2 The Ever-Changing Picture of the Legal Framework of Migration: A Comparative Analysis of Common Trends in Europe and Beyond[1]

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Introduction

In a recent judgement, the Italian Constitutional Court stated that excluding asylum seekers from registering with the municipal administrative office (as occurred under the rules introduced by the Salvini Decree) is constitutionally illegitimate.[2] The reasoning underlying the ruling does not rely solely upon the principle of non-discrimination. The Court also objected to the intrinsic irrationality of the provision. Preventing asylum seekers from registering would complicate the process of identifying them (in addition to excluding them from several services and benefits). As such, the Court ruled, the regulation contradicts the very purpose of the decree, which is to enhance security and territorial control.

This is a paradigmatic and vivid example of one of the main features of migration law: a stark, systematic contradiction between the proclaimed goals and actual results achieved through laws and regulations. This phenomenon is well known in politics under the term 'policy gap'—namely, the gap that often occurs between policy formulation and policy outcomes. It has been in the spotlight of migration studies since the mid-1990s when migration started attracting broader attention among scholars (Lahav and Guiraudon 2006; Castles 2004). It remains a central topic that continues to engage policy-

[1] The authors have jointly discussed and conceived this chapter. Nonetheless, V. Federico is mainly responsible for the following sections: Labyrinthine and hypertrophic legislation, Horizontal subsidiarity, The role of courts, and the Conclusion. P. Pannia is mainly responsible for the following sections: Introduction, Vertical and horizontal subsidiarity, Vertical subsidiarity, and the *subsidium* of European and international agencies.

[2] Constitutional Court, judgement No. 186/2020. The press release is available at https://www.cortecostituzionale.it/documenti/download/pdf/request_20200803143349.pdf.

makers, stakeholders and researchers alike as they reflect on the reasons for the failure of migration policies. In legal research, the gap between the law as it is formally laid down and the law as it is actually implemented was masterfully described by Roscoe Pound way back in 1910, when he drew a distinction between 'law in books' and 'law in action' (Pound 1910). This refers to the distance that sometimes exists between black-letter law, on the one hand, and how the law works is and actually applied, on the other.

In migration studies, scholars have mainly addressed this gap, both in political and legal terms, by emphasizing the complexity surrounding this research field. Notably, the hermeneutical tool of 'multilevel governance' has been used to capture and explain the phenomenon (Zincone and Caponio 2006; Scholten and Penninx 2016) by taking into account the polycentric and multilayered nature of migration management. This approach has debunked a traditional state-centric perspective (Gill 2010) by drawing attention to the role of the manifold 'sources' of migration regulation, which applies at several scales—local, supranational and international. These sources at different levels actively contribute to migration governance (at various stages and to different degrees) depending on the specific matter at stake.

However, the concept of 'multilevel governance' has recently met with some criticism from those who question its scope of applicability and theoretical robustness. Many have pointed to the polysemy of the term, along with the inconsistent use made of it by scholars (Caponio and Jones-Correa 2018). In addition, some authors also argue that the universe of migration regulation is too chaotic and disorderly to be wholly circumscribed within the cognitive categories of 'multilevel governance' or MLG (Campomori and Ambrosini 2020). Thus, alternative theoretical frameworks have been proposed based on such concepts as the 'battleground' or 'multilevel playing field',[3] deemed better able to explain the constellations of actors who interact and pursue conflicting objectives, strategies and spheres of interest. What these authors contest is the 'irenic (pacific) view' supported by the MLG approach.

In contrast, the analysis often reveals the lack of a clear distribution of competences, a lack of coordination and the impossibility of reaching a 'negotiated order among interdependent actors' (Campomori and Ambrosini 2020: 16). In this regard, a condition of 'institutional uncertainty' seems in many instances to pervade every level of national migration systems, where it is

[3] The term 'battleground' was coined by Maurizio Ambrosini to describe the nature of 'the multi-actor, conflictual and plural local dynamics' (Campomori and Ambrosini 2020: 3. See also Ambrosini 2018). The 'multilevel playing field' concept was introduced by Lahav and Guiraudon (2006: 208) and is referred to by Campomori and Ambrosini as a useful basis for investigating 'not only the various levels of policy making, but also the diverse actors and logics that prevail in it' (Campomori and Ambrosini 2020: 16).

the law in itself and not only the way it is implemented that instils uncertainty, instability and discrimination into the system (Pannia 2020). This condition raises the question of whether, in some contexts, the management of migration can be accurately described as 'governance' (Sabchev 2020).

Based on these considerations, some critics also challenge the methodology traditionally adopted in migration research. In this respect, the issue's complexity should be considered when defining migration as a field of study and when addressing the analytical process per se and how migration is studied and understood (Lahav and Guiraudon 2006; Scholten 2020). Doing so requires adopting a comparative perspective and a more flexible and dynamic methodology, which attempts to grasp the real dimensions of the phenomenon with its inherent fluidity and continuous transformation.

This chapter aims to analyse, precisely from such a perspective, how selected states in Europe and beyond (namely the RESPOND countries of Austria, Germany, Greece, Hungary, Italy, Lebanon, Poland, Sweden, Turkey[4]) have responded to post-2014 migration flows. Drawing upon evidence provided by national reports within the RESPOND research project, the chapter provides a comparative legal and institutional analysis of migration governance across countries, highlighting trends and similarities, as well as differences and relevant inconsistencies in the response to mass migration. It will attempt to offer an overview of a changing situation that, while acknowledging the peculiarities of very diverse national contexts, may help capture the main tendencies and common mechanisms, if any, underlying the formulation and implementation of migration law across countries.

The chapter also offers analytical insights for evaluating the potential implications of the dynamics of migration management in the aforementioned countries concerning the respect for fundamental rights. Indeed, any analysis of the 'policy gap' and the lack of efficacy of migration laws needs to be complemented with a rights-based perspective. What is at stake is not exclusively a governance issue, which can be assessed and measured against the parameter of effectiveness, but also the protection of vulnerable people, where the salient parameters are human dignity and fundamental rights (Cholewinski and Taran 2009). Mapping out the multiplicity of actors involved in the management of migration and analysing the complex dynamics of their interactions also entails an assessment of the implications that these extremely mobile and fast-changing dynamics have on migrants' rights. That is the aim of this chapter.

