

Rights on the skids. The experiment of quarantine ships and main points of criticism



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Report by [In Limine project](#) ASGI (Association for Juridical Studies on Migration), in collaboration with the students of the Legal Clinic for Human Rights of the University of Palermo, Italy.

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Introduction

The health emergency caused by the outbreak of the Covid-19 pandemic had a major impact on Search and Rescue (SAR) activities, disembarkation procedures and the reception of migrants arriving in Italy via the Mediterranean route.

On 7 April 2020, the Italian Ministry of Transport, in cooperation with the Ministry of Interior, the Ministry of Health and the Ministry of Foreign Affairs, issued a decree establishing that Italian ports could not be considered “safe” for disembarking migrants rescued outside the Italian SAR zone by foreign-flagged vessels for the entire duration of the health emergency. This measure was based on two different lines of arguments: first, due to the outburst of the pandemic in Italy, the alleged impossibility of ensuring essential healthcare and other basic services and, secondly, the fact that the arrival of rescued migrants could compromise the very functioning of the national healthcare, logistical and security systems. According to the decree, responsibility to provide “emergency assistance” to migrants rescued outside the Italian SAR zone by foreign-flagged vessels lies with the country of the flag State.

Later, on 12 April 2020, a new decree was published by the Head of Civil Defence. The decree introduced disembarkation procedures for migrants rescued at sea and identified the authorities competent for that purpose during the health emergency. The decree established an exceptional procedure that has been used in a flexible and extensive manner over the course of the months. In the long run, there is a risk that this procedure becomes the new normal, to the detriment of the protection of migrants’ rights, both those arriving in Italy and those already present in the territory.

The decree identifies as the main implementing authority the Department for Civil Liberties and Immigration of the Ministry of the Interior, which, in turn, relies on the Italian Red Cross (IRC) to carry out the procedures. More specifically, it states, in a rather contradictory fashion, that the implementing authority may use vessels to carry out the mandatory period of health surveillance for migrants rescued at sea for whom it is not possible to indicate a “place of safety” (safe place for disembarkation), in other words for migrants rescued by foreign vessels outside the Italian SAR zone. The decree also establishes that the implementing body shall identify facilities “on land” where to host those arriving in Italy on their own for the mandatory period of health surveillance. However, even in this case, it leaves open the possibility to resort to vessels when it is not possible to identify reception facilities on land.

Since mid-April 2020, a number of vessels belonging to private companies have been selected through a [direct call for tenders](#) for the purpose of carrying out the mandatory “quarantine period” for both migrants arriving on their own and those rescued by foreign-flagged vessels. The first ones to experience this procedure were migrants rescued by the [Alan Kurdi and Aita Mari vessels over the Easter period](#). Initially, the vessels used to this end were the Rubattino and Moby Zaza ferries, owned by the private company “*Compagnia Italiana Navigazione*” (formerly Tirrenia). According to information collected by ASGI [through FOI requests](#) within the *In Limine* project, several hundred migrants rescued at sea were brought to these ships. In the following months, the Ministry of Interior also made use of other ships, including the “GNV Azzurra”, the “GNV Allegra”, “GNV Splendid”, “GNV Rhapsody”, “GNV Excellent” and “GNV Suprema”, the “SNAV Aurelia” and the

"SNAV Adriatico". According to the latest [update](#) of the [list of naval assets](#) employed for this purpose, the vessels will remain operational until the end of the state of emergency, which it has now been extended until 30 April 2021. The same vessels can also be used for the quarantine period of people arriving via land borders.

As part of the implementation of the *In Limine* project, between mid-May and the beginning of November 2020, 82 interviews were conducted with migrants who were quarantined after their arrival in Italy on one of the vessels identified by the Government. Thanks to these interviews, information was collected about all the quarantine vessels operating during the research period¹. The information gathered in this report is the result of this research activity.

The interviews focused, first and foremost, on material conditions on board, access to medical care, availability of infection prevention devices and on availability and arrangements for accommodation. Secondly, questions were asked about border control procedures and possible rights violations resulting from the mandatory health surveillance procedure. From the observation of these data and the analysis of the issues, some serious concerns have emerged with regard to the use of ships to quarantine migrants who arrived to Italy by sea. First of all, we underline the discriminatory nature of this practice that directly affects the personal freedom of migrants who are subjected to it.

Obstacles to accessing full information on one own's legal status and asylum procedures are at the core of this new "emergency model" of managing migrant arrivals, which was created in the wake of the global pandemic. The use of "quarantine ships" also has a strong symbolic meaning. Lastly, from a public health point of view, it represents a deeply problematic measure. It is therefore appropriate to report on what has been observed so far regarding the management of these ships, highlighting the critical points and violations of law that have emerged during these months.

It is worth noting at the outset that, far from being an exceptional measure, health isolation on quarantine vessels affected some [10,000 people as of 9 November 2020](#).

¹ Within the framework of the *In Limine* project, between the second half of May and the first half of December 2020, legal information activities were carried out in support of about 1,000 foreign nationals hosted on the "quarantine" ships and legal assistance was provided to about 400 foreign nationals, many of whom were subsequently detained at the CPRs (pre-removal detention centres) on national territory.

