matter were abrogated by a Government Decree (n.233/2020). The transit zones were the only places where migrants could apply for asylum if they were not already legally residing in Hungary and they were held there for the entire procedure. They constituted *de facto* detention facilities. The same disposition applied for all vulnerable persons and unaccompanied minors over 14 years old (HHC 2023, 19).

Currently, irregular entry into Hungary is a crime punishable with up to ten years and an expulsion order, even if the individual applies for asylum. Hungarian courts have ruled that eligibility for international protection is not relevant for criminal liability, disregarding the A31 of the 1951 Refugee Convention that disposes the right to “non-penalization of irregular entry”. According to the National Office for the Judiciary, in 2015 when the law changed, there were over 2.800 criminal proceedings. In 2021 five people were convicted. As for 2022 the same office has provided no data, whereas according to the police there were two criminal proceedings (HHC 2023, 23).

As of 2019 the Asylum and Immigration Office no longer exists in Hungary. The institution that took over in part matters of asylum and migration is the National Directorate-General for Aliens Policing (NDGAP). It operates as a law enforcement agency, following the Law Enforcement Act, under the supervision of the Ministry of Interior (HHC 2023, 18). The delegation of migration governance entirely to a law enforcement agency is one of the clearest examples of the trend to criminalize migration in Europe.

The Hungarian asylum system encompasses: assessment on whether the application falls under the Dublin procedure; admissibility of the application; assessment on whether it falls under accelerated procedures; analysis of eligibility; first instance decisions; and judicial review. The deadline to request a judicial review has been significantly reduced, to only eight days. The shortening of the timeline raised criticisms from NGOs that argue that this will harm the right to an effective remedy. Since 2015 amendments lodging an appeal after a rejection does not have suspensive effects on the procedure. The decisions of an asylum application can be: refugee status, subsidiary protection status, grant tolerated status where *non-refoulement* prohibits the person’s return or rejection of the application on inadmissibility or merit (HHC 2023).

The Asylum Act establishes that a person in need of special treatment and protection is an

“unaccompanied minor or a vulnerable person, in particular a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a

person who has suffered from torture, rape or any other form of psychological, physical and sexual violence, found, after proper evaluation, to have special needs because of their individual situation” (EASO 2015).

Despite the clear framing of who those persons may be, there is no procedural framework or practical guidelines of the mechanisms to identify them and implement the disposition. Usually taking into account the vulnerability of the individual is at the discretionality of the officer in charge of the case (HHC 2023, 56). Accelerated procedures are not precluded from vulnerable persons and there are no separate reception facilities.

3.3 External relations

3.3.1 Safe countries list

In regards to the “safe countries” institution, Hungary amended its asylum legislation in 2015 adopting a list. The “safety” assessment of the countries regards the European standards in matters of overall safety, lack of persecution, respect of the prohibition of torture and other degrading treatments, respect of non-refoulement, access to the asylum procedure and access to effective remedy.

The Hungarian list consists of: EU member states, EU candidate countries, member states of the European Economic Area, US states that do not have the death penalty, Switzerland, Bosnia and Herzegovina, Kosovo, Canada, Australia and New Zealand (HHC 2023). This list is applied for “safe countries of origin” and also for “safe third countries”. Nationals from these countries are automatically submitted to accelerated procedures.

The “safe third country” criteria presupposes a connection of the applicant with a safe country, which makes the application inadmissible. The “connection” is when: the applicant stayed there; traveled there and had the opportunity to ask for protection; has relatives there and may enter the territory; or has been requested for extradition. Stay and transit are the most widely used connections, even when the person was not in the country voluntarily or was smuggled there. Serbia is considered a “safe country” since it

is an EU candidate country, therefore, applicants that transited through Serbia have to provide proof that the country was unsafe due to their individual situation and that they were unable to present an asylum claim there.

3.3.2 Hungary's relation with the EU and its neighboring countries

As part of the EU Hungary has obligations to fulfill with both the international and the EU laws, therefore national legislation must be in accordance with these two legal sources. However, the strict anti-immigration policy that started to develop in 2015 is not in respect of its legal obligations and was subject to sentences of international courts and criticisms from human rights NGOs..

Hungary's relationship with the EU is significantly impacted by its nationalist anti-immigration agenda. The EU's Rule of Law and role as a supranational institution is weakened by not being able to enforce its policies. Hungary has refused to comply with the EU's relocation quotas for asylum-seekers since 2015. The refusal was not followed by significant consequences, which exposed the EU's weakness in managing migration at a supranational level through cooperation of the member states. It also exposed that the EU lacks ability to enforce its decisions since Hungary continues to ignore the sentences of the CJEU and ECtHR.

Hungary's relationship with its neighboring countries, such as Croatia and Serbia, is also significantly impacted by its migration policy. Hungary's border with both Serbia and Croatia is marked by intense police presence and a fence. The fence with Croatia is no longer in place since it recently entered the EU. As the EPRS on the Western Balkans pointed out "some states have reintroduced internal EU borders and tightened controls", "despite travel within the Schengen area being unrestricted" (Lilyanova 2016). Reports of Hungarian police clashing with refugees in Serbian territory have already led to tensions and to the closure of the border. Tensions between Hungary and Croatia have also been observed since the flow that was precluded from entering Hungary has been redirected to Croatia. As a cascade effect, the impact of Hungarian policies also reached Slovenia, since the flow that was diverted to Croatia

now has Slovenia as a part of the route to reach Western and Northern Europe. The construction of a fence between these two also started in 2015.

The overall picture is that each country's priority is national security and that "divided national interests have hindered a common EU approach" in the Western Balkans Region. The construction of walls and fences, the reintroduction of border controls and additional limitation of movement between EU member states are typical characteristics of a securitization approach towards migration and are "the greatest blow to Schengen since its inception" (Lilyanova 2016) .

3.3.3 EU Courts' sentences

In 2020 the CJEU ruled in several sentences that Hungary is in breach of its obligations established by EU law. One of the cases concerned the introduction of the "Embassy Procedure". The Court disposed that asylum rejections sent via email without justifying or exposing the factual and legal grounds for the refusal are a violation of procedural requirements (ECRE 2023). This procedure is furthermore in breach of obligations of protection, since it can not deny protection (or access to request protection) on the sole reason of national security, without specifying the grounds and presenting the reasoning of expert authorities.

The CJEU also found (C-808/18) that Hungary is in breach of the obligation established in the Asylum Procedures Directive concerning the right for any applicant of international protection to stay in the territory of the country that issued the rejection until the time limit to appeal against the rejection; or if the appeal has been lodged, the right to stay until a decision has been taken on it (HHC 2023). The same sentence disposed that pushbacks of people irregularly present in Hungary, operated in the entire territory, were illegal as they are not in observance of the standard guarantees for return procedures - since most of the pushbacks are not carried out through the legal procedure and do not involve notifying Serbian authorities. Another CJEU sentence in 2020 (joined cases C-924/19 PPU and C-925/19 PPU) ruled that the transit zones constitute unlawful detention, since asylum seekers were detained "automatically and indefinitely" (HHC 2023, 22).

In regards to all the Court dispositions Hungary has taken no provisions to change the legislation or the *de facto* situation. Nor it has taken responsibility, on the contrary, Hungarian officials have assigned responsibility to the EU for “forcing Hungary to create this legislation” (ECRE 2023). In 2021, following these sentences and upon pressure from NGOs and the media, Frontex suspended its operational activities in Hungary to “avoid complicity in unlawful practices” (HHC 2023, 24).

The ECtHR has also ruled that Hungary is in violation of the Convention. The 2016 amendment that legalizes pushbacks is in violation of A4 “prohibition of collective expulsion of aliens” of the Protocol 4 of the ECHR. In 2022 four other sentences of the ECtHR found that in detention centers and transit zones there were breaches of A3 “prohibition of torture” and other inhuman or degrading treatment; A5 “right to liberty and security” regarding unlawful detention; and A13 “right to an effective remedy” (HHC 2023, 93-94).

3.4 *De facto* suspension of the asylum system and migrants’ rights

3.4.1 Institutionalization of pushbacks at the Hungarian-Serbian border

There are increasingly high numbers of illegal pushbacks reported on the WBRR, including the Hungarian-Serbian border. In 2022 Hungarian authorities carried out more than 158.000 pushbacks to Serbia (HHC 2023, 24). The average is 2.500 pushbacks per week, despite Serbian efforts to restrict the flow from arriving at the Northern border. During pushbacks several abuses and forms of physical and psychological violence committed by the border authorities are reported. Migrants report being apprehended by border authorities and then photographed; beaten; searched; stripped; robbed of money and other belongings; having their belongings destroyed (ex. mobile phones); being forced to walk long distances; spend nights outside without shelter or food in temperatures below zero degrees. Abuse and indiscriminate use of violence by the police and border authorities were reported in several countries in the WBR, including Hungary, Serbia, North Macedonia and Croatia (Collective Aid and Kölner Spendenkonvoi 2022).

Through this physical abuse and humiliation that migrants are subjected to, they face the “triple loss” that Mbembe cites when explaining the “slave’s condition”: the loss of home, political status and rights over their own body, that leads to the “expulsion of humanity altogether” (Mbembe 2019, 74-75). The loss of the home is intricate to the condition of exile and becomes permanent when the possibility of building a new home in Europe is also precluded by being denied the permission to stay legally, coerced into informality and precluded from finding stability to build a future. The loss of a political status connects with the asylum system, when migrants that have not been considered deserving of a refugee status face a situation of limbo and informality. Currently in Europe, the legal status *de facto* seems to be the determining factor on whether someone is entitled to any rights at all on the territory - including the respect of human rights - or if, by being “illegally” present, they can be deprived of the rights associated with their humanity altogether. The last dimension - loss of rights over their own body - is the dimension that is finalized by authorities when they strip; search; beat; force migrants to remain naked or barefoot; to walk long distances; to sleep without shelter; to be deprived of food and water. All of these violations have been reported together and also during winter, there have been cases of migrants being forced to walk back from Hungary to Serbia naked or barefoot during freezing temperatures, without food, shelter and phones after being beaten by authorities. Through these violent practices authorities almost physically destroy migrants' bodies by exhaustion and other health conditions associated.

Other than depriving migrants of dignity, these practices also deprive migrants of the control over their own bodies. They can not move to other countries because they do not have the right to freedom of movement in Europe, but they also can not stay where they are, because they do not have the possibility to claim asylum; regularize their situation; or even be legally deported. Coerced into informal existence and seen by the authorities as “bearers of no rights” they are submitted to ill treatment. The definition of “inhuman treatments” presupposes a recognition of humanity as the basis for the preclusion of these treatments - when one is “expulsed from humanity altogether” no treatment is precluded. Migrants along the WBR are not often actively or directly

murdered by the authorities, they are allowed to remain alive but “kept in a (permanent) state of injury, in a (...) world of horrors and intense cruelty and profanity” (Mbembe 2019, 75) that ultimately deprives them of the conditions necessary to continue living.

3.4.2 Vulnerable subjects and access to rights in Hungarian territory

As previously stated, there is *de facto* almost no access to the asylum procedure in Hungary, which is why only 44 people were able to apply for asylum in 2022. The asylum seekers that are able to enter the territory and make their application face limitations to access services and rights which they are entitled to. According to the Hungarian Asylum Act applications of unaccompanied children should be prioritized, nonetheless many cases take as long as adult’s applications to receive a decision. Furthermore, the HHC (2023) reports that since 2020 unaccompanied minors suffer, as well as adults, from systematic denial of access to the asylum procedure. In 2021 the application of only one unaccompanied minor was lodged and processed, the same applied for the entire year of 2022. As the UN committee on the rights of the child reported, children are also victims of police violence, especially during pushbacks. There were cases of unaccompanied minors who were hospitalized after being severely beaten by police or military when attempting to cross the border (HHC 2023, 29).

