Coalizione Italiana Libertà e Diritti civili

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CIE: what has happened over the last 20 years?

Safety and freedom in the management of migratory flows

It truly is disappointing and surprising that in 2017 we are once again – or should we say still? – discussing **Identification and Expulsion Centers (CIE - Centri di identificazione e espulsione).**

Following Chief of Police Franco Gabrielli's press release on extraordinary provisions related to "illegal immigration" – the first step of "a wider strategy" of the new Minister of the Interior ("*Ministro dell'Interno*"), Marco Minniti, which promises a strict regime regarding irregular immigrants – the discussion on opening new identification and expulsion centers has begun anew throughout the country.

This document provides a summary of the historical failure of CIEs and is intended for politicians, the media and civil society.

A brief history of administrative detention and CIEs

(1995) The administrative detention of "illegal immigrants" is a recent concept, introduced for the first time as an exceptional and temporary measure in 1995 when the Dini Decree made it possible to detain foreigners who had received an expulsion order on an administrative basis for up to 30 days (without clear explanations about the structures mentioned by the Ministry of the Interior). The Dini Decree was never converted into law, but in the same year the Puglia Law created "*the first seed for the current Accommodation Centers for Asylum Seekers (Centri di accoglienza per richiedenti asilo - CARA)*", which allowed the opening of such centers along the Apulian coast between 1995 and 1997 (Apulia was the region, until 2001, with the highest amount of immigrant arrivals). The aforementioned centers were to guarantee more open first reception but, with the charge of combatting "illegal" immigration, the Puglia Law perceived such places to be closed structures from which the foreigners were unable to leave.

(1998) With the Turco-Napolitano law of 1998 came the first reference in the Italian legal system to administrative detention (and to the these types of centers). The law included the possibility of detention on an administrative basis, establishing that whenever it was impossible to immediately proceed with deportation or turning a person away at the border (i.e. because of arrival through rescue efforts or lack of identification) the Police Commissioner ("*Questore*") could request detention for a maximum period of 30 days in a temporary detention center ("*Centro di permanenza temporanea*" or "CPT").

(2000-2002) The implementing Act of the Turco-Napolitano law governing the functioning of these CPTs (from which "guests" were absolutely prohibited from leaving) provided an obligation to guarantee respect for the fundamental rights of the detainee. Subsequently, two different circulars of the Ministry of the Interior ("*Ministero dell'Interno*"), issued in 2000 and in 2002 respectively, set out

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the first domestic guidelines for the management of the CPTs; the first circular allowed the various Central Governmental Institutions at a county level (so called Prefectures or "*Prefetture*") to outsource management to external bodies, while the second tried to establish a conformity of center management throughout Italy by introducing a standard with all the ordinary provisions to be supplied by the managing bodies.

(2002) The approval in July 2002 of the Bossi-Fini law signaled a major change, as it replaced and amended the former law (Turco-Napolitano) by re-defining policies on immigration in Italy, introducing, *inter alia* the administrative ability to immediately expel undocumented immigrants (*i.e.* those without a permit to stay, a so called *"permesso di soggiorno*", and appropriate identification), including escort to the border by law enforcement. The law called for undocumented immigrants to be taken to CPTs, which had been created by the Turco-Napolitano law, and detained therein for a maximum of 60 days (instead of the previous maximum of 30 days), to first allow identification and then a decision about expulsion. The new law also called for the detainment of asylum seekers in new centers of identification ("*Centri di identificazione*" or "CDIs"), which was mandatory in cases where the immigrant applied for asylum after being intercepted in an attempt to elude border controls or in any other improper situation anywhere within Italy, and otherwise optional in all other cases in which it was deemed necessary to verify or to determine the identity of the asylum seekers.

(2003-2005) A European Community directive, called the Reception Conditions Directive, allowed Member States to adopt restrictive measures towards asylum seekers, allowing for the possibility of imposing residence obligations or confinement in a specific place. Additionally, the Asylum Procedure Directive was passed, which both set forth that the States were not to detain foreigners if seeking asylum exclusively and set conditions for the judicial protection of asylum seekers.

