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Contesting Migration in Law

Perspectives on Cases involving Pro- and Anti- Migration Mobilisation in Italy

Contesting Migration in Law
 Perspectives on Cases Involving Pro- and Anti- Migration Mobilisation in Italy

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About the project:

This report has been produced as part of the ESRC-funded project “Contesting Migration: Pro- and Anti-Migrant Mobilization in Mediterranean Refugee Reception Sites” (ES/W012324/1), led by Olga Demetriou at Durham University in collaboration with Antonis Ellinas at the University of Cyprus.

Contesting Migration brings together anthropologists and political scientists to study one of the main social and humanitarian contemporary challenges, that of forced displacement. The project focuses on the impact of grand policy shifts on migration and refugee protection over the last decade on local activist communities in the Mediterranean. Taking locations in Greece, Italy, and Spain as its main sites of focus, and building on previous research in Greece and Cyprus, the project studies the governance of migration through the lens of refugee reception sites with a focus on political contestation. Mobilising political ethnography in nine sites, the project seeks to understand in a comparative frame, refugee politics and policy from the point of view of activists involved in conventional, contentious, and cultural forms of activism.

The project’s legal reports address the landscape of activism for and against migration in the three countries and provide a frame for understanding the legal context in which this form of conventional activism operates. They seek to provide contextual and judicial background, through studying the provisions of the law and how these are put in practice. Each report uses two legal case studies to compare the approach to pro- and anti-migration activism in each country.



Contesting Migration Law

Perspectives on Cases Involving Pro- and Anti- Migration Mobilisation in Italy

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Perspectives on Cases involving Pro- and Anti- Migration Mobilisation in Italy

Report Summary

This report provides a systematic and evidence-based assessment of the legislative and judicial instruments governing civil society movements engaged in the migration debate in Italy — whether advancing humanitarian and solidarity-driven objectives or articulating nativist and anti-migration positions. As a Mediterranean frontline state and a principal point of entry within the European Union's external border architecture, Italy occupies a structurally significant position in the governance of international migration, rendering its domestic legal choices consequential both nationally and within the broader European legal order.

Through a contextualised analysis of the applicable legislative framework and two case studies — Linea d'Ombra (Trieste) and CasaPound Italia — the report documents a systemic asymmetry in the enforcement of domestic law: civil society actors engaged in solidarity-based activities have been subjected with increasing frequency to criminal prosecution, administrative scrutiny, and institutional pressure, while openly neo-fascist and anti-migration actors have operated within a largely permissive legal environment, benefiting from the persistent under-enforcement of constitutional and statutory prohibitions. This pattern raises substantive concerns regarding the equal application of the law and Italy's obligations under binding instruments of international and European human rights law.

The report concludes that this enforcement asymmetry is structural in character and identifies concrete pathways for legal reform, including the introduction of an explicit humanitarian exemption within the migration law framework, the consistent application of anti-fascist and hate-speech legislation, and the reassertion of state accountability in the regulation of extremist mobilisation.

Introduction

Context

This report provides a systematic overview of the legal frameworks and regulatory mechanisms governing pro- and anti-migration activism in Italy. Its principal aim is to offer a rigorous and evidence-based assessment of the current approaches adopted by Italian authorities and the legal system towards civil society movements engaged in the migration debate, whether in support of or in opposition to migration.

In recent years, the Italian socio-political landscape has been characterised by a deepening polarisation over migration-related issues – a tendency observable across several EU Member States – reflecting broader tensions between humanitarian obligations and increasingly restrictive domestic policy agendas. Italy plays an important role in the wider European migration landscape, as a Mediterranean frontline state and has done so for the last couple of decades. This role has had profound impact on the development of national legislation on migration and on public perceptions and political rhetoric on the issue.

Civil society organisations and grassroots networks operating at the national level have experienced a marked deterioration in institutional cooperation, while security-oriented and nationalist movements have gained considerable public visibility through largely unregulated campaigns advocating stricter border controls and the deterrence or criminalisation of irregular migration. This dynamic has been further compounded by a series of bilateral agreements concluded between the Italian government and third-country governments with documented authoritarian characteristics, notably in the Mediterranean region, which have generated significant concerns regarding human rights violations and potential breaches of international legal obligations pertaining to the protection of human dignity and fundamental freedoms, without distinction as to origin, language, orientation, socioeconomic condition, or social status.

The report maps the principal legislative and judicial instruments bearing on both forms of activism, with particular attention to processes of criminalisation affecting specific actors and activities. Of note in this regard is the direct targeting and formal prosecution of Search and Rescue (SAR) workers and organisations – most prominently illustrated, as discussed in later sections, by proceedings against *Mediterranea Saving Humans* and *Sea Watch* – in circumstances that raise significant questions about the compatibility of such measures with international humanitarian and maritime law.

Over the preceding five years, civil society initiatives supporting migrants and refugees have been subjected with increasing frequency to controversial investigative actions, surveillance practices, and administrative controls by state authorities and security services. This pattern reflects a progressive contraction of civic space – a phenomenon documented also in the Greek case – and raises serious concerns regarding the proportionality and legitimacy of the measures deployed to curtail solidarity-driven activities.

This report ultimately seeks to contribute to a more informed and rigorous understanding of how Italian law mediates and constrains social movements engaged in migration governance. By charting the evolving legal and political landscape, it aims to identify both the impediments to and available pathways for the safeguarding of civic participation, access to justice, and the protection of human dignity within an increasingly securitised institutional environment.

The findings presented herein are intended to serve as a foundation for further legal scholarship and to inform policy deliberation and advocacy at both national and international levels.

Socio-political context

While migration has featured in Italian political discourse since the early 1990s, it is over the past decade that it has emerged as one of the most divisive and politically contested issues in public and institutional life. This trajectory represents a significant transformation from the socio-demographic realities of the 1970s and 1980s, when individuals of migrant background were predominantly present as seasonal agricultural labourers or as dependants arriving through family reunification channels.

The turning point came with the large-scale Albanian arrivals of the early 1990s, which initiated a sustained expansion of Italy's foreign-born population and marked the country's definitive transition from a historically emigration-sending nation to a principal destination of international migration flows. As one of the European Union's primary points of entry for persons crossing the Mediterranean – most notably via Lampedusa and the Sicilian coastline – and for those traversing the Western Balkans route through Trieste, Italy has since confronted both acute administrative pressures in the management of reception infrastructure and sustained political controversy surrounding the regulation of arrivals, the processing of asylum claims, and the governance of border control mechanisms.



“Grooving Lampedusa”, 2012 © Mario Badagliacca

represented the apex of what became widely characterised as the European “migration crisis.” In that four-year period approximately 624,000 people reached Italy by sea, with arrivals concentrated predominantly at Sicilian ports such as Augusta, Catania, and the island of Lampedusa, the last

As a frontline state, Italy's domestic migration governance has been shaped by successive layers of EU legal architecture: from first-entry responsibility frameworks, to the Dublin Regulation which formally assigned asylum processing obligations to states of arrival, to the Hotspot Approach which designated Italian reception sites as primary identification and screening hubs – each iteration compounding administrative pressure on a strained national system. Far-right political actors have in turn exploited this tension, weaponizing migration as the spearhead of a broader anti-EU sovereigntist discourse in which European frameworks are cast not as instruments of shared protection but as external impositions undermining national sovereignty.

Periods of large-scale maritime arrivals – most acutely between 2014 and 2017 – exposed persistent tensions between Italy's obligations under international human rights law, including the 1951 Refugee Convention¹ and the European Convention on Human Rights (ECHR),² and growing domestic demands for restrictive migration policies.³ This period

¹ The 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees: <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees>.

² European Convention on Human Rights: https://www.echr.coe.int/documents/d/echr/convention_ENG.

³ All websites have been last accessed in March 2026.

serving as the most symbolically prominent point of entry. The scale of this phenomenon was significant: 2014 alone recorded over 170,000 arrivals – representing a nearly fourfold increase from the 42,925 arrivals recorded in 2013 – driven by the intensification of armed conflict in Syria, Eritrea, and Libya, while 2016 registered the highest annual total of the period, with over 181,000 disembarkations. The human costs were equally severe, with over 4,500 deaths recorded in the central Mediterranean in 2016 alone.

According to data collected by the Italian Red Cross (*Croce Rossa Italiana*),⁴ sea arrivals surged by 296% between 2013 and 2014, before declining progressively from 2018 onwards – a reduction that coincided with the introduction of restrictive political measures, the conclusion of bilateral agreements with Libya, and increasingly hostile domestic political discourse that cast solidarity and humanitarian assistance as legally suspect activities.



