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Introduction

Founded in 2014, the Coalizione Italiana Libertà e Diritti Civili (hereinafter “CILD”) is currently composed by 34 civil society groups working to address some of the most pressing human rights issues faced by Italy today – such as anti-discrimination and rights of minorities, criminal justice and prisoners rights, asylum and international protection, freedom of expression and right to privacy. It supports and empowers civil society organisations through a combination of capacity building, advocacy, media strategy and public education.

This report has been prepared by CILD in collaboration with its members – and especially with Associazione Antigone and Associazione 21 Luglio – with the aim to review and analyse how Italian national laws, policies and other measures comply with the ICCPR. The section Right to Privacy is a joint submission with Privacy International.

Implementation of ICCPR and related issues which the Covenant is implemented (art. 2)

Legal framework within which the Covenant is implemented (art. 2)

National Human Rights Institution (NHRI)

Italy still does not have an independent National Human Rights Institution (NHRI) that is in full compliance with the Paris Principles. This means our country is now more than 20 years late with the obligations imposed by General Assembly A/RES/48/134 back in December 1993. This deficiency has been noted several times by international human rights bodies, and most lately by this Human Rights Committee in the context of the twentieth Universal Periodic Review.

It is to be noted that at the opening of the current legislature (XVII) various draft laws have been submitted, without success, and that the Inter-ministerial Committee for Human Rights (CIDU) has also been promoting the establishment of the NHRI through meetings at various levels. At the same time, it is to be appreciated the establishment of human rights bodies such as the National Observatory on the promotion and protection of persons with disabilities and the National Ombudsman on the Rights of Children as well as the National Ombudsman on the Rights of the Detainees and Prisoners (Ombudsman).

This obviously does not suffice, as the lack of a NHRI strongly hampers the possibility to have a more comprehensive and coherent national strategy to promote and protect human rights. An Italian NHRI is fundamental to elevate Italy's participation in international and regional human rights fora, in ensuring compliance with international commitments and in enhancing the promotion and protection of human rights on the national and local level.

Furthermore, the legislation proposed so far provides only for a limited cooperation of the Italian NHRI with civil society, taking place through one to four formal meetings per year. This really is a critical point as NHRIs' cooperation with civil society must amount to way more than a few formal meetings: NHRIs are indeed often described as a bridge between civil society and the state (and then between the state and the international arena). Through their cooperation with NGOs and other civil society actors NHRIs can and should collect an accurate overview of the human rights situation which, due to their state mandate, they can bring directly to government, parliament and other state bodies.

Recommendations

- Ignite a public consultation process in order to establish a NHRI 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;
- Strengthen NHRI's cooperation with civil society, starting already in the phase of the recruitment of members of a NHRI and going on with constant information-sharing, joint projects and reliance on NGOs support in monitoring.

Non discrimination & equality, rights of minorities and the prohibition of advocacy of national, racial or religious hatred (art. 2, 20, 23, 26, 27)

Same-sex couples and families

Italy still lags behind European countries when it comes to equality for homosexual people and parental rights for gay couples. A much-awaited civil unions bill for same-sex couples was finally adopted in 2016, as a result of the groundbreaking judgment in the case of *Oliari and Others v. Italy*¹, in which the European Court of Human Rights (ECtHR) held that Italy violated the right to privacy and family life in failing to provide sufficient and reliable legal protection for same-sex relationships.

The Italian civil unions bill was a milestone in the struggle toward legal recognition for same sex-couples in Italy but its restrictive adoption provisions for same-sex couples still deny some children the legal protection and security they deserve, as highlighted by LGBTI NGOs Rete Lenford and Associazione Certi Diritti. It is worth noting that in June 2016, the Supreme Court of Cassation² upheld a lower court's decision to approve a request for a lesbian to adopt her partner's daughter in light of the superior interest of the minor, setting an important precedent.

Recommendations

- Revise Italy's adoption legislation to allow unmarried couples in a civil union, irrespective of their gender, and individuals, to adopt children and to also allow stepchild adoption, ensuring that the best interests of children are the primary consideration in all adoption proceedings.

¹ *Oliari and Others v. Italy* (2015) ECHR

² Cassazione Civile, sez. I, sentenza 22/06/2016 n° 12962

Hate speech against Roma, Sinti, Caminanti and non-citizens

Anti-gypsyism is a specific form of racism and a powerful obstacle in preventing Roma and Sinti inclusion³. Routine violent attacks against Roma and Sinti settlements and individuals and occasional episodes of collective hysteria, are exemplificative indicators of the broad diffusion and deep rooting of anti-Roma sentiments in the Italian society. A research published in June 2015 by the Pew Research Center reported that 86% of the respondents in Italy hold a negative opinion about Roma⁴. Among the different forms that anti-gypsyism can acquire, hate speech against Roma is the most pervasive in the Italian context. These episodes are usually not promptly and firmly condemned by Government officials, politicians and relevant head of political parties. The data⁵ collected by Associazione 21 luglio, through the National Observatory on Hate Speech against Roma, confirm that hate speech targeting Roma is a deep-rooted and endemic phenomenon in Italy⁶, mainly fueled by the political discourse at local level⁷. Whereas cases of hate speech adopting explicit and racist rhetoric may fall within the provisions set forth by the Law No. 205/1993, for cases adopting a more indirect and subtle expression of bias, the current Italian anti-discrimination framework does not provide for effective means to address and discourage them, leaving anti-gypsyism and its promoters enough space to irresponsibly fuel anti-Roma sentiments with blatant dangerous effects. The action of the National Office Against Racial Discrimination (UNAR) is considerably limited due to the lack of

³ CoE Commissioner for Human Rights, *The discrimination of Roma in Europe: a human rights perspective*, 2010

⁴ Pew Research Center, *Report: Faith in the European Project Reviving*, June 2015

⁵ Associazione 21 luglio, *Rapporto annuale*, 2016

⁶ In nearly four years of activity, the Observatory recorded a total of 1.296 hate speech episodes against Roma and Sinti, 794 of whom deemed of particular gravity. This results in a daily average of 3,5 episodes, or 2,2 limiting the analysis to the grave episodes. It is too early to assess the decrease in episodes occurred in 2015 and in 2016 as an indicator of a substantial change sustainable in time within the Italian society, as during the same period the political and public debate moved much of its attention towards the so-called "migrants issue", resulting in the scapegoating of other vulnerable groups

⁷ Associazione 21 luglio considers the responsibility of Italian politicians in fueling anti-gypsyism and discriminatory sentiments as a factor of crucial concern that should be urgently addressed. Hate speech against Roma and Sinti in Italy usually adopts indirect and subtle expressions of bias, rather than explicitly racial remarks, which can also become the substrate and produce ethnic and racial violence

sanctionary and/or deterrent measures to address and discourage episodes of this kind. The only direct action UNAR can undertake is in practice limited to sending “moral suasion” letters to the targeted recipients. From the information available to Associazione 21 luglio, resulting from nearly four years of constant engagement with UNAR, when no reply of any kind is received from a recipient of a “moral suasion” letter, the Office proceeds to archive the episode having exhausted its possible means of intervention, an outcome that could hardly be deemed satisfactory.

Recommendations

- Adopt necessary measures to ensure that domestic anti-discrimination legislation prohibits all forms of discrimination disabling the promotion or incitement to racial discrimination by public authorities or public institutions at both national and local levels;
- Ensure that all private and public actors, including politicians at all levels, are held accountable and sanctioned for the dissemination of all forms of racist speech and of ideas based on racial superiority or hatred concerning the Roma community;
- Provide public authorities, including politicians at all levels, with a binding code of conduct to ensure the eradication of hate speech;
- Collect and publish disaggregated data concerning hate speech and crimes against Roma by establishing a coherent data collection mechanism to systematically record incidents of racist hate speech;
- Ensure that public authorities take necessary measures to guarantee the independence of UNAR so that it may implement its activities more efficiently.

⁸ CoE, *Estimates and official numbers of Roma in Europe*, 2012

Roma, Sinti and Caminanti rights

According to the most recent estimates, approximately 180.000 Roma and Sinti live in Italy, constituting approximately 0,25% of the total population⁸, and approximately 60% of them are minors⁹. A structural factor which complicates the implementation of effective inclusive policies is the substantial lack of disaggregated data regarding the Roma and Sinti communities living in Italy¹⁰.

In 2012 Italy submitted its National Roma Integration Strategy (NRIS) to the European Commission. Despite lacking an effective monitoring and evaluation mechanism and a set of quantifiable objectives and result indicators, the NRIS foresees a set of integrated policies focusing on four key areas – housing, employment, education, health – and recognizes the inadequacy of current policies. Concerns have been expressed with regard to its effective implementation on the ground.

