



**International Covenant on  
Civil and Political Rights**

Distr.: General  
16 November 2015

Original: English  
English, French and Spanish only

---

**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Sixth periodic reports of States parties due in 2009**

**Italy<sup>\*</sup>, <sup>\*\*</sup>**

[Date received: 8 October 2015]

---

\* The present document is being issued without formal editing.

\*\* The annexes to the present report are on file with the Secretariat and are available for consultation.  
They may also be accessed from the web page of the Human Rights Committee.



## I. General

1. Submitted in March 2004 (CCPR/C/ITA/2004/5), the fifth periodic report was considered by the UN Human Rights Committee, in October 20-21, 2005 (85th session). The Committee adopted Concluding Observations (CCPR/C/ITA/CO/5), on November 2, 2005. The present periodic report, submitted in accordance with Article 40, updates previous reports and provides the pertinent responses to the last Committee's Observations.
2. Following the request under paragraph 24 of the above Concluding Observations, Italy provided follow-up information (CCPR/C/ITA/CO/5, Add.1), in October 2006.
3. In order to draft the present periodic Report of Italy to ICCPR, an ad hoc Working Group was set up in 2014 — following the re-establishment of the Inter-ministerial Committee for Human Rights (acronym, CIDU), within the Italian Ministry of Foreign Affairs and International Cooperation, in late 2013.
4. The above WG prepared this Report, in line with the Committee's Guidelines; and the Common Core Document will be made available in December 2015 (HRI/Gen/2/Rev.6).<sup>1</sup>
5. As for the political situation, the (current) XVII Legislature was initiated on March 15, 2013, following general elections held in late February 2013. Since April 28, 2013, the Government has been led by a centre-left wing parties-coalition, currently headed by Mr. Matteo Renzi, President of the Council of Ministers.
6. Over the last years, Italy has been paying specific attention to: Migration; Improving the judicial system, including expediting judicial proceedings; Reduction of prison overcrowding; Improvement of judicial safeguards; Increasing attention to the rights of detainees and prisoners; Closing down judicial psychiatric hospitals; Establishment of the NPM<sup>2</sup>; Roma's integration; and Effective gender equality.<sup>3</sup>
7. As for dissemination of relevant Recommendation,<sup>4</sup> CIDU promptly translated in Italian, CCPR/C/ITA/CO/5. As per its own practice, CIDU included the above translation in its annual report to the Parliament. Plus, it held relevant consultations with CSOs, in view of and in the aftermath of consideration under UPR-II (October 2014-March 2015).

## II. Information relating to Articles of the Covenant

### Article 1

8. Protection under other international instruments ratified by Italy is as follows: UN Charter (1945); ICESCR (1966); Framework Convention for the Protection of National Minorities (1995).

---

<sup>1</sup> In line with the Human Rights Committee Guidelines-2008, this report covers specific issues related to the individual provisions of the International Covenant on Civil and Political Rights (hereinafter, ICCPR). Where appropriate, several issues are dealt with jointly in one Article, by taking into account the respective recommendations of the Committee from the year 2005. The Annexes provide statistical data, as well as the National Action Plan by the Ministry of Justice-Penitentiary Administration Department (hereinafter, DAP) and the National Roma Inclusion Strategy.

<sup>2</sup> Following the ratification of OPCAT by Act 195/2012 and the deposit of the ratification thereto at the UN Secretariat, in April 2013.

<sup>3</sup> The new relevant ratifications are reported throughout the present report.

<sup>4</sup> CCPR/C/ITA/CO/5, para. 23.

## Articles 2, 26

9. Protection under other international instruments ratified by Italy refers to the following (no exhaustive list): UN Charter; ECHR and Protocols 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14; European Social Charter and its Additional Protocols; ICERD; ICESCR and its Optional Protocol; CEDAW and its Optional Protocol; UNCRC and its Optional Protocols<sup>5</sup>; Framework Convention for the Protection of National Minorities; ICRPD and its Optional Protocol; Treaty on European Union and the Treaty on the Functioning of the European Union and the Nice Charter.

10. In accordance with Article 3 of the Italian Constitution, devoted to the principles of “formal and substantial” equality, Italy is firmly committed to eliminating all forms of discrimination.<sup>6</sup> Within this framework, the constitutional court<sup>7</sup> exercises its duty as one of the highest guardian of the Constitution, in various ways. Central and local Authorities may submit complaints of unconstitutionality by claiming that a state or a regional Act might be unconstitutional. Therefore, the Court monitors Authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State’s organs and decides in proceedings between central and local Authorities. When the Court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of its decision.

11. In accordance with EU Directives 2000/43/EC and 2000/78/EC, within the Department for Equal Opportunities (DEO), the National Office Against Racial Discrimination (UNAR) is the Office for the promotion of equality and the removal of all and intersecting forms of discrimination (Art. 7, Lgs. Decree 215/2003); and its mandate has been enhanced by Art. 8-sexies of Act 101/2008.

12. As for DEO-UNAR activities, it has been designated as the NCP for the National Strategy on Roma Integration (2012-2020), in accordance with EC Communication 173/2011.<sup>8</sup> UNAR also adopted the First National Strategy to Prevent and Fight Against Discriminations grounded on Sexual Orientation and Gender Identity. Soon, it will launch the second Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance.<sup>9</sup> Finally, under the responsibility of Under-Secretary of State for Integration, DEO-UNAR resumed the National Working Group on Religions, to promote inter-religious dialogue. In November 2014, DEO set up a National Fund to support legal expenses of victims of discrimination when they lodge relevant complaints.

13. By Legislative Decree 26/2006 et ff. (Act 111/2007), the Superior School for Magistrates has been established. As an autonomous body, it focuses on induction and life learning training, including in IHRL.<sup>10</sup> Relevant courses and activities take place also within the school system; and other bodies, such as the Observatory Against Acts of Discrimination (OSCAD<sup>11</sup>) are developing relevant programs.

14. As for the establishment of an independent NHRI,<sup>12</sup> at the opening of the current Legislature (XVII), various draft laws have been submitted: A.C.1004; A.S.865; and A.C.1256. In this regard, an increasing movement has been promoting meetings at various

<sup>5</sup> The ratification of the last Protocol (communication procedure) is under consideration.

<sup>6</sup> Women-related issues under Article 3.

<sup>7</sup> Constitutional court consists of 15 judges.

<sup>8</sup> Article 27 below.

<sup>9</sup> In all the above national strategies, the approach is integrated and inclusive.

<sup>10</sup> CCPR/C/ITA/CO/5, paras. 11, 20.

<sup>11</sup> Article 20 below. CCPR/C/ITA/CO/5, para. 20.

<sup>12</sup> CCPR/C/ITA/CO/5, para. 7.

levels, the last of which — with the participation of international experts, Parliamentarians and CSOs, — was organized by CIDU, at the Ministry of Foreign Affairs and International Cooperation, on July 22, 2015. Furthermore, mention has to be made of the establishment of: the National Observatory on the promotion and protection of the rights of the persons with disabilities; the National Ombudsman on the Rights of the Child; and, more recently, by Law-Decree 146/2013, the National Authority for the Rights of the Detainees and Prisoners (NPM).

### Article 3

15. The institutional body responsible for the prevention of gender-based discrimination at the workplace is the Councillor for Equality. In this regard, the Code on Equal Opportunities (Lgs. Decree 198/2006)<sup>13</sup> provides under Article 46 the obligation for both public and private companies, with more than 100 employees, to submit every two years a report on the staff situation highlighting quantitative gender-related differences.<sup>14</sup> In case of failure to transmit it, the Regional Directorate of Labour<sup>15</sup> will apply administrative sanctions and, in the most serious cases, it can also come to the suspension of all contributory benefits — if enjoyed by the company — for a period of one year.<sup>16</sup>

16. According to the latest report-June 2015<sup>17</sup> by Ministry of Labour (Inspection Division), jointly with the National Equality Councillor,<sup>18</sup> monitoring cases of both resignation and consensual resolution of job contracts for father and mother workers in the year 2014 pursuant to Art. 55, Lgs. Decree 151/2001 and Act 92/2012, indicates that the overall figure amounted to 26.333, of which 24.319 (+3%) resignation-related cases and 2.014 consensual-resolution ones, of which 85% (=22.480) referred to mother workers: compared to 2013, a slight reduction should be noted (20.774 in 2014 vs. 21.282 in 2013), whereas resignation cases by father workers are marked by an increase (3.545 vs. 2.384 in 2013).<sup>19</sup> By examining motivation behind the resignation, it emerges: the difficulty to reconcile job and family. Additional resignation-figures indicate the increase in cases of transfer to other enterprise (6.414), prevailing in the North and Centre of Italy (6.195) — owing to the local market situation. Additional motivation refers to: no part-time, no flexible working hours granting (1.465 vs. 1.541 in 2013); personal choice to exclusively take care of their children (4.690 vs. 5.031 in 2013); excessive distance from workplace (1.383 vs. 1.719); enterprise bankruptcy (491 vs. 1.169 in 2013).<sup>20</sup> To counter such a situation, Italy is carrying out several actions, especially to promote work and family care reconciliation: Art. 1, paras. 8-9, of Act 183/2014 (“Jobs Act”), amending Legislative Decree 151/2001, has just been enacted by Legislative Decree 80/2015, which extends the parental leave applicable to parents, both women and men, with children, including those who are adopted or with disabilities, up to the age of 12. Further, by Act 81/2015, both

<sup>13</sup> Arts. 37, 51, 117 Cost.

<sup>14</sup> In relation to: recruitment, training, career promotion, etc. The report must be sent to the regional Councillor for Equality and to the enterprise union representatives.

<sup>15</sup> Invites the employer to comply within 60 days, after which it.

<sup>16</sup> Art. 50-b of the Equal Opportunity Code stipulates that collective bargaining may provide for specific measures, including relevant codes of conduct, guidelines and best practices.

<sup>17</sup> [www.lavoro.gov.it/ConsiglieraNazionale/Pages/default.aspx](http://www.lavoro.gov.it/ConsiglieraNazionale/Pages/default.aspx).

<sup>18</sup> CCPR/C/ITA/CO/5, para. 8.

<sup>19</sup> As for the age, the majority refers to the age group 26-35, with 13.342 women and 1.765 men.

<sup>20</sup> As for sectors concerned, data are as follows: Services (10.038 vs. 10.219 in 2013); Commerce (8.816 vs. 7.786 in 2013); Industry (4.544 vs. 4.043 in 2013); and the majority of cases refers to SMEs (20.754 vs. 18.076 in 2013).

women and men are entitled to choose to shift the full-time into a part-time contract (Art. 8, para. 7).

17. From a statistical standpoint, the National Office of Statistics (ISTAT) indicates that 25,7% of the population (11,300.000 people) states that while at school or at workplace or when searching a job has been discriminated against or has been “treated in a less favourable way, due to some physical, mental or other personal characteristics of no relevance at all for the activity to be carried out”. In terms of results, no gender difference emerges: 25,6% of men and 25,8% of women had similar experiences. Nevertheless, among victims of discrimination, women are those who most often report that discrimination occurred on the gender ground. On a positive note, following last domestic general parliamentary elections, 31% of the Parliament’s members are women — besides being the youngest Parliament ever. Further, at the last EU Parliament elections-2014, the increase in women amounts to 39,7%.

18. To fight against stereotypes,<sup>21</sup> several actions have been put in place. Since 2009, the Department for Equal Opportunities has been launching the “Week Against Violence and Discrimination”, an initiative established by an MoU with the Ministry of Education (MIUR). During that Week, the schools organize awareness-raising<sup>22</sup> and training on the prevention of physical and psychological VAW and violence based on all forms of discrimination. Since 2004, DEO-UNAR has been organizing the Week against Racism, which in the March 2015-edition was jointly launched with ANCI and involved 700 Municipalities. As for the Ministry of Education, specific initiatives have been envisaged, including the revision of textbooks. To this end, DEO set up, on February 27, 2015, a Group of experts on language and gender with the aim at: raising awareness of the correct use of the Italian language to be respectful of both sexes; elaborating guidelines for the Public Administration and the media sectors; and educational models. Additional initiatives take place within the State Police and the Armed Forces.<sup>23</sup>

19. As for surveys and statistics on VAW, between 2006 and 2014, ISTAT<sup>24</sup> carried out two surveys, commissioned by DEO (See Article 7 below).<sup>25</sup>

<sup>21</sup> Starting from early 2015, DEO and the Self-regulatory Institute on Advertisements renewed and strengthened their MoU, including by expediting the withdrawal procedure of offensive and/or incorrect ads. A similar model has been replicated with ANCI.

<sup>22</sup> As for the latest campaigns: “*Quote di genere. Un paese più equilibrato ha un futuro migliore*”; “*Sì alle differenze, no all’omofobia*”; “*Abilità diverse. Stessa voglia di vita*”; “*Made in Italy*”. Furthermore, DEO has launched various projects, such as “Recognize Violence Campaign” (November 2013), officially translated into English and Spanish (following the signature of the Belen do Param Convention).

<sup>23</sup> Revised National Action Plan on Women, Peace and Security, in accordance with UNSCR1325(2000), 2014-2016.

<sup>24</sup> The first survey indicated that 6.7 million women, aged 16-70 (31.9% of all women), had been victims of violence at least once in their lives. Five million women were victims of sexual violence and one million of rape or attempted rape. ISTAT also estimated, there were 74,000 cases of rape or attempted rape, of which 4,500 were reported to the Police. Partners commit approx.23% of sexual abuse-cases; On June 5, 2015, ISTAT released the follow-up survey, the results of which are to be widely disseminated also among migrant women. Carried it out in 2014 on a sample of 24,000 women, aged 16-70, ISTAT indicates that the most affected foreign women for citizenship are from: Romania, Ukraine, Albania, Morocco, Moldavia and China. In the 2015 survey, some sections investigate the percentage of women seeking help in shelters/services and their feedback. The survey also collects data on stalked women. With the aim of contributing to assessing stalking, ISTAT also collects data about women’s assessment of the relevant legislation. Furthermore, 49.3% of women, victims of violence, have stated that they are aware of the right to free legal aid.

<sup>25</sup> CCPR/C/ITA/CO/5, para. 9.

20. Under the first National Plan against GBV and Stalking (2010-2013), DEO has, inter alia: 1. Renewed the MoU with ISTAT, with a view to conducting a new national survey; Entrusted the management of the 1522 helpline number supporting victims of gender-based violence and stalking. Over six years of activity, the 1522 helpline has provided assistance and guidance for more than 80,000 women, victims of violence, 10% of whom coming from a foreign country; 2. Carried out several trainings, among others, for law enforcement officials and lawyers; 3. Signed a new MoU with the Carabinieri Corps, for the regular collection of official data on crimes committed against vulnerable people and the setting up of a database; 4. Carried out several communication campaigns on VAW (also worthy of mention are: the codes of conduct in the tourism sector and for media professionals, respectively); 5. Set up, in November 2012, the Monitoring Committee on the implementation of the Plan's activities; 6. Issued three Calls for proposals aimed at granting funds to anti-violence Centres, shelters and other public and private services providing support and assistance for women, victims of violence.

