



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Nils Muižnieks**  
**Commissioner for Human Rights of the Council of Europe**

**Following his visit to Italy**  
**from 3 to 6 July 2012**

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## **Summary**

Commissioner Nils Muižnieks and his delegation visited Italy from 3 to 6 July 2012. In the course of this visit the Commissioner held discussions with representatives of the Italian authorities and institutions as well as with members of civil society. The present report focuses on the following selected human rights issues:

### **I. Excessive length of court proceedings**

The Commissioner is seriously concerned about the excessive length of court proceedings in Italy, a long-standing human rights problem, which has considerable negative repercussions not only for individuals and the Italian economy, but also for the European human rights protection system due to a continuing influx of cases to the European Court of Human Rights. The Commissioner is aware of the complexity of this phenomenon, whose underlying causes include diverse factors contributing to the caseload of courts, many procedural aspects, as well as problems relating to court management and the role of lawyers.

Although he is encouraged by the Italian authorities' determination to tackle this problem, the Commissioner notes that many reform efforts in the past failed to produce the desired results, either because they have been piecemeal, failed to integrate an evidence-based approach, or did not benefit from the full collaboration of all stakeholders. The complexity and magnitude of the problem is such that Italy needs nothing short of a holistic rethinking of its judicial and procedural system, as well as a shift in judicial culture, with a concerted effort from the Ministry of Justice and the High Council of the Judiciary, as well as judges, prosecutors and lawyers.

While legislative action is necessary, it is not sufficient and should be complemented with organisational and management aspects for courts and judges, in line with the relevant guidelines of the European Commission for the Efficiency of Justice. Existing examples, such as the experience of the First Instance Court of Turin, prove that good results can thus be obtained even within the current framework and without additional financial or human resources.

The Commissioner is concerned about the clear malfunctioning of the existing domestic remedy for excessive length of proceedings and calls on the Italian authorities to ensure as a matter of urgency the payment of compensations awarded by domestic courts. He encourages the authorities to revise this compensatory remedy and complement it with a more preventive, acceleratory remedy in order to stave off further applications to the European Court of Human Rights.

### **II. Protection of the human rights of Roma and Sinti**

#### **1. Overall strategies for the inclusion of Roma and Sinti in society**

The Commissioner strongly welcomes the adoption of Italy's first national strategy for the inclusion of Roma and Sinti, as a promising step towards discontinuing and reversing harmful policies of the past targeting these groups in Italy. The initial period will be critical for the implementation of the strategy, which should be tied to clear quantitative targets and financial resources. Especially crucial to a successful implementation is the genuine participation of Roma and Sinti, for which effective mechanisms must be devised at national, regional and local levels. Thorough monitoring, sustained efforts for training and awareness-raising and a constructive public debate are further essential elements. The Commissioner has concerns, however, that UNAR, the office entrusted with a co-ordinating role under the strategy, will not be able to fulfil this function owing to severe cuts to its resources.

#### **2. Housing and evictions/"Nomad emergency"**

The Commissioner strongly believes that the policy of segregated camps and forced evictions, characteristics of the "Nomad emergency" approach, are diametrically opposed to the new national

strategy for the inclusion of Roma and Sinti and should be firmly relegated to the past. The Commissioner is therefore worried that the appeal by the Italian government to the November 2011 decision of the Council of State declaring the “Nomad emergency” decree illegal may send mixed messages and appear to sanction the former approach. He urges the government to state unambiguously that the emergency approach is definitively abandoned, regardless of the outcome of the appeal, and to ensure that any ongoing work on segregated camps and evictions be stopped immediately. He underlines that the involvement of the relevant communities in choices affecting their housing situation is essential for the success of future policies.

### **3. Anti-Gypsyism in political discourse and the media**

The Commissioner is deeply concerned that anti-Gypsyism in political discourse and the media remains rampant. While there have been sporadic cases where political parties and their leaders were prosecuted and convicted for racist and xenophobic speech against Roma and Sinti, the response remains inadequate given the scale of the problem. The Commissioner points to the obvious link between hate speech and hate crimes in the Italian context. He urges the Italian authorities to take decisive measures to comply with ECRI’s General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma and to re-establish adequate penalties against incitement to racial discrimination and violence.

### **4. Violent hate crimes**

Similarly, the Commissioner expresses concern over the persistence of violence against Roma and Sinti and the inadequacy of the response of the Italian criminal justice system. He urges the authorities to step up their efforts to monitor hate crimes and to ensure that the racist dimension of offences is effectively taken into account by prosecutors and judges. The authorities should also promote awareness about the need to actively counter all manifestations of racism and racial discrimination and about the remedies available to victims.

### **5. Statelessness**

The Commissioner welcomes the intention, as set out in the national inclusion strategy, to establish a working group with the participation of relevant ministries, UNHCR, Roma and Sinti representatives and NGOs, in order to define possible solutions to overcome *de facto* statelessness. He urges the Italian authorities to ensure that this working group fulfils its task in a timely fashion and to implement the solutions it will identify, with a view to enabling the persons concerned to accede at least to the same rights as stateless persons, paying special attention to the relevant Council of Europe standards concerning children born to stateless parents.

## **III. Protection of the human rights of migrants, including asylum seekers**

### **1. Access to the asylum procedure**

The Commissioner notes the landmark *Hirsi Jamaa* judgment of the European Court of Human Rights concerning the “push-back” to Libya of intercepted migrants, and welcomes the declarations at the highest political level to the effect that Italy will no longer pursue this policy in the light of this judgment. He considers that the announced renegotiation of the bilateral agreement with Libya must include appropriate human rights guarantees to prevent similar violations resulting from possible expulsions, interceptions and removal measures. He expresses concern about reports that similar issues arise from the application of other bilateral agreements, such as the readmission agreements with Egypt and Tunisia, and from automatic returns to Greece. The Commissioner urges the Italian authorities to ensure that all migrants, including those intercepted, have full access to the asylum procedure, and for this purpose, to provide systematic training to relevant officials, such as border control agents. As regards search and rescue operations at sea, while expressing his appreciation of the valiant efforts undertaken by Italian authorities, the Commissioner encourages them to carefully examine and to implement the

relevant recommendations of the Parliamentary Assembly, including those relating to the responsibility of commercial vessels.

## **2. Reception of migrants, including asylum seekers**

The Commissioner highlights a number of shortcomings in the Italian framework for the reception of migrants, including asylum seekers, which are mainly linked to the fragmentation caused by different types of centres, variability of standards, and the effects of a sudden increase in capacity under the North African emergency framework. The Commissioner encourages Italy to replace the existing framework with an integrated, unified reception system, capable of responding to fluctuating needs and affording the same quality of protection throughout the Italian territory, backed up by clear national standards and independent monitoring. While the capacity of the SPRAR network is not adapted to the current needs, the Commissioner considers that this is a good practice which could be significantly expanded and put at the heart of a new reception system. Finally, the Commissioner urges the Italian authorities to avoid a sudden deterioration of the human rights situation of persons who have been received in 2011 under the emergency plan.

## **3. Integration of refugees and other beneficiaries of international protection**

Having witnessed the plight of some 800 refugees and other beneficiaries of international protection living in destitute conditions in Rome, the Commissioner considers that the near absence of an integration framework for refugees and other beneficiaries of international protection has created a serious human rights problem in Italy. He urges the Italian authorities to remedy this shortcoming by taking positive measures to counteract the considerable disadvantages these persons face in the labour market, including widespread discrimination and the risk of exploitation, reviewing relevant laws and regulations and removing the numerous administrative obstacles to the enjoyment by these persons of their rights. He encourages the Italian authorities to transpose, as soon as possible, the relevant EU Directive extending the status of long-term resident to refugees and other beneficiaries of international protection.

## **4. Administrative detention of migrants**

The Commissioner expresses deep concern about the conditions of administrative detention in identification and expulsion centres (CIEs), which have not been adapted to the extension of the maximum detention period from 2 to 18 months. He sees the lack of recreational activities as one of the major concerns, and warns the Italian authorities against a further degradation of standards due to budgetary cuts. More generally, the capacity of CIEs to respond to the needs of a very heterogeneous population of administrative detainees is a matter of concern. The majority of men held in these centres being former prisoners, the Commissioner urges the Italian authorities to carry out the identification of such persons before they finish serving their sentence. In accordance with the relevant Council of Europe standards, he encourages the Italian authorities to phase out administrative detention of irregular migrants in prison-like settings in favour of suitable alternatives and to promote the use of voluntary return programmes.

The report also contains the Commissioner's conclusions and recommendations to the authorities. It is published on the Commissioner's website together with the authorities' comments.

## Introduction

1. The present report follows a visit to Rome by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, (the Commissioner) from 3 to 6 July 2012.<sup>1</sup> The aim of the visit was to review certain human rights issues in Italy, focusing in particular on the excessive length of court proceedings, the human rights of Roma and Sinti and the human rights of migrants, including asylum seekers and refugees. Concerning the two latter issues, the Commissioner intended in particular to follow up on the findings and recommendations of his predecessor.<sup>2</sup>
2. In the course of his visit, the Commissioner held discussions with representatives of the national authorities, including the Minister of Justice, Ms Paola Severino, the Minister of the Interior, Ms Annamaria Cancellieri, and the President of the Extraordinary Commission for the Protection and Promotion of Human Rights of the Italian Senate, Mr Pietro Marcenaro, as well as with other members of the Extraordinary Commission. The Commissioner also met the First President of the Court of Cassation, Mr Ernesto Lupo, and the Vice-President of the High Council of the Judiciary, Mr Michele Vietti. The Commissioner also held discussions with representatives of the National Office against Racial Discrimination (UNAR), professional associations of magistrates and lawyers, as well as intergovernmental and non-governmental organisations active in the field of protecting human rights.
3. During his stay in Rome, the Commissioner had the opportunity to visit the Identification and Expulsion Centre (CIE) in Ponte Galeria, the Roma camps of Salone and Salviati II, as well as an abandoned university building in the south-eastern periphery of Rome, which was inhabited by refugees or other beneficiaries of international protection.
4. The Commissioner wishes to thank the Italian authorities, in particular the Permanent Representation of Italy to the Council of Europe and the Inter-Ministerial Committee of Human Rights of the Ministry of Foreign Affairs, for the assistance they provided in organising the visit and facilitating its independent and effective execution. He extends his thanks to all interlocutors, from the national authorities, civil society and the communities he visited, for their willingness to share with him their knowledge and views.
5. In the present report the Commissioner focuses on the following major human rights issues: the excessive length of court proceedings (Section I); the human rights of Roma and Sinti (Section II); and the human rights of migrants, including asylum seekers and refugees (Section III).

### I. Excessive length of court proceedings in Italy

6. The excessive length of court proceedings in civil, criminal and administrative cases in Italy is one of the longest-standing human rights problems with which the Council of Europe has been confronted. As stated by the Committee of Ministers of the Organisation on numerous occasions, excessive delays in justice not only violate Article 6 of the European Convention on Human Rights (hereafter, "ECHR") concerning the right to a fair trial within a reasonable time, but also constitute a grave danger, in particular for the respect of the rule of law and access to justice.
7. Within the context of the system of the ECHR this issue arose for the first time in the 1970s.<sup>3</sup> and has continued to the present day, despite numerous and repeated findings of violation by the European Court of Human Rights (hereafter, "the ECtHR"), prompting the latter to identify it as a serious structural problem of the Italian justice system.

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<sup>1</sup> During his visit the Commissioner was accompanied by Mr Giancarlo Cardinale, Deputy to the Director of his Office, and Mr Hasan Bermek, Adviser.

<sup>2</sup> See in particular [Report](#) by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 26 to 27 May 2011.

<sup>3</sup> *Bocchieri v. Italy*, Appl. No. 6323/73, decision on admissibility of 19 May 1977, European Commission of Human Rights.

8. By the end of 2011, the ECtHR had delivered a total of 1,651 judgments finding at least one violation of the ECHR by Italy. The vast majority of these judgments concerned the right to a fair trial within a reasonable time (1,400 cases in total), and in particular the excessive length of court proceedings (1,155 cases).<sup>4</sup> Again as of the end of 2011, excessive length of proceedings was also at the origin of more than half of the 14,500 pending applications against Italy. The Commissioner notes that the Committee of Ministers is currently supervising the execution of more than 2,500 cases against Italy (most of which concern the excessive length of proceedings), by far the highest number for any member state of the Council of Europe.<sup>5</sup>
9. The scale of the problem is also borne out by statistical evidence concerning the functioning of the Italian judicial system, in particular with respect to length of proceedings at appeal courts and last-instance courts. According to research published by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe on the basis of data relating to 2008, the average disposition time for a civil case in Italy was 378 days at first instance, 1,181 days on appeal and 1,066 days at the highest instance court, i.e. more than seven years (2625 days) at least for a case that reaches the highest instance court. This figure was higher than those registered in any other of the 25 member states for which these figures were calculated, and vastly above the average of 714 days. Similarly for criminal proceedings, the sum of the average disposition times in first instance, second instance and highest instance courts in criminal cases was 1,351 days, again more than three times the average of 414 days for the states considered at the time.<sup>6</sup>
10. The ECtHR has expressed its concern about this long-standing, systemic problem on many occasions. While Italy is not the only country in Europe that faces problems relating to the length of court proceedings, it generates the highest number of so-called repetitive cases and the ECtHR considers that the duration and magnitude of the problem in Italy are exceptional. This has prompted the President of the Court to visit Italy in May 2012 to discuss these aspects with the highest Italian authorities.
11. As regards the adoption of general measures for executing the large body of existing judgments of the ECtHR against Italy concerning this issue, the Commissioner notes that these judgments have been under enhanced supervision before the Council of Europe Committee of Ministers<sup>7</sup>. The Committee of Ministers has adopted a large number of interim resolutions and decisions, stressing that excessive delays in the administration of justice in Italy was “a serious threat to the effectiveness of the system of the Convention”.<sup>8</sup>
12. The Parliamentary Assembly of the Council of Europe is also closely following the execution of judgments by Italy and expressed its preoccupation on several occasions. On 26 January 2011, it adopted a resolution, stating that the excessive length of proceedings had been a problem for decades and that Italy “must now take measures” to address this problem.<sup>9</sup>
13. In March 2012, the Committee of Ministers noted that “apart from a slight decrease of the length of the bankruptcy proceedings and in the backlog of civil proceedings, the situation concerning the excessive length of proceedings and the malfunction of the existing remedy relating thereto

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<sup>4</sup> See [official statistics](#) provided by the ECtHR.