Housing & segregation. The main national housing policies do not present elements in blatant contrast with the NRIS, but within the Italian decentralization context local authorities have a certain degree of autonomy in designing and implementing local policies and therefore they assume a fundamental importance for a concrete implementation of the NRIS through effective measures. Within this framework, and in lack of a mechanism of accountability, local authorities indeed have a degree of discretion which can lead to the implementation of policies in contrast with the principles of the NRIS. Housing policies targeting Roma implemented by some Italian local authorities contrast with the NRIS as they reiterate housing and social segregation through the construction or the extraordinary refurbishment of Roma-only “authorised” settlements.

Furthermore, Italian authorities continue with the practice to officially construct and manage “authorised” settlements, and to provide Roma and Sinti families

⁹ ECPPHR, *Report of the Investigation on the Conditions of Roma, Sinti and Camminanti in Italy* (2011)

¹⁰ The lack of data has also been highlighted by the ECPPHR, by the EU Fundamental Rights Agency and by the Committee on the Elimination of Racial Discrimination

with housing units inside them. Even if initially the realization of “authorised” settlements was not intended to be a means of segregation but a way to protect the perceived peculiarities of these minorities, the results have been extremely critical in terms of spatial segregation and social marginalization. The Italian authorities committed to overcome discriminatory segregation and sub-standard housing conditions in “authorised” settlements with the approval of the National Roma Integration Strategy. Despite this commitment, the national Government has not implemented any concrete measure to eradicate housing segregation and the persistence of segregated housing policies addressed towards Roma and Sinti throughout Italy continues to attract criticisms from a number of human rights monitoring bodies¹¹. According to a mapping by Associazione 21 luglio¹², Italy currently manages 145 “authorised” Roma-only settlements throughout Italy. Housing segregation of Roma communities is a widespread and systematic issue and it is not just limited to the main Italian cities, as many medium-sized municipalities also manage Roma-only settlements.

Forced Evictions. When collectively evicting Roma and Sinti families, the Italian authorities hardly ever apply all the procedural protections foreseen by international instruments: in most of the documented cases, evictions are carried out in absence of formal eviction orders and without a formal notice, therefore impeding the access to a legal remedy, and without an adequate advance notification, in absence of any kind of consultation and without taking into consideration the individual circumstances of each family. Often evictions result in the arbitrary loss of private property without compensation and in people being rendered homeless, as no adequate alternative housing solution is provided to

¹¹ The following human rights monitoring bodies and mechanisms expressed concern and urged to end housing segregation of Roma communities in Italy in recent years (2012 – 2016): UN CERD (Concluding Observations, 2012); ECRI (4 th and 5 th monitoring cycles, 2012 and 2016); Universal Periodic Review (2 nd Cycle, 2014); UN CESCR (Concluding Observations, 2015); Advisory Committee of the Framework Convention for the Protection of National Minorities (4th Opinion, 2016); Council of Europe Commissioner for Human Rights (various statements)

¹² The mapping is constantly updated and intended for internal use. It is not publicly available for privacy and security concerns

those unable to provide for themselves. When alternative housing is offered, either it usually foresees the division of households – with only mothers with children being offered temporary shelter in emergency structures – or it takes the form of a substandard and inadequate housing unit in a segregated Roma-only “authorised” camp or Roma-only reception facility. Forced evictions thus do not result in restoring housing adequacy, but in reiterating housing inadequacy in another place while further increasing the vulnerability and exacerbating the living conditions of those affected. Recent examples of forced evictions¹³ highlight the systematic use of forced evictions that have been carried out by Italian authorities throughout Italy and mainly in the cities of Rome, Milan and Florence. From constant monitoring by Associazione 21 luglio in 2016 in Italy there were 250 forced evictions. In the city of Rome alone, from 1 January 2013 to 31 December 2016 a total of 196 documented forced evictions were carried out, affecting roughly 4.890 Roma overall.

Recommendations

- Immediately integrate all shelters and overcome all Roma segregating camps to eliminate racially segregated shelters and settlements;
- Allocate funds to projects providing for integrated housing settings and inclusion paths ensuring family unity as well as ceasing the transfer of families on ethnic basis in substandard, inadequate and segregating housing;
- Establish, monitor and enforce conditions on the use of all housing-related funds, including prohibiting the use of funding to create or maintain segregated housing such as camps or shelters;
- Ensure that all Roma who may be evicted from their homes enjoy the full protection of the guarantees of national and international law;

¹³ Such as: the forced eviction on 15 March 2016 of 20 families from the via Idro settlement (Milan) who had been living there since 1989; the forced eviction of approximately 500 persons from via Mirri (Rome) on 10 May 2016; the forced eviction of more than 300 Roma from the Masseria del Pozzo settlement (Giugliano) on 21 June 2016; the forced eviction on 10 October 2016 of approximately 350 Roma from via Virginia Wolf informal settlement in the city of Naples. The families relocated themselves in either the via Traversa Cupa Cimitero informal settlement or the Gianturco informal settlement due to the lack of any alternative and adequate housing solution offered by authorities

- Immediately cease the systematic practice of forcibly evicting Roma without undertaking any of the measures required by international human rights law to provide social and adequate housing inclusive alternatives consistent with the commitments on housing for Roma undertaken in the NRIS.

Right to life (art. 3 and 6)

Violence against women and femicide

Described as a “national emergency” in the public and political debate, violence against women and femicide have been a hot topic in Italy for the past few years. According to a 2015 Italian National Institute of Statistics report¹⁴ almost 1 in 3 women in Italy (little less than 7 million) have been victims of some forms of violence, either physical or sexual, during their life. No national observatory on violence on women – providing official statistics on femicide – has yet been created but feminist network Casa delle Donne has been monitoring the phenomenon for years (without any funding or other forms of support from the government) and reports 1274 cases between 2005 and 2015, with more than 100 women killed each year¹⁵.

The Italian national legislation to prosecute violence against women is quite extensive, covering domestic violence, sexual violence, violence against minors, female genital mutilation, stalking and trafficking of human beings. A national plan against gender-based violence and stalking was officially enacted in 2010 as a first attempt to develop an organic response to address violence against women in the country. In 2013, Italy ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul

¹⁴ ISTAT, *Violence against women* (2015)

¹⁵ Casa delle Donne, *I femicidi in Italia* (2016)

Convention) and in 2015 it adopted the 'Special Plan against sexual violence and gender-based violence' to expand women's support services including anti-violence centres and women's shelters.

While such legislative initiatives have been applauded, measures to ensure their implementation remain weak. Furthermore, inadequate fundings and malfunctioning of the system put at continuous risk the very existence of anti-violence centres and shelters¹⁶ – which are more often than not volunteer ran due to lack of resources.

Access to legal abortion

Women's access to safe abortions is a critical issue. Law 194/1978 legalized abortions within the first three months of pregnancy but also allowed for doctors to conscientiously object from the practice: this means that on paper Italy allows abortion but in practice very few doctors will perform them. According to official data by the Health Ministry¹⁷, circa 70% of gynaecologists – up to 83% in some regions – are conscientious objectors to the law and do not perform abortions for religious or personal reasons. The number of non-objector gynaecologists has been decreasing over the last 10 years: from 1,900 in 2001 to 1,500 in 2013. The Health Ministry maintains that the number is adequate given the number of abortions and that the number of objectors does not impact on women's access to safe abortions but in practice – as recently highlighted by the European Committee of Social Rights (ECSR)¹⁸ – many women face hurdles trying to gain access to abortion facilities in their regions and are thus forced to go abroad or to bypass the authorities and undergo an illegal abortion.

¹⁶ No national mapping of such structures is conducted, but [the 2015 Women Against Violence Europe \(WAVE\) report](#) documents 140 anti-violence centres and 73 shelters for victims of violence

¹⁷ Ministero della Salute, *Relazione sull'attuazione della Legge 194/78* (2015)

¹⁸ ECSR, *Decision on Complaint No. 91/2013* (2015)

Recommendations

- Create a National Observatory on Violence Against Women responsible for coherent data collection on violence against women and femicide, application of relevant legislation, penalties imposed on the perpetrators, and remedies provided to victims;
- Ensure that the Special Plan leads to concrete and tangible improvement in the prevention of violence against women including by ensuring that: (i) the impact of the plan is monitored and evaluated regularly on the basis of comprehensive data; (ii) there are adequate human and financial resources to effectively implement the plan;
- Ensure adequate funding and resources to anti-violence centres and shelters;
- Take all steps necessary to ensure women's adequate access to abortions all over the national territory, also by intervening on the territorial organization of health-services.