The chapter begins by illustrating that, in all RESPOND countries, the legal framework concerning migration and asylum/international protection is ex-

[4] The RESPOND study also included the case of Iraq, which is not included in this chapter, as the data gathered are not homogeneous and therefore not comparable.

tremely complex and hypertrophic, with lawmakers frequently resorting to secondary legislation (such as decrees, by-laws, regulations, and the like) instead of proper statutes/acts of parliament. The outcome is a stratified legal framework that is extremely fragmented and largely unintelligible, making consistent interpretation and implementation very difficult. Therefore, the enforcement of laws and guarantees of fundamental rights are jeopardized and often greatly depend on the discretionary power of individual offices and officials. The analysis then goes on to explore the variety of actors who are involved in the multilevel and subsidiary-based management of migration flows. All tiers of government (from international to local) are involved, with different, often overlapping, or not clearly defined competences. In addition, third-sector actors and private companies are also part of national migration management mechanisms, making the picture even more complex, fluid and blurred.

The third section is devoted to courts, which play a relevant role in migration governance, in the name both of the rule of law and of uninfringeable rights. On the one hand, judges are crucial in securing remedies for those whose rights have been violated and are, on the other, a crucial source of sound interpretations of legal provisions. However, their interventions, especially when court judgements do not have an *erga omnes* effect (that is, they are not constitutional/supreme court rulings), may also result in further fragmentation and personalization of rights entitlements and guarantees. Finally, the concluding remarks of the chapter highlight that the interaction among actors involved in the management of migration often ends up exacerbating the fragmentation of legal guarantees and protection.

Labyrinthine and hypertrophic legislation

In all countries involved in the RESPOND study, the legal framework governing migration and asylum is extremely complex and cumbersome. This is even more true for the RESPOND countries that are also EU member states. While EU law partially harmonizes several aspects of the legal framework for migration, it still falls short of expectations for a common European asylum system and more coherent economic, family and migration law across the continent.

The national legislation of each RESPOND country has undergone continuous changes, not necessarily in a coherent fashion. For example, in the UK, 12 Acts of Parliament regulating immigration issues have been approved in the last 20 years (Hirst and Atto 2018). In Italy, the Consolidated Law on Immigration consists of multiple fragmentary provisions and lacks internal consistency, precluding its effective application. The same complexity, inconsistency and rapid evolution are also apparent in the legal frameworks of Germany and Austria. Concerning the latter, scholars have highlighted that

the Aliens Act was created in 1992 as a follow-up to the former Aliens Police Act and merged with the Residence Act in 1997. However, the same subject matter was later separated again into the Foreign Police Act (FPG) and Settlement and Residence Act (NAG), which have formed the legal basis of the provisions adopted since 2005 (Hirst and Atto 2018: 80). In Germany, the 'law distinguishes between the various migrant groups in a very bureaucratic way, extending to 107 legal paragraphs with some 50 different types of residency permits' (Franzke 2021: 110).

Adding further to this complexity is the fact that in most RESPOND countries, acts of primary legislation only provide a general framework and immigration issues are de facto regulated in detail and implemented by congeries of acts of secondary legislation (by-laws, regulations, ministerial circulars, administrative rules, and the like). This trend can be seen above all in Turkey, where the rules regarding 'temporary protection' status (currently the main form of protection granted to most asylum seekers in the country) are defined in acts of secondary legislation. The leading example of such legislation is the Temporary Protection Regulation issued on 22 October 2014 by a Board of Ministers. However, the Regulation on Work Permits of Foreigners under Temporary Protection also maintains a certain relevance. In addition, a plethora of circulars complement the regulation of the temporary protection status, but most are not publicly accessible. As a result, the authorities' discretion is further broadened, especially when it comes to circulars dealing with public order and security issues (Çetin et al. 2018).

Acts of secondary legislation also play a central role in the legal frameworks of Poland and Austria, and even the UK. The 'hotspot approach' in Italy was developed entirely based on secondary legislation, up until the introduction of Legislative Decree No.13/2017, which, nevertheless, fails to provide a thorough legal basis for the operations carried out, and thus to guarantee their constitutional legitimacy.[5] In Italy, there is an abundance of evidence pointing to this trend, which sees a secondary role for the parliament and constant erosion of the mechanisms of democratic scrutiny. The numerous readmission agreements signed by the country are a good example of the approach that has been taken (and is mirrored at the EU level by the EU–Turkey Statement).[6] The 'code of conduct for the NGOs operating in the rescue of migrants at sea', issued by the Italian Ministry of the Interior in consultation with the European Commission, further echoes this type of pol-

[5] Moreover, from a substantive point of view it should be noted that in the last three years, legislative decrees have been approved without any real parliamentary control, as the cabinet asked for a vote of confidence on each bill, thus reducing the possibilities of amending it (Pannia et al. 2018: 63).

[6] Some of these readmission agreements can be found at the following page of the Italian Ministry of Foreign Affairs website: http://atrio.esteri.it/.

icy approach. It aims to regulate search and rescue operations in the Mediterranean conducted by non-governmental actors, including those flying third states' flags. However, as stressed by ASGI (the Italian Association for Legal Studies on Immigration), this 'code of conduct' is just another example of a more general and regrettable trend towards regulating migration through atypical acts in order to evade the judicial and democratic checks and balances that are inherent to a society based on the rule of law (ASGI 2017; MSF 2017).

Along similar lines, a new reform was recently introduced in Hungary, which authorized parliament to declare a 'state of terror threat' (Gyollai 2018: 296) upon a government proposal and subject to the approval of a two-thirds majority of the members present. In the event of authorization, the government may enact extraordinary measures, suspending or waiving the ordinary procedures established by law. The 'state of terror threat' is triggered in cases where there is a 'significant and direct threat of a terrorist attack'. Unfortunately, this extremely vague definition has led to several misuses of these exceptional powers. For example, in 2015, clashes at the Roszke border crossing were reportedly depicted by members of the press as a 'quasi-terror threat situation'. This provided the pretext for the arrest of 11 migrants, one of whom was sentenced to 10 years imprisonment for terrorism (Gyollai 2018; Kovács 2016; Amnesty International 2016).