21. By Act 77/2013, Italy was one of the first States to ratify the (Istanbul) Council of Europe Convention on preventing and combating violence against women and domestic violence. Within this framework, pursuant to Art. 5 of Law-Decree 93/2013, the new three-year "Extraordinary Action Plan against Sexual and Gender-based Violence" has been approved by the Unified Conference, on May 7, 2015 (See Article 7 below).<sup>26</sup>

22. To translate into practice the principles of the UNCRC, UNCEDAW, Lanzarote and Istanbul Conventions, pursuant to Act 172/2012 some Italian Public Prosecutor's Offices have recently added to their offices a "protected hearing room", which allows them to listen to women and children and, in general, the victims of violence in a more appropriate setting. To this end, the Prosecutors' Offices have also given clear guidance to the judicial Police on how to collect information. In some Offices, we have set up daily shifts of expert consultants, available 24 hours, to ensure immediate assistance to the Police in gathering information from the victim if and when an urgent investigation so requires. For this service to be as efficient and timely as possible, the intervention of specialized judiciary from larger districts has been assured, with constant and timely contact, even for purely advisory purposes, between the judicial Police and the Coordinator of the pool of specialized prosecutors. The growing general awareness is also confirmed by the significant increase, recorded as for the request for precautionary measures (with a total of 30%) for the crimes of domestic violence (Art. 572 cp), sexual violence (Art. 609 bis cp), and stalking (Art. 612 bis cp). The seriousness of the violence committed (almost exclusively) to the detriment of women and children must also be taken into consideration: more and more frequently, the severity of the facts and the danger of perpetrators require the adoption of stricter precautionary measures, such as preventive detention.

23. On February 27th, 2014, Italy adopted the revised NAP to implement UNSCR1325 (2000), 2014-2016, of a two-year term, in view of the 2015 major events. The MFA set up a national inter-ministerial WG at CIDU as the NFP; and relevant CSOs closely cooperate with. From a substantial standpoint, we have broadened NAP's scope, to reflect, inter alia, the growing "inter-relatedness of human rights". The aim is to support existing and/or to-be-launched initiatives with an inclusive, transparent, integrated and participatory approach, besides involving, for instance, the UNHCR with regard to the situation of women asylum-

---

<sup>26</sup> By Act 7/2006, DEO has been tasked with promoting and supporting the coordination of activities for prevention, victims' assistance and eradication of FGM, as well as data-collection and information at the national and international levels (data annexed). Since 2014, DEO has been undertaking specific research on CEFM by supporting and publishing an initial study, by which it shows the difficulty of detecting this situation and the overall underreporting. However, when cases have been brought before the justice, they mainly refer to: family ill-treatment; abuse; and reduction into slavery.

seekers and refugees in Italy (including their health situation. In this regard, the Ministry on Health set up a Task Force, involving Regions, Ministry of Interior, INMP, CSOs and UNHCR, to draft “Guidelines for asylum-seekers and refugees victims of torture, rape and other forms of violence, including training for health-care personnel and specific pathways for women and children” pursuant to Lgs. Decree 251/2007, later amended by Lgs. Decree 18/2014).<sup>27</sup>

24. Act 62/2011 envisages that from January 1, 2014, the Penitentiary Administration shall open low-security penal establishments for both accused persons who are to be held in custody and finally-sentenced persons, having children up to the age of 6.<sup>28</sup>

25. With the aim of expediting the divorce proceeding (max.12-month-long besides being reduced to 6 months in case of consent), Act 55/2015 entered into force, on May 26, 2015; and it is estimated that it will immediately impact on 200,000 pending cases.

#### Article 4

26. “The emergency in relation to the camps of nomad communities” declared by DPCM (et ff.), dated May 21, 2008, does not refer to the purposes and meaning of Article 4. It was intended only to more easily resort to *inter alia* specific financial resources from the Civil Protection, to deal with the Roma camps located in five Italian Regions. In this regard, the Council of State (Superior Administrative Court) declared void the above Decree and the following ones, by Decision 6050/2011, dated November 16, 2011, as subsequently confirmed by the Supreme Court, Joint Sessions, in April 2013 — when the latter stressed in particular the failure to resort, on a priority basis, to ordinary measures (Verdict 9687/2013). To definitively overcome the above situation, Italian Authorities are implementing the above-mentioned National Strategy on Roma Inclusion, 2012-2020.<sup>29</sup>

#### Article 5

27. The Italian Government informed the UN Secretary-General, by a notification received on 20 December 2005, of its decision to withdraw reservations in respect of Articles 9 (5), 12 (4) and 14 (5).<sup>30</sup> The remaining reservations refer to Article 15, paragraph 1, and Article 19, paragraph 3. An in depth examination has been thus re-conducted when drafting the present report but conclusions cannot be drawn, yet. In particular, as for the former, mention has to be made of Article 2 cp, stipulating “No one may be punished for a conduct that, according to the law of the time it was committed, did not constitute a criminal offense. No one may be punished for a conduct that, according to a subsequent law, does not constitute a crime; and, if there has been condemnation, the execution and criminal effects must cease. If there was an imprisonment verdict and the subsequent law provides only a fine, the detention penalty to be served immediately translates into the corresponding pecuniary penalty, in accordance with Article 135 cp. If the law of the time

<sup>27</sup> Relevant development cooperation initiatives have been carried out in various partner priority countries. The commitment to recognise VAW as a human rights issue, to challenge *de jure* and *de facto* discrimination against women and to end impunity for the widespread use of sexual violence in war and armed conflict has been strengthened after 2009 when Italy launched the first G8 initiative against VAW. Since then, the support against THB, FGM, CEFM and GBV has been strengthened both at the political and financial levels.

<sup>28</sup> Such facilities have to be inspired to normal houses.

<sup>29</sup> Article 27 below.

<sup>30</sup> CCPR/C/ITA/CO/5, paras. 5-6.

when the offense was committed and the following one are different, it applies the one the provisions of which are more favorable to the defendant, unless a final judgment has been issued...”.

28. The limit refers to the inner value of the final verdict (*res iudicata*), which underpins procedural law and the certainty of law. However, in order not to affect the rights of the citizens, the Supreme Court has stressed (Penal Section I, Court of Cassation, Verdict 5973/2014) how the unconstitutionality of specific legislation/provisions impacts on the final verdict, in particular on its penal effects and execution, in accordance with Article 30, paragraph 4, of Act 87/1953. The latter stipulates as follows: “if final condemnation verdict has been issued in accordance with a law subsequently declared unconstitutional, the execution and the penal effects of the verdict must cease”. For instance, this provision has been recently applied when, following the declaration of incostitutionality of the legislation on “light drugs” (Constitutional Court Verdict 32/2014), the Court of Cassation has recognized the right of the convicted to the revaluation of the penalty (Penal Section I, Court of Cassation, 3342/2014).<sup>31</sup>

## Article 6

29. On September 25, 2013, the Parliament approved Bill 1041/S, by which the ATT<sup>32</sup> has been ratified.

30. On July 15, 2015, the Parliament approved Bill 2764/S, by which the ICPPED has been ratified.

31. *Mutatis mutandis*, by Act 237/2012 on the adjustment to the Rome Statute, Italy has introduced provisions on: the judicial cooperation with the ICC; the domestic execution of the ICC measures; and the introduction of the crimes against the ICC into the Criminal Code, in accordance with Article 70 of the Rome Statute.

32. As for the moratorium on the use of death penalty, Italy has been at forefront since the beginning of this campaign. In 2007, Italy relaunched it at UNGA level within which this has been successfully marked by an increase in the number of cosponsors up to the latest Resolution (A/RES/69/186), dated December 18, 2014, with 117 cosponsors. Plus, in March 2009, Italy ratified Protocol 13 to the ECHR.

33. Domestically, Article 27 of the Constitution, devoted to the individual responsibility, envisaged at paragraph 4: “Death penalty is prohibited except by military law in time of war” but Constitutional Act 1/2007 amended Article 27, which now expressly prohibits it under any circumstances.

34. Finally, the Constitutional Court declared the unconstitutionality (Verdict 223/1996) of Article 698, para. 2, cpp, in order to ensure that “under whatsoever circumstances the extradition proceeding cannot take place should the death penalty be envisaged by the

---

<sup>31</sup> Furthermore, the ECtHR has been increasingly introducing the “flexibility of the *res iudicata*”, as considered by the Constitutional Court in 2011 when it declared the incostitutionality of Article 630 cpp (Verdict 113/2011), due to the violation — though indirectly — of the State’s duty to comply with the international obligations stemming from Article 46 ECHR, in the section not envisaging the re-opening of the criminal trial in accordance with a verdict issued at a European level. Domestically, Article 630 cpp was in contrast with Article 117, para. 1, of the Italian Constitution imposing the Legislator the duty to comply with international obligations. Regionally, the ECtHR has stressed that the most appropriate proceeding should be the reopening of the trial, also to ensure the *restitutio in integrum* in accordance with Article 6 of the ECHR.

<sup>32</sup> And the ratification instrument was deposited on April 2, 2014.



requesting State”. Mutatis mutandis, the Supreme Court recently reiterated the need for strict compliance with Article 3 ECHR and, thus, to grant international protection to whoever may be exposed to the risk of life and torture in his/her country of origin regardless of the seriousness of the crime committed in Italy and of his/her lack of collaboration with Italian Authorities (Civil Section 6, Decision 21667/2013).

## Article 7

35. Italy ratified OPCAT by Act 195/2012. It also ratified the Lanzarote and Istanbul Conventions, by Acts 172/2012 and 73/2013, respectively.

36. As for VAW,<sup>33</sup> from a legislative standpoint, it is worth-mentioning, as follows: In 2009, Law Decree 11/2009 converted into Act 38/2009 introduces the crime of stalking (Art. 612-bis, Criminal Code). With the aim of preventing and further protecting victims of stalking, a new administrative measure “warning (ammonimento)” has been entrusted to Questore (senior police officer), when the victim does not want to take action against the offender. Stalkers are punished by imprisonment, from six months to four years. Penalty is increased if the offence is committed by the spouse, who is legally separated or divorced, or by a person previously engaged in an emotional relationship with the victim. Penalty is also increased if the crime is perpetrated against a minor, a pregnant woman or a person with disabilities. In order to enhance this fight, the then Minister for Equal Opportunities and the Minister of Defense signed, in January 2009, an MoU, by which a specific Unit (RaCIS) has been established at Carabinieri Corps; Act 172/2012 amended Art. 572 c.p. on, “Ill-treatment against family members and cohabitants” and provided for harsher penalties (from two to six years of detention). Furthermore, it doubled the time limit (from ten to twenty years), within which the victim is entitled to report sexual abuse to the Police; Act 119/2013 addresses both stalking and GBV. As for prevention, this Act strengthens the above “warning” for the mandatory removal of the violent man from home, as well as the gun banning, driving disqualification and the possibility to use electronic tagging. Concerning punishment, new aggravating circumstances are to be mentioned; penalty is increased if children under the age of 18 witness violence as well as if the victim is in a particularly vulnerable situation (if pregnant). Moreover, femicide is further strengthened by the introduction of the particularly close relationship between the victim and the perpetrator as an aggravating circumstance (e.g. if the perpetrator is the victim’s spouse or partner, also non-cohabiting partner). More generally, the Italian law aims at ensuring greater protection for victims both in relation to hearings, which will be protected, and through a system guaranteeing transparency during on-going investigations and legal proceedings, in addition to the obligation to inform victims about local-level support-services.<sup>34</sup> Furthermore, the law provides for legal aid also for women victims of domestic

<sup>33</sup> CCPR/C/ITA/CO/5, para. 9.

<sup>34</sup> As for training-related initiatives, the signing of MoUs is of importance, precisely for the training of all operators. Since long time, VAW has been addressed by the State Police through special Units carrying out prevention and prosecution-related activities, both at the central and local levels. The State Police Special Units attend ad hoc training courses focusing on victims and the more effective ways to prevent recurrence of violence and emergence of violence. Several relevant initiatives include: training on relevant “Investigation Techniques” — for “*Squadre Mobili*”; VAW, including domestic violence, stalking, and fight against discriminatory acts included in the yearly refresher courses; the MoU on “Training for law enforcement to standardize their approach to gender-based violence victims”, signed in May 2011, by DEO and the Ministry of the Interior; several seminars and courses organized on “How to approach victims of sexual violence” for senior officers; training of trainers; special training sections also for cadet officers; training on good practices; and the “Multimedia Tools Against Violence” project. State Police staff trained, between 2011-2014, amounts

violence, regardless of their income. As for the protection of the victims, Lgs. Decree 9/2015, transposing Directive 2011/91/EU, on the Order of European Protection, aims at ensuring the mutual recognition of the effects of the protection measures for the victims of crime when adopted by the judicial Authorities from EU Member States.

37. From a procedural law standpoint: it is mandatory, *inter alia*, to inform the victim of the right to free legal aid (pursuant to Art. 76, para. 4-ter, DPR 115/2002) regardless of her income — meaning that all women are entitled to free legal aid when being victims of sexual violence, stalking, family ill-treatment, and FGM (Law-Decree 93/2013); stalking falls within those crimes allowing for wiretapping; it is broadened the range of cases for the expulsion from household, and all protection-related measures have to be promptly communicated first to the legal counsel of the victim, then to the victim itself and to the local social-care services; no request for withdrawing or replacing the above measures can be accepted should it not be immediately communicated to the legal counsel of the victim, in line with EU Directive 2012/29 on victims of crime; family ill-treatment and stalking fall within cases of mandatory *flagrante delicto* apprehension; to counter domestic violence, the urgent expulsion from the household falls within the precautionary measures (Art. 384 bis cpp). The above Decree also acts upon the order of examination of cases by judicial Authorities that must consider, on a priority basis, ill-treatment (Art. 572 c.p.), sexual violence (Arts.609 bis to 609-octies c.p.), and stalking (Art. 612 bis c.p.)-related cases; to hear minors, for preliminary information purposes, the judicial Police must be supported by psychologists or childhood psychiatrics, as appointed by judicial Authorities in cases relating to ill-treatment (Art. 572 cp), enticement (Art. 609-undecies, cp), stalking (Art. 612 bis, cp); for special evidence pre-trial hearing (*incidente probatorio*), involving a child under the age of 16, the justice must adopt measures respecting the child's needs. Additionally, in case of domestic violence prevention measures and shelters-related services are extended to migrant women. Finally, Act 117/2014 on the less restrictive legislation on pre-trial detention does not apply to: ill-treatment, stalking, and all those conducts falling within Art. 4 bis of Penitentiary Act (Act 354/1975).