Accountability for excessive use of force and torture (art. 6, 7 and 26)¹⁹

Excessive use of force

The use of excessive force by law enforcement officials remains a critical issue, especially in the context of migrant identification procedures under the so-called hotspot approach. Prior to 2015 Italy had limited success in getting fingerprints from people who refused because they wanted to claim asylum in other countries and thus the EU implemented a new approach, imposing a 100% fingerprinting target on Italy and recommending the use of force where necessary to obtain them. As argued by a recent Amnesty report²⁰, “meeting this target has pushed Italian

¹⁹ This section is a joint submission with Associazione Antigone

²⁰ Amnesty UK, *Hotspot Italy* (2016)

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authorities to the limits – and beyond – of what is permissible under international human rights law”. The “hotspot approach” – included in the 2015 European Agenda for Migration and firstly implemented in Italy and Greece – regulates identification, fingerprinting and registration of migrants by EU officers in collaboration with national authorities. NGO reports have denounced a significant number of episodes of violence and intimidation – and also some allegations of torture²¹ – during fingerprinting operations²². Accountability is a vital element of policing and is still not yet fully ensured in Italy. In fact, not enough measures have been taken to put an end to impunity for police and law enforcement officials involved in excessive use of force, torture and ill-treatment. No specific code of conduct has been adopted and the government failed to introduce identification tags on the uniforms of law enforcement officers that would facilitate accountability for abuse²³. Concerns remain about lack of accountability for deaths in custody, as highlighted by many notable cases in the last years and most recently by new developments in the case of Stefano Cucchi²⁴.

Torture criminalization

Torture is still not a crime under Italian law, despite the fact that the duty to criminally sanction torture is unequivocally stated in various international treaties which Italy has signed and ratified (most notably the 1984 UN Convention Against Torture and the 1953 European Convention on Human Rights).

²¹ Amnesty UK, *Hotspot Italy* (2016)

²² Oxfam Italia, *Hotspots, Rights Denied* (2016); ECRE and others, *The implementation of hotspots in Italy and Greece* (2016)

²³ Italy has been recommended to introduce such identification tags many times, most lately with regard to the specific context of a foreign nationals joint removal operation by the Committee for the Prevention of Torture (CPT). See: CPT/Inf (2016) 33 - §40

²⁴ Stefano Cucchi died while in custody in 2009. His case is now to be reopened after prosecutors declared in January they concluded a second investigation into the death in custody of Stefano Cucchi on October 22, 2009 and that the three Carabinieri police who first arrested Cucchi on are probed for involuntary manslaughter. Two other Carabinieri are also suspected of the crimes of calumny and making false declarations. The case is ongoing

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This state of affairs has been condemned repeatedly by international human rights bodies and courts – most lately in 2015 by the ECtHR which, in its judgment on the *Cestaro v. Italy* case²⁵, condemned Italy for police brutality amounting to torture committed during the infamous raid at the Diaz school in the context of the 2001 Genoa G8 summit. The court condemned Italy both on substantive and procedural grounds: not only for the violences perpetrated on the demonstrators, but also because Italy lacks appropriate legislation to punish the crime of torture – a situation which *de facto* ensured impunity for the police officers responsible for the violence.

After the judgement the Italian government pledged to finally fill the *vacuum* as a matter of priority but the draft law has been stuck for months before the Senate and is not likely to pass through at this point. Furthermore, the proposed text would still not comply with international law obligations as it asks for “reiterated acts” for a conduct to be deemed as torture and makes the offense a common crime, rather than one specific of public officials.

The unwillingness of the Italian State to comply with the CAT and the ECtHR judgements to introduce the crime of torture in the penal code is also evident from the tentative of friendly settlement proposed in relation to the Asti case²⁶, which is now at the ECtHR²⁷.

²⁵ *Cestaro v. Italy* (App 6884/11) (2015) ECHR

²⁶ The government, in order to avoid another negative sentence, instead of waiting for the ECtHR judgment, offered a monetary compensation to the two detainees who had been victims of torture; however the proposal was rejected by the ECtHR, which will proceed to issuing a judgement for this case

²⁷ In December 2004 two men detained in Asti prison were put in solitary confinement, stripped of their clothes, denied food and sleep, insulted and beaten for days by the penitentiary police. Because of the absence of a specific crime of torture, the judges – despite recognizing that the mistreatment of the two men amounted to torture – were unable to condemn anyone for what happened. Antigone’s lawyers took part to the proceedings as plaintiff at the internal trial and later, along with Amnesty International Italia, helped the two detainees in the preparation and submission of the appeal to the ECtHR and at the end of November 2015, the Strasbourg judges admitted the case for violation of Article 3 ECHR

The lack of a crime of torture also puts Italy at risk of becoming a safe haven for torturers, as demonstrated by the recent Reverberi case²⁸. Moreover, it endangers the outcome of trials regarding crimes against humanity, as in the Plan Condor trial²⁹.

Recommendations

- Take all steps necessary to ensure that migrant identification and registration procedures fully respect human rights;
- Forbid the use of coercive measures – violence, intimidation, prolonged detention – to force migrants to comply with photo-identification and fingerprinting procedures;
- Adopt the Code of Conduct for Law Enforcement Officials as demanded by the UN General Assembly in
- A/RES/34/169;
- Introduce identification tags on the uniform of law enforcement officers;
- Incorporate the crime of torture into the Italian Criminal Code, in line with art. 1 of the UN Convention Against Torture.

²⁸ Franco Reverberi is a catholic priest subject to an Interpol international warrant under the accuse of having committed torture during Videla dictatorship in Argentina. He could not be extradited from Italy as the imprescriptible crime of torture is not recognized by Italian criminal law and all the other charges against him are prescribed (Cassazione Penale, sez. VI, sentenza 4/11/2014, n° 46634)

²⁹ Corte d'Assise di Roma, sez. III, sentenza 17/01/2017. The Plan Condor was an agreement established during the 1970s and 80s among the governments and intelligence services of the South American military dictatorships, which aimed to annihilate their political opponents. Their security operatives orchestrated a campaign of persecution, abduction, kidnapping, torture and murder. It was possible to hold the trial in Italy because some of the victims were Italian citizens. The Plan Condor trial shows the limitations that Italian justice encounters because of the lack of the crime of torture in the Penal Code. In fact eight of the accused could be prosecuted and sentenced only for the murder of the Italian citizens, but not for the acts of torture they subjected them

Treatment of aliens (art. 2, 7, 9, 10, 13, 24 and 26)

Statelessness and access to citizenship

As highlighted by the Italian Council for Refugees (CIR) 2015 report³⁰ childhood statelessness poses a complex challenge, also because there is a significant lack of reliable data on the phenomenon. Italy has recently ratified the 1961 Convention on the Reduction of Statelessness and Italian law provides a number of solutions to reduce and prevent statelessness of children born on Italian territory. Nevertheless, there are still some consistent legislative gaps and shortcomings in the interpretation of norms by the authorities – which leaves many children born on the Italian territory at risk of inheriting the statelessness status from their parents (as it happens with many children of Roma communities from former Yugoslavia). A draft law on the recognition of the status of statelessness³¹ presented by the Senate Human Rights Commission in collaboration with the United Nations High Committee for Refugees (UNHCR) and CIR would ensure a great improvement through accessible and effective solutions but has been stuck for months despite appeals from human rights organisations. More broadly, access to citizenship poses a challenge for children born in Italy from third-country nationals or arrived in our country at a young age. Italian citizenship is indeed largely based on *jus sanguinis* and according to the current law³² children born in Italy to non-Italian parents must apply for Italian nationality after their 18th, but only if they have lived in Italy continuously for their whole life. The process is particularly long and complicated and leaves many unable to access citizenship, as denounced by the national campaign for citizenship rights “l’Italia sono anche io”. A draft reform³³ which would allow for citizenship on the principle of (tempered) *jus soli* or *jus culturae* has been stuck before the Italian Senate for more than a year.

³⁰ CIR. *Ending childhood statelessness: a study on Italy* (2015)

³¹ DDL S. 2148

³² Law 91/1992

³³ DDL S. 2092

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Organizations members of the “I’Italia sono anche io” campaign have launched a permanent mobilization until the reform finally passes through.

Recommendations

- Establish a coherent data collection mechanism to systematically record cases of statelessness with a view to identifying the full dimension of the phenomenon, the different persons affected as well as the critical issues to be addressed;
- Adopt the draft law on the recognition of the status of statelessness (DDL S. 2148);
- Adopt the draft reform of citizenship law (DDL S. 2092) which would allow for citizenship on the principle of "jus soli or jus culturae".

