

Coalizione Italiana Libertà e Diritti Civili (CILD)

Joint Submission to the Universal Periodic Review of Italy

March 2014

CILD is a network of Italian civil organisations, which was founded in 2014 to promote and protect civil and political rights. CILD welcomes the opportunity to participate in the Universal Periodic Review (UPR) and call on the Working Group and the Council to recommend that Italy fulfil all its human rights obligations, with particular regard to: migrants' rights, Roma and Sinti rights, prisoners' rights, LGBT rights, women's rights, freedom of expression, corruption and government transparency¹.

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I. MIGRANTS' RIGHTS

1. As regards immigration and asylum, the main weaknesses in the national regulations are:

- Lack of regulations that provide migrants in search of occupation a way to legally access the country;
- Lack of regulations that allow for ordinary regularisation of foreign citizens who are stably resident on the territory;
- Lack of a consolidated act on asylum, formulated in compliance with art.10 of the Italian Constitution;
- Excessively restrictive requirements for the acquisition of Italian citizenship in Law no. 91/1992;
- Lack of regulations granting the right to vote and to stand for election in local elections to foreign citizens who are stably resident in the country;
- Flaws in the administrative detention system, which allows authorities to limit the personal freedom of migrants with no documents tracked down on the national territory, even in absence of criminal charges.

2. Italy has not yet ratified the following international conventions:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The International Convention for the Protection of All Persons from Enforced Disappearance;
- Protocol no. 12 to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms.
- Furthermore, while Italy has ratified the European Convention on the Participation of Foreigners in Public Life at Local Level, it has formally ruled out the implementation of Chapter C.

3. During the 2005-2012 period, the rates recorded for rejections (14.9%) and expulsion or repatriation (25.5%) were noticeably lower than the rate of migrants who evaded a departure order (59.5%). Altogether, 40.5% of the illegal migrants tracked down on the national territory were forced to leave (through rejection at the border, deportation or repatriation).

4. Less than half (46.2%) of the 175,142 citizens detained in the Centres for Identification and Expulsion of illegal immigrants (CIEs) between 1998 and 2013 were actually repatriated.

Refugee Protection

5. Italy lacks an organic law governing international protection in a harmonious and unified way. In addition, the legislation in force is applied unevenly in the country, leading to contradictory administrative practices.

6. The cases of rejection at sea, for which Italy has been convicted of serious violations of fundamental human rights (ECHR, *Hirsi and others vs. Italy*), have clearly pointed out that such detailed and strict rules are absolutely necessary to avoid the violation of the non-refoulement principle at the borders and at sea.

As regards access to the procedure from within the territory, the most critical elements are the long waiting time (several months), the formalities sometimes required of the applicant (such as in particular the choice of a legal residence), the difficult access to reception and assistance systems, which in most cases is granted only after the protection request is formalised.

7. The lack of organicity of the reception system is so severe and deep that it has led to a high level of subjectivity in the implementation of assistance and reception measures for applicants and persons with protection status, both before and after recognition².

8. Finally, the complete lack of a programme for social inclusion of the recipients of protection has led the Commissioner for Human Rights of the Council of Europe to comment on the subject criticising the dire situation, defining it “a serious human rights problem in Italy”³.

Centres for Identification and Expulsion (CIEs)

9. Centres for Identification and Expulsion (CIEs) were introduced in 1998 by the Turco-Napolitano Consolidated Act on Immigration under the name of Centri di Permanenza Temporanea e Assistenza (CPTA) with a maximum detention of 30 days. This period was later extended to a maximum of 18 months. Although European law does not censure the practice of administrative detention, it admits its use only as a last resort. Yet, in Italy, it is generally adopted as the ordinary means of expulsion. Official national statistics on CIEs for the year 2013 confirm the inadequacy of administrative detention in combating illegal immigration⁴.

The abnormal extension of the maximum period of administrative detention seems to have served rather to exasperate the levels of violence and dehumanization inside these

² Applicants' reception is divided among various parallel systems with little or no central coordination. The most relevant are the Reception Centres for Asylum Seekers (Centri di Accoglienza per Richiedenti Asilo, or CARA, in Italian) and the Protection System for Asylum Seekers and Refugees (Sistema di Protezione per Richiedenti Asilo e Rifugiati, or SPRAR, in Italian). The former, in particular, are of enormous concern regarding the protection of applicants, as they are large centres, cut off from the local territory, and offering absolutely inadequate reception standards. In general, asylum seekers' reception standards started falling in 2011, when approximately 63,000 people reached Italy by sea, and continued to worsen in 2012 and 2013. The decline has been denounced several times by the UNHCR, the Commission for the Protection and Promotion of Human Rights of the Italian Senate, and other key protection authorities.