38. Protection is also extended to foreign victims, for whom legislation introduces humanitarian residence permit, in accordance with Legislative Decree 286/1998. The above Law-Decree extends the release of the stay permit to cases of: domestic violence, family ill-treatment, injuries, FGM, kidnapping, stalking, sexual violence, and those crimes under mandatory *flagrante delicto* apprehension.

39. At the organizational level, the position of the Magistrate Coordinator at the Prosecutor's Office has been created for the consideration of urgent issues relating to the "more vulnerable group of victims". The number of judges specialized in relevant crimes has also been increased; while periodic meetings are held to ensure a fruitful exchange of information, creating a more uniform response to complex problems that are not just of a legal nature but are intrinsically tied to this type of crime. Constant contact with other equally competent judicial offices has also been established, in particular, with the Prosecutor, the Juvenile Court and the Ordinary Court. Equally important is the consistent and effective cooperation with the National Bar Association and the Bar Association of each Court district — which, in some cases, has led to holding relevant meetings with a large participation of lawyers and judges.

---

to 6,950 units; training on GBV is also provided by COeSPU-Carabinieri Corps in Vicenza, especially for those to be deployed abroad. The afore-mentioned prevention initiatives are all the more effective since a wider and more representative network of institutional and private actors is involved. Cooperation has been strengthened by Act 38/2009 with the obligation to communicate to the victim local Anti-Violence Centers — a measure later extended by Act 119/2013 to crimes, such as domestic violence, THB, child prostitution, paedo-pornography, sexual crimes.

40. As mentioned earlier, ISTAT carried out specific surveys on VAW.<sup>35</sup> The first relevant 2006-ISTAT survey reported that 6.7 million women, aged 16-70 (31.9% of all women), had been victims of violence at least once in their lives;<sup>36</sup> b) On June 5, 2015, ISTAT released the follow-up survey on VAW in Italy, the results of which are to be widely disseminated also among migrant women. Carried it out in 2014 on a sample of 24,000 women aged 16-70, ISTAT indicates the most affected foreign women for citizenship are from: Romania, Ukraine, Albania, Morocco, Moldavia and China. In the survey, some sections investigate the percentage of women seeking for help in shelters and services and their feedback. The survey also collects data on stalked women. With the aim of contributing to assessing stalking, ISTAT also collects data about women's assessment of the relevant legislation.<sup>37</sup> Furthermore, 49.3% of women, victims of violence, have stated that they are aware of the right to free legal aid (ISTAT data annexed).

41. According to the ISTAT survey-II, 6.788,000 women have been victims of some forms of violence, either physical or sexual, during their life (=31,5% of women aged 16-70); 20,2% has been victim of physical violence; 21% of sexual violence; and 5,4% of the most serious forms of sexual violence, such as rape and attempted rape: 652,000 women have been victims of rape; and 746,000 have been victims of attempted rape. Furthermore, foreign women are victims of sexual or physical violence on a scale similar to Italian women's: 31,3% and 31,5%, respectively. However, physical violence is more frequent among foreigners (25,7% vs. 19,6%), while sexual violence is more common among Italians (21,5% vs. 16,2%). Specifically, foreign women are more exposed to rape and attempted rape (7,7% vs. 5,1%) with Moldavians (37,3%), Romanians (33,9%) and Ukrainians (33,2%) who are the most affected ones. As for the author, current and former partners are those who commit the most serious crimes: 62,7% of rapes is committed by the current or the former partner while the authors of sexual assault are in the majority of cases remain unknown (76,8%). As for the age of the victim, 10,6% of women has been victims of sexual violence prior to the age of 16. Considering VAW-cases against women with children who have been witnessing it, the rate rises up to 65,2%.<sup>38</sup>

42. On a positive note, compared to the previous edition-2006, sexual and physical violence cases result to be reduced from 13,3% to 11,3%. This is the result of increased women's awareness of existing protection tools, in addition to an overall social climate of condemnation and no mercy for such crimes. More specifically, physical or sexual violence committed by a partner or a former partner results to be reduced,<sup>39</sup> as well as VAW cases perpetrated by non-partners.<sup>40</sup>

<sup>35</sup> According to "Violence against women: an EU-wide survey"-2014, developed by EU-FRA, 19% of women in Italy have experienced physical and/or sexual violence by a current or former partner since the age of 15.

<sup>36</sup> Five million women were victims of sexual violence and one million of rape or attempted rape. ISTAT also estimated, there were 74,000 cases of rape or attempted rape, of which 4,500 were reported to the Police. Partners commit approx.23% of sexual abuse-cases.

<sup>37</sup> According to privacy protection law, information about ethnic origin and religious affiliation cannot be collected.

<sup>38</sup> if compared to the 2006 figure (= 60,3%). As for women's status, women separated or divorced are those far more exposed to physical or sexual violence (51,4% vs. 31,5% relating to all other cases).

<sup>39</sup> as for the former, from 5,1% to 4%; as for the latter, from 2,8% to 2%.

<sup>40</sup> from 9 to 7,7%. The reduction is significant when considering cases among female students: reduced from 17,1% to 11,9% if committed by a former partner; from 5,3% to 2,4% if committed by the current partner; and from 26,5% to 22%, if committed by a non-partner. Significantly reduced are those cases of psychological violence committed by the current partner (from 42,3% to 26,4%), especially when they are not coupled with physical and sexual violence.

43. Women are far more aware that they have survived a crime (from 14,3% to 29,6% in case of violence by the partner), which is reported far more often to the Police (from 6,7% to 11,8%). More often, they talk about it with someone (from 67,8% to 75,9%) and look for professional help (from 2,4% to 4,9%).<sup>41</sup>

44. As of 2013, femicides amounted to 0,83 out of 100.000 inhabitants. In 2012, 30,3% of homicide cases were against women; in 2013, such rate increased to 35,7%. In 42,5% of cases, the partner or former partner has been the author of femicide, with a geographical prevalence of women victims of killing in the Centre of Italy (47,8%), Northern-East (42,3%), and Northern-West (40,0%). Data regarding “the practice of FGM” are very low because only recently this topic has been regulated (available data annexed).

45. As for the Naples and Genoa cases,<sup>42</sup> the most recent Decision refers to ECtHR, with regard to *Mr. Cestaro v. Italy*, dated April 2015:

- As for the events in Naples-2001, last March 2015 the motivation supplementing the Court of Cassation verdict was deposited (Verdict 11071/15, dated 9.10.2014/16.3.2015) — though not yet published. From a historical standpoint, the Tribunal of Naples found guilty, in 2010, 10 out of 21 defendants, mainly on the ground of abuses committed against protesters at Ranieri Barracks, in Naples. For eight of them, the Court of Appeal ascertained in 2013, the statute of limitation — since two defendants had previously renounced to that institute. However, the Court of Appeal did recognize the compensation for those victims who had brought the civil action into the penal proceeding (*persone offese*);
- As for Genoa-2001-related events, on April 7, 2015, ECtHR issued a condemnation verdict in the case of *Mr. Cestaro v. Italy*, which has been published in Italian on the website of both the Ministry of Justice and the Court of Cassation (Italgiureweb). Based on these grounds, ECtHR deemed that the treatment amounted to torture as understood in Article 3 ECHR (para. 190). As for the specific cases relating to the Bolzaneto events, complaints have been lodged with the ECtHR and are pending before it. Domestically, by verdict 38085/2013, the Court of Cassation confirmed the second instance verdict with regard to the events occurred in Bolzaneto, besides reiterating the specific responsibility of the senior officers who were in that Barracks and failed to stop the relevant conducts.

46. Following the G-8 Events (2001<sup>43</sup>), an in-depth State Police review process resulted in up-to-date basic, permanent and refresher courses concerning both values and modus operandi. Several activities have been promoted in order to support Police officers’ professional skills by raising continuous awareness of the principles of professional ethics, being strictly connected to the protection of human rights. The relevant study and basic training programmes envisage “IHRL”, including the analysis of the major standards and the way to effectively implement them. This results in a specific area of study for all Police

---

<sup>41</sup> The same applies to cases of violence by a non-partner. Compared to the 2006-survey, survivors are far more satisfied with the relevant work carried out by the Police. In the event of violence from the current or former partner, data show an increase from 9,9% to 28,5%. Negative results emerge when considering cases of rape or attempted rape (1,2% in both editions). The forms of violence are far more serious with an increase of those involving injuries (from 26,3% to 40,2% when the partner is the author); and an increasing number of women fear for their life (from 18,8% in 2006 to 34,5% in 2014). Also the various forms of violence by a non-partner are more serious. 3,466.000 women (=16,1%) have been victims of stalking during lifetime, of whom 1, 524.000 from their former partner; and 2,229.000 from other person than the former partner.

<sup>42</sup> CCPR/C/ITA/CO/5, para. 10.

<sup>43</sup> CCPR/C/ITA/CO/5, paras. 10-11.

officers on duty who attend professional refresher courses: training focuses on identifying the mission of Police within a democratic society; a human-centred vision of the State Police; the fight against all forms of discrimination; and specific guidelines for Police officers. Further, ad hoc training tools support the Police personnel professional training activities and teaching materials, as provided by DPS.

47. From a disciplinary standpoint, the “T-4- Tutela dei Diritti Umani nei servizi d’Istituto”, handbook by the Carabinieri, envisages the involvement of the Operations Office at the Carabinieri HQs. that will contact the competent authorities, either penal or disciplinary. As for very serious cases, an initial investigation can be decided in accordance with Art. 552 of the Military Code. The above publication also reiterates the modalities for the use of force in line with international standards. Likewise, publication “P-11- Procedimenti d’azione per i militari dell’Arma dei Carabinieri nei servizi d’istituto” reiterates the use of force as an exceptional measures, and expressly recalls the European Ethical Code-2001. Plus, in drafting relevant guidelines with regard to coercion measures (vis-à-vis persons, such as the drug addicted), by Memo 1168/483-1-1993 dated January 2014, the Operations Unit of the Carabinieri General Command recalls the principle of proportionality. Along the above lines, Guardia di Finanza has been developing specific activities, too.<sup>44</sup>

48. In brief<sup>45</sup>:

A strong normative framework has been designed to prevent cases of excessive use of force: Police is duty-bound to: diligence, legality, correctness, and loyalty. Additional obligations and prescriptions<sup>46</sup> fall within disciplinary responsibility — the latter is also reflected in the military system — as linked with constitutional principles under Art. 97 referring to the correctness of the public administration and the expeditiousness of the proceeding; The Carabinieri General Regulation envisages that the military servicemen shall always keep an approach appropriate to his/her status. Whatsoever form of ill-treatment, abuse or harassment by the military servicemen towards the population or those arrested must be considered as a very serious failure; c) Ad hoc Directives are issued, on a continuous basis, in order to prevent whatsoever inadequate conduct, especially during the arrest or the apprehension stage; d) In accordance with Art. 582 cp on the ill-treatment of persons deprived of their liberty, relevant conducts by law enforcement officials are often pursued ex officio, even in cases of minor injuries (Abuse of authority over arrested or detained persons, private violence, abuse of office, forgery of documents).

Since June 1998, DAP has been ordering that when the medical personnel working in the prison facilities verifies the presence of bodily injuries during the medical examination of a prisoner’s first entry or of an inmate, not only they are obliged to take note (in the Register

<sup>44</sup> (in the course of the current year) “Refugee protection, based on international and national law”, financed by UNHCR, with the aim of training 240 staff personnel deployed to various Centres, including CARA and CIE at Piedmont, Friuli Venezia Giulia, Marche, Latium, Calabria, Sardinia, and Sicily; Following specific exams, Corps’ personnel working in public security and safety, must attend a structured 8-week course, aimed at obtaining the Anti-Terrorism and Ready Alert qualification; (Yearly) specific training modules within the framework of “basic” training, as well as residential and e-learning advanced training on inter alia “Operational Methodologies Against Illegal Smuggling”, (refresher) “Irregular migration-related Legal Framework and Participation in Search and Rescue Operations”, as well as to gain the “Abroad Operation Specialists” diploma; For 2015, Guardia di Finanza has scheduled courses on “IHL and Armed Conflict”, with the Italian Red Cross, for some 400 staff deployed regionally.

<sup>45</sup> CCPR/C/ITA/CO/5, paras. 10-11.

<sup>46</sup> Act 121/81.

defined Model 99) but also of the statements made by the concerned party in relation to the circumstances of the ill-treatment suffered. The annotations included in the Register must be immediately transmitted to the judicial authority. A monitoring system of all critical events, among which the injuries suffered by the inmates, has been instituted at the DAP “Situations room”.

The Carabinieri Corps issued ad hoc orders for all its Stations, with the aim, inter alia, of drawing the attention to the correct use of the “Register for persons detained in the security rooms” and “the rights sheet”<sup>47</sup>.

In April 2008, DAP disseminated the Istanbul Protocol in Italian among all the prison facilities. It also translated the Bangkok Rules.

Over the years, Italy has been one of the co-facilitators of the international initiatives on HRE culminating into the 2011 relevant UN Declaration. As reported, training activities, including HRE-related courses, have been introduced for all law enforcement agencies. Accordingly, renewed emphasis has been placed on HRE for personnel to be deployed across the country and abroad.

49. Even though the crime of torture has not been formally introduced in the ordinary criminal code (Various draft pieces of legislation are pending before the Parliament), following the ratification of OPCAT by Act 195/2012 and the so-called pilot-judgment of ECtHR on the case of *Mr. Torreggiani and Others v. Italy*, Law-Decree 146/2013 was converted into Act 10/2014, with the aim of addressing prison overcrowding and full respect for HR of detainees and prisoners. It thus provides inter alia for the establishment of the National Ombudsman for the rights of detainees and prisoners. To implement the above legislation, Regulation 36 has been adopted, on March 11, 2015, with the aim to ensure the specific functional independence for the above body.<sup>48</sup>

50. As for the closing down of Judicial Psychiatric Hospitals (OPG), mention should be made of the shift of competence between the Ministry of Justice and the Ministry of Health with regard to the health-care at the penitentiary facilities, initiated in 2008. By specific DPCM 230/2008, within prisons, wings have been established for mental health care intended for detainees and prisoners affected by mental illness pursuant to Art. 148 cp — where to accommodate both offenders under psychiatric observation pursuant to Art. 112, para. 1, DPR 230/2000 and those finally sentenced offenders having their sentence reduced because of their partial mental illness pursuant to Art. II, paras. 5 and 7, DPR 230/2000. DAP has identified those wings within several prisons and many of them have already been activated; the internees coming from the OPGs will be assigned to the Italian Region of their origin, and the Mental Health Departments of the Regional Health-care Services will take them under their responsibility and care, through therapeutic and rehabilitation programs, aimed at their resettlement into community; for those who are assessed to be very dangerous for the society, the security measures of hospitalisation in OPG and of assignment to prison Hospital will be enforced in residential healthcare facilities (the so-

<sup>47</sup> The person detained/apprehended shall confirm in writing that s/he received a copy of this sheet.

