

ECRI REPORT ON ITALY

(fifth monitoring cycle)

Adopted on 18 March 2016

Published on 7 June 2016

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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 10 December 2015; except where expressly indicated, developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's 4th report on Italy on 6 December 2011, progress has been made in some of the areas addressed in the report.

Draft laws provide for major improvements in the legislation against racism and racial discrimination, such as: the ratification of Protocol No. 12 to the European Convention on Human Rights and of the additional Protocol to the Convention on Cybercrime; harsher penalties when racist propaganda and public incitement to hate crime are based on Holocaust denial; and considering homophobia as an aggravating circumstance in any offence.

An increasing number of incidents of hate speech have given rise to legal proceedings against the authors of the offensive remarks.

The new Action Plan against racism, xenophobia and intolerance proposes measures to combat hate speech and racist, homophobic and transphobic violence, such as improving the tools for collecting data on incidents of this type.

The creation of the Observatory for protection against discriminatory acts (OSCAD) is one practical measure to facilitate the reporting of hate crimes and communication between police and victims.

Available statistics show positive results in respect of individual integration agreements. If enacted, a new law will facilitate access to Italian citizenship for many of the foreign minors in Italy. Other positive initiatives include the study of data on the integration of Roma and their access to housing.

One of the main aims of Act No. 107/ 15 "on good schooling" is to give substantial financial and human support to schools with large numbers of foreign pupils.

A draft law regulating the situation of same-sex couples was approved by the Senate in February 2016 and shall enter into force in the near future. Considerable efforts have been made at the national and local level to reserve a proper welcome for the numerous asylum seekers who have been landing in the south of Italy.

In the framework of the national LGBT Strategy 2013-2015 training programmes have been organised for the police and public servants, as well as in the workplace.

ECRI welcomes these positive developments in Italy. However, in spite of the progress made, certain causes for concern remain.

The law does not criminalise discrimination on grounds of colour or language and the penalties provided for are not always an effective, proportionate and dissuasive response to offences involving racism and racial discrimination.

The Ufficio Nazionale Antidiscriminazioni Razziali (UNAR) is not in compliance with the principle of independence of national bodies specialised in the fight against racism and intolerance, and it does not have sufficient power.

The authorities are not always able to collect data on hate speech or other hate-related incidents or offences in a systematic and coherent manner.

Another major source of concern are the geographical disparities in respect of the integration of foreign nationals and the Roma population in Italy.

The implementation of the 2012 National Roma Integration Strategy has suffered considerable delays. The forced evictions of Roma from their unauthorised settlements continues, in some cases with no regard for procedural guarantees, such as the lack of notification in writing and, more importantly, of re-housing solutions.

The question of sex education in school, particularly on subjects like gender identity and sexual orientation, remains controversial in Italy and meets with strong opposition from certain regional authorities.

In the present report, ECRI asks the Italian authorities to take additional action in certain fields; it makes a series of recommendations, including the following.

There is a need to assess the effectiveness of the provisions for combating the dissemination of racist ideas as well as incitement to commit and the commission of discriminatory acts or acts motivated by hatred.

The full independence of UNAR should be secured both in law and in fact, and its powers should clearly cover discrimination on grounds of colour, language, religion, nationality and national origin.*

A coherent and systematic system for collecting data on incidents related to hate speech and other hate-motivated offences should be developed that identifies the different categories of racist motivation and of people involved. The data should be published regularly, with information on the number of prosecutions, the reasons for not prosecuting and the outcome of the legal proceedings instituted.

The authorities should ensure, in the context of the relations between the State and the regions that sufficient support in the integration process is guaranteed in every region.

An order of priority should be established for the implementation of the National Roma Integration Strategy, with quantifiable objectives in all the fields covered by the Strategy, and all regional working groups should be set in place as soon as possible. Sufficient prior notice in writing should be given of any decision to evict Roma from settlements, with the possibility of re-housing in suitable accommodation.

Measures should be taken in schools to promote mutual tolerance and respect, regardless of sexual orientation or gender identity.*

* The recommendations in this paragraph will be subject to interim follow-up by ECRI no later than two years following the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Common themes

1. Legislation against racism¹ and racial discrimination²

- Protocol No. 12 to the European Convention on Human Rights

1. Italy has still not ratified Protocol No. 12 to the European Convention on Human Rights, which it signed in 2000 and which provides for a general prohibition of discrimination. Ratification of the Protocol as an essential part of the fight against racism and intolerance, is provided for in Draft Law No. 1633, submitted to the Senate in September 2014.
2. ECRI recommends that Italy complete the legislative process for the ratification of Protocol No. 12 to the European Convention on Human Rights as soon as possible.

- General legal framework

3. Article 3 of the Italian Constitution guarantees the right of every citizen to equal social dignity, without distinction on grounds, inter alia, of race, language or religion. Under the second paragraph of Article 3 the State must eliminate any economic and social obstacles that stand in the way of freedom and equality of the citizens.
4. However, the legislative branch has never passed one comprehensive ordinary law on equal treatment, prohibiting discrimination and implementing the principle of equality. There is a piecemeal proliferation of laws which, particularly at the civil and administrative law levels, can generate a risk of lacunae and inconsistencies. The analysis which follows will refer to the guidelines in ECRI's General Policy Recommendation No. 7 (GPR No. 7) on national legislation to combat racism and racial discrimination.

- Criminal law

5. Act No. 654 of 13 October 1975 (known as the "Reale Act"), as amended by Act No. 205 of 25 June 1993 (known as "Mancino Act") and Act No. 85 of 24 February 2006, criminalises a) incitement to racial discrimination, b) racial discrimination, c) incitement to racial violence, d) racial violence, e) the promotion of ideas based on racial superiority or ethnic or racist hatred³ and f) the setting up or running of, participation in or support to any organisation, association, movement or group whose purpose is the instigation of racial discrimination or violence.⁴ The Mancino Act also prohibits the public display of symbols and emblems of such organisations⁵ and makes racist bias an aggravating circumstance in connection with any offence.⁶
6. ECRI considers that Italy's criminal law covers a large number of offences that could be classed as racism or racial discrimination. However, in relation to its GPR No. 7, it notes a number of lacunae.

¹ As in the text of ECRI's General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or group of persons.

² As in ECRI's GPR No. 7, "racial discrimination" is any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

³ Article 3.1 a) and b).

⁴ Article 3.3.

⁵ Article 2.1.

⁶ Article 3.

7. The wording of the Reale Act does not include language⁷ as ground of discrimination. Nor is colour included as a ground of discrimination, even though this law was enacted to ratify and apply the International Convention on the Elimination of All Forms of Racial Discrimination, which includes this ground in its definition of racial discrimination.⁸ Furthermore, where GPR No. 7 recommends criminalising “the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material”⁹, the Reale Act makes only a general reference to “promoting ideas”.¹⁰
8. ECRI recommends that, in keeping with its General Policy Recommendation No. 7, the authorities make sure that colour and language are expressly included in the grounds of racist behaviour and racial discrimination punishable under the Criminal Code and that the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material inciting to racial discrimination and racial violence are treated as criminal offences.
9. As ECRI mentioned in its 4th report, it should also be noted that Act No. 85 of 24 February 2006 replaced the term “dissemination”, then used in the Mancino Act, by the term “promotion” (propaganda) of ideas based on racial superiority or ethnic or racist hatred. ECRI considered the replacement of the term “dissemination” by the term “promotion” as a step backwards which could restrict the scope of the law and reduce the possibility of prosecution, in particular for certain racist remarks exchanged in discussion groups on the Internet. ECRI reached this conclusion based, *inter alia*, on the fact that in 2007 the Court of Cassation had found that one effect of replacing the term “dissemination” by the term “promotion” had been to limit the ban on disseminating racist ideas (only) to those cases where the ideas are spread with the aim of influencing or conditioning the behaviour or attitudes of a wide audience in order to convert them to these ideas.¹¹ Since then, the Court of Cassation has had to rule on the scope of the new wording on several occasions: in 2008 and again in 2012, it declared that there was a continuity between the two terms and that the idea of spreading racist ideas was already contained in the interpretation of the term “dissemination” found in the case-law and included the same ideas in different forms.¹²
10. ECRI nevertheless remains concerned about the narrowing, by the term “promotion”, of the definition of acts that constitute a criminal offence. It points out that the term “dissemination” is used again in the draft law against homophobia, which proposes to amend the Reale and Mancino Acts to include sexual orientation as a prohibited ground of discrimination.¹³ ECRI is accordingly pleased to note the tendency for this term to be reintroduced in the law to facilitate criminal prosecution in cases of incitement to hatred.

⁷ Although it is true that Art 18*bis*, para. 1, of Law No. 482/1999 on linguistic and cultural minorities provides that the Reale Act “shall also apply in order to prevent and counter intolerance and violence acts against people belonging to linguistic minorities”, ECRI considers that this is not comparable to prohibiting racism and racial discrimination on ground of language.

⁸ “In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin ...” Article 1, International Convention on the Elimination of All Forms of Racial Discrimination.

⁹ GPR No. 7, paragraph 18 f.

¹⁰ See also on this point Framework Decision 2008/913/GAI of the European Council on combating certain forms and expressions of racism and xenophobia by means of criminal law.

¹¹ Court of Cassation, Bragantini ed altri no. 13234/ 08.

¹² Court of Cassation, Mereu no. 37581/ 08 and Court of Cassation G.E. N. IL (omissis) no. 47894/ 12.

¹³ Draft Law No. 245 Parliament, 15 March 2013.