In regards to gender-based vulnerabilities the HHC (2023) reports the lack of gender specific guidelines amongst the special procedural guarantees. It further notes that when the applicant requested an interpreter of the same gender the authorities were reluctant to provide it and often resorted to the excuse that this would delay the process. This highlights an absolute disregard for how traumatic gender-based violence is and how important it is for the victim to have an interpreter of the same gender in order to feel comfortable to recount the traumatic past. A female applicant who suffered gender-based violence might feel uncomfortable sharing her past trauma with a male interpreter for fear of being revictimized and this can negatively impact the decision on the application. An interpreter of the same gender is important when recollecting the applicants past, which could be determining on the coherence of the history and on the outcome of the application.

In regards to the reception capacity, HHC (2023, 73) reported that between 2017 and 2020 “the main form of reception was detention, carried out in the transit zones”. The reception system is almost non-existent. Despite the few open facilities their effectiveness is irrelevant since there is very little access to reception facilities. In 2022 extremely low occupancy of the few reception centers was reported, including cases in which a center remained empty during the entire year. In 2021 Afghan evacuees, which were not formally registered as asylum seekers, were placed in the few existent reception centers, quickly leading to the overcrowding of the facilities.

Until 2020 most of the asylum seekers were placed exclusively in the “transit zones” in which they had to wait for the entire process. The placement of migrants in these transit zones led to a low occupancy rate of the reception facilities. After the introduction of the Embassy Procedure in 2020 the transit zones ceased their functioning, however the occupancy of reception facilities continued low since almost no asylum seekers were able to access Hungarian territory. The occupancy of detention centers is also very low considering the systematic employment of unlawful pushbacks.

Despite the numbers in administrative detention being low since asylum seekers are not allowed into the country, the percentage has increased over the years. In 2015 only around 1% of the asylum applicants were held in detention. Currently almost 16% of the very few applicants that manage to claim asylum are detained. The existing detention facilities are not accessible by NGOs therefore there is no monitoring or data on the conditions of the facilities. Essential services, such as free legal advice, social assistance and psycho-social support, are usually provided by NGOs and are non-existent due to the lack of access. Vulnerable asylum seekers, except unaccompanied children under 14 years old, are not excluded from detention.

Most of the support and services that migrants irregularly present receive are provided by NGOs. They provide material aid distribution, medical supervision and psychological support. The states in the WBR, and Hungary more specifically, have moved towards the “criminalization of assistance to irregularly present migrants”. According to the European Commission Against Racism and Intolerance (ECRI 2023)

this ultimately reinforces racism since it criminalizes solidarity according to the immigration status of who is receiving the support.

The state also increases the need for medical and psychological support when much of this need is to treat and heal the consequences of the violence committed by the authorities. The progressive securitization of the borders deliberately creates the isolation of migrants and obstructs the access to essential services provided by NGOs since people must “remain invisible” in order to not be caught by the authorities. This necessity to hide from the authorities, and from their abuses, favors crossings at night, which imply higher risks. The inability to contact and receive support from State authorities or NGOs makes the smugglers the only point of contact that migrants have (Border Violence Monitoring Network 2024).

3.4.3 Widespread anti-immigrant discourse

Amongst Central-Eastern EU countries Hungary is the one with the weakest integration system. Such weakness is in part attributed to a widespread xenophobic discourse that negatively impacts on the integration of migrants since it promotes the intensification of “enclaving of entire communities” (Mbembe 2019, 43). The main targets of hate speech in Hungary are refugees, asylum seekers, migrants, Muslims and LGBTQI+ persons, but anti-Roma and antisemitic hate speeches have also been historically very present in Hungary. Since 2015 there has been a rise in anti-immigrant and anti-Muslims sentiment (ECRI 2023).

The UN Committee on the Elimination of Racial Discrimination has requested Hungary to take measures to put an end to racist hate speech and incitement to violence against migrants. Local media and public figures have a particularly powerful role when promoting racial hatred, xenophobia and anti-immigration sentiments. The Hungarian Government has “systematically pursued anti-refugee rhetoric over the years” (HHC 2023, 110), fueling an unfounded image of immigrants as a threat to national security, identity or culture. This type of discourse is intensified during election periods, particularly by members of *Fidesz*, the ruling nationalist party of Viktor Orbán (European Commission Against Racism and Intolerance 2023), in line with what was

analyzed by Mbembe, that “in the current conditions of crisis in the West (...) racism shapes up as a supplement for nationalism”. He further stated that there are “new varieties of racism emerging that no longer need to appeal to biology for legitimation. They are content to resort to chasing away foreigners, to proclaim the incompatibility between civilizations” (Mbembe 2019, 180).

Discourses surrounding an imminent loss of national identity and culture are strongly reliant on “old prejudices (that) are constantly recycled (...) in a cyclical process typical of racist discourses”. Relying on prejudices against nationality and religion, these discourses fuel the fear of a rise of religious extremism and of a demographic explosion since the perception is that the “invaders” come “from overpopulated lands - countries where each woman still gives birth to seven or eight children” (Mbembe 2019, 98). Migrants have been referred to, by high-ranking officials, as “Muslim invaders”, as an example of how different categories such as Muslims, Arabs, migrants and refugees are all fused as one homogenous group of “invaders” in the political speech. This fusion is particularly relevant to understand the extent of anti-immigrant sentiments in Hungary when a 2019 public opinion poll “showed that 58% of Hungarians express negative sentiments toward Muslims” (ECRI 2023).

The number goes in line with what was reported in Hungary’s main partner in migration policies, Serbia. A research conducted in Serbia found that 44% of the population has a general negative attitude towards migrants and refugees coming into the country, whereas another 43% has a neutral attitude and only 10% has a positive attitude. In Serbia the negative sentiment towards migrants and refugees was attributed mostly to the misconception that refugee aid responses are entirely state-funded, as well as misconceptions about what migrants and refugees are receiving (Danish Refugee Council 2023).

Other than relying on the threat of loss of national identity and culture, anti-immigration discourses rely heavily on the association of the migrant with terrorism and a threat to national security. The imaginary link of migrants with terrorism comes from a sequence of wrongful associations and prejudices. The previously

mentioned fusion of “migrant” with “Muslim”, and the fusion of “Muslim” with “terrorist” ultimately leads to the wrongful fusion of “migrant” with “terrorist”.

From 2014 to 2015, the year of the so-called “migrant crisis”, Europe saw an increase in jihadist terrorist attacks. The peak year of this type of attack was 2017 (Europol 2022). This two separate events - the unprecedented migration influx and the rise in jihadism in Europe - were wrongfully associated with each other in the political speech despite Europol reiterating that there are no signs of connection and that in “more than 70% of the arrests related to jihadist terrorism (...) the individuals were nationals of the EU country in question” (Europol 2018). Other than clarifying that jihadism and immigration are not in any way interconnected, and that the majority of jihadist attacks are committed by EU nationals, it is also worth to note that the vast majority of terrorist attacks in Europe are separatist and not jihadist (Europol 2022). The scope here is evidently not to explore the complex dynamics of terrorism in Europe, it is simply to raise the question: why did the rhetoric of immigrants as terrorists and as a security threat became so widespread in Europe despite no facts supporting it?

Mbembe contributes to answering this question when he explains that the fantasy of “the foreigner, the immigrant, the refugee, the intruder” as an enemy serves the political agenda because it gathers consensus around the ever present “desire for an enemy” and the “desire of apartheid” (Mbembe 2019, 43) that permeate the human subconscious. As Mbembe stated “to be deprived of an enemy means being deprived of the kind of relation of hatred that authorizes the giving of free rein to all sorts of otherwise forbidden desires” (Mbembe 2019, 48). Desires of violence that have no place in Western “democracies” and therefore must be externalized and directed towards Others.

Portraying the migrant as a terrorist gathers support for extraordinary measures that are acceptable by a “democratic” society and a “civilized” people only in the face of a significant threat. With the excuse of countering terrorism and preventing it from destroying the society of rights, the Rule of Law is suspended. In a clear contradiction “to protect the state of law against terror (...) violence must be done to the law”, and

what “only yesterday was seen as an exception or as (...) outright lawlessness” must be institutionalized (Mbembe 2019, 33).

The institutionalization of what previously was outright lawlessness is what is currently happening with Hungary’s migration system. The country relies on the extension of a state of exception under the name of “state of crisis due to mass migration” every six months since 2015. Through numerous “legal” dispositions Hungary has institutionalized the suspension of rights and the lifting of guarantees for migrants and asylum seekers despite it being against European and International Law. Not by fault “the concept of the state of exception has been often discussed in relation to Nazism, totalitarianism” (Mbembe 2019, 67). The question that Mbembe once posed echoes “are we not in the presence of an entirely different political regime whenever the suspension of law and freedoms is no longer an exception?” (Mbembe 2019, 33).

Chapter IV – Coerced into informality: the situation in Northern France

4.1 Overall panorama in France

Metropolitan France borders eight countries in Europe: Belgium, Luxembourg, Germany, Switzerland, Italy, Monaco, Spain and Andorra. Some of the borders of metropolitan France and overseas are EU's external borders, including the Mediterranean Sea in the south-east and the English Channel in the north-west. Most of the migrant flow that arrives irregularly in France comes through the French-Italian border, in which around 40.000 decisions refusing entry were issued in 2022, out of a total of 70.000 refusals including the borders with Spain, Belgium and Switzerland. Police violence, disregard for protection when denied entry, over 40.000 arrests and 33.000 pushbacks to Italy were also reported in the French-Italian border in that same year (Forum réfugiés 2022, 16).

In 2022 in France there were more than 156.000 requests for protection. The vast majority of those were first-time applicants. The rate in which asylum was granted was 22%, whereas subsidiary protection was nearly 5%, leaving the rejection rate at 73%. The first country in number of the applicants was Afghanistan, followed by Turkey, Bangladesh, Georgia, the Democratic Republic of Congo and Guinea. The majority of the applicants were male (66%) and more than 23% were children, including 0.6% who were unaccompanied (Forum réfugiés 2022, 9-10).

This thesis will focus on the coastal Northern area of France, specifically Calais and Dunkirk, which are departure points for the CR. The area that borders the English Channel has gained particular importance since the UK has ceased to be an EU member in 2020. In 2022 over 45.000 crossings were reported and the estimate is that one in two crossings are successful. There are many risks associated with the crossing, including collisions with commercial ships since the Channel reports around 400 commercial ships per day (Krisper 2023).

In-site visits of an ad-hoc sub-committee of the Council of Europe's Committee on Migration, Refugees and Displaced Persons (2023) collected data on the migrant

population in Northern France. The sub-committee to carry out a fact-finding visit reported around 4.000 migrants living in the area of Calais. Half of them are in the area of Grande-Synthe and Loon Plage, where most of the living sites and informal camps are located. In Calais the main nationalities of the migrants are Sudanese, South Sudanese and Syrian, whereas in Grande-Synthe the majority are Afghans, Kurds (from both Iraq and Iran), Eritreans, Ethiopians and Palestinians. Other nationalities reported in the area are Albanians, Indians, Turks and Vietnamese. Around 90% of the population are single adults, mostly male. The remaining population is particularly vulnerable and consists of children, unaccompanied or not, and women, who are the main victims of sexual violence.

The main nationalities reported in the area are from countries with internationally recognized humanitarian crisis, armed conflicts or authoritarian regimes that limit rights and freedoms. Sudan has been at war since the beginning of 2023 and facing one of the world's largest displacement crisis; the conflict in Sudan's Darfur region is also still ongoing. The war in South Sudan officially ended in 2018 but the country continues to face a large humanitarian crisis and widespread violence. Syria's war has entered its 13th year. Afghanistan is officially under the Taliban's rule since August 2021. Kurds remain as a nation without a state, facing persecution and violence in Iraq and Iran. Eritreans, other than a dictatorial government and lack of fundamental rights, still face humanitarian challenges in the Tigray area, as well as Ethiopians. Despite the truce in the area in 2022, human rights abuses and ethnic cleansing persist. Palestinians also face ethnic cleansing and displacement due to the State of Israel. The majority of the individuals in the area in question are forcibly displaced persons from "war-torn countries or countries where their security is at stake" (Krisper 2023) who would be entitled to international protection.