Demonstrations Refugees Welcome in Brennero in 2016 © Federico Epifanio

As the State progressively withdrew from direct involvement in the daily management of migrant and refugee populations present on national territory after this time, civil society organisations (CSOs) assumed an increasingly central, and in many contexts, indispensable role in the provision of humanitarian assistance, social support, and legal advocacy. While this substitutive function served to address certain immediate operational gaps, it simultaneously enabled the State to externalise responsibility for the protection and social inclusion of migrants and refugees onto non-State actors – a dynamic that, while practically expedient, raises substantive questions regarding the allocation of constitutional and international legal obligations incumbent upon public authorities.

Public debate on migration has been shaped by successive governments of divergent political orientations and by shifting patterns of public sentiment, reflecting persistent legal ambiguities in the treatment of newly-arrived migrants and refugees and in the regularisation of individuals already present on national territory who are administratively categorised as ‘economic’ migrants.⁵

A significant turning point in this legislative trajectory was the adoption of two Security Decrees – Decree Law n.113/2018 and Decree-Law n.132/2018⁶ – enacted under then-Interior Minister

⁴ Croce Rossa Italiana Comitato Regionale Sicilia Area III – Preparazione della comunità e risposta ad emergenze e disastri, Report sbarchi in Sicilia

⁵ Throughout this report, the term ‘migrant’ is used as an inclusive designation encompassing all persons who cross or seek to cross international borders, irrespective of their legal status or the motivations underlying their movement. The term ‘asylum seeker’ and ‘refugee’ are used where relevant to indicate a person's specific legal status or protection claims under international law. The term ‘economic migrant’, where it appears, reflects an administrative and legal categorisation employed within Italian law and policy, and does not constitute a normative assessment on the part of the author.

⁶ Decreti Sicurezza. D.L. 113/2018, D.L. 132/2018 and Decreti Sicurezza: <https://www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/SG>.

Matteo Salvini.⁷ These instruments substantially curtailed access to humanitarian protection, imposed stringent restrictions on search and rescue (SAR) operations in the central Mediterranean, and significantly expanded the administrative and criminal liability applicable to NGOs engaged in maritime rescue activities, generating widespread legal uncertainty regarding the boundaries between lawful humanitarian action and criminal facilitation of irregular migration. Although subsequent governments partially amended these measures, their structural legacy continues to exert a discernible influence on law enforcement practices, prosecutorial culture, and public discourse surrounding migration governance.

Civil society organisations have played a demonstrably critical role in responding to the structural and humanitarian challenges generated by migration, providing humanitarian aid, legal assistance, and integration pathways toward social integration. Nevertheless, expressions of civil solidarity have increasingly been subjected to processes of criminalisation by State authorities – a development that constitutes one of the central analytical concerns of this report. A particularly illustrative case is that of *Mediterranea Saving Humans*, a civil society platform conducting SAR operations in the central Mediterranean. Since 2019, its vessels – including the *Mare Jonio* and the *Alex* – have been repeatedly detained by Italian authorities, and their crews were subjected to criminal investigation under Article 12 of the Italian Consolidated Immigration Act (Legislative Decree n. 286/1998⁸) on grounds of alleged facilitation of irregular migration. These proceedings were initiated notwithstanding the vessels' demonstrated compliance with applicable maritime law and binding international obligations, including the duty to render assistance to persons in distress at sea as codified in UNCLOS,⁹ IMO SOLAS,¹⁰ and the SAR Convention.¹¹ Competent courts have largely declined to proceed with or have dismissed these investigations, a pattern that underscores the fundamental tension between the domestic criminalisation framework and the imperative of humanitarian compliance under international law.

A further, less visible dimension of this criminalisation dynamic concerns migrant people themselves, specifically those being designated on arrival as boat drivers or captains. Since 2013, more than 2,700 individuals have been arrested and prosecuted under Article 12 of the Consolidated Immigration Act because they have been identified as alleged smugglers on the basis of a few testimonies often extracted under pressure, despite evidence that many were coerced into steering the vessel by armed traffickers or assumed command simply to survive. Prosecutions have resulted in sentences of up to life imprisonment. Investigative reporting has documented emblematic cases, such as that of the Libyan football player Abdelkarim Alaa F. Hamad convicted of murder and sentenced to thirty years' imprisonment in 2017.¹² This pattern reveals that criminalisation is not only targeting civil society organisations but extends to the individuals fleeing violence, often transforming victims of trafficking into perpetrators under Italian law.

Analogous dynamics have emerged in terrestrial contexts. *Linea d'Ombra*, an association operating in Trieste which provides first aid, basic necessities, and humanitarian support to persons arriving via the Western Balkans Route, has been subjected to administrative scrutiny, institutional pressure, and sustained public hostility from local authorities and anti-migration groups. Although the association's activities remain consistent with applicable domestic law and international humanitarian standards, this case is emblematic of the growing institutional and social pressure directed at solidarity-based initiatives in locations geographically and symbolically remote from Italy's maritime frontier. This case is examined in greater detail in the case-studies section.

The prominence of migration in Italian public discourse has also fuelled organised anti-migration activism, racial hostility, and far-right mobilisation. Polling data place immigration among Italians' top concerns, with three quarters of Italian respondents affirming that there is a linkage between migration and the worsening of criminality.¹³ This attitudinal environment provided fertile ground

7 All translations from Italian sources are by the author unless otherwise noted.

8 Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero (D.L. n.286/1998). Decreto Legislativo 25 luglio 1998, n.286: <https://www.gazzettaufficiale.it/eli/id/1998/08/18/098G0348/sg>

9 United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 U.N.T.S. 397.

10 International Convention for the Safety of Life at Sea, Nov. 1, 1974, 1184 U.N.T.S. 2.

11 International Convention on Maritime Search and Rescue, Apr. 27, 1979, 1405 U.N.T.S. 97.

12 After spending 10 years in prison, Hamad was pardoned in December 2025, see <https://www.infomigrants.net/en/post/68953/italy-president-pardons-libyan-football-hopeful-convicted-of-trafficking-migrants>.

13 European Commission, Standard Eurobarometer 91, Spring 2019 https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_19_4969/IP_19_4969_EN.pdf

for neo-fascist formations to expand their organisational presence, most notably CasaPound Italia and Forza Nuova.



Demonstration Forza Nuova, 2018 © Federico Epifanio

CasaPound Italia, an openly neo-fascist movement originating from a 2003 building occupation in Rome and formalised as a national association in 2008, is examined in greater detail in the case-studies section below. Forza Nuova, founded in 1997 by Roberto Fiore and Massimo Morsello, is an explicitly neo-fascist organisation whose platform centres on ethno-nationalist opposition to immigration, hostility toward the European Union, and the defence of Catholic social values – positions that have allowed it to cultivate a base among economically marginalised urban communities and former industrial workers. Like CasaPound Italia, it operates as a hybrid movement-party, combining street-level activism, organised intimidation, and selective electoral participation to maintain political relevance beyond its modest vote share, functioning as a radicalising force within the broader far-right milieu.

Over a twenty-year period, the two movements organised over 290 protests in Rome alone and ran sustained campaigns targeting migrant populations.¹⁴ In a well-reported case, in September 2018, CasaPound activists attacked demonstrators protesting Salvini's anti-immigration policies in Bari and were prosecuted in a trial that lasted 8 years.¹⁵ These activities did not remain at the political margins: in the general elections in March 2018, anti-migration rhetoric had moved from the fringes to the centre of the political spectrum. Anti-migration sentiment also manifested in racially motivated violence at that time. The most prominent episode is the shooting in Macerata in February 2018, when a former Lega Nord candidate carried out an attack targeting African migrants in the streets, wounding six individuals. Although the trial sentenced the perpetrator to 12 years' imprisonment later in the year, the party remained unscathed and came second in the elections that took place a month later.¹⁶ In fact, it appears that "some Italian right-wing extremists hailed him as a sort of hero"¹⁷ presumably based on his alleged avenging of the murder of an Italian woman as the source of his action. This pattern of selective enforcement on the part of judicial authorities for the two forms of activism – vigorous prosecution of solidarity actors alongside much more reluctant prosecution of political parties and movements that support racially motivated violence – is a recurrent feature of the asymmetry this report documents.

14 Froio, C., Castelli Gattinara, P., Bulli, G. and Albanese, M. (2020). CasaPound Italia: contemporary extreme-right politics. 1st edn. London: Routledge.

15 <https://searchlightmagazine.com/2026/02/landmark-legal-verdict-against-italian-fascists/>

16 <https://www.theguardian.com/world/2018/oct/03/italian-extremist-given-12-year-sentence-after-shooting-at-migrants>

17 Marone, F., 2023. Right-wing extremism and lone-actor violence in Italy: the case of the 2018 Macerata shooting. *Modern Italy*, 28(1): 18-34, p. 26.