1. Material reception conditions during the stay, services and access to medical care



The use of ships for quarantine purposes has led to devastating consequences. On 20 May 2020, 28-year-old Bilal Ben Massaud [jumped overboard in an attempt to swim to the shore](#) but lost his life. At the beginning of October 2020, Abou Diakite, a 15-year-old boy, died at a hospital in Palermo, but his emergency hospitalisation took place only after several days of isolation on board the [GNV Allegra](#). On 15 September 2020, Abdallah Said, aged 17, died of tuberculous encephalitis at the Cannizzaro Hospital in Catania, where he was transferred after a period of isolation on the quarantine ship GNV Azzurra.

These episodes, together with the evidence gathered through interviews, demonstrate that medical care and assistance standards on board are insufficient not only for adequate living conditions but also for the safety and security of the people quarantined on the ships.

Both migrants interviewed by the staff of the *In Limine* project and the Italian Red Cross humanitarian workers interviewed by the journalist [Eleonora Camilli](#) testified to the inadequacy of medical care. All the people interviewed by the project staff declared that they had not received any medical or psychological assistance. Seven of them stated that, although they had verbalised the need to see a doctor, they had not been examined. This was the case both for minor health issues, such as headache or seasickness, and for more serious situations, such as that of a pregnant woman who stated that she had never been examined by a doctor during the whole month she spent on board. Respondents were also unanimous in stating that they were not aware of the existence of psychological assistance on board or support services for vulnerable people or people with special needs.

The Red Cross humanitarian workers interviewed by [Eleonora Camilli](#) confirmed the existence of multiple serious flaws: insufficient and inexperienced medical staff, inadequate medical assistance and inability to provide adequate support to traumatized or abused people or victims of trafficking.

As for infection prevention and control devices, the respondents revealed that the Italian Red Cross staff distributed personal protective equipment on a daily basis only occasionally. In most cases, the equipment was provided to migrants at their request.

Due to the lack of information received, the measure of compulsory quarantine on board seemed rather obscure: Red Cross workers testified that people taken on board did not know why they were there. Most of those interviewed claimed that they did not receive any clear information on the quarantine period and that they became aware of the purpose of their isolation mainly by word of mouth. In addition, none of the interviewees received any legal information about their legal status, rights and obligations, despite the fact that all of them were identified and fingerprinted prior to boarding or afterwards.

The persons interviewed reported being accommodated in cabins with two beds each, where meals were also consumed.

The Italian Guarantor for the Rights of Persons Detained or Deprived of Liberty pinpointed [two critical aspects](#) related to the use of quarantine ships. “The effectiveness of the information on the rights that can be given by the Red Cross staff on the ferry, when it is not supported by any written material and showed in multiple languages, and administered to a very large number of migrants housed there. The difficulty of relating with people in such a way as to recognise their often traumatic past and consequently develop a concrete support plan. The death of 15-year-old Abou, subjected to a past of ill-treatment or torture during his journey, is a painful proof of this difficulty. These two critical issues risk becoming central in the context of the protection of rights in cases where the practice of a deferred ‘refusal-of-entry’ is carried out as soon as people are brought ashore.”

Finally, it should be noted that several [studies](#) have shown that the period of compulsory quarantine on ships is not only ineffective in containing the spread of the virus, but it can also increase the risk of contagion. The presence of many people in places that do not allow, for example, physical distancing or adequate ventilation of indoor spaces can lead to an increase in infection rates, aggravated by the inadequacy or remoteness of health facilities that can offer an adequate support in more serious cases.

The operational and financial aspects linked to the implementation of the emergency activities related to health assistance and surveillance on the dedicated ships are governed by a [Contract](#) signed on 8 May 2020 between the implementing authority, i.e. Head of the Department for Civil Liberties and Immigration of the Italian Ministry of Interior, and the Italian Red Cross. The contract is valid until the end of the pandemic emergency.

The services that the Italian Red Cross is bound to ensure include: health and psychological assistance, identification of and support to pregnant women and vulnerable persons presenting clinical/psychological risks² with the support of a psychologist who is part of the healthcare team, treatment of chronic diseases, linguist-cultural mediation, social assistance, logistical support and provision of services including the distribution of PPEs to on-board staff. Such activities are

² Women victims of violence, victims of trafficking, unaccompanied migrant children, victims of beatings and victims of torture.

performed by healthcare and technical staff using means, structures and dedicated expertise, and by volunteers. These personnel shall be on call 24/7.

Furthermore, the [Italian Red Cross guidelines](#) provide that exhaustive information will be given on the reasons for the presence on board “highlighting the health-related purpose of the operation together with its temporary nature which depends on the PCR test results during the quarantine period”. Specific focus groups and learning sessions will be organised. In particular, the focus groups will explore the role of the Italian Red Cross, the right to health and family unity, international protection, labour exploitation, human trafficking and the Covid-19 pandemic situation in Italy. “Specific information sessions for women and girls” will be dedicated to the prevention of sexually transmitted diseases, pregnancy, correct personal hygiene, the rights of children and unaccompanied children and educational activities for mothers with small children.³

However, most of the obligations contained both in the contract signed between the Italian Red Cross and the Department for Civil Liberties and in the Red Cross Guidelines do not appear to have been met.