<sup>5</sup> See the 2011 [Annual Report](#) of the Committee of Ministers on the Supervision of the execution of judgments and decisions of the European Court of Human Rights, 12 April 2012.

<sup>6</sup> Study on Council of Europe Member States on Appeal and Supreme Courts' Lengths of Proceedings, report prepared by Marco Velicogna, [CEPEJ-SATURN\(2011\)3E](#), 9 November 2011.

<sup>7</sup> As of 2011, 1,713 cases concerned the length of civil, criminal and administrative proceedings (the leading case being *Ceteroni v. Italy*, judgment of 15 November 1996) and 24 cases concerned the length of bankruptcy proceedings (the leading case being *Luordo v. Italy*, judgment of 17 July 2003).

<sup>8</sup> Decision [Dec\(2012\)1144/12](#) of 5 June 2012.

<sup>9</sup> [Resolution 1787 \(2011\)](#) of the Parliamentary Assembly of 26 January 2011, on the basis of a [report](#) entitled “Implementation of judgments of the European Court of Human Rights”, 20 December 2010.

remains deeply worrying”.<sup>10</sup> It requested that additional large-scale measures be adopted as a matter of urgency, inviting the Italian authorities to submit an action plan containing concrete proposals tied to a clear calendar.

### 1. Malfunctioning of the domestic remedy

14. The malfunctioning of the domestic remedy for excessively lengthy proceedings in Italy is a connected problem, which has increasingly occupied the ECtHR.
15. In 2001, the so-called “Pinto” law entered into force in Italy, creating a domestic remedy involving compensation payments for the unreasonable length of proceedings.<sup>11</sup> Shortly after the entry into force of this law, the ECtHR adjourned the examination of a large number of applications, requiring applicants to make use of that domestic remedy instead.<sup>12</sup> However, it became quickly apparent that the application of the “Pinto” law itself generated serious problems in turn. In particular, by entrusting the control of this remedy to the courts of appeal, the law increased the considerable caseload of these already congested courts. More significantly, the application of the “Pinto” remedy was characterised by inadequate amounts of compensation awarded – at least initially - and undue delays in payments, in particular as a result of the lack of sufficient provision of funds in the Italian budget, a problem continuing to this day. Other shortcomings concerned the complexity of this judicial procedure, and the fact that the remedy did not include injunctions to expedite proceedings.<sup>13</sup>
16. Because of these shortcomings, the ECtHR began to find violations of Article 6 of ECHR by Italy again.<sup>14</sup> In addition, new waves of cases started arriving, directly challenging the “Pinto” procedure. In 2010, the Court delivered a judgment, holding that Italy had violated both Article 6, paragraph 1 of the ECHR and Article 1 of Protocol No. 1 to the ECHR (right to peaceful enjoyment of property), owing to the delays in the payment of “Pinto” compensations.<sup>15</sup> The Court notably held that these delays confirmed the difficulty for the Italian authorities to guarantee payment of the compensation in a reasonable time, which generally should not exceed six months from the date on which the decision awarding compensation becomes enforceable. It is also worth noting that the Court observed in this “quasi-pilot” judgment that general measures at national level were required in the execution of this judgment, including earmarking funds in the budget for the enforcement of “Pinto” decisions.<sup>16</sup>
17. The Commissioner understands that by the end of 2011, approximately, 5,000 of the 14,500 pending applications against Italy concerned “Pinto” proceedings, with more than 300 such applications arriving each month. The judgments of the ECtHR concerning this particular issue are under enhanced supervision by the Committee of Ministers.<sup>17</sup>

<sup>10</sup> Decision [Dec\(2012\)1136/14](#) of 6 March 2012.

<sup>11</sup> Law No. 89 of 24 March 2001.

<sup>12</sup> See *Brusco v. Italy*, Appl. No. 69789/01, decision on admissibility of 6 September 2001.

<sup>13</sup> See, for example, the Interim Resolutions of the Committee of Ministers, [CM/ResDH\(2009\)42](#) of 19 March 2009 and [CM/ResDH\(2010\)224](#) of 2 December 2010.

<sup>14</sup> See in particular *Scordino v. Italy (No. 1)*, Appl. No. 36813/97, judgment of 29 March 2006.

<sup>15</sup> *Gaglione and others v. Italy*, Appl. No. 45867/07, judgment of 21 December 2010.

<sup>16</sup> *Ibid.*, see in particular paragraph 59. This kind of ‘soft instructions’ form part of the quasi-pilot judgments rendered by the ECtHR, after the first pilot judgment rendered in 2004 in the case of *Broniowski v. Poland*. Unlike the quasi-pilot judgments, in the pilot judgments the ECtHR indicates in the operative provisions of its judgments general measures that the respondent state is obliged to take, under the Committee of Ministers supervision, in order to execute the judgment in question (and avoid recurrence of the violation).

<sup>17</sup> 135 cases in the Mostacciolo group, the leading case being *Giuseppe Mostacciolo v. Italy (no. 1)*, Appl. No. 64705/01, Grand Chamber judgment of 29 March 2006.

## 2. Underlying causes

18. The problem of excessive length of court proceedings in Italy has been linked to a wide range of interconnected factors, which include the caseload of courts, procedural and organisational aspects, and factors relating to judicial culture. During the visit, the Commissioner's interlocutors have also pointed to a number of anomalies in the Italian judicial system, which may shed further light on the different causes of this problem. Some of these aspects are detailed below.

### *a. The caseload of courts*

19. The Commissioner observes that the Italian judicial system suffers from a very large overall caseload. While it is encouraging that the number of pending civil cases decreased in 2011 for the first time in several decades, there are reported to be still 5.5 million civil cases and 3.4 million criminal cases pending at all levels of jurisdiction. This problem is compounded by relatively low clearance rates (i.e. the ratio of resolved cases to incoming cases), which appear to affect in particular second instance courts. Thus, for non-criminal cases the clearance rate was 87% before second instance courts in 2008, meaning that the caseload was continuing to grow. The clearance rate was however 97% for first instance courts and 112% for the high courts.<sup>18</sup> The Commissioner considers that the number of incoming cases clearly exceeds the capacity of the Italian judicial system, despite the comparatively high productivity of Italian judges.
20. Many different factors appear to contribute to this situation. As regards civil cases, the Commissioner's interlocutors agreed that Italy faced a high degree of litigiousness. CEPEJ statistics also indicate that the country has relatively high numbers of incoming litigious civil cases per number of inhabitants. Some interlocutors expressed the view that this was partly due to the inability of administrative authorities to resolve certain problems at an early stage, and the fact that many claimants are eager to bring cases before judges that they consider as more trustworthy than other public authorities. The First President of the Court of Cassation, Mr Ernesto Lupo, also identified a tendency, even on the part of administrative authorities, to exclusively rely on courts for civil matters.<sup>19</sup> This problem seems to be linked in part to the absence, until recently, of extrajudicial means of settling differences, such as mediation.
21. Another aspect reported to the Commissioner concerns the relative unforeseeability of the outcome of court cases. The Court of Cassation has the task of ensuring the consistency of the case-law in Italy, but its members reported that the considerable caseload at the Court of Cassation (80,000 incoming cases yearly), as well as frequent changes in law, make this task particularly challenging. The Commissioner also observes that, as a consequence of the length of first and second instance proceedings, there are long periods during which conflicting case-laws may coexist before an issue is finally settled by the Court of Cassation. This reportedly is a factor fuelling civil litigation.
22. As regards criminal proceedings, it has been reported to the Commissioner that the combination of a constitutional obligation to prosecute all reported offences on the one hand, and an abnormally high number of offences defined in Italian statutes (more than 35,000 according to some sources) on the other, leads to a very large number of criminal proceedings.
23. It has been suggested to the Commissioner that the consequent congestion of the criminal system with relatively minor cases hampers the ability of Italian courts to deal with more serious cases in a timely fashion, in particular taking into account the very strict rules concerning lapse of time in the Italian criminal procedure (see below). Some interlocutors even pointed out that prosecutors kept initiating proceedings for offences which, given the average disposition time before criminal courts, were highly unlikely to lead to a conviction, despite generating additional caseload. In this respect, the Commissioner gained the impression that there was little clarity as

<sup>18</sup> CEPEJ [Evaluation report of European judicial systems](#) – Edition 2010 (2008 data): Efficiency and quality of justice

<sup>19</sup> Ernesto Lupo, [Relazione sull'amministrazione della giustizia nell'anno 2010](#).



to the leeway prosecutors had, within the limits set by constitutional provisions, to prioritise more serious cases or cases more likely to lead to convictions.

24. With respect to criminal proceedings, the Commissioner is also conscious of the serious difficulties Italy faces with respect to widespread and entrenched organised crime. In any event, most interlocutors agreed that, as far as excessive delays are concerned, the problems with respect to civil proceedings were more acute than for criminal proceedings.

*b. Procedural aspects*

25. Both for civil and criminal trials, it has been pointed out to the Commissioner that Italian courts hold a very high number of hearings per case, often with long periods before the first hearing can take place, as well as lengthy interruptions between hearings. The Commissioner notes, however, that precise statistics on this particular aspect of the Italian judicial system are lacking.
26. While the Commissioner understands that the Italian codes of criminal and civil procedure contain important safeguards to protect the rights of defendants or parties, several interlocutors pointed out that the procedures tend to be rigid and not always capable of adapting to the nature and seriousness of the case in question.
27. As regards the civil procedure in particular, these procedural safeguards are reportedly often misused by parties in order to dilate proceedings and delay the fulfilment of legal obligations. The Commissioner's attention was drawn for example to the rules concerning the service of documents and summonses, which were considered obsolete, notably by the representatives of the High Council of the Judiciary, and capable of generating long delays due to numerous procedural flaws that can be exploited.
28. As regards criminal proceedings, the Commissioner notes that trials *in absentia* are particularly common before Italian courts and could cause significant delays. Another particularity of the Italian system concerns the way in which lapse of time applies in criminal proceedings (accused persons can acquire immunity by reason of lapse of time, even when the trial for the offence concerned is in progress, including appeals). In addition to concerns relating to impunity,<sup>20</sup> this state of affairs reportedly creates incentives for the defendant to prolong proceedings, in order for the alleged offence to become statute-barred. The Commissioner was informed that this was common practice in particular for proceedings concerning white-collar crime.
29. Some interlocutors also reported that the functioning of the appeal system in general, including in civil cases, lead to a considerable extension of the time required to conclude proceedings, as the appeal procedure contains numerous safeguards and may include a re-evaluation of the case *ab initio*. The Commissioner also takes note of widespread agreement that second instance proceedings are a clear bottleneck in the Italian judicial system and that appeals often constitute the longest segment in the overall length of proceedings.

*c. Other factors*

30. A striking feature of the Italian legal system, which was pointed out by many interlocutors, is the very high number of lawyers: the Commissioner notes that, according to the latest available CEPEJ report, there were 332 lawyers per 100,000 population and 32.4 lawyers per professional judge in Italy, one of the highest figures in Europe. The fee structure of the profession is also referred to as creating incentives for lawyers to dilate procedures, since their fees depend on the time they spend on a case (rather than being determined in advance by bar associations per type of case, for example).

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<sup>20</sup> In this respect, see *Alikaj and others v. Italy*, Appl. No. 47357/08, judgment of 29 March 2011, in which the ECtHR found that the application of the Italian lapse of time rules resulted in impunity and a violation of the procedural aspect of Article 2 ECHR (lack of effective investigations).

31. The Commissioner also considers that organisational factors have a significant impact on the length of proceedings. One aspect, which has recently been reformed, concerns the geographical organisation of judicial districts. The existence of a number of very small districts has reportedly hampered the efficient use of resources by Italian courts and specialisation of judges.
32. In this connection, the Commissioner observes that a significant factor affecting the disposition time of cases appears to be the internal management of courts, as well as the management of individual cases by judges. Most interlocutors agreed that this aspect had long been neglected in reform efforts, despite the fact that there are strong indications that the quality of management may be the determining factor for the variations in performance in the different regions of Italy, as well as significant differences in the results obtained by individual Italian courts in reducing lengths of proceedings. Certain examples, in particular the experience of the First Instance Court of Turin (see below) indicate that good results could be obtained even when all the other factors mentioned above remained constant.
33. The Commissioner also notes wide agreement among stakeholders concerning problems in the collection of accurate and detailed statistics relating to different aspects affecting the length of proceedings. This appears to have made it particularly difficult to assess the effects of numerous reforms made in the past, some of which are detailed below.
34. As regards the budget allocated to judicial services in general, according to the CEPEJ figures for 2008, Italy had allocated approximately 7.3 billion euros to the whole justice system, 3 billion of which was allocated to courts. These figures were the highest among the responding Council of Europe member states at the time. Therefore, the Commissioner considers that the problems in Italy do not appear to be linked to a lack of financial resources allocated to the judicial system in absolute terms. However, the Commissioner noted the concern expressed by some interlocutors that there was a risk that the level of expertise and professional skills among administrative and clerical staff in courts would fall in the coming years, due to the lack of new recruitment and the non-replacement of retiring staff, thereby aggravating the existing situation.

