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COMMETTEE of APPLICATION of STANDARDS

ITALY: Convention 143 Migrant Workers

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We acknowledge that Italy is among the few countries that ratified this convention and strongly support the request for more ratifications, first of all by the most developed countries.

In fact, when the Italian State adopted C. 143, in 1981, Italy was still more a sending country than a receiving one.

Addressing such issues, Italy paid tribute to the millions of Italian workers who experienced migration, leaving behind poverty, war, fascism and searching abroad better conditions of life for themselves and their families.

Obviously, it must be underlined that Italy is a democratic country and its laws provide for the protection of fundamental human rights. However, the abstract declaration of rights often does not translate automatically into their implementation and total enjoyment by citizens.

More in detail:

Right to religious freedom: while respected on paper, in the practice it has been interfered with at local level, with controversies against the construction of mosques (Lombardy, Veneto) and against praying in public.

Political rights. (Active) **voting right** is denied, as it only vests with Italian citizens; administrative voting right is given only to Italian nationals since Italy has never ratified chapter C of the Strasbourg Convention.

As far as **access to citizenship** is concerned, the so called "Security Package" now in discussion before the Parliament extends the term of legal domicile in Italy after celebration of marriage (from 6 months to 2 years) after which citizenship may be applied for.

Citizenship on grounds of residence may be applied only after 10 years and is difficult to obtain, apart from being costly (requires payment of a fee of 200 €).

The essential civil principle of **equality before the law** has been questioned by Law no. 125 of 2008, that amended Section 61 of the Criminal Code by introducing the case of "general aggravation" of the crime (which implies increasing the penalty by one-third) ... if *the culprit committed the crime while staying illegally* in the national territory.

Regarding the **abolition of discriminations**, as the three Italian Confederations Cgil, Cisl and Uil have repeatedly stated, the founding duties of UNAR (Non-Discrimination Office within the Ministry of Equal Opportunities) is not merely to report and fight direct discrimination generated by individual and collective behaviour, but also indirect discrimination, removing from legislation rules in conflict with C. 143 and the Italian Constitution.

Actually, the provisions of law are not free from discriminations in respect of foreign citizens:

access to public employment denied to non-Italian citizens,
social security treatment, the enjoyment of which varies for those who return to their countries of origin,
use of foreigner diplomas, usually not recognised in Italy,
the enjoyment of allowances (like the one granted for the birth of a child) that the recent Budgetary Law has expressly denied to non-Italians.

Then there are de-facto practices, like wage levels (actually 40% lower than those received by Italians, as evidenced by a recent INPS survey), as well as local regulations governing the use of certain social services that in many towns are not available unless after 10 years of residence.

Italy remains one of the European countries with the largest incidence of working accidents and diseases. According to the INAIL figures, while there is a small decrease of about 1.3% of the total accidents, those affecting migrant workers are increasing by 3.7%, because they are employed in the heaviest and most hazardous jobs, often in "dark" or "grey" jobs, always without sufficient information on health and safety provisions.

Cgil, Cisl and Uil have repeatedly reported that the behaviour of UNAR is inadequate for an institution that is supposed to be independent from the Government, if its duty is to guarantee the full enforcement of non-

discrimination rules and reject practices (including public practices) in conflict with those rules.

This is also recommended by Thomas Hammarberg, Commissioner for HR of the Council of Europe, in the report issued on April 16th 2009, following his visit to Italy.

As regard to article 8, the equal treatment for migrant workers losing their job is not guaranteed. They can maintain the residence permit only for six months, while unemployment benefit for dismissed Italian workers are provided from 8 to 12 months (depending on the worker's age), and up to 12 months for other provisions.

On May 6th 2009, the Minister of Interior issued a circular to the Prefects to restrictively enact the current law which provides for at least 6 months residence permit for dismissed or unemployed legal migrants, impeding the local provisions that were reached between local authorities and social partners for residence permit prolonged till 1 year, in order to fairly afford the negative consequences of the global crisis.

In relation to Art. 9, for the time being, an irregular migrant worker is not guaranteed to receive compensation, let alone social security.

On many occasions when a worker reported its defaulting employer he/she ended up being expelled and hence deprived to take legal action.