³ Nils Muiznieks, *Report*, Strasbourg, 18 September 2012. As regards refugee protection in Europe see also: <http://tinyurl.com/pyhpp3s>

⁴ According to the Italian State Police, a total of 6,016 migrants (5,431 men and 585 women) were held in CIEs in Italy during 2013. Fewer than half of these detainees (2,749) were actually readmitted, with a 5% fall in effectiveness rate (deported over detained): 45.75% in 2013 compared to 50.5% in 2012. The total number of readmitted migrants passing through CIEs in 2013 was 0.9% of the estimated total number of illegal immigrants present in Italy, i.e. 294,000 according to figures released by Fondazione ISMU (Initiatives and Studies on Multi-ethnicity) on 1 January 2013.

centres⁵. Although the 2013 data provided by the Italian State Police highlight an average duration of 38 days for detainment within CIEs, MEDU (an Italian NGO) has identified various cases of migrants being held for periods exceeding 12 months in conditions of extreme vulnerability and severe mental distress. The fact that living conditions within CIEs have deteriorated even further can be seen from the numerous revolts and protests that took place during 2013 and the first months of 2014⁶.

10. Although in 2001 the Constitutional Court declared the former CTSA solution constitutional (in judgement no. 105/2001), the introduction of the so-called "Return Directive" makes current CIEs unconstitutional as well, due to the following factors:

- The restriction of personal freedom – for a period of time totalling up to a year and a half – is usually decided by the administrative as opposed to the judicial authority;
- The court has no power to establish the length of detention, which depends exclusively on the Police Immigration Officer's discretion;
- The terms of administrative detention are not established by law, but only by regulation.

Readmissions

11. Readmissions from the Adriatic ports to Greece, which the Ministry of the Interior has confirmed are undertaken regularly, seem to be carried out summarily and with a grave disregard for the migrants' basic human rights by the Italian authorities.

12. Although government data indicates a significant decrease (1,809 in 2012 and 619 in the first semester of 2013) over the last few years, the number of migrants remanded to Greece within the same period (2,334 in 2011; 1,606 in 2012; and 529 in the first semester of 2013) indicates how the practice of readmission is consolidated and systematic: almost 90% of foreigners apprehended – mostly of Syrian and Afghan nationality – were returned to Greece. In the majority of cases, these were individuals in possession of all the prerequisites to request international asylum. 80% of migrants interviewed by MEDU declared their desire to request international protection or to remain in Italy due to fear of what might happen to them upon return to their country.

13. In the absence of clear directives from the Ministry of the Interior, the four ports apply their own (frequently very different) procedures, which are ultimately inadequate in terms of access to the docks provided for organisations responsible for social and legal assistance⁷.

⁵ MEDU, *Arcipelago CIE. Indagine sui centri di identificazione ed espulsione italiani*, Infinito, April 2013.

⁶ See documentary: <http://www.zabbara.org/en/eu-013-lultima-frontiera/>

⁷ According to official data, only half of the aliens detained at Adriatic frontier posts were offered access to social and legal aid, as required by Italian legislation. Additionally, assistance and information services by NGOs are further compromised due to the extremely limited timescales available to their staff to carry out interviews with migrants, as well as by the lack of suitable locations for said interviews. On the basis of the

14. In the event of alleged unaccompanied minors, according to the eyewitness accounts collected by MEDU, the procedures to establish underage status as carried out by Italian border officials (radiological examination of the wrist) were found to be completely inadequate when compared to the international standards. Italian and international legislation expressly forbid the repatriation of foreign unaccompanied minors, and the Italian government requires “the benefit of the doubt” be given to those who declare themselves to be minors.

15. According to eyewitness accounts collected by MEDU⁸ in the cities of Patras, Athens, and Ioannina, both whilst on board the vessels returning to Greece and once in the country, migrants are likely to be exposed to xenophobic and racist persecution, and are frequently subjected to violence or inhuman and degrading treatment by police or security personnel, in addition to running the risk of being arbitrarily repatriated to their country of origin.

Human trafficking

16. Long past the deadline set for its transposition (6 April 2013), Italy has yet to implement Directive 2011/36/EU, which identified minimum standards in the definition of human trafficking crimes and the sanctions for such crimes.

17. On the other hand, Italy has transposed Directive 2009/52/EU regarding the employment of illegal immigrants – which includes important rules about the “specific exploitation” of migrant workers who don’t have regular permits. The implementation law (Legislative Decree no. 109 of 16 July 2012) introduced a special stay permit that can be issued to workers in certain specific situations. However, it did not put in place adequate social protection mechanisms for migrant workers who report recruiters exploiting illegal immigrants as day labourers⁹.

eyewitness accounts collected by MEDU, in 80% of cases readmissions are undertaken within just a few hours.