### **3. Past and envisaged reforms**

35. The Commissioner welcomes the fact that the Italian authorities clearly recognise the extent of the problems affecting the Italian judicial system. He particularly appreciates the clear political will of the Italian government to resolve them, as conveyed to the Commissioner by the Minister of Justice, Ms Paola Severino. The Italian authorities also affirmed on many occasions their commitment to resolving outstanding issues in the execution of the ECtHR's judgments, including at the latest human rights meeting of the Committee of Ministers of the Council of Europe in June 2012.
36. The Commissioner is aware that numerous judicial reforms have been adopted by the Italian authorities over the years in order to tackle some of the issues highlighted in the case-law of the ECtHR. Some notable examples include the reform of criminal procedure in 1989, the establishment of Justices of the Peace (non-career judges serving on a temporary basis ruling over minor civil or criminal cases) in 1995, the unification of various first instance courts in 1999, the "Pinto" law of 2001, as well as reforms of civil procedure in 2003, 2006, 2009 and 2011.
37. The Commissioner notes that some of these reforms seemed initially promising. This had even prompted the Council of Europe Committee of Ministers to close the supervision of the execution of judgments against Italy concerning the unreasonable length of proceedings in the 1990s. However, past reforms failed to live up to their promise and a fresh influx of cases caused the Committee of Ministers to reverse that decision in 2000. Given the scale of the problem today, all parties agree that reforms have so far not been sufficient to control and conclusively reverse the tendency of excessively lengthy court proceedings.

38. The Commissioner notes the information contained in the most recent action plans submitted to the Council of Europe Committee of Ministers by the Italian authorities in October 2011 and March 2012,<sup>21</sup> which refer to measures that have been recently taken or are being envisaged to address the length of proceedings. These measures include: a re-definition of the judicial districts, which is expected to redirect a number of justices of the peace and administrative personnel towards areas where they are most needed (a reform concerning this aspect was finally adopted during the Commissioner's visit to Italy); the strengthening of e-justice; the establishment of courts specialised in commercial law; for criminal proceedings, the transformation of certain offences from criminal to administrative and the suspension of the criminal trial for certain offences with probation; and the entry into force in October 2011 of new legislation simplifying civil proceedings, reducing the number of different types of civil proceedings.
39. Another recent development concerns the introduction into the Italian system of mediation in civil matters.<sup>22</sup> The Commissioner understands that prior mediation has become a condition of admissibility for certain categories of civil cases in 2011, and that these categories were further extended in 2012. The Italian authorities reported to the Council of Europe Committee of Ministers in October 2011 that initial results seemed encouraging. The Commissioner welcomes this development. He was informed during his visit, however, that several practical difficulties affected the smooth functioning of the mediation system, including, according to some interlocutors, resistance from lawyers, despite the fact that the legal framework sought to create strong fiscal incentives to promote the use of mediation. While hoping that compulsory mediation will have a noticeable impact on the number of incoming cases, the Commissioner notes that the First President of the Court of Cassation, Mr Ernesto Lupo, reported in January 2012 that mediation seemed to have had little impact until then on the volume of incoming civil litigation (although cautioning that it was premature to draw conclusions on the basis of initial and unconsolidated data).<sup>23</sup>
40. As regards the procedural reforms of October 2011, some interlocutors were of the view that the complexity of this reform created a great deal of confusion, compromising the announced aim of simplifying and reducing the number of different civil procedures, a view that appears to be shared by Mr Lupo.<sup>24</sup>
41. During his visit, the Commissioner was also informed of other plans or bills that have been presented to the Parliament by the present government, which should have an impact on the length of proceedings. Of particular note is the information given by the Ministry of Justice that a bill abolishing trials *in absentia* is currently before the legislator, as well as indications that the government envisages a rethink of the functioning of the appeals system.<sup>25</sup>
42. With respect to court management, the Commissioner welcomes the information he received which indicates that the Italian authorities have been paying more attention to this aspect. An important development in this regard was the adoption of Article 37 of the Legislative Decree no. 98 of July 2011, which provides that Presidents of courts shall draw up yearly programmes, after consultation with the relevant district bar associations. These programmes shall contain, *inter alia*, targets for reducing the length of proceedings. The same Article provided for financial incentives if the number of pending cases is reduced by 5% by December 2011 and 10% by 2012.
43. The Commissioner regrets, however, that little awareness seemed to exist among judges and lawyers he met during his visit about the precise implications of this new measure. The

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<sup>21</sup> Available at <https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD%282011%29898> and <https://wcd.coe.int/ViewDoc.jsp?id=1931581> respectively (French only).

<sup>22</sup> See Legislative Decree no. 28 of 4 March 2010.

<sup>23</sup> Ernesto Lupo, *Relazione sull'amministrazione della giustizia nell'anno 2011*, 26 January 2012, p.62.

<sup>24</sup> *Ibid.*, p. 65.

<sup>25</sup> See interview with the Minister of Justice, Paola Severino, published by Reuters on 14 May 2012, available at <http://www.reuters.com/article/2012/05/14/us-italy-justice-severino-idUSBRE84D0GM20120514>.

Commissioner nonetheless welcomes the information provided by the High Council of the Judiciary that the latter is currently working on providing guidance to judges about the application of Article 37.

44. As regards the functioning of the domestic remedy and the “Pinto” procedures, in an action plan sent to the Council of Europe Committee of Ministers in October 2011, the Italian authorities indicated that, in the context of the financial crisis, the government has given greater priority to addressing the underlying causes of the violations themselves (i.e. the length of proceedings, notably civil proceedings) without neglecting the issue of compensations for these violations through the “Pinto” mechanism. Thus the budgetary chapter devoted to “Pinto” compensations increased from 16 million euros in 2010 to 20 million euros in 2011. The Commissioner also welcomes the information provided by the Ministry of Justice during his visit that an extra 30 million euros would be exceptionally affected to “Pinto” compensation payments starting from October 2012.<sup>26</sup>

### **Conclusions and recommendations**

45. The duration and magnitude of the problem of excessively lengthy judicial proceedings in Italy are of serious concern to the Commissioner. While he fully comprehends the complexity of this long-standing problem, the Commissioner is encouraged by the clear determination to tackle it that has been expressed at the highest political level and by all the relevant stakeholders in Italy.
46. The Commissioner notes the extremely high number of incoming civil and administrative cases which show that the Italian public continues to place its trust in the judiciary, despite the significant problems detailed above. Italian magistrates are therefore to be commended for their recognised independence and impartiality, as well as the quality of the judgments they produce in difficult circumstances. Length of proceedings can however not be considered a secondary problem. The nefarious effects of unreasonable delays do not only concern individuals and the Italian economy (many interlocutors, including the Minister of Justice, referred to estimates that judicial inefficiency in civil cases reduces Italy’s yearly GDP growth by as much as 1%<sup>27</sup>), but constitute a menace for the functioning of the ECtHR and for the effectiveness of the protection system set up under the Convention.
47. In this difficult context, the Commissioner welcomes the ongoing reform measures adopted or envisaged by the Italian authorities, such as the reform of judicial districts, the introduction of compulsory mediation in a number of civil cases, a number of procedural reforms, as well as initiatives to improve the information technology infrastructure for judicial services. However, the Commissioner observes that numerous reforms in the past tackling this issue have had limited success. The Commissioner considers that this is due to several factors.
48. Firstly, as observed by Commissioner Alvaro Gil-Robles already in 2005, Italy “has often tended to go for piecemeal remedies. Cutting down on formalities in criminal and civil proceedings, increasing the judiciary’s budget and adjusting the appeal machinery are all necessary reforms, but improve only parts of the system. [...] judges, lawyers, politicians and civil society must agree, as a matter of urgency, that global reform is needed”.<sup>28</sup>
49. The Commissioner shares the growing consensus in Italy that the conclusive resolution of the problem of excessively long judicial proceedings requires nothing short of a holistic rethinking of the judicial and procedural system, as well as a radical shift in judicial culture.

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<sup>26</sup> The Commissioner notes that the Committee of Ministers requested the Italian authorities to provide further clarification about this plan for payment, see the Decision [Dec\(2012\)1144/12](#), 5 June 2012, para. 4

<sup>27</sup> See the aforementioned interview with the Minister of Justice.

<sup>28</sup> Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Italy, 10-17 June 2005, [CommDH\(2005\)9](#).

50. Secondly, the Commissioner observes that past reforms have not always observed a scientific, evidence-based approach, including notably monitoring their implementation and measuring their precise impact on the length of proceedings, a circumstance which has clearly compromised their efficiency. The lack of carefully defined indicators and precise statistics can be seen as a connected problem. The Commissioner therefore encourages the Italian authorities to tap the considerable scientific expertise that already exists in Italy on the quality and efficiency of justice so as to support reform with solid tools.
51. Finally, the governance structure of the Italian judicial system, with the unclear separation of competences between the Ministry of Justice and the High Council of the Judiciary, requires a high level of collaboration between the two authorities for the success of future reforms. In addition, the Commissioner is also of the view that a close collaboration with a view to resolving this problem is necessary between the different professional groups, *i.e.* judges, prosecutors and lawyers. Past experiences of failed reforms or deficient implementation clearly demonstrate that a concerted effort and constructive collaboration of all stakeholders is a precondition for resolving the problem of excessively long proceedings in a durable manner.
52. As expressed by the Council of Europe Committee of Ministers on numerous occasions, Italy needs a clear action plan with very clear proposals tied to a strict calendar to tackle this problem. When doing so, the Commissioner urges the authorities to take account of the aforementioned considerations and bear in mind that, while legislative reform is indispensable to tackle some of the concerns detailed above, it needs to be complemented by a whole array of other measures.
53. In this connection, the Commissioner strongly encourages Italy to make better use of the broad expertise within the Council of Europe on judicial time management, and in particular the SATURN Guidelines for judicial time management of the European Commission for the Efficiency of Justice (CEPEJ)<sup>29</sup>, which contain special recommendations for legislators and policy makers, courts, administrators, and judges. The Commissioner urges the Italian authorities to ensure that reform efforts are informed by the principles contained in this document.
54. In particular, the Commissioner stresses that these guidelines pay special attention to organisational and management aspects, underlining the importance of, *inter alia*, the organisation of judicial bodies so as to encourage effective time management, the definition of clear targets and standards, and in particular clear but flexible targets for timeframes required for different types of cases; the empowerment of judges to manage cases in order to reach those targets; the establishment of clear indicators and collection of reliable statistics that allow for permanent monitoring and fine-tuning.
55. In this connection, the Commissioner notes the good example shown by the First Instance Court of Turin, which in 2001 put in place the so-called "Strasbourg Programme". The goal of this programme, which bears remarkable resemblance to the measures recommended by CEPEJ, was to reduce the length of civil proceedings, by establishing clear rules and detailed practical advice for judges and court personnel (codified in a handbook), such as non-postponement of hearings, prioritisation of cases lasting for more than three years, or guidelines for the hearing of witnesses. This was accompanied by constant monitoring of the caseload, broken down by length of cases, and an active case management by judges.<sup>30</sup> The Commissioner was informed that another crucial feature of this programme was the fact that its draft was first forwarded to the Turin Bar Association, in order to avoid misinterpretation by lawyers of the strict measures applied by judges as harassment or one-off initiatives, but rather as a coherent framework of case management.

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<sup>29</sup> Adopted by CEPEJ at its 12<sup>th</sup> plenary meeting, Strasbourg, 10-11 December 2008, available at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2008\)8Rev](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)8Rev)

<sup>30</sup> Dr Marco Fabri, « The Italian maze towards trials within reasonable time », proceedings of a roundtable organised by the Council of Europe in September 2009, available at :

[http://www.coe.int/t/dghl/standardsetting/cddh/Publications/bledproceedings\\_book.pdf](http://www.coe.int/t/dghl/standardsetting/cddh/Publications/bledproceedings_book.pdf)

56. There was unanimous agreement among all stakeholders whom the Commissioner met during his visit that the results in Turin have been remarkable, with a reduction of the backlog of cases by 26.6% over 5 years. It is also worth noting that the judicial district of Turin accounted for only 66 “Pinto” claims in the period 2003-2006, compared to 46,648 proceedings for the whole of Italy. Similar more recent good practices have been reported also at the Appeal Court of Turin, as well as courts in other regions of Italy.
57. The Commissioner does not share the scepticism expressed by some interlocutors that the example of Turin, which showed that positive results can be obtained with the same legislative framework and with the same resources, is not transposable to other parts of Italy. He considers that active case management by judges should be at the centre of the change of the Italian judicial culture which many in Italy advocate. In times of economic crisis, the fact that this approach does not require additional resources also presents obvious advantages.
58. In this context, the Commissioner welcomes the information provided by the Ministry of Justice and the High Council of the Judiciary that they have undertaken initiatives in order to disseminate such good practices. Other positive signs include the adoption of Article 37 of Legislative Decree no. 98 of 2011, and the increased attention being paid to the managerial capacities of candidates in the appointment of court presidents. Nevertheless, the Commissioner considers that more efforts need to be undertaken in this area.
59. As regards the domestic remedy for excessively long proceedings, the Commissioner considers that the “Pinto” remedy has clearly compounded the Italian problem, owing to the additional burden imposed on the judiciary and the failure to pay the sums awarded. While welcoming the positive steps recently taken by the Italian government to provide additional funds for the payment of the backlog of outstanding compensations, the Commissioner would like to impress the urgency of the situation on the Italian authorities, given the continuing flow of incoming cases at the ECtHR. He therefore urges them to make provision for the necessary funds in the Italian budget without delay. As regards the length of the “Pinto” proceedings themselves, the Commissioner notes with interest the information given by the Italian authorities that they are considering the replacement of the current “Pinto” remedy with a much simplified or even primarily administrative remedy.
60. In this respect, the Commissioner would also like to express his misgivings about an exclusively compensatory remedy, such as the “Pinto” remedy, taking into account the indications given by the ECtHR and the Committee of Ministers on this issue. He observes that the Venice Commission of the Council of Europe concluded, after having studied the case-law of the ECtHR relating to unreasonably long proceedings, that acceleratory remedies should be given precedence over compensatory remedies, given the preventive nature of the former.<sup>31</sup> The Venice Commission also endorsed the recommendation to establish a structure to monitor delays and remedy them rapidly, as proposed also by CEPEJ. The Commissioner urges the Italian authorities to take very careful note of these considerations when revising the existing domestic remedy.