Collective expulsions, principle of non refoulement and human rights compliance of migration agreements

Italy continues to carry on collective expulsions of migrants to countries of origin or transit despite a number of judgements by the ECtHR³⁴ finding the country in breach of Article 4 of Protocol 4 to the ECHR (which prohibits collective expulsion of aliens). One of the most recent cases – reported by the Italian Association for Juridical Studies on Immigration (ASGI), CIR and the European Council for Refugees and Exiles (ECRE) – is that of the 48 Sudanese nationals deported from the border town of Ventimiglia to Khartoum in August 2016, in violation of the prohibition of collective expulsion as well as of the principle of non-refoulement. This deportation was the first to take place under a much-contested³⁵ Memorandum of Understanding on management of borders and migration signed by Italy and Sudan in August 2016.

³⁴ Most lately in its Grand Chamber judgement on *Khlaifia and Others v Italy* (2016). See also *Hirsi Jamaa and Others v Italy* (2012) and *Sharifi and Others v Italy and Greece* (2014)

³⁵ The Memorandum has been strongly criticised by the Tavolo Nazionale Asilo [a consultation group on asylum comprising Acli, Arci, Asgi, Caritas italiana, Casa dei diritti sociali, Centro Astalli, Consiglio Italiano per i Rifugiati, Comunità di S. Egidio, Federazione delle Chiese Evangeliche in Italia, Medici per i Diritti Umani, Medici Senza Frontiere, Senza Confine]. See ASGI, "Memorandum of understanding between the Italian public security department and the Sudanese national police" (2016)

This agreement belongs to a series of measures taken or to be taken in the framework of cooperation between the Horn of Africa states and the European Union on migration – the so-called Khartoum process – followed up by the EU Emergency Trust Fund launched at the Valletta Summit in November 2015. This process of externalization of European and Italian policies on migration has deep consequences in terms of human rights violation, as documented by a 2016 ARCI report³⁶.

Furthermore, there are grave concerns over systematic human rights violations in the context of the “hotspot approach”: the lack of a clear legal framework for the operation of the hotspots were recently raised several times during the UN Human Rights Office’s mission to Italy in June 2016 and its consequences in terms of human rights violations have been denounced by many NGO reports³⁷. A 2016 report by ECRE and others³⁸ highlighted how the implementation of the approach raises a number of extremely serious concerns: on the one hand, fundamental rights violations in the implementation of identification and registration practices, including the use of arbitrary detention and coercive measures for photo-fingerprinting purposes; on the other hand, impeded access to the asylum process through pre-identification measures conducted by the police immediately after disembarkation, without sufficient information provided and differentiated treatment and returns based on nationality. Furthermore, no constant monitoring of practices takes place in the hotspots that could spot shortcomings and irregularities and ensure human rights compliance.

Recommendations

- Take all steps necessary to ensure that bilateral and multilateral agreements on migration guarantee the full respect of human rights as well as strict compliance

³⁶ ARCI, *Steps in the process of externalisation of border controls to Africa, from the Valletta Summit to today* (2016)

³⁷ Amnesty UK, *Hotspot Italy* (2016); Oxfam Italia, *Hotspots, Rights Denied* (2016)

³⁸ ECRE and others, *The implementation of hotspots in Italy and Greece* (2016)

with the principle of non-refoulement and immediately suspend any bilateral agreement lacking adequate human rights protection;

- In order to reduce the risk of a violation of the principle of non-refoulement, take all steps to ensure that a foreign national is not removed when: i) a court has suspended such removal; ii) a request for suspension of removal is pending before a court; iii) such a request for suspension is legally possible³⁹ ;
- Rigorous monitoring mechanisms, including independent monitoring by international organisations, NGOs, and independent bodies like the newly established Ombudsman for the rights of detainees, should be in place to ensure that the hotspots function is compatible with legal and rule of law standards. Monitoring should cover all practices, from pre-identification to screening, to identification, access to the asylum procedure;
- The access of NGOs and lawyers in the hotspots should be ensured in order to provide information and legal counselling before and during identification and access to the asylum procedure as well as to improve transparency over human rights compliance.

Reception system

Despite the government's commitment to end the "emergency approach" and work toward standardization and improvement of reception conditions, the overwhelming majority of asylum seekers in Italy are still accommodated in Centres for Extraordinary Reception (CAS) rather than in the national System for Protection of Refugees and Asylum Seekers (SPRAR)⁴⁰. The SPRAR network has been growing consistently over the last years but, despite doubling its capacity between 2013 and 2015, is still underdeveloped when compared to actual demand

³⁹ CPT/Inf (2016) 33 - §18

⁴⁰ In 2016 only 23,000 people were hosted in SPRAR (and 13,500 in government-run CARA/CPSA) against 128,000 in temporary reception structures, according to the data most recently reported by the government (CCPR/C/ITA/Q/Add.1 §44). The former structures are usually of small dimensions and always provide comprehensive projects of reception and integration, whereas the latter are big structures with only basic services and substandard accommodation.

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– mostly because local authorities participation to the program remains voluntary and distribution of reception projects dishomogeneous. Reception conditions vary considerably among different centres and, while the SPRAR publishes annual report on its reception system, no comprehensive and updated reports on reception conditions in all the Italian territory are available. With specific regard to CAS, reception conditions have been often reported as substandard and inadequate to ensure respect of human rights⁴¹. Furthermore, recently broken scandals and cases of corruption, such as that one “Mafia Capitale”⁴², highlighted the necessity to constantly monitor the management and conditions of the reception structures.

Recommendations

- Establish a comprehensive monitoring system over management and reception conditions in all centres as well as a coherent data collection and divulgation mechanism;
- Take all steps necessary to enlarge and strengthen the SPRAR with a view to avoid reliance on temporary reception structures.

Unaccompanied minors

The number of unaccompanied minors (UAMs) arriving in Italy have been rising sharply in the last year⁴³. Italian provinces and municipalities struggle to provide thousands of UAMs with adequate reception services and a lot of UAMs end up disappearing from the reception system⁴⁴.

⁴¹ MEDU, “CARA of Mineo: a reception model incompatible with personal dignity” (2015)

⁴² The “Mafia Capital” investigation laid bare allegations of organized crime, bureaucrats and politicians working together to steal millions of euros from public services and especially from refugee centers. According to Italian prosecutors and watchdog groups, criminal groups have often succeeded at rigging the awarding of the contracts for the management of migrant reception centres

⁴³ According to UNHCR data, 13,096 UAMs arrived in Italy in 2014 and 25,846 in 2016

⁴⁴ According to Ministry of Interior data, in 2016 alone 6,500 UAMs went missing in Italy. See Ministero del lavoro e delle politiche sociali, “Report mensile MSNA in Italia” (2016)

Many of these children are without valid identity or residence documents, as these might have been lost or confiscated prior to or during their travel. Being under or over eighteen years makes a crucial difference in the context of migration in Italy in terms of protection provisions – as this this circumstance can drastically change the possibility to legally remain in a country, to be granted safe accommodation, access to education and training, to be appointed a guardian⁴⁵, or to be instead detained, expelled and deported, or to remain in an irregular condition, with very limited access to fundamental rights and exposed to abuses and violations.

The adoption of proper methods for age assessment in the context of separated children is therefore crucial. For too long Italy has failed to define the standards needed so that procedures respect children’s rights and provide them appropriate safeguards. Only in January 2017 the government issued a regulation on age assessment for UAMs⁴⁶ but these norms only apply to minors who have been victims of trafficking.

Recommendations

- Apply by analogy the age assessment regulation to all UAMs, rather than only to those who have been victims of trafficking⁴⁷;
- Review the age assessment procedures, ensuring that the best interests of the child are effectively protected and that the benefit of the doubt is given in cases of age

⁴⁵ UAMs must have a guardian in order for them to apply for asylum. There are concerns about delays in this process

⁴⁶ D.p.c.m. n. 234/16

⁴⁷ As asked by a network of 30 Italian NGOs working in the field: ASGI – Associazione per gli Studi Giuridici sull’Immigrazione, SIMM – Società Italiana di Medicina delle Migrazioni, Save the Children, Amnesty International Italia, UNHCR, AIMMF – Associazione Italiana dei Magistrati per i Minorenni e per la Famiglia, Magistratura Democratica, UNCM – Unione Nazionale Camere Minorili, Fondazione Migrantes, Caritas Italiana, ARCI, ACLI, CIR, CNCA, GdS Gruppo di Lavoro Nazionale del Bambino Migrante della Società Italiana di Pediatria, MSF, Associazione Culturale Pediatri, Oxfam Italia, Terre des Hommes, CCM – Comitato Collaborazione Medica, INTERSOS, Defence for Children International Italia, Naga, Centro Astalli, A Buon Diritto, Osservatorio Vie di Fuga, Coordinamento Non Solo Asilo, Consorzio Farsi Prossimo SCS Onlus, Dedalus, Accoglierete, Associazione Les Cultures, FIMP-Federazione Italiana Medici Pediatri, Gruppo Lavoro Rifugiati onlus- Bari, Coordinamento Regionale per l’Asilo della Lombardia – CRAL

disputes and special protection measures are provided, in accordance with Article 10, paragraph 3, of the Convention, and taking into account the requirements of the UN Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.