⁸ Based on eyewitness accounts collected by MEDU, one in five migrants were victims of violence, which in 60% of cases took the form of physical abuse and degrading treatment carried out by the Italian police. In the remaining 40% of cases, the acts of violence were perpetrated by the security personnel on board the vessels or by the Greek police once they had reached Greece. In ten cases documented during the investigation, the migrants’ return trip took place without meeting the minimum standards necessary for a dignified voyage. This investigation has further documented the acts of violence to which migrants in Greece are subject. Of the 185 migrants visited by MEDU’s team in the temporary accommodation at Patras, 40% claimed to have been subjected to violence by the police (84% of cases) and xenophobic groups (16% of cases). At the time of our visit, eighteen migrants (seven of whom were minors of Afghan nationality) still bore signs of the physical abuse they had suffered.

⁹ F. Dolente, “Lo stato dell’arte sullo sfruttamento lavorativo”, in De Filippo, Pugliese (eds.), *Diritti violati*, Ediesse, Rome, 2013.

The Right to Health of Foreign Citizens

18. Art. 32 of the Italian Constitution states, “The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent”.

Therefore, the lacking health services provided in Italy to illegal immigrants do not stem from a deficient national legislation, but tie in for the most part with the discrepancies in how different Regions approach the issue of healthcare access. The same problem trickles down to the local level, with many variations in the way different hospitals implement the general rules.

On 20 December 2012, the Permanent Conference of the State (CSR), Regions, and the Autonomous Provinces of Trento and Bolzano ratified an Agreement (255/CSR) with “Recommendations for the correct implementation of regulations on health assistance for the foreign population, granted by Italian Regions and Autonomous Provinces”.

As well documented by SIMM (Società Italiana di Medicina delle Migrazioni)¹⁰ in its *Dossier*, at the present time only a handful of Italian Regions have ratified formal acts to implement Agreement 255/CSR.

Equal Opportunities in the media industry

19. In various respects, Italy does not guarantee non-EU citizens equal opportunities in accessing a career in journalism.

In an industry that is already suffering from a profound crisis, citizens of foreign origin risk being excluded from the media industry due to the political and cultural failure of Italian society to adapt to a changing world.

The influence of mass media in building a pluralised society is, indeed, crucial for the social and cultural integration of citizens of foreign origin in Italy.

At the moment, Italian media in fact do not comply with the principle of equal representation of the country’s diversity, nor do they seem to consider diversity to be important for their market strategy, unlike their counterparts in most countries in Europe.

Recognition of foreign educational and professional qualifications

20. In contrast to the statement made by art. 22 of the Universal Declaration of Human Rights¹¹ on the procedures for the recognition of educational and professional qualifications obtained abroad, Italian law provides that “the qualifications obtained

¹⁰ Available at www.simmweb.it/index.php?id=397

¹¹ “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”.

abroad have no legal value in Italy except in the cases provided by law”¹². In practice, this translates into recognition procedures that are almost impossible to access.

21. The situation is further complicated when the person asking for recognition of his or her qualifications is a holder of international protection¹³, despite the fact that Italy – by ratifying the Lisbon Convention – has committed to implementing procedures and finding administrative solutions that facilitate this specific segment of the migrant population in the process of qualification recognition¹⁴.

The protection of domestic workers

22. Prompted by the ratification of the International Labour Organization’s Convention no. 189, in July 2013 a new National Collective Labour Agreement (NCLA) for Domestic Staff and Caretakers came into force in Italy, which will be valid for 3 years.

Art. 42 of the new NCLA on domestic work grants the right to paid leave for union duties¹⁵. Given the fact that domestic workers are very often foreign citizens – with little knowledge about the Italian legal system, protection mechanisms, and labour rights – personally meeting with them and giving them the necessary information about their rights appears indispensable to give the article true implementation.

Access to justice is a key issue: guaranteed access to courts and other dispute resolution mechanism¹⁶, the creation of report mechanisms, and accessible and effective means to ensure compliance with national legislation are core elements in the protection of domestic workers and the safeguard of their rights.

Recommendations

- Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Reform of the Consolidated Act on Immigration (Legislative Decree no. 286 of 25 July 25 1998), in particular as regards to the regulation of access to the country for work or to seek work, family reunification, and the implementation of expulsion orders;
- Reform of Law no. 91/1992, regulating Italian citizenship, in order to expedite citizenship acquisition for children born in Italy from foreign citizens, minors entering the country, and adults after 5 years of permanent residence;

¹² Art. 170, par. 1, Royal Decree no. 1592 of 31 August 1933 approving the Consolidated act on higher education.

¹³ See Candia G., Giacomello L., and Rellini G., *Quando il medico parla arabo. Il riconoscimento delle qualifiche dei titolari di protezione internazionale*, Sviluppo locale edizioni, 2011.