Presently, art. 11 of the so called Bossi-Fini Act (Law n. 189/2002) provides for detention up to three years for an employer who uses irregular workers, but only in theory. Very few employers are reported and even less have been sentenced.

On the contrary, with the introduction of the crime of illegal migration - now pending of approval in Decree Law C. 2180 - an illegal migrant can be expelled without the review of his/her case by a magistrate, since the approval of a justice of the peace is sufficient.

With the expulsion, the right to **claim one's rights before a competent authority** remains mere theory.

In 2006 the Government then in office - under lobbying by the unions - extended the application of art. 18 of the Unified Text of Legislative Decree on Immigration (applied to the crime of slavery for prostitution purposes) also to serious cases of exploitation at work. According to this provision proven cases of serious exploitation reported by victims and verified by the authorities may give rise to the grant of a residence permit for humanitarian reasons and to a protected integration process. However, the rule is very restrictive and has not affected the proliferation of cases of

forced labour, now very common in agriculture, in the field of home care, but also in the building construction and trade.

Lastly, the State does not guarantee **travel costs in case of expulsion**. And a migrant who does not comply with the order of expulsion is subject to arrest and might be sentenced up to four years of detention (Art. 12 of the so called Bossi-Fini Act).

Articles 10 and 12 of C. 143 are not only systematically disregarded, but there is also a tendency to generate a feeling of refusal of immigration in the public thinking, especially - but not solely - irregular immigration.

The word "illegal migrant" often coupled with the word "criminal", the criminalisation of an entire ethnic group like the Roma or the Romanians, are part of a campaign that is often started by public authorities or political party representatives and that, boosted up by the media, generates an intolerant attitude against all foreigners, with serious consequences also in terms of individual or collective episodes of racism and xenophobia.

Several measures were adopted by municipal authorities against migrants. On 11 February 2009, for example, a court in Milan cancelled a circular issued by the Milan City Council because of its discriminatory nature. The circular restricted kinder-garden enrolment for children of migrants without a residence permit.

Public may be brought to the idea that the respect of fundamental human rights can be overlooked, as in the case of rejection of boat-people from North Africa, who have been denied to prospective of political asylum.

In its recent report on human rights in Italy (May 2009) Amnesty International arises many concerns about this new Italian policy, which is the final result of a cooperation with "Libya pursued and carried out, on the last 10 years, by the different governments and characterized by few transparency and any condition posed to the Libyan government in terms of Human Rights".

The Council of Europe HR Commissioner reiterated his disapproval of bilateral or multilateral agreements for the forced returns of irregular migrants with countries that don't guarantee the full HR respect.

The number of disembarkments and the continuing flow of boat -people on the dangerous Mediterranean sea are proofs of the failure of the prevention of the irregular migration expected by the bilateral agreements.

Actually, many administrative and legislative provisions to tackle the irregular immigration risk to strongly hit the victims of traffic and exploitation more than the traffickers and exploiters.

Furthermore, the so-called "security package" that is awaiting approval - introducing the crime of illegal immigration, the aggravating circumstance of illegal migrant status, the seizure of the property from those who rent to illegal migrants, the obligation to report those who use money transfer services without producing a residence permit, the obligation to produce the permit also for civil administration deeds - confirms, in our opinion, the intention to create a separate body of laws that is penalising migrants, especially irregular migrants, with serious consequences in terms of violation of human and civil rights.

In particular, the crime of illegal immigration converts into a criminal offence what is now an administrative malpractice. Therefore, this kind of offence is most likely to bring a cascading effect on the laws and on the behaviour of civil servants who might commit a violation of Section 328 of the Criminal Code (refused or omitted deed in office) if they do not report an "illegal" migrant.

Many would have heard of the rules introduced (and now withdrawn) in the "security package" that provided for the option for physicians to report irregular migrants seeking treatment, and the option for school headmasters to report parents of a foreign student without residence permit.

Actually, having those rules withdrawn is not enough to avoid prospective persecutory attitudes against patients and pupils, since the introduction of the crime of illegal immigration will end up with the same provisions to be enacted by civil servants.