“Illegal immigration” and administrative detention in identification and expulsion centers (CIEs)

In 2014 the Government was tasked⁴⁸ with abolishing the offence of irregular entry into or stay on Italian territory but as to today such conducts remain punished under criminal law, notwithstanding widespread consensus on this being wrong and useless⁴⁹. Furthermore, following Chief of Police Franco Gabrielli’s circular on extraordinary provisions related to “illegal immigration” – the first step of “a wider strategy” of the new Minister of the Interior, Marco Minniti, which promises a strict regime regarding irregular immigrants – the discussion on opening new identification and expulsion centers (CIEs) has begun anew throughout the country. Notwithstanding the fact that immigration detention should only be used as a measure of last resort and that there are positive alternatives to immigration detention⁵⁰ – which has instead historically failed – the Italian government wants to make CIEs a core element of its immigration management strategy.

At the administrative detention system’s peak of expansion there were 15 CIEs in Italy with a total capacity for over 2000 detainees. The CIEs have then been gradually abandoned in the past years due to grave legal, humanitarian and practical problems, and currently there are only 4 – Brindisi, Caltanissetta, Rome and Turin – in which around 300 migrants are confined.

⁴⁸ Act 67/2017 of 28 April 2014

⁴⁹ ASGI, *Le buone ragioni per abrogare il reato di clandestinità* (2016)

⁵⁰ The International Detention Coalition (IDC) has undertaken a program of research to identify and describe a number of positive alternatives to immigration detention that respect fundamental rights, are less expensive and are equally or more effective than traditional border controls. IDC, “There are alternatives - revised edition” (2015)

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Over the course of the years, a plethora of reports – both by institutional bodies⁵¹ and NGOs⁵² – have denounced CIEs as inhumane, useless and incredibly expensive. Internment in CIEs lies outside the safeguards provided by the legal penitentiary system and it is regulated only by administrative non-legislative sources. This legal *vacuum* affects people directly.

Paradoxically, detainees in prisons are more protected than the “guests” of the centers for immigrants: 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. For “reasons of security and public order” the Italian Prefectures tend to further tighten up the rules that govern life within the CIE helping to make the detention conditions of migrants even more unbearable and degrading. The detention conditions in CIEs are so deplorable, unbearable and degrading – significantly worse than those of penitentiary facilities – that in 2012 the Court of Milan and the Court of Crotone⁵³ 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.

It is also to be noted that majority of people in CIEs have already been detained in prisons but got interned because it was not possible to identify them during their detention. A law to overcome the problem of “double punishment” was adopted in 2013, amending the system of deportation as an alternative measure to detention and providing for a speeding up of the documenting process. To date, the actual impact of this legislative measure has been hard to measure, since, as pointed out

⁵¹ Commissione Parlamentare d’Inchiesta per le verifiche e le strategie dei Centri per gli immigrati, *Rapporto De Mistura* (2007); Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, *Rapporto sui centri di identificazione e espulsione in Italia* (2016)

⁵² Medici per i diritti umani, Arcipelago CIE (2013); LasciateCIEntrare, *Accogliere: la vera emergenza* (2016)

⁵³ Trib. Milano, 18.7.2012, sez. I pen., Pres. Mannucci, Est. Freddi e Trib. Crotone, 12.12.2012, Giud. D’Ambrosio

in the 2016 CIE update report of the Senate's Extraordinary Commission for the protection and promotion of human rights (ECPHR), 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".

Recommendations

- Abolish the criminal offence of irregular entry into or stay on Italian territory;
- Refrain from expanding the system of administrative detention of third-country nationals in CIEs and work towards its progressive dismantlement;
- Use detention of third-country nationals only in *extrema ratio* (as a last resort) and ensure community options are as effective as possible;
- Regulate the rights of people interned in CIEs through primary legislation;
- Guarantee press and NGOs the right to access CIEs to ensure transparency;
- Put in place a rigorous monitoring mechanisms, including independent monitoring by international organisations, NGOs, and independent bodies like the Ombudsman for the rights of detainees.

Trafficking in persons (art.8)

Italy has adopted its first National Action Plan against Trafficking and Serious Exploitation of Human Beings in February 2016. That notwithstanding there are persisting issues as regards the identification of victims of trafficking in human beings (THB): there still are neither a clear procedure for the screening of persons placed in CIEs for trafficking indicators nor qualified personnel with the necessary skills to identify victims of trafficking. Recent data register increased arrival of

⁵⁴ See BeFree. *INTER/ROTTE. Storie di Tratta, Percorsi di Resistenze* (2016)

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women and girls from Nigeria to Italy⁵⁴, the huge majority of whom appeared to be victims of human trafficking⁵⁵, and frequent cases of unaccompanied children disappearing from the reception centres. The European Group of Experts against THB (GRETA) has recently published a report⁵⁶ expressing great concern over cases in which possible victims of trafficking in human beings were being returned from Italy to Nigeria on forced return flights⁵⁷ – as already reported by the CPT⁵⁸ – as well as over the broader situation with regard to the providing of assistance and protection to victims of THB. CILD, who took part to consultations with GRETA, welcomes and reiterates the recommendations made by the Group of Experts.

Recommendations

- Ensure that the National Plan leads to concrete and tangible improvement in the prevention of TBH;
- Improve the identification of victims of trafficking among migrants and asylum seekers, including by: i) setting up clear, binding procedures to be followed and providing systematic training of immigration police officers and staff working in first aid and reception centres (CPSA or “hotspots”), accommodation centres (CDA), CIE and centres for accommodation of asylum seekers (CARA); ii) further involving NGOs and international organisations in the identification of victims of trafficking, including by giving them expanded access to hotspots, reception centres and CIE;
- Increase and strengthen as a matter of priority the capacity of victim support programmes, both for adult and for children;

⁵⁵ IOM's survey of 2 783 migrants who had arrived in Italy along the Central and Eastern Mediterranean routes between December 2015 and September 2016 revealed that 71% of those interviewed showed at least one indicator of having been trafficked or exploited for profit by criminals at some point on their journey. IOM, *Flow Monitoring Surveys*, 2016

⁵⁶ GRETA, *Report on Italy*, 2016

⁵⁷ GRETA expressed grave concerns about the manner in which the forced removals of possible victims of human trafficking are conducted, the lack of transparency, the lack of information given to the persons concerned, their lawyers and interested NGOs, and the methods of forced repatriation used

⁵⁸ In the context of the the monitoring of a so-called joint removal operation of 28 Nigerian# from Rome to Lagos in 2015. CPT/Inf (2016) 33

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- Review the legislation in order to ensure that there is an automatic suspensive effect of appeals against removal orders and to provide the persons to be removed, their lawyers and NGOs working with them with full information of the planned removal operation;
- Conduct individual risk assessments prior to the return of trafficked persons to their countries of origin, in co-operation with the countries of return, international organisations and NGOs, with a view to ensuring compliance with the non-refoulement obligation.

Exploitation of migrant workers

Abusive working conditions and labour exploitation of migrant workers, especially in the agricultural sector, remain a grave concern. Trade unions say that more than 300,000 foreign workers are subject to extreme exploitation across the country⁵⁹ and especially in the Southern regions under the so-called “caporalato” system. New legislation passed last year⁶⁰ promises a crackdown on the phenomenon imposing mandatory prison terms, fines and assets seizures for those recruiting and exploiting migrant workers.

Recommendations

Ensure that the law leads to concrete and tangible improvement in the prevention of labour exploitation of migrant workers including by ensuring that the impact of the plan is monitored and evaluated regularly on the basis of comprehensive data.

⁵⁹ FLAI CGIL, *Osservatorio Placido Rizzotto*, 2016

⁶⁰ Law 199/2016

Right to liberty and security of persons, treatment of persons deprived of liberty, fair trial (art. 9, 10)

Prison overcrowding

In July 2009 Italy was condemned by the ECtHR for violation of Article 3 in the *Sulejmanovic* case⁶¹, which revealed for the first time the grave overcrowding conditions in Italian prisons. After the *Sulejmanovic* sentence, thousands of actions⁶² were filed by detainees who were in the same conditions of detention. In January 2010 a state of emergency in relation to the penitentiary system was declared: at that time there were around 68,000 detainees, with an official overcrowding rate of 153%. In reality, things were even worse: as denounced by Antigone's Observatory on Italian prisons⁶³, the official accommodation capacity on which the estimate was based also included closed jail sections and the real overcrowding rate, as later recognized by the Ministry itself, has reached 175% – the highest among the EU countries.

