

Italy¹

IHF FOCUS: freedom of expression and the media; judicial system; prisons; asylum seekers and immigrants.

Most human rights concerns in Italy in 2003 were linked to the media concentration and to efforts by the ruling coalition to secure a privileged position for Prime Minister Silvio Berlusconi, also in relation to the judicial proceedings he was facing for alleged bribery.

Court proceedings were still excessively long, with the government and magistrates, the Bar Association and NGOs backing different proposals aimed at overcoming this endemic problem.

Another persisting problem was overcrowding in prisons. The number of inmates exceeded in most cases the tolerable capacity of both prisons and detention facilities. Non-EU citizens faced additional problems in gaining access to alternative punishments instead of prison sentences.

Implementation of the 2002 law on immigration resulted in some positive developments, while other moves potentially endangered the right to asylum. The law included a provision on asylum but there was no consistent implementing legislation on this as of the end of 2003.

Freedom of Expression and the Media

During the year, several media outlets, opposition parties, as well as Italian and international NGOs expressed concern about the increasing media concentration in Italy. Although editors and journalists of all the main news broadcast programs were not usually subjected to serious political pressure in their professional activity, there were allegations that the public television RAI (whose management was appointed by the speakers of the two houses of parliament) was occasionally influenced by the ruling coalition of Forza Italia, Alleanza Nazionale and Lega Nord. This indirectly added to the media power of Prime Minister Berlusconi, who already controlled a large part of Italian media, including the privately owned Mediaset TV group. Berlusconi was also shareholder of the leading Mondadori publishing group, which itself owned *Panorama*, one of the country's biggest news weekly magazines. In addition, Berlusconi's wife and brother ran two large newspapers, *Il Foglio* and *Il Giornale*, respectively. Although this media concentration was legal, there were increased fears of a potentially dangerous media concentration, which could lead to a lack of democratic pluralism and cultural and political diversity.

A law adopted on 28 February 2002 allowed Berlusconi to keep his media holdings as long as he has no direct responsibility over them; a special body has been created to monitor possible conflict of interests of government officials.

In December, Italian President Carlo Azeglio Ciampi refused to sign a new media law, which was adopted on 2 December and was known as the "Legge Gasparri" after the name of the minister of telecommunications. The law would have added to the influence of the prime minister's media empire by removing previous restrictions according to which one person was allowed to own no more than two national broadcasting stations. Berlusconi's Mediaset already owned three nationwide TV channels. In a letter sent to the speakers of both houses of parliament, President Ciampi said that the new communications bill would run counter to a ruling by the Constitutional Court that had stripped Mediaset of one of its country-wide channels. The bill would also legalize cross-ownership of broadcast and print media from 2009, and would enable one media group to earn an increased amount from advertising revenue. According to President Ciampi, this could place one media group in dominant position.

A European Parliament report on media concentration is to be adopted in 2004, and it is likely to be used as a basis for an EU regulation on media concentration.

¹ Based on information from the Italian Helsinki Committee, March 2004.

A matter of concern was also the fact that Italian law still provided for criminal libel, punishable with a prison sentence.

Judicial System

The problem of excessive length of trials was recognized by the judiciary, the Bar Association, as well as by the attorney general of the Appeal Court of Rome and by the attorney general of the Supreme Cassation Court in their annual reports. A large number of detainees were still waiting to be sentenced.²

According to official data, the average length of criminal proceedings (including appeal) was about 1,500 days, but this figure did not include the time required by court bureaucracy to transfer the cases from one judge to another and the waiting time for issuing motivations of the sentences. In several cases—especially when many defendants were on trial in one case—judicial proceedings have taken as long as ten years or more. Such excessively long proceedings not only violate international standards of a fair trial but, additionally, virtually morally destroy the lives of persons who have finally been acquitted.

In a similar vein, the average time for judicial proceedings in civil cases was also long: about 879 days in 2003.