11. The reductions in penalties introduced by the 2006 amendments are another cause of concern for ECRI, considering that, according to its GPR No. 7, the law should provide for effective, proportionate and dissuasive sanctions for these offences.¹⁴ These reductions in penalties also make it more difficult to impose secondary penalties, such as the obligation for the offender to do unpaid community work.¹⁵
12. ECRI once again recommends that the Italian authorities assess the effectiveness of the provisions for combating the dissemination of racist ideas as well as incitement to commit and the commission of discriminatory acts motivated by hatred. In particular, they should make sure it is not too difficult for the judicial authorities to meet the conditions linked to the prosecution of conduct aimed at disseminating racist ideas, and that the penalties for the offences concerned are effective, proportionate and dissuasive.
13. Public insults and defamation or threats¹⁶ against a person or group of people are ordinary crimes for the purposes of the Criminal Code and not separate criminal offences when committed against a person or group of people on the grounds of their race, colour, language, religion, nationality or national or ethnic origin. According to ECRI, defamation and threats intentionally committed against a person or group of people for any of the above motives should be considered as separate criminal offences, in accordance with its recommendations in GPR No. 7.
14. ECRI recommends that the Italian authorities introduce provisions into the Criminal Code penalising public insults and defamation or threats against a person or group of people on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, in keeping with its General Policy Recommendation No. 7, paragraph 18, b and c.
15. With the exception of the condoning of genocide,¹⁷ the law does not specifically penalise the denial, gross minimisation or justification with a racist aim of the crimes of genocide, or the denial, gross minimisation or justification with a racist aim or the condoning of crimes against humanity or war crimes.¹⁸ A draft law¹⁹ provides for a harsher penalty where racist propaganda and public incitement to hate crimes are based in full or in part on Holocaust (Shoa) denial, crimes of genocide, crimes against humanity and war crimes as defined by the Statute of the International Criminal Court (Articles 6, 7 and 8), ratified by Italy by virtue of Act No. 232 of 1989.
16. According to the lawmakers, the choice of considering Holocaust denial and the other crimes mentioned above as an aggravating circumstance rather than as separate offences in their own right was made in order to avoid introducing an offence (*délit d'opinion*) that might clash with the freedom of expression guaranteed by Article 21 of the Constitution. However, in conformity with its GPR No. 7 and with the case-law of the European Court of Human Rights, ECRI considers that freedom of expression is not an absolute right and that it cannot be exercised in a manner incompatible with the other human rights. In the same way, duty of memory, vigilance and resistance in the face of

¹⁴ It should be remembered that Act No. 85/2006 reduced the penalties provided for under Article 3.1 a) of the Reale Act as amended by the Mancino Act for offences relating to the promotion of ideas based on racial or ethnic superiority or hatred, and to the commission of or incitement to commit acts of discrimination. The maximum penalty was thus reduced from three years' to eighteen months' imprisonment or a fine of up to 6,000 euros.

¹⁵ Article 1-bis a) Mancino Act.

¹⁶ "Ingiuria" (Article 594 c.p.), "diffamazione" (Article 595 c.p.) and "minaccia" (Article 612 c.p.).

¹⁷ Law No. 962 of 9 October 1967.

¹⁸ See GPR No. 7, paragraph 18, e.

¹⁹ Draft law No. 54 Senate, 11 February 2015.

Holocaust denial are an integral part of the protection and promotion of universal and indivisible human rights.

17. ECRI recommends that the Italian authorities complete, as soon as possible, the criminal law on the prevention and repression of genocide, crimes against humanity and war crimes, and see to it that the denial, gross minimisation, and public justification or condoning of these crimes for racist motives are made criminal offences.

- **Civil and administrative law**

18. The main civil and administrative law provisions against racial discrimination are found in Act No. 300 of 1970 on employment,²⁰ Legislative Decree No. 286 of 1998 on immigration (known as the “Turco-Napolitano Act”)²¹ and Legislative Decrees Nos. 215 and 216 of 2003, transposing Directives 2000/43/EC and 2000/78/EC²² into Italian law. The grounds of discrimination prohibited by this legal framework, taken as a whole, coincide with those covered by GPR No. 7, with the exception of discrimination on grounds of language and colour, for which no provision is made.

19. As regards the prohibition of discrimination based on nationality, it should be noted that: in keeping with Section 43 of the Legislative Decree of 1998 on immigration, discrimination on grounds of national origin is interpreted as covering nationality. This can be seen, for example, in the case-law on access for foreigners to public service jobs.²³ Discrimination based on nationality is specifically prohibited by ILO Convention No. 143 of 1975, on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers,²⁴ which Italy ratified in 1981 and with which, according to its Section 2, the Legislative Decree on immigration is required to conform; although discrimination on grounds of nationality, *inter alia*, is expressly prohibited only by Section 43 of the Legislative Decree on immigration, Section 43.3 applies this prohibition not only to immigrants from non-EU countries, but *erga omnes* (including Italian citizens, stateless persons and nationals of EU member States); and this *erga omnes* prohibition of discrimination on grounds of nationality has been maintained in the subsequent anti-discrimination legislation by a special clause inserted in Legislative Decrees 215/2003 and 216/2003 preserving the provisions of the Legislative Decree on immigration.

20. These arguments might support the hypothesis, widely present in the case-law, of the complementarity of the system of protection against discrimination as far as prohibited grounds of discrimination are concerned.²⁵ However, an explicit legal prohibition of discrimination on grounds of nationality, as well as discrimination based on language, as provided for in Article 3 of the Italian Constitution, would strengthen the system of protection against racial discrimination in Italy.

21. Furthermore, the idea of the complementarity of the system of protection against discrimination should also apply to the right of associations to take

²⁰ Article 15 “Atti Discriminatori”.

²¹ Article 43 “Discriminazione per motivi razziali, etnici, nazionali o religiosi”.

²² Council Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation.

²³ Tribunale di Firenze, sez. lavoro, ordinanza 23/01/2014 (access to public service posts for non-EU nationals). See also Tribunale di Brescia, ordinanza 26/01/2009 (payment of childbirth allowance only to Italian citizens).

²⁴ Regularly present in the country.

²⁵ Civil law protection against ethnic, racist and religious discrimination, Association for Legal Studies on Immigration (ASGI), 2013, pages 58-61.

judicial action on behalf of victims, which is regulated differently in the Legislative Decree on immigration²⁶ and in the one transposing the EU Directive on discrimination.²⁷ In ECRI's opinion these systems should be unified to allow any organisation with a legitimate interest in combating racism and racial discrimination to represent victims of discrimination in court, even in cases of collective discrimination, without having to register as provided for in Section 5 of Legislative Decree No. 215 of 2003 transposing Directive 2000/43/EC.

22. ECRI reiterates its recommendations to the authorities a) to introduce legal provisions prohibiting discrimination based not only on grounds such as "race", religion and ethnic origin but also language, colour and nationality, and b) to ensure that all organisations active in the field of combating racism and racial discrimination are able to take legal action on behalf of alleged victims of these phenomena or in cases of collective discrimination.

23. As was mentioned in ECRI's 4th report, Italian law makes no explicit provision obliging the public authorities to promote equality and prevent discrimination in carrying out their functions. However, in the light of the principle of promotion of "substantive equality" enshrined in Article 3 (2) of the Italian Constitution, the authorities have developed and implemented various temporary special measures to prevent or offset disadvantages, especially where Roma and non-nationals are concerned (see section on Integration Policy for more details).

- **National Specialised Bodies**²⁸

24. In its February 2015 Conclusions on the implementation of recommendations subject to interim follow-up,²⁹ ECRI considered that: the powers vested by law in UNAR (Ufficio Nazionale Antidiscriminazioni Razziali) remained limited to the fight against discrimination based on race and ethnic origin; UNAR itself was still not entitled to take legal action in the event of discrimination; in terms of its structure, it still came under the Department for Equal Opportunities of the Presidency of the Council of Ministers and its Director was a senior official appointed by the Government.

25. According to the information available to ECRI, that situation remains unchanged. ECRI therefore considers that, in relation to its General Policy Recommendations No. 2, on Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and No. 7, UNAR does not comply with the principle of independence and its powers are incomplete. ECRI accordingly regrets that its recommendations have not been followed. What is more, ECRI has been informed that UNAR does not have the necessary human resources to handle its heavy workload. ECRI considers that the implementation of its recommendations is essential to maintain public confidence in the body and its effective role in the fight against racism and racial discrimination. This latter concern is all the more serious considering that UNAR is responsible at present for the coordination and implementation of a large number of national projects against racism and intolerance.

26. Various laws in preparation provide for the creation of a national human rights Commission (or a Public Defender) with powers in the field of the protection and promotion of human rights inspired by the United Nations' "Paris Principles".³⁰

²⁶ Article 44.

²⁷ Directive 2000/43/EC, Article 5.

²⁸ Independent authorities expressly responsible at the national level for combating racism, xenophobia, antisemitism, intolerance and discrimination based, for example, on ethnic origin, colour, nationality, religion and language (racial discrimination).

²⁹ Published on 24 February 2015: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/ITA-IFU-IV-2015-004-ENG.pdf>.

³⁰ Principles approved by the Commission on Human Rights in March 1992 (resolution 1992/ 54) and by the UN General Assembly (resolution A/RES/48/134 of 20 December 1993).

27. These draft laws provide for forms of cooperation between the future institution and UNAR. In particular, Section 3 of the draft law on the institution of a human rights “Defender” provides for the body to be run by UNAR staff.³¹ However, for all provisions regarding the organisation of the staff and the respective powers of the two institutions, which have very different remits, the draft law refers to a ministerial decree. As a result, certain representatives of civil society fear that the law is simply intended to merge UNAR into the new “Defender” institution to reduce the operating costs of the new authority to a bare minimum, with no provision for the additional financial or human resources needed to cope with the extra workload.
28. ECRI accepts that bodies specialising in the fight against racism and racial discrimination can take different forms. It is preferable, however, to avoid merging a specialised body like UNAR into a larger institution with a broader remit without providing sufficient resources. This could deprive UNAR of its specificity and its expertise and generate counterproductive “competition” between the different divisions of the resulting body because of its limited resources.
29. ECRI reiterates its recommendation to the Italian authorities to ensure that UNAR’s full independence is secured both in law and in fact; to extend its powers so that the relevant legislation clearly covers discrimination based not only on ethnic origin and race but also on colour, language, religion, nationality and national origin; and to grant it the right to bring legal proceedings. The authorities should also ensure that any move to merge UNAR with an independent body with a broader remit guarantees the full implementation of the above recommendations and provides for all the human and financial resources necessary to fulfil its mission.

2. Hate speech³²

- Data

30. According to ECRI’s 4th report the Italian authorities were working on a data collection system on racism and racial discrimination. The main sources of data on offences related to hate speech are UNAR, the Observatory for Protection against Discriminatory Acts (OSCAD), the police criminal investigation data system (SDI), the Ministry of Justice and the National Statistical Institute (ISTAT). However, these data systems do not use the same categories and do not always distinguish between hate speech and other offences linked to racism and racial discrimination.
31. The SDI criminal police statistics show a total of 123 investigations in 2012 and 130 in 2013 for violation of certain provisions of the Reale Act or the Mancino Act, which prohibit hate speech among other things. As hate speech is also punishable under other, more general legal provisions, covering racially motivated slander, defamation and insults, for example, these figures do not give a full picture of the situation. It is true that the same statistics include a total of 78 investigations in 2012 and 153 in 2013 under the section of the Mancino Act which considers racist bias behind ordinary offences as an aggravating circumstance.³³ However, these statistics are based on the violation of those sections of the Reale and Mancino Acts and are not broken down by the different types of racist motivation or criminal offence. Another problem is that

³¹ Draft Law No. 1998, Senate, 4 May 2015.