In January 2013, Italy was sentenced by the ECtHR in the historic *Torreggiani* case⁶⁴ – a pilot-judgment which recognized the systemic and non-occasional character of the degrading life conditions in the Italian jails. The court required Italy to solve the problem of overcrowding within one year, as well as to put in place both a mechanism apt to suspend the inhuman and degrading treatment while underway and a mechanism of compensation for prisoners who have suffered it.

⁶¹ *Sulejmanovic v. Italy*, Appl n° 22635/03 (2009). The detainee of Bosniak origin Mr. Sulejmanovic had to share his cell with six other prisoners for two and a half months in the Rebibbia Jail in Rome. Each of them had about 2.7 square meters at his disposal

⁶² Circa 4,000, more than one quarter of which has been directly helped by Antigone's lawyers

⁶³ In 1998 Antigone received from the Ministry of Justice a special authorization to visit prisons with the same power that the law gives to parliamentarians. Every year Antigone publishes a Report on the Italian penitentiary system

⁶⁴ *Torreggiani and others v. Italy*, Appl n° 43517/09, 46882/09, 55400/09 et al (2013) ECHR

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In order to tackle the issue of conditions of detention, the Ministry of Justice instituted three special committees on penitentiary issues: two of them had to elaborate legislative measures against prison overcrowding and the third one had the task of effectively intervene with non-normative measures on the prison quality of life. On the normative side, two significant Decree Laws have been issued during 2013 by the Italian Government – limiting the use of pre-trial detention; strengthening alternative measures to detention were strengthened; raising the reduction of penalty to which well-behaving prisoners can have access was raised from 45 to 75 days for semester; reducing penal sanctions for possession of small amounts of drugs; setting judicial mechanisms of protection of prisoners’ human rights and instituting the national Ombudsman of people deprived of their freedom. The measures developed by the third committee consisted primarily in imposing an open cell regime in medium security circuits⁶⁵, redesigning prisons’ spaces⁶⁶ and facilitating contacts between prisoners and relatives⁶⁷. These reforms in the prison life are gradually – but not everywhere – taking hold⁶⁸ and are at the core of that reorganization of the prison system that the Government has in mind in order to make the prison life conditions comply with the European standards. The increased use of alternative measures and the introduction of the “messa alla prova” as an alternative to pretrial detention diminished the number of pre-trial detainees⁶⁹ but there are still serious concerns regarding the percentage of detainees who are not serving a final sentence, which at the end of 2016 is of 34.61% (10% over the average of the other States of the Council of Europe⁷⁰).

⁶⁵ Cells are here to be closed only at nighttime, with at least eight hours per day ensured each day

⁶⁶ Creating spaces where the prisoners can spend the daytime together by organizing prisons like small towns where all the services are available in different common places

⁶⁷ Through a flexible management of visits and phone calls and the use of new technologies ⁶⁸ Cassazione Civile, sez. I, sentenza 22/06/2016 n° 12962

⁶⁸ In 2015 the provision of the open cells was implemented for the 86% of the medium security prisoners, that is to say around 39,000 detainees. The second measure, requiring structural interventions, is much harder to be implemented

⁶⁹ Ministry of Justice, *Number of detainees per legal position: 2008 - 2016*

⁷⁰ Council of Europe, SPACE I 2014 5.1, the CoE mean of detainees not serving a final sentence in 2014 was of 25.7%

The reforms accomplished after the Torreggiani judgment are now ending their effects on overcrowding. In fact, notwithstanding the measures adopted after the judgment, between the December 31, 2015 and December 31, 2016 the number of detainees⁷¹ raised from 52,164 to 54,653 and the official overcrowding rate augmented to almost 109%, showing the need of a deeper reform of the penitentiary law. Within the prison system, the situation of each institution⁷² varies consistently, some presenting very low overcrowding rates and a few of more than 150%.

Foreigners

Foreigners represent the 34% of the prison population. They are usually detained for minor offences⁷³, but receive on average harsher sentences than Italians for those same crimes and encounter difficulties to access non custodial preventive measures and external alternative justice measures. A 2015 research⁷⁴ showed that this is due to mainly to the prejudices of Italian judges, in fact on average they tend to trust foreigners less than Italians, therefore they are more prone to inflict them a prison sentence instead of granting them alternative measures. The issue of alternative measures is also linked to factual problems, such as the lack of residence appropriate for home-detention sentencing.

Once they enter the prison, foreigners face even more discriminations, as the Italian prison system doesn't take into consideration the needs of non-italian detainees (e.g. food habits, clothing, religion). A very grave issue is the lack of cultural mediators, who could facilitate the dialogue between the penitentiary police and foreigner detainees.

⁷¹ Ministry of Justice, *Number of Italian and foreign detainees: 1991 - 2016*

⁷² Ministry of Justice, *Number of Italian and foreign detainees and institutions' capacities*

⁷³ Drug or prostitution related crimes, as well as violation of immigration law

⁷⁴ P. Gonnella, *Detenuti stranieri in Italia. Norme, numeri e diritti* (2015)

Religious minorities & radicalization

Serious concerns arise in relation to the issue of religious minorities, and especially with the Islamic faith. Only 47 Imams⁷⁵ have been authorized to enter prisons and lead the Friday prayer, despite the presence of more than 6,000 detainees who declared themselves as Muslims⁷⁶. Further, the Catholic chaplain is paid as staff by the State while Imams and pastors are volunteers. The DAP affirmed that there are 375 radicalized prisoners in Italian prisons, but it is not clear which are the parameters to define them as radicalized. There are no deradicalization programs to be carried out in prisons. Radicalized muslim detainees are usually held in separate sections, and Imams are not granted the authorization to meet with them. Even in these sections the penitentiary administration is not organized to have translators or cultural mediators⁷⁷ always available to communicate with the inmates.

Health

Prisoner healthcare suffers from lack of personnel, equipment and resources. Prison doctors are also members of disciplinary boards, thus creating conflicts of interest and confidentiality problems. Medical records are generally difficult to access and poorly kept; for this reason the third reform committee encouraged the adoption of digital medical records⁷⁸. The state of health of inmates and the rate of infectious diseases in prison are alarming. In 2015 according to data by Società Italiana Medicina e Sanità Penitenziaria⁷⁹, 60% to 80% of detainees were ill with one or more diseases, 48% of them suffered of infectious illnesses in prison and

⁷⁵ Ministry of Justice, *Religions*

⁷⁶ This is likely to be underestimation, as there are 15,000 detainees who have not declared their faith - amongst which many it is plausible to think are included Muslims who prefer not to speak out as the simple declaration to belong to the Islamic faith automatically poses the inmate under a special supervision for radicalization risks

⁷⁷ In the whole Italian prison system there are only 39 cultural mediators and 28 assistant-volunteers, who are entrusted to deal with detainees of Islamic faith

⁷⁸ Commissione Ministeriale per le Questioni Penitenziarie, *Relazione al Ministero di Giustizia sugli Interventi in Atto e gli Interventi da Programmare a breve e medio termine* (2013)

⁷⁹ SIMSP, *L'Agorà Penitenziaria 2016. XVII Congresso Nazionale SIMSPe-ONLUS*

32% had mental health problems. One third of the prison population was affected by hepatitis.

A recent research carried out in 2015 by Agenzia regionale di sanità della Toscana shows that among the detainees with mental health issues, half of them has a pathology related to substance dependency, the 27.6% suffers from neurotic disturbs and adaptation reaction, and the 9% from alcohol-related mental issues⁸⁰. The data regarding the medicines used in penitentiary institutions is reveals that the 46% of the prescriptions are related to psychiatric pathologies, such as anxiety, psychosis, seizures and depression⁸¹. After the progressive closure of the Judicial Psychiatric Hospitals (OPG), the issue of excessive use of “psychiatric sections”⁸² made by the prison administration has emerged⁸³.

Suicides in detention

According to data by DAP elaborated by Ristretti Orizzonti⁸⁴, in 2015 there have been 43 suicides and 956 attempted suicides, as well as 7,029 episodes of self-harm. A conference between State and Regions on the reduction of self harm and suicidal acts among the detainees was held in 2012 and elaborated a prevention system that follows the guidelines of the World Health Organization. However this system is based on agreements between the Regional “Provveditorati” of Penitentiary Administration and each Region and other agreements between

⁸⁰ Agenzia regionale di sanità della Toscana, *La Salute dei Detenuti in Italia: i risultati di uno studio multicentrico* (2015), p.76

⁸¹ Agenzia regionale di sanità della Toscana, p.89

⁸² Associazione Antigone, *GALERE D'ITALIA. XII Rapporto di Antigone sulle condizioni di detenzione*

⁸³ In fact at times detainees who are perceived as “difficult” are transferred to the “psychiatric section”, notwithstanding the absence of any diagnosed mental health issue. There also concerns on the effective quality of the health services guaranteed in these sections: the systematic lack of psychiatrics, psychologists and medical staff often corresponds to a massive use of psychiatric drugs. In some of these sections the remnants techniques are still used daily

⁸⁴ Ministry of Justice, *Eventi critici negli Istituti Penitenziari* (2015)

each Penitentiary Institute and the local health institutes. These agreements vary in content and only sometimes adhere to the WHO guidelines. In May 2016 the Minister of Justice issued a directive in order to draw a National Plan for the Prevention of Suicides in Detention, which will take in consideration the WHO guidelines, and whose implementation is yet to be evaluated.

