Margherita D'Andrea[1]

# Unforeseen Territories, Foreigners' Rights and Infralegality. The Case of the European Roma Citizens in Naples

## 1. Introduction: Infralegality Across Citizenship Borders

Police headquarters, prefectures, revenue agencies are some of the physical places where the relationship between institutions and foreign citizens takes place. This relationship, aimed at obtaining a decision for a request concerning a right or a legitimate interest, follows the natural dialectic between the validity of the norms enacted by the legislator and their concrete effectiveness. It is an area criss-crossed by various interpretative activities, as well as by the behaviour, practices, rules and hierarchies of public administrations and public security authorities.

These interactions can be situated within the broader framework of *street-level bureaucracy*, understood as the ensemble of public agencies in which personnel operate in direct contact with citizens. By its very nature, this level of administration is characterised by an ineliminable degree of discretion[2]. This feature, however, appears to take on a peculiar and more extensive configuration in the field I address: that of immigration law and the free movement and residence of EU citizens of Roma ethnicity. My hypothesis is that, in these domains, the space between the validity and the effectiveness of legal norms reveals itself as belonging to a weaker and more uncertain form of legality. I refer to this space as "infralegal" [3].

Administrative practices or behaviours carried out by authorities can evidently infringe upon the rights of foreign nationals safeguarded by legal frameworks. For example, if a police officer were to explicitly refuse to receive and register an application for political asylum, such behaviour would be manifestly illegitimate and censurable, as it would constitute a contravention of both international and domestic law. However, in other cases, institutional illegitimacy assumes a more nuanced and less visible form. The violation does not manifest itself overtly but unfolds through opaque or dysfunctional administrative practices, in which the proof of the infringement of rights becomes complex. For instance, consider a scenario whereby a police headquarters has entrusted the task of furnishing users with the dates for submitting an asylum application to a web platform. However, the platform in question experiences persistent malfunctions, thereby effectively impeding access to the right. The use of web platforms is a prevalent practice in the organisation of access at immigration offices. In itself, the adoption of such technological platforms is not illegitimate: it responds to needs of efficiency, traceability, and rationalisation. However, when these practices turn into technological barriers, they generate a space in which the law continues to exist formally, yet its concrete exercise is suspended or obstructed by technical devices and organisational logics.

It is evident that the consequences of such a dysfunctional situation can be serious. The inability to access offices to submit an asylum application can create a state of uncertainty that can result in an arduous path for the recipients of this right and thus cause a situation of *de facto* illegality. These individuals may present language or cultural gaps or other forms of vulnerability. Bureaucratic difficulties thus become a surreptitious means of marginalisation, depriving them of information and necessary assistance.

[1] margherita.dandrea@ismed.cnr.it, Istituto di Studi sul Mediterraneo (CNR - ISMed): Naples, Campania, IT
, ORCID: 0009-0003-3894-4955.

[2] The street-level perspective is employed to analyse the actors' strategies of conformism or subversion, the relations of power and conditioning between them, the factors influencing their decisions, and the way in which these factors are traced back to systematic practices, producing informal routines that end up concretely constituting policies (Mantovan, 2025, p. 14).

[3] For a discussion of the concept of infralegality in relation to the evolution of increasingly restrictive legislative policies in the field of asylum law, see D'Andrea (2024).