Prominent magistrates blamed the lack of resources and an excessive recourse to appeal trials for the situation, while the ruling coalition, the movement Radicali Italiani and the Bar Association proposed a comprehensive reform of the whole judicial system. They proposed, *inter alia*, a clear separation of the role of judges from that of attorneys (*procuratori*) in order to strengthen the defense in trials. In 2003, a magistrate could still switch from the function of an attorney to that of a judge and *visa versa*, following a procedure controlled by the Higher Magistrates' Council (*Consiglio Superiore della Magistratura*), a constitutionally independent body. This practice, however, has been frequently denounced as inappropriate. The National Association of the Magistrates (*Associazione Nazionale Magistrati*) expressed concern over the planned reforms, claiming that it would reduce the independence of the judiciary, a stronghold of the Italian Constitution. According to some critics, the risk of reform would be that attorneys would be bureaucratically subjected to the executive power, despite the fact that this appeared not to be the intention of those who supported the separation of functions.

Law on Immunity

In June, the House of Deputies adopted in record time an immunity law (already passed by the Senate) that protected Prime Minister Berlusconi and four other high officials from criminal prosecution as long as they remain in office. The law, named by the opposition “Lex Berlusconi,” was judged by critics as unconstitutional and a disgrace. Under this law, magistrates could investigate complaints but not bring them to court. The law saved Berlusconi from facing a verdict in an on-going corruption trial against him during the Italian presidency of the EU. While the supporters of the bill explained that it merely restored some legal protections removed in the wake of corruption scandals in the early 1990s and noted that similar laws existed also in other democratic countries, the practical effect of the law was that it actually froze a trial in Milan in which Berlusconi faced charges of bribing judges to win the approval of a corporate takeover in the 1980s. The trial against his business associates continued, and a court convicted Berlusconi's friend and lawyer, Cesare Previti, of bribing a Rome judge. Sentenced to five years' imprisonment, Previti appealed the sentence.

Opponents of the immunity law started a campaign to organize a referendum on the issue. From June to September, the signatures of more than the 500,000 electors demanded that a referendum be called. The referendum would go ahead if both the Court of Cassation and the Constitutional Court decided to allow it. Turnouts in referenda, however, have been recently very low, and in most cases under the necessary quorum of 50% percent of eligible voters needed to be accepted.

² See also section on Prisons.

On 13 January 2004, however, the Constitutional Court annulled the immunity law. As a result, Prime Minister Berlusconi could now again face bribery charges.

In June, the European Court of Human Rights (ECtHR) declared inadmissible the application lodged in March in the high-profile case of *Sofri and Others v. Italy*.³ The applicants had claimed that their right to a fair trial had been violated due to, inter alia, conviction despite lack of evidence, lack of impartiality of domestic courts and equality of arms, undue pressure by the judge on the jurors, violations of the right to be presumed innocent, and the lack of any possibility to cross-examine an important witness.

- Adriano Sofri, a respected opinion maker and former leader of the extreme left “Lotta Continua” movement,⁴ was sentenced to 22 years imprisonment for complicity in the murder of police commissioner Luigi Calabresi in Milan in 1972. The enforcement of Bompresini’s sentence was stayed on health grounds and Pietrostefani could not be found. The convictions were based solely on a witness statement given by a “repented” person 16 years after the murder, in the absence of any actual evidence. Sofri has been serving his sentence since 1996, with a short interruption between two trials. The men’s sentences were declared void and then reconfirmed again more than once.

Prime Minister Berlusconi had already in November 2002 proposed that Adriano Sofri be pardoned. Sofri has always pleaded not guilty and therefore refused to ask for a pardon. However, the president of the republic may issue a pardon upon the proposal of the minister of justice even without Sofri’s appeal. Minister of Justice Roberto Castelli refused to initiate proceedings to this end and stated that he would not countersign (as requested under article 89 of the Italian Constitution) a related presidential decree. Many politicians, editors and scholars have regarded this position as contrary to the Constitution. In June, deputy Marco Boato and others deputies presented a draft bill on the interpretation of article 87, to make clearer that the Minister of Justice could not make void a presidential decree on pardon. The law was to be voted on in the first quarter of 2004, but was strongly opposed by two parties of the ruling coalition.

Prisons

According to information from the Ministry of Justice, as of 30 June, the total number of persons held incarcerated in Italian prisons was 56,403, of whom 2,565 were women. 35,879 were serving their definitive sentences, while 20,524 were in pre-trial detention or being held pending appeal. The high number of inmates exceeded the official capacity of the Italian penitentiary and pre-trial facilities, with overcrowding placing the whole prison administration under strain and making worse the physical condition of many detainees.