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<sup>31</sup> [CDL-AD\(2006\)036rev](#), Report on the effectiveness of national remedies in respect of excessive length of proceedings, adopted by the Venice Commission at its 69th Plenary Session, 15-16 December 2006. Acceleratory remedies may include, for example, measures designed to put an end to the undue delay (e.g. injunctions, requests to hold a hearing), disciplinary actions against dilatory judges that can be taken by a supervisory body, or compulsory time limits to be defined by a higher court while the proceedings are ongoing.



## II. Protection of the human rights of Roma and Sinti

61. The protection of the human rights of Roma and Sinti has been the subject of long-standing attention by the Office of the Commissioner, as reflected notably in the Memorandum and Reports that Commissioner Thomas Hammarberg published in 2008, 2009 and 2011.<sup>32</sup> The present report follows up in particular on the 2011 report and covers developments which have occurred in Italy since the preparation of that report (May 2011).
62. The Commissioner reiterates the view that the situation of Roma, Sinti (and migrants, including asylum seekers, see the next section) poses some of the most pressing human rights challenges Italy has to face, and that the treatment of these vulnerable groups should be seen as a litmus test regarding the effective observance of Council of Europe human rights standards.
63. The Commissioner welcomes that the present government has marked, in particular in the declarations of the Minister for International Co-operation and Integration, a shift towards social inclusion of Roma and Sinti, after many years of policy focused essentially on security concerns and emergency legislation. For the moment however, these indications have not translated into concrete and unambiguous policies and actions. As a result, many Roma and Sinti in Italy still find themselves in a situation of serious exclusion and marginalisation and are subjected to continuing practices that are at variance with human rights standards, such as forced evictions and the construction of segregated camps. The coming period will be crucial for the announced shift in policy to have a concrete impact on the ground throughout the different regions of Italy.

### 1. Overall strategies for the inclusion of Roma and Sinti in society

64. The 2011 report called on the Italian authorities to adopt and implement a national strategy for the social inclusion of Roma and Sinti. Drawn up in thorough and genuine consultation with as broad a range of Roma and Sinti representatives and organisations as possible, the strategy should take into account the diversity of the situations in the different regions of Italy and aim at effectively supporting social inclusion initiatives at the local level.
65. The Commissioner therefore warmly welcomes the adoption of a National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities (hereafter: "National Roma Inclusion Strategy") in February 2012, a step undertaken by Italy in the framework of its EU obligations.<sup>33</sup> The Office against Racial Discrimination (hereafter, "UNAR") which has been designated as the relevant National Focal Point for the Strategy, also ensured the consultation process leading up to the adoption. The Commissioner notes with satisfaction that representatives of Roma and Sinti that he met during his visit were particularly appreciative of this consultation process, which they considered to be a first in Italy. He commends the Italian authorities for these consultations and the commitment expressed in the Strategy to further pursue the involvement of the Roma, Sinti and Caminanti communities, relevant NGOs, as well as regional and local authorities in the implementation process.
66. As regards policy development, the Minister for International Co-operation and Integration has been entrusted with the task of establishing a "political control room" of the policies for the coming years, which will guide the integration process over time, together with other relevant Ministers and through the involvement of representatives of regional and local authorities, as well as of the Roma, Sinti and Caminanti themselves.

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<sup>32</sup> [CommDH\(2008\)18](#), Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 19-20 June 2008; [CommDH\(2009\)16](#), Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009; [CommDH\(2011\)26](#), Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 26 to 27 May 2011.

<sup>33</sup> Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, "An EU Framework for National Roma Integration Strategies up to 2020", COM(2011)173 final.

67. The Commissioner finds that the Strategy includes a wide range of useful measures in the four axes of intervention set out in the EU Framework (education, employment, health, housing). It also appears to reflect an adequate understanding of the shortcomings in the former policies *vis-à-vis* Roma and Sinti, pointing to the need of a profound shift towards inclusion and empowerment.
68. However, many interlocutors and the European Commission observed that the proposed measures are not reinforced by precise quantitative targets, figures and indicators, or by clear timeframes for the implementation of individual measures, a circumstance which will make monitoring of progress difficult. A precise quantification of the corresponding financial resources is also lacking. The Commissioner understands that some of these aspects have been left to various working groups (see below), which should develop them in 2012-2013. This may, however, carry a risk of fragmentation.
69. The Commissioner is particularly pleased to note that the Strategy places a strong emphasis on the need to address the continued lack of a comprehensive national legal framework affording protection to the languages and culture of Roma and Sinti people, who are currently excluded from the scope of Law 482/1999 concerning the protection of the linguistic and cultural minorities of Italy.<sup>34</sup> The Commissioner is concerned that this lack of recognition currently hampers precisely the spreading of knowledge about Roma and Sinti culture and history that is sorely needed in Italy to help address the high levels of anti-Gypsyism in the country. This state of affairs has also been criticised both by the Council of Europe Advisory Committee on the Framework Convention and European Commission against Racism and Intolerance (ECRI) as exposing Roma and Sinti to particularly serious forms of abuse.
70. The Commissioner is therefore pleased to note that the Commission for Foreign Affairs of the lower house of the Italian Parliament approved a draft amendment in May 2012 in the context of the law for the ratification by Italy of the European Charter for Regional or Minority Languages, which “recognises the languages of the Roma and Sinti minorities as also meriting protection, by including them among those already provided for” by Law 483/1999.<sup>35</sup>
71. The Commissioner notes that in the Strategy the Italian authorities set out their main priorities for the period 2012-2013 as follows:
- elaboration of a Bill concerning the recognition of Roma, Sinti and Travellers as a national minority;
  - launching of local plans for social inclusion in the regions of Campania, Lombardia, Lazio, Piemonte and Veneto, “by re-programming the resources from the past emergency phase”;
  - establishment of three working groups within the national focal point UNAR, with the following tasks:
    - o an *ad hoc* working group with the task of closing the information and statistical gaps and drafting the first survey on Roma, Sinti and Travellers by 31 December 2013;
    - o another *ad hoc* working group for the legal recognition of Roma from the former Yugoslavia, to define solutions to overcome *de facto* statelessness (see below);
    - o a joint working group with the authorities managing the National Operational Programmes in order to re-purpose residual resources in existing programmes for the 2007-2013 programming cycle, and to elaborate proposals for the introduction of specific objectives dedicated to the social inclusion of Roma and Sinti for the next programming cycle (2014-2020);
  - launch within UNAR of a national network of territorial anti-discrimination observatories and centres, a database, and a computer-based monitoring system for the discrimination phenomena in mass media and social media;
  - the launch of the second edition of the “Dosta!” campaign (aimed at countering anti-Gypsyism);

<sup>34</sup> Italy’s [National Strategy](#) for the Inclusion of Roma, Sinti and Caminanti Communities, 18 February 2012, p. 17.

<sup>35</sup> <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Sindispr&leg=16&id=667138>



- the testing of a participatory model for the involvement of the Roma and Sinti communities in the relevant decision-making processes.
72. The Commissioner considers that constant monitoring and evaluation, as well as effective co-ordination of the strategy will be key for its success. He welcomes the critical role that UNAR will be called to play for this purpose. However, he was also surprised to learn that the staff of this agency, which is already significantly under the level initially foreseen, is at risk of being drastically reduced as a result of the ongoing spending review. The Commissioner understands that as a result notably of the non-renewal of secondments from various ministries UNAR will lose 9 out of the 14 staff currently working for the institution.

### **Conclusions and recommendations**

73. The Commissioner considers that the adoption of Italy's first national strategy for the inclusion of Roma and Sinti, which represents a break from past policies concerning these groups, was a momentous event, offering great potential for the protection and promotion of the human rights of these persons in Italy.
74. It is clear, however, that the initial stages of its implementation will be critical, in particular for the identification of the financial framework within which the strategy will be put into practice which, for the time being, remains largely undefined. The Commissioner recommends that, following this initial phase, precise quantitative targets and indicators be attached, and adequate financial resources be allocated to the measures envisaged under each one of the axes of intervention. While doing so, the Italian authorities should bear in mind that the integration of Roma and Sinti, especially following years of very counterproductive policies and practices, will require not only considerable resources, but also a sustained effort in terms of training and awareness-raising. It will also require constructive public debate to ensure genuine ownership of the Roma and Sinti inclusion agenda among the general population.
75. The evolution of national, regional and local consultation mechanisms, as well as of an efficient monitoring framework, are also issues that will have to be followed very closely. For this purpose, the Commissioner calls on the Italian authorities to build on the successful consultation practice during the period leading up to the adoption of the national strategy.
76. While implementing the strategy, the Commissioner considers that the Italian authorities could pay more attention to relations between the police and Roma, Sinti and Traveller communities. He also recommends that the authorities capitalise on the work of the Council of Europe Training Programme for Roma Mediators (ROMED).<sup>36</sup>
77. The Commissioner strongly supports the Italian authorities in their efforts to finally provide the Roma and Sinti communities of Italy with an adequate national legal framework for the protection and promotion of their languages and culture.
78. The Commissioner would like to express his deep concerns about the announced cuts to UNAR, which jeopardise the capacity of this Office not only to act as the national focal point of the national strategy, but also to continue to fulfil its crucial role in the fight against discrimination, which it has been carrying out with increasing efficiency and independence, despite statutory limitations. The Commissioner stresses the importance of national human rights structures in times of austerity budgets,<sup>37</sup> and strongly urges the Italian authorities to reinforce UNAR, both in terms of resources and independence, as opposed to radically reducing its resources as announced.

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<sup>36</sup> See on the website of the Programme for information about the 35 mediators who received training in Italy, <http://coe-romed.org/countries/italy>.

<sup>37</sup> See the Commissioner's human rights comment entitled "[National Human Rights Structures can help mitigate the effects of austerity measures](#)" published on 31 May 2012.

## 2. Housing and evictions/“Nomad emergency”

79. In the memorandum and reports on Italy of 2008, 2009 and 2011, grave concerns had been raised about the declaration of the state of “Nomad emergency” in certain Italian regions, endowing the Prefects of those regions with extraordinary powers facilitating policies and practices, including in the field of housing and evictions, which were often in violation of human rights standards. The extent of the problem was notably recognised by the European Committee of Social Rights in its June 2010 decision on the merits in collective complaint No. 58/2009 (*Centre on Housing Rights and Evictions (COHRE) v. Italy*), in which the Committee unanimously found eight violations in respect of four Articles of the Revised European Social Charter.<sup>38</sup>
80. The Commissioner notes that the Italian Council of State stroke down the governmental decree behind the “Nomad emergency”, as well as all subsequent acts based on this decree, in November 2011, three and a half years after its adoption.<sup>39</sup> The Council of State found, in particular, that the decree had not sufficiently justified the existence of a genuine emergency (only referring instead to a number of isolated criminal acts widely reported in the media). It is also worth noting that the Council of State validated decisions of a lower court whereby regulations adopted on the basis of the “Nomad emergency” decree in Lazio and Lombardy had unlawfully hindered freedom of movement for inhabitants of authorised camps in those regions (including by requiring an identification card to obtain a camp residence permit, mandating registration of guests at camp entrances and permitting organised surveillance of camps).
81. However, the Commissioner was informed that the Council of State did not declare that the decree had been discriminatory in intent or order the destruction of personal data collected through a census, limited to Roma and Sinti on strictly ethnic grounds, which was based on this decree.<sup>40</sup> Neither did it require compensation for the Roma and Sinti who had been subjected to unlawful evictions.
82. Despite welcome repeated declarations that the emergency-based approach to Roma and Sinti would be discontinued and replaced by ordinary measures, the Commissioner notes that on 15 February 2012 the Italian government seized the Court of Cassation against this ruling of the Council of State. The Minister of the Interior informed the Commissioner during his visit that the main reason for the referral was the government’s view that the Council of State had exceeded its powers, unduly limiting the government’s prerogative to decide what constitutes an emergency. Some interlocutors also suggested that the referral was considered necessary in order to access leftover funds allocated to the “Nomad emergency”, which could potentially be now used for the implementation of the National Roma Inclusion Strategy.
83. As a result of the referral, the Council of State adopted an ordinance on 9 May 2012 to suspend the effects of its ruling as regards activities already engaged under the emergency decree before its November 2011 judgment, pending the review by the Court of Cassation.
84. The Commissioner was informed that on the basis of this ordinance, the authorities in Rome were able to continue the construction work on a new segregated camp (*La Barbuta*) near Ciampino, Rome, which will include fences and video-surveillance. The Commissioner understands that the building of this so-called “equipped village” (*villaggio attrezzato*) was originally part of a resettlement plan, adopted on the basis of the emergency decree, involving the construction of 13 camps in the outskirts of Rome and the eviction of 6,000 Roma.