(2008) In 2008, the legislative decree which implemented the Asylum Procedure Directive in Italy transformed the CDIs created by the Bossi-Fini law into the current accommodation centers for asylum seekers, while a decree law in relation to urgent provisions about public safety transformed the CPTs into the current identification and expulsion centers (CIEs). In Europe, the Return Directive was also adopted, which contains different laws connected to the detainment of foreigners subject to orders of expulsion and confirming that the Member States can use detention only for preparing and carrying out expulsion, highlighting that detention is to be used only as a last resort. It also set forth an alternative measure of assisted voluntary repatriation for any citizens of third countries present in the EU to receive aid to voluntarily return to their country of origins in safe conditions. At the same time, the term of detention permissible by the EU was increased pursuant to EU directive to a maximum of 18 months.

(2009-2011) The Repatriation Directive at the European level extended detainment at identification and expulsion centers from 60 days to 180 days through the so-called Safety Package approved by the Berlusconi cabinet. Shortly thereafter, pursuant to article 10-bis of the Consolidated Act on Immigration, the crime of illegal immigration was introduced, and relative cases were to be tried by way of summary judgment ("*rito direttissimo*") before a justice of the peace ("*giudice di pace*"). Then two years later with Law Decree No. 89/2011, the abovementioned period of detention was extended to 18 months; therefore, ordinary Italian law applied the maximum period provided by the EU Directive for exclusively extraordinary circumstances. Directive 1305 of 1 April 2011 limited outside access to CIEs to some specific humanitarian bodies, and excluded the media.

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(2014) In October of 2014, EU Law 2013 *bis* was approved and – for the first time since the Turco-Napolitano law of 1998 had created administrative detention for foreigners – detention in CIEs was thereby reduced from a maximum period of 18 months in 2011 to 3 months, or only 30 days when the foreigner was subject to an expulsion procedure after at least 3 months of detention.

(2015) Legislative Decree 142 established the ability to detain an asylum seeker as permitted by the EU directives. Therefore, optional detention was available for asylum seekers who committed serious crimes, those who posed a danger to public order or national security, and those who at the moment of filing the claim were already detained in a CIE with reasonable grounds to believe that the claim was filed only to avoid the execution of the expulsion procedure. In these cases, the maximum term of the detainment for the examination of the protection claim is a period of 12 months.

At the administrative detention system's peak of expansion there were 15 CIEs in Italy with a total capacity for over 2000 detainees.

As these centers were established for emergency reasons, the single centers were and remain extremely dissimilar from one another in terms of structure and management: some were built from scratch, others were instead obtained from the conversion of existing buildings (former barracks, factories and hospices). The Roman CIE of Ponte Galeria is the only center that has a section for women. In any event there is one common trait: as the LasciateCIEntrare campaign states in summary of the situation, "*the IECs operating as of today are mostly located far from cities, there is an overwhelming presence of metal bars and surveillance instruments, the social-sanitary situation is critical and there are frequent complaints of abuse and violence. They are huge cages surrounded by concrete"*.

The IECs were then gradually abandoned due to legal, humanitarian and practical problems (see below), and currently there are only 4 - Brindisi, Caltanissetta, Rome and Turin - in which around 300 migrants are confined.

Arguments against CIEs: places outside a nation of laws

Given the current situation, while depriving any citizen of their freedom without having committed any crime or for a mere administrative offence is unthinkable, absurdly, for non-EU citizens in Italy this has come to be considered normal.

This is unacceptable, *in primis*, from a legal and ethical standpoint. Here is why.