According to the information gathered through interviews conducted with foreign nationals who spent a quarantine period on the ships and according to what humanitarian workers declared to the news agency *Redattore Sociale*, on the quarantine ships there are no basic health services, no effective systems to prevent the infection, no psychological support or support for vulnerable persons. The lack of such measures in a *de facto* detention situation is particularly serious and can clearly have an extremely negative impact on the conditions of people on board. This lack is even more severe if we consider that the people on board could have survived torture and inhuman treatment, lived long periods of detention in degrading conditions and suffered sorrows and losses or risked drowning.

The measures to ensure social and legal assistance do not seem to be guaranteed either. Foreign nationals find themselves in a limbo, with very limited access to information and in extremely inappropriate living conditions.

³ Further information on the Italian Red Cross services can be found in the [Contract](#) (available in Italian) and in a document titled “Instructions on Sanitary Activities (from page 54 and from page 63) at the following link: <https://inlimine.asgi.it/wp-content/uploads/2020/12/All.1-Elementi-di-risposta-CRI.pdf> (available in Italian).

2. The procedure to determine legal status: a radicalization of the hotspot approach

Thanks to the interviews conducted in the framework of the *In Limine* project and thanks to the FOI requests submitted to the administrations involved in the management and organization of the disembarkation procedures, including the authorities involved in health surveillance, it has been possible to understand, at least partially, what procedures are in place to determine the legal status of foreign nationals transferred onto quarantine ships.

While, at first⁴, the authorities confirmed that the identification and fingerprinting procedures were carried out on the quarantine ships, it was later clarified that these procedures are mostly conducted before the transfer on the ships, for example at the Lampedusa hotspot, following the typical hotspot approach which includes photographing, fingerprinting and filling in of an information paper.

It was possible to observe that, as was the case when the procedures were entirely implemented in the hotspots, nationals of certain countries – more specifically Tunisian citizens – encountered numerous obstacles in accessing the asylum procedure. The interviews conducted with Tunisian nationals who spent their quarantine period on a ship revealed that in several cases they were not fully informed about the possibility to seek asylum in Italy and, more generally, about their status or their right to appeal an expulsion order, despite the long time they had spent in Italy – at the Lampedusa hotspot and on board the ships for health surveillance.

Furthermore, the practice of [filling in two information papers](#)⁵, which was already reported in relation to Tunisian nationals who disembarked in Lampedusa prior to the pandemic outbreak, seems to be replicated today, with the result that upon disembarkation from the quarantine ships the majority of Tunisian nationals are notified with expulsion orders. The first information paper is filled in prior to the transfer to, and the second upon disembarkation from, the quarantine ship. In the latter information paper the declarant confirms that there are no impediments to his or her expulsion. In the above cases, the Questure (Police Headquarters) at the disembarkation points (mainly Palermo, Augusta and Trapani, but also Siracusa, Catania, Messina and Bari) executed those orders (expulsion orders or deferred refusals of entry) by escorting the foreign nationals to the border, or sometimes by serving them with an order to leave the country issued by Questore. In several cases, the disembarkation is therefore followed by a detention period in a CPR (pre-removal detention centre), with all the consequences that this entails in terms of additional [difficulties in accessing the asylum procedure and the right to information and defence](#). This happened even in cases where the individual had formally expressed his will to seek international protection in Italy.

⁴ See the response of the Palermo Police Headquarters of 22 June 2020 to the FOI request regarding the Rubattino ferry.

⁵ With the practice of the “double information paper” systematically implemented in Lampedusa, police authorities have foreign nationals sign a second information paper in which they formally “renounce” international protection declaring that there are no impediments to their repatriation despite the fact that they had previously expressed – and the police had formally registered – their will to request international protection.

As for the responsibilities of the Italian Red Cross with regard to access to the asylum procedure, it could be useful to refer to the CJEU judgment of 25 June 2020 in case C-36/20 PPU⁶. In this judgment, the CJEU clarified that an asylum request presented to an authority that only has competence to receive it without registering it shall nevertheless be considered valid to start the asylum procedure because it is imperative that the receiving authority communicates that request to the authority competent for registering it.

According to the principle laid down by the Court, since the Italian Red Cross is the health authority responsible for the management of the quarantine ships, it should receive the asylum applications and transmit them to the authorities competent for their registration. As pointed out in the Court's judgment, this gives rise to the obligations, on the one hand, to inform third country nationals in an irregular situation on how to present an asylum claim and, on the other, to transmit asylum claims to the competent authority for their registration in order to guarantee access to the rights attaching to the status of asylum seekers.

Lawyers and staff of the *In Limine* project followed the journey of some individuals after their disembarkation and continued to assist them during their detention period at the Milan, Gradisca d'Isonzo and Rome pre-removal detention centres⁷. As previously hinted, several Police Headquarters infringed the legal provisions in force and did not initiate the procedure for granting asylum even for those who expressed their will to apply for international protection not only verbally, but also by sending a registered email (PEC) through the lawyers they had delegated orally or by electronic means⁸. This in some instances resulted in some Judges not confirming the detention orders, as was the case in Rome and [Milan](#) in November 2020.