<sup>48</sup> Briefly, this is a collegial body, at the Ministry of Justice, consisting of a Chairman and two members. Its mandate is to monitor and oversee: the treatment of the persons deprived of their liberty in places of detention; and the execution of relevant measures to be in accordance with the Constitution, relevant legislation and international standards. It is thus attributed to him/her: the power of visiting, even without previous authorization, prisons, correctional facilities, judicial psychiatric hospitals and all those other Institutions in which inmates are the recipients of detention-type measures, including CIE; the power to requesting information and documents to the Authorities responsible for the relevant facilities; and finally the power of formulating and addressing specific recommendations.

called REMS — Residenze per l'Esecuzione delle Misure di Sicurezza). However, due to difficulties met by the Regions in arranging the necessary facilities, Law-Decree 24/2013 postponed the deadline for the closing down of OPGs. By Act 81/2014, OPGs have been finally closed on March 31, 2015.

51. As of March 25, 2015, the inmates in OPG were 698, of whom 623 men and 75 women. In accordance with Act 81/2014, the detention-type security measures, including at REMS, cannot exceed the duration of the detention penalty. Finally, the Regional Authorities of the Penitentiary Administration have been invited to make available the Mental Health Care Areas for prisoners and detainees.

## Article 8

52. Since 1998, Italy has been at the forefront of the fight against THB and the protection of victims, both children and adults. The main legal provisions include: Art. 18 of the National Law on Immigration (Legislative Decree 286/1998); and Art. 13 of the National Law against THB (Act 228/2003).<sup>49</sup> More recently, in compliance with Art. 7 of Legislative Decree 24/2014, transposing EU Directive 2011/36, DEO is the Authority responsible for guidance, coordination and monitoring of interventions related to THB. Besides these tasks, the above Legislative Decree officially recognizes DEO's role as the equivalent mechanism and national contact point for the EU Anti-Trafficking Coordinator.<sup>50</sup> By this Decree, the above two programmes have been incorporated in a single more structured model to ensure better integration of the victim. In compliance with Directive 2011/36/EU, the above Decree entitles victims to the right to compensation, (1,500 Euros, each), to be paid in accordance with the terms established by the Decree under the Annual Fund for Anti-Trafficking Measures.<sup>51</sup> Furthermore, by Act 190/2014, 8 million Euros are to be allocated for the single unified program.

53. In Italy, all forms of THB are prohibited;<sup>52</sup> and, with the aim of harshening penalties, besides ensuring that all forms of trafficking are comprehensively punished, Lgs. Decree 24/2014 amends Arts. 600 (Placing/holding a person in conditions of slavery or servitude) and 601 (Trafficking in persons). The Criminal Code specifically envisages prosecution in case of trafficking in children under "child prostitution" (Art. 600-bis), "child pornography" (Art. 600-ter) and "possession of pornographic material" (Art. 600-quater). More specifically, this conduct is punished even if the crime is not committed by fraud, deceit, and threat or by promising or giving money.

54. As for the protection of victims, the above Legislative Decree also amended the Code of Criminal Procedure in order to extend the existing protection — already envisaged for child victims or mentally-ill adult victims — to all adult victims being under

<sup>49</sup> Whereby a complex assistance pattern focuses on: Programmes for temporary assistance (above Art. 13); Programmes for long-term assistance and social inclusion (above Art. 18); and a National Anti-Trafficking Toll-Free Helpline. Victims of trafficking benefit from special residence permit for social protection, the granting of which does not rely on reporting traffickers/exploiters. The only requirement is to participate in the "Article 18 assistance programme", which includes a six-month temporary humanitarian residence permit, renewable for one year, to be eventually converted into a residence permit for education or work purposes.

<sup>50</sup> Since 2014, DEO, in cooperation with all relevant authorities and CSOs, has been working on a specific NAP. It will provide for, inter alia, a national referral mechanism for trafficked persons.

<sup>51</sup> already existing and to be fed with the proceeds derived from the confiscation of assets following a judgment of conviction.

<sup>52</sup> Act 228/2003 introduced THB in the Italian Criminal Code (Art. 601).

particularly vulnerable conditions.<sup>53</sup> With the aim of further strengthening the protection system, the above Legislative Decree provides for the obligation to adequately inform victims of their rights, especially unaccompanied minors. This also establishes that a further Decree will be adopted to define specific mechanisms as for the determination of their age and identification. Thus, trafficked children are provided with special assistance and care programs, carried out by individualized age-appropriate-related services — supplied under national assistance projects co-funded by DEO, including dedicated shelters, specific counselling, medical and social support. More generally, the victims or alleged victims of trafficking benefit from assistance and social protection projects promoted and co-funded by DEO. Both adults and children can be victims of forced labour and forced prostitution or other forms of exploitation (forced begging, illegal activities, etc.).<sup>54</sup>

55. Since 2001, due to the dimensions and development of THB, the Chief of the Police has been ordering the re-organization of the Immigration Offices and Squadre Mobili (Investigative Units). The Central Operational Service (acronym, SCO) has always played a very proactive role in professional training of State Police personnel. SCO is participating in a European project dedicated to trafficking in children exploited in illicit activities (ongoing).<sup>55</sup> Under the Italian Semester of EU Presidency-2014, the Central Directorate of the national Police, in cooperation with the Special Operations Group (ROS) and the Labour Department Command of the Carabinieri Corps, has drafted a “Handbook on THB — Indicators for the Investigating Police” (approved in April 2015). Very important investigative results have been achieved thanks to a bilateral cooperation project with the Romanian Police, denominated “ITA.RO. (on-going)”<sup>56</sup>. Since 2012, the Ministry of Justice monitors the THB-related legal proceedings. Plus, DEO is currently working with ISTAT to set up a relevant national database.<sup>57</sup>

56. The fight against THB also fell within the priorities of the Italian Presidency of the EU-2014. The Ministry of Foreign Affairs finances projects in several countries of transit and origin of migratory flows to raise awareness for both the public opinion and potential victims. More generally, Italy is promoting dialogue with third countries, within the framework of initiatives, such as the Rabat Process. In line with the latter and the EU-Africa Dialogue on Migration and Mobility, the Italian Presidency of the EU had been promoting “The EU-Horn of Africa Migration Route Initiative”/ EU-HoAMRI.

## Article 9

57. As for the judicial safeguards of the arrestees (and the application of Art. 104<sup>58</sup>), in accordance with Articles 13 and 27 of the Constitution,<sup>59</sup> Article 606 and other provisions,

<sup>53</sup> By Art. 1, vulnerable are: children; unaccompanied minors; the elderly; persons with disabilities; women, especially if pregnant, single parents with underage children, and persons victims of rape or other serious forms of physical, psychological, sexual or gender-based violence.

<sup>54</sup> From 2000 to 2013, 665 projects were co-funded within the Article 18 framework while, from 2006 to 2012, 166 projects were co-funded under “Article 13’s”.

<sup>55</sup> In April 2010, DPS and the Anti-mafia National Directorate signed an MoU to draft “Guidelines for coordinating the fight against THB”.

<sup>56</sup> The Romanian Police was directly involved in relevant investigations.

<sup>57</sup> As for the nationality, while Nigerians’s rate (women and young girls) remains stable (approx. 40%), a decrease emerges for nationals from Eastern Europe (Romania, Moldova, Bulgaria and Albania) — though victims coming from Africa (Nigeria, Egypt, Morocco, and Tunisia) are increasing (approx.60%). Sexual exploitation is still the most common form of THB (about 70%). However, the trafficked also refer to: forced labour; begging, etc..

<sup>58</sup> CCPR/C/ITA/CO/5, para. 14.



contained in the same section of the Criminal Code, safeguard the individual against illegal arrest, undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches. Other provisions include: Article 581 (battery); Article 582 (bodily injury); Article 610 (duress, in cases where violence or threat are not considered as a different crime); and Article 612 (threat). Moreover, the Code of Criminal Procedure contains principles aiming at safeguarding the moral liberty of individuals: Article 64, para. 2, and Article 188 set out that, “during interrogation and while collecting evidence, methods or techniques to influence the liberty of self-determination or to alter the ability to remember and to value facts cannot be used, not even with the consent of the person involved.”<sup>60</sup>

58. According to Art. 111 of the Constitution (amended by Constitutional Law 2/1999), the law guarantees that a person, who has been accused of an offence, must be promptly informed, in a confidential manner, of the nature and the grounds of the charges moved against him/her, and be placed in the condition necessary for preparing his/her defense, as well as his/her right to be assisted by an interpreter should s/he not understand or speak the language used during the trial. In implementing such constitutional rules, Art. 386 ccp provides that the judicial Police officers and agents who have carried out the arrest or the apprehension, or to whom the arrested person has been surrendered, expeditiously inform the Public Prosecutor of the place where the arrest or the apprehension was carried out. They must also inform the person put under arrest or apprehended of his/her right to appoint a defense counsel. The judicial Police must promptly inform the private defense counsel or the Court-appointed defense counsel,<sup>61</sup> as designated by the Public Prosecutor pursuant to Art. 97 of the occurred arrest or apprehension. Pursuant to Art. 143 ccp, the defendant has the right to be assisted by an interpreter, free of charge, also during the talks with the defense counsel. Art. 387 ccp provides that the judicial Police, with the consent of the person arrested or apprehended, must inform without any delay the person’s family of said person’s arrest or apprehension. Art. 388 ccp sets out the rules governing the questioning by the Public Prosecutor, of the person arrested or apprehended. S/he shall proceed with the questioning, in compliance with Art. 64 ccp, and timely inform of the said questioning the person’s private or Court-appointed defense counsel (Arts. 96 and 97 ccp).

<sup>59</sup> Art. 13 of the Constitution stipulates: “Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise restricted in personal liberty, except by order of the judiciary stating a reason and only in such cases and in such manner as provided by law. As an exception, under the conditions of necessity and urgency strictly defined by law, the police may take provisional measures that must be reported within 48 hours to the judiciary and, if they are not ratified within another 48 hours, are considered revoked and remain without effect. Acts of physical and moral violence against persons subjected to restrictions of personal liberty are to be punished. The law establishes the maximum duration of preventive detention”. Art. 27, para. 3, sets forth: “Punishments may not contradict humanity and must aim at re-educating the convicted”.

<sup>60</sup> The apprehension/arrest-related proceeding enforces Art. 13 of the Constitution. Legislation and entitles detainees to prompt and regular access to lawyers of their choice and to family members. The State provides a lawyer to indigent persons, besides an interpreter for foreigners. Under exceptional and strict circumstances relating to mainly mafia-type crimes, the judicial authority may take up to five days to interrogate the accused. In general terms, persons deprived of their liberty shall be fully informed of their rights in their own languages or in a language they understand (Legislative Decree 101/2014; Art. 94 of Legislative Decree 271/1989). Police must record all cases in which a person is deprived of liberty; and the Registers are updated, accordingly. The two ministerial Memos, dated 4 January 2007 and 19 July 2007, set the requirements for the proper use of: “Register of the rights of the person arrested or apprehended”, and “Register of the persons restricted in security rooms”.

<sup>61</sup> According to Art. 24 of the Constitution and Art. 98 CCP providing for the defence of the indigents, Presidential Decree 115/2002 provides for legal aid in criminal action (Art. 74 et ff.). For being admitted to legal aid, no particular conditions are required.

S/he shall also inform the person arrested or apprehended of the acts under investigation, the grounds on which the measure is based, the evidence gathered against him/her and — provided that this does not cause any prejudice to the investigations — the sources of said evidence.

59. Furthermore, Art. 391 ccp sets forth the obligatory participation of the defense counsel in the validation hearing of provisional arrest or the arrest. Art. 294 ccp rules the questioning of the arrested person or the person under provisional arrest on behalf of the judge, who, generally speaking, has to proceed immediately to the questioning, or, at any rate, no more than five days after the start of the custody measure, if s/he did not do so during the validation hearing (para. 1). The precautionary custody loses immediately its efficacy in case the judge does not proceed to the questioning by the above deadline (Art. 302, para. 1, ccp). The questioning before the judge shall take place with the mandatory participation of the defense counsel (para. 4) and according to the terms provided for by Arts. 64, 65 ccp, which contain the general provisions on questioning, in compliance with the constitutional writs mentioned above.

60. By Art. 104 ccp, the person who has been arrested while in the act of committing an offence or subject to provisional arrest (according to Art. 384 ccp) and the accused under precautionary custody, have the right to talk to the defense counsel immediately after their arrest or provisional arrest or at the starting of the execution of the precautionary custody in prison. However, Art. 104, para. 3, ccp, envisages an exception to said general rule: the possibility that the judicial Authorities, by means of a motivated decree, defer the exercise to confer with the defense counsel for a period of time not exceeding five days. Said postponement is allowed, as specified under the same Article, only in the presence of precise assumptions on which the measure is grounded, i.e. “the existence of specific and exceptional reasons for precaution”. In case of arrest or provisional arrest, the same power is exercised by the Public Prosecutor until the arrested person or the person subject to provisional arrest is put at the disposal of the judge for the validation hearing (Art. 104, para. 4).<sup>62</sup>

---

<sup>62</sup> In brief, in terms of relevant judicial safeguards, the Supreme Court reaffirmed that any judicial act regarding the suspect and/or the accused shall be null and void if it has not been translated in his/her mother tongue. Article 143 ccp, amended by Lgs. Decree 32/2014, envisages that the accused who does not understand the Italian language has the right to be assisted, free of charge, by an interpreter, regardless of the outcome of the proceeding — in order to understand the accusations against him/her and to be able to follow the conclusions of the case in which s/he is involved. Besides, the competent Authority appoints, when necessary, an interpreter to translate a printed document in a foreign language, a dialect not easily comprehensible, or upon request of the person who want to make a declaration and does not understand the Italian language. The declaration can also be in writing: in such a case, it will be integrated in the report with the translation made by the interpreter. An interpreter is nominated even when the judge, the Public Prosecutor or the officer of the Criminal Investigations Police have personal knowledge of the language or of the dialect, which must be interpreted. Further, judicial-related acts impacting on the personal liberty of the person concerned, such as verdict and pre-trial detention order, must be translated on a mandatory basis. Due attention is also paid to legal aid, the system of which was amended by Legislative Decree 115/02, which extends the access to legal aid in civil and administrative proceedings. Access to this institution is guaranteed whoever has an income below 11.369,24 €, per year. As for the criminal proceedings, Act 134/01 envisages the self-certification procedure for the income of the defendant. Such procedure is also extended to those foreigners who have an income abroad (In this regard, ad hoc information desks have been established at Bar Associations).