³² This section covers racist and homophobic/transphobic discourse. For a definition of “hate speech”, see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on “hate speech”, adopted on 30 October 1997.

³³ Article 3.

the SDI statistics are not systematically published and do not tell us anything about the victims.³⁴

32. OSCAD statistics, on the other hand, are published every year and give information about the racial grounds for the offence. In all, between September 2010 and November 2014 OSCAD received 1,187 reports, 583 of which were acknowledged to be criminal offences related to the race or ethnic origin of the victim (61.4%), their religious faith (19.8%) or their sexual orientation or gender identity (16.4%). However, like UNAR data, OSCAD data make no distinction between hate speech and other offences linked to racism and racial discrimination, are based solely on complaints received by OSCAD³⁵ and use categories which also include cases of discrimination not yet classified as criminal offences or breaches of civil law, such as discrimination based on gender identity.
33. In conclusion, ECRI considers that the authorities are still not able to collect data on incidents or offences in a systematic, coherent manner, be it in cases of hate speech or other hate-motivated offences. A step towards solving this problem appears in the recommendations of the new Action Plan against racism, xenophobia and intolerance,³⁶ which proposes: the regular publication on the Internet of all the data collected by the different sources mentioned above; the monitoring of the judicial action taken in respect of the incident, from the time when it is reported or when the courts intervene *ex officio*, until the final court decision; and the collection of data on the victims, in order to identify the most vulnerable groups.
34. ECRI recommends that the authorities set in place, without delay, a method of collecting data on incidents related to hate speech, broken down into the different categories of racist motivation and of victims, and that they regularly publish the results, with information on the number of prosecutions, the reasons for not prosecuting and the outcome of the legal proceedings concerned.

- **Racism in political discourse**

35. A number of incidents of hate speech by politicians have targeted immigrants, Roma, Muslims and LGBT people.³⁷ In 2013, for example, a local politician from the Northern League political party published an offensive comment on the Internet about the Minister of Integration Cecile Kyenge, who is of Congolese origin.³⁸ In April 2013, in a radio interview on the occasion of international Roma day, a Euro MP for the Northern League indiscriminately accused all Roma of being thieves.³⁹ In 2013 a former MP said in a radio interview that he would never employ a homosexual person.⁴⁰ More recently, during a television

³⁴ For example, the study by the European Agency for Fundamental Rights on anti-Semitism in Europe reports a lack of official data on this phenomenon in Italy between 2004 and 2014, while the Observatory on Anti-Jewish Prejudice reports a significant increase in anti-Semitic incidents in 2013 and 2014.

³⁵ There is an e-mail address where complaints can be sent, even anonymously (oscad@dcpc.interno.it).

³⁶ "Piano nazionale d'azione contro il razzismo, la xenophobia e l'intolleranza", adopted by Ministerial Decree on 7 August 2015.

³⁷ From January 2013 to March 2015 the NGO European Roma Rights Centre documented 35 cases of hate speech emanating from politicians, many of whom (15 cases) were from the Lega Nord (Northern League) party. The European Network Against Racism (ENAR) documented eight incidents of hate speech by Italian politicians during the election campaign for the European Parliament in 2014: http://www.enar-eu.org/IMG/pdf/nohateep2014_report_-_3_july.pdf.

³⁸ The person concerned was given a thirteen-month suspended prison sentence, banned from public office for three years and fined.

³⁹ An NGO filed a complaint and on 11 July 2014 the Milan court of first instance held a preliminary hearing on the case.

⁴⁰ In August 2014 the Bergamo Court ordered the former MP to pay 10,000 Euros' compensation to an NGO which defends the rights of LGBT people, for violation of Legislative Decree No. 216 of 2003,

programme in March 2015, another Euro MP from the same party called the Roma community “the dregs of humanity”.⁴¹

36. ECRI is pleased to see that all the above-mentioned cases have given rise to judicial proceedings against those responsible for the offensive remarks. However, this has not prevented the continuing use of aggressive and offensive language and even hate speech in political debate on radio and television against groups within ECRI’s remit.
37. ECRI stresses once again that political representatives must resist the temptation to fuel hate speech by approaching issues relating to members of minority groups in a negative, alarmist fashion for their own electoral purposes. Instead, they must take a firm stand against all forms of hate speech and combat it in their statements, by clearly showing that it is based on lies and unacceptable.

- **Extremist groups**

38. Political extremism in Italy with strong xenophobic and islamophobic connotations has become a source of concern in the current migration context. At the present time Casa Pound is the most active of the extremist groups: it claims to have 4,000 militants and has been officially registered as a charity organisation since 2008; it occupies around ten buildings all over Italy, which have been transformed into socio-cultural centres, and it is very present in the cultural field, especially in music and theatre. About ten local elected representatives say that they are close to this group.
39. In July 2015 the presence of Casa Pound militants was filmed by television cameras during demonstrations of inhabitants to prevent the rehousing of asylum seekers in their neighbourhoods in Quinto di Treviso in the Veneto region, and in Casale San Nicola on the outskirts of Rome. In Casale San Nicola Italian flags were waved, fascist salutes were made and racist slogans were shouted as the cars carrying the asylum seekers drove past. Both demonstrations degenerated into confrontations with the police. Following the incidents in Rome, some Casa Pound militants were arrested.⁴²
40. Even if the law provides for the possibility of disbanding groups founded on fascist party ideology,⁴³ this provision is not so effective in practice, partly because it is difficult to prove the direct link between the ideology and the acts perpetrated by militants from these extremist groups. In this respect ECRI reiterates the recommendation it made in paragraph 12 concerning the need to assess the effectiveness of the provisions for combating the dissemination of racist ideas as well as incitement to commit and commission of discriminatory acts motivated by hatred.

- **Racism in the media and on the Internet**

41. According to UNAR statistics, reports of hate speech in the media (including the Internet) accounted for 34.2% of all alerts received by UNAR in 2013, up from

transposing Directive 2000/78/EC into Italian law. The Directive prohibits, *inter alia*, discrimination (even announced intention to discriminate) based on sexual orientation in access to employment .

⁴¹ A group of NGOs lodged a complaint against the MP concerned. ASGI, press release of 28 May 2015: <http://www.asgi.it/notizia/associazioni-presentano-esposto-contro-leuroparlamentare-buonanno-e-the-dichiarazioni-contro-the-comunita-rom/>.

⁴² “Roma, scontri anti-immigrati a Casale San Nicola: arrestati sei esponenti Casa Pound”, *il tempo.it* 30 October 2015.

⁴³ Article 1 of Act No. 645/ 52 concerning “provisions relating to the application of the twelfth and final transitional provision (first paragraph) of the Constitution” (Prohibition of the reorganisation of the fascist party) states that there is reorganisation of the banned fascist party when an association, a movement or a group of people, numbering no less than five, pursues antidemocratic aims characteristic of the fascist party, including racist propaganda.

19.6% in 2012. Because of the number of offensive messages against certain vulnerable groups broadcast on radio and television, in January 2014 the president of the AGCOM (communication regulatory authority) sent a letter to all the public and private radio and television stations drawing their attention to the risks of such messages being broadcast by the media.⁴⁴ ECRI also takes note of all the activities of the Carta di Roma journalists' association,⁴⁵ which are an example of good practices in respect of migrants, asylum seekers and refugees, not only for journalists but for all those working in the media to prevent hate speech against all vulnerable groups

42. Still according to reports sent to UNAR, the Internet is increasingly used to disseminate offensive or intimidating racist remarks (reports of remarks of this type posted on the Internet account for over 80% of all alerts concerning the media). In February 2014 the people responsible for publishing on the Italian version of the Stormfront site a list of eminent Jews and people who supported Jews and immigrants were found guilty, in a final judgment, of violation of the Reale Act.⁴⁶ In this case the court extended the penalties applicable to crimes of association under Section 3 of the Reale Act to an association set up in order to spread messages inciting to violence and racial hatred using modern means of communication such as a blog, social network or forum.
43. ECRI welcomes this judicial outcome. It regrets, however, that in spite of a specific recommendation made in its 4th report, Italy has still not ratified the additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The ratification of the Protocol is actually provided for in Draft Law No. 3084, which has already been approved by the Senate and presented to the Chamber of Deputies for discussion in April 2015.
44. ECRI recommends that Italy complete, as soon as possible, the legislative process for the ratification of the additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
45. Since the last general elections in 2013, elected women have become the favourite target for racist and sexist insults on the social networks. Racist and outrageous comments about the former Minister of Integration Cecile Kyenge, of Congolese origin, took on such dimensions that 17 ministers from EU countries meeting in Rome in December 2013 signed an open letter pledging their support to Mrs Kyenge. In 2014 the Speaker of the Parliament encouraged the creation of a commission to develop principles concerning the rights and duties of users of the Internet, which are now framed in a declaration adopted by the commission in July 2015.⁴⁷

⁴⁴ Although its statutory powers are limited to the public radio and television broadcasting sector, the AGCOM regularly follows public and private broadcasting and encourages all broadcasters to abide by the fundamental principles enshrined in the current legislation. However, its statutory powers limit its ability to be more effective in the private broadcasting sector.

⁴⁵ The aim of the Carta di Roma Association, which was founded in December 2011 with the support of the UNHCR, is to implement the Code of Ethics for journalists on immigration, signed by the National Council of the Journalists' Association (CNOG) and the National Federation of the Italian Press (FNSI) in June 2008.

⁴⁶ During the proceedings the Court of Cassation, rejecting the application to set aside the decisions pronounced by the lower court against one of the accused, held that "propaganda is defined as the dissemination of messages aimed at influencing the ideas and behaviour of those who receive them, and it is all the more effective today because it uses new communication technologies, such as the social networks or Web sites"; Court of Cassation no. 33179/ 13.

⁴⁷ Declaration of Rights on the Internet, Commission on Rights and Duties on the Internet, Chamber of Deputies, 28 July 2015.