The dominance of secondary regulation over proper acts of parliament does not solely impact the rule of law as formally understood; it has serious implications for the quality of regulation, the separation of powers and democratic scrutiny over legislation by parliaments. Human rights theories include, among the mechanisms of rights protection, the constitutional and legal provisions requiring that certain matters be governed by parliament alone (Malfatti 2018). A person can be deprived of or limited in his or her fundamental liberties 'only in such cases and in such manner as provided by the law'.[7] This bastion of legal protection is based on a twofold guarantee: a *procedural one*, which relies on the formal law-making process, and a *demo-*

[7] See for example Art. 13 of the Italian Constitution or Art. 2 of the German Basic Law ('These rights may be interfered with only pursuant to a law') or Arts. 13 and 16 of the Turkish Constitution, which provide that fundamental rights can be restricted only by law, in accordance with the constitution, and, in the case of aliens, also in accordance with international law (Art. 13 'Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality'; Art. 16 'The fundamental rights and freedoms in respect to aliens may be restricted by law compatible with international law').

cratic one, which relies on the function of political control over parliamentary decision-making.

Such a twofold guarantee becomes even more relevant when the rights at stake are those of a particularly vulnerable category of people: migrants. Migrants, who are by definition non-citizens, remain outside the scope of representation based on citizenship. This means that they are subject to the legal systems of the countries they live in, with no power to influence the rules that govern their lives. It is the citizens' choices (as expressed through their representatives in parliament) that define the statuses, rights, duties and conditions of aliens, as the latter are systematically prevented from having a say (at least directly, because they are disenfranchised) in the law-making and decision-making processes that have such a crucial impact on their lives. Against such a fragile background, bypassing the primary role of parliaments may seriously jeopardize the guarantee of rights.

However, secondary acts are rarely subjected to parliamentary debate. The lack of adequate parliamentary control results in broad executive discretion regarding the concrete regulation of important migration issues. The secondary role of the parliament and the increasing range of policies that are not subject to democratic scrutiny are another general trend observable throughout RESPOND countries. Indeed, the governments of most countries bypass the use of ordinary legislation to manage migration and frequently resort to decrees or other informal acts, such as communications, standard operating procedures and circulars, thereby de facto eliminating parliamentary control and concentrating both decision-making and implementation in the hands of the executive.

Therefore, the principle of separation of powers has had a different configuration regarding migration policy, where the executive has historically been allocated a preeminent role compared to the legislature and the judiciary. However, the refugee crisis has amplified the imbalance between the state powers, so much so that the traditional doctrine on the separation of powers should be reassessed in light of current developments (Bilchitz and Landau 2018).

Vertical and horizontal subsidiarity

The principle of subsidiarity is neither a universal nor univocal concept: its definition changes depending on the context, interests and ideological background surrounding its use (Kazepov 2010; Rinella 1999). Also for this reason, the relationship between the concepts of subsidiarity and multilevel governance remains controversial in scholarly debates. Some authors conceive this relationship as divisive and conflicting. Here, the principle of subsidiarity is seen to represent a 'localist' ideal-type of governance (where the local level prevails upon the central level of government), as opposed to

'multilevel governance', which refers to an 'interaction and joint coordination of relations between the various levels of government without clear dominance of one level' (Scholten and Penninx 2016: 94). However, if we question the notion (as advanced by the 'MLG' model) that the relations among the various levels of government are irenic (pacific) and static, we can reappraise the concepts of horizontal and vertical subsidiarity and then take them up as a critical tool enabling us to gain insights that are relevant to the analytical approach undertaken here. Indeed, as they refer to 'processes', these terms are better able to capture the complexity, variability and dynamism surrounding the interactions among different levels of government.

More precisely, vertical subsidiarity concerns the territorial reorganization of regulatory powers across the different levels of government, while subsidiarity in its horizontal dimension looks at the interconnection between the public and private sectors (including both non-profit and for-profit actors) (Kazepov 2010). The premises underlying these processes (and principles) mostly revolve around the idea that the management and delivery of services should be left up to civil society and the government level that is closest to citizens (as long as these prove to be efficient).

However, reality has demonstrated that this is not always the case. On the one hand, the principle of vertical subsidiarity may generate the phenomenon of 'public inertia', which places lower government tiers (particularly local municipalities) under financial and logistic strain. On the other hand, horizontal subsidiarity can lead to fragmented management, which, instead of enhancing participation, may limit accessibility and accountability, especially regarding vulnerable groups such as foreigners (Martinelli, Anttonen and Mätzke 2017). This is especially the case when solid mechanisms of coordination and monitoring, which are essential to guarantee the system's efficiency, are not in place. As the sections below will illustrate, the migration domain well exemplifies the ambiguities related to the concrete implementation of the principle of subsidiarity.

Vertical subsidiarity

In most RESPOND countries, all tiers of government (from the national to the local) are endowed with different, often overlapping competences. However, as will be illustrated below, it is usually the delivery of services that is affected most by vertical subsidiarity: regional and local actors are strongly involved in the provision of education, health care, child care services and social welfare. In addition, in some RESPOND countries, the management of migration also involves other relevant actors, such as the third sector, private companies and the courts, as well as EU and United Nations (UN) agencies. This multiplicity of actors often results in substandard and uneven services and uncertainty vis-à-vis the enforcement of rights.

Certainty and predictability are two basic defining features of the law per se and the principle of the rule of law. This means that laws, and the legal framework they are part of, should satisfy the requirements of clarity, stability, and intelligibility. This is even more true for migration law, as the individuals involved are obviously more susceptible to precariousness and are likely to have difficulty understanding. However, legal certainty and predictability require neither absolute stability nor complete homogeneity, regardless of decentralization. Needless to say, some degree of unevenness in services and rights enforcement is an inherent trait of decentralized states, and it is equally apparent that such unevenness also affects some aspects of migration governance. This should allow the responsible tier of government to better accommodate local communities' needs (Horowitz 2007). However, when the lack of homogeneity is not reasonable or understandable, or, even worse, when it exacerbates inequality instead of filling the gaps, it impacts rights enforcement.

In Germany, the management of migration is distributed over different levels of government. For example, the national government is in charge of border management and protection, whereas migrant reception and integration are the responsibility of the *Bundesländer* (federal states), which sometimes delegate ample powers of implementation to local municipalities (Caponio, Ponzo and Giannetto 2019; Franzke 2021). As a result, in practice, gross disparities exist in the provision of basic services. For instance, in the state of Lower Saxony, the municipal authorities are totally responsible for providing accommodation and care to asylum seekers, and most cities have established their own local accommodation policies. Since 2014, municipalities have also been responsible for funding the services provided. This has caused them significant financial strain due to the insufficient contributions from the state (Chemin et al. 2018). Significant differences can also be observed in the standards of the accommodation provided: for example, according to data from the Federal Statistical Office, in 2017, in Schleswig-Holstein, 83.4 per cent of the asylum seekers were living in decentralized accommodation, whereas this was the case only for a total 44 per cent of asylum seekers in Mecklenburg-West Pomerania (Franzke 2021: 114).