Art. 387 ccp envisages that upon agreement with the person under arrest or detained, the criminal investigation police must promptly inform his/her family members. Among the above procedural safeguards, the intervention of medical personnel is always guaranteed when the person under arrest

61. The jurisprudential enforcement of said rule is very strict,<sup>63</sup> meaning that as results from the jurisprudence of the Supreme Court, the rule has been considered of narrow interpretation (Verdict 3025/1992; Verdict 1507/96; Verdict 1758/95; Verdict 2157/1994), with reference to the risk of tampering with evidence (Verdict division VI — 06/10/03 Vinci). In particular, mention was made of the fact that the measure of the judicial Authorities, which does not contain a detailed indication of the specific and exceptional reasons foreseen by the ruling, gives rise also to the nullity of the further questioning of the person under precautionary custody before the judge, according to Article 294 ccp, in case the arrested person was not in the position to talk to his/her defence counsel before said questioning. According to the Supreme Court, “the illegitimate postponement of the talk with the defense counsel and hence the infringement of the right provided for under Art. 104 paras. 1 and 2, ccp, entails the infringement of the right to defense, to be considered within the framework of general nullity provided for under Art. 178 (c), ccp — nullity, which, according to Art. 185 para. 1, ccp, makes invalid the questioning rendered by the arrested person, who has been illegally denied the right to talk before the defense counsel, with the consequences provided for under Art. 302 ccp, i.e. the loss of efficacy of precautionary custody (Judgement 3025/1992, confirmed by Judgment Division VI — 04/20/2000 Memushi Refat). The exceptional provisions under Art. 104, paras. 3 and 4, ccp, do not affect the right of the arrested person to be questioned in the presence of the defense counsel (Indeed, Arts. 391 and 294 CCP provide for the obligatory participation of the defense counsel in the validation hearing and the questioning before the judge).<sup>64</sup>

62. As for counter-terrorism measures, the latest amendment refers to the issue of “foreign fighters”. Law Decree 7/2015 converted into Act 43/2015 envisages urgent measures, inter alia, to punish the so-called foreign fighters. This has been adopted to follow up to UNSCR2178. Among relevant provisions, it envisages the crime of organization of transfer for terrorism purposes (Art. 270-*quater*.1) besides punishing

---

or detained requires medical assistance or when s/he explicitly requests it. In this regard, the Police underlines that the person deprived of his/her freedom has the right to request the presence of a physician who, regardless of such a request, shall be present in any case when the Police officer deems it to be necessary. Such indication emanates, inter alia, from Memos and internal Regulations of the Carabinieri Army Corps. Moreover, on the basis of the internal practice, the access to medical services for persons under arrest must be reported in the ad hoc Register, devoted to record individuals who are placed in security rooms, the so-called *Registro delle persone ristrette nelle camere di sicurezza*, under the item “AOB”.

In case of arrest (upon order by the justice), Art. 104 ccp sets out, as a general rule, that the charged person being under pre-trial detention enjoys the right to hearing with his/her counsel since the beginning of the execution of the measure. Art. 104 envisages, as an exception to such provision, the possibility for the justice to postpone, by motivated Decree, the exercise of the right to hearing with the legal counsel, up to five days. To guarantee the right to self-defense, the examination before the justice must take place with the participation of the legal counsel, in line with Art. 294 ccp. In case of unjust detention, liberty tribunals regularly review cases of persons awaiting trial.

<sup>63</sup> CCPR/C/ITA/CO/5, para. 13.

<sup>64</sup> The only case, in which there could be a temporary limitation of meetings, even with the defense counsels, occurs when the prisoner is subject to a measure of judicial isolation (Art. 22, Penitentiary Act). In this case, the decree imposing such measure shall indicate in detail the length and modalities thereof. In any case, if there is an order of deferral of the meetings with the defense counsel, such deferral shall not last more than five days (Art. 104 ccp). However, even during the period of judicial isolation, the prisoner has contacts with the prison guards, the surveillance magistrate and the medical staff, for reasons connected with their activities. This is a very last resort measure, to be applied when given circumstances so require, as is the case with mafia-type related crimes. In this context, mention should be also made of the fact that the Italian legal system considers the right of being assisted by a defense counsel as an inalienable right, along the lines of the mandatory nature of the technical defense.

whoever trains or is trained to this end (Art. 270-quinquies). Procedurally, the mandate of the Anti-Mafia National Coordination Office has been broadened so that it now deals with terrorism, too. As extensively reported under the previous exercise, further to the events occurred in London and in Sharm-el-Sheik in summer 2005, Italy urgently passed Law Decree 144/05, entitled “Urgent measures to contrast international terrorism”, then converted into Act 155/2005, which is still in force.

63. Mutatis mutandis, the Strasbourg Court issued various Decisions, and stresses the obligation not to return a person to a country where there is an actual risk of torture or ill-treatment, not only in the cases in which the expulsion has actually been carried out but also if it has not. In light of the cases of *Ben Khemais; Trabelsi; Toumi and Mannai v. Italy* — who, inter alia, benefited from the safeguards contained in the European Convention — at the meetings of the Committee of Ministers 2010 (Resolutions CM/Res DH 2010-82 and 83) —, Italy had already given assurance that, where it needed to proceed to the expulsion of a terrorist on which the Court had already issued an interim measure, it would preliminarily request the Court to lift said measure and support the request with all relevant documents (save confidential documents) proving the dangerousness of the person concerned and the alleged danger for the security of the State in case of non-expulsion or the absence of any risk in the country of destination.<sup>65</sup>

## Article 10

64. In the course of 2014, Italy submitted to the Council of Europe, a relevant Plan of Action, drafted by DAP (annexed herewith).<sup>66</sup> Furthermore, within the current overall justice reform process, the Ministry of Justice has introduced a number of amendments mainly designed to limit the use of remand in custody and thus reducing prison overcrowding:<sup>67</sup> Law Decree 211/2011; Act 94/2013; and, following ECtHR’s ruling on the Torreggiani case, Act 10/2014 envisaging inter alia a “Special Early Release”, which is a new specific judicial complaint under Art. 35-b of the Penitentiary Act.<sup>68</sup> Act 117/2014, converting Law-Decree 92/2014, envisages among the various novelties, compensation for damages: the oversight magistrate can compensate the inmate with an-eight-Euro per diem, should inhuman and degrading living conditions in jail be ascertained. On a more specific note, it envisages, inter alia: urgent measures for prison’s population, including possible compensation for damages in the event of non-compliance (e.g. inadequate living conditions in prison’s cells); a specific hearing in the event of a proceeding allegedly non-compliant with the Rules and Regulations of the Prison (Penitentiary Act) and causing a “current and serious prejudice to the exercise of rights”; the power to order Administration’s fulfilment; compliance with the judgment; easier modalities for the

---

<sup>65</sup> Moreover, by Judgment 3898/2010, the Supreme Court ruled that the prohibition of expulsion or refoulement pursuant to Art. 19, para. 1, of Legislative Decree 286/1998 imposes that the competent justice (*giudice di pace*) deciding on an appeal against an expulsion order shall examine the actual danger indicated by the appellant, since that provision contains a humanitarian measure of a barring character whereby its beneficiary has the right not to be placed again in a highly risky environment for him/her, if the alleged condition is actually ascertained by the judge. Further to Mr. Mannai’s expulsion, it was issued a ministerial Memo, dated 27 May 2010, to raise judges’ of the peace awareness about the principles on expulsions laid down by the European Court’s case-law and notably on the need, when validating the relevant measure: to make a thorough judicial checking of it; verifying not only that it is formally correct but also that it complies with IHRL, or, specifically, with ECHR (Sect. 6 civ., 20514/2010).

<sup>66</sup> CCPR/C/ITA/CO/5, para. 16.

<sup>67</sup> CCPR/C/ITA/CO/5, para. 16.

<sup>68</sup> In addition to the National Ombudsman for detainees and prisoners.

execution of the home detention; additional limitation to remand in custody for adults. Plus, an ad hoc WG has been established at DAP, to constantly monitor the respect of the rate of inmates per cell, in light of the ECtHR's size-related indications.

65. Accordingly, the following figures are to be mentioned: (as at June 3rd 2014), there were approx. 59.500 inmates, of whom 800 under semi-liberty regime; no inmate lives in areas of less than a 3-square-meter size; persons benefitting from measures alternative to detention penalty amounted to 31,000; reduction of penalties for drug-trafficking and use-related crimes, with the transfer of drug-addicted inmates to rehab. communities — in the coming months, approx. 5,000 will benefit from this measure (DAP data annexed).

## Article 11

66. No developments to report under this Article.

## Article 12

67. Article 16 of the Constitution enshrines the right to freedom of movement. This right, together with the right to reside within State's borders, the right to leave any country, including one's own, and the right to return to one's country and the right to nationality, is considered by the legislation on citizenship (Act 91/1992, Presidential Decrees 572/1993 and 362/1994). Citizenship legislation applies to: Italians who have lost their citizenship and wish to reinstate it; descendents of Italian citizens claiming citizenship; and foreigners applying for Italian citizenship.

68. Law-Decree 69/2013, converted into Act 98/2013, aims at simplifying citizenship acquisition for those who have come of age and cannot prove their constant stay in the Italian territory for the past 18 years, due to administrative failures not directly caused by them but by their parents' negligence and/or birth register personnel. Its Art. 33 envisages the mandatory use of IT programs by relevant state officers to make this proceeding faster and less expensive. In 2013, a +54% of the applications positively went through (101,712), as submitted mainly in Northern Italy (72.2%) — especially if compared with Southern Italy and the Islands (34.2% and 27.2%, respectively).

69. As for the entry of Non-EU citizens in 2013, data relating to women indicate that the majority arrives for marriage or family reunification purposes. Specifically, from data on citizenship applications for marriage (Art. 5 Act 91/1992) or residence purposes (Art. 9 L. 91/1992), most migrant women under the age of 40 apply in accordance with the above Art. 5. Further, since 2006 the residence permit in Italy is issued in the form of a smart card. Against denial of residence permit, an appeal with the administrative judicial Authority can be always lodged.

70. As at 2014, approx. 4.9 million foreigners stay in Italy. Following a recent ISTAT survey, foreign population shows satisfaction for its own life: 7,7 points (scale is from 0 to 10); 60,8% of foreign citizens have even a higher degree of satisfaction: 32,8% says 8, 13,2% says 9 and the 14,8% indicate 10 points. However, 89,5% of foreign people (of 15 years old and over) experienced discrimination at work-place because of their foreign origin.

71. Recent measures have been also adopted to grant the access to the labour market (in public administrations) for foreigners (holders of a residence permit, refugees and subsidiary protection holders, family members of European citizens as holders of the right of residence, even on a permanent basis) and for the allocation of social cards for families

with at least three children (eligible are: Italians; EU citizens; and third-country nationals with long-term residence).<sup>69</sup>

72. Regular migrant workers are protected and enjoy — by job contract — rights equal to Italian workers'. Over the last five years, migratory flows and the demographic increase have been so relevant to impact on the working population; on the other hand, the economic crisis has impacted also on them: in 2013, about 500,000 foreign citizens were looking for a job (rate increased in the past year by 100,000 more units; and the relating unemployment rate reached 17.3%). Administrative data confirm the difficulties that foreign workers are facing. In 2013, the Sistema Informativo delle Comunicazioni Obbligatorie registered job contracts involving foreign citizens equalling to 1,861,943 units, of whom 766,150 EU (41.1% of the total) and 1,095,793 non-EU (58.9%). On a positive note, the Infocamere database concerning companies listed in the Register of the Italian Chambers of Commerce indicates that companies created by migrants have been increasing since 2011: +9.5%.<sup>70</sup>

73. Under UPR-II (October 2014), Italy recalled the ratification of ILO Conventions C143 and C189, under which we accepted to be periodically reviewed. As for the latter, the initial report illustrates the protection of domestic workers.

### Article 13

74. As for the situation in Lampedusa, those migrants willing to apply for international protection, enjoy immediate access to this proceeding, with the support by mediators and the other safeguards envisaged by law. At the Police HQs. in Agrigento (responsible for Lampedusa), 1,327 applications for international protection were submitted in 2014; in the course of the first three months of 2015, applications have been 270. Across the country, relevant applications in 2014 were 63,041. More specifically, as for migrants landing by sea, between January-September 2014, 136,905 migrants reached Lampedusa Island, of whom 10,000 unaccompanied minors. According to UNHCR, 170,000 migrants arrived in 2014, of whom 63,000 applied for asylum. In the first five months of 2015, approx.47,000 persons arrived, with an increase of 12% — if compared to the previous year.<sup>71</sup>

75. Without a specific legislation, Italy increased its reception system up to 61.536 units as at September 30, 2014. Between January-September 2014, 39,450 migrants applied for international protection.<sup>72</sup> As for relevant statistics, between August 2013-September 2014,

<sup>69</sup> The Ministry of Labour is active in fighting against the illegal exploitation of those migrant workers lacking valid residence permits. It also increased the number of job inspections. In 2013 only, out of 139,624 companies inspected, the total amount of informal workers amounted to 44,652, of whom 1,091 EU workers lacking residence permits. By Act 9/2014, it added 250 more units to the inspection sector.

<sup>70</sup> At the end of 2013, 500,000 companies were run by foreigners, mainly in the trade sector (32.5%); and mainly planted in northern Italy (51.7%).

<sup>71</sup> CCPR/C/ITA/CO/5, para. 15.

