

Experiencing dual vulnerability: the lack of protection for LGBTQIA+ subjects under the Italian-Albanian Agreement for the strengthening of cooperation on migration issues

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Introduction

The legal notion of vulnerability is increasingly central in contemporary discussions on migration, asylum law, and human rights protection. Despite its growing relevance, the concept continues to suffer from a lack of coherent application across legal systems. While international and European instruments acknowledge the need for heightened procedural safeguards for individuals in vulnerable situations, the operationalisation of such protection often remains limited and frequently instrumentalised for political purposes.

This issue has become particularly evident in the context of the Italian-Albanian Agreement for the strengthening of cooperation on migration issues and its domestic implementation through Law No. 14/2024.

Explicitly, the Agreement provides the possibility for Italian authorities to lead migrants saved by military ships in international waters directly to hubs, set in the cities of Shengjin and Gjadër, Albania.

This legislative framework permitted the transfer of asylum seekers rescued in international waters by Italian authorities to detention centres located in Albania. However, it failed to provide adequate procedural guarantees for the identification and protection of vulnerable individuals, especially LGBTQIA+ persons, raising substantial concerns regarding

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the system's compatibility with international human rights law, European Union asylum legislation and Italian constitutional framework. Indeed, such operations took place in 2024 and 2025, before several Italian courts submitted a request for a preliminary ruling to the Court of Justice of the European Union (CJEU), temporarily halting the activities².

The aim of this paper is to critically analyse the normative, procedural, and operational deficiencies of the Italian-Albanian system, with a specific focus on the inadequate recognition of LGBTQIA+ asylum seekers as vulnerable subjects.

The first part analyses how the Italian system, provided by Law n. 14/2024 based on the Agreement with the Republic of Albania, constituted a severe breach of people's rights. Particularly, this system disproportionately affected members of the LGBTQIA+ community, whose vulnerability is often not immediately visible and whose protection require an intersectional and contextualised approach. Of particular concern was the preliminary screening phase conducted aboard Italian military ships during rescue operations in international waters, in which individuals were assessed for detention in the Albanian centres under questionable criteria, time pressure and without the assistance of qualified personnel or independent legal safeguards.

The paper eventually focuses on the inadequate recognition of LGBTQIA+ applicants as vulnerable subjects in procedures for the recognition of international protection, mainly due to the use of stereotypes repeatedly censured by case law.

Ultimately, it argues the validity of the safe Country criterion, pointing out that most countries considered safe are in fact hostile towards members of the LGBTQIA+ community, exposing applicants to potentially irreversible risks.

Methodology notes

The paper adopts a critical and methodologically grounded approach to the current Italian legislation related to the procedures for recognising

2. At the time of writing, the border procedures at the centres in Albania are suspended following the Court of Justice of the European Union decision of the 1st of August 2025, C-758724 and C-759/24.

international protection and asylum, focusing on border procedures under Law 14/2024.

Drawing on law, doctrinal sources, case law from international, European and domestic courts, and reports from civil society organisations, this study will demonstrate how the Italian legal framework fails to meet its obligations under current legislation.

The critical reading of the legal provisions is carried out through the methodology of legal hermeneutics and systemic interpretation. Special attention is paid to assessing the coherence of the contested legal framework with the constitutional principles of the Italian legal system and the supremacy of EU law and international human rights obligations. The analysis applies interpretative techniques, such as textual interpretation of law, teleological interpretation, comparative and case-based reasoning. Particular emphasis is placed on the interpretative contribution of the judiciary, with a focus on the evolving case law that highlights the tensions between national legislative reforms and supranational standards of fundamental rights protection.

The paper includes an analysis of the notion of safe countries of origin as applied to LGBTQIA+ asylum seekers. This part adopts a law-in-context approach, integrating legal analysis with empirical data drawn from the ILGA World Database³. The criteria used for assessing the effective protection of LGBTQIA+ rights include: the criminalisation of consensual non heterosexual sexual acts, the existence of anti-discrimination legislation, and the availability of legal gender recognition. These three criteria serve as fundamental indicators for assessing the respect for personal freedom, dignity, and social equality. Their presence (or absence) constitutes a concrete element in assessing the safety of a State for LGBTQIA+ individuals according to international law standards. Particularly, criminalization of consensual non heterosexual intercourse conflicts with protection of private and family life and prohibition of discrimination, guaranteed by Articles 8 and 14 of the European Convention of Human Rights, while the absence of anti-discrimination laws shows a structural lack of protection against violence and discrimination. The presence of an anti-discrimination framework is one of the key tools through which a State demonstrates its commitment to ensuring substantive equality. In

3. <https://database.ilga.org/en>

the case of the Countries part of the European Convention of Human Rights, this commitment is enforced by a positive obligation to adopt active measures to protect individuals against discriminations. As per the third criterion, the legal recognition of gender identity is essential for the effective enjoyment of civil, political, and social rights by transgender and non-binary individuals. The inability to obtain documents that reflect one's gender identity entails risks of discrimination, exclusion, and violence, even in everyday life.

