
Italy

Law 645/1952 (implementing the Constitutional norm on the prohibition of reorganization of the fascist party)

Article 1: For the purposes of the twelfth transitory and final (first paragraph) of the Constitution, it was reorganizing the dissolved fascist party when an association, a movement or at least a group of at least five people pursue their undemocratic goals of the fascist party, enhancing, or threatening using violence as a method of political struggle or advocating the suppression of the freedoms guaranteed by the Constitution or denigrating democracy, its institutions and values of strength, or acting racist propaganda, which addresses its activities to the exaltation of leaders, principles, facts and methods of that party or its outward manifestations of character turns fascist.

Article 2: Anyone who promotes, organizes or directs associations, movements or groups indicated in Art. 1, shall be punished with imprisonment from five to twelve years and a fine ranging from two to twenty million dollars. Anyone participating in such associations, movements or groups shall be punished with imprisonment from two to five years and a fine ranging from 1,000,000 to 10,000,000 lire. If the association, movement or group takes in all or part of the character of armed or

paramilitary organization, which makes use of violence, the penalties mentioned in the preceding paragraphs shall be doubled. The organization is considered armed if the promoters and participants, however, the availability of weapons or explosives are stored anywhere. Without prejudice to art. 29, first paragraph, of the Criminal Code, the conviction of the promoters, organizers or leaders of the matter in any case, the deprivation of rights and of the offices specified in art. 28, second paragraph, points 1 and 2 of the Criminal Code for a period of five years. The condemnation of the participants matter for the same period of five years deprivation of rights under Art. 28, second paragraph, no 1, Penal Code

Loi 654/1975, modifiée par Décret-loi n° 122 du 26 avril 1993 converti en loi n° 205 du 25 juin 1993 portant «Mesures urgentes en matière de discrimination raciale, ethnique et religieuse» et par Loi 85/2006

NB The 2006 amendment opted for detention or the payment of a fee as alternative punishments for the below mentioned offences; the offences addressed by the norm are now the “instigation” to commit actions of discrimination (in place of the “incitement” previously included), and the “propaganda” of racist ideas (instead of the mere “circulation”).

« (1993) Article 3. 1. Sauf si l'infraction constitue un délit plus grave et aux fins de la mise en oeuvre de l'article 4 de la convention, est punie:

a) de trois ans d'emprisonnement maximum toute personne qui de quelque façon que ce soit, diffuse des idées fondées sur la supériorité ou la haine raciale ou ethnique, ou incite à commettre ou commet des actes de discrimination pour motifs raciaux, ethniques, nationaux ou religieux;

b) d'un emprisonnement de six mois à quatre ans toute personne qui, de quelque façon que ce soit, incite à commettre ou commet des actes de violence ou de provocation à la violence pour des motifs racistes, ethniques, nationaux ou religieux;

«(2006) Art. 3. - 1. Salvo che il fatto costituisca piu' grave reato, anche ai fini dell'attuazione della disposizione dell'art. 4 della convenzione, e' punito:

a) con la reclusione fino ad un anno e sei mesi o con la multa fino a 6.000 euro chi propaganda idee fondate sulla superiorita' o sull'odio razziale o etnico, ovvero istiga a commettere o commette atti di discriminazione per motivi razziali, etnici, nazionali o religiosi;

b) con la reclusione da sei mesi a quattro anni chi, in qualsiasi modo, istiga a commettere o commette violenza o atti di provocazione alla violenza per motivi razziali, etnici, nazionali o religiosi;».

Décret-loi n° 122 du 26 avril 1993 converti en loi n° 205 du 25 juin 1993 portant «Mesures urgentes en matière de discrimination raciale, ethnique et religieuse»

3. Toute organisation, association, mouvement ou groupe ayant notamment pour finalités l'incitation à la discrimination ou à la violence pour motifs raciaux, ethniques, nationaux ou religieux est interdite. Toute personne qui participe à de telles organisations, associations, mouvements ou groupes, ou prête assistance à leur activité, est punie, du seul fait de sa participation ou de son assistance, d'un emprisonnement de six mois à quatre ans. Les personnes qui encouragent ou dirigent de telles organisations, associations, mouvements ou groupes sont punies, de ce seul fait, d'un emprisonnement d'un an à six ans.

Article 3 (Circonstance aggravante) - Pour les délits punis avec une peine autre que la condamnation à perpétuité qui ont été commis à des fins de discrimination ou haine ethnique, nationale, raciale ou religieuse, ou dans le but de faciliter l'activité d'organisations, associations, mouvements ou groupes qui poursuivent les mêmes finalités, la peine est augmentée de moitié. »

Additional penalties : a/ unpaid community service b/ temporary prohibition from taking part in election campaigns c/ ban on attending sports events : The amending Act enabled courts to apply a number of additional penalties to anyone guilty of one of the offences covered by Acts Nos. 654 of 1975 or 962 of 1967. These penalties include:

the obligation to perform unpaid community service for a period of up to 12 weeks, after the prison sentence has been served. The details must be determined by the court in such a way as not to interfere with the work, studies or social reintegration of the convicted person. This obligation may consist in:

the restoration of buildings defaced by racist inscriptions, emblems or symbols;
assistance to social welfare and voluntary organisations (e.g. those assisting the disabled, drug addicts, the elderly or immigrants from non-Community countries);
work for the purposes of civil defence, environmental protection, conservation of the cultural heritage, etc.;

This work may be carried out for the benefit of public bodies or private organisations;

the temporary obligation to return to or leave one's ordinary residence at a fixed time for a period of no more than one year;

suspension of the offender's driving licence, passport or other documents permitting travel abroad, for a period of no more than one year;

d) prohibition from possessing weapons of any kind;

prohibition from participating in any way in election campaigns for the political or administrative elections following conviction and, at all events, for a minimum period of three years.

Article 2. External or ostentatious displaying of symbols of racist organisations ; gaining access to sports events with such symbols : imprisonment of up to 3 years

Article 3 General aggravating circumstance for all offences committed with a view to discrimination for reasons of ethnic racial or religious hatred or in order to help

organisations with such purposes : sentence may be increased by up to half of the main penalty

Act n° 962-1967 (implementation of the 1948 Genocide Convention)

Sections 1-5, 6(2) : *Acts conducive to committing genocide : imprisonment of up to 30 years*

Section 8: Whoever publicly incites to commit any crimes predicted in articles 1 to 5, shall be punished, simply because of the instigation, with imprisonment from three to twelve years. The same penalty applies to anyone who publicly advocates any of the crimes provision in the preceding paragraph.

Code pénal, Article 403 (mod. L. 85/2006)

« (Offese a una confessione religiosa mediante vilipendio di persone). - Chiunque pubblicamente offende una confessione religiosa, mediante vilipendio di chi la professa, e' punito con la multa da euro 1.000 a euro 5.000. Si applica la multa da euro 2.000 a euro 6.000 a chi offende una confessione religiosa, mediante vilipendio di un ministro del culto».