<sup>72</sup> When assessing the application for international protection, the Court would infringe the law, should it base its decision exclusively on the credibility of the statements made by the parties concerned. According to the Court of Cassation, a court dealing with the substance of a case concerning international protection is required to carry out a broad and rigorous investigation, based on a critical examination of the evidence produced by the party and on the exercise of its official duties/powers (Joint Session, Decision 17318/2008). The Court of Cassation, in its Decision 20637/12, confirms the principle that a Court cannot reject an application only on the basis of what it deems is the "applicant's credibility", but is also entitled to verify whether the subject's declarations are plausible, and therefore to check in particular — on the basis of the obligation to cooperate in the investigations — the actual situation occurring in the applicant's country of origin. Any consideration in the

67% of the applications submitted to the territorial Commissions (the latter increased from 30 to 50) were accepted. To ensure transparency, in all Commissions there is a UNHCR representative. If a decision is not made on an individual basis within six months — period during which the applicant can be accommodated by the State — s/he will get a residence permit, allowing him/her to work. Italian legislation also provides humanitarian protection to individuals who may not qualify as refugees or entitled to subsidiary protection under the 1951 Convention and the European law but who cannot be repatriated for humanitarian reasons (usually this is a one-year long permit renewable until the humanitarian need remains).<sup>73</sup>

76. The Italian reception system consists, at the first level, of 14 Reception Centres and Centres of first aid and reception. These structures provide first aid to migrants landing by sea and are mainly located in the sea towns. CIEs are mainly devoted to identify migrants. Should, at the expiration of the detention period in a CIE, the expulsion order not be executed, the Police superintendent releases an order for the foreigner to leave the country, within a seven-day-term. Should the individual fail to comply and be apprehended by the Police, the payment of a fine between 10,000-20,000 Euros can be ordered. Afterwards, s/he can be detained in a CIE and be subjected to another expulsion order. Illegal immigrants are repatriated upon individual examination. However, immediate repatriation is envisaged if there is a risk of absconding or if the alien is socially dangerous or has applied evidently without foundation or fraudulently for a residence permit. Otherwise, a time limit is granted for the alien who makes such a request to voluntarily leave Italy. Voluntary and assisted repatriation programmes have been thus introduced.

77. Italian law establishes minimum standards for detention: Legislative Decree 286/1998, Article 14.2, provides that detainees in CIEs must be detained in a way that guarantees the necessary assistance and full respect for human dignity. Presidential Decree 394/1999, Article 21.2, further provides that detention Centres should provide detainees

judgment based on the lack of objective evidence in support of the applicant's declarations shall not be deemed sufficient — unlike those based on the criteria laid down in Art. 3 of Legislative Decree 251/2007: that is to say, after having verified that all reasonable effort has been made in order to support the application with details; that there is an acceptable reason for the lack of objective evidence; that the declarations made are not inconsistent with the country's situation; that the application has been timely submitted; that the application is intimately plausible.

<sup>73</sup> Data on asylum-seekers in Italy

	<i>Asylum applications submitted</i>	<i>Applications examined</i>	<i>Decisions made</i>	<i>Refusals</i>	<i>Approvals</i>	<i>Refugee status</i>	<i>Subsidiary protection</i>	<i>Humanitarian protection</i>	<i>Other results</i>
2014	64.886	36.330	13.327 (37%)	21.861 (60%)	3.649 (10%)	8.121 (22%)	10.091 (28%)	1.142 (3%)	
2013	26.620	23.634	6.765 (29%)	14.392 (61%)	3.078 (13%)	5.564 (24%)	5.750 (24%)	2.477 (10%)	
2012	17.352	29.969	5.259 (17%)	22.031 (74%)	2.048 (7%)	4.497 (15%)	15.486 (52%)	2.679 (13%)	
2011	37.350	25.626	11.131 (43.46%)	10.288 (40.14%)	2.057 (8.02%)	2.569 (10.02%)	5.662 (22.06%)	4.207 (16.41%)	
2010	12.121	14.042	4.698 (33.45%)	7.558 (53.82%)	2.094 (14.91%)	1.789 (12.74%)	3.675 (26.17%)	1.786 (12.71%)	
2009	19.090	25.113	11.193 (44.57%)	10.070 (40.09%)	2.328 (9.27%)	5.331 (21.22%)	2.411 (9.60%)	3.850 (15.33%)	
2008	31.723	23.175	9.219 (39.77%)	12.576 (54.26%)	2.009 (8.66%)	6.946 (29.97%)	3.621 (15.62%)	1.380 (5.95%)	

Source: National Commission on Asylum — <http://www.cir-onlus.org/it/comunicazione/statistiche>.

essential health services, activities for their socialization and freedom of worship. Furthermore, the Ministry of Interior developed Guidelines, detailing all services to be provided and items to be supplied. In terms of services-supply, in 2006 the Praesidium project was launched; and since 2012 it operates in all governmental Centres for immigrants.<sup>74</sup> As for the specific needs of migrant families with children, by Ministerial Decree, dated 21 November 2008, the so-called “Capitolato d’appalto (tender dossier)” for the management of governmental centers was approved.

78. Procedurally, following identification, asylum-seekers are hosted for an initial period (from 20 to 35 days depending on migrants flows) in specific Reception Centres for asylum seekers (CARA), which are open to visitors and may be left by the guests during the day. CARAs also provide: legal assistance; Italian language teaching; healthcare services; and the supply of food and other essential services. Applicants housed in a CARA have the right to receive visits from UNHCR, relevant CSOs, lawyers, family members or Italian nationals who have been authorized by the competent Prefettura. After the initial period in CARA Centres, refugees and asylum-seekers are hosted in the Asylum-seekers and Refugees Protection System Network (acronym, SPRAR), managed by local Authorities and financed through the National Fund for Asylum Policies and Services (FNPSA), comprising also the European Refugees Fund, managed by the Ministry of the Interior. The Network relies on facilities where refugees and asylum-seekers are hosted and provides additional services: linguistic and cultural mediation; job orientation; multicultural activities; and legal aid. As at 30th September 2014, thanks to an extraordinary funding of approx.60 million Euros, this System has increased its capacity from 3.000 to over 18.000 units.<sup>75</sup>

79. From a legislative standpoint, Italy has translated all the EU asylum-related Directives; Directive 2013/32/EU on common procedures for granting and withdrawing international protection is about to be transposed, while by Legislative Decree 142/2015, published on September 16, 2015, Directive 2013/33/EU (laying down standards for the reception of applicants for international protection) has been just transposed. The legal framework governing detention pending expulsion has undergone important changes. In particular, Act 129/2011 increased the maximum period of detention, previously set at 60 days, to six months; and the statutory maximum duration, under certain circumstances, to 18 months. Following the Ruperto Commission’s report, endorsed by the Minister of Interior in 2013 — by which it had been proposed that the maximum period of detention be reduced to 12 months —, at the end of 2014 the Italian Parliament approved Act 161, which envisages the reform of immigration detention. The most relevant aspect is the reduction in the maximum period of migrants’ detention. By the new law, the maximum duration a foreign national may be detained in a CIE has changed from 18 months to a strict limit of three months. This new maximum is reduced to 30 days if the foreign national has already

---

<sup>74</sup> The Praesidium project is implemented by UNHCR, IOM, Save the Children and the Italian Red Cross, with the support of the Ministry of the Interior. It has proved to be an effective operational model, by which to provide overall legal counselling. It also helps identifying vulnerable groups, besides monitoring reception procedures.

<sup>75</sup> As for integration-related policies, the National Programme of Action for the new Fund on Asylum, Migration and Integration, 2014-2020 (promoted by the EU within the European Funds framework), is currently being finalized. € 500 million are available and € 310 million are allocated by EU. It focuses on the comprehensive management of migration flows, including asylum-seekers, legal migration, integration and repatriation of illegal foreign migrants (a wide consultative inter-institutional exercise to define global strategies for the inclusion of migrants is on-going).



spent three months or more in prison.<sup>76</sup> This reform is based upon a case-by-case evaluation in line with the European Return Directive.<sup>77</sup>

80. As for “illegal immigration”, Constitutional Court (Judgment 49/2010) removed the status of illegal immigration among aggravating circumstances. In April 2014, Parliament approved Act made under delegate power, 67/2014, which provides for the decriminalization of illegal immigration, to be considered as an illegal administrative conduct save those cases inherent to administrative measures, such as expulsion procedures already adopted.

## Article 14

81. In addition to information provided under Article 9, from a legislative standpoint, mention has to be made of:<sup>78</sup> Act 47/2015 (to further reduce the resort to detention precautionary measures); Act 28/2015 (in case of light conducts); draft laws 2798/C, 631-B/C (to increase the use of non-custodial measures before the imposition of a sentence); (to improve the efficiency of the judiciary) in the penal sector, Act 67/2014 (envisaging inter alia probation and the clustering of crimes, the penalty of which can be transformed into an administrative sanction); Law-Decree 146/2013 on extension of the electronic tagging to those under house arrest; Legislative Decree 101/2014, transposing EU Directive 2012/13, on the right to be informed in the criminal proceedings, which amends the Criminal Procedural Code by envisaging — as per general rule — the submission, in writing, of a list of rights to which the person concerned is entitled, and draft Law 2798/C; in the civil sector, Law Decree 90/2014, converted into Act 114/2014; Law Decree 132/2014, converted into Act 162/2014; and Law Decree 69/2013, converted into Act 98/2013. Furthermore, Art. 111 of the Constitution sets forth the State’s duty to ensure and to implement the principle of the right to a fair trial within reasonable time. Accordingly, Act 89/2001 has introduced a legal remedy in case of failure to comply with the above principle. In positive terms, the reasonable time occurs when the proceeding does not exceed before: the Court of first instance, a 3-year term; the Court of second instance, a 2-year term; and the Court of last instance (namely the Court of Cassation), a 1-year term.

82. Concerning preventive custody in prison, this is a last resort<sup>79</sup> (Art. 275, para. 3, ccp), under the strict circumstances set by Art. 273 and ff. In order to revoke this measure, the CCP envisages an expeditious sub-proceeding. Generally, preventive custody in prison

<sup>76</sup> Moreover, the reform has replaced the system of judicial control on prolonged detention. The law now requires that after the initial 60 days, further time in a CIE has to be supplemented by concrete facts showing for instance that continued detention is necessary to arrange his/her return. However, even in such cases, the maximum period of detention in a CIE cannot exceed a 90-day term.

<sup>77</sup> More specifically, to reduce the stay in the CIE, Act 161/2014, which amended Art. 13 (administrative expulsion) of the Unified Text on Immigration, envisages that the foreigner undergoing expulsion by the Prefet can be returned to those EU countries with which Italy has signed specific agreements, including on a bilateral basis. This Act, by amending Art. 14 of the above Text, envisages for those foreigners who are brought to jail for whatsoever reasons for a 90-day-period, can be housed in the CIE for no more than 30 days. At the same time, the prison administration must request information about the identity and the nationality of the person concerned to the Head of the local Police HQs. in charge of initiating the identification procedure, including by involving the consular authorities of the country of origin. To this end, following a testing phase, DAP and the Ministry of Interior signed an MoU, to also acquire information about the social and family situation of the person concerned with the aim of facilitating reintegration. By Memo GDAP PU 043667, dated 17.12.2014, DAP has instructed all detention facilities to ensure a coordinated action.

<sup>78</sup> CCPR/C/ITA/CO/5, para. 14.

<sup>79</sup> CCPR/C/ITA/CO/5, para. 14.

can be imposed only as a last resort when there is a clear and convincing evidence of a serious offence. In this case, a maximum of two years of preliminary investigation is permitted with the exception of extraordinary situations. Plus, preventive custody is not permitted for pregnant women, single parents of children under the age of 3, persons over the age of 70, or those who are seriously ill. Art. 657 ccp envisages that pre-trial detention must be considered when calculating the duration of the detention penalty; and Art. 314 ccp provides for compensation in case of unjust detention. Within this framework, Law-Decree 146/2013, converted into Act 10/2014, provides for, inter alia: “Special Early Release”; and a new judicial complaint under Art. 35-b of the Penitentiary Act (Act 354/1975).

83. Additional regulatory changes designed to limit the use of remand in custody are as follows: Act 199/2010, to enforce sentences in premises outside the prison facility; as for the access to home detention, following the extension to eighteen months for the minimum detention penalty by Law-Decree 211/2011, inmates admitted to home detention have increased significantly. Plus, the arrested person for acts of lesser social alarm can wait for the validation of the arrest in home detention; Act 9/2012, adopted with the aim of reducing prison overcrowding; Law-Decree 78/2013, converted into Act 94/2013, with regard to the limit-requirement for the applicability of the precautionary measure of custody in prison, raised from 4 to 5 years. More specifically, Act 47/2015 has introduced several amendments to the CCP and to the Penitentiary Act, as follows: in case of risk of absconding or risk of crime recurrence, the precautionary measures can be applied only when the risk is “current and concrete”, meaning that it cannot be presumed from the gravity or the type of the crime; pre-trial detention can be ordered only when other measures are not adequate; when the judge orders pre-trial detention, the motivation behind the inadequacy of the house arrest and electronic tagging have to be provided; when the accused under house arrest infringes the exit ban, the judge must order the withdrawal of the house arrest unless the person is accused of a low gravity crime. Moreover, strict rules have been adopted regarding both the pre-trial detention motivations and the time-limit for taking a decision by the Oversight Tribunal: if such requirements are not met, pre-trial detention will go ineffective; the right of the inmates to receive visitors has been extended to allow them visiting their children with a serious disability, in addition to those ones who are in life danger or are affected by a severe disease. Legislative Decree 28/2015 (implementing Act 67/2014) introduces Article 131-b in the criminal code: the defendant cannot be punished if the maximum penalty foreseen for the crime does not exceed a five-year-detention term, and the judge considers the conduct as facts of a lower social alarm: for example when the fact is particularly tenuous and the defendant’s behaviour is not habitual (Data on prison population annexed).

84. As for the independence of the judiciary, no amendments have been made to the relevant section of the Italian Constitution<sup>80</sup> (Art. 101 et ff). However, more recently, following Case C-379/10, *Commission v. Italy*, whereby the Court of Justice of the EU ruled (Judgment, dated 24 November 2011) that Italy was violating EU law when it excluded any liability of the Italian State for damage caused to individuals by reason of a breach of EU law attributable to a court of last instance, if this infringement stems from the interpretation by the latter of provisions of law or assessment of facts and evidence,<sup>81</sup> Act 18/2015 has been introduced. This reform preserves the mixed system of the previous

---

<sup>80</sup> CCPR/C/ITA/CO/5, para. 17.

<sup>81</sup> The EU Court of Justice also determined another profile of breach of EU law by the Italian law when limiting liability to cases of intentional misconduct or gross negligence. Thus, to govern and update the institute of the civil liability of judges,...

legislation (Act 117/88) structured on: the direct responsibility of the State; and the indirect one of the magistrate.<sup>82</sup>

85. As for expediting and reducing the civil proceedings-related backlog, mention has to be made of: Act 114/2014 envisaging an increasing resort to arbitration-related measures; and Act 132/2014 for the computerization of the civil trials (from June 30, 2014).

### **Article 15**

86. In addition to information provided under Article 5, by Legislative Decree 28/2015, Article 131-b has been introduced in the CC, and envisages the non-punishability for conducts of lower social alarm.