46. Hate speech often takes the form of cyber-bullying. According to information provided by Eurispes / Telefono Azzurro, in 2012 one out of every four children was a victim of cyber-bullying, and a survey carried out in 2013 for Save the Children showed that the social networks are the means of attack preferred by cyber-bullies (61% of cases). The authorities have informed ECRI of the existence of permanent regional observatories to monitor the cyber-bullying phenomenon.
47. ECRI considers that more should be done to increase awareness among young people of the need to respect pluralism and the dangers of hate speech on the Internet, in keeping with the recommendations made in the above-mentioned Declaration of the rights and duties of Internet users and the Action Plan against racism, xenophobia and intolerance. ECRI also notes that one of the main aims of Act No. 107/ 15, on “good schooling”, is that schools should teach pupils about responsible use of the social networks and the media.⁴⁸
48. ECRI recommends that the authorities do more to raise awareness among young people of tolerance and mutual respect and alert them to the dangers of using the Internet to spread hate speech and offensive content. In particular, be it in the framework of the Action Plan against racism, xenophobia and intolerance or of the teaching provided for in Section 1.7 h) of Act No. 107/15 on “good schooling”, they should make sure that all young people receive the information and support they need in order to make responsible use of the social networks.

- **Racism in sport**

49. The Observatory of racist phenomena in football (ORAC) recorded 249 episodes of racism over the last five years, including cases of hate speech. It would even appear that a number of sport managers themselves uttered offensive remarks about vulnerable groups, such as LGBTs, people of African origin or members of religious minorities.⁴⁹
50. Act No. 205 of 25 June 1993 already contained measures to combat incitement to hatred at sporting events and competitions, and the Code of Justice of Sport⁵⁰ provides for penalties against members of sports federations for “discriminatory conduct”. More recently, in order to combat the increasing displays of racism and intolerance at sporting events more effectively, Italy has added to its legislative arsenal. Legislative Decree No. 119 of 22 August 2014 now provides for urgent measures to combat racist phenomena at sporting events, including, among others, “DASPO”, or the banning from sports venues of people convicted of displaying offensive, violent or racist banners, causing public disturbances or other serious offences.
51. ECRI considers that DASPO alone cannot prevent racism in football stadiums or at other sports events. It would appear, on the other hand, that the measures taken by the Italian Football Federation (FIGC), based on “zero tolerance” of racist acts in the stadium, which provide for the suspension of the match if necessary, are a first effective response to manifestations of racism and intolerance at sporting events.

⁴⁸ Article 1.7 h).

⁴⁹ At the Winter Olympics in the Russian Federation a member of the International Olympic Committee and former President of the Italian National Olympic Committee declared that by openly sending lesbian athletes in their delegation the United States were committing “political terrorism in the name of rights”. In March 2015 another high-ranking sports official called female footballers “a band of lesbians”. He was suspended for four months by the disciplinary tribunal of the Italian Football Federation (FIGC). And only recently it was reported in the press that the President of the FIGC had been accused of making anti-Semitic and homophobic remarks during a meeting.

⁵⁰ Article 11.

52. ECRI proposes continuing to combine these repressive measures with initiatives promoting the sporting spirit and tolerance, together with educational and social projects in this field. It draws the attention of the authorities to its GPR No. 12 on Combating racism and racial discrimination in the field of sport, which proposes a series of measures. It would also be a good idea, in the context of the new Action Plan against racism, to provide for the building of a database of good practices⁵¹ used in the fight against racism and racial discrimination in sport.

3. Racist and homophobic/transphobic violence

- Data

53. In the hate crime category,⁵² the OSCE/ODIHR report for 2013 indicates a total of 472 offences, including 194 “racist and xenophobic” offences,⁵³ 226 for religious motives⁵⁴ and 52 offences against LGBTs.⁵⁵
54. These figures show a marked increase compared with earlier years, when an average of 100 hate-motivated offences per year were recorded. According to the authorities, the main explanation for this difference is that since 2013 the data supplied to the OSCE/ODIHR no longer come from the police criminal investigation system (SDI) but from the OSCAD, which does not classify the incidents in the same way but, instead, based solely on the incidents reported, rather than on the investigations opened or the legal proceedings instituted.
55. ECRI welcomes this desire to give a more detailed statistical picture than in previous years. However, it notes that, as already mentioned in paragraph 30, the data concerned include other offences related to hate speech and do not give any information on the action taken by the justice system. As it did in connection with hate speech, ECRI once again emphasises the need to improve the system for collecting data on criminal offences linked to racist and homophobic/transphobic violence in order to produce clearer, more detailed statistics.
56. A number of anti-racist NGOs supply information on incidents of racist violence, particularly against Roma, LGBTs or members of religious groups, including the Jewish and Muslim communities.⁵⁶ They do not always classify the data collected in the same way, however, and their information is often based on what is reported in the press.⁵⁷

- Response of the authorities

57. In 2010 the OSCAD anti-discrimination observatory was set up within the Ministry of the Interior to tackle the problem of under-declaration of hate crimes by making them easier to report and encouraging better communication between the police and the victims, and also in order to improve the prosecution

⁵¹ ECRI is aware of a number of projects by the Ministry of Labour and Social Policies in cooperation with the Italian National Olympic Committee (CONI) to foster integration and combat discrimination through sport.

⁵² A category which includes not only racist and homophobic/transphobic violence but all criminal offences committed with a discriminatory or racist motive.

⁵³ Including 60 physical aggressions, 12 offences against property, 4 acts of vandalism, 100 cases of threats and 18 other offences, including 9 involving weapons and possession of drugs, plus 9 unspecified offences.

⁵⁴ Including 13 physical aggressions, 90 offences against property, 4 acts of vandalism, 39 cases of threats and 80 other offences: 3 committed via the Internet and 77 unspecified.

⁵⁵ Including one homicide, 22 physical aggressions, 3 cases of incitement to violence, 3 of material damage, 22 threats and one unspecified offence.

⁵⁶ For more information see the OSCE/ODIHR report on Italy for 2013 <http://hatecrime.osce.org/italy>

⁵⁷ See the NGO Lunaria's 3rd White Paper on racism in Italy, which gives statistics on incidents of racist violence between 2011 and 2014.

of these crimes by raising police awareness of hate crimes and the laws prohibiting racism and racial discrimination. The OSCAD has also become an important source of data on hate crimes, based on incidents reported by individuals, institutions and NGOs. This mixed unit combining State police and "Carabinieri"⁵⁸ comprises five officers and cooperates with anti-racist NGOs and public institutions, including UNAR. ECRI welcomes this initiative.

58. However, the only measure the OSCAD seems to have taken to tackle the under-declaration problem is to provide victims with a special e-mail address and a fax and hotline number. On no account can reporting an incident to the OSCAD replace a formal complaint to the police. This is a weak spot for the OSCAD. Especially as none of the parties involved - police stations, NGOs, victims or witnesses - are under any obligation to report hate crimes to it. Under these conditions, the OSCAD's role as a facilitator relies on the willingness of all the other parties to keep it informed of hate crimes.
59. Apart from the work of the OSCAD, which works with the competent police stations to follow up the reports it receives, the Italian police use no particular procedure when dealing with hate crimes and offer no special support to the victims of these offences. Only certain police stations in large cities which have special sections for "vulnerable victims" such as women and children have started, through those sections, to deal with hate crimes as well. Likewise, there appears to be no official contact person responsible for questions of "racism and discrimination" in the public prosecutor's office in each jurisdiction, although such reference people do exist for other offences, such as violence against women and abuse of minors.
60. The other aspect of the work done by the OSCAD involves police training. In cooperation with UNAR and civil society, the OSCAD has launched a vast programme to familiarise the police with all the provisions prohibiting racism and racial discrimination, with almost 2,900 officers trained in 2013, 2,200 in 2014 and a likely figure of 1,800 officers for 2015, as well as a training programme for instructors. ECRI regrets, however, that this training programme is not mandatory for all police officers, but only new recruits.
61. In conclusion, ECRI considers that the OSCAD's good practices in providing the police with guidance on dealing with hate crimes should be decentralised out to the local police stations in order to help the police provide proper follow-up. This decentralisation should also help to give special support to victims of these offences.
62. ECRI reiterates its recommendation to the Italian authorities to ensure that UNAR's full independence is secured both in law and in fact; to extend its powers so that the relevant legislation clearly covers discrimination based not only on ethnic origin and race but also on colour, language, religion, nationality and national origin; and to grant it the right to bring legal proceedings. The authorities should also ensure that any move to merge UNAR with an independent body with a broader remit guarantees the full implementation of the above recommendations and provides for all the human and financial resources necessary to fulfil its mission.
63. In its 4th report ECRI recommended that the Italian authorities establish an independent body to investigate allegations of human rights violations by the police, including acts of racism or racial discrimination. ECRI remains convinced that the ability of the authorities to react effectively in the event of allegations of ill treatment committed by the police is decisive in maintaining public confidence in the legal system. The same applies to the investigation and prosecution of

⁵⁸ The equivalent of the Gendarmes in France.

hate crimes. ECRI is pleased to see that the Action Plan against racism specifically mentions this recommendation to set up an independent body.

64. ECRI reiterates its recommendation to the Italian authorities to establish a body independent of the police and the prosecution service to investigate allegations of human rights violations by the police, including, *inter alia*, all allegations of racial discrimination or racially motivated misconduct.

4. Integration policies

65. In Italy the main beneficiaries of integration policies are non-nationals recently arrived and regularly present in the country, and the Roma population, which includes “Roma”, “Sinti” and “Camminanti” (Travellers). ECRI regrets the lack of specific integration policies for refugees and people who qualify for international protection. It considers that the phase following the granting of this status should be accompanied by the implementation of a system of positive measures to facilitate their integration.⁵⁹

- Integration of non-nationals

Data

66. At the beginning of 2015 there were over five million non-nationals regularly residing in Italy, almost four million of whom were non-EU nationals, out of a total population of 61 million.⁶⁰ Lombardy, Emilia-Romagna, Veneto and Latium together house more than half of this population, who come mainly from Romania, Albania, Morocco, China and Ukraine. Over the last decade the number of non-nationals regularly present in the country has doubled, with a considerable increase in the number of minors, who made up almost 10% of the school population in the school year 2014-2015 and half of whom were born in Italy.⁶¹ Because of the economic crisis there have recently been fewer regular arrivals every year but the number of second-generation non-nationals born in Italy is growing.⁶²

Legislation and policies

67. Legislative Decree No. 286/ 98, the “Turco-Napolitano Act”, as restrictively amended by Act No. 189/ 02 of 2002 (known as the “Bossi-Fini” Act), contains measures to facilitate the integration of non-nationals lawfully present in Italy.⁶³ The integration policy for new regularly residing immigrants⁶⁴ is based on the national “Identity and Encounter” Plan (the national Plan) adopted in 2010, which ECRI evaluated in its 4th report (§ § 111-113). What seems to have changed in the interim is the implementation since 2012 of a compulsory individual integration course based on an “integration agreement,⁶⁵ aimed at facilitating the integration of foreign nationals. In signing the agreement the non-nationals undertake, *inter alia*, to acquire a sufficient knowledge of the Italian language and culture and to comply with the obligation to send their children to

⁵⁹ See on this point the proposals of the Office of the United Nations High Commissioner for Refugees (UNHCR) “*Nota UNHCR sul recepimento della Direttiva 2011/95/UE del Parlamento Europeo e del Consiglio*”, 26 September 2013, page 13 et seq.