About 30% of inmates were foreigners: including Moroccans (22.2 %), Albanians (16.9 %), Tunisians (11.7 %), Algerians (8 %), other Africans (8.3 %), Latin Americans (7.8 %), Former Yugoslavians (7.4 %), Romanians (5.9 %), and people from the Middle East (1.6 %). About 16,000 detainees were addicted to narcotics.

About 31% of all prisoners were serving terms of up to three years, in spite of the fact that the so-called “Simeone Law” (*Legge Simeone*) allowed in such cases the execution of alternative punishments to imprisonment. The failure to apply alternative punishment could largely be attributed to the fact that most of the detainees of this category were not in the position to hire a good lawyer to surmount bureaucratic difficulties.

A report issued in August by the movement Radicali Italiani showed that 50,432 detainees in Italian prisons and detention facilities lived in conditions below the standards set by the Ministry of Justice. Some 21,000 persons were detained in 63 institutions where conditions were defined as “unbearable.” The prison

³ No. 37235/97.

⁴ *Il Foglio*, 8 November 2002.

of Caltagirone (Sicily), for instance, has the official capacity of 50 detainees, and a “tolerable” capacity of 100, but in reality 223 people were detained there. Even worse was the situation in the judiciary psychiatric hospitals, where, out of 1,427 detainees, 1,165 lived in “unbearable” conditions.⁵

In August, the NGO Antigone visited several prisons where overcrowding, especially because of the hot weather in that period, led to extremely harsh living conditions for the detainees: e.g., in the women’s prison of Pozzuoli (near Napoli), and in the old prison Ucciardone in Palermo.

Convicted prisoners—both Italians and foreigners—theoretically had the right to benefit from all alternative punishments to imprisonment if all conditions provided for by law were fulfilled. However, the interpretation of law was more restrictive in the case of migrants without residence permits. As a result, an irregular immigrant prisoner found it hard to be entrusted to social services or given any regular work. This practice was sealed by a Court of Cassation (section I) ruling on 17 July 2003.⁶ According to this, serving a prison sentence by carrying out social services and all measures that take detainees outside prison and detention facilities cannot be permitted for non-EU citizens who are staying in Italy unlawfully. According to the judgment, allowing illegal immigrants to serve their sentences by alternative measures would equate to allowing them to stay in Italy illegally.

In September, the European Parliament published a report by the French deputy Fodé Sylla on the situation of fundamental rights in the EU, which, among other things, expressed concern over the overcrowding in Italian prisons. An additional amendment to the report (presented by several MEPs and approved), made a particular mention of the case of Adriano Sofri, and stated that “member states’ competent authorities should monitor and reconsider the effective legitimacy of keeping in detention persons who are correctly serving their prison terms and whose civic and social activity, after the crimes they were convicted for, show that the function of detention as an instrument for positive social reintegration has already been achieved.”

Asylum Seekers and Immigrants

Regularization of the status of Immigrants

According to the Ministry of the Interior, 705,404 illegal non-EU immigrants applied for the regularization of their status on the basis of the so-called “Bossi-Fini Law” (*Legge Bossi-Fini*) of 2002.⁷ Of them, 694,224 applications were recognized as falling under the law. The status of 634,728 people had been regularized by November 2003 when the process ended. Regularized immigrants who held work contracts received a one-year permit to stay. The status of family members of regularized workers and family reunification, however, proved problematic. According to the law, only children up to 18 years of age were eligible for family reunification.

Article 5(3) of the law “Bossi-Fini Law” allowed for triennial permits to stay for habitual seasonal workers. For workers with a fixed term contract, the permit was for one year. In cases where the job had a longer term perspective, it was released for two years, and could be renewed. After six years of regular stay, a “charter of stay” can be released. If a regularized worker lost his job, he was allowed to remain in Italy for up to six months in order to look for another one.

According to article 19 of the above-mentioned law, trade unions, NGOs, regional administrations and other territorial institutions may promote instruction and professional training in the countries where the immigrants came from. Those immigrants who attend such courses would enjoy a special consideration in their immigration application process.

⁵ *Il Manifesto*, “Il 90% dei detenuti vive in condizioni infernali,” 14 August 2003.