The immigration field offers a particularly effective point of analysis for the broader discussion concerning the dialectic between the validity and efficacy of norms, extending beyond the confines of its physiological environment. Within this domain, the equation between the recognition of rights and administrative discretion frequently becomes nebulous. Furthermore, despite the fact that the provisions on residence permits can impose particularly onerous burdens on those who first apply for a residence permit and later have to renew it (e.g. income criteria for work permits), the national legislation is still characterised by gaps and normative contrasts that most often concern the rules that guarantee the realisation of fundamental rights, such as access to asylum applications. This is a short-circuit that has the effect of hugely increasing the power of authorities within the territories. This, in turn, leaves individual conduct or practices of entire offices with a very little controllability, thereby effectively preventing access to the right.
The infralegal space is thus a zone of uncertain realization of rights that is both unforeseen and visible. The space in question is that of the street leading to the immigration offices, the pavements filled by long lines, and the barriers at the entrances. It is a space characterised by a sense of depersonalisation, where individuals find themselves adrift amidst the Kafkaesque architecture of public edifices and the interminable wait for some form of attestation to their existence, in the *"myriad of different legal rules of contemporary cities"* (Nitrato Izzo, 2017, p. 46).
Beyond the immigration sphere, this terrain of uncertainty also encompasses the field of free movement and residence of EU citizens, particularly of Roma ethnicity. The formal distinction between the two regimes of citizenship - extra-European in the first case and European in the second - fades in the material continuities between them. These continuities become visible in situations of *de facto* exclusion from services that, for EU citizens, should be guaranteed even in the absence of a residence permit. This blurring of legal boundaries exposes the limits of formal equality before the law, an illusion long challenged by Critical Legal Studies (Douzinas & Gearey, 2005) and further elaborated by Critical Race Theory (Delgado & Stefancic, 2001)[4]. From these perspectives, structures of oppression and subordination cut across gender, race and ethnicity, class, disability, and sexual orientation. These approaches urge us to move beyond the boundaries of positive law, revealing how legal systems reproduce social hierarchies beneath the rhetoric of universality and neutrality (Harris, 2013).
The concept of infralegality finds a concrete articulation in the empirical research conducted in the city of Naples. The fieldwork focuses on the right to obtain a document that is essential for full participation in the social and economic life of Italian communities: the tax code. The subjects involved in the study are exclusively of Roma ethnicity and Romanian origin. As citizens of the European Union - pursuant to Article 21 of the Treaty on the Functioning of the European Union - they are formally entitled to move and reside freely within the territory of the Member States, in accordance with the conditions established by Directive 2004/38/EC. They are therefore not required to hold a residence permit in the strict sense of the term.
The final section draws on a significant study conducted by the Association for Legal Studies on Immigration (ASGI), which examines recurrent administrative practices in Italian police headquarters toward foreign citizens, particularly those seeking political asylum. This case provides an additional and more tangible illustration of infralegality as it takes shape within the field of immigration.

## 2. The "Grey Side" of Legality: Mapping Theoretical Perspectives

In this study, infralegality is defined as occurring in two related spheres: the interpretation and implementation of norms by public administration actors, and the production of concrete effects on the beneficiaries of rights. In the first sphere, infralegality is defined as the concept pertaining to the sphere of discretional power and the relationship between legal norms and values, standards and

[4] For an overview of the Critical Legal Studies family tree, see also Stewart (2020).

"norms relating to norms" that concern administrative decision-making procedures. We can think of written rules such as circulars, or the various and diverse organisational practices of single offices. Particularly within the field of immigration, one encounters many of these rules, which are constantly changing and sometimes contorting to the point of rewriting abstract norms, nullifying legislated rights and the procedures for recognising them. In the field of asylum law, for example, there are police practices that limit daily access to a very small number of people. This results in the asylum application formalisation process not starting within the legislated timeframe. Article 26 of Legislative Decree No. 25 of 2008 establishes this timeframe at three days, with an extension of 10 days if there are a significant number of applications.

Such behaviour and practices are illegitimate and censurable through judicial review. Yet demonstrating illegitimacy frequently proves difficult. The use of web platforms for the scheduling of appointments, or the referral to external agencies to collect applications (as is usually the case with Italian embassies), does not inherently constitute illegitimacy. Nevertheless, it may result in the emergence of obstacles that equally compromise the rights of individuals.

The concept of infralegality is therefore proposed as a theoretical key to highlight the systemic dimension of continuous instability between legitimate implementation and a tacit rewriting of the norm, *contra legem*. Moreover, the manner in which the authorities exercise their functions has the potential to delineate between the legal and the illegal, in so far as it determines which individuals fall within the parameters of the law and which fall outside them, prior to any judicial intervention. From the perspective of the recipients, this administrative power translates into heightened precarity of statuses and legal situations awaiting definition, which sometimes has the effect of pushing people beyond the margin of legality. It is evident that a chaotic and dysfunctional immigration administration system can have severe consequences, particularly with regard to vulnerability of individuals in need of care and assistance from exploitation and labour slavery (Mezzadra, Nielsen, 2013). The examination of these effects on the recipients constitutes the other sphere of infralegality.