Case Law

Organo giudicante: Corte Costituzionale Deposito in Cancelleria: 6/12/1958	
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SENTENZA N. 74

ANNO 1958

REPUBBLICA ITALIANA

IN NOME DEL POPOLO ITALIANO

LA CORTE COSTITUZIONALE

composta dai signori Giudici:

Dott. Gaetano AZZARITI, Presidente

Avv. Giuseppe CAPPI

Prof. Tomaso PERASSI

Prof. Gaspare AMBROSINI

Prof. Ernesto BATTAGLINI

Dott. Mario COSATTI

Prof. Francesco PANTALEO GABRIELI

Prof. Giuseppe CASTELLI AVOLIO

Prof. Antonino PAPALDO

Prof. Nicola JAEGER

Prof. Giovanni CASSANDRO

Prof. Biagio PETROCELLI

Dott. Antonio MANCA

Prof. Aldo SANDULLI,

ha pronunciato la seguente

SENTENZA

nei giudizi riuniti di legittimità costituzionale della norma contenuta nell'art. 5 della legge 20 giugno 1952, n. 645, promossi con le seguenti ordinanze:

1) ordinanza 29 aprile 1957 emessa dal Pretore di Como nel procedimento penale a carico di Maccarrone Giovanni, pubblicata nella Gazzetta Ufficiale della Repubblica n. 161 del 28 giugno 1957 ed iscritta al n. 60 del Registro ordinanze 1957;

2) ordinanza 7 dicembre 1957 emessa dal Pretore di Forlì nel procedimento penale a carico di Fratesi Luigi, pubblicata nella Gazzetta Ufficiale della Repubblica n. 21 del 25 gennaio 1958 ed iscritta al n. 2 del Registro ordinanze 1958;

3) ordinanza 7 dicembre 1957 emessa dal Pretore di Forlì nel procedimento penale a carico di Monti Alberto, pubblicata nella Gazzetta Ufficiale della Repubblica n. 21 del 25 gennaio 1958 ed iscritta al n. 3 del Registro ordinanze 1958.

Viste le dichiarazioni di intervento del Presidente del Consiglio dei Ministri;

udita nell'udienza pubblica del 5 novembre 1958 la relazione del Giudice Giuseppe Cappi;

udito il vice avvocato generale dello Stato Cesare Arias per il Presidente del Consiglio dei Ministri.

Ritenuto in fatto

Su denuncia 26 marzo 1956 dell'Autorità di P. S. di Como, il Pretore di Como, con decreto penale 1 settembre 1956 condannava alla pena di L. 10.000 di ammenda il giovane Maccarrone Giovanni quale responsabile di contravvenzione all'art. 5 legge 20 giugno 1952, n. 645, per avere il 25 marzo 1956, in occasione di un comizio del M.S.I. tenuto dall'on. Almirante in Como nel Cinema Araldo, compiuto pubblicamente manifestazione usuale del disciolto partito fascista, tendendo il braccio nel saluto fascista-romano al momento del congedo del predetto deputato. Avendo il Maccarrone proposto opposizione, veniva rinviato a giudizio all'udienza del 29 aprile 1957. Al dibattimento il difensore preliminarmente eccepiva l'incostituzionalità dell'art. 5 della legge 20 giugno 1952, n. 645, e chiedeva il rinvio degli atti alla Corte costituzionale e ciò in riferimento all'art. 21, primo comma, della Costituzione. Il Pretore, sentito il P. M., pronunciava la seguente ordinanza: "Dato atto della richiesta del difensore perché sia sospeso il giudizio e siano inviati gli atti alla Corte costituzionale per l'esame della legittimità costituzionale dell'art. 5 legge 20 giugno 1952, n. 645, in relazione all'art. 21 della Costituzione. Ritenuto che la questione sollevata non appare manifestamente infondata e che il presente giudizio non può essere definito indipendentemente dalla risoluzione della questione di legittimità costituzionale. Visto l'art. 23 legge 11 marzo 1953, n. 87, sospende il giudizio in corso e ordina l'immediata trasmissione degli atti alla Corte costituzionale".

Dietro denuncia dell'Autorità di p. s. il Pretore di Forlì rinviava a giudizio il giovane Fratesi Luigi quale imputato della contravvenzione di cui all'art. 5 legge 20 giugno 1952, n. 645, "per avere in Forlì il 22 settembre 1957 salutato romanamente una comitiva di persone che su un'autocorriera si stava recando a Predappio a visitare la tomba del defunto Benito Mussolini". All'udienza del 7 dicembre 1957 la difesa dell'imputato eccepì in via preliminare la incostituzionalità dell'art. 5 legge 20 giugno 1952, n. 645, e perché in urto ed in contrasto con l'art. 21, primo comma, della Costituzione che garantisce la libertà di pensiero e di manifestazione, e perché il detto articolo 5 non può considerarsi norma di attuazione della XII disposizione transitoria e finale della Costituzione. Il Pretore pronunciava la seguente ordinanza: " Omissis ritenuto che la questione di incostituzionalità dell'art. 5 legge 20 giugno 1952, n. 645, non é manifestamente infondata in quanto detto articolo é in contrasto con la XII disposizione transitoria della Costituzione, la quale vieta la riorganizzazione del

disciolto partito fascista e nulla dispone nel caso vengano compiute manifestazioni usuali al disciolto partito, come nel caso in esame; ritenuto altresì, stante la sentenza 16 gennaio 1957 della Corte costituzionale con la quale veniva dichiarata la incostituzionalità dell'art. 4 legge 20 giugno 1952, n. 645, che appare opportuno che la Corte si pronunci anche sulla costituzionalità o meno dell'art. 5 stessa legge; P. q. m. ordina trasmettersi gli atti alla cancelleria della Corte costituzionale disponendo la sospensione del procedimento".

A seguito di denuncia dei carabinieri della stazione di Predappio, il Pretore di Forlì rinviava a giudizio il giovane Monti Alberto quale imputato della contravvenzione di cui all'art. 5 della legge 20 giugno 1952, n. 645, "per aver in Predappio il 22 settembre 1957 indossato la camicia nera mentre si accingeva a visitare la tomba del defunto Benito Mussolini". All'udienza del 7 dicembre 1957 la difesa del Monti sollevava l'identica eccezione di incostituzionalità già sollevata per l'imputato Fratesi e il Pretore pronunciava ordinanza identica a quella già sopra trascritta per il predetto Fratesi.

Le surriferite ordinanze venivano regolarmente notificate e pubblicate.

Nel giudizio avanti questa Corte non si costituivano le parti private; proponeva intervento il Presidente del Consiglio dei Ministri rappresentato e difeso dall'Avvocatura generale dello Stato.

In tutte e tre le cause l'Avvocatura dello Stato concludeva perché venisse respinta l'eccezione di illegittimità costituzionale sollevata dalla difesa degli imputati. Al riguardo faceva le seguenti osservazioni e deduzioni.

L'art. 5 della legge 20 giugno 1952, n. 645, non può che essere considerato una ulteriore specificazione della stessa ipotesi già prevista nel precedente art. 1 della legge, la quale ha inteso ricollegarsi al divieto contenuto nella XII disposizione transitoria della Costituzione concernente la riorganizzazione del disciolto partito fascista. Pertanto, continua l'Avvocatura, la legge 20 giugno 1952, n. 645, non può essere definita anticostituzionale perché attua una norma della Costituzione. L'esigenza poi di dare attuazione al divieto di riorganizzare il disciolto partito fascista non può, sempre secondo l'Avvocatura, ritenersi limitata alla repressione dell'associazione o del movimento già sorto, ma deve intendersi logicamente estesa a tutti quegli atti o fatti che in qualunque modo possano favorire la riorganizzazione di cui trattasi. Al riguardo l'Avvocatura, come già le ordinanze di rinvio, cita la sentenza n. 1 del 16 gennaio 1957 di questa Corte. In proposito non è inopportuno specificare che detta sentenza si occupava dell'art. 4 della legge 20 giugno 1952, n. 645, e affermò che l'apologia del fascismo prevista da tale articolo è stata legittimamente vietata costituendo una istigazione indiretta alla riorganizzazione del disciolto partito fascista e ciò in relazione alla XII disposizione transitoria della Costituzione.

L'Avvocatura ricorda poi che, anteriormente all'entrata in funzione della Corte costituzionale, la Cassazione aveva ritenuto legittima la legge 3 dicembre 1947, n. 1546, e in particolare l'art. 7 che costituisce l'antecedente della disposizione in esame. Secondo la Cassazione la figura di reato prevista da tale articolo fu dalla legge 20 giugno 1952 scissa in una ipotesi delittuosa per quanto attiene alla previsione della esaltazione delle persone e delle ideologie del fascismo ed in una ipotesi contravvenzionale per quanto attiene alla previsione delle manifestazioni di carattere fascista, specificando queste ultime anche in semplici parole o gesti usuali al partito fascista.