<sup>38</sup> Articles 16 (the right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non discrimination).

<sup>39</sup> Council of State, case no. 6050, 16 November 2011.

<sup>40</sup> On this census, see [CommDH\(2009\)16](#), Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009, paragraphs 41 to 47.

85. During his visit in Rome, the Commissioner visited such an “equipped village”, the camp of Via Salone, and observed first-hand the segregation imposed on Roma families forcibly evicted there. The biggest of 8 such camps in Rome, this camp was opened in 2006 and currently houses an estimated 1,100 persons. It is surrounded by a metal fence and video surveillance cameras, and accessible through a single, controlled entrance. It is in a very remote location, public transport, schools, shops, healthcare and other services being located several kilometres away and only accessible via a busy road which has no pavements, crossings or lights for pedestrians. It was reported to the Commissioner that, a nearby regional train station had remained closed until April 2010 due to “public order reasons linked with the nearby nomad camps”, and that upon reopening the Trenitalia company requested staff to fill out forms to count and report “possible passengers of Roma ethnicity”.
86. Isolation, lack of interaction with the outside world and of prospects for employment and inclusion in mainstream society were among the main grievances raised by the inhabitants of the camp with whom the Commissioner met. They also informed him that the structural and living conditions in the camp had deteriorated considerably since its inauguration, in particular due to the overcrowding caused by a steep increase in evictions under the “Nomad emergency”. The living conditions, in particular of the children and juveniles, was also subject to severe criticism in a research report published by an association that carries out regular work in the camp.<sup>41</sup> The Commissioner was informed that the distance of the camp from schools causes delays and reduces the number of hours children spend at school, to which they are transported in segregated conditions (reportedly in special buses marked with the letter N). It was also reported that, despite the considerable spending by public authorities, school attendance remained low due to these circumstances.
87. The Commissioner was informed that the local authorities indicated on several occasions that they considered the camp of via di Salone as a model camp, and that the newest “equipped village” of *La Barbuta* follows the same model. However, in the opinion of the Commissioner, the segregated conditions in these camps offer no prospect of gainful employment to the inhabitants, or even the possibility to interact with non-Roma persons and integrate into society. He also personally witnessed the sub-standard living conditions in a former authorised camp (Salviati II), which serve as an illustration as to the speed with which conditions can deteriorate in such segregated settings.
88. Thus, the Commissioner particularly regrets the information received during his visit that forced evictions to *La Barbuta* had already started, some taking place while he was in Rome. In the Commissioner’s view these actions can hardly be reconciled with the shift in policy required by the National Roma Inclusion Strategy, which is now in force in Italy. Instead, they show a regrettable continuity with previous official policy based on emergency. As noted in the reports of the Commissioner’s predecessor and the aforementioned decision of the European Committee of Social Rights, that policy had fuelled an unprecedented spate of systematic forced evictions, often even chain evictions, with little regard for the personal circumstances of the persons concerned and for procedural safeguards.
89. The situation of Roma and Sinti in Milan was examined in some detail in the 2011 report mentioned above. The Commissioner was informed by Roma representatives and NGOs that little had changed since the election of a new municipal government in May 2011, and that evictions continued to take place, including from authorised camps, sometimes linked to building projects for EXPO 2015.
90. However, the Commissioner also notes that the establishment by the Roma and Sinti communities of Milan of a consultation mechanism (“*Consulta Rom*”) in June 2011 constitutes a very promising development. He considers that by bringing together Roma and Sinti groups and

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<sup>41</sup> Associazione 21 Luglio, “Esclusi e ammassati”, November 2010, available at: [http://www.21luglio.com/images/Report/esclusi%20\\_e\\_ammassati.pdf](http://www.21luglio.com/images/Report/esclusi%20_e_ammassati.pdf)

representatives of both authorised and unauthorised camps for the first time, the Consulta constitutes a clear opportunity for local authorities to finally ensure genuine involvement of these communities in the decisions concerning their future.

91. As regards the database established as a result of the “Nomad emergency” census mentioned above and examined in detail in the 2009 report mentioned above, the Commissioner was informed that the Italian authorities had declared to the UN Committee on the Elimination of Racial Discrimination (CERD) that this database had been deleted. However, the Commissioner received information that, in the course of litigation initiated by Roma and Sinti concerning personal data contained in the records held by prefectures in Rome and Milan, it became apparent that not all of this data had been erased.

### **Conclusions and recommendations**

92. The Commissioner strongly believes that both segregated camps for Roma and Sinti and forced evictions in Italy should be firmly relegated to the past. The Italian authorities should instead give priority to the implementation of the goals expounded in their National Roma Inclusion Strategy, which rightly states that “the liberation from the camp as a place of relational and physical degradation [...] and relocation to decent housing is possible”, and points to existing good practices in Italy.
93. The genuine involvement of Roma and Sinti communities in the decision-making process is an essential precondition for the success of future policies. The authorities are strongly encouraged to capitalise on existing examples of promising consultation mechanisms at local and regional levels and to ensure that the relevant communities have a real say in the choices that will affect their housing situation.
94. Segregated camps and forced evictions are diametrically opposed to the text and spirit of the National Roma Inclusion Strategy, which clearly states that the aim for the authorities is “to definitively overcome the emergency phase, which has characterised the past years, especially when intervening in and working on the relevant situation in large urban areas”.<sup>42</sup> The camp-based approach and the evictions associated with it were hallmarks of the “Nomad emergency” policy, and should be overcome together with the corresponding Decree. The Commissioner therefore regrets the reports of continuing evictions of Roma and Sinti, despite a circular letter sent by the Minister for International Co-operation and Integration to all prefects, informing them of the adoption of this strategy and its contents.
95. In this respect, the Commissioner is concerned about the mixed message sent by the Italian government by referring the November 2011 decision of the Council of State to the Court of Cassation. While understanding that this referral does not imply that the government intends to pursue the emergency approach vis-à-vis Roma and Sinti and that there are other procedural and financial considerations at stake, the Commissioner is worried that it may appear, *a priori*, to sanction the continuation of the former approach in the eyes of Roma and Sinti, as well as of local and regional authorities, and provincial representatives of the State.
96. The Commissioner therefore urges the Italian government to state unambiguously that it will not pursue a return to the emergency approach, as exemplified by segregated camps and forced evictions, regardless of the ruling which will ultimately be delivered by the Court of Cassation. Any ongoing work on segregated camps and evictions thereto should be ended as a matter of urgency.
97. The Commissioner encourages the Italian authorities to give consideration to the fact that the human rights of many Roma and Sinti have been violated as a direct or indirect result of the “Nomad emergency” decree, and that adequate compensation mechanisms should be made

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<sup>42</sup> Italy’s [National Strategy](#) for the Inclusion of Roma, Sinti and Caminanti Communities, 18 February 2012.

available. Finally, he wishes to express his concerns about the retention of personal data of Roma and Sinti individuals which were systematically collected under the emergency regime. The Italian authorities should ensure that this data is erased from all relevant databases, including at local and regional levels.

### 3. Anti-Gypsyism in political discourse and the media

98. In the report following his visit to Italy in May 2011, the Commissioner had expressed serious concerns about the continuation of racist and xenophobic speech against Roma and Sinti in Italian political discourse. As an example, he pointed to the use of electoral material in municipal elections in Milan warning against the risk of the city turning into a “Gypsytown” (*Zingaropoli*).
99. The Commissioner has been informed of a decision of the district court of Milan taken on 24 May 2012, which he considers a positive development in this respect. This decision condemned two political parties, the Northern League and the People of Freedom, for the use of the word “Zingaropoli” on their election material, as well as for the declarations of their leaders in the 2011 municipal election campaign for Milan. The two parties were condemned to having the court’s decision published at their own expense in the daily “Il Corriere della Sera”. The district court notably recognised the offensive and humiliating character of the term “Zingaropoli”, stating that “not only did it violate the dignity of the Roma and Sinti as an ethnic group, but favoured an intimidating and hostile climate *vis-à-vis* the Roma”.
100. However, the Commissioner is aware that this decision needs to be seen against a background of widespread and persistent anti-Gypsyism in political discourse, many examples of which were shared with him by civil society representatives during his visit. He also notes that in 2012, both ECRI and CERD<sup>43</sup> criticised the prevalence of - or even increase in - racist and xenophobic discourse among politicians at all levels, sometimes accompanied by calls for Roma to be deported, which occasionally have led to actual acts of violence. Considering in particular the scale of the problem, there have been very few cases where politicians have been prosecuted for discriminatory statements targeting Roma and Sinti.
101. A recent example for the prevalence of anti-Gypsyism in political discourse were the events which took place in Pescara following a murder committed on 1 May 2012, the principal suspect of which was an Italian Roma man. A series of outbursts of public outrage targeting all the Roma in Pescara, including demonstrations, online petitions requesting their expulsion, or serious threats of vigilante violence, were further inflamed by some local politicians. An example for this was a banner by the People of Freedom Party calling for the eviction of “Roma and delinquents” from public housing. This has led to a sentiment of great insecurity among the Roma population of Pescara, the members of which were, according to NGO reports, advised by the police to leave their homes due to the threats of violence.
102. As noted by ECRI and CERD recently, the Commissioner is also deeply worried about a reported increase in discriminatory statements against Roma and Sinti in the media and on the Internet, particularly on social networks. The Commissioner received many reports of news items where the ethnic origin of persons as Roma or Sinti is mentioned unnecessarily and in a sensationalist manner, for example reporting on the drivers’ ethnic origin when reporting on traffic accidents, including in mainstream newspapers. In this connection, the Commissioner welcomes the announced goal in the National Roma Inclusion Strategy to endow UNAR with a computer-based monitoring system for discrimination phenomena in mass media and social media.

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<sup>43</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination on Italy, adopted at its eightieth session, 13 February – 9 March 2012.

## Conclusions and recommendations

103. The Commissioner stresses that there is a close link between hate crimes and hate speech. Inflammatory political rhetoric and xenophobic media revive age-old stereotypes about the Roma which, in the eyes of some individuals, legitimises discriminatory or violent actions against Roma individuals.<sup>44</sup> This has unfortunately been the case in Italy on many occasions.
104. The Commissioner reiterates the recommendations made in 2011, including a call on the Italian authorities to implement the measures in accordance with the study and declaration of ECRI on the use of racist, antisemitic and xenophobic elements in political discourse;<sup>45</sup> and to re-establish adequate penalties against incitement to racial discrimination and violence (given the mitigation of the sanctions for these offences and the limitation of their scope through Law No. 85/2006). The Commissioner further hopes that the translation into Italian and dissemination of the Council of Europe factsheets on Roma history, to which the Italian authorities have committed themselves on several occasions in the past, will finally be carried out.<sup>46</sup>
105. The Commissioner also urges the Italian authorities to take decisive measures to comply with ECRI's General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma.<sup>47</sup> All political discourse which publicly incites discrimination, hatred or violence against Roma, including during electoral campaigns, must be condemned and, if appropriate, punished.
106. The Commissioner invites the Italian authorities to pay special attention to the section of the aforementioned General Policy Recommendation dealing with anti-Gypsyism expressed in the media, which recommends, *inter alia*, encouraging the media to adopt and enforce an adequate code of conduct and not to mention the ethnic origin of persons when it is not essential for a good understanding of events.

## 4. Violent hate crimes

107. As raised by the Commissioner previously in 2008, 2009 and 2011, incidents of racist and xenophobic violence, including violence specifically directed against Roma and Sinti, continue to be widely reported both by the media and NGOs. A recent example of serious mob violence was the arson attack on a Roma camp in Turin in December 2011, after a 16-year old girl lied about being "raped by gypsies" (she later admitted to the police that she invented the story). The camp in question was set on fire and destroyed as a result of this attack by a group of around 50 people.
108. However, there continues to be a significant discrepancy between the scale of the problem and the public response to document, prevent and prosecute anti-Roma violence. It appears that on many occasions, law enforcement or judicial authorities downplay the racist motivation behind such incidents.
109. This concern has been echoed more recently by CERD, which referred to the "small number of prosecutions and convictions for racial discrimination despite the high number of hate crimes and

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<sup>44</sup> Report of the Council of Europe Commissioner for Human Rights on the Human Rights of Roma and Travellers, February 2012, available at: [http://www.coe.int/t/commissioner/activities/themes/Roma/RomaRights\\_en.asp](http://www.coe.int/t/commissioner/activities/themes/Roma/RomaRights_en.asp)

<sup>45</sup> European Commission against Racism and Intolerance, The use of racist, antisemitic and xenophobic elements in political discourse, December 2005.

<sup>46</sup> [CommDH\(2008\)18](#), Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 19-20 June 2008, para. 25; [CommDH\(2011\)26](#), Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 26 to 27 May 2011, para. 12.