4.2 Legal framework and the unconstitutional Darmanin Law

France's asylum and migration legal system's cornerstone document is the Code of Entry and Residence of Foreigners and of Right to Asylum (CESEDA). There were some recent amendments to the CESEDA in 2018, 2019 and 2023, mainly regarding

access to asylum and integration. The implementation of the system is regulated by administrative guidelines such as bylaws - which are decisions of the French Office for the Protection of Refugees and Stateless Persons (OFPRA) - circulars and decrees. They concern the practical implementation of the asylum procedure, content of protection, reception conditions, administrative detention, emergency centers and access to social welfare.

In the end of 2023 the French Parliament adopted reform on France's asylum and immigration law, the "Law to Control Immigration, Improve Integration", or the so-called "Darmanin law". The new amendment to the CESEDA, with a strong securitization approach, reduces the protection and efficiency of the asylum system and stigmatizes foreigners as potential criminals (International Refugee Assistance Project Europe 2024). Foreigners are placed in "a category of a priori suspects, yielding a state of suspicion" (Mbembe 2019, 33).

The law was adopted in light of political interests, not precisely connected to ensuring adequate protection of migrants. It followed a fast track procedure without due assessment of the content, impacts and formulation, which led to more than half of the articles being ruled as unconstitutional or incoherent with the intent of the law by the French Constitutional Court (Brexit Institute 2024). After removing 35 out of the 86 dispositions, mostly the ones proposed by the far-right, the reform was adopted in January 2024.

The censored provisions concerned citizenship for children born in France to two foreign-parents, access to social welfare for immigrants, family reunification and immigration quotas. The adopted provisions still significantly reduce the right to asylum and expand the use of administrative detention facilities. The law states the intent to "fight against irregular immigration" through the construction of 1.200 additional administrative detention facilities (Ministère de l'intérieur et des outre-mer 2024). It is important to recall that the main nationalities of "irregular immigrants" in France are from internationally recognized unsafe countries due war, generalized violence or authoritarian regimes and persecution (Krisper 2023), therefore the French strategy is to

place in administrative detention persons, including minors and families, that are escaping from humanitarian crisis and countries where their lives are threatened and that, therefore, are eligible for international protection.

French Law foresees border procedures as separate from the asylum procedure. The border procedures take place in waiting zones, which are classified as places of deprivation of liberty. These procedures assess the right of the person to access French territory to then claim asylum and they take place on accesses through land or sea. When irregular arrivals are in airports a “fiction of non-entry” applies (Forum réfugiés 2022, 64). Access to the territory is not granted when, under the Dublin Regulation, France is not responsible for examining the asylum claim, or when the claim is inadmissible or manifestly unfounded. In the scope of the application of the Dublin Regulation, French law establishes that people may be detained during the procedure of determination of the member state responsible (Forum réfugiés 2022, 121).

The asylum procedure allows the application to be made in France, at the borders or in administrative detention centers. There is a centralized authority, the Initial Reception Establishment for Asylum Seekers, with which an asylum claim must be registered. In accelerated procedures there is a shorter timeline for the case evaluation, the right to stay in the country ceases after a first instance decision and there are less procedural guarantees in an appeal. The appeal has a suspensive effect on the process for all those under a regular procedure and for those subjected to accelerated procedures who are not: nationals of a “safe country”, threaten public order or consist on a subsequent application (Forum réfugiés 2022, 72).

Prioritized examination is predicted by French Law for vulnerable applicants, who are persons with attested special needs in terms of reception conditions or procedure, but there is no information available for the use of such procedure over the past years. Vulnerable applicants may also be exempted from accelerated procedure and not be held in detention during border procedures. A persistent issue in the French system regards the interview for the assessment of vulnerability, often not conducted

properly. In most cases, the interview is short, not in depth, lacks an interpreter and a sensitive approach (Forum réfugiés 2022, 77-81).

When it comes to establishing the age of an applicant the A25 of the Asylum Procedures Directive allows the benefit of the doubt when the assessment is not conclusive. In practice this does not happen, therefore these applicants are not placed in specialized reception centers that provide protection for minors. Multiple NGOs reported police treating minors as adults during evictions, mostly unaccompanied ones. Inadequate age assessment and refusal of authorities to consider minors as such, as well as lack of due diligence when assessing the age, significantly impacts their access to fundamental rights and services. Unaccompanied minors are also exempt from being subjected to accelerated procedures on certain grounds such as when they have been caught using false travel documents or when they present incoherent or contradictory statements (Forum réfugiés 2022, 79-82).

Particular concerns emerge in regards to the detention of children, object of sentences of the ECtHR. Unaccompanied minors can not be held in administrative detention, but minors with family can be held for up to 90 days, which implies lack of access to education (Forum réfugiés 2022, 127). Unaccompanied children can be kept in a waiting zone during border procedure when they originate from a “safe country”; when they introduce an inadmissible subsequent application; when their claim is based on false identity documents; and when they constitute a threat to public order and security (Forum réfugiés 2022, 82).

A national reception system is established by law and all asylum seekers should have access to it except when the applicant refuses to go to the region or refuses the accommodation; when it is a subsequent application; or when the asylum claim is registered after 90 days of entering France (Forum réfugiés 2022, 96). Non-compliance with residing in the assigned region leads to the termination of the right to reception. The choice left for asylum seekers is between having their freedom of movement restricted (to the assigned region) or moving regions and facing homelessness and informality. Regions are assigned regardless of family or community ties in other parts

of the country. The assigning of a region is an informal process therefore it is not possible to appeal (Forum réfugiés 2022, 101).

Forum réfugiés (2022) reports that the competent authority, the French Office for Immigration and Integration (OFII), as a matter of fact, refuses access to the reception system whenever it is possible to do so. Asylum seekers without access to reception centers are housed in emergency facilities, unofficial sheltering or, since they also lack available places, face homelessness and live in informal settlements or squats. They are rendered more vulnerable by being precluded from the access of other essential services such as legal assistance, information on health and rights, and education for children. All these services are mostly accessible only through government reception facilities.

4.3 External relations

4.3.1 Safe countries list

France adopted the concept of safe country of origin by law in 2003. The definition of “safe country” was provided in reference to the Asylum Procedures Directive and to the criteria established at the European level, regarding democracy, overall safety and access to rights. It was updated in 2018 inserting that a country is considered safe when it “ensures respect for the principles of freedom, democracy, rule of law, human rights and fundamental freedoms for men and women, regardless of their sexual orientation” (Forum Réfugiés 2024).

Nationals from “safe countries” are assigned to accelerated procedures. They are entitled to the normal procedure only under exceptional circumstances, when a particular and personal vulnerability is asserted. The Management Board of OFPRA reviews and amends the list taking into consideration developments in the country's situations. This Board has a UNHCR representative in the meetings. NGOs report a lack of transparency in the process of decision of the countries which will be placed on the list, mainly because the sources of information to assert the country's situation are not public. The list was last updated at the end of 2022 and it consists of: Albania, Armenia, Bosnia and Herzegovina, Cape Verde, Georgia, India, Kosovo, North Macedonia,

Mauritius, Moldova, Mongolia, Montenegro and Serbia. Amongst the main nationalities of asylum claims in France there are Georgians and Albanians, which are on the safe countries list (Forum Réfugiés 2024). Since the institution of the list in 2005, a few countries have been removed by decision of the Management Board or by the Council of State, after being challenged by third parties. In 2021, the Council of State removed three countries from the list, Benin, Senegal and Ghana (Forum Réfugiés 2024).

4.3.2 Bilateral agreements

Since years before Brexit a trend of securitization and militarization of the borders consolidated through agreements between France and the UK. In 2014 both governments invested in security and technology around French Ports and the Eurotunnel to prevent migrants from irregularly crossing to the UK. The measures included “more perimeter fencing and lighting, additional CCTV, more guards and dogs, more frequent patrols, scanners, infra-red motion detection and vehicle screening cameras” (The migration observatory 2023). Around the port area of Calais a double fence was erected in 2015 with barbed wire, a “curved access ramp to prevent people from hanging on to it” and an infrared detection space between the two fences (Galisson 2020).

The Eurotunnel area has also seen progressive securitization and it was reinforced in 2015 with the “installation of 29 km of new barriers, 570 static and mobile cameras, over 300 security patrols and a €3 million new security control center”, furthermore “100 hectares were razed to facilitate surveillance and the area was deliberately flooded to create natural obstacles” preventing access to the fences. In 2018 the UK provided an additional budget of €50 million to the area of Calais for reinforcing the fences, CCTV, detection technologies and a joint information and coordination center for the police (Galisson 2020). These fortification measures led to a change in the route, from the Eurotunnel to the sea.

In response to increased securitization, the Channel area has seen the professionalization of smuggling operations (The Migration Observatory 2023). Anti-immigration policies with the focus on deterrence and on increasing security and

control at the border have contributed to this professionalization. Smuggling networks have been able to make more profit at the borders since people have no access to safe and legal routes. Individuals have to pay between €3.000 and €6.000 to attempt to cross the Channel and a single crossing generates between €70.000 and €80.000 for the smugglers (Krisper 2023). Due to increased securitization, migrants are left with no possibility other than recurring to smuggling networks, even when it implies contracting debt, choosing which family members to send and risking their lives.

4.3.3 EU Courts' sentences

With the proposal of the Darmanin Law concerns were raised regarding the compatibility of the new dispositions with EU law, mainly in regards to family reunification. In the version of the law that was proclaimed these provisions were set aside, following a sentence of the French Constitutional Council. It became evident, however, that there is political willingness to regress the standards of protection, in spite of international and European Law (International Refugee Assistance Project Europe 2024).

In 2022 France received the 9th condemnation by the ECtHR for violating A3 of its convention “prohibition of inhuman and degrading treatment”, in regards to detention of children seeking asylum. The grounds for these cases concerned the length of detention; the age of the children; and the unsuitability of place of detention for children (Forum réfugiés 2022, 17).

In 2020, the violation of A3 was attested in a case (N.H and Others v France) concerning homelessness of asylum applicants. The case concerns five applicants that were not granted access to the reception facilities and other material and financial support that they were entitled to. They were left in a situation of extreme precarity and therefore “forced into homelessness without access to sanitary facilities or other material support” (ECRE 2020). A year before, in a case (Khan v France) concerning an unaccompanied minor in the Calais refugee camp the Court found that the authorities failed to provide adequate care for the minor. As a consequence the minor was subjected to conditions that classify as “inhuman and degrading treatment” (Forum réfugiés 2022,

116). The pattern seems to indicate a lack of political willingness to address the systematic gaps that led to violations of A3, mostly due to violent inaction of the authorities on providing access to rights established by law.

4.4 The critical institutional abandonment of migrants in Northern France

4.4.1 The UK as the main sponsor of French pullbacks at sea

The French coastal area that borders the Channel is highly militarized and the UK continues to assign a significant budget to increase the securitization of the area. Through the funding from the UK, French authorities patrol the beaches every night using a wide variety of equipment such as binoculars, drones, motorbikes and other vehicles. “Patrolling the shores” also includes destroying boats and dinghies which would be used for migrants to cross the Channel at night. It is reported that authorities further increase the risks for migrants by “breaking outboard motors, cutting into the sides of inflatable boats and destroying life jackets or materials used as life jackets” (Collective Aid 2023).

Deaths in the Channel are consequences of these bilateral agreements despite the media’s attempts to portray deaths and disappearances as fatalities. Migrant deaths in Calais are preventable and are a consequence of deterrence policies and invisibilization of migrants, which have only strengthened smuggling networks. An increased level of securitization of a border makes the crossing more inaccessible and risky, therefore creates the need to recur to a professionalized third party, the smuggler (Galisson 2020). The lack of safe legal routes and the focus on security aspects in migration governance redirects migrants towards more perilous routes and worsens their situation by making the figure of the smuggler the last point of contact and hope for migrants (Krisper 2023).

The immigration deal between France and the UK after Brexit has led to an increase in police violence towards migrants attempting to cross the Channel. The UK provided a significant budget to support France in preventing departures and carrying out pullbacks, including through the use of force and at sea. Human rights NGOs on the field in Northern France report the normalization of pullbacks to France, referred to as

“interceptions”. Recent footage of pullbacks in the English Channel from October 2023 show the French *Maritime Gendarmerie* employing aggressive tactics that pose significant risk to migrants safety. Tactics that other than dangerous seem to be illegal, such as “circling a small boat at great speed, creating waves that would flood it, and puncturing boats that are at sea, forcing people to swim back to the shore” (Border Violence Monitoring Network 2024).

