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ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF ITALY SUBJECT TO INTERIM FOLLOW-UP

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[1]Except where expressly indicated, any developments which occurred after 7 August 2014, date on which the latest response of the Italian authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007[1], not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

[1] CM/Del/Dec(2007)986/4.1.

1. In its report on Italy (fourth monitoring cycle) published on 21 February 2012, ECRI recommended that the Italian authorities take steps to enhance the role of Ufficio Nazionale Antidiscriminazioni Razziali (UNAR), in particular by formally extending its powers so that the relevant legislation clearly covers discrimination based not only on ethnic origin and race but also on colour, language, religion, nationality and national origin; by granting it the right to bring legal proceedings; and by ensuring that its full independence is secured both in law and in fact. ECRI wishes to stress in this regard that UNAR must also be provided with all the necessary human and financial resources, in the light of its workload.

According to information provided by the authorities, since the publication of ECRI's last report in 2012 the work of UNAR has continued to cover grounds of discrimination other than ethnic origin and race, such as discrimination based on religion, sexual orientation and gender identity, as well as on personal convictions, disability and age. ECRI welcomes the fact that UNAR's activity continues to cover a wide range of discrimination grounds.[1]

However, ECRI notes that, despite this large range of activities, no legislation has yet been enacted to extend formally UNAR's competence to cases of discrimination on grounds of colour, language, religion and citizenship;[2] since UNAR's establishment in 2003, its statutory powers remain restricted to combating "discrimination based on race and ethnic origin".[3] ECRI also notes that while the number of NGOs and trade unions entitled to represent victims of discrimination or bring cases concerning collective discrimination before the courts has increased,[4] UNAR itself is still not entitled to bring legal proceedings in discrimination cases and its intervention is limited to *amicus curiae* briefs.

Consequently, ECRI considers that the part of its recommendation that concerns the formal extension by law of the powers of UNAR has not been implemented.

ECRI notes that in terms of structure, UNAR continues to be under the Department for Equal Opportunities of the Presidency of the Council of Ministers, its Director is a civil servant appointed by the government and part of its staff is seconded to UNAR from various ministries. UNAR is also physically located on the premises of the Presidency of the Council of Ministers.

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[1] Since 2012 UNAR is the national focal point for the elaboration and the implementation of the National Roma Integration Strategy. UNAR has also coordinated the implementation of the 2013-2015 National Strategy to prevent and combat discrimination on grounds of sexual orientation and gender identity.

[2] In 2010 an internal administrative act describing the specific tasks of each government body extended UNAR's tasks to combating discrimination based on sexual orientation and gender, age, disability, religion and personal convictions. This act was renewed in 2012 and UNAR's report to the Parliament relating to 2012 activities reflects this extension of competence.

[3] Legislative Decree No. 215 of 9 July 2003 transposing EU Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 7.

[4] Ibidem; Article 5 provides that associations which meet certain criteria are entitled to bring legal proceedings, either on behalf or in support of a victim of discrimination, against a natural or legal person. These associations are also entitled to bring cases concerning collective discrimination. The register of these associations, which in 2011 comprised around 450 NGOs and trade unions, now includes almost 600 organisations, http://www.unar.it/unar/portal/wp-content/uploads/2013/11/Elenco-delle-Associazioni-e-gli-Enti-art.-5-d.lgs_.-215-03-2013.pdf.

UNAR therefore does not comply with the principle of independence of equality bodies as recommended by ECRI's General Policy Recommendations No. 2 and No. 7.[5] [6]

In light of this, ECRI concludes that the part of its recommendation that concerns the *de jure* independence of UNAR has not been implemented either.

The information received by ECRI indicates that UNAR, with over 2 million Euros of ordinary budget per year[7] in addition to EU funding, and around 25 staff members, seconded personnel and experts,[8] has sufficient resources to carry out its activities. Moreover, UNAR has established a number of cooperation agreements with local and regional authorities which have increased its accessibility and impact at local level.

In conclusion, ECRI considers that the last part of its recommendation, concerning the availability of the necessary human and financial resources, has been implemented.

2. In its report on Italy, ECRI urged the Italian authorities to ensure that all Roma who may be evicted from their homes enjoy the full protection of the guarantees of international law in such matters. It underlines that the persons concerned must be notified of any proposed eviction and benefit from appropriate legal protection; nor must they be evicted without the possibility of being rehoused in decent accommodation, even if they may stay in the country only for limited periods of time.