In Austria, the system is highly centralized, but this has not reduced fragmentation in terms of standards and rights. The fundamental immigration and asylum policies, such as those regarding legal status, entry and return, are determined by legislators at the federal level. Regarding reception within the asylum system, by contrast, the federal government and provinces share legislative competence, whereas responsibility for some other areas is entirely delegated to the provinces. For example, the provinces are responsible for providing the so-called 'needs-based minimum benefit'—a social welfare benefit granted to all persons legally residing in Austria (including citizens

and beneficiaries of international protection) who lack adequate means of subsistence.[8]

Since 2016, upon the expiry of a harmonizing agreement between the federal and provincial authorities, which imposed the same standards throughout Austria, the degree of support provided through the needs-based minimum benefit has diverged significantly from one province to another. In some Austrian provinces, refugees are entitled to smaller allowances than nationals. Meanwhile, the province of Upper Austria passed legislation making entitlement to the needs-based minimum benefit subject to the duration of stay, but it was annulled by the Constitutional Court (Josipovic and Reeger 2018; AIDA 2018a). Besides their policies regarding the provision of social welfare services, provinces have also taken a restrictive stance regarding the quota of asylum seekers they are willing to receive. This has led to the establishment of a compulsory quota system under federal constitutional law (Josipovic and Reeger 2018).

However, despite these shortcomings, the 'multilevel model', involving the participation of subnational entities in the management of migration, has also proven crucial for promoting the rights of foreigners. Indeed, while it is true that the multilevel scheme has generally exacerbated fragmentation in respect of migrants' rights, it is important to note that it has also paved the way for more progressive approaches in specific regions, provinces and local municipalities, in contrast with the overall restrictive tendency at the national level. Thus, for example, in Austria, the policy of the federal government is to allow access to social integration programs only to refugees, whereas the Viennese authorities decided to extend integration courses to all applicants (Josipovic and Reeger 2018).

In the UK, legislative powers regarding immigration and asylum are vested exclusively in the central government. However, the devolved governments of Scotland, Wales and Northern Ireland possess legislative power in fields that are relevant to immigration and asylum, such as housing, health care, education, childcare services and social welfare. The fuzzy distinction between national and subnational legislative competencies regarding immigration and asylum has led to conflicts between the central UK government and the devolved administration of Scotland. The Scottish administration has traditionally embraced a more inclusive and protective approach compared to the rest of the UK, as in the case of the Children (Scotland) Act 1995, which collided with three pieces of UK legislation providing, among the other things, for the detention of children (Hirst and Atto 2018).

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[8] More precisely, the 'needs-based minimum benefit' is provided to persons who have personal savings of no more than €4,189 (2016), reside legally in Austria and are available for employment (Josipovic and Reeger 2018: 34).

Conflicts among the central and regional tiers of government have also arisen in Italy, where a 2001 constitutional reform attributed exclusive responsibility for policy-making and management concerning immigration and (the right of) asylum, as well as the legal status of non-EU foreign nationals to the central government (Art. 117, sections a) and b) of the Italian Constitution). However, the regions have continued playing a decisive role in this field, as they retain legislative competences in the realms of healthcare, education, child care services and social welfare.

Furthermore, the Constitutional Court has clearly promoted a 'multilevel model' (Panzeri 2018),[9] which has highlighted that asylum and migration necessarily involve both central and regional interventions, notwithstanding the strict distribution of legislative powers provided by Article 117 of the Italian Constitution.[10] Based on such considerations, the Constitutional Court dismissed the government's requests to declare the illegitimacy of some regional laws, such as those extending undocumented migrants' entitlements to health, housing and social services (Salazar 2010; Biondi dal Monte 2011; Corsi 2012; Gentilini 2012). As a result, undocumented migrants currently enjoy a wide range of rights and benefits in regions such as Tuscany, Apulia and Campania, though different standards of protection are currently applied to undocumented third-country nationals across the country (Salazar 2010; Spencer and Delvino 2014).

A decentralized system has also been established in Poland, where regions have the responsibility, among other things, to grant residence permits and provide social assistance; however, the processing of applications for international protection is centralized (Molęda-Zdziech, Pachocka and Wach 2020). Hungary stands as an exception to the pattern of decentralization displayed to some extent in the majority of RESPOND countries. In Hungary, since 2019, the entire system has fallen within the scope of authority of the National Directorate General for Aliens Policing, a department of the Minis-

[9] Italian Constitutional Court, judgements No. 300/2005; No. 269/2006; No. 156/2008; No. 50/2008; No. 134/2010; No. 269/2010; No. 299/2010; No. 61/2011.

[10] Art. 117 of the Italian Constitution distributes legislative power between the central state and the regions. In particular, following the amendments introduced by Constitutional Law No. 3/2001, Art. 117 identifies a number of policy areas divided into two lists. The first list (Art. 117(2)) specifies the matters falling under the exclusive legislative competence of the national parliament. The second list (Art. 117(3)) specifies the matters for which the central state and the regions share responsibility (so-called 'concurrent competences'). The central state is responsible for issuing general guidelines regulating the subject matter, while regional authorities have to enact detailed legislation in observance of the general principles laid down in national legislation.

try of the Interior, and local authorities are excluded from the management of migration.[11]

In Turkey as well, a highly centralized system has developed since the introduction of the Law on Foreigners and International Protection (LFIP) in 2013. The Directorate General for Migration Management, operating under the Ministry of the Interior, has become the institution responsible for dealing with immigration and asylum issues (Art. 158 of Presidential Decree No. 4). However, local authorities still maintain the responsibility for organizing the delivery of important services related to the integration of foreign nationals (Art. 96 of the LFIP) (Çetin et al. 2018).