⁶⁰ Data on the immigrant population, ISTAT, <http://www.istat.it/it/immigrati/tutti-i-dati/dati-del-censimento>.

⁶¹ “*Dossier Statistico Immigrazione 2014*”, IDOS, <http://www.dossierimmigrazione.it/>.

⁶² During that period the number of illegal migrants arriving from North Africa increased exponentially.

⁶³ Article 42 “Measures on social integration”.

⁶⁴ That is to say non-nationals over sixteen years of age who enter Italy for the first time and apply for a residence permit for at least one year; see Article 2 of Presidential Decree No. 179 on the Regulations governing the implementation of the integration agreement between the foreign national and the State, 14 September 2011.

⁶⁵ In conformity with Article 4-bis, para. 2 of Legislative Decree No. 286/ 98, implemented by Presidential Decree No. 179.

school. If the foreign nationals achieve a sufficient level of integration (for which they must score a certain number of points) their residence permit will be renewed, with the possibility of obtaining a long-term residence permit after five years; if the foreign nationals fail to win a sufficient number of points, even after an extension of the probation period of one year, their residence permit will be revoked and they could be expelled from Italy by the police (Ministry of the Interior) subject to authorisation by a judge.⁶⁶

Positive results of policies

68. The statistics show the positive results of the integration policies. In November 2015 there were 227,414 integration agreements, mostly in the major cities (11.62% in Rome and 10.77% in Milan). By August 2015, 784,591 applications for Italian language proficiency tests had been submitted on line by non-nationals wishing to apply for a long-term residence permit,⁶⁷ with a success rate of 80%.⁶⁸ These figures give an idea of the large number of non-nationals who take part in this language-learning programme and of the positive results achieved, at least in the Italian language programme for adults. What is more, a study carried out by the ISTAT⁶⁹ for the period 2011-2012 revealed that a majority of non-nationals were generally satisfied with their lives in Italy (60.8%, compared with only 37.2% of Italian nationals). This satisfaction appears to be confirmed by the data in the “Migration Policy Index 2015”, which place Italy 13th out of 37 European countries and the United States.⁷⁰
69. In addition, ECRI notes progress on the question of access to Italian citizenship for long-term migrants, even if the access rate remains one of the lowest in the OECD zone because the legislation is based on the principle of “jus sanguinis” and is not fully compliant with the European Convention on Nationality.⁷¹ The progress in question has been achieved thanks, *inter alia*, to the legislative reforms to modernise and simplify administrative procedures; online tools have been developed to enable candidates for Italian citizenship to follow the processing of their application on line and contact the official handling their file. Furthermore, a draft law (No. 2092) has been tabled to amend Act No. 91 of 1992 on citizenship (since October 2015 it has been under examination in the Senate): under the new law a minor born in Italy of non-Italian parents at least one of whom has a long-term residence permit would immediately qualify for Italian nationality, as would a minor who arrived in Italy before the age of 12 and has completed at least 5 years’ schooling. It is estimated that about 778,000 foreign minors could qualify for Italian nationality under this law. ECRI welcomes this draft law which, if enacted, will be an important factor of integration for many of the foreign minors living in Italy.
70. ECRI recommends that the Italian authorities complete the legislative process to reform the legislation on the granting of citizenship as soon as possible, to facilitate the naturalisation of foreign minors born or studying in Italy. ECRI also recommends ensuring that the legislation on naturalisation is in conformity with the provisions of the European Convention on Nationality.

⁶⁶ Article 13.5-bis, Legislative Decree No. 286/ 98.

⁶⁷ In addition to knowledge of the Italian language, to qualify for a long-term residence permit the non-national must have had a valid residence permit for at least five years and have an annual income of at least 6,000 euros, as well as accommodation that meets health and urban planning requirements.

⁶⁸ Data available on the Ministry of the Interior website.

⁶⁹ <http://www.istat.it/it/archivio/136691>.

⁷⁰ MIPEX 2015 <http://www.mipex.eu/italy>.

⁷¹ European Convention on Nationality, Council of Europe Treaty No. 166.

71. Progress has also been made in the evaluation of the results of integration policies, which was inadequate for many years except in certain regions.⁷² In 2013 a working group attempted to arrange the existing data on immigration into a coherent and homogeneous system in order better to plan the extension of the national Plan until 2020. The work was coordinated by the ISTAT (which also supplied most of the data) and the Ministry of the Interior. However, ECRI has no information concerning any action taken on the proposals made by this working group.⁷³
72. In 2015, for the third year running, UNAR financed and contributed to the “*Dossier Statistico Immigrazione*” prepared by IDOS, a private research centre.⁷⁴ ECRI takes note of this positive initiative; it regrets, however, that rather than being carried out by the authorities themselves the analysis of the data is delegated out for a modest fee to a research centre that, although highly competent, has limited means.
73. ECRI recommends that the authorities ensure that the extension of the national “Identity and Encounter” Plan involves an evaluation of all the integration projects set in motion in recent years, based on accurate data on the integration rates achieved in the different sectors of social life.

Main areas of concern

74. Access to education and housing, as well as access to steady work, remain the principal areas of concern as regards the integration in Italy of non-EU nationals regularly present in the country. In addition, there are geographical disparities in the implementation of policies in these fields.
75. Although all immigrant children, whether in the country regularly or irregularly, are guaranteed compulsory schooling, the OECD’s “Indicators of Immigrant Integration 2015”⁷⁵ show a pre-school attendance rate for children in immigrant families 10 points lower than that for children from Italian families. This is a larger than average difference for the OECD zone, even if some Italian regions perform much better than others in this respect. Furthermore, the parents of most immigrant children in Italy do not have a particularly good command of the Italian language, which has a negative impact on their children’s school results.⁷⁶ In this connection ECRI takes note that one of the main aims of Act No. 107/ 15, on good schooling, is literacy and the improvement of Italian as a second language for non-Italian pupils, as well as substantial support in terms of funding and staffing for schools with large numbers of foreign pupils.
76. Another problem for immigrants in Italy is the lack of access to home ownership. As a result a vast majority of immigrants live in homes that are too small, for which they pay higher rents than Italian nationals.⁷⁷ At the same time the practice, already highlighted in ECRI’s 4th report, whereby certain municipalities introduce tougher eligibility conditions of access to public housing has led to

⁷² For example, since 2008 the Veneto Region has published an annual report on immigration with an assessment of the region’s integration policy, <http://www.venetoimmigrazione.it/reporto>.

⁷³ “Integration: know it, measure it, assess it”, study by the ISTAT and the Ministry of the Interior, 2013, http://www.istat.it/it/files/2012/12/PROG-102655-Volume_Integrazione_ITA.pdf.

⁷⁴ http://www.dossierimmigrazione.it/index_en.php.

⁷⁵ Indicators of Immigrant Integration 2015, Country Note Italy, OECD http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/indicators-of-immigrant-integration-2015/summary/french_ffcd4ff-fr#page1.

⁷⁶ On average immigrant children are a year behind Italian children in terms of real abilities, and after lower secondary schooling (at the age of 14) the rate of enrolment in non-occupational upper secondary schools is half as high for immigrant children as for their Italian classmates, “*Dossier Statistico Immigrazione 2014*”, IDOS, page 332.

⁷⁷ More than two out of five such homes have insufficient rooms for the size of the family (compared to one out of five in the OECD zone) and 13% of migrants have two fewer rooms than they need (compared with an average of 8% in the OECD countries).

cases of indirect discrimination in access to housing for immigrants from non-EU countries. A number of regulations imposing these tougher conditions were amended as a result of legal proceedings brought by NGOs against the local authorities concerned for violation of anti-discrimination legislation. ECRI regrets these discriminatory practises, which only aggravate the already difficult situation with regard to access to housing in the private market.⁷⁸

77. Although the immigrant employment rate has decreased sharply in recent years, it is still relatively higher than the employment rate for Italian nationals. But the high incidence of low-quality jobs among migrant workers exposes them to a greater risk of poverty. Furthermore, foreigners living in the south earn a lot less than those living in the northern part of the country, and the difference between what foreigners and Italians earn is even greater in the south.⁷⁹ Lastly, undeclared work among immigrants, even those in the country regularly, continues to be a common feature of the Italian labour market, especially in the south and in the agricultural sector.⁸⁰
78. One of the greatest concerns is the geographical inequalities in the integration of immigrants in Italy. ECRI has noted that the support given by the authorities to help with the integration process varies from one region to another, and that especially in the south it often relies on associations, trade unions and religious organisations. These inequalities, confirmed by the data on access to work in the previous paragraph, are exacerbated by the inability of certain regions which receive European Union Structural Funds to put those funds to good use in improving the integration of foreign nationals.⁸¹ To counter this situation, the Ministry of Labour and Social Policies in 2014 signed agreements with 17 regions to strengthen cooperation with regional and local authorities in the field of integration policies.
79. ECRI recommends that the authorities ensure that, in the context of relations between the State and the regions, adequate support is made available for the integration process in every region, inter alia by making more effective use of European Union Structural Funds.

- **Integration of Roma**⁸²

Data and recent developments in legislation, case-law and policies

80. In the absence of official statistics, the Roma population in Italy (including Roma, Sinti and Camminanti) is estimated to number between 120,000 and 180,000; about half of them are Italian nationals belonging to groups which have lived in Italy for centuries, while the other half is made up of foreign nationals, even if many of them have been permanently resident in Italy for decades. Among that group many of the Roma, who come mainly from Bosnia and Herzegovina, Serbia and Kosovo,⁸³ are at present stateless to all intents and purposes, following the emergence of new States in the western Balkans.

⁷⁸ "Discrimination in access to housing", CIRDI, 2014; <http://www.integrazionemigranti.gov.it/Attualita/News/Pagine/casa.aspx>.

