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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



Executive Summary

Alternative policy approaches to RR: regularisation and other recognised statuses

Case Study: **Italy**

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This document provides a concise summary of the key findings on Legal and policy responses to irregularised non-removable TCNs and promising practices from seven EU Member States and the UK that was conducted in the framework of MORE project. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.

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Introduction

The concept of "non-returnability" for humanitarian reasons was first introduced in Italy in the 1998 Consolidated Act on Immigration (Art. 5, co. 6), based on the principle of non-refoulement and protected by international and national legal frameworks. Over the years, this concept has been modified and fragmented into rock-hard "types" of situations meant to cover all possible conditions and cases, including the current provision known as "special protection." The rights derived from these modifications have been stretched or restricted depending on the political coalitions in power, the priorities of political and policy agendas, and public and political discourse. Until 2018, "humanitarian protection" (the name of the residence permit introduced by the 1998 Consolidated Act on Immigration) was granted whenever an individual was in a situation of vulnerability.

Today, Third Country Nationals (TCNs) in Italy with irregular administrative status are considered non-returnable *de facto* if non-returnability is due to practical reasons (e.g., lack of identification or transportation) or *de iure* when protected from expulsion by national or regional laws (such as the ECHR). Paradoxically, when practical reasons hinder the return of a TCN, they are issued a new order to leave the country independently within seven days. As one interviewee remarked: *"This demonstrates the incapacity of the State, which, in eighteen months of detention, was unable to return a person, despite having the means, political power, diplomatic influence, and resources, and then expects the TCN to resolve the State's incapacity within seven days."*

The possible paths of a TCN who has been served with an expulsion order depend on factors that lay on the different territories and the organisational and working modalities of the designated institutions, such as police headquarters (Questure) and Ministry of Interior local offices (Prefetture) that are on the territory. Not to forget the agency of the TCN, where sometimes the migration project determines and guides the decisions taken. As an interviewee pointed out: *"A TCN whose destination is Northern Europe who gets an order of expulsion will probably make different decisions on how and if to deal with it than one who has decided to stay in Italy"*.

It is important to emphasise that non-returnability is not synonymous with regularisation. There are cases where the conditions for granting a residence permit cannot be met, even if the TCN is declared non-returnable. For instance, a pregnant woman without a passport may struggle to obtain a medical care residence permit, even though the law provides for it, as a passport is one of the required documents. Similarly, a boy exploited in illegal activities who refuses to report his exploiters or engage with social services may be considered non-returnable (as a victim of exploitation in illegal economies), but no available residence permit would apply to his situation, preventing the regularisation of his status.

The suspension of an order of expulsion, though, is not enough to grant regularisation.

When a TCN appeals an expulsion order, they are issued a document by the Magistrate Court (*Giudice di Pace*) suspending the order until the hearing date. However, this does not automatically grant a residence permit unless the TCN actively applies for one. In the stratified scale of rights, this places the TCN just above the status of “undocumented,” leaving them in a sort of *quasi-limbo*, where they are authorised to remain in Italy but lack a residence permit and, at times, are unable to apply for one due to the strict categories and requirements of the paradoxical legal framework.

Awareness of the potential pathways to escape irregularity and avoid expulsion is critical: applying for asylum or a “special cases” permit requires the TCN to be informed of these possibilities. Not only is the information provided in detention centres crucial, but so too are the resources offered by various formal and informal support offices dedicated to TCNs, regardless of their administrative status. Research has shown that TCNs detained in detention centres are less likely to claim asylum due to inadequate legal information, insufficient assistance, and administrative obstacles.

In this context, practitioners play a vital role. The legislative and policy framework governing regularisation in Italy is complex, difficult to navigate, and even more complicated for TCNs to understand and utilise, especially those in vulnerable situations, such as irregular administrative status. Furthermore, the reasons that may justify regularisation are sometimes visible (e.g., a pregnant woman) but often not (e.g., a boy exploited in the illegal drug trade). Discovering such reasons can be challenging for various personal and systemic factors, frequently linked to the individual’s migration project. Through formal and informal meetings, essential support, and open dialogue, street-level bureaucrats can facilitate identifying circumstances that qualify a person as non-returnable under the law. These interactions can provide the basis for requesting a residence permit and accessing (some) social rights.

Evidence and analysis

The report analyses the legal statuses of non-returnable TCNs in Italy and alternatives to return, focusing on the normative and policy framework. Non-returnability can be *de facto* if due to practical reasons (e.g. lack of identification or carrier) or *de iure* when the person is protected against expulsion by the national, European Union and regional law such as the Council of Europe.

The main results are the following:

- The institution of non-returnability in Italy, established in 1998, during the years has seen several modifications connected to the issuing of a variety of residence permits recently fragmented into rock-hard “types” of situations which are supposed to cover all the conditions and cases;
- Italian State progressively compressed and reduced the categories allowed to be regularised so that these categories do not represent the complex variety of situations nowadays;
- The equation non-returnability/regularisation is not always true;
- In relation to the equation of non-returnability/regularisation, some third-country nationals declared non-returnable do not fit into the types of residence permits defined by the law. Consequently, they find themselves in a situation of “*quasi-limbo*”: they are entitled to stay in Italy regularly but *de facto* deprived of a residence permit and then of many social and fundamental rights. On the scale of administrative precarity, they come right before undocumented TCNs;
- The lack of public data on the number of non-returnable TCNs in Italy sign of little attention given to the topic by the State;
- Alternatives to return and readmission policy in Italy is the regularisation path (if and when possible) with a case management approach, based on social work;
- The work of practitioners proved to be essential and effective in the regularisation processes.
- The “formal informality” of the administrative circular letters used to regulate access to rights of TCNs, hinders the navigation into the topic since they are many and difficult to recover;
- The lack or denial of municipally registered residency can be very damaging – since this right gives the holder access to other rights – increasing the exclusion and casualisation of TCNs, even in a regular administrative position;
- Local institutions apply formal residency, territorial rootedness, and long-term residence discretionally, using different combinations according to the clerk in charge of the territory, resulting in a shifting geometry of social rights that puts TCNs in an insecure and vulnerable position. This differentiated access to social welfare is different according to the legal status of individuals;

- The knowledge of the possible paths to take to flee irregularity by the TCN and avoid expulsion is essential: claiming asylum or applying for a “special cases” permit first requires the TCN to be aware of these possibilities;
- The likelihood that a TCN detained in a detention centre (CPR) would claim asylum is limited because of inappropriate legal information and assistance and administrative obstacles;
- The possibility to obtain a residence permit for victims of trafficking and severe forms of exploitation without recurring to report the exploiters or traffickers is possible, but its granting largely depends on the local police headquarters (Questure), which are in charge of issuing of the document and not always prone to issuing it.
- The differentiated access to social welfare varies according to the legal status of individuals

Policy recommendation

- Guarantee rights for non-returnable TCNs, ensuring that non-returnable TCNs are not left in a "quasi-limbo" without access to essential rights.
- Establish a residence permit for non-returnable TCNs who cannot regularise their administrative situation due to law constraints.
- Empower and support projects adopting a case-manager approach that support and help the regularisation of TCNs in an administrative irregular situation who can regularise their position but they do not know.
- Improve Transparency and Accountability, by increasing public data collection on non-returnable TCNs.
- Enhance awareness and legal assistance, ensuring that TCNs are informed about their rights and the pathways to avoid irregularity and expulsion.
- Ensure equal access to social welfare, by reducing the differentiated access to social rights based on legal status and territorial disparities.
- Ensure the regularisation of victims of trafficking irrespectively to their cooperation with law enforcement.