All in all, the use of quarantine ships represents a continuum with the already applied procedures which aim at an often arbitrary selection and differentiation of the persons arriving in Italy between "asylum seekers" and "economic migrants", which highlights critical issues in terms of protection of rights. It is worth noting that the period spent on the ship aggravates the physical and psychological suffering of those who made an extremely dangerous journey and the lack or scarcity of information prolongs their uncertainty about their legal status. This also has severe consequences in terms of compliance with the non-refoulement principle and it increases the risk of Covid-19 infections or the worsening of pre-existing medical conditions or trauma symptoms that cannot be properly treated on the ships.

⁶ The case regards a vessel with 45 third-country nationals on board intercepted by the Spanish Maritime Rescue Service near the Gran Canary Island, where the migrants later disembarked. The day following their arrival, an administrative authority ordered their expulsion and detention. At that point a national of Mali said he wanted to request international protection, As there were no vacancies in the local reception shelter, the Tribunal ordered his placement in a detention centre. The applicant appealed the Tribunal's decision, which led to the submission of prejudicial questions to the CJEU.

⁷ Please note that from June to December 2020 legal assistance was provided to around 400 foreign nationals who were on quarantine ships, many of whom were subsequently detained in pre-removal detention centres.

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<http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=./20200220/sn civ@s6L@a2020@n04280@tO.clean.pdf>

3. Quarantine ships used as a mechanism for deprivation of liberty



Over the last few years, places used for detaining foreign nationals have increased and [detention has taken on new informal forms](#). Although the implementation of isolation measures on quarantine ships is justified on grounds of protection of health, it should be compared to other common detention and isolation measures for migrants arriving in Italy and to the situations of legal uncertainty that characterises migration management and containment policies. The current health emergency has paved the way for measures and practices that at times severely restrict the personal freedom of foreign nationals.

Emergency rules against the spread of Covid-19 have introduced the possibility to impose a precautionary quarantine on those who have had close contact with confirmed cases of infectious contagious disease or have returned from areas outside the Italian territory (Article 1 of Decree Law No. 19 of 25 March 2020). The Decree of the President of the Council of Ministers of 17 May 2020 provides that people travelling to Italy from abroad by air, sea, inland waterway, rail or land, shall be subject to a mandatory fourteen-day period of supervised self-isolation. Some exceptions are made, among others, for citizens and residents of the European Union and Member States to the Schengen Area⁹. Those who have tested positive for Covid-19 are strictly forbidden by order of the health authorities from going out of their homes or residence until their recovery has been confirmed or unless they are admitted to hospital or other healthcare facility.

No form of “coercive” enforcement is envisaged for these measures. However, those who are subject to a precautionary isolation order have an obligation to be reachable and to avoid social contacts, movements or travel. Any breach constitutes an administrative offence punished by a fine. If the person committing the breach is Covid-19 positive, he or she shall be liable to criminal prosecution.

⁹ The precautionary quarantine period currently required according to Circular of 12 Oct. 2020 of the Italian Ministry of Health is 10 days.

It could be useful to recall the definition of measures affecting personal freedom, as given by the Italian Constitutional Court in judgment No. 105 of 2001 relating to a case of deportation of foreign nationals forcibly escorted to the border. In this judgment, the Court underlined that restriction of *physical* liberty affects *personal* liberty as long as it is more than negligible. It also argued that personal liberty must be considered restrained “whenever a person is physically subject to the power of another” and when this leads to “that mortification of human dignity [...] which is a clear sign that the measure is affecting the sphere of personal liberty”.

In its [judgment No. 194 of 1996](#), the Constitutional Court examined the case of a vehicle driver instructed by the police officers to accompany them to hospital for drug and alcohol testing. The Court considered fundamental to establishing whether the police measure had affected the driver’s area of personal freedom “the fact that the person involved has the right to refuse to accompany the police officers. Even if this course of action exposes him or her to the risk of criminal proceedings and sanctions, the police authority cannot use any form of physical coercion on him or her”. The Court held therefore that deportees escorted to the border are subject to the power of another and this puts them in a situation of deprivation of liberty, whereas in the case of persons taken to hospital for toxicological testing there is no deprivation of liberty. Their refusal to follow police instructions does constitute a breach, but the competent authorities cannot enforce compliance using coercion.

In this perspective, the foreign nationals’ factual living conditions on the quarantine ships seem to have all the characteristics of deprivation of personal freedom, as acknowledged by the cited case-law falling under Article 13 of the Italian Constitution.

During the health surveillance period on board, foreign nationals are physically prevented from disembarking as most of the time the ships are at anchor off the port. In addition, security officers perform control and surveillance activities on board. Therefore, those who are on the ship find themselves subjected to the power of the controlling authorities. Their condition is therefore structurally different from that of self-isolation in other places or in one’s home. Indeed, the authority applies very different procedures and degree of coercion. In this sense, foreign nationals on quarantine ships are subjected to discriminatory treatment that, as we have seen, may lead to additional rights’ violations, with particular reference to the right of access to health care, information, and international protection procedures.

If the health surveillance period on ships that are constantly in navigation or at anchor a few miles off the coast affects the personal freedom of the people on board, it is necessary to assess the compatibility of this measure and of its legal basis with Article 13 of the Constitution. This appears even more urgent to prevent it from becoming an ordinary practice in view of the continuing national health emergency.