⁶ No. 30130

⁷ Law No. 189/2002

New Illegal Immigrants

The arrival of illegal immigrants by sea continued to be a serious issue, although the number of such immigrants appeared to have reduced by approximately 40% in 2003 (from 23,719 to 14,331). In 2003, only a few boats reached clandestinely the shore of Puglia from Albania through the Otranto Channel, the favorite arrival route for illegal immigrants. Only 137 persons seeking illegal immigration were intercepted in that region in the first 11 months of the year, far less than the 3,363 in the same period of 2002 and 8,244 of 2001. People seeking illegal immigration were usually trafficked by international traffickers who demanded very high fees and completely ignored the safety of the passengers.

On the shores of Calabria, where old ships had been used for years to carry thousands of illegal immigrants, only 177 clandestine people were intercepted in the first 11 months of 2003 —down from 2,117 in 2002 and 6,093 in 2001. According to the Ministry of the Interior, this significant reduction was mainly due to the increased cooperation with several states, including Turkey, Egypt, and Sri Lanka. However, tragic incidents still occurred, with boats and dilapidated ships sinking—mainly off the shores of Sicily, and the small islands of Pantelleria and Lampedusa, which are closer to Africa. In Sicily, 13,899 clandestine people were stopped in the first 11 months of 2003 (17,032 in the same period in 2002).

Most illegal immigrants to Sicily come from Libya or Tunisia, and some from African countries. In July, Minister of Internal Affairs, Mr. Pisanu met the Libyan leader Khaddafi to discuss the issue, even if the EU embargo toward Libya was still in force (not allowing the cession to Libya of military boats or helicopters, which may be used by Libyan agencies to patrol the shores).

Applying an agreement established in May 2002 with Egypt, an Italian official of the Finance Guard was sent to the Suez Channel to cooperate with the local forces in stopping the vessels carrying would-be illegal immigrants. In three cases, Egyptian authorities stopped such vessels before the Channel, and Italian police provided charter flights for the clandestine people to return to their countries of origin, mainly Sri Lanka.

Citizens of countries that had signed special cooperation agreements on immigration control with Italy would enjoy privileged quotas for official immigration. On the other hand, additional restrictions would be put on citizens of countries that did not cooperate, especially in providing safe return for repatriated people.

The expulsions of illegal immigrants increased progressively between 2001 and 2003. In 2003, their number reduced in absolute terms because less people were intercepted. Most of them were kept in special centers for up to 60 days for identification procedures.

If, following an order to leave the country, a foreigner remained illegally on Italian territory, he/she could be sentenced to six to twelve months imprisonment. However, in practice, judges were not able to process their cases within the prescribed 48 hours following the arrest, and the arrested persons had to be released.

On a positive note, article 11(3) of the “Bossi-Fini Law” reduced the penalty by half for those convicted if they collaborated with the judiciary and the police in disclosing human trafficking. A much contested provision on taking the fingerprints of immigrants was applied to more than 700,000 people, in several cases allowing police to discover faked identities of persons accused of serious crimes.

In an open letter of 11 September to the Minister of the Interior Giuseppe Pisanu, Amnesty International (AI) expressed concern over the Italian initiatives aimed at organizing stricter control over external EU borders to fight illegal immigration. The letter asked for efficient and fair asylum procedures, and criticized the detention of asylum seekers and illegal immigrants and noted that the government measures should not violate the universal right to seek asylum and to enjoy protection, and the principle of *non-refoulement*. AI noted that, according to the consolidated jurisprudence of the ECtHR, detention is arbitrary

and illegal when it is not justified on an individual basis or is not periodically monitored by a judicial authority.

While the “Bossi-Fini Law” included a section on asylum, it was not regulated by any specific asylum legislation, despite the existence of regulations under international conventions and article 10 of the Constitution. The government had asked parliament to delay the discussion on a new asylum law until the end of the Italian EU presidency in December 2003.

Instead of having one single commission responsible for asylum applications, seven territorial commissions were established. Each of them included a representative of UNHCR.

Both AI and the Italian Helsinki Committee remarked that any cooperation on the issue of illegal immigrants and asylum seekers with an authoritarian regime (such as Libya) should be very careful, taking into proper consideration the EU’s official commitments on human rights in these countries. A detention center for clandestine people in Malta, and a new center to be established in Cyprus in agreement with the Italian government, were an additional matter of concern.