Other authors have pursued paths of analysis that appear to intersect through semantically analogous concepts, the idea of a space of infralegality. In "The Politics of the Governed", Pharta Chatterjee introduces the concept of *paralegality*, which refers to the agreements between the inhabitants of the "*railway colony*", a substantial informal settlement of former Bengali farmers located to the south of Calcutta, and the power companies operating within the area. In the late 1980s, due to the continuous theft of electricity and the legal difficulty of recognising the occupants as regular consumers, the power companies began to negotiate forms of collective payment from them. Unlike *"civil society"*, defined as the exclusive club of modern elites *"sequestered from the wider popular life of the communities, walled up within enclaves of civic freedom and rational law"* (Chatterjee 2004, p. 4), the *"political society"* of the governed is always spurious. Through its exceedance, it shifts the edges of legality by following tactics and strategies acted upon (de facto recognition through government sanitation programmes) and subjected to (e.g. forced relocations), working politically for autonomy and emancipation on the same terrain as the governmental technologies trying to control, produce and manage it.

However, unlike paralegality, infralegality does not exist *"on the other side of legality"* (Ivi, p. 56). Rather, it is part of it, as the "grey side" between the poles of validity and efficacy. While public authorities are indeed entrusted by law with certain faculties and discretionary powers, in the field of immigration and in the free movement and residence of people with specific ethnic backgrounds, the shift toward practice-based administration is, as previously noted, particularly frequent. It is precisely within this shift, where discretionary practices override the formal content of legal norms, that an infralegal space emerges: a space in which rights continue to exist on paper, yet their concrete exercise becomes contingent, uncertain, and often obstructed.

In addressing the detention centres for the repatriation of foreigners in Italy, Giuseppe Campesi characterises this as a derogatory space of law, *"a police and administrative infra-law that imitates in a completely formal way the guarantees of criminal law without possessing its substance"* (Campesi, 2013, p. 239). The lack of grievance mechanisms or an autonomous monitoring system,

the inadequacy of judicial protection against arbitrary detentions, and the regulation of the detention regime and the rights of detained foreigners through ministerial circulars and prefectural orders are elements that *"masquerade police arbitrariness with a facade of legality"* (Ibid.). On the other hand, the author points out that the progressive "juridification" of administrative detention of foreigners has not resulted in a return to the framework of rule of law legality.
This is a crucial point: when the legal order contains such an uncertain space, perhaps we are faced with a rewriting of law in which the norm/exception dialectic operates as a legal engine of displacement of powers (Micciarelli, 2013), rather than a permanent state of exception associated with anomie, in which acts are radically removed from any legal determination (Agamben, 2003).
While infra-law (as a derogatory space of law) and infralegality (as a shifting boundary between legality and illegality) share these features in my interpretation, the case study section will show that infralegality also carries its own ambivalence, as it may function not only as a *vulnus* to rights, but also as a potential pathway for their recognition. In this respect, it comes closer to paralegality, particularly in terms of its effects on the beneficiaries.

## 3. Methodology

The present study employs a socio-legal methodology, critically analysing certain aspects of the *gap problem* between *law in books* and *law in action*. Law is regarded not as a set of norms, but rather as a dynamic process involving various actors, interpretations, and interests (Nelken, 2016). The gap perspective, further developed within socio-legal scholarship (Banakar & Travers, 2005; Sarat, 1985; Pound, 1910), provides a methodological framework for investigating how formal legal orders interact with social structures and institutional cultures. In Reza Banakar's critical view (2015), this gap is not merely a problem of imperfect implementation or efficacy; it reflects a deeper epistemological and sociological tension whereby law - though presented as a coherent normative system - is continually interpreted, mediated, and at times transformed by the contexts and subjects that enact it (D'Andrea, 2025).
Within this debate, the discussion on the gap problem refers to, *"on the one hand, studies on legislature's intentions and, on the other hand, studies on law's role in shaping normative practices in ordinary life"* (Polner Nielsen, 2023, p. 240). Here, the analysis focuses on the concrete practices through which legality is produced, negotiated, and, at times, suspended in the daily functioning of public bureaucracies. The gap problem, in this context, does not concern the law and its general effectiveness (e.g. in tax code applications). Rather, it unfolds within a shadow zone of implementation that disproportionately affects certain groups of individuals. To fully grasp this gap, it is necessary to examine how two distinct categories of legal subjects engage with it in practice: on the one hand, the bureaucratic apparatus, and on the other, the population directly affected by its actions.
The study follows an empirical-interpretive approach, combining observation, consultations, and qualitative analysis of institutional contexts[5]. Attention is given to the practices of *street-level bureaucrats*, administrative officers, and the recipients of law, comparing formal norms with their practical implementation. In line with Banakar's (2019) perspective, the research design integrates both top-down and bottom-up approaches: it examines how legal and administrative norms are translated within institutional settings, while also exploring how individuals experience, interpret, and negotiate legality in their interactions with public authorities. Accordingly, the study adopts a systemic perspective attentive to the behaviours and practices by which authorities shape, interpret, and apply legal norms. Indeed, administrative actors express will, choices, interests, and value