Detention without a crime. Those detained in CIEs are people who have not been found guilty of committing a crime but who simply entered Italy or remained "illegally" in Italian territory (including persons who were in possession of a valid document and failed to renew it; people born in Italy or minors who, at the age of eighteen, were unable to renew the document in light of their coming of age; and stateless persons who have not made the request to be recognized as such). Immigrants held in CIEs are basically deprived of their liberty because of their undocumented status – *i.e.* for violation of an administrative provision – and not for having committed a crime. This mere

administrative status of “illegal immigrant” has justified the construction of actual para-criminal structures in which the immigrant is then, in fact, held.

These places cannot strictly be referred to as “prisons”; in reality, however, they are, even if the people kept there are euphemistically referred to as “guests” instead of inmates. Basically, this has to do with “administrative” detentions applied simply because these people are legally considered “irregular immigrants” (often acquired due to the loss of a permit to stay) and may thus be deprived of those freedoms of defense they would be guaranteed in a criminal trial. This is totally unacceptable from the perspective of safeguarding fundamental rights.

“***Here it is worse than a prison***”. Not only are the “guests” of CIEs deprived of their freedom without having committed any crime, but such deprivation lies outside the safeguards provided by the legal penitentiary system.
Thus, paradoxically, detainees in prisons are more protected than the “guests” of the centers for immigrants: this has been confirmed by those in the centers themselves, written by reporters, denounced by the criminal lawyers and admitted by politicians. As eloquently stated by the jurist and former Minister of the Interior, Giuliano Amato, the CIEs are "*prisons for outcasts in which the legal safeguards do not apply*”. Indeed, they are worse from every point of view: in terms of transparency, the CIE system is significantly more suspect than the penitentiary system – the centers are closed prisons, closed to the press and difficult for civil society organizations to access – and left to the management of the custodial institutions. Furthermore, the “guests” are treated far worse than prisoners, as they are deprived not only of their freedom but even of those rights recognized by the penitentiary system. For “*reasons of security and public order*” the Italian Prefectures tend to tighten up the rules that govern life within the CIE "*helping to make the detention conditions of migrants even more unbearable and degrading*” (at the CIE of Ponte Galeria, for example, the detainees are not allowed to have combs, pens, books or newspapers; a protest broke out in November 2011 in the same center, after an order, which was later withdrawn, had forced detainees to only wear slippers so as to decrease the risk of their escaping).

Then there is the matter of the rules on outside contacts and visitors, which does not appear to be ensured to an appropriate degree and their manner and times are excessively left up to the discretion of the individual prefectures. There is a very serious issue with the right to healthcare being denied. In all centers, healthcare personnel is managed directly by the operators and organizations; therefore, the CIEs are in an “*abnormal condition of extraterritorial healthcare, separated entirely from local healthcare centers and therefore from the public healthcare services, whose staff is even forbidden access*”.

Failure to document and the double punishment of non-nationals passing from prison to a CIE. The issue is even more absurd for foreigners held in CIEs after being detained in prison (applicable to approximately 70% of the total population of CIEs in 2014). With regard to these detainees - who have committed a crime, but are detained again despite having already served out their sentences - an almost surreal question arises: how could a person who has been in prison still need to be documented? The problem, concerning documentation for the purposes of deportation, relates to the collaboration of the consulate of the person’s country of origin within the context of a procedure that can take a long time. But the period of detention of non-nationals already held,

though still undocumented, in a CIEs in addition to what they have already served in prison, which gives the impression of a double punishment.

To overcome this problem of "double punishment", the so called "empty prisons" ("*svuota carceri*") decree law of 2013 introduced provisions on the detention of immigrants, amending the system of deportation as an alternative measure to detention and providing for a speeding up of the documenting process. This piece of legislation establishes that the initiation of the detainee-documenting process and the acquisition of those diplomatic documents necessary in order to return non-national detainees to their countries of origin be anticipated to the time of entry into prison in order to avoid double detention problems in the CIEs after being released. The Department of Penitentiary Administration ("DAP") had not in fact organized itself in a way to ensure the completion of the documenting procedures in prison.