A recent conviction of CasaPound members for the Bari violence may provide indication of some change in this landscape, although this remains to be seen.¹⁸ In that case, the assault victims included the then-MEP Eleonora Forenza, her assistant Antonio Perillo, and activists Giacomo Petrelli and Claudio Riccio, while civil parties joining the proceedings comprised ANPI, Rifondazione Comunista, the Municipality of Bari, and the Puglia Region. After 8 years following the attack, on 12 February 2026, the Court of Bari convicted 12 members of CasaPound for violating the 1952 Scelba Law — specifically Articles 1 and 5 — by attempting to reorganise the dissolved Fascist Party and by engaging in fascist demonstrations. Seven of the 12 were also convicted of assault, while all 12 received custodial sentences, five of them of 1.5 years, and the rest of 2.6 years. All of them also received a five-year suspension of political rights. As of the time of writing in March 2026, an appeal was expected to be filed by the defendants. The finalisation of the case is still pending, but initial analyses point to the exceptional nature of this decision in the historical application of the law.

Notwithstanding this exception, the patterns of criminalisation against pro-migrant actors evident so far, covering operations on both land and at sea, are indicative of a broader and increasingly systematic strategy of deterrence directed at restricting civic engagement in migration governance. They reveal a deepening structural tension between the imperatives of national security and border management, as articulated in domestic legal and political discourse, and the foundational principles of humanitarian assistance, human dignity, and the right to solidarity, as enshrined in constitutional provisions and binding instruments of international law.

Legal context

Over the past four decades, Italy has undergone a fundamental repositioning within global migration dynamics, transitioning from a country of emigration to a destination for people relocating from African, Asian, and American continents, mainly for employment and economic purposes. These movements of people prompted successive legislative interventions, producing a body of norms that continues to underpin the Italian migration law framework. In particular, Law 943/1986¹⁹ sought simultaneously to regulate the employment placement and working conditions of non-EU immigrant workers and to combat irregular migration – establishing from the outset a dual-track approach that extended equal labour protections to documented workers while imposing penalties on undocumented flows. From the beginning, therefore, Italian regulatory mechanisms were designed primarily around the imperative to control and deter irregular migration, a foundational orientation that remains central to contemporary migration governance.

As migration increased – notably from Albania and the Western Balkans in the early 1990s – new legislation emerged to systematise the conditions governing migrant entry, residence, and work. The Martelli Law, 39/1990,²⁰ introduced annual quotas for foreign workers, aligned national legislation with the standards established by the 1951 Geneva Convention Relating to the Status of Refugees, and provided regularisation programs for migrant people already present on the Italian territory. Family reunification subsequently became a primary driver of migration to Italy.

The Turco-Napolitano Law, 40/1998,²¹ introduced a unified residence and work permit, a long-term residence card for those who had resided lawfully in Italy for over five years, and Temporary Detention Centres for undocumented migrants awaiting expulsion. Crucially, this law laid the institutional foundation for the criminalisation of specific aspects of undocumented migration, including unauthorised border crossing, the absence of valid identification documents, and undocumented presence on national territory. It was a punitive framework that persisted in pursuing previous patterns and was progressively reinforced by successive legislation. A recent and tangible expression of this legacy is the establishment of Repatriation Centres (*CPR - Centro di Permanenza per il Rimpatrio*), facilities designed to detain migrants pending forced return – including those constructed under a bilateral agreement with Albania in 2024 and 2025, which have attracted significant criticism from human rights bodies and international legal observers.

18 <https://www.euronews.com/my-europe/2026/02/13/italian-court-convicts-12-casapound-members-for-attempting-to-revive-fascist-party>; <https://lamilano.it/dai-media/casapound-processo-a-bari-12-condanne-per-violazione-legge-scelba/>.

19 Legge 943/1986 <https://www.gazzettaufficiale.it/eli/id/1987/01/12/086U0943/sg>.

20 Legge Martelli, D.L. 39/1990 <https://www.gazzettaufficiale.it/eli/id/1990/02/28/090G0075/sg>

21 Legge Turco-Napolitano 40/1998 <https://www.gazzettaufficiale.it/eli/id/1998/03/12/098G0066/sg>

The Bossi-Fini Law, n. 189/2002²² further restricted access to legal migration by conditioning entry upon the prior conclusion of a work contract on Italian territory. Given the structural difficulty of obtaining such contracts through lawful channels from abroad, this requirement generated significant demand for fraudulent documentation, thereby creating conditions conducive to exploitation by transnational criminal networks engaged in trafficking. It thus strengthened border control, reinforced expulsion practices, and reshaped power dynamics within migrant communities abroad. Notwithstanding these cumulative restrictions, large-scale regularisation programmes continued to recur as a distinctive and paradoxical feature of Italian migration governance.

From the late 2000s onwards, Italian migration governance began to acquire explicitly racialised dimensions through the progressive securitisation of reception and asylum frameworks. The System of Protection for Asylum Seekers and Refugees (*SPRAR - Sistema di Protezione per Richiedenti Asilo e Rifugiati*), established as a decentralised network of municipal reception projects coordinated by local authorities and NGOs to provide integrated social, economic, and legal support to asylum seekers, became increasingly entangled with security measures introduced under the 2008 Security Package (*Pacchetto Sicurezza*). These measures introduced systematic biometric data collection and the linking of asylum seekers' personal data to criminal intelligence databases, effectively positioning migrants – and disproportionately non-EU nationals – as subjects of suspicion rather than protection, and raising serious concerns regarding the facilitation of discriminatory profiling and the criminalisation of refugee status itself.

These concerns are compounded by Italy's obligations under the Dublin III Regulation, which assigns responsibility for processing asylum applications to the first Member State of entry. This framework has historically produced a systematic conflation of border control imperatives with asylum processing, reinforcing the securitised logics criticised above. The hotspot approach, introduced by the European Commission (EC) in May 2015 operationalised this conflation: hotspots facilities served simultaneously as reception and identification hubs feeding into both the Dublin mechanism and the Eurodac database.

The most significant further restriction came in 2017 with the signing of the Memorandum between Italy and Libya,²³ in line with the agreements the EU has concluded with Turkey in 2016.²⁴ Under this memorandum, Italy funded the Libyan government to stop departures from its land: the agreement is self-renewing every three years.

The Salvini Security Decrees, No.113/2018 and No.132/2018²⁵ abolished humanitarian protection replacing it with limited and special permits for migrants. This shift was also evident in the language of the decrees, which shifted from refugee or humanitarian protection to irregular or illegal migration. The decrees made it more difficult for people to access the territory and detentions became more common, alongside widespread deportations. This punitive frame was structurally facilitated by the hotspot approach already in place at Italy's external borders. By systematically fingerprinting and identifying arrivals and cross-referencing data against criminal databases, the hotspot infrastructure served as an upstream screening mechanism for deportation pipelines. Critics from ECRE and academic observers have documented that the Salvini Decrees thereby built upon – and intensified – a pre-existing architecture of identification and detention that the hotspot system had already normalised.²⁶

22 Legge Bossi-Fini 189/2002 <https://www.gazzettaufficiale.it/eli/id/2002/08/26/002G0219/sg>

23 Memorandum d'Intesa sulla Cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana [Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic], <https://www.governo.it/sites/governo.it/files/Libia.pdf>

24 EU-Turkey Statement and Action Plan, <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>.

25 Decreti Sicurezza. D.L. 113/2018.

26 See <https://ecre.org/italy-latest-immigration-decree-drops-protection-standards/> and <https://ecre.org/italy-report-on-effects-of-the-security-decrees-on-migrants-and-refugees-in-sicily/> as well as Borderline-Europe report here: <https://www.borderline-europe.de/sites/default/files/readingtips/Sizilienbericht%202019%20final.pdf>. See also Corsi, C., 2019. Evaluating the "Salvini Decree": doubts of constitutional legitimacy. In *Policy Briefs, Migration Policy Centre* (pp. 1-5). European University Institute.

After the introduction of these restrictive measures, a partial legislative reversal took shape in 2020 and 2022 through a series of decrees that curtailed law enforcement's capacity to obstruct migrant access to Italian territory. The Lamorgese Decree (Law Decree n.34/2020, Art. 103)²⁷ introduced a regularisation programme during the COVID-19 emergency, and subsequent reforms expanded access to the Reception and Integration System (*SAI – Sistema Accoglienza e Integrazione*) for asylum seekers. Crucially, these post-Salvini reforms also limited law enforcement's authority to block NGO rescue vessels and reduced penalties for humanitarian assistance operations at sea. This reversal in legislative orientation was not entirely separable from the judicial and political fallout of the Open Arms case. In 2019, then-Interior Minister Salvini had blocked the NGO vessel from disembarking 147 people saved in the Mediterranean Sea for 19 days, resulting in charges of kidnapping and refusal to perform official duties. These events are related to the one of the main cases analysed in the report on Spain. The ensuing trial before the Tribunal of Palermo drew sustained public and parliamentary scrutiny to the legal limits of ministerial discretion in migration management and the rights of persons rescued at sea, generating significant institutional pressure for reform.