The same also applies to Greece, where the central government bears exclusive responsibility for the reception of asylum seekers and integration services.[12] More specifically, after the 2016 elections, a new Ministry of Migration Policy was established, with responsibilities encompassing asylum, migration and integration policies. Furthermore, in March 2016, a new interministerial entity was created to tackle the many loopholes in the national system of reception. The responsibilities of this new entity, headed by the Deputy Minister of National Defence, range from managing migrant flows to establishing reception centres (Petracou 2018; Triandafyllidou and Mantanika 2016). In 2019, the Ministry of Migration Policy was subsumed into the Ministry of Citizen Protection, which has competences in the area of public order and public security. This institutional change raised many concerns due to the stigmatization that could arise from linking security with migration. Therefore, in 2020, the Ministry of Migration Policy was re-established (AIDA 2019: 27).

The urgent need for more transparent and more efficient cooperation among all the actors involved has also been addressed in Sweden, where a decentralized system operates under the oversight of the Ministry of Justice. Up to 2013, migrants reportedly had to engage with about 40 different governmental officials during and after the lengthy asylum procedure (Swedish Migration Agency 2017: 7). In order to solve this problem, in 2014, a Memoran-

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[11] Sections 1, 2 and 4 of Government Decree No. 126/2019 (V.30.). The National Directorate General for Aliens Policing took the place of the Asylum and Immigration Office. The latter was similarly under the responsibility of the Ministry of Interior. However, the new agency operates as a branch of the police. This has had the effect not only of making immigration and security issues more closely linked, but also of generating deadlocks and long delays in procedures because 'asylum officers needed to receive training and pass physical and psychological exams in order to be appointed as police officers' (AIDA 2020b: 11).

[12] In 2010, Law No. 3852 allowed local municipalities to provide additional services in the social welfare domain. However, the government did not allot any specific funds for this purpose (Sabchev 2020: 2).

dum of Understanding (MoU) was signed with all the relevant authorities to boost dialogue and cooperation (Shakra et al. 2018).

Horizontal subsidiarity

Together with subnational authorities, third-sector and private actors are also part of national migration management mechanisms, making the picture even more complex and fluid. Italy and the UK are emblematic of such a pattern. In the UK, the entire reception system for destitute asylum applicants is managed by private companies (House of Commons Home Affairs Committee 2017: 12).[13] The outsourcing of immigration-related services to the private sector results in a 'convoluted web of contractors, subcontractors and hundreds of private landlords', with limited coordination between the private providers, local municipalities, the central government and subnational authorities (Hirst and Atto 2018: 856). Meanwhile, the standards in the reception of foreigners are inconsistent and often poor; two out of the three providers operate at a loss (House of Commons Home Affairs Committee 2017).

Similarly, in Italy, the reception services provided to asylum seekers are highly fragmented and diversified. The Italian reception system is complex, with most responsibilities being shared among municipal authorities, NGOs, and third-sector associations and cooperatives (Ambrosini 2018; Campomori and Ambrosini 2020), which end up producing very different outcomes. Thus, effective communication among all relevant actors is hampered by a lack of adequate mechanisms of coordination. Furthermore, the limited implementation of the 'ordinary' reception system as envisaged by Legislative Decree No. 142/2015 has resulted in the addition of new actors to the Italian reception landscape, which has, in turn, generated inconsistency in the system's administration and exposed asylum seekers to further uncertainty. Articles 9 and 14 of the aforementioned legislative decree provide for asylum applicants to be channelled into a two-tiered system. It comprises first-line governmental accommodation in centres set up to receive newly arrived asylum seekers and carry out the necessary formalities to define their legal status, and second-line reception and integration services to be provided over a longer period. The latter services are run by local authorities (together with

[13] From 2012 to September 2019 accommodation services were entrusted to three private providers (namely Serco, G4S and Clearsprings Group) to whom regional contracts, known as COMPASS contracts, were awarded by the Home Office. In 2019, COMPASS was replaced by different regional contracts, which were awarded to Clearsprings Ready Homes (Clearsprings), Mears Group (Mears) and Serco (National Audit Office 2020: 5).

third-sector actors) within the SPRAR network (the national system of protection for asylum seekers and refugees).

Since 2015, the Italian government has made a great effort to boost the capacity of the national reception system, providing for 180,000 new places to be made available (UNHCR 2017: 3). However, this has not been enough to enable the SPRAR network to respond to existent needs, due also to the volunteer-based system underlying the SPRAR since the interest and participation of local authorities have been limited. In this context, migrants have been often accommodated in special reception centres (CAS) set up at the initiative of prefectures (provincial offices of the central government). Prefectures, in turn, subcontract to the private and third sectors. CAS facilities, conceived in principle as temporary measures of last resort, accommodated 80.9 per cent of asylum seekers as of December 2017 (Pannia et al. 2018; Parliament of Italy 2017: 98).[14]

However, the selection procedures of the CAS have been strongly questioned, there being doubts as to their transparency and the accountability of those in charge. In addition, there have often been complaints about the inadequate organization and poorly trained staff (see Parliament of Italy 2017: 109, 116; Parliament of Italy 2019: 50). As a result, the Italian reception system is highly fragmented. There is a plurality of centres with highly diverse standards, and foreign nationals' fundamental rights are not always respected (Banca d' Italia 2017; Oxfam 2017). The lack of consistency is the result of the complex interplay among the various actors involved in the reception system in each local context and their often-conflicting logics and interests, such as the role of stakeholders involved in reception system management or the role of anti- and pro-immigrant associations (Campomori and Ambrosini 2020).

Adding further complexity, in 2018, the national reception system was dismantled by the so-called Salvini Decree (Legislative Decree No. 113/2018). Under the new rules, the SPRAR changed its name (to SIPROIMI), as well

[14] A concern about the lack of coherent and updated data has been voiced by some NGOs, such as Openpolis and Actionaid, which have complained of the lack of transparent data about the way in which CAS are managed (such as information about those who manage the centres, the number of foreigners accommodated, and so on). See also Actionaid (2020). The same disparity also existed in 2018. See Ministry of Interior (2019: 16). The report for 2019 has not yet been presented. The percentage of people accommodated in CAS facilities seems to have decreased in 2020, when people accommodated in SIPROIMI accounted for 31 per cent of the total number of people accommodated in the national reception system. However, these data also reflect the reduction in the number of arrivals and the legislative changes introduced by the Salvini Decree, which, as illustrated elsewhere in this chapter, dismantled the SPRAR (Legislative Decree No. 113/2018).

as the recipients of its services: asylum seekers were no longer allowed access to the integration services provided by the SPRAR. Pending the determination of their refugee status, asylum seekers were accommodated in CAS facilities, where a substantial cut in funding further exacerbated the poor standard of care and inadequacy of services. This ended up favouring large reception facilities, whose major deficiencies (inefficiencies, social tensions and infiltrations by criminal organizations) have already been pointed out by monitoring reports issued by NGOs (Actionaid 2020: 11; Parliament of Italy 2019: 64).