### **Article 16**

87. No developments to report under this Article.

### **Article 17**

88. As for the expulsion-related measures, please refer to information provided above under Articles 6, 9, and 13.<sup>83</sup>

89. Considering the current debate on the possible revision (Bill 2798/C submitted by the Minister of Justice in February 2015) of the relevant norms aimed at striking a more satisfactory balance between the interest for security of the society (in this case the interest of criminal investigations) and, on the other hand, the individual fundamental rights, namely the right to respect for private and family life, the wiretapping of conversations and communications which results in forms of covered surveillance techniques placing obvious restrictions on the right to privacy and family life is strictly limited to specific given circumstances, envisaged by law. Furthermore, among the relevant requirements, there are strict criteria for the dissemination of the content of wiretappings since the current legislation aims at ensuring an effective balance between the right to privacy of individuals whose conversations are recorded in the course of criminal investigations and the right to freedom of expression and information, including the access to information.

### **Article 18**

90. The protection of freedom of religion, especially with regard to individuals, associations and religious organisations, is guaranteed in accordance with Art. 8 of the Constitution (concerning the establishment of effective relationships between State and religious confessions). In this regard, there is no State religion; however, besides the historic accord between the Roman Catholic Church and the Government, Art. 19 of the Italian Constitution sets out the right to freedom of religion and belief. This is even more true when considering the increasing number of migrants living in Italy. More in details, religious Denominations without agreement enjoy the same treatments as others. The

---

<sup>82</sup> It is intended to implement effective protection for those who have been damaged by denial of justice or due to a behavior, an act or a court order, made by a judge, also honorary, with intent or gross negligence in the performance of its functions.

<sup>83</sup> CCPR/C/ITA/CO/5, para. 18.

absence of an *Intesa* does not affect a religious group's ability to worship freely.<sup>84</sup> If a religious community so requests, an *Intesa* may provide for State routing of funds, through a voluntary check-off on tax-payer returns, to that community. The law provides all religious groups the right to be recognized as a legal entity and be granted the fiscal exempt status. As for the right of worship and religious sites, the construction of new places of worship, regardless of the issue of the ownership, are subject to the issuance of a building permit to be consistent with the local urban plan. All buildings designed for public worship of both the Roman Catholic Church and the other religious Denominations, cannot be diverted from that destination.

## Article 19

91. At present, various relevant draft Laws<sup>85</sup> are pending before the Parliament.<sup>86</sup> In this context, mention has to be made of the so-called Costa Bill (A.C.925-B) — currently under the second reading. The amendments proposed aim at limiting the use of criminal sanctions for defamation and at introducing the abolishment of imprisonment as a sanction for defamation.<sup>87</sup> In April 2014, the Italian Parliament approved the law delegating the Government to reform the penal sanctionary system (Act 67/2014), under which it has been envisaged the abrogation of the offence of insult which will thus become relevant only in the civil sector.<sup>88</sup>

---

<sup>84</sup> The Constitutional Court repealed the provision envisaging the authorization to be granted by Decree of the Head of State for the opening of a religious site (Decision 59/58). Accordingly, religious Denominations that did not sign any agreement (*Intesa*) with the State, can apply for the State's financial resources for the building and the equipment of religious sites (Decision 195/1993).

<sup>85</sup> Given the constitutional principles enshrined in Article 21, which sets forth: "Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship [...]".

<sup>86</sup> CCPR/C/ITA/CO/5, para. 19.

<sup>87</sup> The overall purpose is to more clearly design defamation and related procedures and remedies, including by extending the scope of the relevant provisions to the audio-visual media and the internet. Efforts have been made to ensure improved criteria for assessing damages resulting from defamation, and a two-year time limit for civil actions for damages has been envisaged, too. In brief: a two-year time limit for civil actions for damages; an aggravating circumstance if a fact attributed to a person results to be false; prohibitory measures in case of recurrence; a specific increased focus on the role of the editor and the relating liability in case of defamation, as well as the reformulation of Art. 57 CC; the strengthening of the system to discourage the frivolous litigation to avoid mismanagement of the civil action; and the extension to independent journalists and "contributors" of the protection of journalistic sources. With regard to the fines, according to the proposed new provision amending the Press Law, those applicable to the media for defamation will be increased between 5,000 and 10,000 Euros. The application of proportionate sanctions principle, in accordance with the individual circumstances of the particular case, remains a key requirement.

<sup>88</sup> Defamation is defined under Article 595 cp as a damage to the reputation/honor of a person through communication with several persons. There are three forms of aggravated defamation: through the allegation of a specific act (Art. 595 § 2); through the press or any other means of publicity, or through a public deed (§ 3); and if it is directed to a political, administrative or judicial body (§ 4). Article 596 excludes the defence of justification (proving the truth of the allegation, *exceptio veritatis*), except for cases of defamation through the allegation of a given act, in three cases: 1) when the defamed person is a public official and the alleged act relates to the exercise of his/her functions; 2) if criminal proceedings are still pending on the alleged act on the part of the defamed person, or if proceedings are brought against him/her; 3) if the complainant formally requests that the judgment should extend to ascertaining the truth or falsity of the alleged act. Article 596bis extends to the editor, deputy editor, publisher and printer, the application of the provisions of Article 596 dealing

92. Act 215/2004 also covers possible conflicts of interest between government responsibilities and professional and business activities in general.<sup>89</sup> With specific regard to media concentration and ownership,<sup>90</sup> the conflict of interest-related provisions are completed by detailing the powers, functions and procedures of the independent administrative Authorities responsible for oversight, prevention and imposing penalties to combat such cases, together with the applicable penalties. For companies in general, this responsibility lies with the Anti-trust Authority established by Act 287/1990 (Art. 6); for companies of the printed press and media sector, the responsibility lies not only with the above Authority but also with AGCOM instituted by Act 249/1997.

- The above Authorities are characterised by their neutrality with regard to the parties with conflicting interests to be resolved and third parties, and are therefore *iudicanti* in any relevant conflicts. Specifically, Act 215/2004 entrusts AGCOM to conduct audits against companies operating in the Integrated Communications System (acronym, SIC) and are headed by the holder of governmental position (or by relatives).

---

with the defence of the truth. Plus, Articles 57 and 57bis CC provide for liability of the editors/deputy editor and publisher or the printer, in case the offence of defamation is committed, for failure to conduct supervision of the content of the publication. Article 58 extends the scope of these provisions to the clandestine press. Should the condemnation not be suspended, an additional penalty is applied (*pena accessoria*) concerning the temporary interdiction from labour (Art. 20). However as for the latter, the Court of Cassation has clarified that it is not automatically applied but it depends on the further ascertainment of abuse by the journalist in accordance with Art. 31, cp, by which “abuse of the profession” stands for absurd performance aimed at an objective other than the traditional one stemming from the job position under reference.

Both the Italian legal literature and the case-law have constantly affirmed that the exercise of the right to news reporting (*diritto di cronaca*) and of the freedom of the press guaranteed in Article 21 of the Constitution represents a cause of justification within the meaning of Article 51 cp, thus making the acts non punishable. A landmark judgment of the Court of Cassation (*Civil, sez. I*, October 18, 1984), constantly applied, sets out the three criteria for the application of Article 51: the social utility or social relevance of the information; the truthfulness of the information (which may be presumed (*verità putativa*) if the journalist has seriously verified his or her sources of information); restraint (“*continenza*”), referring to the civilised form of expression, which must not “violate the minimum dignity to which any human being is entitled”. The case-law has further clarified that these three criteria cannot fully operate in relation to the right to criticize and to satire. Also, the Constitutional Court (Decision 175, 5 July 1971) has stated that the exclusions and the limitations of the *exceptio veritatis* provided for in Article 596 cp are not applicable when the defendant exercises the cause of justification related to the freedom of expression recognized by Article 21 of the Constitution, asserting the truthfulness of the information. Importantly, in most cases the truthfulness of the communicated information excludes criminal defamation.

The defence of truth, public interest and responsible journalism are largely recognised by the Italian case law. The Supreme Court has often stated that such a right is lawful when it is exercised under the following circumstances/requirements: 1. social value; 2. truth; 3. correct exposition of the episode under consideration. Along these lines, the so-called “right to criticism” must be exercised within specific borders: 1. correctness of the language; 2. respect for one’s rights (Cass. 40930/13).

However, freedom of the press and freedom of expression relating to politics and trade union-areas enjoy more extensive interpretations.

<sup>89</sup> CCPR/C/ITA/CO/5, para. 20.

<sup>90</sup> this could not simply be singled out by the law as a reason of incompatibility with a government position because such provision would have been in contrast with Articles 42 and 51 of the Constitution protecting the fundamental right of individuals to hold private property and the freedom to be elected to public offices. Furthermore, the prohibition of ownership to this effect would have caused a “forced sale” determining an irreversible situation upon expiry of public office, which would also contravene to the same Articles of the Constitution.

- The SIC comprises all the main media business sectors, and may be considered to be the result of the multimedia convergence process in which apparently heterogeneous media (radio, television, newspapers, the Internet, cinema) are gradually drawing closer together and becoming integrated.

93. As for the access to information, new transparency-related obligations have been introduced. By Legislative Decree 33/2013, the right of access to information is placed at the core of the administrative system. Article 5 introduces “Civic access” namely the right to request a PA office to promptly publish online, any documents: failure to comply with this request may trigger sanctions also for senior officers, including for damage to Administration’s image.

## Article 20

94. The Italian legal system<sup>91</sup> includes specific provisions to combat racist and xenophobic speech, including those actions directed to spread ideas founded on racial or ethnic hatred and the incitement to commit acts of violence on racial, ethnic or religious grounds. The legislation in force punishes the establishment of, organizations, associations, movements or groups that have, among their purposes, the incitement to discrimination or to violence motivated by racial, ethnic or religious motivation. It also provides for a special aggravating circumstance for all crimes committed on the ground of discrimination or racial hatred. In light of constitutional principles, the penal action by the public attorney’s office is mandatory. Therefore, prosecutors are able to investigate any alleged discriminatory motive, associated with a crime irrespective of the mention of such motive in the report drawn up by Police authorities.

95. From a judicial standpoint, with due respect to and given the judicial safeguards set forth by the Constitution and relevant legislation, should new events emerge, the Court can admit additional evidence, in accordance with Arts. 516, 517, 518, CCP. In general terms, the Court can always decide a more severe penalty in light of new circumstances or specific evidence. Should the Court find new facts — compared to those already under trial —, it has to mandate the public attorney to proceed separately, unless the attorney and the defendant decide to do otherwise (Art. 518 CCP).

96. From an institutional standpoint, mention has to be made of OSCAD and DEO-UNAR’s work<sup>92</sup>:

- Established in 2010, at the Ministry of Interior, OSCAD is operated by Police and Carabinieri to prevent and repress “hate crimes”. Headed by the Deputy Director of the Department of Public Security/Central Director of Criminal Police, it is composed of officials from Police and Carabinieri, and aims at: overcoming under-reporting; alerting Police and Carabinieri; enhancing training and exchange of investigative information and best practices at the international level; monitoring discrimination; increasing awareness, in synergy with other relevant agencies; promoting communication and prevention.<sup>93</sup> It receives relevant reports

---

<sup>91</sup> Lasr March 2015, the Council of Ministers approved a Bill to ratify the Optional Protocol to the CoE Convention on Cyber-crime.

<sup>92</sup> CCPR/C/ITA/CO/5, para. 12.

<sup>93</sup> Among activities, emphasis must be placed on HRE and closer cooperation with DEO-UNAR, the LGBTI service of the Turin Municipalities leading the READY network, Amnesty International, Polis Aperta, Lenford Network, as well as — at the international level —, with OSCE-ODIHR (TAHCLE). Between 2012-2014, OSCAD trained: 350 Police Executives; 200 Police senior officers (*Commissari*); 340 Superintendents; and 4,650 Agents; approx. 500 operators; 250 officers, 90 of

(oscad@dcpc.interno.it — fax 0646542406 and 0646542407) from Institutions, professional or trade associations and private individuals; launches targeted interventions at a local level; also keeps contacts with relevant CSOs; prepares training to qualify Police operators on anti-discrimination activity; and participates in training programs with public and private Institutions; and, more generally, elaborates appropriate measures to prevent and fight discrimination.<sup>94</sup>

- UNAR's role<sup>95</sup> has been strengthened and its role expanded over the years. It is engaged in: combating racism; promoting the integration of Roma, Sinti and Caminanti; and fighting homophobia and trans-phobia, with particular attention to multiple and intersecting forms of discrimination. DEO-UNAR works on and fight against hate speech and hate crimes whereas cases of discrimination on the grounds of racial and ethnic origin still remain the majority, with a total amount of 68,7% complaints (as at 2013). According to the yearly-collected DEO-UNAR's data, mass media are the most used means to disseminate discriminatory ideas (34.2%, compared to 19.6% in 2012). In particular, hate crime cases affecting specific ethnic minorities or foreigners have been recorded on the new social media. Also the xenophobic contents of social network have increased — as facilitated by anonymous format. Over the years, the Office supported and/or promoted various initiatives, such as the "Rome Charter" (a code of conduct for journalists when dealing with migration-related issues), training for media, law enforcement and law professionals. More recently, it has been involved and is developing Action 2.2.3. "Combating different forms and manifestations of Racism and Xenophobia" within an international 18 month-project.

97. According to UNAR's yearly-collected data (2013), about 70% of in-bound reports were considered as discriminatory acts and conducts. A decrease has been recorded with regard to institutional discrimination (i.e. from public services, 7.7%), the access to work or housing (7.5% and 5.1%). Specific attention has been paid to the 139 cases against Roma and Sinti. Discrimination resulted to be mainly in northern Italy with 55.3%. Locally, Latium scored the highest percentage with 22.1% (156 reports in the Municipality of Rome). Most of the victims are Italian (26.5%), followed by Moroccans and Romanians (8.5% for both nationalities) and by nationals from other 38 Countries. The reports came directly from victims (29.2%); from witnesses (19.5%); and from associations on behalf of victims (10.2%).

---

whom were trainers. The same has been scheduled for 2015, for all young inspectors. By an MoU with MIUR dated May 2013, pilot-projects are envisaged also within the school system, starting with a High School in Rome.

<sup>94</sup> Under no circumstances, reporting an act of discrimination to OSCAD replaces a formal complaint with the Police.