Demonstrations for the opening of the ports in Palermo, 2018 © Federico Epifanio

The present far-right government has once again restricted the access of migrants to the Italian territory and extended detention in CPRs to up to 18 months, while also criminalising NGOs working in Search and Rescue (SAR) operations. Current policies in the form of the *Flussi Decree (Decreto Flussi)*,²⁸ in the meantime, allow for a maximum of 497,550 entries in the period 2026-2028 – roughly 165,850 per year – for economic purposes.

In parallel to this legislative trajectory on the regulation of migration and the legal position of migrant people and civil society actors, a legal framework governing political extremism has also developed in Italy since the end of World War II. This framework concerns hate crime and the limits of constitutional democracy. Relatedly to the governance of migration, this body of law has diachronically suffered from under-enforcement – and this in turn created the conditions for the rise in anti-migration activism, as mentioned in some of the cases above and examined in further cases below.

This under-enforcement has revealed fundamental issues in terms of granting equality, as per Article 3 of the Italian Constitution: “All citizens have equal social dignity and are equal before the Law.” The most relevant provisions in the case of Italy are perhaps the XII Transitory and Final Provisions of the

27 Decreto Lamorgese. Legge 19 maggio 2020, n.34 <https://www.gazzettaufficiale.it/eli/id/2020/05/19/20G00052/sg>
28 Ministero dell'Interno, 20 October 2025. <https://www.interno.gov.it/it/notizie/decreto-flussi-2026-2028-previste-497550-quote-tre-anni-precompilazione-domande-dal-23-ottobre>

Constitution where it is clearly stated that the reorganisation of the dissolved Fascist National Party is prohibited in any form. Examples of mediated cases connected to far-right movements, public opinion, as well as statements by government officials present a loose and partial interpretation of these provisions. A paradigmatic example is the series of judicial proceedings arising from the annual *Acca Larentia* commemorations in Rome, held each January 7th to mark the 1978 killing of three young neo-fascists. At the 2024 commemoration, dozens of participants – the majority CasaPound Italia militants – performed the Roman salute in unison. Charges were brought against them invoking both the Mancino and Scelba laws, but in February 2026 the preliminary hearing judge of Rome acquitted all 29 defendants, applying a ruling of January 2025, which held that the fascist salute constitutes a criminal offence only where there is a concrete danger of reorganising the dissolved Fascist Party.

Such interpretations are linked to a general public sentiment that appears permissive when it comes to the questions of the revitalisation of extreme and far-right movements and groups, such as CasaPound and Forza Nuova, which have generated a fertile environment for anti-migrant activism on racial and supremacist grounds – and for which the development of the Bari case mentioned above will prove a testing ground.

One of the key statutes in terms of politically-motivated crimes that follows the constitutional obligations contained in the XII Transitory and Final Provisions of the Constitution is Law Scelba, Law 20 June 1952, n. 645.²⁹ This law provides that the promotion or direction of an association or movement with five or more people that pursues antidemocratic ends such as the suppression of liberties and the downgrading of democracy and its values is punished with imprisonment of up to 12 years. Also, Law Scelba criminalises the apology of fascism and fascist demonstration. However, recent jurisprudence, as seen in the *Acca Larentia* case, has exhibited a narrowing down of the application of these provisions to cases where there is concrete threats of reconstituting a fascist party or organisation. Broadly speaking, limitations to the use of such codes are related to the high ambiguity by which symbols are analysed and to their under-utilisation in the jurisprudence relating to hate crimes and hate speech.

One of the key statutes in terms of anti-racism and hate-crime legislation is the Law Reale, Law 654/1975,³⁰ that introduces the provisions of the Convention on the Elimination of All Forms of Racial Discrimination signed in New York in March 1966.³¹ It applies to all cases of discrimination, hatred and violence based on racial, ethnic, national or religious reasons. In later manifestations, it has been extended to cases of homophobia and transphobia. Nonetheless, in the political arena and within parliamentary sessions, the discussion on transphobia and homophobia still generates debates.

Based on Law 654/1975, Law Mancino was adopted in 1993 (Law n.205, June 25th, 1993),³² introducing more specific sanctions in terms of hate speech and hate crime. This law is at the core of the legal instruments used to prevent the resurgence of extremist movements in Italy. It criminalises incitement to violence or discrimination on racial, ethnic, and religious grounds, the dissemination of xenophobic ideas and the public expression of racist symbols. It also criminalises acts of violence, threats, and harm committed with racial motivations and purposes and recognises racism as an aggravating factor in deciding the penalties foreseen by the Penal Code.

To align with the abovementioned XII Transitory and Final Provisions of the Constitution, Law Mancino also prohibits associations, movements, and groups of people that aim to promote discriminatory messages or incite others to violence for racial, ethnic, religious, national reasons. The Mancino Law also confirms Italy's adherence to the European Convention of Human Rights and the United Nations legal mechanisms against discrimination. It also aligns with ECHR Article 14 (non-discrimination) and Framework Decision 2008/913/JHA. On the security side, it allows Italian authorities to seize materials used for hate purposes and to break up events or gatherings that promote hate discourses. Nonetheless, during recent years, several neo-Nazi racist and xenophobic gatherings took place without the Italian authorities intervening in any way as the law foresees.

29 Legge Scelba. Legge 20 giugno 1952, n.645, <https://www.gazzettaufficiale.it/eli/id/1952/06/23/052U0645/sg>

30 Legge 13 ottobre 1975, n.654 <https://www.gazzettaufficiale.it/eli/id/1975/12/23/075U0654/sg>

31 International Convention on the Elimination of All Forms of Racial Discrimination, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtmsg_no=iv-2&chapter=4&clang=en.

32 Legge 25 giugno 1993, n.205 <https://www.gazzettaufficiale.it/eli/id/1993/06/26/093G0275/sg>

With regards to the Italian Penal Code, Articles 604-bis³³ and 604-ter³⁴ prohibit and punish hate crimes and incitement to discrimination. They specifically criminalise propaganda and instigation to crimes committed for racial, ethnic, and religious purposes and aggravate ordinary offences if committed with discriminatory intent. According to more recent jurisprudence, prosecutors have referred to Article 604-bis in cases linked to negationist propaganda and racist motivations, but the Corte di Cassazione continues to refine the boundaries between criminal propaganda and freedom of expression in such a way that makes it difficult to assess the weight given to such crimes. In particular, courts are demanding evidence in ways that may result in a general lightening on the use of such instruments. It is notable that the Bari case considered a substantial amount of evidence relating to the attack itself, the organisation of CasaPound's Bari branch, use of symbols as per Scelba criteria, witness testimonies and civil party submissions.

Within the Italian Penal Code, Articles 241-258³⁵ further provide a complex of norms protecting the State and its constitutional order, by proscribing treason, espionage, crimes against constitutional order and the unlawful use of state secrets, and they are complemented by special laws on terrorism (Article 270-bis).³⁶

Taken together, the laws on racism and hate crime relate directly to Italy's specific historical experience with fascism and the specificities around the drafting of its Constitution. In this sense, Italy can be defined as a militant democracy constitutionally speaking, and thus its relevant legislative framework is best understood through the lens of the doctrine of militant democracy. It invests greatly in the prevention of the resurgence of fascism and in actively working against the birth of extremist, racist, or anti-constitutional movements, using both administrative measures and criminal law. Nonetheless, this otherwise solid legal framework that defines the Italian approach in terms of prosecuting extremist or racially-motivated hate crimes is currently under threat.³⁷

33 Codice Penale, Articolo 604-bis, https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=60&art.flagTipoArticolo=1&art.codiceRedazionale=030U1398&art.idArticolo=604&art.idSottoArticolo=2&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1930-10-26&art.progressivo=0

34 Codice Penale, Articolo 604-ter, https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=60&art.flagTipoArticolo=1&art.codiceRedazionale=030U1398&art.idArticolo=604&art.idSottoArticolo=3&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1930-10-26&art.progressivo=0

35 Codice Penale, Art. 241. Codice Penale, Art. 242. Codice Penale, Art. 243. Codice Penale, Art. 244. Codice Penale, Art. 245. Codice Penale, Art. 246. Codice Penale, Art. 247. Codice Penale, Art. 248. Codice Penale, Art. 249. Codice Penale, Art. 250. Codice Penale, Art. 251. Codice Penale, Art. 252. Codice Penale, Art. 253. Codice Penale, Art. 254. Codice Penale, Art. 255. Codice Penale, Art. 256. Codice Penale, Art. 257. Codice Penale, Art. 258.