[5] "Consultations" refers to the interaction between lawyer and client. It is the specific term used in the reports of the joint programme JUSTROM2, which constitutes the subject of the case study.

orientations whose relevance is equal to, if not greater than, that of legislative production (Prina, 2019).
In theorising the concept of infralegality, I have reflectively reread my own work as a lawyer, conducted over the course of ten years. This rereading pertains to the field of the protection of subjective legal positions of foreign citizens, with a particular focus on the experience of a specific case concerning a group of Roma citizens of Romanian nationality in the city of Naples. According to a certain perspective within the sociology of law, this reflective reinterpretation may be seen as consistent with Grounded Theory (Ferraris, 2022). Classical Grounded Theory (GT) is a qualitative research methodology in which observation and theoretical elaboration are integrated, resulting in the generation of a theory that is rooted in data (Glaser, Strauss, 1967).
In this study, however, GT does not operate as a full methodological framework; rather, it functions as a heuristic lens that treats the lawyer-client interaction and the analytic reworking of case materials (e.g., a case dossier) as sites of inquiry within an open social reality, where meaning is constructed and continually adjusted through a non-linear, evolving process. In a related vein, the grounded pedagogy developed within legal clinics (Di Donato, Scamardella, 2016) offers a model that helps guide clinicians, students, and lawyers themselves toward structural analyses of law and its social effects (Wasilczuk, 2023; Kashyap, 2019). Similarly, to conceptualise one's own professional experience in a reflexive manner means to look through the lens of the case study at the broader social impacts of legal practice and at the structural conditions that sustain discrimination.
The reflexive rereading inspired by GT was combined with a case study strategy relying on multiple sources (Yin, 2018). In particular, in addition to consultations and field observations, reference was made to various documents, including legal provisions, administrative acts, municipal resolutions, and a recent report produced by ASGI on unlawful practices by police headquarters in the recognition of international protection.
Empirical observation and data collection have indicated the presence of a wide and variable range of practices in the relationship between foreign nationals and public administration. Furthermore, it was indicated that practices and behaviours are in accordance with legislative policies that are oriented towards diminishing the aforementioned persons' rights. This has the effect of engendering a state of uncertainty regarding their status, among individuals who are at risk of social marginalisation. The data collection process encompassed three primary methods: firstly, a specific case study with open-ended consultations; secondly, field observation; and thirdly, document analysis. The three methods can be described as follows:

a) Case study: The case study was chosen by reflectively re-reading part of the fieldwork carried out as legal consultant on the joint programme for the Council of Europe and the European Commission entitled JUSTROM2, which took place from August 2018 to March 2019[6]. The programme established a legal clinic in Naples, suburban district of Scampia, with the aim of improving the access to justice of Roma women. The aforementioned women were subsequently furnished with assistance and support in their respective requests to the public administration in the domains of law and social services, together with their families. JUSTROM2 aimed to empower Roma women to adequately address discrimination and other human rights violations committed against them, including early/forced marriage, trafficking, domestic violence, housing evictions, police abuse and hate crime by raising their awareness about discrimination, complaint mechanisms, the justice system and human rights institutions[7].
Open-ended consultations were conducted with 27 Romanian nationals at the legal clinic in Scampia and within the Roma settlement located in the Barra-Ponticelli neighbourhood of Naples. The interviewees comprised 18 women and 9 men. Each consultation was approximately 15 minutes in

[6] The Programme started its pilot phase in October 2016, concluding activities with phase three in August 2021. In Italy, legal clinics were established in Rome and Naples.
[7] More information is available here: https://pjp-eu.coe.int/it/web/access-to-justice-for-roma-women/about-justrom.