¹⁴ See the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, elaborated by the Council of Europe and UNESCO, and signed on 11 April 1997, section VII.

¹⁵ See NCLA on domestic work, art. 42, par. 1-2.

¹⁶ See art. 16, par. 1, ILO Convention concerning Decent Work for Domestic Workers.

- Recognition of the right to vote and to stand for election in local elections for non-EU citizens after 5 years of stable residence in Italy;
- Arrangement of a national plan for the reception of migrants, asylum seekers, and persons in need of international protection;
- Guarantee of equal opportunities for Italian and foreign citizens in the access to education, health services, welfare and social security;
- Actively encourage all Italian Regions to formally and fully implement Agreement 255/CSR;
- Definition of effective and unvarying service standards for all border, disembarkation, and transition areas, with unrestricted access to such areas granted to the UNHCR and other protection authorities;
- Definition of unvarying standards for the access to protection procedures allowing for applications to be submitted without formalities;
- Definition of strict criteria for the selection of Territorial Commissions' members, including a requirement for adequate expertise about asylum issues;
- Creation of a single decentralised, high-standard reception system;
- Provision of a sufficient period of time for reception and support, in order to foster the social inclusion of all persons who are granted protection;
- Abolition of all Centres for Identification and Expulsion (CIEs);
- A sharp reduction (only when strictly necessary) in the detention of migrants to be readmitted;
- Cease the practice of summary readmissions to Greece, and that all migrants who reach the Adriatic ports be given real access to national territory and protection;
- Suspend the transfer of asylum seekers from Italy to Greece on the basis of the Dublin Regulation, until Greece is capable of providing an asylum system and temporary stay infrastructure in line with EU standards;
- Guarantee of the "best interest of minors" when establishing migrants' age;
- In all cases, humane and dignified treatment of migrants must always be guaranteed during detainment and, if necessary, during every phase of readmission, including the return journey.

II. ROMA AND SINTI RIGHTS

23. According to the most recent and reliable estimates, approximately 150.000 Roma and Sinti live in Italy, constituting about 0,25% of the total population¹⁷. About 60% of this group are minors¹⁸.

In 2008 the Italian Government declared the “Nomad Emergency”¹⁹. Following a legal proceeding filed by a NGO²⁰, on 16 November 2011 the Council of State declared unlawful the Decree at the base of the “Nomad Emergency”, therefore proclaiming the illegitimacy of the acts and orders implemented under the emergency framework²¹. Following an appeal against the ruling of the Council of State filed by the Government in February 2012, on 22 April 2013 the Italian Supreme Court of Cassation (the final court of appeal) rejected the appeal, thus ending the “Nomad Emergency”²². Under the emergency framework, which explicitly addressed Roma and Sinti exclusively under a security and public order perspective, various human rights violations occurred, which further exacerbated the living conditions of Roma and Sinti communities. Systematic forced evictions, discriminatory census conducted on an ethnic basis (also including the involvement of minors) and the transfer of families to sub-standard, inadequate and segregated housing without other alternatives being provided, are among the most blatant. Despite the formal closure of the “Nomad Emergency”, and the adoption in February 2012 of the Italian National Roma Integration Strategy (NRIS)²³, no substantial improvement of the living conditions of Roma and Sinti families can be recorded on the ground, nor any mechanism to provide access to an effective remedy for the human rights violations that occurred has been implemented.

a) Segregated and sub-standard housing

24. Italy is legally bound to protect, respect and fulfil the right to adequate housing and to non discrimination by a number of international and regional instruments. Moreover, the Committee on the Elimination of Racial Discrimination (CERD) highlighted specific measures to be implemented in order to eradicate discrimination against Roma in its General Recommendation No. 27²⁴. The Italian authorities have repeatedly failed to meet these international obligations and recommendations, as they continued with the practice of officially constructing and managing the so called “authorised camps”²⁵, and to provide Roma and Sinti families with temporary housing units (mainly containers)

¹⁷ Council of Europe, Estimates and official numbers of Roma in Europe, July 2012.

¹⁸ Extraordinary Commission for the Protection and Promotion of Human Rights of the Italian Senate, Concluding Report of the Investigation on the Conditions of Roma, Sinti and Camminanti in Italy, 9 February 2011, p. 19 and p. 45.

¹⁹ Decree of the President of the Council of Ministers of 21 May 2008, Declaration of the state of emergency in relation to the settlements of nomad communities in the territory of the regions of Campania, Lazio and Lombardia.

²⁰ European Roma Rights Centre.

²¹ Council of State, Section IV, Judgement No. 6050/2011 of 16 November 2011.

²² Supreme Court of Cassation, Judgement No. 9687/2013 of 22 April 2013.

²³ Italian National Strategy for the Inclusion of Roma, Sinti and Caminanti, February 2012.