<sup>47</sup> [CRI\(2011\)37](#), ECRI General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, adopted on 24 June 2011.



violence”.<sup>48</sup> ECRI has raised similar concerns in its latest report on Italy, and recommended that the authorities thoroughly re-examine the effectiveness of the relevant criminal law provisions and of their application by various actors in the criminal justice system, as well as improve data-collection on these aspects.<sup>49</sup>

110. Another issue raised in 2011 by the Commissioner was the interpretation by courts of the statute establishing racist motivation as an aggravating circumstance (Article 3 of the Law no. 205/1993, also known as the “Mancino Law”) as only applying to cases where racial hatred was the sole motivation of the offence, causing many hate crimes which appear to also have other motives to be prosecuted as ordinary offences. The Commissioner has been informed, in this respect, that there have been conflicting interpretations of this provision, including from different chambers of the Court of Cassation, and that the latter recently rendered judgments which seem to allow for the application of aggravating circumstances even in cases where there is a multitude of motives.<sup>50</sup>
111. An Observatory for security against acts of discrimination (OSCAD, *Osservatorio per la sicurezza contro gli atti discriminatori*) was established within the police force in September 2010, which signed a memorandum of understanding with UNAR in April 2011.<sup>51</sup> While the Commissioner has been informed that OSCAD had been primarily set up to co-ordinate interventions concerning violence against LGBT persons, he understands that it is expected to diversify its activities in the future.
112. The Commissioner understands that since 2010, UNAR has been more active in collecting data on racist violence and monitoring the media for incidents with a view to alerting the police or the judiciary. The representatives of UNAR have also informed the Commissioner that it is currently monitoring the approximately 200 ongoing criminal proceedings which have a racial discrimination component, and will be able to publish data on these issues by the end of 2012.

### Conclusions and recommendations

113. The Commissioner considers that the recommendations made in 2011 on violent hate crimes remain entirely valid, as the continuation of very serious incidents of hate crime targeting Roma and Sinti demonstrate. He urges Italian authorities to step up their efforts to monitor such hate crimes and to ensure that the racist dimension of offences is effectively taken into account by the criminal law system, in accordance with the 2012 recommendations of ECRI to Italy.
114. The Commissioner understands that, while there have been positive developments in case-law, there is a certain amount of confusion about the application of aggravating circumstances in hate crimes, and more generally about the legal arsenal at the disposal of victims, law enforcement authorities and prosecutors to deal with racist, and notably anti-Roma violence. Political leadership continues to be necessary to promote awareness by actors in the criminal justice system of the need to actively and thoroughly counter all manifestations of racism and racial discrimination, and awareness by victims of the remedies available to them.
115. Finally, given the role that UNAR has increasingly played in this field, both in terms of awareness-raising and monitoring, the Commissioner reiterates his deep concerns about the future of this Office.

<sup>48</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination on Italy, adopted at its eightieth session, 13 February – 9 March 2012.

<sup>49</sup> [CRI\(2012\)2](#), Fourth Report of the European Commission against Racism and Intolerance on Italy, 6 December 2011,

<sup>50</sup> See, in particular, the replies of the Italian authorities to the Fourth Report of ECRI, p. 63, as well as the report of Human Rights Watch entitled “[Everyday Intolerance – Racial and Xenophobic Violence in Italy](#)”, March 2011, p. 63.

<sup>51</sup> <http://poliziadistato.it/articolo/view/25241/711aea47c09e4ee0f815f9be4f616170/#>

## 5. Statelessness

116. The extremely precarious situation of the estimated 15,000 stateless Roma in Italy has been raised on many occasions in the previous reports mentioned above. As set out in the 2011 report, numerous barriers continue to prevent access by stateless Roma, including many born in Italy, not only to citizenship, but also to a legal recognition of their stateless status. Many factors contribute to this situation, including the Italian legal framework, administrative practice, but also the lack of co-operation of the consular services of some successor states of former Yugoslavia.
117. In their National Roma Inclusion Strategy, the Italian authorities explicitly recognised the fact that the legislation in force makes the recognition of the *de facto* stateless status of Roma, Sinti and Travellers difficult.<sup>52</sup> As mentioned above, the Strategy foresees the establishment of a working group with representatives of the Ministry of the Interior, the Ministry of Foreign Affairs, the Office of the Minister for International Cooperation and Integration, UNHCR and the Roma and Sinti communities as well as human rights NGOs. Its aim will be to examine issues relating to the legal recognition of Roma from the former Yugoslavia and define possible solutions of an administrative and diplomatic nature to overcome *de facto* statelessness. As a possible outcome of this work, the Strategy explicitly refers to the granting of refugee status or a residence permit for humanitarian reasons to Roma from the former Yugoslavia who entered Italy before 1 January 1996.
118. The Minister of the Interior, Ms Anna Maria Cancellieri, informed the Commissioner that her Ministry insisted on the inclusion of this aspect in the National Roma Inclusion Strategy, as a sign of the importance it attaches to the resolution of this problem. At the time of the Commissioner's visit, the working group in question had however not yet been convened.

## Conclusions and recommendations

119. The Commissioner welcomes the will demonstrated by the Italian authorities to address the difficulties faced by Roma who are in a situation of statelessness in Italy. He urges them to ensure that the working group announced in the National Roma Inclusion Strategy starts its work as quickly as possible, and that it fulfils its task in a precise timeframe. He hopes that this process will lead to the identification of adequate solutions, enabling the persons concerned to accede at least to the same rights as stateless persons. He also hopes that these solutions will be implemented without delay.
120. In this process, the Commissioner reiterates the call on the Italian authorities to pay special attention to children born to stateless parents and the relevant recommendations of the Council of Europe Committee of Ministers,<sup>53</sup> and to remedy, as a priority, the problems relating to the acquisition of Italian nationality by children born on Italian territory who otherwise would be stateless. In this connection, the Commissioner also reiterates the call on the Italian authorities to ratify without reservations the European Convention on Nationality.

## III. Protection of the human rights of migrants, including asylum seekers

121. The protection of the human rights of migrants, including asylum seekers, has been the subject of long-standing attention by the Office of the Commissioner, as reflected notably in the Memorandum and Reports published in 2008, 2009 and 2011. The present report follows up in particular on the 2011 report and covers developments which have occurred in Italy since the preparation of that report (May 2011).

<sup>52</sup> Italy's [National Strategy](#) for the Inclusion of Roma, Sinti and Caminanti Communities, 18 February 2012, p. 16.

<sup>53</sup> Recommendation [CM/Rec\(2009\)13](#) of the Committee of Ministers to member states on the nationality of children, adopted by the Committee of Ministers, 9 December 2009.



## 1. Possibility to access the asylum procedure in Italy

122. The number of migrants, including asylum seekers, arriving in Italy on boats increased significantly in 2011, as a consequence of political unrest in Tunisia and the armed conflict in Libya. UNHCR estimates the number of arrivals in Italy in 2011 at 56,000 (28,000 of which were Tunisian nationals), the vast majority arriving in the first half of the year.<sup>54</sup>
123. The aforementioned 2011 report of the Commissioner referred to operations carried out by Italy, jointly with Libya, aimed at intercepting migrants fleeing Libya on boats and returning them there (the so-called *respingimenti* or “push-backs”) up to the beginning of the armed conflict in Libya in 2011. A major development relating to this policy since that report was the judgment delivered by the ECtHR in the case of *Hirsi Jamaa and others* on 23 February 2012,<sup>55</sup> which concerned precisely this type of operations.
124. This Grand Chamber judgment concerned 11 Somali and 13 Eritrean nationals who were intercepted at sea and transferred to Libya by the Italian military authorities in May 2009, in accordance with the bilateral agreements with Libya that had come into force on 4 February 2009 (the application of which had been suspended on 26 February 2011). The Court held unanimously that the operations had given rise to several violations of the ECHR by Italy.
125. The ECtHR considered, in particular, that the Italian authorities, who exercised continuous *de jure* and *de facto* control over the applicants during the operation, knew or should have known that, as irregular migrants, the applicants ran a real risk of being exposed to ill-treatment in Libya (including detention in inhuman conditions, torture, poor hygiene, lack of appropriate medical care) and they would not be given any kind of protection in that country (first violation of Article 3 of the ECHR on the prohibition of torture). They should also have known that there were insufficient guarantees in Libya protecting them from *refoulement* to their countries of origin, owing to the lack of any asylum procedure and the impossibility of making the Libyan authorities recognise the refugee status granted by UNHCR (second violation of Article 3).
126. The removal to Libya was of a collective nature, as it was carried out without any form of examination of each applicant's individual situation (violation of Article 4 of Protocol No. 4 of the ECHR on the prohibition of collective expulsion of aliens). Finally, the applicants could not lodge their complaints with a competent authority nor obtain a thorough and rigorous assessment of their request before the removal measure was enforced (violation of Article 13 on effective remedy, taken together with Article 3 of the Convention and Article 4 of Protocol No. 4).
127. General measures to execute this judgment would clearly require Italy to avoid such operations in the future. In this context, the Commissioner welcomes statements by members of the Italian government, including the President of the Council of Ministers, the Minister of the Interior and the Minister for International Co-operation and Integration, that Italy will fully respect the judgment of the ECtHR.
128. However, there is concern among civil society representatives and UNHCR that the push-back policy has not been officially revoked. The Commissioner also notes criticism expressed concerning leaked records of a meeting on illegal immigration between the Italian Minister of the Interior and her Libyan counterpart in Tripoli in April 2012, notably by Amnesty International<sup>56</sup> and UNHCR representatives, who expressed regret that Italy did not use this opportunity to play a determining role in the institution-building process in Libya.

<sup>54</sup> UN High Commissioner for Refugees, [Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011](#), 31 January 2012.

<sup>55</sup> *Hirsi Jamaa and others v. Italy*, Appl. No. 27765/09, Grand Chamber judgment of 23 February 2012.

<sup>56</sup> Amnesty International, [public statement](#) of 20 June 2012, which claims that “the Italian authorities seek support by Libya in stemming migration flows, while turning a blind eye to the fact that migrants, refugees and asylum-seekers risk serious human rights abuses there”.

129. In their action plan submitted to the Council of Europe Committee of Ministers concerning the execution of the *Hirsi Jamaa* judgment,<sup>57</sup> the Italian authorities stated that the record of this meeting does not constitute a new international treaty, referred to explicit references to human rights in this document, as well as to a declaration of the Minister for International Co-operation and Integration, Andrea Riccardi, that push-backs are not part of Italy's policy on irregular migration. The Italian authorities informed the Commissioner that the agreements with Libya will be renegotiated after the stabilisation of the political situation in that country.
130. While welcoming these statements about stopping "push-backs" of persons intercepted in international waters, the Commissioner heard serious concerns linked to the principle of *non-refoulement* involving countries other than Libya. In particular, UNHCR representatives reported that they had no access to persons arriving from Egypt who were routinely sent back in accordance with the readmission agreement with that country, despite indications that some arrive with the intention to seek asylum, according to the reports of minors who are allowed to stay on Italian territory. There are also numerous reports concerning persons arriving in an irregular manner in Italian ports on the Adriatic who are returned to Greece without having access to procedures aimed at formally clarifying their status and identifying any protection needs.<sup>58</sup>
131. In this connection, the Commissioner also refers back to the issue raised in the aforementioned 2011 report concerning Tunisian nationals returned directly to Tunisia under simplified procedures and related concerns about the observance of procedural guarantees. He bears in mind a series of judgments of the ECtHR concerning the expulsion by Italy of foreign nationals to their country of origin in violation of Article 3 of the ECHR (as well as of Article 34 of the ECHR, as Italy disregarded the Court's interim measures).<sup>59</sup>
132. Finally, as regards the issue of search and rescue operations at sea raised in the 2011 report, the Commissioner notes that according to UNHCR, 2011 had been the deadliest year for the region, with at least 1,500 people drowning or going missing while attempting to cross the Mediterranean Sea. The Commissioner regrets that tragic incidents continue to occur, with 54 persons having perished in one of the most recent incidents.<sup>60</sup>
133. Following its Resolution on the interception and rescue at sea of asylum seekers, refugees and irregular migrants of June 2011,<sup>61</sup> the Parliamentary Assembly of the Council of Europe maintained its interest in the matter by adopting a Resolution entitled "*Lives lost in the Mediterranean Sea: Who is responsible?*" in April 2012.<sup>62</sup> The Commissioner notes that the latter resolution, which is accompanied by a number of recommendations relevant for Italy, was prompted by an episode, referred to in the aforementioned 2011 report, which resulted in the death of 61 persons at sea, despite the reported notification of the authorities of Italy, Malta and NATO.
134. The Commissioner notes that following a fire that broke out in the migrant reception centre in Lampedusa in September 2011 (see below), the island was declared as not being a safe place

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<sup>57</sup> Available at [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2012\)671](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2012)671).

<sup>58</sup> See UN High Commissioner for Refugees, [UNHCR Recommendations on Important Aspects of Refugee Protection in Italy](#), July 2012 and the report of PRO ASYL and the Greek Council of Refugees, "[Human Cargo](#)", July 2012..

<sup>59</sup> 3 cases in the Ben Khemais group, the leading case being *Ben Khemais v. Italy*, Appl. No. 246/07, judgment of 24 February 2009. The Commissioner also notes the 10 cases in the *Saadi* group, the leading case being *Saadi v. Italy*, Appl. No. 37201/06, Grand Chamber judgment of 28 February 2008, concerning potential violations of Article 3.

<sup>60</sup> UN High Commissioner for Refugees, [One survivor, 54 die at sea attempting the voyage to Italy from Libya](#), 11 July 2012.