36 Codice Penale, Art. 270-bis https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=3&art.idGruppo=21&art.flagTipoArticolo=1&art.codiceRedazionale=030U1398&art.idArticolo=270&art.idSottoArticolo=2&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1930-10-26&art.progressivo=0#:~:text=Chiunque%20promuove%2C%20costituisce%2C%20organizza%2C,da%20sette%20a%20quindici%20anni

37 Andrea Martini, Fighting against Apology of Fascism: origins and contradictions of the Italian Approach to Militant Democracy. *European View* 23 (1): 55-73, 2024; Markus Thiel, The Militant Democracy Principle in Modern Democracies. Farnham: Ashgate, 2009; Markus Thiel, The Militant Democracy Principle in Modern Democracies. Farnham: Ashgate, 2009.

Case Studies

Case-study 1: Linea D'Ombra

Italy has, in recent years, become a focal point in European and Mediterranean media for its often-restrictive posture toward migrants arriving from countries of the Global South. Lampedusa has been in the headlines for years, and so have the Mediterranean ports of Sicily. This has placed Italian migration policies under scrutiny, regarding the treatment of individuals rescued at sea and the operations of pro-migration organisations or movements. Within this context, the activities mentioned above of *Mediterranea Saving Humans*, *Sea Watch*, and the agreements to set up externalised and illegal repatriation centres (*Centri di Permanenza per il Rimpatrio - CPR*) in countries such as Albania illustrate the Italian state's approach to migration management and its broader political agenda in the Mediterranean region.

Italy's response to migration is formally framed by obligations under International Law, including the United Nations Convention on the Law of the Sea (UNCLOS, Montego Bay Convention).³⁸ Despite these obligations, the country has frequently demonstrated limited adherence to the principles established under the 1951 Geneva Convention on the Status of Refugees, and particularly Article 33³⁹ on non-refoulement. This created tensions between the state's legal commitments and its operational policies, particularly regarding rescue at sea, bilateral agreements with neighbouring countries, and the criminalisation of solidarity initiatives.

The criminalisation of humanitarian practices in land and sea raises questions about the role of the state in balancing border control with international human rights obligations and the moral values of the European Union framework. By prosecuting volunteers and migrant-led organisations the state signals its prioritisation of security and migration deterrence over the protection of people at risk, and who are marginalised and vulnerable. In turn, these prosecutions have implications for civil society and civil society mobilisation, generating an environment in which humanitarian actors must navigate legal risks while striving to fulfil ethical responsibilities.

Media coverage in Italy tends to emphasise cases linked to Search and Rescue (SAR) operations, often framing humanitarian actions as politically contentious. However, less attention is given to prosecutions or criminalisation processes that target organisations and movements based outside the primary landing zones in Sicily (Augusta, Pozzallo, Trapani), the Italian southern islands (Lampedusa, Pantelleria) and regions (Calabria).⁴⁰ The case-study chosen for this report serves as a reminder of these less visible processes.

The case of Linea d'Ombra in Trieste exemplifies a broader pattern of criminalisation of solidarity. Situated on the border with Slovenia, Trieste serves as a key entry point into Europe for individuals following the Western Balkans migration route, generally from Asian countries. This case demonstrates that anti-migration enforcement is not confined to southern coastal areas but extends to other regions involved in humanitarian assistance, and thus testifies to a nation-wide practice of criminalising humanitarian activism in support of people on the move.

Linea d'Ombra was founded in 2019 by Gian Andrea Franchi and Lorena Fornasir, activists committed to supporting migrants upon their arrival in Italy, often in dramatic conditions after having faced extreme police brutality in the Balkan crosspoints, often having been tortured and forced to reroute their migratory journeys — extending them significantly — in order to evade further violence alongside the harsh gelid mountains of Caucasus, with temperatures dropping well below zero and no shelter other than the solidarity networks forged among people in migration. These dangerous routes are often preferred as the only alternative to avoiding police apprehension and brutality, as torture and police violence are known to be systematic along this route. Once people

38 United Nations Convention on the Law of the Sea: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

39 1951 Geneva Convention, Art. 33, <https://www.ohchr.org/fr/instruments-mechanisms/instruments/convention-relating-status-refugees>

40 For documentation and analysis of criminalisation processes targeting humanitarian organisations operating in Sicily and in Calabria see: European Union Agency for Fundamental Rights (FRA), *Table of Administrative and Criminal Proceedings Initiated Against NGO SAR Assets* (updated June 2022), available at: https://fra.europa.eu/sites/default/files/fra_uploads/table-2-legal-proceedings-ngos-sar-operations-june-2022.pdf

have crossed into the Italian side of the border, the organisation provides a comprehensive array of services, mainly based on basic necessities, legal support, and medical and psychological care. Despite the organisation's humanitarian intent, granted by the principles of the Constitution, both founders faced prosecution, highlighting the Italian state's broader trend of targeting civic actors involved in migration support. The case underscores the tension between grassroots activists and state enforcement, revealing how legal frameworks, political pressures, and public discourse intersect to shape how pro-migrant actors are treated.

The founders of Linea d'Ombra in Trieste have been accused of facilitation of illegal migration, under the Legislative Decree No. 286 of July 25, 1998,⁴¹ better known in Italy as the Consolidated Immigration Act. Article 12 and Article 12-bis⁴² regulate this offense, and the associated penalties have been increased with the Law Decree 20/2023.⁴³ To provide some background, the promotion, organisation and funding of non-Italian people entering into the Italian territory falls under the violation of immigration laws and carries a penalty up to five years' imprisonment, rising to fifteen if aggravating circumstances pertain, such as transporting more than five people, using false documents or subjecting people to inhumane or degrading treatment. The investigation falls into the area of anti-smuggling investigations and operations. Linea d'Ombra may thus be suspected of being a criminal network of trafficking, against the Consolidated Immigration Act norms and provisions.

The case opened in January 2021. Authorities seized phones, accounting books, financial records and other documents that were considered relevant for the investigation, during a raid in the private home of the founders in February 2021. The prosecution advanced the argument that the activities conducted by Linea d'Ombra may have been undertaken for financial gain and therefore could not be characterised as purely charitable in nature – a framing that sought to reclassify the organisation's financial operations as commercial transactions rather than humanitarian assistance. The investigative and prosecutorial actions took place during a period of intensified state control over civil society and public space, shaped by the emergency governance frameworks introduced in response to the COVID-19 pandemic. Restrictions on movement, assembly, and associational life – justified on public health grounds – overlapped with and amplified pre-existing security logics targeting humanitarian actors operating along migration routes. In Italy, this conjuncture produced a heightened exposure of solidarity-based organisation to administrative scrutiny and criminal suspicion: the same period saw NGO rescue vessels subjected to prolonged port detention under health and safety regulations, and civil society across the Balkan route facing increased surveillance and legal pressure from national authorities. This case thus forms part of a broader and systematic enforcement approach targeting solidarity-based and humanitarian organisation operating along migratory routes, in which the pandemic emergency provided both institutional cover and additional legal instruments for the restriction of humanitarian action.

The Association for the Study of Migration Law (*ASGI – Associazione Studi Giuridici per l'Immigrazione*) is active in the defence of migrant and refugee people but also in re-defining the legal frameworks in which civil society organisations in the field of migration can operate. ASGI's work is focused on research on practices. ASGI played an important role in the defence of Linea d'Ombra by stating that the two founders' behaviours were not acts of facilitation of illegal entry, but visible acts of solidarity and that there was no specific functional link between them and a larger network of trafficking. Consequently, the Preliminary Investigation Judge (G.I.P.) of the Bologna Court ordered the dismissal of this part of the proceedings on November 23rd, 2021.

The case against Linea d'Ombra raises fundamental questions about freedom of expression and civic space at the national level. It compels us to reflect on the extent to which volunteers should be exposed to the risk of criminal sanctions for acts of solidarity, and on the broader implications this has for their role within the societies in which they operate. Such prosecutorial attitudes can generate a powerful deterrent effect, discouraging individuals from supporting people in situations of vulnerability or marginalisation. They also contribute to wider negative societal dynamics, potentially exacerbating social instability and extreme polarisation.

41 Decreto Legislativo 25 luglio 1998, n.286:<https://www.gazzettaufficiale.it/eli/id/1998/08/18/098G0348/sg>

42 Art. 12 et Art. 12-bis, Decreto Legislativo 25 luglio 1998, n.286: https://www1.interno.gov.it/mininterno/site/it/sezioni/servizi/old_servizi/legislazione/immigrazione/0958_2009_08_05_art.12Uimmigrazione.html#:~:text=Il%20vettore%20aereo%2C%20marittimo%20o,trasporto%20di%20stranieri%20in%20posizione

43 Decreto Legge 10 marzo 2023, n.20:<https://www.gazzettaufficiale.it/eli/id/2023/05/05/23A02665/sg>

In this sense, it is important to note that the case was opened against the founders of Linea d'Ombra as individuals rather than the organisation as a whole. This suggests a wider trend in how this type of criminalisation happens across Italy and also in other European contexts where by one or more selected individuals who are the most visible figures in a movement are targeted specifically.