It is worth remembering that pursuant to Article 13 of the Constitution, deprivation of liberty can occur only in those cases and manners specified by the law and only if validated by the judicial authority within very specific deadlines. The legislation currently in force allows the application of a “precautionary quarantine” measure, but it does not envisage any form of coercion to restore compliance with this measure in case of its breach, which entails only an administrative fine.

Health surveillance measures, such as those described for quarantine ships, have been imposed on migrants over the months also in other locations, such as in hotspots and reception centres. Yet, the legal basis allowing this compression of personal freedom has not been clarified. Neither effective legal remedies nor guarantees of judicial review are available to those restrained in their liberty. Moreover, the precautionary quarantine measure imposed by the health authority on foreign nationals does not seem to be based on individual and formal orders, although this is clearly required by law. These risks giving rise to forms of arbitrary detention and not ensuring that due consideration is given to individual circumstances, duration of the measure and provision of full information.

Covid-19 prevention measures for foreign nationals arriving by sea or already present in reception centres in our country have led to their systematic confinement in enclosed places at the border, often violating their rights of information and access to asylum and encroaching on their personal freedom with no guarantees. Detention and confinement at the border ultimately respond to the same procedural needs for profiling and channelling that is the underlying reason for the hotspot approach. Besides, with reference to the European scenario, the new European Pact on Migration and Asylum provides that people undergo a pre-screening procedure at the border before they formally enter the territory also with a view to performing health checks on irregular entrants.

4. The use of quarantine ships for health surveillance of people already on the territory

One of the risks of the prolonged and systematic use of ships for health surveillance of foreign nationals arriving in Italy by sea lies in the standardization and extension of a measure that shows strong weaknesses in terms of respect for the rights of those affected.

This measure has a significant impact on the quality of foreign nationals' rights, and runs the risk of legitimizing other practices of exclusion and confinement at the border.

These risks materialized [between September and October 2020](#), when the Italian Interior Ministry, with the logistical support of the Italian Red Cross, arbitrarily transferred hundreds of Covid-19 positive foreign nationals who already obtained international protection status or other residence permits and stayed in reception centres across Italy. These transfers took place with no prior communication or information and no assessment of conditions of vulnerability, integration in the country or family ties. The Interior Ministry's Department for Civil Liberties and Immigration ordered on the basis of non-individual measures that a certain number of "Covid-19 positive migrants" be transferred from several Italian provinces to the ships. Some foreign nationals who were subjected to this measure reported [being transferred in the middle of the night](#) without any prior information or notification of conditions, duration, or legal basis for this decision.

People were therefore wrongfully detained on quarantine vessels and received a discriminatory treatment that was exclusively reserved to foreign nationals and undermined additional rights, such as the rights to personal freedom, private and family life and health.

The [Guarantor for the Rights of Persons Deprived of Personal Freedom National](#) expressed its concern for this practice “because of its having no legal basis and factual motivation as well as being critical in terms of the rights and guarantees of the people involved, including front-line staff”.

These transfers were enforced outside the cases provided for by the decree of the Head of Civil Defence of 12 April 2020. The Decree establishes the use of quarantine ships for self-isolation purposes exclusively for foreign nationals rescued at sea or arriving by sea by their own means but not for foreign nationals already legally resident and hosted in reception centres, as in the present case. This decision appears to be discriminatory and unjustified and does not respond to the need of preventing the spread of the infection that could have been met differently, while respecting the rights of foreign nationals who tested positive for Covid-19. Some of them, for example, were already in isolation albeit within the reception centres where they were hosted. Moreover, pursuant to Articles 4 and 6 (7) of Decree Law No. 18 of 17 March 2020 converted into Law No. 27/2020, the Regional Authorities, may set up temporary healthcare areas, both inside and outside public and private hospitalization, care, reception and assistance facilities or other suitable places, to cope with the Covid-19 emergency, while Prefects may requisition hotels or other suitable properties to accommodate people in self-isolation in case they cannot self-isolate in their homes. It is therefore difficult to understand the reasons behind this practice of forced transfers onto quarantine ships, also and above all considering how these transfers were carried out and the absence of any legal basis or valid reasons related to the protection of health and personal dignity of those who have been subjected to this practice.

Although [the Minister of the Interior underlined](#) the exceptional nature of such transfers, it is important to highlight that, in addition to being unlawful, these measures had serious consequences on the lives of the people subjected to them. Some asylum-seekers, for example, were unlawfully issued removal orders at the end of the quarantine period, while others were readmitted to the reception system, with different consequences on their working and social lives.

5. What protection for unaccompanied minors?

Edited by the students of the Legal Clinic for Human Rights of the University of Palermo: Daila Costa, Costanza Spagnolo, Claudio Costanzo, Angela Presti, Bianca Cusimano, Simona Caleca, Nawres Ghouma.