duration and was conducted in person. Group discussions were also conducted in the communal areas of the Roma settlement, involving small groups of participants gathered spontaneously, altogether around 40 people. In this case, participants were not individually identified, in order to preserve anonymity and to respect the informal nature of the setting. It was determined that people' sense of psychological comfort (Phatshwane, 2024) was influenced by two factors: the trust they placed in the professionals, who were regarded as a source of support, and the setting, which was characterised by the familiarity of their own homes.
In early September 2018, following a juridical study of the problem and the preparation of the necessary material, consultations were carried out on the basis of a non-structured outline consisting of questions designed to ascertain the difficulties encountered when applying for the tax code at the designated administration office in Naples. In addition, in April 2025, two interviews were conducted as part of the research study with a social worker and a cultural mediator who had direct contact with individuals of Roma ethnicity and Romanian citizenship in the city of Naples. The interviews were carried out as a follow-up to the enquiry.

b) Field observation: the author conducted a reflective review of her own work as a lawyer, both in general and with particular reference to her role as a legal consultant on the JUSTROM2 project.

c) Secondary data: The documentary analysis focused on the following elements: 1) The pilot study conducted by ASGI and entitled *Mappatura delle prassi illegittime delle questure italiane* [Mapping of the Illegitimate Practices of Italian Police Headquarters]. I had also the possibility of consulting provisional data from August 2023 collected during the same study; 2) legal and administrative documents; 3) media sources on the authorities' practices towards foreign nationals.

**Table 1. Sources of information**

| **Sources of information** | **Number/Duration** |
|---|---|
| **Open-ended individual consultations**<br>Women<br>Men<br>**Follow up interviews**<br>Social worker<br>Cultural mediator | • **27/405 min**<br>• 18/270min<br>• 9/135 min<br>• **2/60 min**<br>• 1/30 min<br>• 1/30 min |
| **Groups consultations** | • 13 (approx..)/180min |
| **Secondary data** | |
| ASGI pilot study<br>ASGI pilot study provisory data<br>legal provisions<br>administrative acts<br>municipal resolutions<br>Media articles (press, videos, podcasts) | • 1/180 min<br>• 1/180 min<br>• 5/480 min<br>• 3/360<br>• 1/180<br>• 10/120 min |
| **Field Observation** | • 7 months (just referred to in the case study) |

## 4. Findings and Discussion: Rights and Informal Spaces in the Case of Roma EU Citizens

In September 2018, as a legal consultant within the “JUSTROM2 Programme”, I interacted with 27 individuals of Romanian nationality, residing in a Roma settlement in Barra-Ponticelli, in eastern

Naples[8]. All of the applicants, comprising eighteen women and nine men, had previously expressed concerns regarding the complexity of acquiring a tax code, despite the fact that EU citizens are only required to present a valid identity document and a home address. Indeed, should a stay in a member state exceed three months, the European citizen is obliged to register with the Anagrafe (Registry Office) of the municipality of residence, as stipulated in Articles 7 and 9 of Legislative Decree No. 30/2007. In order to obtain registered residence, it is necessary to obtain a tax code, which facilitates financial transactions with Italian public bodies.

The procedure initiated at the Italian Revenue Agency was successfully concluded in October, with the acceptance of all applications that met the requirements. Yet the process illuminated dynamics of particular analytical relevance. At the beginning of the process, the offices raised a critical point, namely that they were unable to recognise the validity of a dwelling within an informal camp as a tax domicile. The denial had been reiterated for a period of several years. However, this problem ultimately resulted in the erosion of fundamental rights enshrined in abstract norms, thereby impeding crucial activities such as the conclusion of employment contracts. Consequently, Roma individuals found themselves entrapped within the intricate layers of illegality. However, informality does not necessarily imply a regulatory vacuum. Consequently, a different strategy emerged: searching for administrative precedents that would serve to strengthen the claim. The proposal to the officials took the form of including a particular council resolution in the preliminary investigation, namely resolution no. 95/2018 of the Naples City Council. This resolution focused on the provision of sanitary and social interventions designed to proactively incorporate the Roma community of Barra into the local social fabric. The act was interpretable as an implicit recognition of the informal settlement in which the community lived. This legal precedent consequently permitted the officials from the Inland Revenue Service to consider the question of domicile, which ultimately resulted in the successful resolution of the procedure.

Infralegality is therefore not necessarily indicative of the diminishing of the rights of these subjects, but has its own ambivalence: it can indicate a space for renegotiation, as in the case of the former farmers of Chatterjee, or resolve itself in a restoration of the full regularity of legal situations rendered de facto uncertain, as in the case of the inhabitants of the Barra settlement. In this sense, Realino Marra's argument is particularly relevant: *"the real rules are those concretely applied in legal-administrative proceedings, i.e. the meanings given to 'rules' by practical jurists"* (Marra 2014, p. 199).