Meanwhile, confirming the trend of hectic legislative changes, in late October 2020, a new legislative decree (No. 130/2020) was issued. According to Art. 4(3)(b) of the new decree, the scope of action of the national reception system will no longer be limited to refugees and unaccompanied minors. Pending a decision regarding their status, asylum seekers will also be channelled into the new 'system of reception and integration', where highly trained staff will provide an ample range of services, such as health care, social and psychological support, cultural and linguistic mediation, Italian language courses and legal assistance.

Nonetheless, it would be an oversimplification to say that the interconnection between the public and the third and private sectors has been only detrimental and prevented the smooth, effective management of migration. Indeed, in some cases, their interaction has positively contributed to the delivery of services and social innovation. The region of Thessaloniki in Greece offers a good example in this respect.

Against the lack of an integration plan at the national level in Greece, in Thessaloniki, the local government was able to develop a comprehensive set of progressive reception and integration services for asylum seekers and refugees. The partnership that the Municipality of Thessaloniki built with the third sector and UN agencies proved crucial to guaranteeing foreigners' fundamental rights (Sabchev 2020). The same can be said for Turkey, where in the absence of a national integration plan, local municipalities and NGOs and UN agencies had a central role in delivering services, also aimed at the long-term integration of newcomers. However, this also resulted in the fragmentation of service provision, while a condition of uncertainty governed interaction between various actors and fulfilment of migrants' rights. Recently the central government issued a Cohesion Strategy and National Action Plan (2018–2023), the effects of which are still to be evaluated (AIDA 2020a: 63).

Also in Germany, integration policies were mainly driven by the initiative of civil society actors and local governments, which proved to be crucial while a coherent strategy had yet to be developed at the national level (Franzke 2021: 116). In Italy and the UK, as well, non-governmental organizations (NGOs) have attempted to close the many loopholes of the reception system,

which fails to meet asylum applicants' needs of protection adequately. The NGOs' activities encompass the provision of essential goods and basic services, such as emergency healthcare, legal advice and support toward integration, including training and language classes. Beneficiaries of international protection are not the exclusive recipients of NGO intervention, which also address legally resident foreigners and undocumented migrants.

In Austria, until recently, NGOs have been actively engaged in a number of fields spanning legal advice, the provision of certain care services for asylum seekers, programs of integration and voluntary return (Josipovic and Reeger 2018). However, in 2019, the third sector's role was drastically reduced by a new law approved by the Austrian parliament (ECRE 2019: 2). Following the legislative change, many crucial services, such as reception conditions, legal assistance for asylum seekers, translations during the asylum procedure, have been centralized and included among the competences of a new federal agency falling under the responsibility of the Ministry of Interior. Serious concerns have been raised regarding the independence of the new body stressing how the potential conflict of interest risks undermining the safeguarding of access to free legal assistance and representation for asylum seekers (ECRE 2019). This tendency aiming at subjecting NGOs to various restrictions did not feature only the Austrian legal framework.

In Poland, from the beginning, NGOs and municipalities with many foreign residents have played a crucial role, especially for those falling outside the 'international protection circuit'. This picture can be explained in the light of multiple factors, including the poorly developed social assistance system in Poland, the lack of an 'integration strategy' at the national level and policy-makers' persistent understanding of integration as a 'pull factor' (Molęda-Zdziech, Pachocka and Wach 2021: 174–175). However, currently, NGOs' intervention in asylum-related services (such as legal advice, reception and monitoring) is increasingly at risk, and their presence is visibly reduced, especially in reception centres. This can be related to the Law and Justice Party (PiS) government's policy of a 'closed society', which has progressively reduced NGOs' room for manoeuvre, significantly complicating the access to European funding (the primary source of economic support not only of specific projects but also of entire organizations) (Szałańska 2019; Molęda-Zdziech, Pachocka and Wach 2021: 179).

In this respect, the Hungarian case is even more striking. For a long time, the role of NGOs in Hungary proved vital in ensuring the basic rights of asylum seekers and refugees, filling the increasingly broad void of assistance from the Hungarian government. In 2015, the government declared the 'crisis situation caused by mass migration' a 'quasi-state of emergency'. The state of crisis has been successively extended until covering the entire territory of Hungary and routinely prolonged (after the recent extension, until 7 September 2021). Under the aforementioned state of crisis, special rules apply to

asylum applicants, who are allowed to submit their claims only in transit zones. Here, NGOs have played a crucial role considering that government reception services only include accommodation, food and healthcare for the very few asylum seekers who are not de facto detained in transit zones, whereas subsequent applicants are excluded from any kind of material support. Meanwhile, in June 2016, the government dismantled the integration programme in place for beneficiaries of international protection, leaving the delivery of essential services aimed at supporting refugees' integration (such as assistance in housing, language courses, job-searching) to the NGOs' intervention (Josa and Fedas 2018).

Despite all the efforts to meet the basic human rights of asylum seekers and refugees, NGOs work continues to be hampered by the Hungarian government in many instances. There are multiple reasons. First, as in the Polish case, NGOs are running out of funds. Indeed, the EU-based funding mechanism (the so-called Asylum, Migration and Integration Fund or AMIF), which used to represent one of the primary sources of finance for NGOs' projects and activities, has been put on hold by the Ministry of Interior, which withdrew all the calls for tenders in 2018 (AIDA 2020b: 120). Furthermore, in 2017, a law was approved imposing the mandatory registration and transparency of foreign-funded NGOs.[15] These rules were approved amid a defamatory campaign launched by the government, portraying NGOs as part of the so-called Soros network and 'enemies of the state' (Gyollai 2018; Nagy 2016). Although the fierce criticism raised by several human rights bodies and the judgement of the European Court of Justice, which in June 2020 declared the legislation in breach of EU law,[16] the stigmatization of NGOs in Hungary has not abated.

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[15] See Act LXXVI of 2017 on the Transparency of Organisations Receiving Foreign Funds, Available at https://www.helsinki.hu/wp-content/uploads/LexNGO-adopted-text-unofficial-ENG-14June2017.pdf.