Deaths in the Channel have seen a rise. In the first three months of 2024 the number of people who lost their lives crossing the Channel nearly reached the total number of deaths in 2023. The increase in deaths is caused by these dangerous deterrence tactics and also due to the increase in the number of people per dinghy. Estimates are that the average number of people in each dinghy has tripled between 2020 and 2023. Initially the average was 13 migrants, currently it is 49 (BVMN 2024).

Despite the deadly consequences of the policies in place not much has been done to address the situation. The death of an “irregular migrant” is a death “to which nobody feels any obligation to respond or bear feelings of responsibility or justice towards” (Mbembe 2019, 38). The violence of the policies progressively increases in association with a discourse that dehumanizes the victims and portrays deaths as fatalities. Through this progressive dehumanization the population of a “democratic” country that takes pride in its “liberty, equality, fraternity” motto is desensitized and bears no “feelings of responsibility or justice towards” these “small massacres inflicted one day at a time” (Mbembe 2019, 38).

Studies on the political discourse on migration in France have identified different tendencies between Le Penn’s far-right party, *Rassemblement National (RN)*, and Macron’s party placed in the center of the political spectrum, *République en Marche (LREM)*. In line with the European trend of progressive use of anti-immigration rhetoric on far-right populist speeches, RN has seen a rise in popularity recurring to a constant opposition between an “Us” and “Them”, which corresponds to the phenomenon of othering (Meddaugh and Kay 2009 quoted on Jamet and Lafiandra 2023, 100), which assigns to this Other the culpability for national problems. Populism, considered as an

“ideology that considers society to be separated in two homogenous and antagonistic groups” (Mudde 2018 quoted on Jamet and Lafiandra 2023, 87), places the French “pure people” *versus* a foreign enemy. The widespread use of terminology such as “terrorism”, “immigration”, and “insecurity” combined has been found more often in Le Penn’s discourse than in Macron’s. The theme “immigration” is systematically associated with a negative phenomenon, as a problem for racism, security and public balance. The repetition of the association of immigration with negative consequences in discourse fixates this idea in the electorate’s opinion (Jamet and Lafiandra 2023, 89-96).

This type of discourse is shown to lead to the lack of sense of responsibility and accountability when migrant’s rights are violated, as they are considered “Others” and not a part of the political body deserving of protection. The ones “pertaining to the foreigner, members of a surplus population” are those to whose “putting to death” is acceptable (Mbembe 2019, 42-71). This condition of “acceptability” of the death or marginalization of some is created through a progressive dehumanization of the victims, through racist and segregationist speeches.

4.4.2 Access to rights in the territory

Regarding access to reception conditions, in 2022 out of the total asylum seekers eligible for reception facilities, only 60% benefited from it, including accommodation and allowance (Forum réfugiés 2022, 17). In the area of Calais, where the migrant population is of around 4.000 people, there are only 160 places in accommodation and 274 additional places in emergency accommodations (Krisper 2023), that open only at night in extreme weather conditions. Housing is insufficient to accommodate the population in need, including particularly vulnerable subjects, such as women, children and unaccompanied minors.

The dichotomic tendency in Europe is to oscillate between managing migration as a crisis or as a crime - either way as an exception. This translates into heavier investments in two types of facilities, emergency facilities and detention facilities. Meanwhile, long-term adequate reception facilities that could promote integration with cultural mediators, legal assistance, healthcare and education, are put aside in the public

budget. While in France the main form of accommodation should be the Accommodation Centers for Asylum Seekers (CADA), investments over the past years have focused more on expanding the capacities of the Emergency Accommodation for Asylum Seekers (HUDA). As reported by Forum Réfugiés (2022, 108) “emergency accommodation in France no longer serves the purpose of temporarily covering shortages in the normal reception system”, it has instead become the default form of accommodation.

An inter-ministerial instruction in 2019 disposed that emergency accommodation centers for homeless persons, which are not exclusive for migrants, now are obligated to communicate the list of people accommodated there to migration authorities (Forum réfugiés 2022, 109). This leads to further precarity of migrants since they can no longer access these facilities due to the fear of being caught by the authorities, detained and deported.

Other than investing in emergency facilities the use of detention facilities has also grown. Administrative detention facilities lack basic needs, such as heating and pillows. Numerous hunger strikes were already reported in these facilities and the most critical issue remains the limited access to healthcare (Krisper 2023). Other than critical conditions regarding physical health, displaced persons often present psychological conditions connected with past trauma. These preconditions associated with detention, especially for long periods of time, have a “disastrous effect on people’s mental health” (IRC 2023). NGOs have raised concerns about the increasing number of self-harm, hunger-strikes, suicide attempts and suicides in detention centers (Forum réfugiés 2022, 128).

4.4.3 Informality and extreme marginalization

Most of the migrants irregularly present in Northern France are blocked in a state of informality and their limbo situation is partly attributed to dysfunctionalities of the Dublin Regulation, lack of information about asylum seekers rights and the extended length of the procedures. The procedural dysfunctions on the European Regulation leave

migrants in inhuman living conditions and without access to fundamental rights (Krisper 2023).

Northern France is an area of particular concern since many migrants find themselves in informal settlements when waiting to cross to the UK. The living conditions in these settlements reflect a lack of protection of migrants' basic rights (Krisper 2023). Informal settlements became an integral part of migrants' experience in Europe, as well as “a focal point for host states' surveillance and regulatory practices” (Obradovic-Wochnik 2018). They are an expression of the violent state abandonment of migrants.

In the winter of 2023, nearly 2.000 migrants were reported sleeping outside without shelter, tents, sleeping bags or blankets. Heavy rainfalls reported in the end of 2023 left people living in flooded areas with all their belongings destroyed by the rain. Limited emergency shelter was provided and many people were left outside in storms facing serious risks (Collective Aid 2023). Other than lack of shelter, access to water, sanitation and electricity are also absent.

Despite a court ruling stating the need to guarantee access to water to migrants the access remains critical. The recommended minimum of water per person per day, according to the World Health Organization (WHO), is 150 liters, but in Calais the average is below five liters per person per day. The few liters that people have access to are provided by NGOs not associated with the government. The single water fountain available is a one-hour walk from the biggest informal camp (Krisper 2023). The lack of access to the right to water has health implications that include dehydration and other diseases linked to the lack of clean water for cooking and for hygiene. Cases of skin infections; painful rashes; urinary pathologies - especially amongst women and girls - are common. The third cause of death of migrants in Northern France is ill health and lack of access to healthcare, which includes lack of access to sanitation facilities and water (Collective Aid 2023). There were also reports of fatal accidents with people trying to wash themselves in the canal. Access to food is also critical and most of the food distribution is provided by NGOs not associated with the government. Food

distribution points are often overcrowded, leading to tensions and risks, particularly for women and minors.

Access to healthcare is provided by hospitals and NGO clinics but is not sufficient and often people are not informed of the existence of these services or they are inaccessible. The lack of effective access is a consequence of a “policy of negligence and harassment” (Krisper 2023). It is also a consequence of the deliberate marginalization and spatial violence since the informal camps in which people are forced to inhabit are far from essential services and inaccessible through public transport.

Informality and lack of access to basic needs puts women and minors in particularly vulnerable situations, more exposed to violence. The distant and unsafe access to needs such as toilets and water affects women and minors disproportionately, particularly in regards to sexual violence. The exchange of sexual acts for shower, bed or crossing is often reported amongst these categories.

What is depriving certain groups of people of basic needs such as water, food and shelter if not a form of necropolitical power? What is this form of non-governance of vulnerable populations that submits women and children to conditions in which sexual favors are asked in order to access needs as basic as a shelter? What explains one of the wealthiest countries in the world reporting cases of people dying by drowning when trying to shower in improper places due to lack of access to water? Or women and girls with urinary infections and other period-related pathologies for the lack of access to toilets, sanitation and sanitary pads?

Bipower and its contributions on control and surveillance as useful as they are for understanding the securitization of EU borders are sometimes “insufficient to account for contemporary forms of the subjugation of life to the power of death (...) in which vast populations are subjected to living conditions that confers upon them the status of the living dead” (Mbembe 2019, 92). Migrants considered irregular are governed through necropolitical policies that deliberately deprive them of the necessary means to live. As previously stated, even when these policies do not lead to death they

deprive people of meaning, dignity, sense of safety and possibility to plan for the future, conferring upon them “the status of the living dead”.

The French State not only does not provide basic services and does not guarantee the respect of human rights but also attempts to block the work of NGOs providing aid. The level of state intervention in the work of NGOs usually differentiates between state mandated NGOs, who benefit from public funds and from a good relationship with state authorities, and non-mandated NGOs, who depend on private funds, report more tensions with the authorities and whose work is deliberately restricted by the state (Krisper 2023).

Limiting the work of associations is a part of the strategy of invisibilization of the situation at the borders and of isolation of migrants. In Calais the authorities blocked or limited the authorized distribution of essential items such as water and food. Amongst other tactics for limiting the work of associations, authorities resorted to placing concrete rocks on the only access to the living sites, through which NGO vans would necessarily pass in order to provide water and food. These limitations were considered illegal by the French Administrative Court, however other tactics are still applied (Forum réfugiés 2022, 106).

Authorities also block the efficiency of the NGO’s work by weekly damaging and destroying the materials that they provide. NGOs that distribute tents and sleeping bags are incapable of supplying enough for the demand when during the weekly evictions they are destroyed or seized. A testimony stated that in “a few weeks the police destroyed four tents” and that it is a waste to continue asking NGOs for tents (Collective Aid 2023).

Intimidation and identity checks are also tactics frequently applied by the authorities, directed towards migrants and NGOs staff and volunteers, mostly the ones that work in the scope of documenting evictions and police violence (BVMN 2024). Who is submitted to intimidation and identity checks? How do police forces choose who must be checked and identify who is an irregular migrant? There is no answer to explain the selection of identity checks for the sole reason of being present in a city square or a

train station other than racism. On this regard I circle back to the previously mentioned notion of “bodies that are assumed to have broken into certain spaces (...) where they never should have been (...) places that they now pollute for their presence alone” (Mbembe 2019, 101) and question which are the bodies are assumed to have illegally broken into France and Europe? Non-white bodies. Which are the bodies that, without having committed any crime or done nothing particular to call for the attention of the authorities, will be questioned for their “presence alone” in a public space? Once again, non-white bodies.

As Mbembe stated, nanoracism has become obligatory in the juridicobureaucratic and institutional state apparatus. The ones that do not belong as considered non-Europeans, since Europe’s identity is historically linked to whiteness, are quickly identified through racial profiling. They are at constant risk of being asked “by someone, by an institution, a voice, or a public or private authority that asks to justify who they are, why they are here, where they have come from, where they are going, why they do not go back to where they came from”. Constantly questioned by the authorities that deliberately seek occasion to irritate, upset and insult them, to get them to lose their calm precisely so as to have a pretext to violate them and to undermine what is most intimate and vulnerable (Mbembe 2019, 59).

4.4.4 Evictions and the hostile environment policy

Human rights NGOs on the field have reported the normalization of police harassment, violence and evictions in the informal settlements. The “zero point of fixation” policy consists of frequent evictions of the migrant living sites to disperse people and confiscate belongings with the scope of depriving them of the necessary conditions to live. This policy is a part of broader hostile policies that intentionally turn the urban environment into “inhospitable and unsurvivable” (Obradovic-Wochnik 2018) for groups deemed “undesirable” such as migrants.