L'Avvocatura conclude per la legittimità costituzionale in quanto le manifestazioni fasciste, quando siano compiute pubblicamente, hanno la capacità di suscitare sentimenti nostalgici che potrebbero incoraggiare e favorire il risorgere di movimenti totalitari antidemocratici la cui organizzazione è stata, invece, vietata dalla Costituzione.

Considerato in diritto

La Corte ha ravvisato l'opportunità della riunione delle tre cause per la loro decisione con un'unica sentenza, trattandosi sostanzialmente di una stessa questione di legittimità costituzionale.

La norma, della cui legittimità si discute, è infatti in tutte quella contenuta nell'art. 5 della legge 20 giugno 1952, n. 645, anche se nella ordinanza del Pretore di Como la incostituzionalità è prospettata solo con riferimento all'art. 21, primo comma, della Costituzione, mentre nelle due ordinanze del Pretore di Forlì si aggiunge che detta norma è in contrasto con la XII disposizione transitoria della Costituzione e si fa inoltre richiamo, seppure non esattamente, alla sentenza 16 gennaio 1957, n. 1, di questa Corte.

In tale sentenza, nella quale, contrariamente a quanto è affermato nell'ordinanza del Pretore di Forlì, fu dichiarata infondata la questione di legittimità costituzionale dell'art. 4 della legge 20 giugno 1952, n. 645, si osserva che: "Come risulta dal contesto stesso della legge 1952... l'apologia del fascismo, per assumere carattere di reato, deve consistere non in una difesa elogiativa, ma in una esaltazione tale da poter condurre alla riorganizzazione del partito fascista. Ciò significa che deve essere considerata non già in sé e per sé, ma in rapporto a quella riorganizzazione, che è vietata dalla XII disposizione".

Questa disposizione pone sì un divieto, ma ciò non deve indurre nell'errore di farla considerare quasi come un divieto penale, costretto, nella interpretazione, entro i limiti della sua formulazione espressa. Le norme penali sono venute successivamente, con le leggi del 1947 e del 1952, sia nella parte sanzionatoria sia in quella precettiva. La XII disposizione transitoria va pertanto interpretata per quella che è, cioè quale norma costituzionale che enuncia un principio o indirizzo generale, la cui portata non può stabilirsi se non nel quadro integrale delle esigenze politiche e sociali da cui fu ispirata.

Riconosciuta, in quel particolare momento storico, la necessità di impedire, nell'interesse del regime democratico che si andava ricostituendo, che si riorganizzasse in qualsiasi forma il partito fascista, era evidente che la tutela di una siffatta esigenza non potesse limitarsi a considerare soltanto gli atti finali e conclusivi della riorganizzazione, del tutto avulsi da ogni loro antecedente causale; ma dovesse necessariamente riferirsi ad ogni comportamento che, pur non rivestendo i caratteri di un vero e proprio atto di riorganizzazione, fosse tuttavia tale da contenere in sé sufficiente idoneità a produrre gli atti stessi. Non è infatti concepibile che, mirando al fine di impedire la riorganizzazione, il legislatore costituente intendesse consentire atti che costituissero un apprezzabile pericolo del prodursi di un tale evento. Ciò risulta non soltanto dalla logica interpretazione dei motivi, e quindi dei limiti, della norma, ma dal testo medesimo della XII disposizione. Nel primo comma l'inciso "in qualsiasi forma" sta appunto a significare la preoccupazione del costituente di non irrigidire il precetto entro limiti formali e di mirare al di là degli atti di riorganizzazione strettamente intesi. Ciò si desume anche dal secondo comma della disposizione, il quale, conferendo al legislatore ordinario la potestà di fissare, per i capi responsabili del regime fascista, limitazioni temporanee al diritto di voto ed alla eleggibilità, mostrava di dare piena rilevanza ad una situazione che era appunto di mero pericolo. Ne deriva che il legislatore ordinario, nel dare con le sue norme concreta attuazione ai criteri espressi dalla norma costituzionale, era autorizzato a spingere i suoi divieti al di là degli atti veri e propri di riorganizzazione strettamente intesi, comprendendovi anche quelli idonei a creare un effettivo pericolo. Posto un tale principio è irrilevante che trattasi di delitto o di contravvenzione, perché, richiedendosi la obbiettività degli atti, può essere legittimamente oggetto di divieto penale ogni atto nel quale, sia pure in diverse proporzioni, quella idoneità si manifesti. Per le ipotesi previste dalla impugnata norma dell'art. 5 della legge del 1952, è noto che, trattandosi di fatti contravvenzionali, basta la volontarietà dell'azione, e - ben si intende - non dell'azione soltanto materialmente intesa, ma dell'azione in quanto costituisca manifestazione usuale del disciolto partito fascista. Sulla base dei limiti della volontarietà così intesa, non è escluso che anche siffatte minori manifestazioni possano in taluni casi essere tali da costituire, obbiettivamente, quel pericolo che, secondo lo spirito della norma costituzionale, si è inteso prevenire.

Chi esamini il testo dell'art. 5 della legge isolatamente dalle altre disposizioni, e si limiti a darne una interpretazione letterale, può essere indotto, come è accaduto alle autorità giudiziarie che hanno proposto la questione di legittimità costituzionale, a supporre che la norma denunziata preveda come fatto punibile qualunque parola o gesto, anche il più innocuo, che ricordi comunque il regime fascista e gli uomini che lo impersonarono ed esprima semplicemente il pensiero o il sentimento, eventualmente occasionale o transeunte, di un individuo, il quale indossi una camicia nera o intoni un canto o lanci un grido. Ma una simile interpretazione della norma non si può ritenere conforme alla intenzione del legislatore, il quale, dichiarando espressamente di voler impedire la riorganizzazione del disciolto partito fascista, ha inteso vietare e punire non già una qualunque manifestazione del pensiero, tutelata dall'art. 21 della Costituzione, bensì quelle manifestazioni usuali del disciolto partito che, come si è detto prima, possono determinare il pericolo che si è voluto evitare.

La denominazione di "manifestazioni fasciste" adottata dalla legge del 1952 e l'uso dell'avverbio "pubblicamente" fanno chiaramente intendere che, seppure il fatto può essere commesso da una sola persona, esso deve trovare nel momento e nell'ambiente in cui è compiuto circostanze tali, da renderlo idoneo a provocare

adesioni e consensi ed a concorrere alla diffusione di concezioni favorevoli alla ricostituzione di organizzazioni fasciste.

La ratio della norma non é concepibile altrimenti, nel sistema di una legge dichiaratamente diretta ad attuare la disposizione XII della Costituzione. Il legislatore ha compreso che la riorganizzazione del partito fascista può anche essere stimolata da manifestazioni pubbliche capaci di impressionare le folle; ed ha voluto colpire le manifestazioni stesse, precisamente in quanto idonee a costituire il pericolo di tale ricostituzione.

Con questa interpretazione, coerente a quella che la Corte costituzionale ha dato nella ricordata sentenza all'art. 4 della stessa legge, la norma denunziata si inquadra perfettamente nel sistema delle sanzioni dirette a garantire il divieto posto dalla XII disposizione transitoria, né contravviene al principio dell'art. 21, primo comma, della Costituzione.