<sup>95</sup> Unlike Equality Councillors, DEO-UNAR is not authorised to take legal action. However, it provides legal support to those NGOs with *locus standi* and admitted to its Register in accordance with Art. 5 of Legislative Decree 215/2003 — which currently counts 560 Associations. As mentioned earlier, in recent years DEO-UNAR has been enhancing its tools through an integrated action in support of victims — also through an MoU with OSCAD. In brief, the assistance provided by DEO-UNAR focuses on the following activities: it informs victims of remedies that may be sought and encourages them to take action, also through the Associations authorized to act on their behalf (*locus standi*); it helps victims and the relevant Associations by formulating opinions; it monitors relevant judicial proceedings initiated through a report submitted to its Contact Centre. In addition to its website, by publishing opinions and recommendations, DEO-UNAR disseminates information and raises awareness of the anti-discrimination legislation and the rulings of national and supra-national courts in order to ensure victims' protection.

98. Additionally, mention has to be made of the specialized investigative Police Units on hate crimes/hate speech: Digos, responsible for crimes motivated by xenophobia, racism, anti-Semitism and overall religion (including Islamophobia); The local Police investigative units (*squadra mobile*) — specifically the units for vulnerable groups; The postal Police with responsibility for web-related crimes; The ad hoc units at the public attorney's offices.

99. Under the Italian Presidency of the EU, a European HLE on Non-Discrimination and Equality was organized in Rome, entitled "Shaping the Future of Equality Policies in the EU"; and public discourse was considered as problematic in various countries. On that occasion, 14 commitments were made, including to enhance HRE-related measures.

## Articles 21-22

100. No developments to report.<sup>96</sup>

## Article 23<sup>97</sup>

101. In addition to information under Article 3 on divorce-proceedings, Act 54/2006 envisages joint guardianship, to which to add Act 219/2012 extending the right of the minor to be heard. Legislative Decree 154/2013 equates legitimate children to those born out of

<sup>96</sup> However, it should be recalled, as follows: Article 17 of the Constitution envisages freedom of assembly: "(1) All citizens have the right to assemble peaceably and unarmed. (2) For meetings, including those held in places to which the general public has access, no previous notice is required. (3) For meetings held in public places previous notice must be given to the authorities, that can prohibit them only on the grounds of proven risks to security or public safety". As for the latter, the denial by the senior police officer (*Questore*) must be motivated and can be challenged before the judicial Authorities; and the lack of prior notice by the organizers triggers penal consequences. The following Article 18 sets out: "(1) Citizens have the right — and without authorization — to freely form associations for those aims not forbidden by criminal law. (2) Secret associations and associations pursuing political aims by military organization, even if only indirectly, are forbidden". As for the latter, it is the judicial Authority that has power to determine the closing down of an association. In terms of associations of major relevance, mention has to be made of political parties and trade unions as laid down in Art. 49 and Art. 39 of the Constitution, respectively. The only association being prohibited by Constitution is the fascist party.

On a more specific note, Art. 18, para. 1, recalls the distinction contained in our Civil Code between recognized associations and those being not recognized besides guaranteeing the right of each person to freely associate with others "for purposes which are not prohibited by the penal law", without a prior authorization. In practical terms, what is allowed to the single citizen, *uti singulus*, it is also authorized to him/her in association, *uti socius*. Therefore, the Constitution recognizes citizens' association; and according to the legitimate interests" — principle (Act 241/1990), opportunities to participate in decision-making process shall be given not only to individuals having an interest in the decision but also to associations representing common interests, when such interests are likely to be influenced by the decision.

<sup>97</sup> Following ECtHR's Decision, dated January 7, 2014, on *Cusan and Fazzo v. Italy*, Bill AC 2123 is before the Parliament. The Court has detected a vacuum in the legislative system, which envisages the automatic registration of children with their father's surname. The above Bill envisages that the child takes the father's surname or upon agreement by the parents, the mother's surname. Current additional Bills aim at: compulsory family mediation (Ddl AS 957) "to educate" women and men to parenthood; AS 1763 on the more uxorio cohabitations register; AC 2661 on the special Tribunals for families; AC 2885 Amendment to the Civil Code for adoption-related rights of same sex couples. On February 10, 2015, the Government approved a Bill with the aim of establishing — other than the Juvenile Courts — ad hoc specialised judicial Sections for "Persons and Families".



wedlock (thus impacting also on more uxorio cohabitation), besides further extending the right of the child to be heard.

102. Recalling Article 12, the majority of women migrant arrive in Italy for marriage or family reunification purposes. Art. 31 of the Unified Text on Immigration envisages that the juvenile Court may authorize the entry and stay of a family member of the foreign child staying in Italy.

## Article 24

103. In addition to information above provided, mention has to be made of custodial measures for the children in conflict with law, who are detained at I.P.M. (Juvenile Penitentiary Facilities) which now accommodate youths, both under pre-trial detention or sentenced to custody, who committed offence when they were under the age of 18 until the age of 25 (Act 117/2014). As for the individual treatment of juveniles, each child is granted a customized program at IPM. A team, made up of social workers, psychologists and pedagogy experts, conceives each individual treatment program and it is conditioned upon the approval of the competent Judge. Specific attention is paid to health education, which includes the treatment of any disease, as well as general prevention plans: each Centre secures the regular presence of one physician and one or more nurses. With the Reform of the Penitentiary Health Care Sector, implemented by DPCM 230/2008, the health functions carried out by the DAP and the Department of Juvenile Justice have been transferred to the NHS. Thus, ASL ensures health-care and psychological support to children involved in the penal system through specific agreements.<sup>98</sup>

104. Due to the massive flow of migrants, increasing attention has been paid to unaccompanied minors. From 1 January to 23 October 2014, 12,164 unaccompanied minors landed by sea. They are housed in Reception Centres for minors or put in family foster care solutions. Italian law forbids the deportation of minors as a general rule. They are entitled to a residence permit, until they reach the age of 18. Upon coming of age, they can obtain a residence permit either for study or working reasons.

105. Within the school system,<sup>99</sup> specific attention is paid to migrant students. As mentioned under UPR-II the Ministry of Education has launched a pilot-project to train teachers and school principals. Another project entitled “Lingue di scolarizzazione e curricolo plurilingue e interculturale” aims at promoting linguistic and cultural heritage of foreign students at the primary schools. A national Observatory for foreign students’ integration has also been established. In 2014, the new Guidelines for the reception and integration of foreign students have been adopted, taking into consideration the different situation of the foreign pupils’ population.<sup>100</sup>

<sup>98</sup> Nationally, with the Unified Conference of Regions and Local Authorities, through ad hoc agreements, including, as a way of example, on specific “Guidelines”.

<sup>99</sup> Act 169/2008 introduced a new subject, dealing with issues, such as the Italian Basic Law, European citizenship, and human rights, for all Italian schools. Specifically, the recognition of rights and duties by students is at the core of education to legality. In 2010-2011, the initiative “LE(g)ALI al Sud: un progetto per la legalità in ogni scuola” has been promoted by the Ministry of Education and the Foundation Giovanni e Francesca Falcone. Within this framework, a competition takes place yearly within primary and secondary schools.

<sup>100</sup> They increased from 430,000 in 2006 to 830,000 at present.

## Article 25

106. Aside from the ongoing parliamentary debate on reforming legislation on citizenship, in general, Italian citizenship remains the pre-condition for enjoying the active and passive rights to vote. Italians permanently living abroad or who were born abroad from Italians, enjoy the right to vote if registered in the electoral register (Art. 48 Constitution); and EU citizens with permanent residence can participate in municipal elections. Recently, ISTAT undertook a survey, by which 72,1% of the citizens is favourable to granting Italian citizenship those children born in Italy from migrant parents. Similarly, the majority of respondents deems that citizenship should be granted to those migrants being resident in Italy for a certain period of time and wishing to apply for it. However, this positive note is not reflected when considering the extension of the right to vote for immigrants: only 42,6% declares to be favourable; and only for the municipal elections. It is worth-noting that Art. 48 of the Constitution envisages: "... A constituency of Italians abroad shall be established for elections to the Houses of Parliament; the number of seats of such constituency is set forth in a constitutional provision according to criteria established by law", in accordance with Act 459/2001 and DPR 104/2003. Along these lines, Act 52/2015 envisages that citizens temporary staying abroad for a period of at least three months, for working, study or health-care reasons, can request to their Municipality to vote by mail.

## Article 27

107. In Italy, Roma are some 160,000 units.<sup>101</sup> As indicated in the relevant National Strategy (annexed herewith),<sup>102</sup> their heterogeneous status *civitatis* does not allow any longer their treatment within the wider framework of immigration-related policies.<sup>103</sup> More importantly, with the Strategy under reference, the connotation "nomad" has been definitively overcome!<sup>104</sup>

108. Operationally, UNAR was designated in late 2011 as the National Contact Point.<sup>105</sup> Under the political responsibility of the then Minister for Integration, it elaborated the above Strategy with an inter-ministerial, inclusive and participatory approach. Substantially, the above Strategy focuses on the EU Priorities (Housing, Labour, Education,

---

<sup>101</sup> Approx. half of whom are Italians.

<sup>102</sup> CCPR/C/ITA/CO/5, para. 22.

<sup>103</sup> Plus, the Constitutional Court stressed the equality between Italian citizens and Non Italian citizens in the enjoyment of basic human rights (Verdict 187/10); and that the solely criterion of citizenship cannot be reasonable in itself. In fact, when the Public Administration detects a need, this cannot be limited to the minimum stay duration criterion (Verdict 2/2013).

<sup>104</sup> CCPR/C/ITA/CO/5, para. 21.

<sup>105</sup> In 2012, Italy joined the CoE programme "Combating discrimination on the grounds of sexual orientation and gender identity". DEO, through UNAR acting as the national focal is currently implementing "The National Strategy for the Prevention and Fight against Discriminations grounded on Sexual Orientation and Gender Identity, 2013-2015" which focuses on: education (integration, overcoming stereotypes and anti-bullying), safety and prisons, communication and media (Relevant awareness raising and training, envisaged for senior officers from schools, labour centres, law enforcement, is carried out through national seminars and pilot projects of a local level, as well as through an *ad hoc* web platform). UNAR also finalized recently the NAP Against Racism (approved in May 2015 by the Unified State-Regions Conference), in terms of target group and scope, it covers both foreign citizens who live in Italy and Italian citizens of foreign origin, including those belonging to religious and ethnic and linguistic minorities.

Health) but Italy decided to introduce a gender perspective, a human rights-based approach and HRE as crosscutting.

109. To comply with relevant standards, the governance of this Strategy includes national-thematic and regional Working Groups, and local Plans of social inclusion. Since December 2012, the above WGs have been gradually establishing. In January 2013, the national WG on Roma Legal Status has been set up and works on those Roma and Sinti without any ID cards and who cannot be connected any longer to their country of origin.<sup>106</sup> Moreover, a specific Task Force has been set up with ISTAT and ANCI, in line with the to-be-launched pattern of Roma's human rights indicators elaborated by EU-FRA.

110. Meanwhile, UNAR keeps promoting, inter alia, awareness-raising and training activities through several initiatives, such as Council of Europe's Romed2/Romact, CominRom, and the "DOSTA (Basta!) campaigns, as well as initiatives related to the remembrance of Porrajmos, the International Roma Day, and the week against racism. In terms of good practices, mention can be made of: "Italian ACCEDER<sup>107</sup>" — to facilitate the access to the job market for Roma women and youngsters in the South of Italy; the joint project run with ANCI and ISTAT to identify relevant administrative sources and data-collection on housing; the project jointly run by UNAR, ANCI and Formez, to promote the adoption of Local Social Inclusion Plans. Other projects are run by: the Ministry of Labour (especially those under Act 285 for Roma family and school integration of young Roma students<sup>108</sup>); the Ministry of Health (also through a sectorial Plan launched in November 2014); the Ministry of Education (also through, inter alia, an ad hoc project devoted to Porrajmos<sup>109</sup>); the Ministry of the Interior (inter alia, by coordinating the above WG on legal status); and DEO — entitled to manage Ob. 4.2 — Action 6 from PON ESF "Governance", by relying on previous training experiences of Roma and Sinti mediators within the project Romed of the Council of Europe, has been implementing a pilot-project on "The promotion of a network of RSC cultural-linguistic mediators". Lastly, within the Italian Presidency of the EU, UNAR organized relevant initiatives and events of a regional level, including the Meeting of the National Roma Contact Points, held in Rome, in November 2014.

111. Under the current Legislature, various draft laws are pending before the Parliament:<sup>110</sup> draft Law 2858, pursuant to Article 71, para. 2, of the Constitution, on "Provisions for the protection and equal opportunities of Roma and Sinti as a historical-

<sup>106</sup> Within this framework, on September 10, 2015, the Parliament passed legislation authorizing the ratification of the UN Convention on Reduction of Statelessness (1961).

<sup>107</sup> Between 2013-2015, within the "FSE Governance and Systemic Actions, Convergence Objective, Axis B, Employability", UNAR has developed a specific Action with regard to "positive models of vocational training, orientation and job inclusion", which falls within the specific Objective No. 2.3 of the National Strategy under reference, dedicated to job inclusion, with the aim of replicating the Spanish ACCEDER project. So far, 100 Roma have been positively involved, the majority of whom are women.

<sup>108</sup> Projects carried out by the Ministry of Labour in collaboration with the Ministry of Education, in accordance with Act 285/1997, within the broader project entitled "for the inclusion of Roma, Sinti and Caminanti children and adolescents". 13 municipalities have been involved; and specific debates and exchange of best practices took place with regard to two key work-streams: family involvement, especially focused on women and girls; and school reception.

<sup>109</sup> As for Roma and Sinti school dropping-out, the National WG gathered, for the first time, on February 11, 2013. A subsidiary WG has been set up and has launched a specific pilot-project for both students and teachers on Roma History/Porrajmos, non-discrimination, and human rights. Within awareness-raising of rights, culture and history framework, a website on Porrajmos mainly for the school system has been launched by the Shoah Foundation and Cattolica University in Milan.

<sup>110</sup> CCPR/C/ITA/CO/5, para. 22.

linguistic minority”; Bill 1748/2015, on “Amendments to Act 211/2000, to extend the Remembrance Day to Roma and Sinti”; Bill 51 (et Abb.) to ratify the European Charter on Regional or Minorities Languages.<sup>111</sup>

---

---

<sup>111</sup> By Act 482/1999, the Ministry of the Interior periodically updates the list of Municipalities where linguistic minorities live besides considering for inclusion those other communities so requesting under the above Act. By recalling information provided under the previous reporting exercise, mention has to be made of the various NGOs working for the protection of local linguistic minorities, such as CONFEMILI (the Federal Committee of Linguistic Minorities of Italy) that represents the Associations of the twelve recognised historical linguistic minorities. It carries out activities of coordination, guidance, advisory and planning, for both local Authorities and associations.