Data were systematically extracted from country reports, categorised under these indicators, and analysed to reveal inconsistencies between the legal classification of countries as safe and the actual level of protection guaranteed to LGBTQIA+ subjects.

The (lack of) definition of vulnerability

The only criterion the Italian-Albanian Agreement provides regarding people who could be transferred to the Shengjin and Gjadër centres is the foreign provenance of the people saved on international waters by Italian authorities. The ratification law was not amended further despite criticism from the Government's opposition parties and international organisations, such as UNHCR and Amnesty International. Indeed, under Law n.14/2024, every person saved by the Italian military could be held in the Albanian centres without considering any peculiar situation incompatible with detention (Siccardi, 2024, p. 121). Nevertheless, Italian lawmaker needs to comply with domestic, European and international legislation dedicated to protecting vulnerable people.

Vulnerability in legal sources

While taking for granted the universal nature of vulnerability (Fanlo Cortès and Ferrari, 2020, p. 8), the approach that the legal system has embraced is that of vulnerability “in context”, meaning as a condition of difference determined by physical, human, social factors (Fineman, 2008, pp. 13-15), to which experiences of offence and non-recognition of rights are connected (Pastore, 2018, p. 107).

Even though the concept of vulnerability has been widely studied and analysed in philosophy and sociology, it has only been expressively acknowledged in the sources of law since the Nineties (Fanlo Cortès, Ferrari, 2020, p. 7). The Convention Relating to the Status of Refugees (Geneva Convention, 1951), the starting point for any form of refugee protection, does not expressly define vulnerability. Indeed, a definition was first provided in guidelines and non-binding documents, such as those issued by international organisations. For example, the UNHCR has started using the term “vulnerability groups” or “persons of concern” to indicate minors and pregnant women starting from 1989 (Report of the United Nations High Commissioner for Refugees, 1989). Gradually, the notion started to be used in international treaties (among others, the United Nations Convention on the Rights of Persons with Disabilities, considered one of the first legally binding sources to use the term openly).

In the following years, the concept of vulnerability slowly penetrated European legislation and, consequently, national orders (Bernardini, 2017). As mentioned, vulnerability is considered to be a condition of differences based on personal peculiarities, so the legal sources generally define the concept of vulnerability as the dividing line to locate groups of people who share specific characteristics worthy of protection (Fanlo Cortés and Ferrari, 2020, p. 7).

In the European legislation, the concept first appeared in relation to migration flows in Directive 2011/95/EU (the so-called Qualification Directive), in which Article 10 provides that Member States, when assessing the reasons for persecution, shall take into account race, religion, nationality, political opinion, and belonging to a particular social group. More specifically:

A group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

The directive, while reproducing a problematic textual formulation that separates sexual orientation as an abstract identity from sexual behaviour (Díaz Lafuente, 2014), introduced some procedural guarantees, such as special modalities for conducting the hearings of people seeking international protection and the involvement of psychologists and physicians in line with vulnerable groups' special needs.

In 2013, the European lawmaker issued two directives, 2013/32/EU and 2013/33/EU (the so-called Procedures Directive and Reception Condition Directive), addressing safeguarding asylum and international protection seekers with specific characteristics, including LGBTQIA+ individuals.

In Italy, the directives 2013/32/EU and 2013/33/EU were implemented by D. Lgs. 142/2015 (now Law n. 176/2023), which introduced into the Italian framework the list of vulnerable groups provided by Directive 2013/33/EU, in order to enhanced reception measures to establish specific obligations for administrative authorities regarding the identification, protection, and care of minors (including those without any parent or guardian), persons with disabilities, older people, women, single parents with children, human trafficking victims, people with severe physical or mental illnesses, people who suffered tortures, rapes or other significant form of acts of violence, also due to their sexual orientation or gender identity, genital mutilation victims.