In tal senso la norma dell'art. 5 é stata interpretata anche dalla Corte di cassazione, che in una recente decisione (Sez. III, 16 gennaio 1958), in applicazione del principio fissato dalla Corte costituzionale, ha testualmente detto: "Si comprende che una volta dichiarata dalla Corte costituzionale la legittimità costituzionale di una legge, il giudice dovrà applicarla secondo lo spirito della Costituzione per una adeguata applicazione al caso concreto. Non crede questo Supremo Collegio che il criterio interpretativo di così ampia portata adottato dalla Corte costituzionale sia suscettibile di modificazioni e che esso non conservi la sua validità anche quando non trattasi di atti che integrino vera e propria apologia del fascismo ma si esauriscono in manifestazioni come il canto degli inni fascisti, poiché si ha ragione di ritenere anche che queste manifestazioni di carattere apologetico debbano essere sostenute, per ciò che concerne il rapporto di causalità fisica e psichica, dai due elementi della idoneità ed efficacia dei mezzi rispetto al pericolo della ricostituzione del partito fascista e che, quando questi requisiti sussistono, l'ipotesi di cui all'art. 5 legge citata é costituzionalmente legittima. Questo principio é fondato sulla stessa ratio legis, che é quella di evitare, attraverso l'apologia e le manifestazioni proprie del disciolto partito, il ritorno a qualsiasi forma di regime in contrasto con i principi e l'assetto dello Stato: esso non può non investire ogni singola disposizione di cui si compone la legge 20 giugno 1952".

PER QUESTI MOTIVI

LA CORTE COSTITUZIONALE

pronunciando con un'unica sentenza sui tre procedimenti riuniti indicati in epigrafe:

dichiara infondata, nei sensi di cui in motivazione, la questione di legittimità costituzionale della norma contenuta nell'art. 5 della legge 20 giugno 1952, n. 645, in riferimento alle norme contenute nella XII delle disposizioni transitorie e finali e nell'art. 21, primo comma, della Costituzione.

Così deciso in Roma, nella sede della Corte costituzionale, Palazzo della Consulta, il 25 novembre 1958.

Gaetano AZZARITI - Giuseppe CAPPI - Tomaso PERASSI - Gaspare AMBROSINI - Ernesto BATTAGLINI - Mario COSATTI - Francesco PANTALEO GABRIELI - Giuseppe CASTELLI AVOLIO - Antonino PAPALDO - Nicola JAEGER - Giovanni CASSANDRO - Biagio PETROCELLI - Antonio MANCA - Aldo SANDULLI

Depositata in cancelleria il 6 dicembre 1958.

Italie

En décembre 2004, le Tribunal de première instance de Vérone a déclaré six membres de la Ligue du Nord coupables d'incitation à la haine raciale suite à une campagne visant à chasser un groupe de Sintis de son campement local provisoire. Ces membres ont été condamnés à six mois d'emprisonnement, à payer une somme de 45 000 euros pour préjudice moral et à l'interdiction avec sursis de participer à des campagnes et de se porter candidat à des scrutins locaux ou nationaux pendant trois ans.

[ECRI, Troisième rapport sur l'Italie adopté le 16 décembre 2005, CRI(2006)19, § 87]

In December 2004, the first instance Court of Verona found six local members of the Northern league guilty of incitement to racial hatred in connection with a campaign organised in order to send a group of Sinti away from a local temporary settlement. These persons were sentenced to six month jail terms, the payment of 45 000 Euros for moral damages and a three-year suspended ban from participating in campaigns and running for national and local elections.

[ECRI, Third report on Italy, adopted on 16 December 2005, CRI(2006)19, § 87]

In the case brought in front of the first instance Court of Verona concerning six local members of the "Lega Nord" found guilty of incitement to racial hatred in connection with a campaign organised in order to send a group of Sinti away from a local temporary settlement, these persons were sentenced to six month jail terms, the payment of 45 000 Euros for moral damages in favour of Opera Nomadi and individual victims – including costs for a sum of 4,000 Euros for each counsel - and a three-year suspended ban from participating in campaigns and running for national and local elections.

[ECRI, Third report on Italy, adopted on 16 December 2005, CRI(2006)19, "Italian remarks on the draft third report of the European Commission against Racism and Intolerance on Italy", p. 70]

An important case regards F. Tosi, current mayor of the municipality of Verona (member of the city council at the time of the described events), and other five members of his political party. The offences stemmed from a political campaign, entitled "Via gli zingari da Verona!", with the purpose to exclude the Sinti minority from the local community. The first instance judge convicted the six persons accused for the crime set out in Art. 3, par. 1 L. 654/75: spread of racist ideas and incitement to commit racial discrimination acts (Tribunal of Verona, dec. 2203/2004). The second instance judge confirmed the sentence with regard to the offence of "spreading", but discharged the defendants from "instigation", according to Art. 3.1 as reframed by the 2006 amendment (Court of Appeal of Venice, dec. 2.4.2007). The Supreme Court of Cassation issued a judgement on the case, stating the inconsistency of the Court of Appeal's reasoning (Cass. 13234/2008): the Court of Appeal restructured the argumentation but confirmed the sentence to two months imprisonment exclusively for "propaganda" of racist ideas (C. Appeal Venice 20.10.2008, finally corroborated by Cass. 41819/2009).

ITALIA - Cassazione condanna Flavio Tosi, sindaco di Verona, per propaganda razzista

La Corte di Cassazione ha confermato la sentenza di condanna a due mesi, con sospensione condizionale della pena, nei confronti di Flavio Tosi, sindaco di Verona, per propaganda di idee razziste. La vicenda risale al 2001, quando Tosi era consigliere regionale e organizzò una raccolta di firme per sgombrare un campo nomadi abusivo nel capoluogo scaligero. Tosi era stato querelato da sette nomadi sinti e dall'Opera nazionale nomadi.

La sentenza della corte d'appello di Venezia e' stata pronunciata il 20 ottobre dello scorso anno. Gia' in primo grado, nel dicembre 2004 Tosi e altri cinque esponenti della Lega nord erano stati condannati per discriminazione razziale a sei mesi. Il 30 gennaio del 2007 la corte d'Appello di Venezia aveva ridotto le pene a due mesi, assolvendoli dall'accusa di odio razziale. Il verdetto era stato poi parzialmente annullato dalla Cassazione - con il mantenimento pero' dell'assoluzione per l'ipotesi di odio razziale - e rinviato a nuovo esame, sempre a Venezia.

GB: INCITAMENTO A ODIO RAZZIALE SU INTERNET, DUE IN CARCERE - Le due prime persone condannate in Gran Bretagna per incitamento all'odio razziale su Internet, due uomini di 51 e 42 anni, sono stati incarcerati oggi dopo essere stati rimpatriati dagli Stati Uniti dove erano riusciti a fuggire subito dopo la decisione del tribunale. Lo scrive la Bbc on line.

L'anno scorso un tribunale britannico aveva condannato Simon Sheppard, di Selby, a quattro anni e dieci mesi di carcere, e Stephen Whittle, di Preston, a due anni e quattro mesi. I due pero' erano in liberta' provvisoria ed erano riusciti a prendere un aereo per Los Angeles. Qui giunti, avevano chiesto asilo politico agli Stati Uniti, rivendicando il loro diritto alla liberta' di espressione. Dopo quasi un anno, l'ufficio immigrazione statunitense ha deciso che i due non avevano i requisiti per ottenere l'asilo politico e li ha rispediti in Gran Bretagna. Dove stati incarcerati.

Secondo il tribunale britannico che li ha condannati, i due hanno messo in circolazione su Internet materiale 'scottante' che incita all'odio razziale: Sheppard ha scritto gli articoli, Whittle li ha messi in rete. Tra l'altro hanno pubblicato articoli che mettono in ridicolo gruppi etnici. Secondo il giudice britannico, si tratta di materiale 'offensivo', che puo' potenzialmente causare gravi turbative sociali.

[Immigrazione, Diritti degli stranieri in Italia, Notizia del 11 luglio 2009, immigrazione.aduc.it (http://immigrazione.aduc.it/notizia/cassazione+condanna+flavio+tosì+sindaco+verona_111000.php)]

Italy / Sinti - Opera Nomadi vs 5 militants of the Northern League in Verona

Subtitle Sentence nr. 2203/04, date of deposit: 24/02/2005.