5.1. Introduction

Among the different actions adopted to curb the spreading of Covid-19, quarantine ships represent a measure targeted exclusively at third-country nationals. Following months where no information was provided, the death of two unaccompanied minors on quarantine ships has shed light on the need for audit and compliance institutions and civil society to verify the material conditions of reception, support and medical assistance on quarantine ships. This includes the provision of essential services, respect for fundamental rights of detained persons and identification procedures for the of unaccompanied minors prescribed by law. In the framework of the *In Limine* project, on 29 October 2020 ASGI submitted a FOI request to the different institutions in charge of the

management of the quarantine vessels and received a diversified set of replies. This analysis is based on the data provided by the Agrigento Police Headquarters (25/11/2020), the Palermo Police Headquarters (27/11/2020), the Juvenile Court in Palermo (9/10/2020 and 22/10/2020) and the Italian Red Cross (19/11/2020, forwarded as attachment by the Ministry of the Interior on 24/12/2020). As for the other institutions to whom the FOI requests were addressed, the Trapani and Palermo Prefectures replied that the requests were still being processed¹⁰ and the Ragusa Prefecture declared that there were no quarantine ships in that province. No answers have so far been received from the Trapani Police Headquarters, the Agrigento Prefecture, the Siracusa Prefecture and Police Headquarters and the Catania Juvenile Court.

5.2. Initial identification

Article 19-bis of Legislative Decree No. 142/2015¹¹ establishes a unified procedure for the identification of unaccompanied minors and their age assessment and consequently for the effective application of the protection measures in place for them.

First, the third paragraph of said article provides that the age assessment procedure can be carried out only after humanitarian assistance has been given to the unaccompanied minor. In short, the Decree of the President of the Council of Ministers No. 234 of 10 November 2016 (which includes a “Regulation defining mechanisms for the age assessment of unaccompanied minors who are victims of trafficking pursuant to Article 4 (2) of Legislative Decree No. 24 of 4 March 2014”¹² and a “Protocol for the multidisciplinary holistic age assessment of unaccompanied minors”¹³) lays down a two-step procedure. The first step is a preliminary interview with the minor in order to reconstruct his or her personal and family life and identify any other information relevant for his or her protection. This interview is conducted by trained staff in the first reception centre, under the supervision of the competent local authority and supported, where possible, by organisations, bodies and associations which have specific and proven experience in child protection. In the second step, when serious doubts persist as to the declared age, the assessment is referred initially to the public security authorities that check, also with the support of the diplomatic and consular authorities¹⁴, whether the child is in possession of any identity documents, and secondly to the Public Prosecutor's Office at the Juvenile Court with territorial jurisdiction. The Public Prosecutor's Office may order socio-medical examinations to be carried out according to a multidisciplinary approach in a suitable environment by adequately trained professionals and, where necessary, in the presence of a cultural mediator, using the least invasive methods possible and respecting the

¹⁰ The Trapani Prefecture and the Palermo Prefecture replied on 16 November 2020 and 11 November 2020 respectively that their work on the request was in progress and that they were in contact with the Ministry of the Interior.

¹¹ This article was introduced by Article 5 of Law No. 47/2017, i.e. the so-called Zampa Law, containing *Provisions on protection measure for unaccompanied foreign minors*.

¹² https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-12-22&atto.codiceRedazionale=16G00248&elenco30giorni=false

¹³ https://www.minori.gov.it/sites/default/files/protocollo_identificazione_msna.pdf

¹⁴ Where the alleged minor has expressed his will to request international protection or where any need for international protection emerges during an interview, the support of the diplomatic and consular authorities must not be requested.

apparent age, sex, physical and mental integrity of the person¹⁵. The age assessment decision is made by the juvenile court and any residual doubt must be resolved in accordance with the principle “*in dubio pro minore*”, i.e. the presumption of childhood prevails.

It is important to point out that, according to Article 18 (1) of Legislative Decree No. 142/2015, such procedures must be based on the principle of the best interest of the child and must also be applied to unaccompanied minors hosted on quarantine ships. This is also underlined in the reply by the Palermo Police Headquarters, where it is stated, however, that the complexity of the multi-step procedure as provided for by the law makes it “*de facto unfeasible on the quarantine ships for reasons that go without saying*”.

It is worth noting that the Palermo Police Headquarters do not provide any information about the time previously spent by unaccompanied minors in the hotspots. On the contrary, in the synthetic and discordant information provided by the Agrigento Police Headquarters¹⁶, reference is made to a “transit” at the hotspot of Lampedusa, but it is not specified whether the described age assessment procedures were performed there. It should be noted that, given the briefness of the information provided, it is not clear how and for how long such a “transit” took place, during which no minors allegedly expressed their will to apply for international protection. Neither of the two Police Headquarters specifies which methods and criteria they adopted for pre-screening unaccompanied minors, therefore it is unclear how this procedure was carried out and whether, in addition to the statements made during the interviews, other elements were considered by the authority. Similarly, it is not clear how the statements were taken by police staff.

With regard to cultural mediators, whose presence during the pre-screening procedure is required by law, it is not stated how many of them were present on the quarantine ships, what languages they spoke or how they interacted with the unaccompanied minors.