In November 2011, the Council of State, upholding a judgment of an administrative tribunal, ruled that the Decree of the President of the Council of Ministers of May 2008 declaring the "state of emergency in relation to nomad settlements" in three Italian regions was unlawful.[9] In its judgment the Council of State also declared unlawful a number of administrative acts (*atti commissariali*) adopted at local level that had been based on this decree. It follows that orders based on this state of emergency to demolish illegal Roma settlements and evict their inhabitants were also to be considered unlawful.

This judgment has been followed by a number of initiatives which indicate a change of policy with respect to Roma housing, aiming to overcome definitively, when intervening and working in large urban areas, the emergency phase of the past few years.

In February 2012, the authorities submitted a National Roma Integration Strategy (NRIS) to the European Commission.[10] Access to housing is one of the four areas on which the strategy focuses. The NRIS, which is co-ordinated by UNAR, refers expressly to the excessive number of evictions that have taken place in the past and their negative effect on Roma housing.[11] In December 2012, UNAR, in order to advise

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[5] ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, Principle 3; ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, point 24.

[6] The EU member States are also required under the EU Equal Treatment Directives (Directive 2000/43/EC, Directive 2004/113/EC and Directive 2006/54/EC) to set up a body or bodies whose tasks include providing independent assistance to victims of discrimination and independent reporting and surveys. According to the Joint Report on the application of Racial Equality Directive and of Employment Equality Directive, COM(2014)2 of 27 January 2014, the Commission is currently scrutinising more widely the member States' compliance with these requirements. This involves checking that each equality body has the required mandate and powers, but also that it actually effectively performs all the tasks set out in the directives.

[7] Article 29, paragraph 2 of Law No. 39/2002 provides for a yearly budget of 2 035 357 Euros.

[8] According to UNAR's organogram available at http://www.unar.it/unar/portal/?page_id=229.

[9] Judgment of the Council of State No. 06050 of 16 November 2011.

[10] Italian National Strategy for the Inclusion of Roma, Sinti and Caminanti, February 2012.

[11] Ibidem, p.78.

local authorities on how to protect the rights of those being evicted, published a summary in Italian of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.[12] In June 2013, Draft Law No. 770 on measures for the protection of and equal opportunities for the Roma minority was introduced into the Senate. The draft law provides for important guarantees, in line with international standards,[13] concerning both the grounds and the modalities of eviction as well as for a special entitlement to social housing for Roma.[14]

ECRI takes positive note of these developments. However, it has difficulty gauging their impact in the absence of updated information about the overall level of implementation of the measures contained in the strategy, which seems to be behind schedule.[15] Moreover, ECRI notes that the above-mentioned draft law is still at the initial stage of the legislative process. ECRI has also been informed that evictions of Roma and Sinti continued to be carried out in 2012 and 2013, and even more recently in July 2014. These evictions were often effected without the necessary procedural safeguards and without alternative accommodation being made available.[16]

In conclusion, legislative and policy developments, which have taken place after the publication of ECRI's report on Italy in 2012, show the beginning of a positive but, for the moment, slow process aimed at changing the way in which the Italian authorities deal with Roma communities in general and with the issue of evictions in particular. However, this process does not yet fully ensure that all the Roma who may be evicted from their homes will enjoy the guarantees needed in this connection.[17]

Consequently, ECRI considers that its recommendation has been partly implemented.

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[12] These have been appended to the report of the Special Rapporteur on adequate housing as a special component of the right to an adequate standard of living(A/HRC/4/18) and formally acknowledged by the UN Human Rights Council in 2007.

[13] See for example, Committee on Economic, Social and Cultural Rights, General Comment 7, The right to adequate housing (Article 11.1): forced evictions, (Sixteenth session, 1997), U.N. Doc. E/1998/22. For the notions of adequate housing and forced eviction, see also Articles 16 and 31 of the European Social Charter (revised), a violation of which has been found by the European Committee on Social Rights when evictions were carried out without respecting the dignity of the persons concerned and without alternative accommodation being made available.

[14] Articles 27-29 of the draft law.

[15] As also stated by the Commission for the Protection and Promotion of Human Rights of the Italian Senate in its Resolution No. 201 of 18 December 2013.

[16] "Double Standards: Italy's housing policy discriminates against Roma", Amnesty International, October 2013, pp. 26-29; "Figli dei Campi, Libro bianco sulla condizione dell'infanzia rom in emergenza abitativa in Italia", Associazione 21 luglio, December 2013, pp. 67-75; "Italy: Many children among dozens of Roma left homeless by forced eviction in Rome", Amnesty International, 9 July 2014.

[17] "All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation", paragraph 59 of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement. On the lack of adequate guarantees related to eviction see also European Committee of Social Rights, Centre on Housing Rights and Evictions (COHRE) v. Italy,

Collective Complaint No. 58/2009, Report to the Committee of Ministers.