Inventory No. CASE 82 1

Deciding body Tribunale di Verona - Sezione Penale [Court of Justice of Verona - Criminal Section]

Date Date of decision: 02.12.2004

Deciding Body National court / tribunal

Topic Hate speech

Keywords Political party, legal finding, court decision, Italy, Anti-Roma racism, Promotion of racial discrimination and hatred

Key facts of the case: In 2001, a local branch of the Northern League Party launched a public campaign in Verona 'to drive away Gypsies' from a camp in the town. Militants of the League (including a regional councillor, two provincial councillors and three presidents of the administrative districts) were accused by a group of anti-racist associations. Main reasoning/argumentation: The six defendants were sentenced to a six-months jail term each for incitement to racial hatred, to moral damages of EUR 35,000 to five members of the local Sinti community, of EUR 10,000 to Opera Nomadi, and to pay EUR 4000 as legal fees to each of the four lawyers representing the various associations. In addition, the court banned the defendants from participating in political campaigns during political and administrative elections for a period of three years. The latter was an additional sanction, not requested by the public prosecutor and was suspended conditionally for five years as the main sanction. Key issues (concepts, interpretations) clarified by the case: The ruling upheld that the association Opera Nomadi had a legitimate interest in the case and assigned it redress for moral damages, even though its members are predominantly non-Roma/Sinti. The ruling reiterated interpretations of the Court of Cassation that incitement to racial hatred and racist propaganda cannot be considered as legitimate manifestations of freedom of opinion and speech because they violate the constitutionally protected principle of the dignity of the person. Results and most important consequences, implications of the case: The sentence provoked fierce attacks not only against the chief public prosecutor in particular and the judiciary as a whole, but also against the criminal law provision that punishes incitement to racial hatred and which made the prosecution possible. This law was modified early in January 2006, making it more lenient. The reduction of the original penal sanctions against racist propaganda and the spreading of ideas based on racial superiority is based on the consideration that these are crimes of opinion. This case is innovative because it rejected the claim by the defence that the campaign to drive the Sinti away from Verona was a legitimate political activity of a legal political party. The sentence does not make any reference to the equal treatment directive. It draws entirely from criminal law provisions and other international instruments against racial discrimination and no references to it have emerged so far in other proceedings. Moreover, the sentence contains ample legal, sociological, cultural, political and historical analysis of racism, xenophobia, nationalism etc. with direct bibliographical references to prominent studies on racism at national and international levels.

[FRA database]

Italy / Suprema Corte di Cassazione- Sentence nr. n.9381/2006

Inventory No. CASE 88 1

Deciding body [Supreme Court of Cassation]

Date Date of decision: 20.01.2006

Deciding Body National court / tribunal

Topic Hate speech

Keywords Legal finding, court decision, Italy, Racism and xenophobia, Racial hatred

Abstract Key facts of the case: Appeal against the aggravating circumstance in a decision of the Court of Appeal of Trieste, which upheld a previous ruling in a case involving a man who insulted a 6-year old child in public by shouting at her: 'Go away from here, dirty nigger'. The defendant claimed that there was no discriminatory intent nor racial hatred behind the insult. Rather it was due to the unfair treatment he received from the residents of the district, including the little girl's father. Main reasoning/argumentation: The court confirmed discriminatory intent or racial hatred as an aggravating circumstance in the case, arguing that not only is the word 'nigger' considered as negative racial qualification, but also that the adjective 'dirty' only reinforces the intent to induce sense of inferiority in the little girl. In support of the shared sense of negativity of the expression 'dirty nigger', the sentence cites the fact that same expression is used frequently by football fans to offend black players from rival club sides. Key issues (concepts, interpretations) clarified by the case: In refusing the respondent's claim that he had no discriminatory intent, the sentence makes reference to the definition of racial discrimination contained in article 1 of the New York Convention of 7th March 1996, highlighting the alternative between 'intent' or 'effect' contained in the definition. It upholds the previous decisions, saying that the expression is always a racist insult, contrary to a ruling by another section of the same court (sentence nr. 44295/2005) which stated that the incriminated expression does not always constitute an aggravating circumstance as it is not always an expression of hate. Results and most important consequences, implications of the case: The court confirmed the sentence issued by the Court of Appeal, that had condemned the man to pay EUR 1200 € and to compensate the plaintiff for moral damages. It reverses a previous ruling on same topic in a different case which did not consider racial hatred as an aggravating circumstance. The sentence deals with a very common form of racism: racial insults which, as clearly pointed out in the sentence, are quite common in sport events, particularly in football matches where there are black players. The ruling a few months before this, which claimed that 'dirty nigger' is not always an expression of hate but rather 'a generic manifestation of exclusion' was widely criticised. No reference is made to the Racial Equality Directive nor to the transposition decree.

[FRA Database]

Italy

Criminal law

Offence	Source	Scope	Sanction	Relevant Jurisprudence	Remarks
Spread of ideas rooted in racial hatred or superiority: incitement to commit or the commission of discriminatory acts of racial, ethnic, national or religious reasons.	Section 3 (1) a of Act n°654 of 1975, as amended by Act n° 205 of 25 June 1993		Imprisonment of up to 3 years. Additional penalties: a) unpaid community service ; b) temporary prohibition from taking part in election campaigns ; c) ban on attending sports events.		Thus amended in 1993, when a more precise distinction was drawn between "discriminatory acts" and "violents acts or provocation" and additional penalties were introduced.
Incitement to commit or the commission of violent acts or provocation for racial, ethnic, national or religious reasons.	Section 3 (1) b of Act n°654 of 1975, as amended by Act n° 205 of 25 June 1993		Imprisonment of up to 4 years. Additional penalties: a) unpaid community service; b) temporary prohibition from taking part in election campaigns; c) ban on attending sports events.	Court of Cassation 26 January 1997: where incitement has taken place, it is immaterial whether the persons targeted responded or not to that incitement.	Thus amended in 1993, when a more precise distinction was drawn between "discriminatory acts" and "violents acts or provocation" and additional penalties were introduced.

<p>Association, organisation, group or movement, the purpose of which is incitement to racial discrimination or hatred.</p>	<p>Section 3 (2) of Act n°654 of 1975, as amended by Act n° 205 of 25 June 1993</p>	<p>The mere participation in, or giving of assistance to, an association or organisation of this kind is punishable; the penalty is aggravated for those who promote or act as leaders of such an organisation or group.</p>	<p>Prison. Additional penalties: a) unpaid community service ; b) temporary prohibition from taking part in election campaigns ; c) ban on attending sports events ; d) dissolution of the association and confiscation of its property (Section 7 of Act n°205 of 1993.</p>	<p>Court of Cassation 10 January 2002: the limits set by the provisions on freedom of expression are constitutionally justified; it is an offence characterised by a specific intent ("dolo specifico"), namely the will to violate, and an awareness of violating, human dignity on the grounds of racial or ethnic or religious characteristics (see also Court of Cassation 24 November 1999).</p>	<p>Amended in 1993: the bas has been widened to include groups and movements and a distinction is drawn between mere participation or assistance and promoting or running such groups, etc.</p>
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[ECRI, Italy – General overview, “Legal measures to combat racism and intolerance in the member States of the Council of Europe”, Situation as of 31 December 2004, pp. 12-13]

Italy

Court of Cassation: <http://www.cortedicassazione.it/>

The screenshot shows the homepage of the Court of Cassation. The header includes the logo and the name 'Corte Suprema di Cassazione'. A navigation menu on the left lists various sections: Home Page, Uffici Centrali 275, La Corte di Cassazione, Consiglio direttivo, Banche Dati, Rifessioni del Primo Presidente e Statistiche, Edifici e Riferimenti, Elezioni e Referendum, Eventi Convegni Seminari, and Altra riservata ai Magistrati. The main content area features 'Eventi Convegni Seminari' with dates and topics like 'La tutela collettiva risarcitoria: il modello italiano di class action' and 'Lo statuto penale dell'impresa tra pubblico e privato'. Below this is a section for 'Accesso diretto alle Banche Dati' with links to 'Prcedimenti Civil', 'Prcedimenti Penal', 'Servizio Novità', 'Rivista in Internet e Biblioteca', 'Prcedimenti Civil', 'Prcedimenti Penal', 'Servizio Novità', 'Rivista in Internet e Biblioteca', 'Banca Dati Cassa Forens', and 'Banca Dati Cassa Forens'. The footer mentions the site is managed by the C.F.D. of the Court of Cassation and the Service Novità of the Office of the Registrar.