In the D. Lgs. 25th of July 1998 n. 286 (also known as the Immigration Law Consolidation Act), the Italian legal system recognises and protects any situation related to personal or social conditions that may expose people to serious risks in their Countries of origin. Specifically, for LGBTQIA+ subjects Article 19, co.1, forbids to eject a foreign citizen to a Country where he/she/they could face persecution related to his/her/their sexual identity. Moreover, members of the LGBTQIA+ community

hold the right to receive international protection as people who are exposed to violence and discrimination in their Countries.

Legal issues arising under Italian legislation

The legal framework outlined so far constitutes the only set of applicable norms for LGBTQIA+ individuals with a migratory background, as there are no specific provisions, either domestic or international, aimed at protecting this category in a targeted manner.

Nevertheless, the Italian legislator cannot refrain from guaranteeing adequate protection to those under the protected categories provided by international, European, and national law. For this reason, among other issues, the lack of any provision related to protecting vulnerabilities raised doubts about the legitimacy of Law n. 14/2024.

The Italian Government partially addressed the matter by issuing a Ministerial Act of Enforcement of Law 14/2024 from the Italian Minister of Interior. The ministerial act provides a detailed discipline of the procedures imposed by the Italian–Albanian deal, as a guideline for Italian authorities involved in rescue operations in international waters. This kind of ministerial act is a secondary source of law, as per the Italian constitutional system. This means the provision is not issued following a democratic procedure, as with the parliamentary law-making process (Bin and Pitruzzella, 2024, p. 400). The secondary sources are indeed issued directly by the executive power, leaving considerable discretion in the hands of the public authority.

This approach is quite common in Italian legislation and is particularly used in Immigration Law. In the present case, the lawmaker chose to defer to the executive power a considerable part of the discipline regarding the operative procedures of rescue operations in international waters, the preventive screening phases, and the transportation of migrants into the Albanian centres. Nevertheless, the use of a secondary source of law in this case constitutes a breach of the principle of qualified reservation of law with respect to Articles 10 of the Italian Constitution, as per Law 14/2024, it appears to be no provision that explicitly excluded the possibility of transferring vulnerable persons to the centres located in Albania (Italian Supreme Court, 2025).

The preventive screening phase

As per the Execution Protocol (the official name of the Minister of Internal act), the Italian authorities drawled on military vessels only migrants found on international waters. Once the people were embarked on the Italian ships, the medical personnel on board conducted a first screening operation. Based on the Protocol, during this phase, the Italian authorities should check on any situation preventing the person from being conducted into the Albanian centres. These conditions expressively provided by the Act are the following:

Conditions of obvious physical or mental fragility, such as female persons, visibly minor persons, older people, people with evident physical or psychological pathologies, persons who voluntarily hand over their valid passport or equivalent identity document.

Hence, it is clear that the Minister of Interior act, in contrast with the international, European, and Italian legislations, intended to circumscribe vulnerability as a condition limited to three factors only: being female, being a minor (but only if the minor age is unmistakable) or an older person, and being visibly ill.

It must be underlined that the identification of these standards took place on offshore military ships, without any adequate means to effectively detect people's vulnerabilities, not even the "visible" ones provided by the Execution Protocol. Indeed, during the few operations carried out between 2024 and 2025, the Italian authorities demonstrated not to be able to carry out the preventive screening procedures successfully, leading to the detention in Albanian centres both minors and people with health issues (Tavolo Immigrazione e Asilo ASGI, 2025).

Furthermore, it must be underlined that the preventive screening operations occurred under time pressure, with little guarantee of privacy. It is difficult to believe that an accurate analysis of individual situations can take place in such an uncomfortable context after a dangerous journey such as that of the Mediterranean route, and in a psychophysical situation severely compromised by the traumatic experiences suffered by migrants.

The situation was exacerbated by the fact that the board authorities were military physicians with no skills to identify vulnerable people. Indeed, even if the act provided the possibility for members of the International Organization for Migration and other professionals, such as psychologists and social workers, to join the operations, it was reported that no one of these professional figures was indeed on the military ships during three operations carried out between October 2024 and January 2025 (Tavolo Immigrazione e Asilo ASGI, 2025).

Incompatibility with legal sources and case law

The conditions under which people were forced to undergo such screening are highly incompatible with the international, European, and Italian framework.

Firstly, the criteria set out in the Execution Protocol raise concerns on multiple levels. The Ministerial act places considerable discretion in the hands of the public authorities, which can decide who can be transferred to Italy and who is sentenced to detention in Albania based on female attributes, age and medical issues, tragically disregarding the categories considered vulnerable under the law.