⁷⁹ Almost one in three immigrant workers lives in relative poverty (in a family with less than 50% of the average wage), which is 2.7 times the figure for Italian nationals. In Campagna in 2011 the absolute difference between the salary of an Italian employee and a foreign employee was about 500 euros, and the wages paid to foreigners in Calabria were almost 60% of the average Italian wage.

⁸⁰ 3rd Report "Agricoltura e Lavoro Migrante in Puglia", CGIL-FLAI Puglia, November 2015.

⁸¹ <http://opencoesione.gov.it/spesa-certificata/>.

⁸² In the rest of this report the term "Roma" includes Roma, Sinti and Camminanti (travellers).

⁸³ Any reference to Kosovo made in this text, be it to the territory, the institutions or the population, must be understood as being fully in accordance with UN Security Council Resolution 1244 and without prejudging the status of Kosovo.

81. Until 2011 the situation was characterised by numerous “emergency” measures introduced in the context of so-called “security pacts” - some of which were aimed specifically at the Roma - and decrees relating to the declaration of a “state of emergency in relation to nomad settlements” in several regions. In its 2015 Conclusions on the implementation of recommendations subject to interim follow-up, ECRI noted some important changes: for example, in November 2011 the Council of State ruled that the Decree of the President of the Council of Ministers of May 2008 declaring the “state of emergency in relation to nomad settlements” in three Italian regions was unlawful;⁸⁴ in February 2012, the authorities submitted a National Roma Integration Strategy (NRIS), focusing on four priorities - work, housing, health and education - and implemented by national and regional “working groups” and through “local social inclusion plans”; Draft Law No. 770 of 2013 on measures for the protection of and equal opportunity for the Roma minority aims to grant linguistic and cultural minority status to the “Roma and Sinti” and to introduce positive measures to guarantee equality of opportunity for this group.⁸⁵
82. More recently, on 30 May 2015, the Rome Civil Court judged a case brought by a group of NGOs against the Municipality of Rome and held that “nomad settlements” were a form of segregation and discrimination on ethnic grounds, in violation of Italian and European law.⁸⁶

Evaluation of the situation

83. ECRI welcomes these developments since its 4th report, which indicate a will to change and to end the emergency treatment that has marked Roma policy in recent years. However, ECRI notes that: the draft law mentioned above has remained at the initial stage of the legislative process since 2013; the May 2015 Rome court decision led to the suspension of the allocation of housing in Roma settlement “la Barbuta” by the Municipality of Rome, without any adequate response for the time being proposing alternative solutions; and the implementation of the measures provided for in the Strategy seems to have been considerably delayed. In spite of the positive intentions, several sources⁸⁷ have highlighted a lack of quantifiable objectives in every sphere of intervention of the Strategy, the fact that no specific funding has been allocated to the implementation of the Strategy and the lack of sound arrangements for monitoring and evaluating the work done. Furthermore, the results of the implementation of the Strategy at the local level are uneven, as the way in which the local authorities implement the measures proposed by the central government is left largely to their discretion. On this point it is disconcerting to see that only 11 regional “working groups” out of 20 have been set in place to implement the Strategy. Lastly, UNAR, which is responsible for its coordination, is currently in a critical situation in terms of its operational and managerial capacity.⁸⁸

⁸⁴ Decision of the Council of State No. 06050 of 16 November 2011.

⁸⁵ Draft Law No. 770, Senate, 30 October 2013.

⁸⁶ In its decision (*ordinanza 30 maggio 2015*) the court acknowledged “the indirect discriminatory nature of the conduct of the Municipality of Rome [...] which it expressed in the allocation of housing in the La Barbuta settlement”, and ordered that a stop be put to any future action and that an adequate response be given to the needs of the Roma community affected.

⁸⁷ Including the European Commission, whose latest evaluation of national strategies for Roma integration was published in 2014.

⁸⁸ According to a written question addressed to the Government by a group of MPs in October 2015, the contracts of several UNAR consultants who were responsible for implementing a large number of projects have not been renewed since September 2015, and its Director was not renewed when his term of office ended. In its reply the Government guaranteed that UNAR would soon have a new Director and that the consultants would be replaced (“*Interpellanza urgente*” 2-01105, Arturo Scotto, 6 October 2015).

84. As a result most Roma, especially in the large cities, continue to live in conditions of acute marginalisation and discrimination, in terms of access to housing and other social rights. This has recently been confirmed by a very comprehensive study published in October 2015 by UNAR and the Association of Italian municipalities (ANCI): it reveals that almost 80% of Roma in the major cities live in settlements, 36% of which are not authorised.⁸⁹ In the authorised settlements, like those ECRI was able to visit,⁹⁰ access is limited to residents who have an identity badge,⁹¹ or the settlements are a long way from any services. As already noted in the 4th report, these conditions – although they are an improvement, in sanitary terms, on those which exist in the unauthorised settlements – are a form of segregation. Access to education also remains a problem. For example, the total number of Roma pupils decreased by 5.6% between school years 2007-08 and 2013-14, with an even larger decrease in nursery and primary schools.⁹² Lastly, the employment rate for 20-64-year-olds Roma in Italy remains far below the national average.⁹³
85. ECRI therefore considers that the degree of integration of the Roma in Italian society remains limited, even if it varies considerably with age, sex, national origin and place of residence.
86. ECRI recommends completing the collection of statistical data in all areas relating to Roma integration in order to be able to establish an order of priority for the implementation of the National Roma Integration Strategy; setting quantifiable objectives in every field of intervention of the Strategy; completing the setting up of regional working groups; allocating special funding to the Strategy; and providing UNAR with the resources it needs to be able to coordinate, monitor and evaluate the Strategy.
87. Furthermore, the fact that some of the Roma from the countries of the former Yugoslavia have no identity documents heightens their social vulnerability and diminishes their hopes of integration and social inclusion. According to one study⁹⁴ some 15,000 Roma children born in Italy were legally “invisible” in 2011 as *de facto* stateless persons, even though their families had been living in Italy for decades. Although the authorities believe that the number of stateless Roma children is much lower today, ECRI deeply regrets that this problem has not yet been resolved.
88. ECRI strongly recommends that the authorities enact a new law or reform the law on access to citizenship (see also paragraph 70) so that no children born in Italy are stateless.

- **Integration of the Muslim community**

89. The 4th ECRI report noted persistent anti-Islamic prejudices in Italian society. Several surveys continue to indicate that much of the Italian population distrusts this religious minority.⁹⁵ In addition, Muslims, who make up only 4% of the Italian population,⁹⁶ also continue to be stigmatised in the statements and political

⁸⁹ First national study of settlements, UNAR, ANCI, October 2015.

⁹⁰ “*Villaggio della solidarietà*” in Castel Romano and “Best House Rom” in Rome.

⁹¹ Non-residents are allowed in only after presenting proof of identity to the guards.

⁹² “Non-national pupils” report 2013-2014, Ministry of Education.

⁹³ See Poverty and employment: the situation of Roma in 11 EU Member States, FRA, 2014, page 18.

⁹⁴ Final report “*Indagine sulla condizione dei Rom, Sinti e Camminanti in Italia*” Extraordinary Commission of the Senate for the protection and promotion of human rights, 9 February 2011, page 23.

⁹⁵ According to a survey conducted by the Pew Research Centre in 2014, 63% of Italians are hostile to the presence of Muslims in their country and overestimate their number.

⁹⁶ According to the “*Dossier Statistico Immigrazione 2014*” of the IDOS, out of a total population of about five million foreigners living in Italy legally, almost a third are Muslims from Pakistan, Morocco, Bangladesh, Tunisia, Egypt, Nigeria and also certain Balkan countries.

agendas of certain parties (see section on Hate speech). In 2012 ECRI recommended that the Italian authorities pursue a regular, constructive dialogue with the representatives of the various Muslim communities in Italy and, if necessary, reinforce the structures established to permit such dialogue. ECRI is pleased to see that the Council for Italian Islam,⁹⁷ an advisory body set up to promote dialogue between the State and the Muslim community at the national level, has resumed its meetings and is proposing concrete measures in favour of integration.

90. One of the main questions raised in connection with the integration of Muslims is the strong opposition encountered by applications to build new mosques.⁹⁸ For example, the Lombardy Regional Council passed a law (L.R. 2/2015) at the beginning of 2015 regulating the construction of new places of worship.⁹⁹ While it is true that the law applies not only to mosques but also to Catholic churches, synagogues and other places of worship, the wording of the text makes it virtually impossible to build a mosque.¹⁰⁰ In the meantime the Italian Government was successful in its appeal to the Constitutional Court for the abrogation of this law which affects freedom of worship in violation of Articles 3, 8 and 19 of the Constitution and of Article 117, c), which gives the State exclusive authority in matters of relations between the Republic and religious faiths.¹⁰¹
91. In this context ECRI draws attention to its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims, recommending that particular attention be directed towards removing unnecessary legal or administrative obstacles to both the construction of sufficient numbers of appropriate places of worship for the practice of Islam and to its funeral rites.

II. Themes specific to Italy

1. Recommendations of the 4th cycle subject to interim follow-up

- **Take steps to enhance the role and independence of UNAR (Ufficio Nazionale Antidiscriminazioni Razziali)**
92. ECRI has already examined in paragraphs 24 and followings, the action taken on the recommendation concerning UNAR it made to the authorities in its 4th report.
- **Ensure that all Roma who may be evicted from their homes enjoy the full protection of the guarantees of international law in such matters**
93. In its 2015 Conclusions ECRI noted that this recommendation had been implemented in part. During its visit to Italy ECRI was informed that Roma continued to be evicted from their unauthorised settlements. These expulsions,

⁹⁷ "La Consulta per l'Islam italiano", established by Decree of the Ministry of the Interior on 10 September 2005, is composed of sixteen Muslim members of various origins. Following a long period of inactivity, it met in Rome on 15 March 2015 under the chairmanship of the Minister of the Interior.

⁹⁸ Even if Rome, since 1995, has been the seat of the largest mosque in Europe, with an important Islamic cultural Centre.

⁹⁹ A draft law on planning permission for mosques along similar lines (*progetto di legge n. 504, IX legislatura Consiglio Regionale Veneto*), was presented by the Northern League to the Veneto Regional Council.

¹⁰⁰ It provides for the organisation of a regional referendum to decide on the fate of a building project, makes the administrative formalities more complicated and even requires the new buildings to be in the spirit of the architecture of the "Lombardy countryside". What is more, in order to be validated a project must win the approval of a "regional consultation" and be closely supervised, *inter alia* by a video surveillance system.