In this light, the restrictive interpretation of immigration-related criminal law adopted in the case – notwithstanding the ultimately positive outcome with the dismissal of all charges – reveals a worrying trend: the progressive shrinking of the public space for solidarity in the Italian context. This pattern is not isolated. In the same period, and in subsequent years, similar approaches have been taken by the Italian judiciary in other high-profile cases, such as the proceedings concerning the Maersk Etienne and *Mediterranea Saving Humans*, as well as the Paragon case involving Luca Casarini.

In May 2025, the GUP (Giudice dell'Udienza Preliminare) of the Court of Ragusa ordered six activists, including the co-founder of *Mediterranea Saving Humans*, Luca Casarini, the captain and the crew of *Mare Jonio* to stand trial on charges of facilitating illegal immigration from the rescue of 2020 on the *Maersk Etienne*. Unlike the Linea d'Ombra case – which was closed at the preliminary investigation stage – the *Maersk Etienne* proceedings advanced to full trial. This opened on October 2025 before the Court of Ragusa and remains ongoing as of March 2026. The concurrent Paragon surveillance operation – authorised against Casarini in 2024 and confirmed by COPASIR in June 2025, which also led to the termination of Italy's contract with Paragon Solutions – illustrates that the criminalisation of humanitarian actors has extended beyond the courtroom to encompass executive-level intelligence surveillance, raising distinct and serious concerns under Articles 8 and 10 of the ECHR.

A further illustration of institutional asymmetry is provided by the civil ruling issued on 18 February 2026 by the Tribunal of Palermo in the *Sea Watch 3* case. The Court ordered the Italian State to pay over 76,000 euros in compensation to the German NGO *Sea Watch* for the administrative detention of its vessel following the rescue operation commanded by Captain Carola Rackete. The ruling found that the administrative detention of the vessel was unlawful, and that the State's failure to respond within the statutory period had produced a tacit administrative acceptance that generated documented patrimonial damage for the German vessel. The Court excluded, at the same time, compensation for the vessel's inability to conduct rescue operations. This civil ruling can be read alongside the criminal proceedings against Captain Rackete herself, cleared of all charges in June 2019 upon arrest. On January 2020, the Corte di Cassazione definitively upheld the acquittal, and the Court of Agrigento formally dismissed all charges in December 2021. The 2026 civil ruling thereby constitutes the final chapter in a seven-year procedure that ended with the State ordered to bear the financial consequences of its own unlawful enforcement action.

Case-study 2: CasaPound Italia

The case law on anti-migrant actors presents a sharp contrast with the persecution of migrant solidarity actors presented above. As previously explained, such prosecution has on the whole been reluctant and required high evidence bars. The recent conviction of CasaPound in Bari in February 2026 in this sense provides an indication of how this trend may be changing, even though its conclusion remains open and its progress thus far partly confirms the evidentiary threshold concerns. Another relevant case that exemplifies the longstanding concerns raised about the approach of the judicial authorities to anti-migrant actors is a second case involving CasaPound, this time in its dispute with the online platform Meta.

CasaPound Italia, has in fact, been the subject of a number of legal cases mentioned in this report. It is a far-right, openly neo-fascist political movement, in Italy, originated from the occupation of a state-owned building in Rome's Esquilino neighbourhood on December 26, 2003, which became its namesake "CasaPound" after the American poet Ezra Pound. It was formally established as a national social promotion association in 2008, evolving from earlier far-right squats and cultural initiatives in the late 1990s. CasaPound Italia contested elections since 2013, often under coalitions like "Sovranità" (Sovereignty) in 2014, achieving limited local success such as electing a councillor in Bolzano in 2015, and three in 2016. Nationally, it runs independently or allies with other far-right groups, focusing on anti-immigration, anti-EU, and housing policies, though it garners under 1-2% in parliamentary races and it reverted to a social movement focus in 2019 after modest results.

Sentenza 17909/2022 (published on 05/12/2022, deposited 2 January 2025, RG n.10810/2020) concerns a legal dispute between CasaPound Italia and Meta Platforms Ireland Ltd (formerly Facebook Ireland Ltd). The litigation arose following Meta's decision to remove CasaPound Italia's official Facebook and Instagram pages, along with associated profiles, in September 2019, citing violations of Community Standards through hate speech, incitement to violence, and extremist ideology, including posts portraying migrants as invaders (*invasori*), criminals (*criminali*), and threats to Italian welfare (welfare chauvinism). The specific evidence submitted to support this has not been made public. CasaPound Italia challenged this decision before the Italian civil courts, arguing that the removal constituted an unlawful restriction of its freedom of expression and political participation.

This case parallels other prosecutions of anti-migrant leaders, such as the Salvini v. Open Arms trial,⁴⁴ highlighting how anti-migrant mobilisation often reframes racism and hate as protected political speech, displacing scrutiny from constitutional anti-fascism to private platform governance.

In December 2019, the Tribunal of Rome issued a precautionary order (17 December 2019) compelling Meta Platforms Ltd. to reinstate CasaPound Italia's accounts, holding that exclusion from dominant social media platforms could seriously compromise the organisation's ability to participate in public and political debate. Meta appealed this order, but in April 2022 the Tribunal confirmed its earlier precautionary position, dismissing Meta's challenge and maintaining the reinstatement obligation. The Court's reasoning at both interim stages was framed almost exclusively through the lens of pluralism and political participation, without substantive engagement with CasaPound Italia's ethnonationalist ideology or documented record of discriminatory conduct. However, in the full-merits proceedings (sentence deposited 2 January 2025), the same court reversed its earlier position and rejected CasaPound Italia's claims, recognising Meta Platforms Ltd.'s contractual autonomy and its right to enforce rules aimed at preventing hate speech and violent extremism.

The case lies at the intersection of freedom of expression, political participation, and transnational systems of platform regulation. As emphasised by scholars of Global Administrative Law⁴⁵ and by the Italian constitutional theorist Sabino Cassese,⁴⁶ digital platforms increasingly exercise soft

44 Tribunal of Palermo, 20 December 2024. In that case, Salvini was acquitted as the Tribunal found that "the fact does not subsist" for refusing disembarkation of 147 migrants in 2019, despite charges of kidnapping and refusal of official acts.

45 Sabino Cassese, Administrative Law Without the State? The Challenge of Global Regulation. *New York University Journal of International Law and Politics* 24 (2012): 663-694.

46 Sabino Cassese, *Oltre lo Stato*. Laterza, 2006.

regulatory power that shapes public discourse, access to the public sphere, and the boundaries of acceptable political participation.

CasaPound Italia, far from marginal, is a structured movement with national branches, electoral runs, and ethnonationalist ideology opposing immigration.⁴⁷ It has been involved in street mobilisations, cultural initiatives, and electoral campaigns, often framed through a narrative of social housing for Italians, welfare chauvinism, and the rejection of multiculturalism. Despite Italy's constitutional prohibition on the reorganisation of the Fascist Party, CasaPound has operated for years in a legal grey zone, benefitting from the narrow judicial interpretation of anti-fascist laws that require proof of a concrete threat to democratic order.

Social media platforms played a crucial role in CasaPound Italia's strategy. Facebook and Instagram allowed the movement to bypass traditional media, mobilise supporters, disseminate propaganda, and normalise far-rights discourse through memes, videos, and local mobilisation campaigns. For CasaPound Italia, digital platforms were not merely communication tools but core infrastructure that facilitated its political existence.

In this case, Meta Platforms Ltd. justified the removal of CasaPound Italia's pages by reference to its Community Standards, which prohibit content that praises, supports, or represents extremist ideologies and organisations, as well as material that incited hatred or violence against groups at risk of vulnerability. Meta Platforms Ltd. classified CasaPound Italia as an extremist organisation and concluded that its online activity systemically violated these rules.

This decision did not stem from a criminal conviction or a formal ban by Italian authorities, but rather from a private regulatory assessment based on transnational private standards developed in response to global pressure on platforms to combat online radicalisation processes. In this sense, Meta Platforms Ltd. exercised a form of private governance that overlaps with, but is not dependent on, state action.

In the interim proceedings of December 2019, the Tribunal of Rome ordered Meta Platforms Ltd. to reinstate CasaPound Italia's pages holding that Facebook acquired the character of an essential platform for the exercise of freedom of expression. The Court reasoned that exclusion from such a dominant communication space could substantially impair CasaPound Italia's ability to participate in political debate and therefore amounted to an unjustified restriction of constitutional rights. This reasoning was striking, as it effectively treated CasaPound Italia as a legitimate political actor entitled to equal access to digital public space, without engaging with its ethnonationalist ideology and structural racism or its history of chauvinist rhetoric. At this stage, the Court framed the dispute almost exclusively through the lens of pluralism and political participation.