Judiciary organization: <http://www.giustizia.it/giustizia.it/homepage.wp>

The screenshot shows the homepage of the Ministry of Justice. The header includes the logo and the name 'Ministero della Giustizia'. A search bar is present at the top. The main content area is divided into several sections: 'Comunicati stampa' with news items, 'Il Ministero informa' with updates, 'Schede pratiche' with service information, and 'Itinerari a tema' with thematic guides. There are also sections for 'Strumenti' and 'Riferimenti'. The footer includes accessibility and privacy information.

Public Policies

Third report on Italy

Adopted on 16 December 2005

Strasbourg, 16 May 2006



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

such as ethnic origin or religion is subject to specific data protection safeguards and that the debate on the use of this type of data as a tool for combating racial discrimination is only just starting in Italy. ECRI understands that monitoring by nationality reflects a situation where most members of minority groups are non-citizens. It stresses however, that there are members of minority groups who are Italian citizens and that their number is bound to increase rapidly. There is therefore a need to consider ways of adapting the systems for monitoring the situation of minority groups to these changing circumstances.

83. The Italian authorities do not systematically collect data concerning the implementation of existing criminal, civil and administrative law provisions against racism and racial discrimination. ECRI has been informed, however, that the Ministry of Justice and UNAR are collaborating in order to improve collection of this type of data as concerns the criminal justice system.

Recommendations :

84. ECRI recommends that the Italian authorities improve their systems for monitoring the situation of minority groups by collecting relevant information broken down according to categories such as ethnic origin, language, religion and nationality in different areas of policy and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.
85. ECRI recommends that the Italian authorities collect readily available and accurate data on the implementation of the criminal, civil and administrative law provisions in force against racism and racial discrimination. This data should cover the number and nature of the complaints filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded.

II. SPECIFIC ISSUES

Use of racist and xenophobic discourse in politics

86. In its second report, ECRI expressed concern at the widespread use made of racist and xenophobic discourse by the exponents of certain political parties in Italy. It noted that members of the Northern League (*Lega Nord*) had been particularly active in resorting to this type of discourse, although members of other parties had also sometimes made use of xenophobic or otherwise intolerant discourse. ECRI notes with regret that since then, some members of the Northern League have intensified the use of racist and xenophobic discourse in the political arena. Although locally-elected representatives of this party have been particularly vocal in this respect, representatives exercising important political functions at national level have also resorted to racist and xenophobic discourse. Such discourse has continued to target essentially non-EU immigrants, but also other members of minority groups, such as Roma and Sinti. In addition, since ECRI's second report, Muslims have increasingly been the target of political racist and xenophobic discourse. In some cases, this type of discourse has consisted in generalisations concerning these minority groups or in their humiliating and degrading characterisation, even taking the form of propaganda aimed at holding non-citizens, Roma, Sinti, Muslims and other minority groups collectively responsible for a deterioration in public security in Italy. Racist and xenophobic discourse has gone as far as presenting the

members of these groups as a threat to public health and the preservation of national or local identity, resulting in some cases in incitement to discrimination, violence or hatred towards them.

87. In its second report, ECRI recommended that the Italian authorities ensure that the criminal law provisions in force against incitement to discrimination and violence on racial, ethnic, national or religious grounds are fully applied. ECRI notes that in December 2004, the first instance Court of Verona found six local members of the Northern League guilty of incitement to racial hatred in connection with a campaign organised in order to send a group of Sinti away from a local temporary settlement. These persons were sentenced to six month jail terms, the payment of 45 000 Euros for moral damages and a three-year suspended ban from participating in campaigns and running for national and local elections.
88. In its second report, ECRI recommended that, in addition to ensuring an effective implementation of the existing criminal law provisions against incitement to racial hatred, the Italian authorities adopt legal provisions targeting specifically the use of racist and xenophobic discourse by exponents of political parties. ECRI notes that no such provisions have been adopted since ECRI's second report.
89. In its second report, ECRI expressed concern that the influence exercised by the Northern League, a part of the government coalition, on the whole political arena may favour the adoption of policies and practices not always respectful of human rights and of the principle of equal treatment, which ECRI stands to protect. As illustrated by other parts of this report, ECRI considers that, since then, these concerns have become more pressing.

Recommendations :

90. ECRI reiterates that political parties must resist the temptation to approach issues relating to non-EU citizens and members of other minority groups in a negative fashion and should instead emphasise the positive contribution made by different minority groups to Italian society, economy and culture. Political parties should also take a firm stand against any forms of racism, discrimination and xenophobia. ECRI reiterates its recommendation that an annual debate be instigated in Parliament on the subject of racism and intolerance faced by members of minority groups.
91. ECRI strongly recommends that the Italian authorities take steps to counter the use of racist and xenophobic discourse in politics. To this end it recalls, in this particular context, its recommendations formulated above concerning the need to ensure an effective implementation of the existing legislation against incitement to racial discrimination and violence³⁷. In addition, ECRI calls on the Italian authorities to adopt *ad hoc* legal provisions targeting specifically the use of racist and xenophobic discourse by exponents of political parties, including, for instance, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts. In this respect, ECRI draws the attention of the Italian

³⁷ See above, "Criminal law provisions".

³⁸ ECRI General Policy Recommendation N°7, paragraph 16 (and paragraph 36 of the Explanatory Memorandum).



ITALY: THE UNAR EDUCATIONAL CAMPAIGN IN THE SCHOOLS

The National Office against Racial Discrimination (UNAR) in collaboration with the General Direction for the Student within the Ministry of Education has promoted a competition for the school-year 2004/2005 with the title *“Proposals and practices to deal with different culture in the schools life”*.

This competition is aimed at involving both the students of the primary and secondary schools in Italy and the teachers that will have the possibility to realise “Intercultural projects” for the promotion of equal treatment and removal of all racial discrimination behaviours. The competition wants to realize the sensibility, originality, confrontation and intercultural dialogue, through the language of the draw, cinema and video, theatre and writing, and the planning elaboration. An evaluation Commission composed by member of the UNAR and by the General Direction for the Student will evaluate and select two awards for the section A (“Intercultural projects” only for the teachers) and six awards for the sections B-C-D (Art and Image, Writing, Audio-visual only for the students).

In occasion of the Human rights international day, the 10th of December, the competition will end giving the prizes to the winners. The first classify school for the section A and the first classify for the primary and secondary schools for the other 3 sections will get € 3.000. The second classify school for the section A and the second classify for the primary and secondary schools for the other 3 sections will get € 2.000. The amount of the prize will be used to promote several initiative to welcome and integrate the students with another ethnic background different from the Italian one. All the schools that have participated to the competition will receive an information kit, with a DVD a book and a poster, about UNAR’s activities and anti-discrimination legislation.

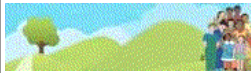
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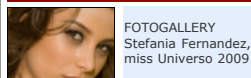
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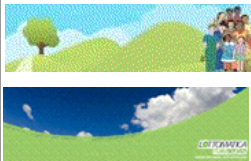
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[Indietro]

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ILJA RICHARD PAVONE*

Italian Experiences in Combating Hate Crimes and Hate Speech in Light of Recent Violence by and Against Roma**

Abstract. This paper provides an overview of national efforts to combat racism, xenophobia and intolerance in the Italian legal framework. It looks specifically at Law n. 94/2009 on public security and its compliance with European and international legal standards. Specifically, the study is devoted to the key issue of the different treatment of Roma and Sinti in Italy due to their legal status.