¹⁰¹ Application No. 47 of the President of the Council of Ministers concerning constitutionality, 9 April 2015.

particularly in Rome, have increased compared with 2013 and 2014.¹⁰² They are often decided on sanitary grounds, because of the insalubrious conditions in the settlements. However, they are often carried out with disregard for the usual procedural guarantees, with no prior notification in writing, for example, and especially with no alternative housing solution being proposed. The lack of an alternative housing plan obliges the municipal authorities at best to offer the evicted families temporary solutions. Unfortunately, all too often the evicted Roma simply move to another unauthorised settlement.

94. ECRI accordingly notes that these forced evictions do nothing to improve housing or sanitary conditions but, on the contrary, have the unwanted effect of simply reproducing elsewhere the same precarious and insalubrious situation that led to the evictions in the first place.

95. ECRI recommends that the authorities ensure that all Roma who may be evicted from their homes enjoy the full protection of the guarantees of international law in such matters. In particular sufficient prior notice in writing should be given of any decision to evict Roma; they should be entitled to proper legal protection; and they should not be evicted without the possibility of being re-housed in suitable accommodation.

- **Take all necessary steps to ensure that the principle of non-refoulement is fully respected and guarantee access to asylum procedures**

96. In its 2015 Conclusions ECRI noted the partial implementation of the recommendation, particularly as regards access to asylum procedures in accordance with international standards. The new developments may be summarised as follows: Italy has adapted its legislation to the directives of the European Union, providing for a common reception system and common procedures for the granting of international protection;¹⁰³ Italy has fixed 20 July 2019 by law as the deadline date for the codification in a single law of all the existing provisions on asylum, which are at present dispersed in various domestic laws and regulations; the number of territorial commissions and sub-commissions responsible for deciding on refugee status has risen from 20 to 42; five additional sub-commissions should be established soon; consequently the average waiting time between the application and the communication of the decision at first instance has been gradually reduced; a plan to spread asylum seekers throughout the country was signed between the State and the Regions in 2014 and is now operational.

97. ECRI welcomes these measures taken by the Italian authorities, who have been faced with a constantly increasing influx of immigrants since 2014, with 144 000 migrants and asylum seekers rescued at sea and entering the country in the first ten months of 2015.¹⁰⁴ ECRI's delegation was also able to witness itself the considerable efforts made by the central government, the prefects and certain local and regional authorities to provide, with long-term accommodation in other parts of the country, to the masses of asylum seekers arriving in the south of Italy, where they had been given a generous welcome.¹⁰⁵ It is often a difficult task because of the fear, and at times the hostility, of part of the local

¹⁰² 54 forced evictions in 2013, 34 in 2014 and 71 in the first 9 months of 2015 alone.

Source *Associazione 21 luglio*, October 2015:

http://www.21luglio.org/wp-content/uploads/2015/10/reporto_peccato_12pag_italiano_webweb_2_ottb.pdf.

¹⁰³ Act No. 142/15 transposing Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast) and Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection.

¹⁰⁴ UNHCR statistics, <http://data.unhcr.org/mediterranean/country.php?id=105>.

¹⁰⁵ The ECRI delegation visited the "Ex Caserma Serena" reception centre for asylum seekers in the Veneto Region, between Casier and Treviso.

population, especially where there is a large concentration of asylum seekers in only one reception center in the same municipality (see section on Hate speech).

98. However, in spite of these numerous and varied efforts and improvements, the system for granting refugee status has certain shortcomings. The territorial commissions, each composed of four members, have an extremely heavy workload, with each member examining dozens of applications every day. The decision whether to grant refugee status is often taken on the same day as the interview, by the person who conducts the interview. According to the representative of the United Nations High Commissioner for Refugees (UNHCR), the commission members do not always have the requisite expertise, despite the training they have received, and do not sit at regular times, which means a constant turnover in the composition of the commissions, with negative effects on the quality and consistency of the decisions.
99. In this context ECRI takes note of the recommendation made by the UNHCR when Italy transposed Directive 2013/32/EU,¹⁰⁶ encouraging the authorities to create an independent specialised authority with a permanent structure to determine refugee status. According to the UNHCR, creating this permanent body would guarantee greater professionalism of the people responsible for examining asylum applications, and their more effective employment around the country as needed. ECRI thinks that implementing this proposal at the same time as the other measures contained in the EU Directive could further facilitate access to asylum procedures and reduce waiting times for the decisions.

2. Policies to combat discrimination and intolerance aimed at LGBT people¹⁰⁷

- Data

100. The 15th population census in Italy, in 2011, attempted to assess the number of LGBT couples by means of a question on cohabitation. The limits imposed by law on the confidentiality of personal data and the reluctance of LGBT couples to be seen as such made it impossible to obtain satisfactory results. However, since 2011 the ISTAT has regularly carried out surveys which take into account the sexual orientation and gender identity of the interviewees. LGBT associations helped to develop a suitable methodology for these surveys.
101. ECRI encourages the Italian authorities to continue their efforts in this area, as it considers that without this type of statistical information there can be no solid basis for the planning and implementation of policies to combat intolerance and discrimination against LGBT people.

- Legislation

102. Legislative Decree No. 216/ 03 of 2003 transposing Directive 2000/78/EC on equal treatment in employment is the only law that prohibits discrimination based, *inter alia*, on sexual orientation, but it does not include gender identity (see section on Legislation against racism and racial discrimination - Civil and Administrative Law). A draft law (No. 245 of 2013) against homophobia and transphobia, which the Parliament has adopted, has been under examination in the Senate since April 2015. ECRI takes note that this draft law includes sexual orientation and gender identity in the characteristics of potential victims of racism and racial discrimination punishable under the Criminal Code. ECRI nevertheless considers that gender identity should also be included in grounds

¹⁰⁶ "Nota UNHCR sul recepimento della Direttiva 2013/32/UE del Parlamento Europeo e del Consiglio", 5 February 2015.

¹⁰⁷ For the terminology, see the definitions in Discrimination based on sexual orientation and gender identity, 2nd edition, Commissioner for Human Rights of the Council of Europe, 2011.

of discrimination prohibited by civil law, in order better to protect LGBT people against discrimination.

103. Same-sex couples in Italy do not have the right to marry. Nor do same-sex couples have the right to adopt children together, that possibility being reserved for married heterosexual couples or single people. In judgment No. 170/2014 the Constitutional Court decided that the provisions of Act No. 164 of 1982 concerning automatic divorce for spouses who undergo a sex change were unconstitutional.
104. At the time of writing this report, the Italian Parliament had not managed to pass legislation regulating the situation of same-sex couples. In the meantime mayors started to register homosexual unions, but these registrations, which have been systematically annulled by the prefects, have only a symbolic value and do not give homosexual couples any rights. This legal uncertainty had lasted a long time, in spite of judgments of the Constitutional Court since 2010 stating that same-sex couples' relationships should be regulated by law, and in spite of a recent judgment of the European Court of Human Rights¹⁰⁸ which found a violation by Italy of Article 8 of the Convention (right to respect for family life) because it was impossible for same-sex couples to have their relationship acknowledged by law. However, following that judgment of the European Court, the Parliament has accelerated the process of examining and passing a draft law on civil unions¹⁰⁹, which was approved by the Senate in February 2016 and shall enter into force in the near future once approved also by the Chamber of Deputies.
105. ECRI welcomes this recent development and encourage the Italian authorities to complete the legislative process for the adoption of a law regulating the relationships of same-sex couples as soon as possible.
106. As to changing the first name of transsexuals, there seems to be a certain confusion about the conditions required by Article 1 of Law No. 164/ 82 for officially changing one's sex. The Constitutional Court has recently ruled on the question interpreting the law as not requiring compulsory surgical operation in order to have a civil status in keeping with the new gender.¹¹⁰

- **Specialised national body**

107. No law has yet been passed to officially extend UNAR's powers to cover cases of discrimination based on sexual orientation or gender identity. In spite of that UNAR's activities cover these types of discrimination, in particular through the organisation of awareness-raising and training activities carried out in cooperation with civil society, trade unions and the OSCAD (see paragraph 113).
108. ECRI recommends that the Italian authorities broaden UNAR's powers so that the relevant legal provisions clearly cover discrimination based, *inter alia*, on sexual orientation and gender identity.

- **Asylum**

109. The new "qualification" directive 2011/95/EU of December 2013 was transposed in Italy by a legislative decree published in February 2014. Section 8, paragraph 1 (d) of that decree explicitly mentioned persecution on grounds of sexual orientation and gender identity as grounds for application for asylum in the context of persecution for "belonging to a particular social group".

¹⁰⁸ Case of *Oliari and Others v. Italy*, applications nos. 18766/11 and 36030/11, 10 July 2015.

¹⁰⁹ Draft Law No. 14, Senate, 14 October 2015 ("*Disciplina delle coppie di fatto e delle unioni civili*").

¹¹⁰ See Constitutional Court No. 221 of 5 November 2015. See also Court of Cassation No. 15138 of 20 July 2015.

110. It should be noted that the territorial commissions responsible for determining refugee status already acknowledged persecution on grounds of sexual orientation, in conformity with UNHCR guidelines on the definition of a social group. Although no statistics are available on the granting of asylum status broken down by grounds of persecution, according to a study carried out in 2010 the UNHCR Italy indicated that up to 2010 40 asylum seekers had obtained refugee status or humanitarian protection for having been persecuted because of their sexual orientation.¹¹¹

- **Employment and health**

111. A survey published by the European Union Agency for Fundamental Rights (FRA) in 2013 shows that 39% of LGBT people in Italy always avoid revealing their sexual orientation at work. The survey also showed that, as LGBT persons, 19% of the respondents in Italy felt discriminated against in their workplace over the previous 12 months, and 13% of them when applying for jobs. In the face of this situation, UNAR, in cooperation with businesses and trade unions, has organised several awareness campaigns (see paragraph 114).
112. Furthermore, the lack of legal recognition for same-sex couples and of the parental rights of the other parent in same-sex couples creates problems in the event of a medical emergency, for example in identifying the “next of kin”. Although measures have been taken at the regional level (in Tuscany, for example), there is still no general framework. This state of affairs makes it all the more urgent to pass a law to regulate the relationships of same-sex couples and resolve the practical problems they encounter in their everyday lives.
113. Transsexuals have free access to gender reassignment surgery in public hospitals. The Government explains that the reimbursement of the cost of treatment linked to sex change is the responsibility of the regional health services. As regards the medicines prescribed, the Government acknowledges that there are problems because of the lack of uniformity of the rules in the different regions of the country, which have almost exclusive powers in the matter. ECRI invites the national authorities to ensure that the essential sanitary assistance levels (LEA) in every region guarantee access to adequate free health care for LGBT persons.