To date, the actual impact of this legislative measure has been hard to measure, since, as pointed out in the 2016 CIE update report of the Senate's Extraordinary Commission for the protection and promotion of human rights, the data on the repatriation of non-national detainees identified in prison and, once their sentence has been served out, directly repatriated without going through an CIE are not available. According to the abovementioned report, still in 2016 "*the people that pass to the CIEs mostly consist of people coming from prison"*. It is also unclear how it will be possible to document these people in the CIE, should it be impossible to do so in the prisons.

No right to defense. It is clear that in all stages of administrative detention the right to defense must be guaranteed.

- Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") provides the right to an effective remedy, stating that "*everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*";

- Article 47 of the Charter of Fundamental Rights of the European Union also provides for the "*right to an effective remedy and to a fair trial*";

- These rules correspond to the provision set forth in Article 24 of the Italian Constitution whereby "*anyone may bring cases before a court of law in order to protect their rights under civil and administrative law. Defense is an inviolable right at every stage and instance of legal proceedings. The poor are entitled by law to proper means for action or defense in all courts. The law shall define the conditions and forms of reparation in case of judicial errors".*

These provisions should apply in full, even for undocumented immigrants subjected to forced deportation ("*allontanamento forzato*"), but are in fact contradicted throughout all stages of CIE detention.

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In fact:

- Immigrants are often transferred from one CIE to another and sometimes their legal counsel is not even allowed access, thus hindering an effective exercise of the right to defense;
- Moreover, immigrants held in CIEs may also be accompanied to the border pending judicial appeal against their deportation ("*espulsione*") and expatriation ("*respingimento*") unless the judge has suspended the effectiveness of the relative provision;
- Furthermore, in many places, the civil courts consider action against deferred expatriation brought by the Police Commissioner to be within the competence of the administrative courts, while administrative judges believe it belongs to the competence of the ordinary courts, with the result that there often is no judge to establish the legitimacy of the forced removal orders (which constitute the basis for internment in CIEs);
- Then, during trial on the validation of the administrative detention, the judge (who, as explained below, is not a professional judge but a justice of the peace) almost always denies a review of the provision constituting the grounds for the application of detention measures and therefore the validation trials turn out to be a mere acquiescence of the Police Commissioner's request;
- In addition, the chronic shortage of official interpreters leads to the failed guarantee of the right to language comprehension, and sometimes creates a paradoxical situation where even the immigrant traffickers or other immigrants with criminal records, present in the CIEs after being released from prison, play the role of interpreter;
- Things aren't any better from the standpoint of legal representation either given that "guests" held within a CIE almost always end up in the hands of public defenders – picked (often just a few minutes before the hearing) almost everywhere from a short list of professionals and contacted by the managing body or by the police authorities – who merely seem to be going through the motions; the difficulties in communicating with the outside and the prohibition on visits by independent organizations make it almost impossible to appoint a private practice attorney.

In the hands of the Justice of Peace. The highly questionable fact that competence on validation and extension of detention is attributed to a justice of the peace further complicates the situation. Indeed, the adoption of measures regarding restriction of personal freedom is assigned to non-professional judges who normally only discharge conciliation functions in the context of small proceedings and are clearly unfit to provide adequate judicial oversight on such a sensitive and complex matter – as demonstrated by the figures of the "*Osservatorio sulla giurisprudenza dei giudici di pace in materia di immigrazione*".

Arguments against CIEs: inhuman, useless and incredibly expensive

CIEs have been recognized as inadequate instruments in a large number of studies and reports by both public institutions and NGOs alike.

These reports show that aside from being extremely expensive – in terms of human rights violations and economic costs – CIEs are also ineffective and inefficient.

This is by no means news: already in 2007, the parliamentary committee of inquiry led by De Mistura advocated the elimination of CIEs, stating that they did not allow for "an efficient management of irregular immigration" and, instead, "entailed high costs that did not match the results achieved".