[16] Court of Justice, Judgment in Case C-78/18, Commission v Hungary. The judgement of the Court of Justice concludes the infringement procedure launched by the European Commission in the summer of 2017. See the press-release at https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf, where the Court states that 'by imposing obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and providing for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary had introduced discriminatory and unjustified restrictions with regard to both the organisations at issue and the persons granting them such support. Those restrictions run contrary to the obligations on Member States in respect of the free movement of capital laid down in Article 63 TFEU and to Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union ("the Charter"), on the

The subsidium of European and international agencies

In some RESPOND countries, UN and EU agencies have played a crucial role in addressing the whole issue of migration. For example, in Italy, EU agencies are actively involved in 'hotspots', and the United Nations High Commissioner for Refugees (UNHCR) caseworkers are part of the 'Territorial Commissions' – local administrative bodies in charge of examining asylum applications and ruling on international protection status (Article 4(3) Legislative Decree 25/2008)[17]. Until 2018, the UNHCR was in charge of registering asylum applications in Turkey, whereas this responsibility currently lies with the Provincial Directorate for Migration Management. Since the handover of responsibility, there have been many reports, particularly from Afghan nationals, about difficulties accessing international protection due to uneven practices and lack of coordination (AIDA 2020a: 24). As of 24 April 2018, the UNHCR has supported Greece's reception system under the Emergency Support to Integration and Accommodation programme, creating more than 24,000 new places to accommodate refugees and newly arrived asylum seekers (Petracou 2018).

However, in some cases, the role of EU and UN agencies has proven problematic. A specific case is once again Greece, where Frontex[18] and the European Asylum Support Office (EASO),[19] originally meant only to provide assistance, now exercise de facto power over identification operations and interviews of asylum applicants, respectively, under fast-track procedures

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right to respect for private and family life, the right to the protection of personal data and the right to freedom of association'.

[17] According to art. 4(3) of Legislative Decree 25/2008, as amended by Legislative Decree 220/2017, "the Territorial commissions are composed, in compliance with the principle of gender balance, of a prefectural career officer, acting as president, […] by an expert in the field of international protection and human rights protection designated by UNHCR and administrative officers [...] assigned to the Commission [...]". Within this normative framework, from August 2021, UNHCR is gradually replacing its own representatives in the Territorial Commissions with external experts, by identifying a shortlist of suitable candidates, to be designated as experts and assigned to each Territorial Commission. Read more about this: https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/08/call-for-expression-of-interest-August-2021-with-template.pdf

[18] The European Border and Coast Guard Agency (Frontex) is a European agency whose aim is to cooperate with national authorities in the management and control of the EU's external borders. For further details see https://frontex.europa.eu/.

[19] The European Asylum Support Office (EASO) is a European agency set up to support the implementation of the Common European Asylum System. Its objective is 'to ensure that asylum cases are dealt with in a coherent way by all Member States'. For further details see https://www.easo.europa.eu/.

that have been set explicitly in place (Petracou 2018). The involvement of these external actors, particularly of EASO, has met with fierce criticism and raised questions regarding the lawfulness of the activities conducted by the agency and its compliance with fundamental rights (Guild 2021; Tsourdi 2020; European Center for Constitutional and Human Rights 2019). Indeed, EASO caseworkers, after having interviewed asylum applicants, issue a recommendation to the Greek Asylum Service, which essentially grounds its decision on the EASO opinion, without having any direct contact with the applicant. Consequently, EASO plays a highly influential role in the process of refugee status determination in the absence of any legal basis and engages in activities that are outside its competence. Furthermore, the quality of the interview process has been strongly questioned. EASO caseworkers are reportedly not fully acquainted with Greek legislation on asylum and sometimes lack experience and cultural sensitivity (AIDA 2018b). Despite these allegations, in 2018, the government presented a bill aiming to extend EASO involvement in the regular asylum procedure (AIDA 2018b).

Finally, Lebanon represents another case worth examining, given its specificity. Two UN agencies— the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA)[20] and the UNHCR — intervene in the country to provide fundamental services and undertake quasi-state responsibilities in an attempt to compensate for the absence of any coherent and complete legislation on asylum. Specifically, the UNWRA is highly engaged in providing social services to Palestinian refugees, including medical services, to which Palestinian refugees would otherwise have no access (Jagarnathsingh 2018).

However, the role attributed to the UNHCR is more complicated. Originally charged with helping the Lebanese authorities provide protection and assistance to non-Palestinian asylum seekers and refugees, the UNHCR has become increasingly marginalized and deprived of legal relevance. Collaboration between the Republic of Lebanon and the UNHCR was made official in 2003 when an MoU was signed in light of the Iraqi refugee crisis. Under the 2003 MoU, the UNHCR was entrusted with conducting refugee status determinations in specific cases. It was also to act as a 'surrogate state' tasked with finding long-term solutions for refugees. However, given the lack of additional formal agreements with the Lebanese state, Lebanese authorities have attributed little significance to the UNHCR's refugee status determination outside the cases falling under the MoU, which only covers a minority of refugees. As a result, the majority are not protected against refoulement, nor have they the right to automatic and timely issuing of residence permits (Jagarnathsingh 2018). Furthermore, in 2015, intending to halt the flow of Syrian refugees, the Lebanese government asked the UNHCR to 'temporari-

[20] For further details, see https://www.unrwa.org/who-we-are.

ly' suspend the registration of Syrian refugees and to deregister those who returned to Syria, even for a very short time. In 2018, 'the total figure of refugees residing in the country informally [was] estimated to be around 2, or even 2.5 million' (Jagarnathsingh 2018: 503).

The role of courts

Courts also are relevant actors when it comes to governing migration. Judges play a crucial role in granting remedies to victims of rights violations. Moreover, they are relied on to provide a sound interpretation of legal provisions related to migration issues. In Austria, for instance, the Constitutional Court (VfGH) has repeatedly stymied the restrictive approach undertaken by the federal and subnational governments. Among other things, the VfGH annulled provisions aimed at reducing the time allowed for an appeal to be lodged in asylum procedures and the restrictive social welfare provisions approved by some Austrian provinces (Josipovic and Reeger 2018).

In Sweden, an important ruling of the Migration Court of Appeal contributed to abolishing a measure introduced by the Temporary Law, which provided for a blanket suspension of family reunifications for beneficiaries of subsidiary protection. Indeed, the Court ruled that excluding a Syrian child from the right to family reunification was in breach of Article 8 (the right to privacy and family life) of the European Convention on Human Rights and the UN Convention on the Rights of the Child (Migration Court of Appeal, 19 June 2018, UM16509–17).