Keywords: xenophobia; racism; human rights; Roma; Sinti; Law n. 94/2009 on public security; European law; international law

1. Introduction

Public opinion regarding the presence of immigrants in the country has recently been fed with media reports on atrocious crimes committed by foreigners, exacerbating feelings of insecurity, fear, and even xenophobia among Italians.¹ Recently, Italy registered several episodes of xenophobia and racism: in January 2010 a racist attack on African migrant workers in the Southern region of Calabria by local gangs brought to the surface the Italian society tensions that had been simmering for some time. It's an issue of strict actuality because Italy has one of the fastest growing immigrant populations in Europe, with immigrants now reaching about 7 percent of the population.²

The EU Special Barometer of July 2009 reported that Italy scored some of the lowest results among the EU member States, as regards “the level of comfort with person from different ethnic origin as a neighbour and especially as regards the comfort with Roma neighbour”.

Another special country-based survey of the same EU institution reported a higher than the EU average (76% and 62% respectively) percentage of interviewees in Italy who thought that discrimination on the basis of ethnic origin was “very or fairly widespread”.

Apart the issue of racial discrimination and xenophobia against immigrants, there is the problem of Roma and Sinti in Italy.³ Usually known as Gypsies (a misnomer, derived

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¹ See Beutin, R. et al.: Reassessing the Link between Public Perception and Migration Policy. *European Journal of Migration and Law*, 9 (2007) 4, 389–418.

² See Caritas Europe: Annual Activity Report Edition, 2009.

³ In this paper we will use the term Roma and Sinti—instead of “nomads” as these people are often quoted in Italian documents—in line with UN and OSCE language. The terms “Roma” and “Sinti” are authentic proper names meaning “person”. Those of eastern European descent are called “Roma” and those of central European origin are referred to as “Sinti”. On the other hand, the foreign term “gypsy” is regarded by most minority members as discriminatory. For further reading see Fraser,

from an early legend about Egyptian origins) defy the conventional definition of a population: they have no nation-state, speak different languages, belong to many religions and comprise a mosaic of socially and culturally divergent groups separated by strict rules of endogamy.

Their total amount is 150,000. They include (i) Italian citizens, as well as citizens of both (ii) EU and (iii) non-EU countries. Groups of Roma and Sinti migrated to Italy during different periods, beginning in the 14th century. In the 1980s and 1990s, the conflicts in the former Yugoslavia caused Roma to flee to other countries, including Italy. In the 1990s and the first decade of this century, a large number of Roma arrived from the States of Central and Eastern Europe. The most recent influx of Roma and Sinti communities has come mainly from Romania: these movements intensified since Romania joined the EU in 2007.⁴

In the Italian legislation, nomads are not considered as a minority group and their legal status differs: after Romania's accession to the EU in January 2007, the Romanian Roma became EU citizens and gained the right to free movement within the European Union, while Roma from Western Balkans are non-EU nationals. Many of them have no documents providing their identity or places of origin rendering them *de facto* stateless (with particular negative consequences for children). They are technically subject to Italian immigration legislation.⁵

Although they do not have a large presence in Italy, Romanian Roma migrants have attracted considerable public attention and negative media coverage, due to growing prejudice and the link between Roma and Sinti migrants, criminality and threats to public security. In November 2007, the murder of an Italian woman, by a Romanian Roma, was highly publicized on the Italian media and led to a series of attacks on Roma, culminating in a mob burning down a Roma settlement in Ponticelli (in the suburbs of Naples) in May 2008 after a young Roma woman living in the settlement was accused of kidnapping a baby from a local couple. The Italian government responded to these events introducing a number of measures affecting specifically the Roma and Sinti population in Italy.

2. The Italian response to violence committed by Roma

Since May 2008, a number of government decisions have been issued concerning the Roma and Sinti communities, or "nomads", as they are commonly referred to in Italy. The Prime Minister issued a decree declaring a "state of emergency" in relation to settlements of

A. M.: *The Gypsies*. Oxford, 1995; Hancock, I.: *Gypsy History in Germany and Neighbouring Lands: A Chronology Leading to the Holocaust and Beyond*. In Crowe, D. M.–Kolsti, J. (eds): *The Gypsies of Eastern Europe*. Armonk (NY), 1991; Kalaydjieva, L. et al.: *A newly discovered founder population: the Roma/Gypsies*. *Bioessays*, 27 (2005) 10, 1084–1094; Liegeois, J. P.: *Roma/Gypsies: A European Minority*. London, 1995.

⁴ See Ban, C.: *Economic Transnationalism and its Ambiguities: The Case of Romanian Migration to Italy*. *International Migration*, September 2009.

⁵ The Committee on the Elimination of Racial Discrimination (CERD), after examining the periodical report submitted by Italy according to Art. 9 of the UN Convention on the Elimination of all Forms of Racial Discrimination of 1965, *warned the Italian institutions that they must recognise the Roma as an official minority and adopt policies aimed at addressing their needs*. The CERD "recalling its general recommendation N° 27 on discrimination against Roma, recommends that the State Party adopt and implement a comprehensive national policy as well as legislation regarding Roma and Sinti with a view to recognizing them as a national minority and protecting and promoting their languages and culture" (para. 12).

“nomad” communities in some regions⁶ (measure based on Law n. 225/1992 which deals with emergency situations arising from severe natural disasters⁷) and three “ordinances” introducing special and exceptional measures concerning “nomad settlements” in the some regions. The state of emergency lasted until 31 May 2009. Following this decree, the prime minister issued on 30 May 2008 three ‘ordinances’ introducing special and exceptional measures concerning ‘nomad settlements’ in the regions of Campania, Lazio and Lombardia and which appointed the prefects of Rome, Milan and Naples as ‘delegated commissioners’ with powers to carry out ‘all the interventions needed to overcome the state of emergency’ in relation to Roma and Sinti settlements in those regions.⁸ Their specific powers include the monitoring of formal and informal camps, identification and census of the people, including minors, who are present there, the expulsion and removal of persons with irregular status, measures aimed at clearing “camps for nomads” and evicting their inhabitants; as well as the opening of new “camps for nomads”.

The government stated that the Ordinances were adopted in order to speed up the administrative procedures, including agreements to build new camps as well as to identify the due additional economic resources from within the State’s Budget, in order to grant *ad hoc* reception measures, build new structures and improve those already existing. The Ordinances also entail specific support measures to promote the integration of people in the settlements through comprehensive projects having an integrated nature aimed at facilitating the school enrolment and the search for employment.

Following the issuing of the ordinances, the authorities initiated a census including the collection and use of personal data of nomads (fingerprints of minors).⁹ These measures were justified as being necessary to provide support to individuals in camps and to prevent further degradation of their living conditions, as well as to identify people involved in criminal activities. With regard to minors involved in begging and stealing, the stated aim was to identify them and those forcing them into criminal activities. Once such data are collected, the plan was to dismantle criminal networks, put a stop to exploitation of children, assist children with their school registration, and provide them with adequate health care. Harsh criticisms to these policies adopted and implemented by the Italian Government have

⁶ Italy, Decree of the President of the Council of Ministers (21/05/2008). “Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia” [Decree of the President of the Council of Ministers of 21 May 2008. Declaration of a state of emergency in relation to settlements of nomad communities in the territory of the regions of Campania, Lazio and Lombardia]. Published in the *Official Gazette* No 122 of 26 May 2009.

⁷ Law no. 225 of 24 February 1992, “Institution of the National service of the civil protection”.

⁸ ‘Disposizioni urgenti di protezione civile per fronteggiare lo stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio della regione Lazio, della regione Lombardia e della regione Campania’ [*Urgent provisions of civil protection in order to face the state of emergency in relation to settlements of nomad communities for the regions of Campania*] (Ordinance No. 3678).