Human Rights Observers and Collective Aid (2023) reported that in 2022 more than 1.680 evictions were carried out on informal settlements, making an average of 140 evictions per month. The numbers continue high until the present year, in March 2024 a

total of 71 evictions were carried out in ten different informal settlements in Calais. The authorities carrying out the evictions are heavily armed, equipped with rubber bullets, automatic weapons and tear gas (BVMN 2024). Different forms of violence committed by the authorities carrying out the eviction were reported. In 2022 there were 32 cases of physical or verbal aggression, 221 arrests, and multiple cases of seizing or destroying personal belongings. In that same year, more than 3.500 tents were seized, 900 blankets and 300 rucksacks (Collective Aid 2023). Other items such as shoes, mobile phones, documents, backpacks, clothes, toys and religious artifacts are also taken or destroyed by the authorities when carrying out evictions (Krisper 2023).

Human rights NGOs on the field also collect testimonies trying to counter the invisibilization of the violence suffered by migrants in Northern France. Minors have reported police brutality, beatings, the use of pepper spray, tear gas, smoke bombs, spitting and robbery of personal belongings by the authorities. Other testimonies have reported suffering the same type of violence and comparing the French to police to mafia. They have reported feeling that the police “can do whatever they want to you” and that “no one will find out and nobody will care” (Collective Aid 2023).

These tactics are applied with the aim to place “the greatest number of those (...) undesirable in intolerable conditions, to surround them daily, to inflict upon them, repeatedly, an incalculable number of racist jabs and injuries, to strip them of all their acquired rights (...) and dishonor them until they are left with no choice but to self-deport” (Mbembe 2019, 58), except that in the context of Northern France migrants are trapped. They have no choice to self deport, nor can they be deported by France since there are no legal grounds and they often come from unsafe countries to which *refoulement* is illegal. They are not regularly present in France, but they can not regularly go to any other country either. There is no scope of police harassment other than “pure violence” which is “back on the agenda” and being willfully embraced in the face of a rising impossibility of accountability in the democratic crisis that the world is facing (Mbembe 2019, 109).

4.4.5 Systematic violations of Children's rights

Migrant children are deprived of numerous rights in a phase that is crucial for their social development due to the systematic denial of access to education. Children, under French law, are entitled to protection regardless of their nationality or legal status, under the notion of “child at risk” (Forum réfugiés 2022, 115). Migrant children who are not French or are present in France irregularly are, however, often deprived of their rights established by the CRC. As previously mentioned France has been sentenced by violating children's rights in regards to detention and homelessness while still claiming to be a state in which human rights are respected. This is “a state that discriminates and performs segregation in broad daylight while swearing the neutrality of the secular republican state”. A state “indifferent to difference” (Mbembe 2019, 59) that does not recognize or take action to address the gap of access to rights between French children and migrant children.

The systematic lack of reception facilities puts children at higher risk, mostly unaccompanied minors, who are stigmatized by the authorities and treated as adults despite their identity documents - when they have them - stating that they are minors. Minors in informal living and homelessness are in extreme vulnerability. Other than the lack of adequate material conditions minors are also submitted to an adult environment and are in a condition of promiscuity with adults. They lack access to systems of protection and guardianship and the conditions in informal camps harm their physical and psychological health (Krisper 2023).

More specifically in regards to Northern France, which has seen an increase in the presence of children - with families or unaccompanied - the conditions are critical. Children and families rely entirely on NGOs to provide them basic material needs such as clothes, shoes and shelter. There are reports of children hungry; barefoot for days after police evictions took their shoes; leaving play sessions to get a tent, firewood or food for their parents; and lacking sleep due to freezing temperatures and early morning evictions. During winter, in sub-zero temperatures and heavy snow on the field, organizations face difficulties providing services. Many children do not come to play

sessions because of the cold and the ones that do “are visibly shaking and rubbing their hands together to try to keep warm” (Project Play France 2021). They face severe risks of hypothermia and other life threatening diseases due to the lack of shelter.

Children’s right to education is also particularly critical. Despite France being a signatory of the CRC and the right to education being recognized as a universal human right, children who are irregularly present in France have no access to formal education. Education and play have key roles in the psychosocial development of children, they help cope with trauma and develop resilience and adaptation strategies (Project Play France 2021).

The frequent evictions and police harassment leave children with a perception of fear and mistrust towards the authorities. The authorities carry out operations in complete disregard for the principle of best interest of the child and add to the pre-existent child trauma and feeling of instability. Children often question humanitarian workers and volunteers in regards to why the police do that to them and ask them for the police to stop scaring them; they are also often afraid to leave their tents unattended to come to play sessions because they fear it will be taken by the police. During evictions there are never child protection services - as legally there should be - to ensure adequate safeguarding. The lack of child protection services increases risks of exploitation and of being lured into criminal networks (Project Play France 2021).

Chapter V – Analysis of the policies and trends through a postcolonial framework

5.1 The European border regime

Wherever we look in Europe, we observe a tendency towards “contraction, containment, and enclosure” not only in the form of “walls and fortifications, gates and enclaves, or various practices of partitioning space, of offshoring and fencing off wealth” but also in “a matrix of rules mostly designed for those human bodies deemed either in excess, unwanted, illegal, dispensable, or superfluous” (Mbembe 2019, 96). The 2015 unprecedented influx of migrants in Europe reinforced a trend that had been shaping up in the years before, the “rise of the anti immigration right as a political force” as well as “increased political pressures (...) to reform migration policy and limit asylum and labor migration” (Costache 2020). The latest reforms on the EU asylum and migration system, such as the New Pact in 2024, move towards a common policy that negatively impacts protection regimes and restricts access to the territory, to asylum and to stable residence permits. The punitive securitarian aspect of the border has established itself as a form of the policy makers to content segments of the society concerned about the dilution of cultural and racial homogeneity.

“Fortress Europe” has progressively consolidated itself as a response to these social and political pressures. A process of borderization has expanded the effects of the borders beyond its physical presence in a way that “borders may be found anywhere” (Guild 2003 quoted in Talbayev 2023), as even the sea has been transformed into an “impenetrable wall”. The statement “borders are no longer at the border” indicates not the disappearance of borders but rather their broad dissemination. This “disgregation of the borders” can be partly attributed to globalization that makes them “inescapable, fractured and unstable” (Talbayev 2023). Hyperglobalization has, everywhere, resulted in the deepening of social cleavages (Mbembe 2019, 112) and the desire of further enclaving communities.

The trends in Europe are not isolated, but observed around the world along with an increasing desire to distinguish between the “Us” and “Others”, and to keep those Others away. Not by fault “we have seen ‘Build the Wall’ get a US president elected”

(Costache 2020) and a rise in popularity of this kind of proposal also in Europe. The world has witnessed a “technological transformation of borders”. Modern fluid borders are “a Foucauldian application of power, ever-present, a Panoptikon constructed in terms of benevolence and menace” and the use of biopolitical technologies has a big role in that change. Borders are “no longer a demarcation line but a fluid framework for enforcement that can manifest itself at any point within or outside the territory of a nation state”, they are “still physically present yet its effects are everywhere” (Costache 2020).

The EU's borders have become an over-monitored space that relies heavily on scientific-military advances and IT surveillance (Costache 2020). Both “physical and virtual barriers of separation” have been introduced through the “digitalization of database, filing systems, the development of new tracking devices, sensors, drones, satellites and sentinel robots, infrared detectors and various other cameras, biometric controls, and new microchips containing personal details”. This new type of border is “mobile, portable, and omnipresent” (Mbembe 2019, 101), as migrants fingerprints are in an Europe-wide database any police officer in Europe is turned into a border agent (Costache 2020). The constant surveillance of migrants is rendered possible by the normalization of a state of emergency and exception, and it is portrayed as the only alternative for the dream of perfect security (Mbembe 2019, 101).

In light of this constant surveillance of migrants, concerns regarding data protection and privacy have been raised. The Border Violence Monitoring Network (BVMN) has reported, between 2019 to 2021, an abuse of power by the authorities and violations of the General Data Protection Regulation (GDPR). Frontex officers have been caught numerous times photographing migrants with their personal mobile phones during operations. The identification of migrants irregularly present at the territory must follow the legal framework. Biometric identification is predicted by EU law, but only within the official identification procedure, in respect to the GDPR and not with private phones for private purposes (BVMN 2024). As Costache (2020) previously warned “there is no mistaking the restrictive potential of biosecurity to the scope of human

liberty” and there is “no mistaking the bio-securitarian impact on the rights and the bodies of refugees, asylum seekers and migrants, legal or otherwise”.

Changes in the border regime are a part of “the slow politicized dismantling of the Geneva convention” and a result of the “continued drive for the illegalization of migrants” and of a deepening “divide between the European self and the Immigrant other” (Costache 2020). The securitization logic expands beyond the borders and has turned much of the EU’s territory into a hostile environment (Talbayev 2023). This logic that aims at perfect security “requires not only complete systematic surveillance but also a policy of cleansing” (Mbembe 2019, 101). Through capitalizing on “systemic restrictions to mobility that were implemented during the colonial era” Europe has developed a migration system based on “increased surveillance, the interception of rescue operations at sea and the outsourcing of border enforcement to non-European states” (Talbayev 2023).

Other than the processes of borderization and securitization in all EU’s external borders, two other processes are also observed: privatization and externalization, as an overall delegation of responsibility and outsourcing of enforcement of the border regime and of its violence to the private sector and third countries. The privatization of migration governance refers to the progressive attribution of the management of facilities, mainly detention centers, to “industries (...) from the private prison complex” (Costache 2020) - which impacts the majority of migrants in countries where detention established itself as the main form of “accommodation”.

Access to the EU is not guarded only at the external borders “in Ceuta, Melilla, Fuerteventura or Lampedusa but outside” through externalization of the borders they are guarded in Europe’s periphery, in the African continent and Middle East. The externalization of border enforcement and migration controls takes place through agreements with third countries, such as the previously cited ones between the EU and Tunisia, Balkan countries and Turkey; Italy and Albania; Hungary and Serbia; France and the UK and many others. This outsourcing of the borders “blurs not only the

physical border, but also the standards” (Costache 2020) delegating the management of the migration “problem” to third countries with far less resources and safeguards.

There is a clear contradiction in the EU system between increasingly blurred internal borders for EU free movers, and increasingly militarized external borders for Global South migrants. As stated by Costache (2020) while the Schengen area “makes inter-state boundaries disappear for EU ‘free movers’, asylum seekers are very much restricted by the perpetual border”. Despite free movement having “been at the core of the European integration project from the early days” the benefits from this “unrestricted transnational migration” apply only to certain populations. On one hand European integration has “blurred considerably the distinction between international and internal migration” (Castro-Martin and Cortina 2015), on the other hand the EU has invested unprecedented sums over the past few years in deterring international migration from “unwanted” populations.

Aspects of the border-state affect people differently according to their legal status, which is mostly based on the country of provenance. Migrants from the Global South’s access to EU territory is perpetually conditioned by where they were born, where they transited to arrive in Europe and by the first country of arrival. People from “safe countries” and who have transited through “safe countries” will mostly be subjected to accelerated procedures and will have lower chances of being granted the right to stay in EU territory. They will also have lower safeguards during the entire process. The Dublin Regulation restricts people’s chances of being granted asylum to the assessment of the first country of arrival, which are mostly overflowed by asylum claims and facing a rise of anti-immigration sentiments, as well as tensions between migrants and residents of the hotspot areas.

The border regime protects Europeans “often empowered by the perpetual border and pan-European policies” while “migrants are singled out and location bound” (Costache 2020). The increased freedom of movement for EU citizens between EU’s internal borders that does not apply for migrants - including legally recognized refugees - creates different normative frameworks and different classes of citizens residing in the

same territory. The differential logic between EU citizens and those Others from developing countries goes beyond the differential procedures that take place at the external borders, it persists in the territory separating “between the haves, the selves, the voters, the free mover, the citizens and the have-nots, the others, the laborers, the bound, the ‘illegals’” (Costache 2020).

5.2 An “Europe of camps” has returned

5.2.1 The camp-form

An “Europe of camps” has returned. Camps have spread in the border and entry points, such as in Samos, Chios, Lesbos, Idomeni, Lampedusa, Vintimille and Sicily (Mbembe 2019, 102) but also in transit countries and in the heart of Europe in final destination countries. The camp form has returned to the European geographical and political landscape and it has become a structural feature of migration policy. Though ever present they are largely invisible, hidden in plain sight. Heterogeneous forms such as

“refugee camps, camps for the displaced, migrant camps, (...) waiting areas for people pending status, transit zones, administrative detention centers, identification or expulsion centers, border crossings, temporary welcome centers, ones for asylum seekers, refugee towns, migrant integration towns, ghettos, jungles, hostels, migrant homes” (Mbembe 2019, 60)

can be summed up as: camps for undesired foreigners. All with the same scope: geographical concentration of migrants for purposes of surveillance, control and segregation.

