

The EU Hotspot Approach and Expansion of De Facto Immigration Detention

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Structure of the presentation

- 1) International legal framework applicable to deprivation of liberty and restriction on freedom of movement
- 2) Operation of hotspots in Italy and Greece
- 3) Conclusions

The right to liberty of person

International Covenant on Civil and Political Rights, article 9(1)

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Also: European Convention on Human Rights, article 5(1)
and EU Charter on Fundamental Rights, article 6

The right to liberty of movement

International Covenant on Civil and Political Rights, article 12

(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

Also: Protocol 4 to the European Convention on Human Rights, article 2
and Geneva Refugee Convention, article 26

Hotspots in Italy



- Lack of proper regulation of hotspots
- Systematic and *de facto* detention during identification and fingerprinting without legal basis
- Repeated refusal to leave fingerprints considered a risk of absconding and a ground for pre-removal detention (art. 17(3) of LD 15/2017)

Hotspots in Greece



- Until March 2016: functioning of RICs as open facilities
- Since the EU-Turkey deal: transformation of RICs in closed facilities and “restriction of movement” under art. 14 of L4375/2016 imposed systematically
- Currently, in practice, the possibility to leave the facilities after swift identification
- Confinement to islands
- Possibility of pre-removal detention

Photo credit: Fundamental Rights Agency

Conclusions

- The hotspots in both Italy and Greece involve measures of deprivation of liberty and restriction of movement:

In Italy: de facto systematic detention without a legal basis,

In Greece: “restriction of movement” under art.14 of L4375/2016 and geographical restriction to the islands,

In both cases, these measures were (indirectly) encouraged by the EU;

- Under international law, confinement in hotspots during identification and fingerprinting amounts to deprivation of liberty rather than restriction of freedom of movement and thus detention- related standards should apply;
- Need for a clear legal basis for the measures carried out in the hotspots which would comply with international human rights law.

Thank you for your attention