The system of “protection” outlined by the Ministerial Act stands in conflict with the legal framework on at least two levels. Substantively, it deviates from the system of rights protection established for vulnerable groups under Article 28-bis D. Lgs. n.25/2008 and, by extension, under European Union law. Formally, it constitutes an unlawful derogation by a secondary normative source from provisions set out in a primary legislative act, as already mentioned.

Secondly, it must be underlined that the application of such discretionary screening procedures contravenes Article 3 of the Italian Constitution. The lack of appropriate criteria leads to a clear violation of the principle of equality since it creates unequal treatment not only between foreigners brought to Italy and migrants transferred to Albania (Benvenuti, p. 255-256, 2024) but also among people with personal conditions, different backgrounds, and special needs that are not visible. In the case of LGBTQIA+ subjectivities, this is particularly relevant, as the complexity of the personal stories of community members does not fit

into summary procedures, which do not provide adequate space or time for empathic or safe listening.

In addition, the operations conducted by the authorities on the Italian military ships seriously infringe the provisions of the directives 2013/32/EU and 2013/33/EU, which impose a personalised and informed assessment of specific personal situations and needs. In particular, Article 22 of the Reception Directive provides for enhanced procedural safeguards, placing on the State the obligation to establish appropriate mechanisms for identifying vulnerable applicants, while at the same time relieving the applicant from the burden of having to prove their own vulnerability.

The approach adopted by the Italian government in managing border procedures in international waters also conflicts with the rights enshrined in the European Convention on Human Rights. The European Court of Human Rights (ECHR) has repeatedly addressed the scope of application of the Convention in relation to the rights of applicants in regularisation procedures, with particular reference to Articles 3, 5 and 8 of the Convention. In the case *Tarakhel v. Switzerland*, the Court clearly stated that any transfer of asylum seekers must be preceded by an individualised and thorough examination of the applicant's circumstances, especially when the individuals involved are families with children or otherwise vulnerable persons. In this case, the Court emphasised that the State intending to carry out a transfer must, through an individualised and thorough assessment, rule out the risk that the person would be exposed to inhuman or degrading conditions, taking into account their specific personal vulnerabilities.

This requirement clashes with the operational practices conducted during the rescue operations by the Italian authorities, as reported by the Italian Association for Legal Studies on Immigration (Tavolo Immigrazione e Asilo ASGI, 2025). The failure to promptly identify vulnerabilities led to hasty transfers to the Albanian centres without the individual guarantees required by the European Court of Human Rights.

The relevance of the rapid identification of vulnerabilities (and, notably, the need to quickly identify the ones related to sexual orientation) was already underlined in *O.M. v. Hungary*. In this case, the ECHR recognised that:

In the present case, the authorities failed to carry out an individualised assessment demonstrating the specific grounds for the applicant's detention. It appears that his detention was ordered automatically, without any consideration being given to his situation, including his sexual orientation or the potential risk of ill-treatment that he faced in detention on account of that orientation.

Indeed, the Court emphasised that the applicant's sexual orientation had to be considered as a factor of vulnerability in assessing whether detention was appropriate, establishing that the State has a heightened duty of protection toward LGBTQIA+ asylum seekers. This decision is particularly relevant in the case at hand, as the people who are not considered to be "visibly" vulnerable are sent to the centres located in Albania, where their freedom risks being unlawfully compromised in breach not only of the European Court of Human Rights principles, but also under Art. 13, 2 and 3 of the Italian Constitution (Benvenuti, 2024, pp. 255-260; Bonetti, 2024, pp.260-266).

Under the conditions provided by the Executive Protocol, it is evident that no protection is guaranteed for LGBTQIA+ people during this phase of the procedure, exposing them to the almost certain risk of being transferred to the Albanian centres.

The recognition of rights between stereotypes and institutional invisibility

The circumvention of the non-refoulement principle

Once the preventive screening was conducted and those considered vulnerable were sent to Italy, the military ships sailed to Albania. This mechanism represented an apparent attempt to circumvent the principle of *non-refoulement* with a system called «preventive interceptions off-shore» (Carta, 2024, p.26). In order to avoid any censorship due to the illegitimacy of people's push backs (as already happened before, such as in

the case of *Hirsi Jamaa and others v. Italy*⁴), foreign citizens intercepted on international waters and sent to Albania using Italian military ships were officially considered as withheld in Italian territories, as provided by Law 14/2024. Nevertheless, one of the main problems related to the principle of non-refoulement remained. Indeed, the rule represents a guarantee for international protection and asylum seekers access to the territory of the host State in order to have access to fair procedures for the recognition of their rights.