- **Education and awareness**

114. At the national level a 2013-2015 National LGBT Strategy¹¹² coordinated by UNAR has been implemented with four priorities: education, access to employment, combating violence and media awareness. Training programmes have been organised for the police and civil service employees, as well as in the workplace. However, so far there has been no report to evaluate this strategy and no information has been given concerning the training programmes to be implemented at the regional level in schools. ECRI encourages UNAR to extend the duration of the National LGBT Strategy so that it can be fully implemented in schools.
115. The question of sex education at school, particularly regarding gender identity and sexual orientation, remains quite controversial in Italy. ECRI notes that sex education (which should cover the subjects of gender identity and sexual orientation) is an extracurricular activity in which teachers and pupils take part exclusively on a voluntary basis. However, the NGO ILGA Europe writes in its 2015 report that in March 2014 the training programmes for Ministry of

¹¹¹ http://fra.europa.eu/sites/default/files/fra_uploads/1358-LGBT-2010_thematic-study_IT.pdf, pages 15-16.

¹¹² Approved by Ministerial Decree of 16 April 2013 in conformity with a proposal made by the Council of Europe following Recommendation CM/Rec(2010)5.

Education staff organised by UNAR in cooperation with LGBT NGOs have been suspended.¹¹³ In addition, the Veneto and Lombardy Regional Councils¹¹⁴ adopted two motions in 2015 opposing the introduction in schools of programmes covering sexual orientation or gender identity and openly criticising UNAR's programmes on this point. Lastly, part of public opinion is still hostile to LGBT people and above all ill-informed about their rights.¹¹⁵

116. In view of this situation ECRI considers that particular attention should be given to the promotion of mutual tolerance and respect in schools, regardless of sexual orientation or gender identity.¹¹⁶ Extracurricular programmes involving teachers and children solely on a voluntary basis cannot suffice to rise to the challenge and may even be counterproductive.
117. ECRI notes that the recent Law on good schooling¹¹⁷ provides for the promotion of gender equality and the prevention of gender violence and all forms of discrimination in schools at every level. These programmes for pupils, parents and teachers will focus on the prevention of violence and discrimination against women, in the context of the implementation of the education and awareness provisions found in the Istanbul Convention.¹¹⁸ ECRI calls on the authorities to include an approach in these programmes to prohibit discrimination in a broader sense, on other grounds, such as sexual orientation and gender identity, which are explicitly mentioned in Article 4.3 of the Istanbul Convention.
118. ECRI recommends that the authorities implement in schools at every level, be it in the framework of the implementation of Act No. 107/ 15 "on good schooling" or in the context of the continuing National LGBT Strategy, measures to promote mutual tolerance and respect at school, regardless of sexual orientation or gender identity. In particular these measures should provide all pupils and students with the information, the protection and the support they need in order to be able to live in harmony with their sexual orientation and their gender identity.

¹¹³ According to the same report the training resumed in November but without the participation of the LGBT associations. 2015 Annual Report on the Human Rights situation of LGBTs, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), page 93.

¹¹⁴ Veneto Regional Council, "*Mozione no. 13*", 23 August 2015. A similar document was approved by the Lombardy Regional Council on 6 October 2015.

¹¹⁵ The homosexual population in Italian society, <http://www.istat.it/it/archivio/62168>.

¹¹⁶ ECRI points out that this is one of the principal tasks of UNAR's National LGBT Strategy, <http://www.pariopportunita.gov.it/images/Strategia%20nazionale%20-%20vers.%20EN.pdf>.

¹¹⁷ Article 16.1, Act No. 107/ 15.

¹¹⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 14 – Education.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations ECRI asks the Italian authorities to give priority to implementing are:

- ECRI reiterates its recommendation to the Italian authorities to ensure that UNAR's full independence is secured both in law and in fact; to extend its powers so that the relevant legislation clearly covers discrimination based not only on ethnic origin and race but also on colour, language, religion, nationality and national origin; and to grant it the right to bring legal proceedings. The authorities should also ensure that any move to merge UNAR with an independent body with a broader remit guarantees the full implementation of the above recommendations and provides for all the human and financial resources necessary to fulfil its mission.
- ECRI recommends that the authorities implement in schools at every level, be it in the framework of the implementation of Act No. 107/15 "on good schooling" or in the context of the continuing National LGBT Strategy, measures to promote mutual tolerance and respect at school, regardless of sexual orientation or gender identity. In particular these measures should provide all pupils and students with the information, the protection and the support they need in order to be able to live in harmony with their sexual orientation and their gender identity.

These two recommendations will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI recommends that Italy complete the legislative process for the ratification of Protocol No. 12 to the European Convention on Human Rights as soon as possible.
2. (§ 8) ECRI recommends that, in keeping with its General Policy Recommendation No. 7, the authorities make sure that colour and language are expressly included in the grounds of racist behaviour and racial discrimination punishable under the Criminal Code and that the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material inciting to racial discrimination and racial violence are treated as criminal offences.
3. (§ 12) ECRI once again recommends that the Italian authorities assess the effectiveness of the provisions for combating the dissemination of racist ideas as well as incitement to commit and the commission of discriminatory acts motivated by hatred. In particular, they should make sure it is not too difficult for the judicial authorities to meet the conditions linked to the prosecution of conduct aimed at disseminating racist ideas, and that the penalties for the offences concerned are effective, proportionate and dissuasive.
4. (§ 14) ECRI recommends that the Italian authorities introduce provisions into the Criminal Code penalising public insults and defamation or threats against a person or group of people on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, in keeping with its General Policy Recommendation No. 7, paragraph 18, b and c.
5. (§ 17) ECRI recommends that the Italian authorities complete, as soon as possible, the criminal law on the prevention and repression of genocide, crimes against humanity and war crimes, and see to it that the denial, gross minimisation, and public justification or condoning of these crimes for racist motives are made criminal offences.
6. (§ 22) ECRI reiterates its recommendations to the authorities a) to introduce legal provisions prohibiting discrimination based not only on grounds such as "race", religion and ethnic origin but also language, colour and nationality, and b) to ensure that all organisations active in the field of combating racism and racial discrimination are able to take legal action on behalf of alleged victims of these phenomena or in cases of collective discrimination.
7. (§ 29) ECRI reiterates its recommendation to the Italian authorities to ensure that UNAR's full independence is secured both in law and in fact; to extend its powers so that the relevant legislation clearly covers discrimination based not only on ethnic origin and race but also on colour, language, religion, nationality and national origin; and to grant it the right to take legal action. It is also important that any plan to merge UNAR into an independent authority with a broader remit should guarantee the full implementation of the above recommendations and provide it with all the necessary human and financial resources it needs to fulfil its mission.
8. (§ 34) ECRI recommends that the authorities set in place, without delay, a method of collecting data on incidents related to hate speech, broken down into the different categories of racist motivation and of victims, and that they regularly publish the results, with information on the number of prosecutions, the reasons for not prosecuting and the outcome of the legal proceedings concerned.

9. (§ 44) ECRI recommends that Italy complete, as soon as possible, the legislative process for the ratification of the additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
10. (§ 48) ECRI recommends that the authorities do more to raise awareness among young people of tolerance and mutual respect and alert them to the dangers of using the Internet to spread hate speech and offensive content. In particular, be it in the framework of the Action Plan against racism, xenophobia and intolerance or of the teaching provided for in Section 1.7 h) of Act No. 107/ 15 on “good schooling”, they should make sure that all young people receive the information and support they need in order to make responsible use of the social networks.
11. (§ 62) ECRI recommends that the Italian authorities take the necessary legislative steps to provide the victims of hate crimes with specialised support, if necessary by adapting the services which already exist for victims of other crimes. It also recommends appointing a contact person in each police district to deal with questions of racism and homophobia/transphobia, as well as a contact person in the corresponding public prosecutor’s office. These contact persons should work together as a network, with good communication between the police contact persons and those in the prosecutors’ offices.
12. (§ 64) ECRI reiterates its recommendation to the Italian authorities to establish a body independent of the police and the prosecution service to investigate allegations of human rights violations by the police, including, *inter alia*, all allegations of racial discrimination or racially motivated misconduct.
13. (§ 70) ECRI recommends that the Italian authorities complete the legislative process to reform the legislation on the granting of citizenship as soon as possible, to facilitate the naturalisation of foreign minors born or studying in Italy. ECRI also recommends ensuring that the legislation on naturalisation is in conformity with the provisions of the European Convention on Nationality.
14. (§ 73) ECRI recommends that the authorities ensure that the extension of the national “Identity and Encounter” Plan involves an evaluation of all the integration projects set in motion in recent years, based on accurate data on the integration rates achieved in the different sectors of social life.
15. (§ 79) ECRI recommends that the authorities ensure that, in the context of relations between the State and the regions, adequate support is made available for the integration process in every region, *inter alia* by making more effective use of European Union Structural Funds.
16. (§ 86) ECRI recommends completing the collection of statistical data in all areas relating to Roma integration in order to be able to establish an order of priority for the implementation of the National Roma Integration Strategy; setting quantifiable objectives in every field of intervention of the Strategy; completing the setting up of regional working groups; allocating special funding to the Strategy; and providing UNAR with the resources it needs to be able to coordinate, monitor and evaluate the Strategy.
17. (§ 88) ECRI strongly recommends that the authorities enact a new law or reform the law on access to citizenship (see also paragraph 70) so that no children born in Italy are stateless.
18. (§ 95) ECRI recommends that the authorities ensure that all Roma who may be evicted from their homes enjoy the full protection of the guarantees of international law in such matters. In particular sufficient prior notice in writing should be given of any decision to evict Roma; they should be entitled to proper legal protection; and they should not be evicted without the possibility of being re-housed in suitable accommodation.

19. (§ 108) ECRI recommends that the Italian authorities broaden UNAR's powers so that the relevant legal provisions clearly cover discrimination based, *inter alia*, on sexual orientation and gender identity.
20. (§ 118) ECRI recommends that the authorities implement in schools at every level, be it in the framework of the implementation of Act No. 107/ 15 "on good schooling" or in the context of the continuing National LGBT Strategy, measures to promote mutual tolerance and respect at school, regardless of sexual orientation or gender identity. In particular these measures should provide all pupils and students with the information, the protection and the support they need in order to be able to live in harmony with their sexual orientation and their gender identity.

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