In the 2022 ruling,⁴⁸ the Tribunal of Rome overturned the precautionary ruling. The Court recognised that while social media platforms play a central role in contemporary public discourse, they remain private entities governed by contractual relationships with users that accept rules upon registration, and Meta Platforms Ltd. was therefore entitled to enforce its Community Standards.

The Court also acknowledged that CasaPound Italia content fell within categories legitimately restricted by Meta Platforms Ltd., including the dissemination of discriminatory, racist, and violent narratives. In doing so, the Tribunal explicitly cited Meta's Community Standards prohibiting direct attack on protected characteristics including race, ethnicity, national origin (*un attacco diretto alle persone sulla base di aspetti tutelati a norma di legge, quali razza, etnia, nazionalità di origine*), accepting that CasaPound Italia's content – including xenophobic posts, fascist symbolisms and calls to violence against migrant reception centres – systemically violated these rules, demonstrating a higher level of regulatory vigilance by private platforms than that exercised by Italian Criminal or Administrative Authorities.

One of the most significant aspects of the case is the limited role played by the Italian State. CasaPound Italia was not removed from Facebook because it was outlawed, prosecuted, or declared

47 Jamie Bartlett, Jonathan Birdwell, and Mark Little, *The New Face of Digital Populism*. Demos, London, 2011; Caterina Froio, Pietro Castelli Gattinara, Giorgia Bulli, and Matteo Albanese, *CasaPound Italia: Contemporary Extreme-Right Politics*, Routledge, 2020.

48 Sentenza n. 17909/2022 pubbl. il 05/12/2022 RG n. 10810/2020 Repert. n. 24158/2022 del 05/12/2022.

unconstitutional by public authorities. Instead, its digital presence was curtailed by a private corporation applying its own standards.

This reveals a form of regulatory outsourcing: while Italian institutions have been reluctant or unable to fully enforce anti-fascist and anti-racist laws, digital platforms have stepped in to fill the gap. Yet this shift raises serious democratic concerns. Private companies are not bound by constitutional principles of due process, proportionality, or democratic accountability, and their decisions are driven partly by reputational and economic consideration.

Note that in terms of synchronicity, the 2019 decision on this case had come after the 2018 attack by CasaPound activists against pro-migrant demonstrators at the heart of the Bari case. It would be another three years before the Bari case was opened in 2022, the same year that the Rome Tribunal overturned the previous decision in favour of Meta.

The CasaPound Italia v. Meta Platforms Ltd. case highlights how far-right, anti-migration movements can operate within legal and political systems that hesitate to confront them directly. While humanitarian actors are criminalised under migration law, extremist organisations can invoke freedom of expression and contractual rights to defend their visibility.

The litigation illustrates a structural contradiction: the Constitution enshrines militant democracy and rejection of fascism, yet in practice these principles are weakly enforced. Anti-migration and neo-fascist actors thus enjoy a wide margin of operation, while civil society actors supporting migrants face criminalisation and administrative repression.

From the perspective of Global Administrative Law, the case exemplifies how regulatory power is increasingly fragmented between public and private actors creating a multi-layered governance system in which fundamental rights are negotiated rather than guaranteed.

Comparative analysis

The two cases examined offer revealing comparisons for analysing contemporary Italian migration governance, freedom of expression, the functioning of the rule of law and regulatory mechanisms at a broader level.

Although situated in different legal domains (criminal law, civil and platform regulation), both cases illuminate how the Italian State, the judiciary, and the regulatory environments respond asymmetrically to forms of political action linked to migration, practices of welcome, and documentation and asylum procedures.

At their core, the cases expose tensions between constitutional principles, international obligations, and political priorities. They also raise fundamental questions about civic space, selective enforcement, and the resilience of Italy's constitutional commitment to militant democracy.

A central theme emerging from the comparison is the asymmetrical treatment of activism depending on its political orientation.

In the Linea d'Ombra case, pro-migrant solidarity is rapidly subjected to criminal suspicion, investigative intrusion, and the deployment of anti-smuggling norms originally designed to counter organised crime. Humanitarian acts – provision of food, medical care, legal and healthcare orientation – are reframed through a security lens, transforming solidarity into a potential criminal offence. Even though the proceedings were ultimately dismissed, the process itself functions as punishment, generating deterrence and chilling effects on civil society, similar to the findings of the Greece and Spain reports. Even though significantly shorter than in those cases, the roughly nine to ten months of proceedings created significant stress as activists continued their work under the pressure of being scrutinised by authorities. Reports indicate that this prolonged uncertainty amplified chilling effects, deterring volunteers through reputational harm and resource drain, even without conviction. Prosecution generated also a deterrence effect: civil society reported a shrinking of their space with CSOs facing access denials to hotspots/detention centres and public trust erosion following similar probes into other organisations; Linea d'Ombra persisted but the case highlighted how retaliation can have wider chilling effects on independent

solidarity movements when other groups in the Friuli-Venezia Giulia region, like Ospiti in Arrivo, faced probes. No quantitative data shows total halts, but qualitative accounts link this chilling effect to broader hostility, resulting in a reduction in donations and engagement.⁴⁹ By contrast, CasaPound Italia, an openly neo-fascist and anti-migration movement, is not criminally prosecuted for its ideology or activities in this litigation. Instead, it is recognised as a legitimate litigant asserting its right to participate in public debate. The judicial system engages with CasaPound Italia primarily through the language of freedom of expression and access rules to digital public spaces, rather than through constitutional safeguards against this newly reconstructed fascist agglomeration.

This contrast reveals a broader pattern: solidarity is securitised, while exclusionary ideologies are normalised within institutional channels. Moreover, CasaPound Italia's response to the Facebook ban demonstrates that the movement has systematically exploited the litigation as a "censorship" narrative and has employed strategies to convert the ban into a source of legitimacy and visibility at the national level. Following the ban, allies in the far-right landscape, have explicitly redirected their organising towards street protests and physical recruitment, showing a mobilizational impact of the legal setback rather than a demobilisation effect.

Another key theme is the elasticity of legal interpretation, which expands or contracts depending on the subject being regulated.

In the pro-migration case, criminal law provisions (Articles 12 and 12-bis of the Consolidated Immigration Act) are interpreted expansively. The absence of profit motive, coercion, or organisational linkage to trafficking networks does not prevent the opening of investigations. Ordinary humanitarian assistance is treated as potentially facilitating irregular migration, stretching the scope of criminal liability beyond its original intent. This expansive use of law aligns with decades of migration governance, in Italy, where emergency logics and securitisation have consistently broadened state powers at the expense of legal certainty. The case reflects how migration law has become an exceptional legal regime, where constitutional principles are subordinated to deterrence.

Conversely, in the CasaPound case and in the broader jurisprudence on far-right activism, legal interpretation tends to be restrained and cautious. Laws designed to prevent fascist resurgence (Scelba Law), combat hate speech (Mancino Law), or sanction racist propaganda (Articles 604-bis and 604-ter of the Penal Code) are applied narrowly, often requiring proof of concrete danger or immediate harm.

This judicial restraint contrasts sharply with the aggressiveness shown in migration-related enforcement. The result is a paradox: laws intended to protect democracy are under-utilised, while those restricting solidarity are over-utilised. A striking asymmetry in the role of litigants further underscores the selective enforcement patterns between the two cases. In the Linea d'Ombra proceedings, the Italian State, through the Procura di Trieste, proactively initiates criminal investigations and prosecutions against pro-migrant activists, deploying anti-smuggling provisions (Article 12 and 12-bis of the Consolidated Immigration Act) to frame humanitarian aid as a criminal facilitation of irregular migration, thereby positioning the State as an aggressive enforcer of border security logics. By contrast, in the CasaPound Italia v. Meta Platforms Ltd. Litigation, the State refrains from launching proceedings under anti-fascist or anti-racist statutes like the Scelba Law or Mancino Law, despite the movement's neo-fascist ideology and hate speech. Instead, when CasaPound Italia initially won a 2019 preliminary injunction against Meta, Italian courts effectively defended the far-right group by ordering platform reinstatement on freedom of expression grounds, only later upholding Meta's removal in 2022 without State-initiated hate crime charges. This inversion – State as prosecutor against solidarity versus State as initial defender of exclusionary actors – highlights how migration enforcement is prioritised as public imperative, while anti-racism remains privatised or dormant, amplifying the chilling effects on civic space while legitimising far-right mobilisation.

⁴⁹ Carla Ferstman on behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, *Using Criminal Law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe Member States*, December 2019. Expert Council on NGO Law Conf/Exp (2019) 1; ASGI for Asylum Information Database, *Country Report: Italy*, 2021; Italian Consortium of Solidarity, *Archiviazione delle accuse a Linea d'Ombra: seri interrogativi sull'inchiesta e sul clima generale di ostilità alla solidarietà in FVG*, 24 November 2021.