²⁴ CERD, General Recommendation No. 27, Discrimination against Roma, 16 August 2000.

²⁵ The “La Barbuta” settlement in Rome, opened in July 2012, is the last “authorised camp” built *ex-novo* by the Italian authorities. Decisions on the construction of new “authorized camps” are currently under debate also in Rome, Lecce, Parma, Pistoia, Asti, Giuliano, Latina, Savona, Carpi and Genova.

inside them. The “authorised camps” constitute a parallel and permanent housing system specifically designed for Roma and Sinti, in alternative to the ordinary social housing system. The Italian authorities committed to overcome discrimination and sub-standard housing conditions in “authorised camps” by accepting recommendations no. 25 and no. 57 during the 2010 UPR. Despite this commitment, the persistence of the “encampment policy” addressed towards Roma and Sinti has continued to attract criticism from a number of human rights monitoring bodies in recent years, including the CERD, the European Committee of Social Rights and the European Commission against Racism and Intolerance (ECRI)²⁶. Associazione 21 luglio widely documented the housing conditions of “authorised camps” in Rome, Naples, Turin, Pisa, Lecce, Cosenza and Palermo²⁷. None of the settlements visited meet the international standards set forth in the General Comment No. 4 issued by the Committee on Economic, Social and Cultural Rights of the United Nations. The housing units (mostly containers, trailers or bungalows) are overcrowded and because of the deteriorated conditions due to their intrinsic temporary nature, they do not offer an adequate protection from weather adversities and structural hazards. All the official settlements present deteriorated hygiene and sanitary conditions, posing a grave threat to the health of the inhabitants²⁸. The settlements have also lacked access to the most basic services like drinking water, sanitation facilities and adequate heating systems.

b) Forced evictions

25. Roma and Sinti continue to be repeatedly forcibly evicted from their houses by the authorities²⁹. Forced evictions constitute a gross violation of human rights³⁰ and have dramatic consequences on the life of children disproportionately impacting on their educational paths. Systematic campaigns of forced evictions have been carried out by the authorities throughout Italy (mainly in the cities of Rome and Milan) often accompanied by a “security” centred rhetoric, and they have also been used as a means for electoral gain³¹. In the city of Rome alone, from 31 July 2009 to 31 January 2014 a total of 556 documented forced evictions have been carried out by the authorities, affecting about 500 Roma families. When evicting Roma and Sinti families, the Italian authorities have hardly ever applied the procedural protections foreseen by international instruments³²: in most of the cases evictions are carried out without a formal notice, therefore impeding the access to a legal remedy, and without an advance

²⁶ CERD, Concluding Observations: Italy, March 2012, para. 15; ECRI, ECRI Report on Italy (4th monitoring cycle), February 2012, para. 92; European Committee of Social Rights, Conclusions 2011 (Italy), Articles 7, 8, 16, 17, 19, 27, 31 of the Revised Charter, January 2012, pp. 40-41.

²⁷ Associazione 21 luglio, Figli dei “campi”, December 2010; available at http://www.21luglio.org/wp-content/uploads/2013/12/Figli-dei-campi_Associazione21luglio.pdf.

²⁸ In October 2012 in the “authorised camp” of Salone in Rome an outbreak of hepatitis A was recorded, as a consequence ten children went through hospitalization and other 80 underwent vaccination.

²⁹ Forced evictions mainly target Roma and Sinti living in informal settlements, but also inhabitants of “authorised camps” have reportedly been victims of forced evictions, as occurred in September 2012 to the 350 residents of the Tor De’ Cenci settlement in Rome.

³⁰ UN Commission on Human Rights Resolution 1993/77, para 1. The UN commission on Human rights has recognized eviction constitute gross violations of a range of human rights, in particular the right to adequate housing.

³¹ This happened in Milan and Rome, respectively in 2011 and 2013.

³² Committee on Economic, Social and Cultural Rights, General Comment No. 7, 20 May 1997.

notification, in absence of any kind of consultation; often evictions result in people being rendered homeless, as no adequate alternative housing solution is provided to those unable to provide for themselves.

c) Anti-gypsyism and hate speech

26. Anti-gypsyism is a powerful obstacle in preventing Roma inclusion³³. From the data collected by Associazione 21 luglio emerges that anti-gypsyism is a deep-rooted and endemic phenomenon in Italy, mainly fueled by the media and by the political discourse at local level. Associazione 21 luglio recorded a daily average of 1,86 episodes of “wrongful communication”³⁴ about Roma and Sinti arising from the media, and of 1,46 episodes of “anti-gypsyism”³⁵ mainly ascribable to politicians and local authorities. The action of the National Office Against Racial Discrimination (UNAR) in this field is considerably limited due to the lack of sanctionary means to address and discourage episodes of this kind.