In fact, the media emphasis about the possibility by public servants to denounce irregular migrants has already caused that many of them are avoiding any contact with the public health care system. Here, not only is clear a grave violation of the art.32 of the Italian Constitution and the art. 2 of the Unified Text of Legislative Decree on Immigration, but is very high the peril to create a "clandestine hearth area" with a huge danger both for the single migrants and for the social community as a whole.

THE SITUATION OF ROMA AND SINTI POPULATIONS

In general, no specific laws were passed in respect of ROMA and SINTI populations, but orders were issued (n. 3676, 3677, 3678) on 30 May 2008 to grant extraordinary powers to the Prefects of the towns of Milan, Rome and Naples, ordering the demolition of unauthorized gipsy camps.

The idea to take the fingerprints of minor nomads was abandoned thanks to the opposition raised also by the EU, and the individual data collection was strongly criticized, among others, by the Council of Europe HR Commissioner.

There were also episodic and isolated cases of violent behaviour against the people that were at the camp during the security inspections.

What we object most to the authorities is the emergency-like approach that is being used to deal with a century-old issue. There are 160 thousand Roma and Sinti in Italy, of which about 90 thousand are Italian. They have been present in our country since 1400, and a large majority have become integrated. Yet, the "gypsies issue" is still treated as if it were a recent one, and the situation as if it were a "public emergency". Actually, what is missing here is a well-defined integration policy, in terms of housing, schooling and employment, as underlined also in the above mentioned report by Thomas Hammerberg.

Basically, the question of the Roma population (and by analogy of the Romanians), is used to stir the public opinion and exacerbate violent behaviour, as it happened last year near Naples, where, as reported by Amnesty International, "On 13 May 2008, up to 100 people, reportedly armed with sticks and Molotov cocktails, set fire to parts of a Roma settlement".

Unfortunately, many other episodes of mistreatment and violence against Roma, Sinti and migrants, although of less gravity, are occurring more frequently in different Italian towns.

On this situation, on last 28th May a small group of disguised people tried to vandalize the OIM premises in Rome. We would like to add our voice to the "support and solidarity" message that the Rome ILO Office sent to the OIM colleagues.

The laws awaiting approval provide for two rules expressly intended for the Roma and Sinti populations: the one that introduces stricter rules to fight the use of minors for begging and the one that makes the grant of resident status conditional on the verification of proper housing conditions, which can be hardly satisfied by people living in camps.

IN CONCLUSIONS

Italian laws do contain important principles about the respect of human rights, in line with international rules and principles and that support the value of individuals regardless of origin, race and religious belief.

However, they include provisions with objectively discriminating contents that ought to be removed.

Furthermore when it comes to enforcing the positive laws and principles, we face a remarkable delay in the application of the principle of full and effective equality for all.

Today, the economic crisis and the poisoned political climate certainly do not facilitate this urgent and necessary process.

Unfortunately, the bodies established to protect equality and harmonious co-existence of diversities have turned out to be insufficient in autonomy and efficacy (e.g. the Ministry of Equal Opportunities).

The presence in Italy of more than 800.000 irregular migrants and the public's perception of the government as incapable of handling the phenomenon have caused the population to grow more intolerant towards diversity.

The economic crisis has worsened the tendency of the Italian people to shut others out, and has made it more permeable to feelings of rejection in respect of foreigners (not only of irregular immigrants) and of the Roma and Sinti populations. This climate is unfortunately fuelled by political propaganda and by the over-dramatic emphasis with which the media report crime events.

The situation has grown so serious that 27 organisations of the civil community (including all trade unions) have launched a national campaign against racism, xenophobia and the fear of "others".

In its Shadow Report 2007 on Italy, ENAR - European Network Against Racism - advances some important recommendations, like the need to "reform the citizenship law to allow the long residents, the children born in Italy by non Italian parents and those who arrive in Italy as children to easily accede to the Italian citizenship" and the proposal to "reform the immigration law, particularly the so called "residence contract", introducing the sponsorship mechanism to allow the migrants' entry in Italy to seek a job".

In this actually difficult situation, the decision of the government to close immigration flows for 2009 and to enact draconian measures around migrants' living conditions will not only compromise the fight against irregular immigration (which, on the contrary, is expected to grow), but is also likely to worsen the existing climate of conflict and misunderstanding within the civil community.