The screening procedure

As the foreign citizens arrived in Shenjin, another medical screening was conducted. Even in this case, the screening aimed to detect any medical issue. There were two options at that point: if any health condition was detected, the person would have been sent to Italy, facing another arduous journey in poor conditions. The others underwent another screening procedure to detect, under Article 28-bis d.lgs. 2008 n.25, the presence of:

Minors, unaccompanied minors, persons with disabilities, elderly people, women, single parents with minor children, victims of human trafficking, persons suffering from serious illnesses or mental disorders, individuals who have been found to have suffered torture, rape, or other serious forms of psychological, physical, or sexual violence, including violence related to sexual orientation or gender identity, and victims of genital mutilation or who belong to family units (including women and/or underage children or other vulnerabilities, with a direct line of kinship.

Ideally, these criteria should have applied to preventive screening as well. However, as we have already seen, these conditions were not provided by the Execution Protocol, and recognising these characteristics was completely impossible on a ship in military trim and without specialised personnel.

The detection of one of these circumstances, in addition to coming from a Country considered safe, prevents the public administration from

4. *Hirsi Jamaa and others v. Italy*, n. 27765/09

applying the so-called accelerated border procedures, which are characterised by tight timeframes and the lack of alternative measures to detention. The Italian framework, indeed, provides just one provision to avoid detention: the payment of a pecuniary guarantee, an unlawful form of discrimination against applicants based on their economic conditions (Praticò, 2023, pp.9-16).

Where vulnerabilities are detected, or when it is impossible to promptly ensure a correct and complete assessment of the individual's situation, the ordinary procedure is applied. Under Article 8 d. lgs. 25/2008, the ordinary procedure allows for a more thorough examination, adequate time for gathering evidence and reception conditions better suited to safeguarding the applicant's physical and psychological integrity.

Nevertheless, failing to promptly identify a vulnerable status during initial screenings often results in incorrect placement into the accelerated procedure. This is particularly true for members of the LGBTQIA+ community.

Stereotypes and institutional invisibility

Applications for international protection based on LGBTQIA+ identity often conflict with an institutional model that ties the applicant's credibility to implicitly normative, ethnocentric, and often stereotyped criteria. Authorities assessing the reliability of migrant narratives frequently rely on a standard of social perception—that is, on how publicly recognisable or performatively aligned the declared identity is with western cultural expectations (Masullo, 2016).

Indeed, the methods used by the public administration to ensure that the person is worthy of protection because he/she/they are at risk of violence or discrimination have often been considered detrimental to the dignity of applicants and not follow fundamental rights when assessing the sexual orientation of asylum seekers. It is not that rare that the authorities responsible for examining international protection claims based on sexual orientation or gender identity rely on cultural and sexual stereotypes to assess the credibility of applicants.

In many contexts, a standardised narrative of the LGBTQIA+ experience is centred on public coming out, visible romantic relationships, and

behaviours that align with the western model of LGBTQIA+ subjectivity (Dustin and Held, 2018). This approach overlooks the diversity of identity experiences in countries of origin and the role of secrecy and fear in shaping identity within repressive environments. One of the causes of this kind of approach is the lack of a specific framework dedicated to the LGBTQIA+ community. As already mentioned, apart from the Procedures Directive, which expressly refers to sexual orientation and gender identity as characteristics guaranteeing special procedural protection, LGBTQIA+ subjects are protected exclusively as vulnerable individuals (Ferreira, 2018). Despite the issuing of guidelines (such as the UNHCR Guidelines on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity), the legal basis is still inadequate to tackle the specificity of LGBTQIA+ subjects' applications, in which an intersectional perspective should prevail (Dustin and Held, 2018). Conversely, the absence of adequate legislation inevitably leads to excessive recourse by administrations to discretionary decisions tainted by cultural stereotypes. As a result, specificities related to sexual orientation and gender identity become invisible to institutions, leading to a double marginalisation of applicants, on one hand as migrants and on the other hand as LGBTQIA+ subjects (Martorano and Prearo, 2020).

It should be considered that authorities are often completely unprepared to handle particularly sensitive cases. For example, little consideration is given to the significant number of LGBTQIA+ individuals who may have never disclosed their sexuality or struggle to accept it (Giametta, 2017), factors worsened by a potential mistrust in the authorities or the fear of retaliation by members of the community of origin (Selim *et al.*, 2024). Likewise, the applicant could decide to hide these elements for religious or cultural reasons or not be comfortable discussing these personal situations with an authority (Ferreira and 2018).