The camp-form is a form of expression of the relation between humanitarianism and biopolitics. It has a dichotomous aspect, it is “both, a site of humanitarian assistance and as a space that controls, monitors and supervisions” (Malkki 1992; Pandolfi 2003 quoted on Gouvias, Petropoulou, and Tsavdaroglou 2019, 104). Although sometimes providing essential services, the camp also serves the purposes of surveillance, regulation, control and containment of migrant bodies who are transgressing not only

the physical borders of the nation-state but also its ideological border of sovereignty. It controls migrants not only by confining them to that space but also by limiting access and excluding others from the outside from entering (Delaney 2005 quoted on Gouvias, Petropoulou, and Tsavdaroglou 2019, 105). In the camps migrants are subjected to regulatory practices which limit mobility and restrict contact with society, aid providers and smugglers (Obradovic-Wochnik 2018).

Migrants are pushed, directly and indirectly, towards camps. Camps are the only geographically designated area in which migrants are allowed to exist in a “bare life” condition (Agamben 1998 quoted on Mbembe 2019, 67). Many actors at multiple levels engage in “practices restricting the use of public space, such as evictions, putting up fences, and demolitions of informal settlements” to push migrants towards camps (Obradovic-Wochnik 2018). Conditioning the access to social services to registration and residence in camps is another widely employed strategy. Local population and commerce also indirectly contribute by restricting access to shops and businesses. Even if migrants have the economic power to purchase they are often precluded from the possibility to do so by shop owners. This restricts access to many essential items, such as food and medication. As a result migrants are left only with the alternative to access these items and services - when available - in official camps or NGOs distributions.

These facilities “for which national governments of transit countries receive EU funding” differentiate migrants from other marginalized groups, such as the homeless, since “there are no comparable spaces designated for other urban ‘undesirables’, especially none which are funded by external/international actors” (Obradovic-Wochnik 2018). European funding aims at ensuring a long-term stay of migrants in transit countries in order to deter the flow from entering the EU.

Camps are a part of the borderization process. As much as the borders they are “non-spaces of disappropriation” in which lives are kept suspended. Even the migrants who manage to enter EU territory are “contained, enclosed in detention camps (...) kept in limbo, excluded from social time”. The camp is a liminal space where “the bodies of the undesirables (fugitive, errant, moved by the most primordial, intense push for survival) are reduced to their most dehumanized expression” (Talbayev 2023). They

operate on a carceral logic that combines “spatial violence, humanitarian strategies, and a peculiar biopolitics of punishment (...) in which people (...) are governed through abdication of any responsibility for their lives and welfare” (Mbembe 2019, 97).

Camps operate on the principle of exclusion rather than in the principle of integration. They are spaces in which migrant bodies are allowed to continue existing in a condition of “bare life” but not to live as individuals “in any meaningful way that lies at the heart of (...) humanity”. Migrants are demoted “from the realm of subjecthood to that of objecthood” (Talbayev 2023). Camps have “ceased to scandalize” and have become a structural part of the present but also of the future, seen as a long-term solution to keep away “undesired foreigners”. Enclosing what is unwanted and surplus has become “a form of government of the world” (Mbembe 2019, 60) and of migration.

5.2.2 Spatial violence and hostile urban policies

Biopolitics are not applied only in the camp area but in entire urban areas. Urban design and spatial relations are purposefully planned for biopolitical control of migrants. The combination of “implicit and explicit rules about who can use public spaces and when (...) have a direct impact on the emergence of informal camps and zones of exclusion” which are found across Europe (Obradovic-Wochnik 2018). The regulation of migrants’ presence in urban areas is a strategy to prevent integration, reduce their agency and invisibilize their suffering, concentrating them in camps and areas away from the public sight where they are often subjected to ill treatment by authorities and to undignified living conditions.

In many parts of Europe it was reported that hostile architecture - as an urban design strategy to restrict the use of public spaces for certain populations - and harassment by the authorities has been combined to turn the environment inhospitable for migrants. Security cameras are the most common *dispositif* used for biopolitical surveillance. Other strategies, which may go unnoticed by the majority of the population, strongly impact marginalized groups such as the homeless and the migrants. Forms of hostile architecture are: bumps and sharp spikes placed in places where people could take shelter; the placement of armrests on benches in public spaces and other

types of bench design that prevent people from being able to lay down and sleep; the construction of fences, grates, placement of rocks and other physical barriers that restrict access to sheltered places, to warmer places and even to parks; sprinklers and other forms of “cleaning” that leave park surfaces soaking in water preventing people from gathering there, sitting, laying down or sleeping; and the placement of flashing lights directed to where people would usually sleep.

There have also been reports of authorities purposefully shining torches and flashing lights to prevent people from sleeping and the use of street cleaning teams for hostile purposes. In Serbia, for example, the surfaces of public areas such as parks where migrants were reported sleeping are left soaked after “cleaning” (Castro-Martin and Cortina 2015). In France, after police evictions of informal living sites, cleaning teams are instructed to take people’s belongings under the pretext of cleaning and picking up litter or unattended abandoned items - since people are escorted out of the perimeter during the eviction and are not allowed to pick up their belongings.

The limitation of activities of NGOs providing aid is another common measure to prevent migrants from accessing essential services and to turn the environment inhospitable. The limitations are both direct and indirect. Direct forms refer to explicit bans on “the provision of aid in form of food, clothing, footwear, and supporting migrants to live outside of the transit reception centers” (Obradovic-Wochnik 2018). Indirect forms include measures that restrict migrants’ access to public spaces where aid providers would be - such as placing them in remote areas with no public transport - as well as measures that block NGOs from accessing living sites where migrants are - such as placing fences and rocks that prevent access with vehicles. These policies lead to further marginalization and precarity of migrants.

Hostile architecture and certain urban policies constitute a form of spatial violence. The execution of these policies is carried out by “a vast network of actors who do the work of the state”, often including anonymous private actors. Much of the urban policies that dictate exclusionary spatial relations are moved by economic interests. As clarified by Obradovic-Wochnik (2018) real estate development projects, investments,

and “land disputes (...) have a direct effect on their (migrants) movements across urban spaces”.

Questions that arise in regards to spatial relations have been posed by Paraskevopoulou (Gouvias, Petropoulou, and Tsavdaroglou 2019, 105): “what kind of understandings can be drawn from the spatiality and location of the camp itself; of the site of reception and accommodation in relation to the processes of integration?”. Can the spatiality of camps constitute a form of spatial violence? How does it connect with the process of integration or lack thereof?

Insights on the underlying reasoning of the camp policy can be drawn from the spatiality and location of the camps, reception sites and accommodation. The geographical location of camps is intrinsically linked with the processes of exclusion, social segregation and state control over migrant bodies. Even if these facilities are not closed access and theoretically allow for a relative freedom of movement they are often isolated and inaccessible (Talbayev 2023). The spatiality of camps reconstitutes the forms in which “‘undesirable’ people are conducted away from public spaces, and into the marginal, precarious sites that are (...) seen as ‘suitable’ for this population” (Bulley 2016; Mitchell 1997 quoted on Obradovic-Wochnik 2018). Urban policies are therefore an important part for the process of invisibilization, isolation and marginalization of migrants.

As reinstated by Castro-Martin and Cortina (2015) the spatial settlement of migrants in the host country is linked to integration. It can be drawn out that socio-spatial exclusion negatively impacts integration. Spatial segregation is known “to shape their (immigrants’) patterns of daily social interactions and thus may condition the pace of adaptation and integration in the host society”. Integration is a process that includes both, the individual with their cultural background, and the host society. It is a multidimensional process that involves economic, social, cultural and political inclusion (Gouvias, Petropoulou, and Tsavdaroglou 2019, 103-104). These dimensions are both objective - regarding the presence of effective policies of access to the labor market, social services, cultural activities and participation in politics; and subjective - regarding the individual’s perception of acceptance and belonging in the host society, as well as

the host society's perception of the individual as a part of the community (International Conference on the Reception and Integration of Resettled Refugees 2001). The five main areas of integration for inclusion policies to focus on are housing, employment, health, education and community life.

Amongst the barriers to the hosting society there are “insufficient language proficiency, difficulties to access local and social networks and housing, as well as spatial concentration in disadvantaged neighborhoods” (Castro-Martin and Cortina 2015). Community ties are shown to have a positive impact on integration as well as the possibility to live with family (IRC 2023), which evidences the importance of policies of family reunification and mobility within the national and European territory. This could be an insight as to why some migrants fail to comply with the assigned regions in France, for example, even if it implies the seizure of right to accommodation and social welfare.

5.3 The reductionist dichotomy of the discourse around migration: the humanitarian *versus* the securitarian paradigm

The most widely employed explanations of anti-immigration attitudes regard three factors - economy, security and culture. Immigrants are often seen as “a threat to the national status quo” (Blalock 1967; Blumer 1958 quoted on Schmidt-Catran and Czymara 2022). Exclusionary migration policies are supported by the population through the reinforcement of a discourse focused on struggles over the allocation of resources, which are not only economic but also cultural (Sniderman, Hagendoorn, and Prior 2004 quoted on Schmidt-Catran and Czymara 2022). Research indicates a predominance of cultural concerns as the main ones conditioning the support for anti-immigration measures (Card, Dustmann, and Preston 2012; Sides and Citrin 2007; Sniderman et al. 2004 quoted on Schmidt-Catran and Czymara 2022). It further indicates that discourse is the main conditioning factor in anti-immigration sentiments and support for exclusionary migration policies. Widespread anti-immigration discourse by political elites has shown to be more predictive in the presence of anti-immigration sentiments and support for exclusionary migration policies than the actual objective

conditions - such as net numbers of migrant arrivals; actual connection between terrorist attacks and migration; economic situation of the country; public budget destined to migration, and so on. The framing of migration in the discourse of political elites is, therefore, essential to understanding public sentiments towards migrants (Schmidt-Catran and Czymara 2022).

Migration is often treated as a “crisis” or as a “disaster”, as an exceptional event that requires extraordinary measures. This discourse is a widely employed strategy to facilitate the application of reform measures by economic technocrats, as Klein (2007) reinstated “the atmosphere of large-scale crisis” provides “the necessary pretext to overrule the expressed wishes of voters and to hand the country over to economic ‘technocrats’”, to support exceptional measures and the long-term installation of a state of exception. The widespread “use of statistics and probability by technocrats and policy makers” dehumanizes migrants and contributes to the support of this type of measures, “paving the way for a distinction between disposable and non-disposable lives” (Gouvias, Petropoulou, and Tsavdaroglou 2019, 61).

Discourse on migration is often reductionist and dichotomous, mostly oscillating between migration as a humanitarian or as a securitarian concern. The same tension between securitarian and humanitarian aspects also dictate the border regime and foreign policy (Costache 2020). National governments recur to one or another in the public speech, in function of the most favorable political outcome. The migrant is either a victim or a safety threat; powerless or culpable; a figure to be pitied or held accountable and feared (Gouvias, Petropoulou, and Tsavdaroglou 2019, 64). In whichever of the two poles the figure of the migrant is a useful homogenous dehistoricized subject in the political speech.

The victimized figure of the “drowning migrant” in the Mediterranean is precluded from the right to singularity as much as the figure of the migrant as a security threat. Migrants who drown in the Mediterranean or in the Channel; who commit suicide in CPRs; or die in camps, borders and other parts of the territory are “unknown, unnamed, and destined to remain anonymous, they slide more deeply into collective oblivion only to be resurrected as a part of a multitude of sacrificed figures (...)

politically mobilized as a uniform, undistinguishable mass”. They are continuously an “indeterminate category - an anonymized inhumanity” in discourse (Talbayev 2023).