In Italy, the Constitutional Court has played a fundamental part in promoting foreign nationals' legal entitlements and preventing a lowering of standards. In this regard, the Constitutional Court's consolidated case law has reaffirmed foreigners' entitlements to social rights, such as the right to health and healthcare services (Judgement No. 269/2010) and to 'essential social benefits', such as invalidity benefits for mobility impairment, blindness and deafness, regardless of the foreigner's length of residence. Nonetheless, the issue of foreigners' entitlement to social rights still remains open. In fact, despite the egalitarian approach of the Consolidated Law on Immigration, Law No. 388/2000 (Budget Law) provides that only EU long-term residence permit holders are entitled to social welfare allowances. On several occasions, the Constitutional Court has declared that the limitation is unreasonable (Judgements No. 306/2008; No. 11/2009; No. 187/2010; No. 329/2011; No. 40/2013; No. 22/2015; No. 230/2015).

However, since the Court has declared the unconstitutionality only of specific provisions relating to certain rights, Italian legislation still maintains a distinction between long-term residents (with EU long-term residence permits) and migrants who have short-term permits (one or two years). Under the law, the latter are denied a number of social welfare allowances, such as

maternity allowances. Concerning maternity allowances, a substantial body of case law has extended this right also to women holding a permit to stay for work, family or humanitarian reasons. This means, however, that access to social benefits is subject to access to a court. Therefore, those who cannot reach the judicial arena are excluded from some social rights and face unlawful discrimination (Pannia et al. 2018). Hence, as shown by the Italian case, the intervention of judges may actually result in further fragmentation and personalization of entitlements and guarantees, thus increasing the legal uncertainty for migrants.

Various authors have already underlined the crucial role of courts in migration governance (Guiraudon and Lahav 2000; Joppke 2001). However, much more specific, in-depth comparative analysis is required to determine the actual effects of court decisions, especially vis-à-vis political power. Indeed, courts are caught in between two equally strong but opposing forces. On the one hand, given the imperatives of the global doctrine on fundamental human rights, they are called on to protect the rights and dignity of one of the most vulnerable categories of individuals in current times: migrants. On the other, courts have to respect and enforce the right of each nation-state to maintain both its discretional power over the entry and stay of aliens, and the distinction between citizens and aliens, which, according to the post-Westphalian notion of statehood, defines their sovereignty (Marmo and Giannacopoulos 2017).

Therefore, courts may themselves be Janus-faced. On the one hand, they may reject migration policies whose conformity with supranational and constitutional fundamental rights is questionable (Anagnostou 2016). But on the other, they are required to actively protect the rule of law and constitutional principles (Pannia 2019).

Given the above observations, it is worth taking a careful look at the role of courts as actors involved in the governance of migration, also in the light of the structural organization of courts and their jurisdiction. Here we do not intend to re-open the discussion on the separation of powers and the rule of law in the migration domain, nor do we wish to engage in an analysis of the legal reasoning of courts or their activism. We shall simply highlight the fact that, especially when decisions are not *erga omnes*, the remedies granted in cases of rights violations are relevant solely for the parties concerned, not for the broader category of people the claimant belongs to. This has the effect of exacerbating the unevenness of the legal framework and migrants' perception that they are victims of unequal treatment and injustice. Moreover, courts are not necessarily easy to access: free legal aid is not readily available in all RESPOND countries (ECRE/ELENA 2017), and migrants may not be in the habit of resorting to courts to have their rights enforced. Thus, despite the crucial role of courts in protecting and enforcing rights, the struc-

tural limits of their actions should be considered when assessing their action within the overall process of migration governance.

Conclusions

In the aftermath of the 'refugee crisis', states have responded to the pressing need for sound management of migration with a large variety of strategies, policies and tools. However, it is possible to identify some common trends among them. What emerges from our analysis is rapidly evolving legislation and a complex and fragmented legal framework. The provisions adopted by governments are often difficult to correctly and consistently implement and duly interpret and apply. The institutional landscape has added further complexity, given the multiplicity of entities involved in the 'multilevel' and subsidiary-based management of migration, with different, often blurred or uncoordinated responsibilities. Migration management involves complex networks of diverse actors who adhere to different political visions and engage in a wide range of actions.

As discussed above, migration governance often ends up relying on pragmatic and informal processes in the absence of a solid legal basis or comprehensive structural policies. Legal and political voids left by national governments are filled by different entities, such as NGOs, subnational tiers of government, courts and international and EU agencies. The outcomes are not always positive. Local authorities are often in the front line when it comes to addressing reception and integration issues. However, in the absence of effective monitoring mechanisms, practices vary greatly among different subnational governments: local policies may be much more progressive than national ones while coexisting with regressive measures approved just a few kilometres away, cases of Italy and Germany have demonstrated.

The intervention of NGOs, which has proven to be crucial, nonetheless often has very limited scope due to their dependence on national policy and the difficulty of securing adequate funding, as shown in the cases of Austria, Poland and Hungary. The role of international and EU agencies, which have been at the forefront in seeking to compensate for weak interstate solidarity and inadequate national policies, has raised multiple concerns, also given the extension of their mandates, which is often not justified by a proper legal basis or a coherent system of control.

Finally, court actions—which have frequently been essential to counteract restrictive policies and secure migrants' rights—are subject to some structural limits. Problems of accountability, monitoring and respect for migrants' fundamental rights have emerged on a large scale, with ample margins of discretionary powers being granted to single entities, offices and individuals.

In this context, the principle of subsidiarity (both vertical and horizontal), which is usually aimed at enhancing efficiency and unity of action, proves to

be highly problematic due to the lack of coherent, sound rules. In the absence of explicit provisions stating who should do what, ensuring the accountability of the system and the actors involved, the dynamics among the multiple entities populating the migration field change continuously under the pressure of conflicting logics and difficult negotiations. Given the lack of a solid architecture of national migration policies backed by adequate coordination, control and monitoring systems, and stable economic resources, the principle of subsidiarity frequently becomes a synonym of fragmentation and discrimination. Thus, besides facing a need to introduce greater order and efficiency into the management of migration, states are being called on to find new, adequate responses to even more urgent needs, such as guaranteeing accountability and respect for fundamental rights in the framework of migration governance.

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