<sup>61</sup> [Resolution 1821 \(2011\)](#) of the Parliamentary Assembly on the interception and rescue at sea of asylum seekers, refugees and irregular migrants, 21 June 2011.

<sup>62</sup> [Resolution 1872 \(2012\)](#) of the Parliamentary Assembly, "Lives lost in the Mediterranean Sea: Who is responsible?", 24 April 2012.

for the disembarkation of migrants rescued at sea. It has been reported that due to this decision, rescue operations have to be conducted from Sicily, leading to a significant loss of time.

### Conclusions and recommendations

135. The Commissioner strongly welcomes the declarations at the highest political level that the “push-back” policy will no longer be pursued in the light of the *Hirsi Jamaa* judgment of the ECtHR. However, he reiterates the call of the Parliamentary Assembly on member states in its aforementioned Resolution 1821 (2011) “to suspend any bilateral agreements they may have concluded with third states if the human rights of those intercepted are not appropriately guaranteed therein, particularly the right of access to an asylum procedure, and wherever these might be tantamount to a violation of the principle of *non-refoulement*, and conclude new bilateral agreements specifically containing such human rights guarantees and measures for their regular and effective monitoring”.<sup>63</sup>
136. In this respect, the Commissioner considers that the announced renegotiation of the bilateral agreement with Libya is an important opportunity for Italy to include such human rights guarantees in order to ensure rigorous examination of the possible human rights consequences of expulsion, interception and removal measures, including the risk of onward *refoulement* to the countries of origin. He encourages the Italian authorities to review under the same light their bilateral agreements with other countries, such as the readmission agreements with Egypt and Tunisia.
137. In any event, the Commissioner reiterates, in the strongest possible terms, the call on the Italian authorities to ensure that all migrants, including those intercepted, have full access to the asylum procedure, and that adequate procedural safeguards are respected whenever a removal decision is taken. In this respect, he recommends that the relevant personnel, such as border control agents, receive systematic training and are sensitised to the necessity of identifying asylum seekers and referring them to asylum authorities, before applying any removal measure.
138. As regards returns to Greece, the Commissioner draws the attention of the Italian authorities to the grave deficiencies in the asylum system in that country, which according to the ECtHR amounted to a violation of Article 3 of the ECHR,<sup>64</sup> and urges the Italian authorities to refrain from automatic returns to Greece.
139. As regards search and rescue operations at sea, the Commissioner wishes to echo the appreciation expressed by UNHCR on several occasions for the efforts undertaken by the Italian authorities, often in very difficult circumstances. However, he calls on the Italian authorities to review their decision of declaring Lampedusa as not safe for the disembarkation of migrants rescued at sea. He also encourages the Italian authorities to carefully examine and to implement the recommendations contained in the Parliamentary Assembly Resolution 1872 (2012) of April 2012, including those relating to the responsibility of commercial vessels.<sup>65</sup>

## 2. Reception of migrants, including asylum seekers

140. The framework for the reception of migrants remains largely unchanged since the last visit of the Commissioner’s predecessor to Italy in May 2011. As noted in the 2011 report, asylum seekers in Italy can be referred to different types of accommodation, including CARAs (*Centri d’accoglienza per richiedenti asilo*, open first-reception centres for asylum seekers), CDAs (*Centri di accoglienza*, reception centres for migrants) and CPSAs (*Centri di primo soccorso ed accoglienza*, first aid and reception centres).

<sup>63</sup> [Resolution 1821 \(2011\)](#), para. 9.9.

<sup>64</sup> See *M.S.S. v. Belgium and Greece*, Appl. No. 30696/09, Grand Chamber judgment of 21 January 2011.

<sup>65</sup> [Resolution 1872 \(2012\)](#), para. 13.4.

141. Concerns have been raised about the conditions in some of the reception centres. For example, having visited a CARA during its visit in September 2008, the European Committee for the Prevention of Torture (CPT) criticised the fact that this centre was located in prison-like premises.<sup>66</sup> While the Commissioner is aware that the Italian government defined minimum standards for tenders for the management of these facilities,<sup>67</sup> interlocutors voiced their concern about the high variability in the standards of reception centres in practice, which may manifest itself in, for example: a numerical shortage and a lack of adequate training of staff; overcrowding and limitations in the space available for assistance, legal advice and socialisation; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information.<sup>68</sup>
142. The inconsistency of the standards in reception centres, as well as the lack of clarity in the regime applicable to the migrants kept in them, became a major concern following the declaration of the “North African emergency” in 2011. Under the emergency plan, the existing reception capacity was enhanced in co-operation with Italian regions in order to deal with the sharp increase in arrivals from the coasts of North Africa (34,120 asylum applications were submitted in Italy in 2011, a more than threefold increase compared to the 10,050 applications in 2010).<sup>69</sup> The Commissioner acknowledges the strain put on the Italian reception system in 2011 and commends the efforts of the central and regional authorities to provide the additional reception capacity needed to cope with the effects of the significant increase in migratory flows.
143. However, the efficiency and viability of an emergency-based approach to asylum and immigration has been questioned by many interlocutors. The 2011 report had already expressed particular concerns over the provision of legal aid, adequate care and psychosocial assistance in the emergency reception centres, and over difficulties relating to the speedy identification of vulnerable persons and the preservation of family unity during transfers. These concerns are still valid, and human rights NGOs pointed to reports of significant problems at some of these facilities, in particular in Calabria and Lombardy. Delays and a lack of transparency in the monitoring of these centres have also been reported, both by NGOs and UNHCR.<sup>70</sup>
144. As regards the effects of the end of the emergency period foreseen on 31 December 2012, the Commissioner welcomes the information provided by the Minister of the Interior that the examination of the outstanding asylum applications (estimated at around 7-8,000) will be concluded before that date. He was informed that 30% of applicants having arrived during the emergency period were granted protection.<sup>71</sup> The Commissioner also commends the significant efforts of the Italian authorities to improve the examination procedure applied by Territorial Commissions, within which UNHCR is represented, noting however that the lack of expertise of some members of these commissions is perceived to be a problem.
145. However, the Commissioner understands that there will be no further support for recognised beneficiaries of international protection beyond this date, the authorities considering that the vocational training they will have received by then will allow them to integrate if they choose to remain in Italy. The Commissioner is concerned about this eventuality, in the light of the serious

<sup>66</sup> [CPT/Inf\(2010\)12](#), Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 September 2008, of 20 April 2010, para. 35.

<sup>67</sup> Available on the website of the Ministry of the Interior at [http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/notizie/immigrazione/0681\\_2008\\_11\\_28\\_capitolato\\_centri\\_accoglienza.html](http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/0681_2008_11_28_capitolato_centri_accoglienza.html) (accessed on 30 July 2012).

<sup>68</sup> See, in particular, the report of Doctors without borders Report “[Over the wall: a tour of Italy's migrant centres](#)”, January 2010, and the [submission](#) of the Open Society Justice Initiative and Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) to the CERD, March 2012.

<sup>69</sup> UN High Commissioner for Refugees, [Asylum levels and trends in industrialized countries](#), 2011.

<sup>70</sup> See UN High Commissioner for Refugees, [UNHCR Recommendations on Important Aspects of Refugee Protection in Italy](#), July 2012, p. 12.

<sup>71</sup> According to information provided by UNHCR, this includes both national and international protection. 7.5% of the applicants were granted refugee status as defined by the 1951 Geneva Convention.

shortcomings he identified in the integration of refugees and other beneficiaries of international protection (see below). He received no information about the position of persons whose judicial appeals to a negative asylum decision will still be ongoing by that date.

146. As noted in the 2011 report, an additional feature of the Italian system is the SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati*), a publicly funded network of local authorities and non-profit organisations, which accommodates asylum seekers, refugees or other beneficiaries of international protection. In contrast to CARAs and emergency reception centres, which tend to be big institutions hosting significant numbers of persons at one time, the SPRAR is composed of approximately 150 smaller-scale projects and was seen by the Commissioner's interlocutors to function much better, as it also seeks to provide information, assistance, support and guidance to beneficiaries to facilitate socio-economic inclusion.<sup>72</sup>
147. However, the capacity of this network, which represents a second level of reception after the frontline reception centres, is extremely limited (approximately 3,000 places) in comparison to the numbers of asylum seekers and refugees in Italy. As a result, asylum seekers are often kept in CARAs for extended periods of time, as opposed to being transferred to a SPRAR project after the completion of identification procedures as originally intended. In some cases this could last up to six months, whereas it has been reported to the Commissioner that asylum seekers received under the emergency reception plan have stayed in reception centres even beyond six months.
148. The Commissioner observes that the problem of the living conditions of asylum seekers in Italy has been receiving increasing attention in other EU member states, due to the growing number of legal challenges by asylum seekers to their transfer to Italy under the Dublin Regulation. He notes that a series of judgments by different administrative courts in Germany have suspended such transfers, owing notably to the risk of homelessness and a life below minimum subsistence standards. The ECtHR has also been receiving applications alleging possible violations of Article 3 as a result of Dublin transfers to Italy. Recently communicated cases concern applications made against, among others, Sweden and Denmark<sup>73</sup>. It is also worth noting that in two applications lodged against Austria,<sup>74</sup> the ECtHR decided in early 2012 to apply the interim measure under Rule 39 and requested the Austrian government to stay the applicants' transfer to Italy until further notice.
149. Another concern raised in the 2011 report was the situation in Lampedusa as regards the reception of migrants. Since the publication of that report, serious concerns about the conditions of reception of migrants on the island were raised by an Ad Hoc Sub-Committee of the Parliamentary Assembly of the Council of Europe.<sup>75</sup> The Commissioner understands that a fire broke out in Lampedusa's main reception centre "*Contrada Imbriacola*" on 20 September 2011 and that the reception centre on the island has remained closed since then. The Commissioner notes with interest an interview given on 24 May 2012 by the Italian Minister for International Co-operation and Integration, Andrea Riccardi, in which he expressed his view that the decision to close the reception centre and the harbour would have to be reversed and that Lampedusa should be equipped to receive asylum seekers.<sup>76</sup>

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<sup>72</sup> Information on the SPRAR network is available at <http://www.serviziocentrale.it>.

<sup>73</sup> See for example, Applications no. 28361/12 lodged on 11 May 2012, and no. 25404/12 lodged on 25 April 2012.

<sup>74</sup> Application no. 53852/11 lodged on 26 August 2011; application no. 6198/12 lodged on 30 January 2012.

<sup>75</sup> [AS/Mig/AhLarg\(2011\)03rev2](#), Report on the visit to Lampedusa by the Ad Hoc Sub-Committee of the Parliamentary Assembly of the Council of Europe on the large-scale arrival of irregular migrants, asylum seekers and refugees on Europe's southern shores, of 30 September 2011.

<sup>76</sup> [Radio interview](#) given to the German ARD station, 24 May 2012.



### Conclusions and recommendations

150. The Commissioner underlines the importance of ensuring that all asylum seekers are received in conditions that meet national and international, including Council of Europe, standards, which include adequate access to legal aid and psychosocial assistance. He considers that most of the problems referred to above are linked to the fragmentation within the Italian reception system, due to the differences between different types of centres, shortcomings in the implementation and monitoring of common standards, as well as the effects of the emergency framework and the variability among the regions.
151. The Commissioner is therefore of the view that Italy needs an integrated reception system, capable of responding to fluctuating needs and affording the same quality of protection throughout the territory, subject to clear standards and independent monitoring. When devising such a system, the Commissioner encourages the Italian authorities to pay special attention to the Recommendations made by UNHCR in July 2012 on important aspects of refugee protection in Italy.<sup>77</sup>
152. The Commissioner considers that the SPRAR network, which is currently clearly unable to respond to actual needs, is nevertheless a good model which could be significantly expanded and put at the heart of such an integrated system, in order to minimise the period asylum seekers spend in CARAs and to support their integration from an early stage. In this respect, the Commissioner warmly welcomes the information provided by the Minister of the Interior that the authorities are exploring ways of increasing the capacity of the SPRAR Network in co-operation with the European Commission.
153. As regards the planned end of the North African emergency, the Commissioner calls on the Italian authorities to ensure that persons with ongoing appeals to a negative decision on asylum be allowed to stay on the Italian territory until the conclusion of their appeal.
154. The Commissioner shares the opinion expressed by Minister Riccardi that the reception centre and harbour in Lampedusa need to be reopened as soon as possible. In this connection, he draws the attention of the Italian authorities to the recommendations of the aforementioned Ad Hoc Sub-Committee of the Parliamentary Assembly of the Council of Europe, calling on the Italian authorities, *inter alia*, to increase reception capacities and improve reception conditions on Lampedusa; to provide appropriate facilities for unaccompanied minors; to clarify the legal basis of detentions and observe procedural guarantees; and to “consider the requests by the population of Lampedusa for support commensurate with the burden it has to bear, particularly in economic terms”.<sup>78</sup>

### 3. Integration of refugees and other beneficiaries of international protection

155. While the authorities have granted international protection to a relatively high percentage of persons applying for it in Italy, severe shortcomings have been highlighted in the assistance provided to these persons after they have obtained their status. The aforementioned 2011 report points notably to the lack of a reliable system to support the integration of refugees and other beneficiaries of international protection in Italian society. While these persons are entitled to many social and economic rights on a par with Italian nationals in theory, in reality they face numerous obstacles to self-reliance. This is due to the fact that current policies do not take account of their initial disadvantages compared to Italian nationals, and notably the lack of family and social networks. In addition, a number of restrictive administrative practices have a tangible impact on their prospects of integration. Underpinning these difficulties, the government’s lack of a refugee

<sup>77</sup> UN High Commissioner for Refugees, [UNHCR Recommendations on Important Aspects of Refugee Protection in Italy](#), July 2012.