In a different light, it is significant that none of the applicants had real confidence in the possibility of obtaining the tax code. Initial interactions at the registration desk revealed that a number of individuals had been turned away due to language barriers. A young woman reported: *"There is no point in me going again; they don't understand me and it is useless. I feel discriminated against."* Notably, such barriers disproportionately affected women. Another participant added: *"I cannot obtain the document because I cannot write; I can only sign with an X".* These difficulties further emerged during the group consultations and were reinforced through shared accounts, often centred on employment: "*No employer will hire us without a tax code. What are we supposed to do?"*[9]

In such cases, it is evident that a legal position of irregularity can be perpetuated or established for recipients of fundamental rights. This phenomenon can be attributed to various factors, including but not limited to: institutional mistrust, the perception of insurmountable personal limitations (e.g. illiteracy), and the experience of discriminatory behaviour. This experience, in turn, can lead to forms of inertia that perpetuate a vicious cycle. Moreover, in the ensuing developments in the case (particularly with regard to the issuance of tax codes to other Roma European citizens), two professionals interviewed in March 2025 corroborated the persistent difficulties encountered in

[8] The Roma camp in Barra is no longer inhabited and the area, covering approximately 16,000 square metres, is awaiting remediation due to the illegal dumping of hazardous waste of various kinds, in addition to the numerous fires that has been started. Nonetheless, a number of families reside in neighbouring areas, inhabiting substandard sanitary conditions.
[9] All consultations have been anonymised to ensure privacy and protection.

obtaining tax codes for these individuals, attributable to the limited availability of administrative officials and the gradual renunciation of applications. The cultural mediator noted: *"The problem of obtaining tax codes has not been resolved, also because many people give up from the outset."*
The infralegal space is thus a complex space: that of ill-concealed racism (Ferrajoli, 2017), or it is the reticent attitude of the administrative operator when faced with an unusual or more complex than usual procedure. This tendency towards immobility also has repercussions for rights. Conversely, it is not possible to address this issue within the confines of this discussion. However, it is necessary to acknowledge that the 'defensive' posture adopted by the bureaucracy (Sismondi, Piersanti 2017) is also attributable to the substantial regulatory expansion in terms of responsibilities. This has the potential to result in individual officials facing disciplinary action by the accounting or administrative judiciary, which could have implications for their personal assets.

### 4.1 Authorities' practices and asylum seekers' rights in Italian police headquarters

As previously discussed, infralegal space can manifest itself in different context and ways. A broader picture pertains to the powers, conflicts and practices observed in the immigration offices of Italian police headquarters. This problem has increased in recent years. Consequently, ASGI initiated a pilot study on 2 May 2023, with the objective of mapping the phenomenon of illegal practices. ASGI is an Italian association founded in 1990 that has achieved notable recognition for its contributions to the protection of foreign citizens. This has been accomplished through a range of educational, practical-legal, and advocacy initiatives. The composition of the organisation includes lawyers, researchers, social workers and members of the social sector. The mapping process was initiated with the dissemination of an online questionnaire, which was directed towards legal professionals and operators within the sector. Up to 26 June 2023, a total of 108 answers and data were collected from 55 of the 107 Italian provinces, covering almost all Italian regions, until. The mapping was finally published in April 2024, documenting concerning outcomes with regard to the realisation of fundamental rights for foreign citizens[10].
Immigration offices are in fact a particular theatre of diversified and variable practices, which on the one hand respond to criteria of internal organisation (based on the size of the city, economic resources, quantity and quality of staff), and on the other hand express common and frequent behaviours that affect fundamental rights by eroding them or violating them. The most problematic case documented in the ASGI survey pertained to the initial access for asylum applications, with 60% of responses highlighting this issue.
Figure 1 displays this finding:

[10] The pilot study can be found at the following link: https://www.asgi.it/wp-content/uploads/2024/04/Analisi-prassi-illegittime.pdf.