National Ombudsman on the Rights of the Detainees and Prisoners

The Ombudsman was created in 2013⁸⁵ and started functioning in 2016. It is a collegial body composed by three members – including its first president, Mauro Palma – with the aim to visit all places of detention (prisons, migrant centers, REMS etc.) in order to prevent any risk of torture and of inhuman and degrading treatment as well as to monitor the repatriation flights that take place under the 2008 EU Directive. The Ombudsman is reliant on the Ministry of Justice for financial resources and staff, which may pose significant obstacles to its future independence.

Article 41-bis regime

In 2016 there were 726 detainees subjected to 41 bis regime. The conditions of this special regime are very harsh⁸⁶ and have been criticized by the CPT^{87,88} and the ECHR⁸⁹. In 2016 the Extraordinary Commission for the Protection and Promotion of Human Rights of the Senate produced a report⁹⁰ highlighting many points of concern.

⁸⁵ Law decree 146/2013

⁸⁶ 22 hours per day are spent in isolation, with only 2 hours daily being spent either outside or in "sociality rooms" in small groups (3 to 4 people). Correspondence is not confidential and censored; contacts with the family are constrained (no more than four visits per month) and exchangeable with a 10-minute phone call per month

⁸⁷ CPT, Report to the Italian Government on the visit to Italy carried out by CPT (2008)

⁸⁸ CPT, Report to the Italian Government on the visit to Italy carried out by CPT(2012)

⁸⁹ Among the others *Enea v. Italy* Application n° 74912/01 (2009); *O spina-Vargas v. Italy* n° 40750/98 (2004)

⁹⁰ ECPPHR, *Rapporto sul regime detentivo speciale del 41 bi*" (2016)

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A serious issue raised by the Commission and shared by Antigone⁹¹ regards the presence of many restrictions, whose ratio seems to be purely oppressive, without a real link to the necessity to prevent and eradicate any relationship with the criminal organization. These restrictions have also the grave effect to compress the right to a fair trial.

Closure of Judicial Psychiatric Hospitals

The closing down of Judicial Psychiatric Hospitals (OPG) is still an ongoing process, which relies on the opening of Centers for the Enforcement of Security Measures (REMS)⁹². REMS are smaller than OPGs⁹³, well distributed on the territory⁹⁴ and “health-oriented”: only medics and paramedics can work inside the facilities, while security staff must enter only in case of emergency.

A National Commissioner of the Government for the overcoming of OPGs was appointed by the Council of Ministers in February 2016 and released two reports⁹⁵, raising concern on the lack of available places in some regions and the consequent need to transfer some patients to structures located out of their region of residence, which is especially problematic for women (as many structures are not equipped to host them). Another concern regards the differences that exist among the regulations of REMS, and the consequent lack of uniformity in treatment of patients. In deed most of them are still organized as penal-institutions and not as hospitals open to the community as set by law.

⁹¹ *Galere d'Italia, XII Rapporto di Antigone sulle condizioni di detenzione (2016)*

⁹² Decided by law n. 81/2014

⁹³ Holding no more than 20 patients each

⁹⁴ There should be at least 2 in each region

⁹⁵ Corleone F., *Relazione semestrale sull'attività svolta dal Commissario unico per il superamento degli Ospedali Psichiatrici Giudiziari* and *Seconda relazione trimestrale sull'attività svolta dal Commissario unico per il superamento degli Ospedali Psichiatrici Giudiziari*

LGBT prisoners

Homosexuality in prisons is not acknowledged by existing penitentiary laws or referenced in any official capacity, therefore no specific conditions of detention are envisaged and no official data on LGBT prisoners exists. As a result LGBT prisoners often face discrimination, sometimes caused by the very remedies that the prison administrations puts in place to protect them. The establishment of unofficial sections to host LGBT detainees for protection purposes is at the discretion of each prison administration. However, because of the lack of personnel, the placement in these protected sections can lead to exclusion from activities inside prison and isolation, transforming a protective measure in a discriminatory treatment⁹⁶. Another serious concern is represented by the treatment of transgender detainees in male prisons, as they cannot access the activities for the other inmates and thus live in a de-facto segregated regime.

Solitary confinement

Solitary confinement remains a serious issue. The Italian penitentiary law⁹⁷ allows three types of solitary confinement⁹⁸, making it quite common. The use of solitary confinement as a disciplinary measure is particularly widespread⁹⁹, and it also applies to minors in juveniles – despite the fact that, as documented by Antigone¹⁰⁰, this is a very dangerous practice, leading to psychological damages on inmates and also favouring mistreatment by the penitentiary police.

⁹⁶ As it indeed happened in Gorizia in 2016 and reported by the Garante Nazionale. Ombudsman, *Rapporto sulla visita alla Casa Circondariale di Gorizia* (CC14) (2016).

⁹⁷ Art.33 L. 354/1975

⁹⁸ For disciplinary reasons, not exceeding 15 days; for health reasons, as prescribed by physicians; for judicial reasons, if the judge deems it necessary for the trial

⁹⁹ In 2015 it was inflicted 7,307 times. Antigone, *Non isoliamo i diritti* (2015)

¹⁰⁰ Antigone, *Ecco perché l'isolamento fa male* (2016). More recently a case of violence in the prison of Ivrea was signalled to Antigone, which called for an investigation of the authorities. The Ombudsman carried out a visit in the prison and confirmed the presence of two "smooth cells" in the prison. The DAP ordered the immediate closing of the two cells. In addition the CPT made a visit to the prison of Ivrea

Right to a fair trial

Regarding the right to a fair trial in the Italian criminal procedure and practice, Antigone points out two main issues: one issue concerns the first hearing after the arrest, when the first decision is made in regard of deprivation of liberty.

An unfair hearing can lead to unjustified deprivation of liberty and even putting at risk the ability of the defendant, when deprived of liberty, to participate effectively to his trial. The fairness of the first hearing is jeopardized by the inequality of the means available to the parties¹⁰¹ and the lack of instruments for the judge to overcome this inequality¹⁰². Also, looking at the demographic profile of the recipients of pre-trial detention orders and of detention sentences, a strong disparity between EU and non-EU citizens clearly emerges. In these specific cases the role played by the defender is not enough to guarantee the effective participation of the defendant who doesn't speak Italian, also because of the only partial implementation of Directive 64/2010/EU. Unless this Directive will be fully implemented, it can be said that the right to a fair trial for defendants who don't speak Italian is often at risk. The second issue concerns the right to access to a lawyer – which is far from satisfactory with regard to legal aid and “appointed” lawyer. Legal aid is governed by Decree 115/2002 and article 98 of c.p.p.. It enables the “indigents” to qualify for free legal assistance to promote or defend themselves in civil or criminal proceedings. With legal aid the lawyer fees are paid for by the State. However, the financial threshold for indigence is very low, and as a consequence many defendants who do not qualify for legal aid are nevertheless unable to pay for an effective and qualified defence.

¹⁰¹ Lawyers have little time to prepare for the first pre-trial detention hearing and reasoning of decisions appear formalistic and relying excessively on the evidence provided by the prosecutor

¹⁰² This is true in particular with regard to the absence of a legal provision requiring that, together with the notification of the date of the hearing, the lawyer should also receive the prosecutor case file to have adequate time to prepare the defence. As regards the procedure, it is also relevant the absence in court, at the first hearing for the application of the measure and for the entire trial, of social services that could bridge the gap between the prosecution and the defence and support the judge in his/her decision. The presence of social services could prevent the detention of a vulnerable defendant that, with the support of these professionals, could access other alternatives to imprisonment from the first hearing

Besides, legal aid lawyer are paid by the State with huge delays, many years after the beginning of the proceedings, and this discourages many layers to take cases under the legal aid scheme. The “appointed” lawyer, on the contrary, is a lawyer appointed by the state to defend the accused that has not appointed a lawyer of choice yet, in order to ensure the right to technical defence in any criminal trial. That lawyer must be paid by the accused, and not by the State, but the accused can instruct a lawyer of choice at all times. The issue with the “appointed” lawyer regards quality of the defence. Although the problem is rarely denounced, in fact it is well known to experts and practitioners in the field that those lawyers can provide a legal defence that is not always up to the professional standards. Controls on this issue are very limited and besides, in particular in the case of vulnerable defendants, they tend to confuse the two systems. They might accept an inadequate defence by the “appointed” lawyer because they believe this is in fact legal aid, and that therefore the lawyer will be paid for by the State.