Recommendations

- End the segregation of Roma and Sinti families in “authorized camps” with sub-standard housing conditions, ensuring Roma and Sinti are provided with adequate housing without discrimination;
- Immediately cease forced evictions affecting Roma and Sinti communities throughout Italy, by adopting a clear prohibition on forced evictions by means of law which explicitly set out the essential procedural protections arising from international human rights law;
- Take all the necessary steps to eradicate anti-gypsyism attitudes and sentiments from society, and to effectively address hate-speech episodes against Roma and Sinti communities by reinforcing the mandate of the UNAR providing it with sanctionary powers.

³³ Council of Europe Commissioner for Human Rights, The discrimination of Roma in Europe: a human rights perspective, September 2010; Council of Europe Commissioner for Human Rights, Positions on the Human Rights of Roma, May 2010.

³⁴ The criteria adopted for the classification are those arising from the Carta di Roma, a code of conduct which applies to the Italian media.

³⁵ The category “anti-gypsyism” encompasses from indirect and subtle expressions of prejudice to explicit and direct expressions of ethnically based bias.

III. PRISONERS' RIGHTS

27. Inhuman treatment due to prison overcrowding is a serious flaw of the entire Italian prison system, a fact that has been confirmed by a series of national and international judicial sentences.

28. On 16 July 2009, Italy was convicted by the European Court of Human Rights (ECHR) in the Sulejmanovic case for having violated art. 3 of the 1950 Strasbourg Convention, which prohibits torture and all other forms of inhuman and degrading treatments³⁶. Since then, hundreds of legal actions have been filed by detainees in similar prison conditions to Mr. Sulejmanovic.

29. On 8 January 2013, the European Court of Human Rights (ECHR) unanimously convicted Italy in another case of failing to protect human dignity (the Torregiani case)³⁷. The Italian government filed an appeal against this sentence, which was rejected on 28 May 2013. Thus, by the end of May 2014, Italy must resolve the systemic problem of prison overcrowding.

30. In the last few years, Italian magistrates have also been engaged in the fight against the inhuman conditions in Italian jails. Prison overcrowding and disregard of prisoners' human rights are nowadays two headline issues in the Italian press. Italy has the highest percentage of overcrowding among EU countries³⁸.

31. Overcrowding in Italian penal institutions is caused by three anomalies, which set the country apart from other EU members:

- 1) The first Italian anomaly pertains to the number of non-Italians held in custody, namely 35.16%. This high figure is partly the outcome of legislation penalising migrants combined with the impossibility of them gaining access to the official/legal labour market.
- 2) The second Italian anomaly is the revised and stricter penal treatment of drug-trafficking and related crimes, a legislative measure recently overturned by the Constitutional Court. The percentage of inmates sentenced or accused for drug-related offences is 40.21%.

³⁶ Mr. Sulejmanovic, a detainee of Bosniak origin, had to share his cell with six other prisoners in the Roman 'Rebibbia Nuovo Complesso' jail for two and a half months. Each inmate had about 2.70 square metres at his/her disposal, i.e. much less than the 4 square metres per prisoner recommended by the Council of Europe's Committee for the Prevention of Torture (CPT) as the minimum space for a multiple cell. According to ECHR standards, an area of less than 3 square metres per prisoner constitutes a violation of art. 3 of the 1950 Convention.

³⁷ The new judgment is even more incisive than that of 2009, and the Torregiani case is momentous for at least three reasons:

- 1) It is a pilot judgment, which recognises the structural and systemic problem of degrading living conditions caused by overcrowding in Italian jails.
- 2) The sentence imposes a one-year deadline, within which Italy must resolve the problem.
- 3) The sentence orders Italy to pay the seven victims in question damages to the sum of almost 100,000 euros.

³⁸ According to official figures, there are 205 prisons in Italy, hosting 61,500 detainees (as of January 2014), even though the Italian penitentiary system is actually capable of accommodating only 47,615 prisoners.

3) The third anomaly regards the number of people on remand. In Italy, 38.04% of prisoners (as of 30 September 2013) had not yet been tried or sentenced³⁹.

32. The crime of torture has never been incorporated into the Italian Code of Criminal Procedure, despite the fact that Italy has signed and ratified the UN Convention Against Torture, which imposes such a codification. Italy's Code of Criminal Procedure does not include the rules of the Code of Conduct for Law Enforcement Officials adopted by UN General Assembly resolution no. 34/169 of 17 December 1979.

Recommendations

- Safeguard human dignity in Italian prisons;
- Introduce new drug-related legislation focusing mainly on harm reduction actions;
- Reduce the impact of preventive detention;
- Incorporate the crime of torture into the Italian Criminal Code, in line with art. 1 of the UN Convention Against Torture;
- Guarantee the right to vote for all prisoners;
- Adopt the Code of Conduct for Law Enforcement Officials as demanded by the UN General Assembly in resolution no. 34/169 of 17 December 1979;
- Introduce new specific Prison Rules for incarcerated juveniles (under the age of eighteen);
- Permit the identification of Law Enforcement Officials during their public order activities.