Sometimes, the barrier can be the language: it may happen that the applicant's language does not even provide a term to define his/her/their sexual orientation or even provide a derogatory term in western culture (Danisi *et al.*, 2021, pp.54-76). Also, interviews take place under conditions of intense emotional stress, in which the information provided by the applicant is often met with scepticism by the authorities.

Moreover, a late disclosure of the applicant's sexuality during the asylum application could potentially be ignored. Indeed, Article 5 of the

Qualification Directive requires the applicant to submit any evidence related to his/her/their right to obtain international protection as soon as possible. On the other hand, no consideration is given to the fact that the LGBTQIA+ applicant is often unaware of the relevance of his/her/their sexual orientation and of the importance of demonstrating any violence or discrimination suffered.

The case law's criticisms

The authorities' approach has been curbed by case law, which has expressly condemned the adoption of cultural stereotypes as a criterion for evaluation in LGBTQIA+ asylum practices, both under European law and international legislation.

In *A, B and C v. The Netherlands*⁵, the CJEU held that the credibility of the applicant's sexual orientation cannot be based solely on stereotypes, questions about sexual practices, or invasive tests. A decision based only on these premises would be in breach of the European framework, considering that the deciding authorities must take into account the applicant's situation and circumstances (as provided by Directive 2013/32/UE). At the same time, the CJEU censured the use of detailed questioning concerning sexual practices or any other evidence that might be invasive of the private sphere under the respect for private and family life guaranteed by Article 8 of the Charter of Fundamental Rights of the European Union.

In recent decisions (*B. and C. v. Switzerland*⁶ and *M.I. v. Switzerland*⁷), the ECHR finally ruled on the illegitimacy of widespread practice in European countries of the so called «discretion requirement» (Ferreira, 2018, p. 42). Indeed, it was pretty standard for European authorities to reject LGBTQIA+ subjectives' applications on the basis that they could keep living in their Country of origin, concealing their sexual orientation. The ECHR underlined that concealment of one's sexual identity represents a constraint falling within the definition of inhuman and degrading treatment and, as such, protected by Article 3 of the European

5. *A, B e C v. The Netherlands*, C-148/13, C-149/13, C-150/13

6. *B. and C. v. Switzerland*, appeals n. 889/19 and 43987/16

7. *M.I. v. Switzerland*, appeal n. 56390/21

Convention of Human Rights. Sexual orientation should be considered as a fundamental element of one's identity: it is not a behaviour to be repressed but an essential part of the person.

The breach of the applicants' right of defence

What has been described so far concerning the treatment of LGBT-QIA+ migrants risked being even worse for those detained in the centres in Albania. It is worth recalling that the migrants undergoing the procedures for the recognition of vulnerabilities, as well as those who have gone through the fast-track border procedures, faced the authorities in a hostile environment, in isolation confinement, and without proper professional legal assistance. Indeed, according to reports (Tavolo Immigrazione e Asilo ASGI, 2025), during the detentions in Shengjin between 2024 and 2025, access to the applicants' right of defence was severely compromised.

Under Article 13 of the European Convention of Human Rights, the State has a positive obligation to ensure adequate and accessible information on the fundamental rights of migrants, including the means of protection to which they can have access (*Hirsi Jamaa and others v. Italy*, 2009). Hence, some doubts arise from the validity of the legal information provided. As reported, the right to receive legal notice was acquired through simple explanatory sheets; the instrument can hardly be considered adequate, given both the legal complexity of the cases and the actual ability of the applicants to understand the information provided (as in the cases of illiteracy, or low level of education). Moreover, as previously noted, in the case of LGBTQIA+ individuals, legal assistance plays a crucial role in limiting the wide discretionary power granted to administrative authorities and in effectively highlighting the specific personal circumstances that warrant special protection.

Particularly worrying was the difficulty of the applicants to be in contact with his/her/their lawyer. Under Law n.14/2024, lawyers could keep in touch with their clients, but they could not visit them in the Albanian centres and had to be present in the courtroom with the competent judge in Italy. However, it appears that the appointments of the defence lawyer took place a few minutes before the validation of the detention hearings,

preventing the defendants from receiving valuable information about their clients. This provision represents a potential breach of Article 24 of the Italian Constitution, which guarantees the right of defence. Remote communications with the lawyers, mainly if these occur when proceedings have already commenced, risk being ineffective in case of language difficulties or psychological trauma, compromising the applicant's right of defence.