3. In its report on Italy, ECRI strongly recommended that the Italian authorities take all necessary steps to ensure that the principle of non-refoulement is fully respected. It urges them to bring their pushback (respingimento) policy to an immediate and permanent end. In this connection, it emphasises the need to guarantee access to asylum procedures in full accordance with the 1951 Geneva Convention, the European Convention on Human Rights and the relevant EU directives.

Since 2012 the Italian authorities have officially stated on a number of occasions that Italy's pushback policy denying individuals the possibility of claiming asylum has been abandoned.[18] Moreover, with the operation *Mare Nostrum,* launched in October 2013 and credited with having rescued - as of 31 July 2014 - more than 70 000 migrants,[19] the Italian navy patrols constantly the south Mediterranean area in order to render assistance to vessels in distress.

ECRI welcomes these positive developments which indicate a significant change from the previous policy of returning all boats of migrants intercepted on the open sea between Italy and Libya (*respingimento* or pushback policy). In addition, the *Praesidium* project providing, inter alia, legal information and counselling to asylum seekers is an example of effective co-operation between authorities, NGOs and international organisations, for the identification of the different needs of migrants, including access to asylum procedures.

However, despite such co-operation, ECRI has been informed that there is no systematic provision of information to all migrants on the possibility and on the modalities of lodging an asylum application. In particular, early identification of migrants in need of international protection and legal counselling still constitute critical areas in so far as access to the asylum procedure in Italy is concerned. For example, NGOs[20] have reported cases of excessively rapid returns of migrants without proper screening and procedural safeguards against the risk of expulsion of potential asylum seekers, in the framework of a number of bilateral agreements (the 1999 readmission agreement with Greece and similar agreements concluded with Libya, Egypt, Algeria and Tunisia in 2012). In particular, the NGO concerns with regards to the readmission procedure in the context of the 1999 agreement with Greece were taken into consideration by the European Court of Human Rights in a recent judgment against Italy.[21] In addition, instances have been reported of unaccompanied minors being sent back to Greece as a result of improper age assessment.[22]

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[18] See for example, the Italian Government's repeated assurances given in this sense in the context of the procedure for the examination of the execution of the judgement of the European Court of Human Rights of 23 February 2012 in the case Hirsi Jamaa and Others v. Italy, [GC] No.27765/09, ECHR 2012.

[19] According to the data provided by the Minister of Internal Affairs on 15 of August 2014, the number of migrants who arrived in Italy by sea during the period of 1 August 2013 - 31 July 2014 amounted to more than 100 000 of whom approximately 70 000 were rescued since the operation *Mare Nostrum* began on 18 October 2013.

http://www.angelinoalfano.it/s6-attivita/23700/angelino-alfano-noi-campioni-accoglienzama-ora-tocca-ue/.

[20] See for example, "Access to Protection: a human right", Italian Council for Refugees, 2014; "Arbitrary readmissions from the Italian sea ports to Greece", Greek Council for Refugees, 2014.

[21] Judgement of the European Court of Human Rights of 21 October 2014 in the case Sharif and Others v. Italy, No. 1664/09, paragraphs 102 and 215.

[22] "Turned away: summary returns of unaccompanied migrant children and adult asylum seekers from Italy to Greece", Human Rights Watch, 2013. See also Recommendation No. 97 of the Report by the UN Special Rapporteur on the human rights of migrants, A/HCR/23/46/Add.3.

Having noted the above, ECRI acknowledges however that the authorities have already made valuable efforts to align domestic legislation with European standards in asylum related matters.[23] It is therefore important to recall that by July 2015 Italy will have further to adapt the current legislation to the EU directives[24] on a common system of reception and procedures for granting international protection. ECRI's attention has been drawn to the fact that this reform can constitute an opportunity to codify in one single legislative text the existing provisions on asylum, which continue to remain spread across different acts of the domestic legal system, rendering some of the relevant rules unclear, making them harder to apply and eventually affecting access to asylum procedures in full accordance with international standards. ECRI is of the opinion that this opportunity should not be missed and therefore intends to keep this question under review.

To conclude, ECRI considers that its recommendation has been partly implemented.

[23] Legislative Decree of 13 February 2014 transposing Directive 2011/51/EU of the European Parliament and of the Council amending Council Directive 2003/109/EC, concerning the status of third-country nationals who are long-term residents, to extend its scope to beneficiaries of international protection; Legislative Decree of 21 February 2014 transposing Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

[24] Directive 2013/32/UE of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast) and Directive 2013/33/UE of the European Parliament and of the Council laying down standards for the reception of applicants for international protection, for which the time-limit for transposition of most of the Articles into national law is 20 July 2015.