The problematic here is not humanitarian principles or humanitarian action, but the discourse on the humanitarian paradigm that portrays the migrant as a passive victim, deprived of agency and individuality. Lives lost in the EU or on its externalized borders are often treated in terms of numbers, as “undifferentiated generality (...) empty, meaningless corporalities” (Mbembe 2019, 87). The humanitarian aspect of migration is also expressed through the notion of hospitality, which places the migrant as a “guest” of the country’s society, the “host”. This concept implies a moral debt position of the newcomer, and privileged position of the arrival state (Herzfeld 1992 quoted on Gouvias, Petropoulou, and Tsavdaroglou 2019, 104) and it is the predominant aspect of the narrative of asylum and migration.

The figure of the refugee, as a declination of the migrant - the “deserving of solidarity” kind of migrant - is still portrayed as a “guest”, not fully a participant of the social and political life of the “host country”. Asylum seekers and refugees - despite a stable legal permit - are still denied of being considered a fully political being, as it is a figure “produced as the receiver of humanitarian generosity, as having limited agency” (Rozakou 2012 quoted on Gouvias, Petropoulou, and Tsavdaroglou 2019, 104). While Europe’s migration system overall demotes migrants to “objecthood”, the asylum system and the status of refugee re-grants a condition of humanity - and of a human subject entitled to rights - with the seal of conditionality inherent in the regime of victimhood, that is at the core of the asylum-granting process (Fassin 2011 quoted on Talbayev 2023).

It is important to note that the distinction between the “economic migrant” and the “real refugee” is beneficial to neither of the categories and that they are both marked by instability and by a status lower than the one of European citizens. Shifting away from the humanitarian paradigm the refugee might be considered a bigger “threat” than the economic migrant. After all, what need does Europe have “of a new culturally distinct citizen that has escaped the horrors of war, famine or poverty when it can settle for a poor posted labor ‘alien’ with few rights?”. The “economic migrant” is at times

perceived as a threat that will steal European jobs, at times perceived as a “market-friendly benign alternative to the ‘dangerous refugee’ and his panoply of international-treaty given rights” (Costache 2020).

Migration treated as a security concern homogenizes the figure of the migrant as an *a priori* threat. The portraying of a wide and diverse range of migrants as a homogenous mass that threatens the state serves the “economy of hostility, of enmity” and the security state which “thrives on a state of insecurity”. Insecurity and fear are manipulated to gather consensus for exceptional measures that suspend the rights of certain populations. Power appeals constantly to the idea of exception, emergency and a well defined image of an imaginary enemy (Mbembe 2019, 54;70).

The framing of the migrant as a threat despite unfounded has shown to gather political consensus, “far right parties and platforms have thrived off the image of the dangerous jihadi in refugee clothing” and isolated mediatized events have “solidified the image of the asylum seeker as a ticking time bomb even as well integrated refugees become part (...) of receiving states economies” (Costache 2020). As reinstated through multiple researches “anti-immigration views have become a core element of the politicalright’s ideology” (Abou-Chadi et al. 2021; Gessler and Hunger 2021; de Vries, Hakhver-dian, and Lancee 2013 on Schmidt-Catran and Czymara 2022). Since 2015 Europe has reported a trend of rising anti-Islam and anti-immigration sentiments, often conflating these two categories, the Muslim and the immigrant. An even more dangerous and unfounded conflation is that of the Muslim and the immigrant with the terrorist. The lack of evidence to sustain the idea of the migrant as a security threat has not precluded politicians from manipulating the fear of terrorism to nurture anti-Islam and anti-immigration sentiments in order to gather political support.

Anti-Islam and anti-immigration political parties and movements have risen in their popularity in EU member states. *Fidesz* led by Orbán in Hungary, *Rassemblement National* led by Le Pen in France, Swiss People’s Party, Sweden Democrats, Finns Party, *Lega Nord* in Italy, Freedom Party of Austria and *Alternative für Deutschland* in Germany, are examples of parties with a significant rise in popularity after campaigning

on anti-migrants and anti-Muslim platforms. Hate crimes and discrimination are often underreported however the existent data indicates a widespread presence amongst European countries. Surveys conducted with the European population indicate broad support for measures that restrict immigration from Muslim majority countries and a great overestimation of the Muslim population growth in their countries (Altomonte 2021). Politicians instrumentalize the fear of “invasions of hordes from overpopulated lands - where each woman still gives birth to seven or eight children” that “returns to haunt people’s minds” and recycle racist prejudices in discourse (Mbembe 2019, 98).

Women were the most affected by anti-Islam discourses and especially by the conflation of the Muslim with the terrorist. Under the name of “counter-terrorism measures”, measures that manipulate questions of gender for racist ends (Mbembe 2019, 60) have been adopted in several countries, mainly banning certain vestments, such as *hijab* and *niqab*. These measures have subjected Muslim women to intersectional discrimination, on the basis of religion and gender. They have led to limitations of Muslim women’s presence in the public space, hence to social exclusion (Altomonte 2021).

Intersectional discrimination is found within the overall expectation that migrants, especially women, in order to be able to stay in European territory, frequent public spaces and develop social relations with the host community, have to abdicate - if not condemn - their culture of origin. The asylum system expressess colonial legacies embodied in international humanitarian protocols and creates intersectional discrimination (Pinelli 2021). It expects women “to recount their experiences of abuse, such as rape or mutilation, in a language that is clear, coherent and free of contradictions” (Garibaldo 2019 quoted on Pinelli 2021) and moreover “to condemn the cultural practices” so they can be “saved and freed from their own cultural traditions”. Women are “called on to repay the humanitarian gift of protection/salvation by giving up the stories and ties they bring with them” (Pinelli 2021). The humanitarian aid system is “based on the assumption that they (migrant women) are oppressed and trapped by their culture and must be freed” according to what Western values determine as free (Ghorashi 2010 quoted on Pinelli 2021).

The European “border regimes and humanitarian policies of admittance are only willing to recognize refugees through preconceived ideas of salvation and as cultural, historical subjects to be led towards modernity and emancipation” on Western standards. The admission into European territory, society and politics - as well as access to citizenship - “is never simply a matter of possessing the rightful permits” (Rey Chow 1995 quoted on Pinelli 2021). Cultural discrimination is ever present in policies regarding migration, asylum and citizenship.

5.4. The migrant as an economic concern and the colonial legacy

International immigration to Europe has been continuously discussed as a solution to population aging (Castro-Martin and Cortina 2015). Europe, despite its border policy, needs an inflow of migration. Following a purely demographic approach “Europe’s population deficit is a significant one”, with “birth rate below the natural replacement level” and a trend to drive the deficit higher every year. Its economy cannot sustain itself with such a low rate and therefore “European-style welfare society cannot survive without new labor, yet that labor (...) desired and imported, is willfully driven (...) into a state of exploitative precariousness”. This essential labor is precluded from integration and from the “social welfare net (...) yet still contributes to it through indirect taxation” (Costache 2020).

In many parts of the world governments are in need to conciliate the “pressure to implement policies that bring immigrant numbers down” to appease the fear of some parts of the population of mass immigration; with the need of economic sectors, in lack of specific forms of labor, either skilled or unskilled (Amaya-Castro 2015). Despite being essential, mostly in “market sectors like the agricultural industry or low turnover service sectors (...) or home care” these migrants are considered disposable. Their informality is what makes their labor force so appealing to the economy, they are “exploited for their labor in exchange for low wages and no benefits associated with the welfare state and in case the parameters change (...) the migrant can simply be pushed out, passively even deported” (Costache 2020).

Migration policies are not exempt from modernity's ever-present “dual paradigm of productivity and waste” that divides humanity into classes (Talbayev 2023). This leads back to the scission of humanity mentioned by Mbembe, humanity is divided into “useful and useless, excess, superfluidity (...) with utility being essentially measured against the capacity to deploy a labor force” (Mbembe 2019, 12) and to serve the economy. An analysis of immigration policies in the US stated “non-nationals who represent economic worth have an easier job justifying their presence” (Amaya-Castro 2015). The same applies to Europe and other parts of the world within the capitalist economic system.

This scission between “useful” and “superfluous” is not restricted to the borders and to the decision-making process of who is allowed to get through them, but also persists inside EU territory. Both the colony - with its “useless superfluous population” - and the metropole - with its useful population - coexist in the same space. There are two classes of individuals with different agency in the EU territory, “the outsider migrant as an economic aid, cheap, necessary labor, and the citizen as the base of democratic power” (Costache 2020).

These individuals living in the same territory are subjected to “different normative frameworks” and this characteristic is typical of colonial regimes. In the colony “the laws that applied to natives were never the laws that applied to settlers” (Mbembe 2019, 26) and European settlers were always favored by the normative framework. Not much has changed in the European normative framework, Europeans are still favored, only now they are the natives. After exploiting and enslaving a great part of the globe they now wish to remain in the metropole and to not have to face the consequences of the colonial past. If the inhabitants of ex-colonies now starve due to exploited razed lands; or flee from conflicts that Europe started or accentuated; and wish to come to Europe, they must be blocked at the borders and if allowed to enter, they must settle to a lower status. They will be granted short permits or no permits at all. They will be granted exploitative labor conditions with no access to social welfare or no labor at all. Whichever conditions they are granted, they must be grateful for.

Migrants, despite deploying an essential labor force, will not be recognized for such work. They are physically present yet invisible. Essential yet deportable. A part of society as a labor force yet not as a political actor. Even if they live in centers, they are still kept at society's margins. They may leave the situation of legal informality and have a recognized legal status, yet this status will still be marked by instability and by the constant fear of revocation as they are still considered a "guest". If they are escaping from war torn countries and persecution they might be granted the "European generous gift of asylum" of which they must be forever grateful for. Even if regularly present, they will not be considered citizens in the same way as EU citizens. They will be fully or partially deprived of political status; access to state welfare; and to the social tissue, yet they must be grateful for the solidarity.

With time they might be granted citizenship, yet they will not be seen as the same class of citizens as Europeans. They will still not be fully accepted and integrated. Second and third generations of migrants in Europe are still seen as "foreigners", as "intruders", mostly when not white. They will be asked to justify the reason why they are here. They will be called out on the street and hear that they must "go back to their country", even if they have known no other country than the one in Europe. They might have been born in Europe, studied in Europe, speak only an European language, have community ties strictly in Europe - yet they are still not considered Europeans. Real integration is precluded at the basis of race.

The "colonial world" is more than the colonial regimes that officially ended with independence declarations in the XX century. The colonial world is that in which colonial relations, based on a differential logic, still thrive. It is the system in which there are different classes of citizens residing in the same space. It is the world in which the scission between the "Us", deserving of aid, and the "non-us" who "have to be kept behind fences and walls" dictates whose human rights will be protected (Costache 2020). Even if behind those fences and walls they face life threatening poverty, violence, torture and persecution. This differential logic underpins the border regime and migration policies, which dictate spatial relations, rights and quality of life in the EU. It separates between and "Us" - "the community, or demos, the political body producing

sovereignty, a body composed of free, equal, and self-conscious subjects with the full privileges of citizenship” - and the “Other” - “living in a ‘state of exception’, the one bred by the ‘crisis’ narrative, a temporary suspension of the state’s law” (Talbayev 2023).

Conclusions

Circling back to the initial research question: What are the human rights implications of the current European migration policies and border regime? It is clear that after detailing the *de facto* situation of violence and institutional abandonment that migrants currently face in Europe the answer is that there are numerous negative consequences on migrants human rights, as a direct or indirect result of deliberate policy choices.

The right to asylum has been progressively dismantled in different countries - more openly in Hungary by denying access to the territory, more indirectly in Italy by delegating SAR operations to Libya and Tunisia, and through other forms in France, including with the attempt to pass unconstitutional dispositions limiting family reunification rights in the Darmanin Law. Through illegal pushbacks and collective expulsions migrants are precluded from accessing Italy and Hungary - while through illegal French pullbacks migrants are precluded from accessing the UK to claim asylum. Once in the territory, many of the legal safeguards for asylum seekers are not respected - as evidenced by the deficiency in reception systems and the institutionalization of detention as a form of “reception”, also for unaccompanied minors and families with children.