<sup>78</sup> [AS/Mig/AhLarg\(2011\)03rev2](#), Report on the visit to Lampedusa by the Ad Hoc Sub-Committee of the Parliamentary Assembly of the Council of Europe on the large-scale arrival of irregular migrants, asylum seekers and refugees on Europe’s southern shores, of 30 September 2011.

integration policy feeds racism and xenophobia which in turn exacerbates the social exclusion of these persons.

156. The Commissioner has been informed, for instance, that in order to exercise certain rights to which they are entitled many refugees and other beneficiaries of international protection are requested by administrative authorities to produce certain documents or certificates which they may not be in a position to obtain from their countries of origin.<sup>79</sup> Such requirements may, for example, hamper the persons' right to have their educational and professional qualifications recognised, to reunite with their family, to marry or to obtain Italian citizenship. The Commissioner also heard from interlocutors that some local authorities apply unreasonable documentary requirements or outright restrictions for residence registration (*iscrizione anagrafica/residenza*), which is necessary to access many social assistance measures.
157. As noted in the 2011 report, most of the support measures, such as language training, civic education or vocational training, are as a rule only available for as long as asylum seekers remain in CARAs, and therefore do not apply to persons whose status has already been recognised. Accommodation is another major problem once the persons have to leave the reception centres, which they have to do in any event after the conclusion of the asylum procedure. While the SPRAR system provides a solution for both of these aspects, as noted above, the capacity of this system is woefully inadequate given the scale of the needs of refugees and other beneficiaries of international protection.
158. As a result of these factors, many refugees and other beneficiaries of international protection are forced to live in destitute conditions, to occupy empty premises illegally, live in makeshift camps or become homeless following this initial period, which, according to ECRI, fuels racism and xenophobia towards them.<sup>80</sup> The Commissioner observes that several reports by NGOs and articles in the media denounced the living conditions faced by refugees and other beneficiaries of international protection, with particular attention being paid to the situation in Rome.
159. During his stay in Rome, the Commissioner visited an abandoned university building in the south-eastern periphery of the city, occupied by recognised refugees or other beneficiaries of international protection from Sudan and the Horn of Africa. This derelict, eight-storey building, called "Selam Palace" by its inhabitants, and nicknamed "Palace of Shame" (*Palazzo della vergogna*) by NGOs and in the media, was housing an estimated 800 people at the time of the visit. The Commissioner witnessed the shocking conditions in which the men, women and children were living in this building, such as one shower and one toilet shared by 250 persons.
160. The inhabitants informed the Commissioner that, prior to his visit, the water supply had been cut off by the municipality for two days before being re-established thanks to the intervention of an NGO. The Commissioner was informed that inhabitants had severe difficulties accessing health services due to administrative hurdles, despite many persons having serious health problems, including mental health problems caused by the trauma of war and their arduous journey to Italy.
161. The inhabitants reported to the Commissioner that they were unable to find a fixed accommodation outside the "Palace", and that they faced big problems in obtaining or renewing their documents, the renewal of a residence permit taking up to 18 months. This has reportedly made it impossible for many to either find or keep work. While many residents spoke fluent Italian and English, linguistic difficulties faced by some, recognition of qualifications and discrimination in the workplace were also seen as major problems. In this connection, the Commissioner notes the concerns expressed by the CERD in its latest concluding observations on Italy about difficulties for non-citizens in accessing social services and widespread discrimination against non-citizens

<sup>79</sup> UN High Commissioner for Refugees, [UNHCR Recommendations on Important Aspects of Refugee Protection in Italy](#), July 2012, para. 14.

<sup>80</sup> [CRI\(2012\)2](#), Fourth Report of the European Commission against Racism and Intolerance on Italy, 6 December 2011, para. 134.

in the labour market and the lack of appropriate legal protection against exploitation or abusive working conditions.<sup>81</sup>

162. The Commissioner understands that, apart from volunteer help they receive, the inhabitants of the “Palace” had no guidance on the administrative procedures needed to exercise their rights, and had received no official support towards their integration. The Commissioner considers that this has effectively relegated these refugees or other beneficiaries of international protection to the margins of society, with little prospect of improvement in their situation. While many attempted to move to other EU countries, they have been returned to Italy under the relevant EU regulations.
163. The Commissioner is concerned about persistent reports by NGOs and UNHCR, as well as ECRI and CERD, about increasing xenophobia and intolerance towards migrants, including beneficiaries of international protection, as well as incidents of racist violence. Criminalisation of irregular migration, and the corresponding vulnerability of migrants to exploitation and abusive working conditions, has also been flagged as a major preoccupation.<sup>82</sup>
164. In this difficult context, the Commissioner welcomes the appointment of a Minister for International Co-operation and Integration in the current Italian cabinet. He notes the recent entry into force on 10 March 2012 of “integration agreements”, which have been presented as a tool to facilitate integration of foreign nationals. The precise scope and impact of this measure is however presently unclear to the Commissioner, as the integration support it foresees does not seem to be backed by a clear framework of implementation, notably for local, regional and decentralised authorities, and specific funding.

### **Conclusions and recommendations**

165. The Commissioner believes that the near absence of an integration framework for refugees and other beneficiaries of international protection, and the effective abandonment of this very vulnerable group, has created a serious human rights problem in Italy. Accordingly, he calls on the Italian authorities to elaborate a coherent framework to promote integration, to devote more attention and resources to the integration process, and to expand the capacity of the SPRAR system to that effect. The Commissioner also underlines that a strengthening of the fight against racism and xenophobia in Italy is a precondition to the success of any effort to promote the integration of refugees and other beneficiaries of international protection.
166. A review of laws and regulations having an impact on integration, as well as of practical administrative obstacles which contribute significantly to the problem, is urgently needed. The Commissioner also believes that positive action is necessary in order to neutralise the considerable disadvantages, including widespread discrimination, faced by refugees and other beneficiaries of international protection in the labour market, which exposes them to the risk of exploitation and abuse. He is of the view that the recent appointment of a Minister for International Co-operation and Integration is an asset that Italy should capitalise on in order to carry out this work.
167. The Commissioner also encourages the Italian authorities to transpose, as soon as possible, the 2011 EU Directive amending the Long-Term Residents Directive,<sup>83</sup> which enables refugees and other beneficiaries of international protection to acquire long-term resident status after 5 years of residence in a member state, thus facilitating their free movement within the EU.

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<sup>81</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination on Italy, adopted at its eightieth session, 13 February – 9 March 2012.

<sup>82</sup> See, for example, the 2012 [contribution](#) by Amnesty International to CERD.

<sup>83</sup> [Directive 2011/51/EU](#) of the European Parliament and of the Council of 11 May 2011, amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.



#### 4. Administrative detention of migrants

168. Another problem highlighted in the 2011 report was the fact that in a number of cases asylum seekers can also be detained in CIEs (*Centri d'identificazione ed espulsione*, identification and deportation centres), for example when they are the subject of measures to expel them from Italian territory, if they have been convicted of certain types of crime, or if there are serious reasons for considering that they have committed the particularly serious crimes listed in the 1951 Geneva Convention relating to the Status of Refugees.<sup>84</sup>
169. One of the main criticisms in this respect is the fact that there are no available data as to the number of asylum seekers held in CIEs or on the outcome of asylum applications submitted by their inmates. UNHCR reports that there have been difficulties in lodging asylum applications from within CIEs, either because of a lack of adequate information or legal assistance, or due to bureaucratic obstacles.<sup>85</sup>
170. During his visit, the Commissioner had the opportunity to visit the CIE in Ponte Galeria near Rome. As for all CIEs, persons of very different legal status, and consequently with very different needs, are held together in these facilities in view of deportation. At the time of the Commissioner's visit, there were 178 persons held in the CIE (116 men and 62 women), and the staff estimated that 70% of the men were former convicts having already served their sentence. The administrative detainees typically also include irregular migrants, some having lived in Italy for considerable periods. The Commissioner also received information that victims of trafficking may sometimes end up in these institutions. According to the information provided by the staff, the overwhelming majority of the administrative detainees used medication to palliate anxiety and psychological problems.
171. The day-to-day management of CIEs and care services are entrusted to non-profit organisations through regular tenders. The contract for Ponte Galeria had been awarded to the consortium Auxilium until March 2013, the public authorities providing funds on the basis of 41 euros per person per day.
172. According to the information provided by the staff in Ponte Galeria, the average length of stay in the CIE was three months. However, it appears that the speed of the identification process depends largely on the co-operation of consulates, and thus varies considerably. This has to be seen in conjunction with the fact that, since the inception of CIEs, the maximum period of administrative detention of irregular migrants has been progressively increased from 2 months, first to 6 months in 2009 and finally to 18 months in 2011.<sup>86</sup>
173. In this connection, the Commissioner notes that after a visit to Italy in 2008, i.e. even before the extension of the maximum detention period in CIEs, the CPT had already recommended that recreational activities in a CIE it had visited in Milan be extended; that staff be more present on the ground to detect risks and organise simple activities; and that the Italian authorities remedy several shortcomings identified with respect to healthcare and seclusion.<sup>87</sup>

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<sup>84</sup> Article 1, paragraph F: "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations".

<sup>85</sup> See UN High Commissioner for Refugees, [UNHCR Recommendations on Important Aspects of Refugee Protection in Italy](#), July 2012, p. 12.

<sup>86</sup> See the Legislative Decree No. 89 of 23 June 2011 and Law No. 129 of 2 August 2011.

<sup>87</sup> [CPT/Inf\(2010\)12](#), Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 September 2008, published on 20 April 2010.

174. The Commissioner observes that in a report published in 2010, Doctors Without Borders stated that it was practically impossible to recognise and respond to the needs of internees in facilities housing such extremely heterogeneous populations for periods of time that cannot be established from the outset.<sup>88</sup> Several other NGOs report that the lack of clear standards for these facilities results in sub-standard conditions concerning, for example, recreational activities, access to family members or overcrowding.<sup>89</sup> The lack of recreational activities in Ponte Galeria was very flagrant, in particular for men (the only available activity was football after 2 p.m., but only for 10 persons at a time).
175. During his visit, the representative of the Prefecture confirmed to the Commissioner that there was no internal regulation provided by the Ministry of the Interior. This could explain the reported variability of the standards and costs between the different facilities,<sup>90</sup> as well as changes over time in the regime applied, for example as regards access of relevant NGOs to persons held there, or access granted to journalists.
176. Representatives of Auxilium provided the information that the consortium was already operating at a loss, despite the rudimentary living conditions observed by the Commissioner, and that they were consequently not intending to bid again when the contract will be up for renewal. The Commissioner is concerned about reports that the funds allocated by the authorities through such tenders are being reduced due to the economic crisis.

### Conclusions and recommendations

177. During his visit to the CIE in Ponte Galeria, the Commissioner gained the impression that the administrative staff, as well as the consortium responsible for care services, were doing the best they could with limited resources in particularly difficult and tense circumstances. However, the Commissioner considers that they were ill-equipped for responding to the needs of a very heterogeneous population under conditions of severe stress. He is deeply worried about the conditions of administrative detention in CIEs which need an urgent review by Italian authorities, who should avoid at all costs a further degradation of standards in these facilities due to budgetary cuts. The lack of recreational activities is of particular concern, and should be remedied as a matter of urgency.
178. The Commissioner considers that the extension of the maximum detention period in CIEs to 18 months raises serious human rights concerns, particularly in the absence of a corresponding, significant change in the facilities and procedures (for example, judicial oversight entrusted to lay judges), which were designed for a period of two months. In the opinion of the Commissioner, this discrepancy contributes significantly to the sense of injustice he witnessed among the administrative detainees, who are subjected to limitations to their personal freedom comparable to a closed prison regime, despite having committed no crimes or having already served a sentence.
179. As regards former prisoners, the Commissioner considers that a better co-operation between the Ministries of the Interior and Justice is essential, with a view to ensuring that prisoners who are liable to be expelled upon release are identified whilst serving their sentence.
180. The Commissioner once more draws the attention of the Italian authorities to Resolution 1637 (2008) of the Parliamentary Assembly of the Council of Europe, calling on member states to “progressively proscribe administrative detention of irregular migrants and asylum seekers”; to ensure that detention “is used only if it is necessary and if there is no suitable alternative [and] for

<sup>88</sup> Report of Medici senza frontiere, “[Over the wall: a tour of Italy’s migrant centres](#)”, January 2010.

<sup>89</sup> For example, see a report by Medici per i Diritti Umani, “[Behind higher fences: Report on the identification and deportation centre of Ponte Galeria in Rome](#)”, 2012.

<sup>90</sup> See for example an [article](#) published in *la Repubblica* on 20 June 2012.

the shortest possible period of time”; and to “promote the use of assisted voluntary return programmes with the support of the IOM”.<sup>91</sup> On this latter aspect, the Commissioner regrets the information provided by the staff in the CIE in Ponte Galeria that very few administrative detainees availed themselves of this possibility, due to insufficient funds.

181. Finally, the Commissioner urges the Italian authorities to ensure that asylum claims of administrative detainees are registered without delay, and that the claimants have access to information on the asylum procedure and to adequate legal aid.

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<sup>91</sup> [Resolution 1637 \(2008\)](#) of the Parliamentary Assembly, “Europe’s boat people: mixed migration flows by sea into southern Europe”, 28 November 2008.