³⁹ The maximum length of remand custody is particularly high as it is related to the unreasonably excessive length of judicial proceedings. The average length of proceedings, which consist of three levels of judgement, is of as many as 1,351 days (*Report by the Justice Commission of the Italian Senate, May 2013*).

IV. LGBT RIGHTS

33. In Europe, laws for the protection of LGBT persons and against homophobia have been passed in Austria, Belgium, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Romania, Serbia and Montenegro, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

34. Italy has implemented only two regulations that pertain to the subject of homophobia. The first is the so-called “Bossi-Fini Law” (Law no. 177/2002), which addresses the humanitarian protection of foreign citizens who were victims of discrimination or persecution in their country of origin due to their sexual orientation or gender identity. The second is the transposition of Directive 2000/78/EU for equal treatment in employment and occupation, which however has proven insufficient and problematic.

35. The Italian government and Parliament, over the years, have systematically and fiercely opposed the approval of a rule against acts of discrimination, aggression, and violence against lesbian, gay, bisexual and transsexual persons.

Recommendations

- Modification of Law no. 203/1995 (so-called “Mancino Law”) in order to explicitly include in its scope hate crimes and hate speech connected to sexual orientation and gender identity;
- Introduction of new educational programmes and improvement of the existing ones for public administration personnel, with the goal of guaranteeing sufficient knowledge and skills to work in full respect for other people’s sexual orientation and gender identity;
- Introduction of specific guidelines to guarantee transsexual detainees’ right to continue their gender transition during detention; new solutions must be found to avoid such detainees’ isolation while they await specific housing units to become available;
- Introduction of sexual orientation and gender identity among the components of Italian society that must be represented in order to guarantee the utmost pluralism in public radio and television;
- Clarification of the fact that undergoing irreversible, surgical sterilisation procedures is not a necessary requisite to achieve legal recognition of one’s sex change; guarantee of unvarying coverage of the necessary costs and health services needed for gender-reassignment throughout the national territory;
- Modification of the current Family Law rules in the Civil Code, in order to assign

unmarried couples – both homosexual and heterosexual – rights and obligations in terms of housing, succession, alimony, medical assistance, and assistance in jail;

- Introduction of a law governing the rights of same-sex parents, with the goal of safeguarding the interests of the biological partner's child;
- Inclusion of gender identity among the prohibited discriminatory criteria, and extension of the applicability of the discrimination ban to the access and supply of goods and services;
- Introduction of measures aimed explicitly at fighting homophobia and transphobia in schools throughout the country;
- Mandatory inclusion in the national education programmes of lessons on sex education and health education, including information about sexual orientation and gender identity;
- Inclusion of specific needs connected to gender identity and sexual orientation in the National Health Service, encouraging regional health systems to implement similar measures;
- Introduction of a legislation governing the case of intersex children, in order to guarantee that no child will have his or her body irreversibly altered by medical procedures without his or her full, free and informed consent;
- Introduction of sexual orientation and gender identity among the prohibited discriminatory criteria in sports;
- Explicit reference in all relevant laws and regulations to sexual orientation and gender identity among the factors that may lead individuals applying for refugee status or seeking asylum to require protection;
- Creation of an independent national body for the safeguard of human rights, with the clear mission to fight discrimination based on sexual orientation and gender identity, also taking or participating in legal actions.

V. WOMEN'S RIGHTS

36. In 2013, following a series of attacks and killings of women, the government passed a package of measures to crack down on violence against women. According to the new provisions approved reports of domestic abuse would no longer be able to be revoked by the complainant and would make it easier for perpetrator to be removed from the home.

37. In 2013 the Italian Parliament also ratified the Council of Europe's Convention on violence against women. In 2012, the UN's special rapporteur on violence against women, Rashida Manjoo, visited the country and declared that Italy must urgently act to end violence against women. There are no official statistics, but according to a report by women's organisation "Casa delle donne per non subire violenza" (Bologna), the number of femicides has been constantly growing since 2005: 84 in 2005, 101 in 2006, 107 in 2007, 113 in 2008, 119 in 2009, 127 in 2010⁴⁰. According to Istat (Italy's national statistics agency), in late 2011 about one in three women were the victims of domestic violence.