The possibility to speak freely with one's lawyer in a context where privacy and empathy are guaranteed is often the only effective way to detect vulnerabilities. This is particularly relevant for LGBTQIA+ subjects whose applications face the abovementioned difficulties.

Considering that the current legislation does not (still) offer any valid protection against the many different forms of oppression that a LGBTQIA+ person could face, and that public administration holds great discretion in deciding on applications, talking with a professional could make the difference in choosing the best path to guarantee as soon as possible individuals' rights.

Safe countries for whom?

Under Article 28 D. Lgs. 25/2005, implementing Directive 2012/32/EU, if the applicant's Country of origin is considered safe, the accelerated procedure must be applied. The consequences of applying this process are relevant concerning applicants' rights. As noted above, the accelerated procedure provides for shorter production times than the ordinary procedure: the commission in charge of the decision needs to issue an order within five working days from the applicant's interview, and any appeal against the rejection order must be proposed in fifteen days, while the ordinary time is usually thirty days. Moreover, in case of appeal, the rejection order effects are not automatically suspended; hence, the applicant could face deportation even if the trial is still pending.

The definition of Safe Country of origin

The first problem relates to the exact definition and application of the safe Country concept. According to Article 36, Annexe 1, a State of origin could be considered safe:

[...] where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In Italy, the list was first introduced under Article 2-bis of d.lgs. n. 25/2008 on the 4th of October 2019 with a Decree enacted by the Minister of Internal Affairs, the Minister of Justice, and the Minister of Foreign Affairs. Even in this case, one of the main problems with the list was using a secondary source of law.

The majority of case law (see, among the others, Firenze Tribunal, Decree 20/09/2023, r.g. 9787/2023 and Decree 26/11/2023, r.g. 11464-1/2023, r.g. 4988-1/2022) argued that the enforcement of the list countered with primary sources, such as Article 37 of Directive 2013/32/EU and Article 2-bis d.lgs. n. 25/2008, which imposes an obligation on judges to evaluate the Country's situation under domestic and European law, regardless of the public administration's definition of a safe Country.

In *CV v. Czech Republic*⁸, for example, the CJEU stated that a Country cannot be considered safe if parts of its territory are not. Following this decision, several Italian Courts started to reject the detention orders (including the ones for people held in Albania) based on the impossibility of establishing security throughout the whole Country and for all categories of people. Specifically, the Court of Palermo (Decree r.g. 11974/2024) objected to the designation of Tunisia as a safe country based on the new principles provided by *CV v. Czech Republic*. Referring to the country fact sheet provided by the Minister of Foreign Affairs, the Court disputed the designation of the Country as a safe place for

8. *CV v. Czech Republic*, C-406/22

members of the LGBTQIA+ community, considering that the Tunisian Criminal Code sentences to three years' imprisonment non-heterosexual intercourse, even if consensual. For the same reasons, the Court of Rome (Decree r.g. 42256/2024) did not validate the detention of twelve foreign nationals detained in Albania, including citizens from Bangladesh, formally considered a safe country but, as stated by the Court, potentially dangerous for minorities, including LGBTQIA+ people.

Following this case-law orientation, the Italian Government issued new legislation (d.l. 158/2024), converting the list into a proper law, removing any reference to the sources used for the safe country designation, in an attempt to limit the judges' scrutiny and guarantee the full implementation of the Italian-Albanian Agreement (Siccardi, 2025, pp. 15-16).

Nevertheless, the situation was far from being resolved. Many Courts decided to refer to the European Court of Justice for preliminary rulings, asking, among others, to determine if a country can be considered safe when there are categories of people at risk and to define better the judge's scrutiny of a country's security (see, among the others: Court of Bologna, Order r.g. 14572-1, p. 20; Court of Rome, Order r.g.46690 and others; Court of Palermo, Order r.g. 763 and 764.).

Finally, in August 2025, the CJEU (C-758/24 and C-759/24) affirmed that a Country cannot be considered to be safe if it is unable to ensuring safety conditions for all its citizens. Moreover, the European judge stated that national Courts have the power to override conflicting domestic rules, including those of legislative status.

Formally safe, substantially perilous

According to the Italian list, the following Countries are considered safe: Albania, Algeria, Bangladesh, Bosnia-Herzegovina, Cape Verde, Ivory Coast, Egypt, Gambia, Georgia, Ghana, Kosovo, Morocco, Montenegro, North Macedonia, Peru, Senegal, Serbia, Sri Lanka, and Tunisia.