Recommendations

- Reform the penitentiary law,. In particular consider to:
- Apply the recommendations of the third committee on penitentiary issues in particular regarding dynamic surveillance and open prison life;
- Extend the use of alternative measures and provide them with adequate personnel and funding to the Offices for Alternative Measures so that they carry out their mandate;
- Insure the rights of foreign detainees with regard to everyday basic needs and set up specific activities for them;
- Guarantee specific rules and rights for female prisoners;
- Guarantee specific rules and rights for juvenile prisoners and ban solitary confinement for them;
- Limit the use of solitary confinement for adults;
- Reform the legislation on drugs, which is one of the main sources of prison overcrowding;
- Make sure that enough cultural mediators and translators are employed by DAP to facilitate the communication between the prison authorities and the inmates;
- Guarantee religious rights to everybody and not only to catholic prisoners;

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- Make prisons more accessible to entrusted Imams, so that muslim detainees can have a reference person that they trust and the prison authorities can better communicate with those belonging to the Islamic faith;
- Avoid the segregation, victimization and stigmatization of radicalized muslims and organize social programs of deradicalization involving translators, cultural mediators and Imams;
- Improve penitentiary health system by increasing medical facilities and staff numbers;
- Take further steps to close down all OPGs promptly as required by law;
- Consider to destine REMS only to patients with a definitive security measure;
- Review the Article 41-bis regime to eliminate those oppressive restrictions, which negatively impact on the right to a fair trial and which don't have a real link to the necessity to prevent and eradicate any relationship with the criminal organization;
- Make sure that the extension of the 41-bis regime is carefully reviewed in each case with a special regard to older detainees;
- Put in place a functioning mechanism of suicide and self-harm prevention;
- Give to the National Authority appropriate personnel and economic means to carry out its mandate as a fully independent body;
- Acknowledge the presence of LGBT prisoners and make sure that they are not excluded from the activities or discriminated in treatment;
- The State administration should provide the funding for the construction and the management of family houses for women prisoners with children, that are now delegated to local administrations;
- Take all necessary steps to make sure that the first hearing after arrest are more fair and that the EU Directives on the rights of suspects and accused people are entirely implemented;
- Review the conditions to access legal aid and reduce the length of time that lawyers have to wait to be paid for their work;
- Address the problem of the quality of ex officio lawyers.

Freedom of Information (art. 19)

The right to freedom of information has been called 'the oxygen of democracy', essential for openness, accountability and good governance. Italy has long been lagging behind with regard to ensuring access to information and has only adopted a Freedom of Information Act (FOIA) in 2016¹⁰³. "The first Italian FOIA" was welcomed by Foia4Italy, a network made up by more than 30 civil society organizations - including CILD and its member Diritto di Sapere - that campaigned for the decree and logged 88,000 names on a petition for the decree. Furthermore, the approval of the FOIA has greatly improved Italy's positioning in the Right to Information Rating Index (from 97th to 54th place). Nevertheless, the law is still far from perfect. Access Info Europe has expressed concern that Italy's newly-adopted "FOIA" still falls far behind international standards, as it forces requesters to go through the infamously-slow Italian court system in order to challenge non-disclosure of information, making it difficult to hold public officials accountable and near-impossible for citizens to participate in decision-making processes.

Recommendations

- Closely monitor the implementation of the new law;
- Put in place effective remedies and sanctions to prevent and redress violations of the right to access to information;
- Spread awareness on the law informing civil servants and the general public.

¹⁰³ DL 97/2016

Right to privacy (art. 17)¹⁰⁴

The Italian Personal Data Protection Code establishes in Section 123(2) that providers “shall be allowed to process traffic data that are strictly necessary for contracting parties’ billing and interconnection payments for a period not in excess of six months”.

Section 132 of the Act establishes an exception to that rule for purposes of crime prevention, noting that:

“telephone traffic data shall be retained by the provider for twenty-four months as from the date of the communication with a view to detecting and suppressing criminal offences, whereas electronic communications traffic data, except for the contents of communications, shall be retained by the provider for twelve months as from the date of the communication with a view to the same purposes. The data related to unsuccessful calls that are processed on a provisional basis by the providers of publicly available electronic communications services or a public communications network shall be retained for thirty days.”¹⁰⁵

Such data may then be acquired from the provider by means of an order issued by the public prosecutor.

In connection with investigations of serious crime, the Anti-Terrorism Decree¹⁰⁶, as was amended on 24 February by a subsequent decree (Milleproroghe decree¹⁰⁷),

¹⁰⁴ This section is a joint submission with Privacy International (see submission by Privacy International)

¹⁰⁵ Cassazione Civile, sez. I, sentenza 22/06/2016 n° 12962

¹⁰⁶ Personal Data Protection Code, Legislative Decree no. 196, Section 132 (Traffic Data Retention for Other Purposes) (30 June 2003)

¹⁰⁷ Decreto-Legge 18 febbraio 2015, n. 7, supra note 5, at 4-bis

¹⁰⁷ Decreto-Legge 30 dicembre 2016, n. 244, Proroga e definizione di termini

compels telecom operators to retain already collected data until 30 June 2017 and beyond the times allocated in the Personal Data Protection Code. Retention terms under Article 132 will then be either reinstated or prolonged even further, as the Government has not yet indicated its intentions.¹⁰⁸

The Committee has already recommended that State Parties should “refrain from imposing mandatory retention of data by third parties”¹⁰⁹. This recommendation is further reinforced by the recent judgment of the Court of Justice of the European Union in the Tele2/Watson Case. Firstly, that judgment reaffirmed and expanded on the invasive nature of metadata collection in the context of the right to privacy:

“That data, taken as a whole, is liable to allow very precise conclusions to be drawn concerning the private lives of the persons whose data has been retained, such as everyday habits, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relationships of those persons and the social environments frequented by them. In particular that data provides the means... of establishing a profile of the individuals concerned, information that is no less sensitive, having regard to the right to privacy, than the actual content of communications.” (emphasis added)¹¹⁰

¹⁰⁸ See The Data Retention Saga Continues: European Court of Justice and EU Member States Scrutinize National Data Retention Laws, Jones Day (August 2016)

¹⁰⁹ Concluding Observations of the Fourth Periodic Report of the United States of America, Human Rights Committee, U.N. Doc. CCPR/C/USA/CO/4, para. 22 (23 April 2014); See also Concluding Observations on the Initial Report of South Africa, Human Rights Committee, U.N. Doc. CCPR/C/ZAF/CO/1, para. 43 (27 April 2016) (“The State Party should... consider revoking or limiting the requirement for mandatory retention of data by third parties...”)

¹¹⁰ Tele2 Sverige AB v. Post- Och telestyrelsen (C-203/15); Secretary of State for the Home Department v. Tom Watson et. al. (C-698/16), Joined Cases, Court of Justice of the European Union, Grand Chamber, Judgment, para. 99 (21 December 2016). This position is in line with the Committee’s approach to indiscriminate gathering of metadata as reflected for example in Concluding Observations on the Seventh Periodic Report of Poland, Human Rights Committee, U.N. Doc. CCPR/C/POL/CO/7 (4 November 2016)

As relating to access to retained data the Court took the position that:

“it is essential that access of the competent national authorities to retained data should, as a general rule, except in cases of validly established urgency, be subject to a prior review carried out either by a court or by an independent administrative body, and that the decision of that court or body should be made following a reasoned request by those authorities submitted, inter alia, within the framework of procedures for the prevention, detection or prosecution of crime”¹¹¹

The Italian law imposes on Telecom providers obligations to engage in indiscriminate data retention, in stark contradiction with both the jurisprudence of the CJEU and the general statements of the Committee. Moreover, the temporal limitations that were introduced in the Personal Data Protection Code have been cast aside through Governmental decrees, allowing for retention of data for even greater periods. That in itself constitutes a violation of the right to privacy. Even further, access to such data by the authorities is not subject to authorization from a judicial authority. In the case of Italy the arbitrariness by which temporal periods provided by law are being cast aside through governmental decrees, allowing for unlimited retention is a source of great concern. Combined with the fact that access to such data does not require authorization from a judicial authority or other independent administrative body is putting at risk the fundamental right to privacy.

Recommendations

The Government should refrain from imposing on third parties indiscriminate obligations to retain communications data, and should review its laws to ensure that any such obligations or requests to access such data are subject to tests of necessity and proportionality and authorized by judicial body.

¹¹¹ Id., at para. 120

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