38. Furthermore, migrant women and those in the Roma and Sinti communities face multiple forms of discrimination.

Recommendations

39. In line with the recommendations of the Special Rapporteur on violence against women⁴¹, the Italian government should:

- Reinforce the measures provided to prevent and fight violence against women, and of the system in place to safeguard the victims of violence;
- Consider a single institution dedicated to gender equality and violence against women;
- Establish an independent national human rights institution with a section dedicated to women's rights;
- Address the legal gap in the areas of child custody and include relevant provisions relating to protection of women who are the victims of domestic violence;
- Ensure the provision of quality legal aid to women victims of violence;
- Promote existing alternative forms of detention, including house arrest and low-security establishments for women with children;

⁴⁰http://femicidiocasadonne.files.wordpress.com/2013/04/femicidio_dati-e-riflessioni-intorno-ai-delitti-per-violenza-di-genere.pdf

⁴¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add2_en.pdf

- Implement the measures provided by the Constitution and other legislation and policies to increase the number of women, including those from marginalized groups, in the political, economic, social, cultural and judicial spheres;
- Remove legal hurdles affecting the employment of women;
- Strengthen the social welfare system by removing impediments to the integration of women into the labour market;
- Ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Continue to conduct awareness-raising campaigns aimed at eliminating stereotypical attitudes about the roles and responsibilities of women and men in the family, society and workplace;
- Continue to take the necessary measures, including financial, to maintain existing and/or set-up new anti-violence shelters for the assistance and protection of women victims of violence.

VI. FREEDOM OF EXPRESSION

The Right of Access to Information

40. Although the right of access to government-held information has become so much of a benchmark for open democracies as to have been recently recognized as a fundamental human right (linked to individual freedom of expression), Italy still lacks a proper Freedom of Information Act, and its current legal framework on access to information is considered to be among the most restrictive in Europe⁴².

While significant transparency principles are now part of the legal framework, the cornerstone of the current regulation on access to information in Italy is Law no. 241 of 1990. According to this law, known as the “Administrative Procedure Law”, requests for access to information that aim to monitor the work of public authorities are still not admissible.

Media ownership and regulation

41. Media ownership and political leadership have played a central role in Italian politics for the last two decades. As confirmed by The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion, excessive concentration of media limits diversity and plurality of freedom of expression and challenges democracy. The issues of main concern relating to freedom of expression are the persistent failure to address the conflict of interest of senior political figures with vast media holdings and the procedure to appoint the board of directors of the public service broadcaster (RAI) that undermines its independence.

Recommendations

- Reform Law 241/1990 and adopt, without delay, a comprehensive and consistent law on access to information, ensuring that the right to information meets international standards;
- Open up the process to appoint the board of directors of RAI to public consultation and scrutiny;
- Tackle the excessive concentration of media by allocating the concession of broadcasting frequencies in a fair manner and ensure that the election of board members of RAI be conducted in a transparent way;
- Introduce a legislative overhaul of the radio-television normative system, especially the anti-trust provisions;

⁴² The findings of the independent monitoring report (The Silent State) on access to information that we carried out in 2013 showed that 73% of responses to requests for information on matters such as public expenditure, health, environment, and the justice system did not comply with international standards. Of that 73%, 65% of requests were met with “mute refusal”, i.e. no response at all within the designated time limits. Source: www.dirittodisapere.it

VII. CORRUPTION AND LACK OF TRANSPARENCY IN GOVERNMENT

42. A new wave of corruption scandals involving politicians and senior political figures has recently emerged providing further evidence of how widespread the phenomenon is and how it risks affecting the right to equality and non-discrimination in the provision of public services. The World Bank and the EU considered corruption to be a problem in the country. Italy adopted a new anti-corruption law in November 2012 including prevention measures aiming to improve transparency within the public administration and the political elites. However, despite representing a positive step forward, the new law needs to be accompanied by further accountability tools in order to strengthen the integrity of the public sector.

Recommendations

43. Following the recommendations of the first European Commission's anti-corruption report⁴³, the government should:

- Strengthen the integrity regime for elected officials through ethical codes;
- Reinforce the legal and institutional framework on party funding;
- Address the deficiencies of the statute of limitation regime;
- Reinforce the powers and capacity of the National Anti-Corruption Agency;
- Enhance transparency around public procurement;
- Take further steps to address shortcomings regarding corruption in the private sector;
- Tackle conflicts of interest and asset disclosure of public officials, as well as control mechanisms around local and regional public spending.

⁴³ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_italy_chapter_en.pdf

VIII. INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTION

44. Despite important formal declarations made by several prime ministers, Italy still lacks a proper independent national institution for human rights (NHRI) with a broad mandate. This hampers the possibility to have a comprehensive and coherent national strategy to promote and protect human rights.

Recommendations

- Start a public consultation process in order to gather good practices and seek strategic advice on a National Human Rights Plan;
- Start a public consultation process in order to establish a National Independent Human Rights Institution in line with the Paris Principles;
- Make any effort to establish a NHRI able to be accredited with Status A within the UN Human Rights Council.