Inhumanity. The Human Rights Commission of the Italian Senate has repeatedly stated that CIEs are "*horrific places where violations of fundamental human rights frequently occur*". Over the years, an endless number of acts of violence, self-mutilations, riots, suicides and deaths have been reported in the CIEs.

For years, the LasciateCIEntrare campaign has been denouncing the inhuman conditions of detention and the repeated violations of human rights within Italian CIEs. The Morti di Cie inquiry has recently documented over twenty cases of people dying in CIEs, such as Mohamed Ben Said, who was found dead on Christmas morning of 1999 in a pool of vomit on the floor of his cell in the CIE of Ponte Galeria, Rome, and Reda Mohamed, who died at the beginning of 2015 in the CIE of Bari due to a heart attack that was never confirmed by the autopsy.

The detention conditions in CIEs are so deplorable – significantly worse than those, already unsustainable, of penitentiary facilities – that in 2012 the Court of Milan and the Court of Crotone justified the riots in the CIEs as "*forms of self-defense against the violations of the human rights of the internees*". In other words, the judges believed that the situation inside the CIEs was so dire in terms of the violation of human rights that the foreigners' violent reaction was legitimate.

Over the last number of years, the proven inhumanity of CIEs, documented by several reports (both institutional – such as the 2007 report of the De Mistura committee and the 2014 report of the Human Rights Commission of the Senate – and non-institutional – such as the Arcipelago CIE report made in 2013 by Physicians for Human Rights), has led to the closure of several structures, in effect progressively dismantling the system. The very circumstance that CIEs end up being "*a sort of concentration camp*" induced many politicians to take a stand against maintaining and/or reopening them.

For instance, in 2013 the Partito Democratico members of the Parliament of Bologna took a position against the prospective reopening of the local CIE, which had been defined as an "*inhuman place, [a] heart of darkness of the city*", and recently renewed their objections after the government's new proposal.

Uselessness. It is possible to repatriate so-called "illegals" only in cases where there are bilateral agreements with their countries of origin. However, these agreements are often absent (which might be considered as a positive in cases where there is strong doubt as to the country of origin's respect for human rights), despite strong pressure from the European Union and their consequent increase over recent years. Currently, the only countries that have entered into formal re-admission arrangements with Italy are Egypt, Tunisia, Nigeria and Morocco. In addition, agreements are in place with the police forces of Gambia and Sudan.

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The result is that less than half of those that receive an expulsion decree and are interned in a CIE are actually repatriated: according to data provided by the Human Rights Commission of the Senate, the returnees were 55% in 2014 and decreased to 54% in 2015 and 44% in 2016. In the last year – from January 1 to September 15 – a total of 1,968 people have been interned in CIEs and of these only 876 have subsequently been repatriated. Accordingly, the Arcipelago CIE report of Physicians for Human Rights talks of "*modest relevance and low effectiveness of the system of administrative detention in the fight against irregular immigration*".

Incredibly expensive. How much do CIEs cost exactly?
Given the low transparency of the system, it is difficult to have exact figures. In order to have a reliable picture of the global cost of the system of administrative detention, it would be necessary to add the expenses for public security personnel employed in the CIEs and for ordinary and extraordinary maintenance of these structures to the cost of the services already provided by the managing entities. According to the "Arcipelago CIE" report, in 2011 the overall expenditure for the management of services in Italian CIEs was equal to €18.6 million. In spite of these high costs, the situation is extremely dire. CIEs are mismanaged by their contractors, which, in a sort of race to the bottom, fail to provide even essential services: it is normal to experience malfunctioning showers for weeks, lack of basic supplies like toilet paper and sanitary napkins, cold or inadequate meals, malfunctioning heating or absence of the necessary professionals. In other words, a lot of money is made at the immigrants' expense.

The journalists of Migrant Files have calculated that, over the last 15 years, European countries have spent approximately €11.3 billion on expelling undocumented immigrants, i.e., approximately €1 billion per year and, on average, €4,000 per repatriation.

The moral of the story is that accepting immigrants would be less expensive than sending them back.

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