As previously stated one of the main aims of this thesis was to highlight the discrepancy between the situation *de jure* and *de facto*. Through the case studies it became evident that member states fail to comply with international obligations in matters of human rights - as evidenced by NGO reports - and with EU’s obligations, instituted by its founding treaties and other legal dispositions - as evidenced by the ECtHR sentences. The EU itself is in contradiction with its international obligations and founding principles when establishing accords with unsafe third countries; exposing migrants to risk of chain *refoulement*; funding an agency such as Frontex or other Coast Guards known to employ dangerous deterrence tactics which put migrants lives at risk; allowing a chronic situation of lack of reception facilities to persist, leading migrants to homelessness and informal living; weakening the international protection system; lowering the safeguard standards of procedures; de-funding life-saving SAR operations;

creating bureaucratic obstacles for NGOs' activities providing essential services for migrants; and much else which was highlighted throughout this thesis.

In regards to other questions posed in the start of this thesis: The progression towards a common European system of migration and asylum tends to expand or reduce protection of migrants? Evidently the progression towards a multi-level system can have benefits, but the European system should raise the standards of protection above what is already predicted by the member states and not the contrary. The European Common System should be the one to set the standards and to apply heavy sanctions, and enforce its human rights standards on the member states who fail to comply with international obligations, such as refraining from submitting populations to inhuman and degrading treatment.

Is it possible to affirm that migrants face systematic state violence and institutional abandonment in Europe? If so, what are the enabling mechanisms of this state of institutional abandonment? Can inaction be considered a form of state violence exercised towards marginalized groups? Migrants in Europe face structural violence perpetrated by state authorities and institutions through violent action as well as through violent inaction. States manage migration through an agnopolitical expression of power - intentionally maintaining ignorance of a situation for political ends. Such a high level of institutional abandonment ultimately leads to deaths as evidenced by the suicide rates in the CPRs; by the death toll of EU's migration routes; and by other forms of death linked with extreme marginalization and homelessness.

As evidenced by the case studies in three countries, concerned with three different migration routes in Europe, migrants human rights violations are not isolated cases. The systematicity and the gravity of the violations implies a form of structural violence. The responsibility for the death toll and violence associated with migration is of numerous multi-level actors from both the private and the public sectors, from the design of migration policies to their implementation at the borders.

While the perpetrators of certain forms of violence against migrants may be individuals, such as smugglers, border guards or other law enforcement agents, they are

enabled and reinforced by an underlying discriminatory system. It is essential to highlight the violent and discriminatory system since individual accountability will not provide the necessary systemic change. It is necessary to request accountability from the system as a whole, from institutions other than individual policy makers. As pointed out by Mbembe (2019, 128) subterfuges appeal to the idea that “the crimes were deeds performed by lone-acting individuals” with personal motives or dysfunctions. It appeals to the idea that the violence committed is an exception, therefore no changes in the system are necessary. The assignment of culpability to individuals and particular institutions, such as Frontex, is important when traceable, however it must not blur the structural cause. The structural cause of violence against migrants, even if performed by a private alone, is the EU border regime and migration policies that create a sense of impunity for the perpetrators. The structurality of the violence is precisely what renders it more difficult to provide proper accountability, since once the system is in place it becomes self-perpetuating in a form that the violence can not be traced to their original source.

The main aim of this thesis was to evidence that violence in migration governance is no longer an exception, but rather the normality and that it is enabled and encouraged in multiple levels - notably the national and the European supranational through funding, international accords, political discourse and other strategies that preclude accountability. Structural violence is observed “through multi-scalar state withdrawal as well as state action”, there is a combination of both violent state action and violent state inaction - and this denial of provision by EU states towards refugees is tantamount to violence (Davies, Isakjee, and Dhesi 2017).

Does the European system reinforce spatial violence through the institutionalization of the camp-form as the praxis for handling migrant influxes from the Global South? How do spatial relations impact migrant integration? As previously mentioned there are clear connections between hostile urban policies and spatial violence with the lack of migrant integration. Urban spatial relations are designed in a way that marginalizes migrants and invisibilizes their suffering.

The purposes of this thesis have been fulfilled: portraying a comprehensive picture of migrants legal and *de facto* situation in order to evidence the gap and the systematicity of migrants human rights violations in the EU; and shifting back attention to daily violent practices that may not receive media coverage, but however constitute forms of inhuman and degrading treatment when employed with a certain level of repetition and intensity by figures of authority. It has also served to analyze how the state's "sovereign power to exclude" is exercised over migrants.

As predicted by the central hypothesis qualitative data indicates that both levels - the European supranational and the national level, at least in the three case studies - employ deliberately and systematically biopolitical and necropolitical tactics that constitute forms of human rights violations and structural violence - which are operated by institutions and authorities through action as well as through inaction. After evidencing the negative consequences of the current border regime and migration policies at the supranational as well as the national level it is certain that there must be a shift in policies in order to comply with international dispositions on human rights protection and to assure the respect of every person's dignity regardless of the nationality.

Is another route possible? What would be the first steps towards a positive change in policies with a more humane approach to migration? Acknowledged international NGOs have formulated reports and statements giving important recommendations and directions to policy makers in order to expand migrants human rights protection. In regards to the New Pact on Migration and Asylum civil society and NGOs have voiced their concerns for the diminution in protection and requested changes in some key points. The IRC (2023) recommended easily-applied changes in order to guarantee the procedural safeguards of migrants during the screening and asylum process. It has recommended that people receive a copy of their debriefing form in a language they understand in order to be able to correct information and be aware of the steps of the procedure; that the border procedures remain optional to states; and that children - unaccompanied or not - and families be exempted from the border procedures. Children should further be exempt from all kinds of detention, as it violates multiple

rights - as evidenced by the ECtHR sentences condemning France - including the right to access to education. For all EU member states the IRC recommends a stricter application of the already existent Reception Conditions Directive in order to guarantee minimum standards.

As a fundamental point for a change in policy administrative detention must be a last resort. There must be a shift in the current trend to criminalize migration, and heavily invest in detention centers - in the EU and in its externalized borders - instead of investing in reception and integration facilities. The main investments must be in reception and integration facilities as well as in other programs that favor integration and community-building, such as the reception in welcoming families rather than impersonal prison-like structures. For that, the EU should act in accordance with the Action Plan on Integration and Inclusion that highlights community-based accommodation as the preferred solution for effective integration (IRC 2023).

What should these new migration policies be based on? The first point is the provision of safe legal routes, which have been requested by civil society for more than a decade in order to prevent deaths in dangerous crossings. Possibilities of safe legal routes include “expanding or creating new refugee resettlement, expanding visa routes for refugees to join family members (...) providing additional humanitarian visas, or creating an option to apply for asylum from overseas” (The Migration Observatory 2023). The presence of accessible safe legal routes to migration and asylum demonstrates to reduce irregular crossings - as analyzed in the Channel when observed that no Ukrainians were detected in irregular crossings, due to the availability of protection schemes, meanwhile the main national group, Afghans, have a resettlement scheme with small capacity. The cessation of hostile policies is another pressing necessity, since deterrence and restrictive policies have shown to be inefficient in reducing irregular crossings - while shifting flows to more perilous routes and increasing the need for smugglers, for the professionalization of smuggling, and for increasing the profit of smuggling networks.

The European Committee on Migration, Refugees and Displaced Persons (2023) has also requested the cessation of harassment committed by the authorities towards

migrants in Northern France. This request must be expanded to all other EU borders and member states, which have reported the same type of authority abuse and harassment towards migrants. The cessation of discrimination and stigmatization of people seeking safety and refuge is the first step towards a positive change in policies.

Furthermore, as a final point in directing migration policies, financial support for third countries and EU countries for “migration governance” must have a clear scope of protection. These European funds must be precluded from being directed towards detention centers in externalized borders, such as in Libya, Albania, Rwanda, Turkey and so on. Financial support as a form of solidarity between EU member states must be directed towards “dignified reception, integration services and asylum procedures rather than policies based on containment and deterrence, such as constructing border fences, or increasing returns at any cost” (IRC 2023).

A change in policies also requires a change in mentality and an effort to confront Europe’s colonial legacy through decolonized education. Countering misinformation concerning migrants is a duty of the institutions that provide education; hate speeches and fake news must be sanctioned as they have real negative consequences on the lives of migrants; and the role of NGOs and civil society on building an inclusive and welcoming multicultural society must be reinforced by the state through numerous mechanisms.

The contributions of a postcolonial theoretical framework became evident throughout this thesis. Much of the current migration policies are founded in anti-immigration sentiments that are themselves founded in a deep-rooted racism that derives from Europe’s colonial past - and neocolonial present. As previously stated, Europe has not left the colonial mentality behind and continues to segregate and apply different legal frameworks for people whose provenance is from past-colonies - and overall from the Global South. If the question “is decolonization over?” is still persistent, the analysis of the current migration policies, supported by much of the European electorate, provides a clear answer: no, the process of decolonization is not over. The current asylum dispositions are founded in a disregard for non-Western cultural practices and often portray the migrant or the refugee as a dehistoricized

homogenous subject, a mere receiver of European generosity. The intersection of characteristics such as race, ethnicity, gender and religion must be considered to assess the vulnerability which some migrants face. Superficial and homogenizing analysis are not capable of fully understanding the impacts of migration policies on human rights.

Foucault's biopolitical theory, associated with Mbembe's necropolitical theory have shown to be useful theoretical frameworks to understand in depth the migration phenomenon and the sentiments that underlie society's support for anti-immigration policies such as the increased securitization of the borders; the containment of migrants in camps; the defunding of life-saving SAR operations; and the other "hostile policies" that I have cited throughout this thesis.

Future research would surely benefit from the contributions of this postcolonial theoretical framework to analyze matters of migration and national identity such as the current citizenship and naturalization policies - in light of the creation of EU citizenship, while different systems of citizenship still persist amongst member states, such as the Italian case which mainly assigns citizenship through *ius sanguinis*, therefore many second-generation migrants who were born in Italy and have never known any other country or language still face long bureaucratic obstacles to be granted citizenship. This theoretical framework could also be interesting when analyzing Europeans' perception of second generation migrants as non-white EU citizens, since many Italians, Hungarians and French are still perceived as foreigners and "intruders" when not-white or not christian.

This theoretical framework and the case-study method could also be interesting to analyze changes in migration policies post-Covid-19; and to analyze the differential treatment and policies put in place for the Ukrainian emergency in comparison to the treatment and policies concerning migrants from the Global South - a most dissimilar case design could be interesting for this analysis. Finally, future research could also benefit from quantitative comparison of case studies in the theme of migration policies in order to provide a broader panorama. The combination of quantitative and qualitative methods would most likely be ideal to evidence the systematicity of migrants human rights violations that derive from the EU's deliberate choices in migration policies.

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“Nathan, il est parti à l’église, nous on a essayé mais Dieu ne voulait pas” - Maidu

“Nathan, he has gone to church, us, we also tried but God did not want it”

To Maidu who was around eight years old at the time. She is from Eritrea and so is Nathan, a baby boy who was in her same safe house in Northern France. They both tried to cross to the UK on the same night. Nathan and his family made it to the UK while Maidu’s dinghy capsized. Maidu, her mother and her baby brother barely drowned. They were rescued at sea by French authorities and brought back to France after more than three hours floating in the Channel’s freezing water. On the next day she told me that Nathan went to church - as a reference to the UK, the sanctuarized promised land that she and her family had been praying for - and that she and her family had also tried but God did not want it.

I dedicate these years in my bachelors, my thesis and hopefully the rest of my academic path to those who must deal with “the haunting presence of death within life” as said by Talbayev and to “whom living means continually standing up to death” as said by Mbembe. My thoughts and prayers during the past three years and during the writing of this thesis have been with the people who lost their lives due to inhuman migration policies and lack of safe legal routes - and also with their families and loved ones who will eternally deal with this unimaginable and preventable loss. During the three and a half months that I took to write this thesis more than 482 people on the move lost their lives in the Mediterranean and inside Europe. Each and every one of them deserves to be remembered, mourned, and repatriated to their countries so their loved ones can get closure.

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