5.3. Appointment of guardians and compliance with other legal guarantees

In its reply to a request about the number of unaccompanied minors who have transited through the so-called quarantine vessels and the number of appointed guardians, the Palermo Juvenile Court declared that up to 8 October 2020, the presence of unaccompanied minors was not reported to the judicial authority “until after the end of the quarantine and upon their transfer to community facilities”. This is in disregard of the provision of Article 19 (5) of Legislative Decree No. 142/2015, whereby their presence must be immediately communicated to the juvenile judicial authority for it to initiate guardianship proceedings, in accordance to Article 343 of the Civil Code and ff. From the data provided by the Palermo Juvenile Court it is clear that, starting from 18 September 2020, some unaccompanied minors were already present on the vessel GNV Allegra; however, only following the death of one of them – namely 15-year-old Abou Diakite from Ivory Coast – and because of the media attention sparked by this news, the President of the Palermo Juvenile Court and the Public Prosecutor attached to that Court sent a joint note to the Prefectures across Sicily, highlighting the

¹⁵ Socio-medical assessments that can compromise a minor’s mental and physical state must not be carried out and the final report must always indicate the margin of error of age assessment results.

¹⁶ The authorities initially said that there were 605 unaccompanied foreign minors on the quarantine ships, but subsequently they said that the number of unaccompanied foreign minors in quarantine was 478.

necessity of reporting the presence of minors to the Juvenile Prosecutor's Offices in order to appoint a guardian "without waiting for the end of the quarantine".

The Court also attached two circulars of the Ministry of the Interior: the first, issued on 18 October 2020, provides that the presence of unaccompanied minors must be reported before the quarantine period and that the Red Cross Head of Mission in charge must be appointed as temporary guardian; the second, issued on 21 October 2020, directs that unaccompanied minors must not be taken on board the quarantine ships. After the two circulars were issued, the Court reported that, over four days from 18 to 21 October 2020, the unaccompanied minors were indeed reported to the judicial authority and 73 guardians were appointed.

It seems therefore possible to infer that, until then, failure to communicate the presence of unaccompanied minors on the quarantine vessels prevented the start of all the procedures prescribed by law to guarantee the protection of their rights – first of all, the interview and the initiation of guardianship proceedings¹⁷.

5.4. Legal Information

In the replies provided by the Juvenile Court and by the local Police Headquarters, there are no meaningful data on the provision of information on the rights of unaccompanied minors and how to exercise them. The Italian Red Cross, which is the organisation in charge of the management of reception on the quarantine ships, reported instead that it provided this information through specific sessions, developed as part of a European project in collaboration with Save the Children; however, the latter too did not provide information materials on how to claim international protection and did not specifically indicate who attended these sessions or how and when they were held. In this regard, it should be noted that, following a visit on the ships, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty reported that there was "very limited information about rights" and that "no meaningful information was provided on board"¹⁸.

5.5. Reception conditions on ships

According to the provisions of Legislative Decree No. 142 of 2015, as amended by Law No. 47/2017, unaccompanied minors may not under any circumstances be detained or hosted in pre-removal detention centres and government first reception centres. The reception system for minors is based first and foremost on government first reception facilities specifically intended to cater for rescue and immediate protection needs of all unaccompanied minors¹⁹. Unaccompanied minors shall only

¹⁷ As pointed out by Mauro Palma, National Guarantor for the Rights of Persons Detained or Deprived of Liberty, the lack of a proper dialogue and sufficient knowledge of the stories of the persons hosted on these ships leads to a critical delay in the provision of legal and psychological support to people who have faced a complex journey such as the migratory one; for more on this topic see: *The quarantine ship model: analysis and critical aspects. Meeting with Mauro Palma, National Guarantor, 22 December 2020*, at this link: https://www.youtube.com/watch?v=mUTi6qPrkZA&ab_channel=CissOngCooperazioneInternazionaleSudSud (available in Italian).

¹⁸ On this point, see: *The quarantine ship model: analysis and critical aspects. Meeting with Mauro Palma, National Guarantor, 22 December 2020*

¹⁹ These are the centres established and run by the Italian Ministry of Interior, in some cases with the support of the local authorities, and financed by AMIF (Asylum, Migration and Integration Fund).

remain in the first reception facilities from the moment they are taken charge of for the time necessary for their identification and, where appropriate, for their age assessment and they shall be fully informed of their rights, including the right to request international protection. In any case, the duration of accommodation in these facilities shall not exceed 30 days. In the current health emergency situation these provisions have been derogated from, at least initially, by placing minors in quarantine on ships²⁰.

With reference to this period, the Police Headquarters of Palermo and Agrigento did not provide detailed information on the reception conditions of unaccompanied minors on quarantine ships. However, the Italian Red Cross reports that minors were accommodated together in dedicated areas (in groups belonging to the same boarding), dividing Covid-19 positive from negative children and keeping them away from the adult population. In addition, the duration of the stay on board and the above accommodation were decided by the competent health authority, i.e. the USMAF (Office of Maritime, Air and Border Health). It was the USMAF itself that gave the clearance for the disembarkation of the minors at the end of the quarantine, on condition that their control swabs were negative.

Another element worthy of attention is the respect for the right to health. The assessment of the mental and physical conditions of unaccompanied minors in isolation should be an essential step for the protection of this right. The authorities have provided no detailed information on this point. The only relevant mention is contained in the ministerial circular of 18 October 2020 already mentioned above, which highlights the need for the juvenile judicial authority to be updated on the mental and physical conditions of minors also during the quarantine period by the IRC Head of Mission appointed as their temporary guardian.