It is not known on what basis these countries are considered safe, but as far as we are concerned, the legal framework of the States under review concerning the LGBTQIA+ community certainly deserves a closer look. Taking into account three elements (criminalisation of consensual same-

sex sexual acts, protection against discrimination, and legal gender recognition), based on data gathered from the ILGA database, the following conclusions can be drawn:

- Criminalisation of consensual sexual acts between non-heterosexual persons. Non heterosexual intercourse is prohibited by law in eight out of nineteen Countries (Algeria, Bangladesh, Gambia, Ghana, Morocco, Senegal, Sri Lanka, Tunisia). The maximum penalty is life in prison, provided for in the Bangladeshi and Gambian Criminal codes. Sri Lanka provides a prison sentence of up to ten years; Senegal five years; Ghana, Morocco, and Tunisia three years; Algeria two years. Egypt does not officially criminalise non heterosexual acts; however, particularly serious is the state authorities' promotion of hateful acts against the LGBTQIA+ community and, in general, against all subjectivities that conflict with strict moral norms (Noralla, 2023).

- Protection against discrimination. Excluding the countries that officially criminalise non-heteronormative relationships, it can be noted that three out of eleven countries (Cape Verde, Ivory Coast, and Peru) do not have regulations to protect members of the LGBTQIA+ community. In the case of Bosnia Herzegovina, there is particular resistance to the recognition of LGBTQIA+ rights by the Republic of Srpska, whose president has announced the introduction of a law in 2023 to prohibit the presence of LGBT subjectivities in educational institutions. Georgia offers protection against sexual orientation discrimination, but not against gender identity or gender expression discrimination.

- Legal gender recognition. Out of eleven Countries (Albania, Bosnia Herzegovina, Cape Verde, Georgia, Ivory Coast, Kosovo, Montenegro, North Macedonia, Peru, Serbia) only Bosnia Herzegovina, Montenegro, and Serbia guarantee access to gender reassignment procedures. Kosovo does not provide an established procedure, but access to gender marker change is possible through judicial claims. In North Macedonia, a procedure of legal gender recognition formally exists, but it appears to be vague and unclear.

The data unequivocally show how the safe country criterion ignores serious violations of the rights of specific vulnerable groups. In the case of LGBTQIA+ subjects, the discriminations and risks that they may face are particularly serious: coming from a safe country, together with the difficulties in coming forward with their personal history, expose LGBTQIA+ applicants to an even greater risk of repatriation, with potentially irreversible consequences.

Conclusion

The present analysis has brought to light a number of fundamental issues concerning the implementation of Law No. 14/2024 and the related Italian-Albanian Agreement, especially as they pertain to the treatment of individuals in vulnerable conditions. The legislative and operational framework currently in force creates a system in which access to asylum procedures and international protection is subordinated to a preliminary assessment conducted in conditions that are neither legally adequate nor procedurally sound. In doing so, it compromises some of the most fundamental guarantees established under international law, European directives, and Italian constitutional principles.

The most alarming consequence of this system is its impact on LGBTQIA+ subjects, whose particular vulnerabilities are systematically overlooked in a process that privileges speed and control over individualised assessment and legal safeguards. The delegation of key phases of the procedure—such as the preventive screening concerning vulnerability—to military personnel, during a high sea crossing, and in the absence of legal and psychological support, exemplifies the structural disregard for the needs of members of the LGBTQIA+ community. As demonstrated by the case law of the European Court of Human Rights and the Court of Justice of the European Union, such neglect can amount to violations of Articles 3, 8, 13, and 14 of the European Convention of Human Rights, as well as of principles of the Charter of Fundamental Rights of the EU and the Italian Constitution. Furthermore, the application of the safe country of origin criterion in an undifferentiated manner, without consideration for the specific risks faced by minorities, constitutes a structural flaw in the current Italian (and, maybe, European) host system. The

judicial responses of Italian courts, which have challenged the legality of detentions in Albania based on a critical review of the safe country lists, demonstrate the growing dissonance between administrative practice and judicial interpretation. Yet, recent legislative efforts to limit judicial scrutiny and consolidate executive discretion signal a dangerous drift towards the erosion of legal safeguards and the weakening of constitutional checks and balances. In conclusion, the Italian-Albanian system, as currently structured, does not merely constitute a legal anomaly or policy misjudgement. It reflects a broader trend of externalising migration control at the expense of individual rights and legal accountability. Indeed, the new European Pact on Migration and Asylum, soon to be implemented, seems to follow in the footsteps of the Albanian system, providing for screening at external borders and stricter procedures for foreign nationals, with predictable results.

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