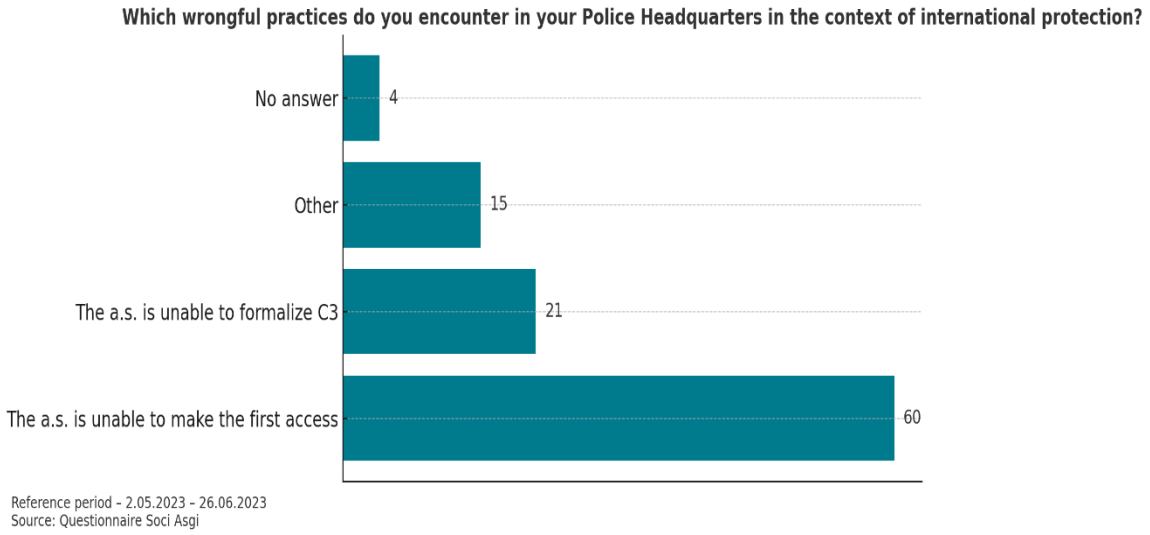


*Figure 1. Elaborated upon by ASGI, p. 10; a.s. stands for asylum seeker.*

Conversely, the most prevalent practice was the unlawful request for applicants to provide a declaration of hospitality or domicile, a requirement that was observed in 40 provinces. This phenomenon, particularly prevalent in major urban centres, involves the illicit exchange of documents that are often wholly fabricated and rarely represent adequate housing. Those engaged in this sector are well-informed of this practice. Concerning the aforementioned issue of constrained daily accesses, the documentation pertaining to the mapping process indicates that the maximum number of applications is subject to variation, ranging from five to fifteen users, depending the specific Police Headquarters under consideration. As has been denounced in several public reports, many individuals are left with no option but to live on the streets or spend the night outside the offices, while waiting for an appointment and without assistance, in the uncertainty of being able to access the office.
Figure 2 displays this finding:

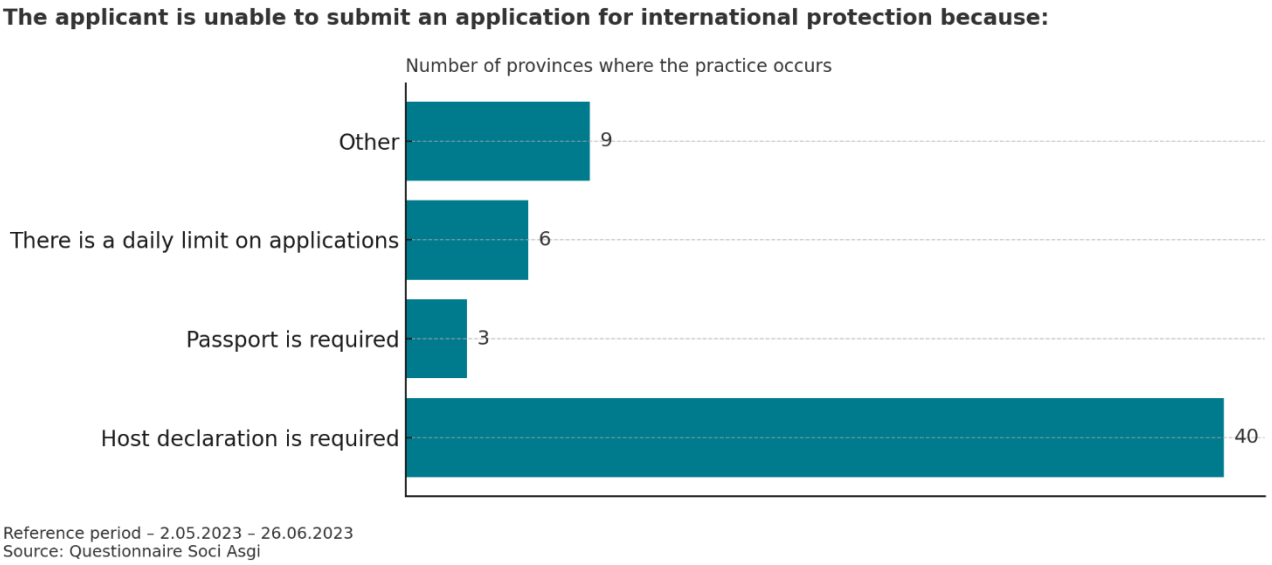


*Fig. 2. Elaborated upon by ASGI, p. 11.*

In such scenarios, the line between legitimate and illegitimate practices becomes increasingly blurred, and drifts toward illegality, which leads to the infringement of constitutional rights. This is due to the process of rewriting the abstract norm and taking it from a mere possibility to a concrete reality. Nevertheless, the legitimacy of an organisational space renders it more challenging to exercise control

and reduce (though not entirely eliminate) the mechanisms of judicial remedies[11]. It is not by coincidence that interlocution with the authorities by accredited associations and groups or widely-echoed media complaints can pave the way to a solution sometimes more than a precautionary rulings by the courts.
The case of Roma EU citizens and that of asylum seekers, although different in scale and nature, show that infralegality in these two domains generates a broad arena of power, conflict, and administrative practice, capable of shaping the implementation of rights more forcefully than primary legal norms themselves. These dynamics invite a broader reflection on the relationship between law, administration, and the concrete realisation of rights, which the following conclusions address.

## 5. Conclusions

While it is true that laws live in the concrete relationship between the subjects to which they refer, this discourse has focused on cases in which this natural dialectic produces a wide borderline between legality and illegality, which can be represented with the concept of infralegality.
Firstly, infralegality explains the phenomenon that arises when illegitimate practices become so widespread as to assume a systemic character. Here, the inevitable gap between the norm and its administrative interpretation manifests itself as a space for the rewriting of abstract norms through administrative practices or interpretations that nullify the protection of individual legal positions.
Moreover, the infralegal space also includes practices, interpretations, or behaviours that fill normative gaps or uncertainties. One may consider the case of an administrative officer who refuses to register an application relating to a fundamental right on the grounds that a signature made with an "X" is invalid. It is true that an "X" is not, strictly speaking, a mark of legal recognisability. However, such an interpretation would distort the proper balance among rights and ultimately lead to the social exclusion of the individual concerned.
Secondly, and related to this, infralegality can be observed in its effects on legal status, physically pushing vulnerable beneficiaries back into a state of lawlessness. This produces a vicious circle whereby these individuals withdraw, self-exclude, and become ghettoised.
Moreover, the case study has shown that infralegality also possesses a certain ambivalence, at times creating spaces that do not necessarily undermine rights. Indeed, within the shadow cone of legality, forms of negotiation and interaction may emerge between actors - including beneficiaries, lawyers, cultural mediators and social workers - and the public administration, oriented towards collaboration and aimed at interpreting norms in accordance with constitutional principles. In the case study concerning EU citizens of Roma ethnicity in Naples, the turning point lay in the use of an administrative precedent, a Council Resolution that contributed to bridging the gap.
In conclusion, the area of law that concerns administrative discretion sometimes takes on the contours of an infralegality in which the legislature affords public authorities broad latitude to display either the state's more indolent or its more repressive face. As the proliferation of illegitimate practices in recent year -, and the corresponding judicial censures - shows, his occurs at a time of very clear legislative restrictions on the recognition of the rights of foreign nationals (Del Guercio & Rondine, 2025). They are segments of the population that are, from time to time, branded as parasitic or dangerous, two variations on the logic of the internal enemy. Ultimately, this is another face of *living law*, one that unfolds not in courtrooms but in the offices of public officials.

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[11] In this sense, we can perhaps say that infralegality also produces a transformation of the dialectic between the legislative and the judicial, because it becomes more uncertain and complex to bring a case before the courts when the object of the violation is a practice.

ASGI (2024*). Mappatura delle prassi illegittime delle questure italiane,* https://www.asgi.it/wp-content/uploads/2024/04/Analisi-prassi-illegittime.pdf
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