The IRC, which on the contrary provides information on the health treatment, states that, upon their arrival, minors undergo a swab and a triage examination to check, inter alia, respiratory rate, body temperature, illnesses or diseases and wounds or fractures. Moreover, it reports that, in addition to the initial examination, daily checks are carried out on the minors' condition (again according to USMAF indications and Ministry of Health protocols) by a health team composed of doctors, nurses, psychologists and Red Cross first aiders, if necessary with remote support from specialists called in to treat particular cases. However, two questions are raised by the already mentioned case of Abou Diakite, who was rushed to hospital on 1 October 2020 (12 days after the beginning of his quarantine on the ship) and died of septicaemia: first, is medical staff proportionate to the number of migrants on board and to the requirement of monitoring their state of health? Second, can adequate medical care, including specialist or life-saving treatment, be provided promptly?

For the sake of completeness, it should be noted that the IRC guidelines and operating procedures were attached to the reply, but no documentation was provided on the actual activities carried out on the ships.

²⁰ As already mentioned, this is no longer possible due to the measures taken to avoid that *“The implementation of emergency legislation may lead to infringement of individual rights”*, as the Palermo Juvenile Court observes.

5.6. Conclusions

As shown by the replies of the authorities to general FOI requests, the treatment of the unaccompanied minors who arrived in Italy before it was decided that they should not self-isolate on quarantine ships presented several critical issues.

This brief analysis seems to point to a significant conflict with the principle of the child's best interests, which did not prevail here, as it should have according to international and national standards²¹. This principle does not appear to have been properly balanced with the need to safeguard public health. Equally critical is the compatibility of children's treatment on quarantine ships with the principles of non-discrimination, proper child development and the right of the child to be heard in all matters affecting him or her.

The time data processed confirm that the intervention of some institutions only took place after a tragic event with fatal consequences, which received particular attention from the media.

The non-application of reception procedures and the insufficient transparency as to the reasons linked to boarding conditions, which cannot be simply justified by the need to adopt emergency measures to contain Covid-19, have in some cases fatally compromised the adequate treatment of unaccompanied minors, who are a vulnerable group specially protected by national and international rules. Only strict observance of these rules can ensure the well-being and proper mental and physical development of unaccompanied minors.

In conclusion, it seems appropriate to point out that, due to incorrect identification procedures and failure to take charge of reports, unaccompanied minors may still be forced to stay on quarantine ships, which are unsuitable places for them, and may face unlawful removal procedures²².

²¹ Article 18 (1) of Legislative Decree No. 142/2015 reads as follows: "When implementing reception measures under this Decree the child's best interests shall be a primary consideration/take priority so as to ensure standards of living adequate to minor age, taking into particular consideration the minor's protection, well-being and development, including his or her social development, as provided for in Article 3 of the United Nations Convention on the Rights of the Child of 20 November 1989, ratified in Italy

²² See <https://inlimine.asgi.it/ancora-minori-stranieri-non-accompagnati-a-bordo-delle-navi-quarantena/>

Final Recommendations



In view of the critical aspects highlighted so far, it is considered essential to call on the Ministry of the Interior, the Ministry of Health and the Department of Civil Defence to:

- **Put an end to the quarantine ship system** and ensure that foreign nationals entering the national territory are guaranteed the possibility of spending their quarantine period in suitable premises. *To this end, the authorities may requisition and use buildings of all kinds as quarantine facilities, as provided for in Article 6 (7) of Decree No. 18 of 17 March 2020.*
- Ensure that foreign nationals entering the territory have **full access to information about their rights and how to exercise them**. *To this end, the authorities must comply with national and European legislation on access to information by providing adequate spaces and time and the assistance of an adequate number of qualified linguistic-cultural mediators and by preparing and distributing multilingual materials also during quarantine periods.*
- Ensure that foreign nationals entering the territory **have access to protection, adequate legal assistance is guaranteed by specialised professionals and the principle of non-refoulement is respected**. *To this end, the authorities must provide adequate spaces and time in which to ensure adequate legal assistance by a sufficient number of legal workers and lawyers. In addition, foreign nationals must always, especially if their personal freedom is restricted, be guaranteed the possibility of communicating with the outside world, so that they can contact their lawyers, civil society organisations or other protection bodies also during quarantine periods.*
- Guarantee that foreign nationals entering the territory **have full access to medical care**, including specialist assessments, diagnostic examinations and any other examination or assessment required by the foreign nationals' conditions. In addition, it is recommended that people be provided with **effective access to psychological support and that effective protection**

be guaranteed to individuals in vulnerable situations. *To this end, the authorities shall ensure that, also during the quarantine period, psychological and medical assistance services are provided by an adequate number of qualified staff so that also transport and referral to other specialist services are available.*

- Guarantee **adequate protection, access to information and social, legal, medical and psychological assistance specifically designed for unaccompanied minors** and ensure that they can spend their quarantine period in places appropriate to their conditions. *To this end, the authorities must ensure that unaccompanied minors have access to their rights in a manner, time and place appropriate to their age and potential vulnerability also during quarantine periods.*