In *CasaPound Italia v. Meta Platforms Ltd.*, freedom of expression is central to the judicial reasoning. The precautionary reinstatement of CasaPound Italia's social media pages - subsequently revoked - was justified on the grounds that exclusion from dominant digital platforms could materially impair political participation. Even in the final ruling favouring Meta, CasaPound Italia is recognised as a political actor whose expressive interest merit judicial consideration.

By contrast, the activities of Linea d'Ombra are not judicially framed as an exercise of the rights to freedom of association or assembly - the constitutional and Convention rights most directly engaged by organised collective humanitarian action - despite the evident civic and political character of the organisation's work. Acts of solidarity are instead depoliticised and recast as technical violations of migration law, a pattern of juridical depoliticization that converges with findings documented in the Greek context. The expressive, associative, and political dimension of humanitarian action thereby receive scant judicial recognition.

This discrepancy suggests that freedom of expression and association functions as a shield for exclusionary politics, while offering markedly limited protection to those who challenge state migration policies through organised civic practice rather than through discourse alone.

The two cases also differ significantly in their interaction with non-state actors, revealing the structures of governance currently in development in Italy.

In the pro-migration case, civil society organisations act as defensive actors, attempting to protect individuals from state overreach. Their role is reactive, operating with a shrinking civic space and contesting prosecutorial narratives *ex post*.

In the CasaPound case, by contrast, a private corporation (Meta) plays a quasi-regulatory role, enforcing community standards that reflect international human rights norms more robustly than domestic authorities. The Italian Court ultimately upholds Meta's autonomy to exclude content that incites hatred, implicitly recognising the inadequacy of public enforcement mechanisms. The inversion is striking: private platforms enforce anti-hate norms more effectively than the State, while the State actively represses humanitarian civil society.

Italy's constitutional identity as a militant democracy is a crucial analytical lens for comparing the two cases. The Italian Constitution explicitly prohibits the reorganisation of the Fascist Party and mandates active defence of democratic values. In theory, this should justify strong action against movements like CasaPound. In practice, however, the doctrine of militant democracy appears selectively dormant. The Linea d'Ombra case shows a state willing to act militantly against perceived threats to border control, while the CasaPound litigation illustrates hesitation - or unwillingness - to apply the same militancy to anti-democratic ideologies. This selective militancy signals a transformation: migrant control has replaced anti-fascism as the primary object of state defence.

Both cases carry significant symbolic weight, but their deterrent effects differ profoundly. In fact, both cases ultimately resulted in negative legal outcomes for the anti-migrant side - such as the dismissal for Linea d'Ombra after prolonged scrutiny and defeat for CasaPound Italia in the final Meta Platform Ltd. ruling - yet their wider political consequences starkly diverge, revealing how judicial processes can serve as tools for asymmetric political mobilisation.

While the investigation against pro-migrant solidarity instilled a chilling effect that deterred civic engagement across NGOs through reputational damage and resource drain in fear of similar probes while the case was ongoing, CasaPound Italia's litigation amplified its visibility, framing the group as a victim of big tech censorship and free speech suppression - a narrative that resonated with far-right sympathisers and bolstered recruitment despite the legal loss.⁵⁰ In contrast to the long-lasting chilling effects in Greece and Spain however, it should be noted that the exoneration of Linea d'Ombra activists allowed the organisation to continue its work and in fact increased its support.

This divergence of approach in the litigation stage nevertheless, underscores a profound irony in outcomes that appear procedurally similar but function politically as empowerment for exclusionary actors. For Linea d'Ombra, the mere initiation and drawn-out nature of these initial proceedings (over 9 months for the initial stage to be completed) acted as *de facto* punishment, shrinking volunteer pools and donations in Friuli-Venezia Giulia's solidarity scene, as evidenced

50 Padovani, C. (2024). Social Media, the Ultra-Right, and Freedom of Speech: A Case Study of CasaPound Italia and Facebook. *International Journal of Communication* 18(2024), 5026-5045

by reports of eroded public trust and access barriers for CSOs. Conversely, CasaPound Italia leveraged the courtroom drama - from the 2019 preliminary win reinstating its pages to the prolonged battle - as a publicity coup, portraying itself as a defiant political force challenging platform monopoly. This victimhood rhetoric not only sustained but energised its base, echoing Salvini-style narratives where legal setbacks fuel populist resilience rather than dampen it. Thus, the cases illustrate how law's symbolic weight tilts the playing field, punishing practice-oriented solidarity, while permitting discursive extremism.

Finally, the State's actions and inactions contribute to discursive imbalance, amplifying exclusionary narratives while silencing others.

Several lessons emerge from the juxtaposition of the cases:

- Legal neutrality is illusory because law has been applied within political hierarchies that privilege border control over human rights.
- Criminal law is an instrument of governance and not merely of sanction in migration contexts.
- Freedom of expression is often unevenly distributed, befitting those aligned with dominant narratives.
- Private actors are increasingly filling regulatory voids, raising questions about accountability in terms of democratic principles and participation mechanisms.
- Militant democracy is weakening not through formal repeal but through selective non-application.

Taken together, the two cases reveal a profound reconfiguration of Italian democracy under the pressure of migration governance. The comparison exposes a system in which humanitarian action is criminalised, extremist discourse is tolerated, and constitutional commitments are unevenly enforced. Rather than isolated anomalies, these cases reflect structural trends in terms of securitisation of migration, the shrinking of civic space, and the erosion of Italy's post-fascist legal identity. The ultimate lesson is not merely legal but rather political: the way a state treats those who defend the most vulnerable, compared to those who promote exclusion, is a litmus test of democratic health.

Conclusion and recommendations

The comparative analysis of pro-migration solidarity activism and anti-migration far-right mobilisation in Italy reveals a troubling reorientation of legal and political priorities. While Italy's constitutional architecture is formally grounded in anti-fascism, equality, and international human rights obligations, contemporary governance practices demonstrate a growing imbalance in how these principles are operationalised. The criminalisation of humanitarian assistance, juxtaposed with the cautious or inconsistent regulation of extremist and racist movements, signals not merely a legal discrepancy but a deeper normative shift within the Italian democratic order.

Rather than functioning as a neutral arbiter, the law increasingly operates as a tool of migration control and symbolic deterrence. Criminal law, administrative discretion, and procedural burdens are mobilised against individuals and organisations providing assistance to migrants, even in the absence of profit motives or demonstrable harm. Conversely, movements promoting exclusionary or openly neo-fascist narratives are often channelled into civil or regulatory disputes framed around freedom of expression, thereby preserving their visibility and political agency. This asymmetry undermines the doctrine of militant democracy and risks hollowing out the constitutional safeguards designed to prevent the normalisation of anti-democratic ideologies.

From a systemic perspective, the delegation of hate-speech governance to private digital platforms further complicates accountability. While companies such as Meta may enforce anti-discrimination standards more effectively than public authorities, reliance on private regulation cannot be a substitute for coherent and principled state action. The absence of consistent enforcement against extremist movements weakens public trust in democratic institutions and reinforces perceptions of selective justice.

In light of these findings, several recommendations emerge.

- First, Italian migration law – in particular Articles 12 and 12-bis of the Consolidated Immigration Act (Legislative Decree n. 286/1998) – should be comprehensively reformed to introduce an explicit and unconditional humanitarian exemption, modelled on the standards recognised by the Court of Justice of the European Union in Joined Cases C-924/19 PPU and C-925/19 PPU. Legal certainty is essential to protect civic actors from deterrent prosecutions that erode social cohesion and democratic participation.
- Second, the application of existing anti-fascist and anti-hate legislation must be strengthened through clearer prosecutorial guidelines and judicial training, ensuring that constitutional principles are not subordinated to political expediency. The consistent under-enforcement of the Scelba Law (Law n. 645/1952), the Mancino Law (Law n. 205/1993), and Articles 604-bis and 604-ter of the Penal Code – as demonstrated by the State's failure to initiate any proceedings against CasaPound Italia despite its documented neo-fascist ideology and sustained hate speech campaign – represents a structural failure of Italy's militant democracy commitments. The conviction of February 2026 may represent a step in the right direction, but ongoing judicial reforms at the centre of a referendum still underway at the time of writing equally provide cause for caution.
- Third, the state should reclaim its regulatory responsibility over hate speech and extremist mobilisation, reducing over-reliance on private platforms and reaffirming democratic accountability. The current reliance on private platform governance reveals a problematic outsourcing of constitutional responsibilities to private actors not bound by proportionality, due process, or democratic accountability.

Ultimately, safeguarding democracy requires more than controlling borders. It demands a consistent commitment to protecting those who act in defence of human dignity while firmly opposing movements that seek to undermine equality and constitutional values. Rebalancing these priorities is essential to preserving Italy's democratic integrity in an increasingly polarised political environment.

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