⁹ The special Commissioners are allowed to derogate from a number of laws concerning a wide spectrum of issues affecting constitutional prerogatives, for instance the right to be informed when subjected to administrative procedures such as photographing, fingerprinting or the gathering of anthropometric data.

been made at European level.¹⁰ In particular, some scholars argued a violation of Article 6 paragraph 1 of the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data,¹¹ which states: "Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, *may not be processed automatically unless domestic law provides appropriate safeguards*. The same shall apply to personal data relating to criminal convictions." The Ordinances would not provide the "appropriate safeguards" requested by the Framework Convention.

On 17 July 2008, the Ministry of Interior issued specific guidelines concerning the application of the orders on "emergency" concerning nomads' camps. The aim of these guidelines is to end the situation of degradation and make conditions liveable for those Roma and Sinti communities living in authorized or illegal settlements by providing humanitarian assistance, improving their access to health care, education and social assistance (with particular emphasis to children and schooling).

The Police conducted forced evictions and dismantling of several illegal camps that caused high rates of criminality in the surrounding areas. The Mayor of Rome, in accordance with the Plan for Nomads issued in 2009 (relocation of many camps realized by settling the people concerned into "authorized villages"¹²) proceeded on 15 February 2010 to the definitive closure of the Nomad Camp Casilino 900.

3. The Italian Legal Framework

The principle of non-discrimination is one of the main pillars of the Italian Constitution (Art. 3) upon which the domestic legislative system is based and enforced, particularly by the domestic Courts.¹³ The presence of this article in the Constitution gives equality and

¹⁰ Office for Democratic Institution and Human Rights, High Commissioner on National Minorities, Assessment of the human rights situation of Roma and Sinti in Italy, Report of fact-finding mission to Milan, Naples and Rome on 20–26 July 2008, 7.

¹¹ CETS No.: 108. The Convention was opened for signature in Strasbourg on 28 January 1981 and entered into force on 1 October 1985. Italy ratified the Convention with Law 21 febbraio 1989, n. 98, published in the Official Gazette *n. 066 SUPPL. ORD. of 20 March 1989*.

¹² Vitale, T.: *Politique des évictions. Une approche pragmatique*. In: Cantelli, F.–Pattaroni, L.–Roca, M.–Stavo-Debaugé, J. (sous la direction de): *Sensibilités pragmatiques. Enquête sur l'action publique*. Bruxelles, 2009, 71–92.

¹³ The principle of equality and non-discrimination is included in all human rights treaties and declarations. Non-discrimination is both a human right of its own and a constitutive element of all human rights. Non-discrimination rules are to be found at international, supranational (EU) and national level. The United Nations (UN), which was created in the aftermath of the horrors of racism, fascism and National Socialism, has since its very beginning placed the battle against discrimination in the forefront of its human rights activities. Indeed, one of the purposes of the UN, as they are enunciated in the UN Charter, is to promote and encourage the respect for human rights and fundamental freedoms for all "without distinction as to race, sex, language, or religion". By now, the principle of non-discrimination has undoubtedly acquired the status of a fundamental rule of international human rights law. It has been expressly included in most international human rights documents and is implicitly embedded in almost all individual human rights provisions, which are usually worded in universal language, such as "everyone has the right to education" or "no one shall be subjected to arbitrary arrest, detention or exile". It is widely held that the principle of non-discrimination is a principle of customary international law and, at least as regards discrimination on

non-discrimination principles the status of paramount values. Moreover Art. 3 provides a benchmark against which subsequent national and regional laws and regulations can be evaluated when the suspicion of discriminatory provisions exists. In this field, the action of judges is important, as on the basis of this national legislation has to be interpreted and can even be declared unconstitutional and disapplied.

The Criminal Code of Italy contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. In particular, Section 3(1)(b) of Law 654/1975, as amended by Section 3 of the Law 205/1993 (which defines racial discrimination as both a crime in itself and as an aggravating factor in other criminal acts) introduces a general aggravating circumstance for all offences committed with a view to discrimination on racial, ethnic, national or religious ground or in order to help organizations with such purposes.

The Italian legal framework against racial discrimination has been reinforced by Legislative Decree No. 215 of 9 July 2003 which foreseen the creation of the National Office Against Racial Discrimination (UNAR). UNAR was established by Decree of the President of Council of Ministers (PCM) of 11 December 2003,¹⁴ in accordance with Art. 13 of Council Directive 2000/43/EC enshrining the principle of equal treatment of all people regardless of their race or ethnic origin.¹⁵

UNAR carries out in an autonomous and independent way activity of promotion against any form of racism and intolerance. In particular, it provides judicial assistance, it carries out inquiries and it disseminates informations and knowledge on this topic. UNAR promoted the establishment of Agreement Protocols with lawyers' associations available to offer pro-bono juridical assistance to alleged victims of racial or ethnic discrimination.

Very important in this context is the adoption of Law n. 101 of 6 June 2008 which provides for an explicit shift of the burden of proof from the complainant to the respondent (in civil and administrative law) in cases of "prima facie discrimination".

4. Law n. 94/2009 on Public Security

Recently, Law N° 94 of 15 July 2009 titled "Regulations about public security", presents considerable amendments in matters concerning immigration.¹⁶ The most important amendment is the introduction of the new crime of "illegal entry and sojourn in the territory of the State" (Article 1, subpara. 16), entrusted to the competence of the Justice of Peace, which punishes the behaviour of a foreigner who enters or remains in the State, infringing

the basis of sex, race and ethnic origin, that it also has a status of *jus cogens*. See Fredman, S.: *Human Rights Transformed: Positive Rights and Positive Duties*. Oxford, 2008, 175–180; Janis, M. W.: *International Law*. New York, 2009, 65–67.

¹⁴ Italy / Decreto del Presidente del Consiglio dei Ministri (11.12.2003).

¹⁵ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin–June, 29th 2000. O.J. L 180, 19 July 2000, 22–26. Article 19 of the Consolidated Version of the Treaty on the Functioning of the European Union, as amended in Lisbon, provides: "Without prejudice to the provisions of this treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".

¹⁶ Published in the Official Journal (*Gazzetta Ufficiale*) no. 170, on 24 July 2009.

the regulations of the consolidating legislation on immigration and Law N° 68/2007 (regarding short-term stays) with a fine.¹⁷

The offence is accompanied by a series of additional sanctions: expulsion, discontinuance of the crime once the “irregular” foreigner is outside Italian territory, the possibility of expelling the “illegal immigrant” even when there is no authorisation. The legal measures contained in this Law with other laws approved by the Italian Government and Parliament in 2008, becomes part of a whole “Security Package”, that is, a group of provisions addressing security concerns and issues with a variety of different legal means. In particular, the provisions of Law no. 94 affect several laws already in effect, amending—among others—the Criminal Code, the Code of Criminal Procedure, the Highway Code, the Immigration Law. Adoption of Law no. 94/2009 represents a comprehensive legal action based on the necessity to deal with relevant—and quite heterogeneous—social issues, furthering protection for the weakest members of society—women and children—the fight against illegal immigration. The Law was supported by 157 votes in favour and 124 against and it was particularly opposed by left-wing parties within the Parliament and heavily criticized by the legal doctrine and the public opinion, due to its alleged discriminatory and racial contents.¹⁸

Among the most important rules introduced by Law no. 94/2009, are worth noting, at the outset, some legal measures against illegal immigrants in the Italian territory whose *rationale* would lie in the enhancement of the fight against illegal immigration. The most relevant measure has been the introduction in the Italian Criminal Code of a provision making illegal immigration a crime. Indeed, Art. 1, s.16, lett. *a*) of Law no. 94/2009 amended Art. 10 *bis* of Legislative Decree 286/1998 (Immigration Law), qualifying as a penal offence—punished with a fine from 5 000 to 10 000 Euros—the entrance and stay in the State territory of a foreign national, performed in violation of the Italian Immigration Law’s provisions on lawful entry and stay requirements. This provision is the most criticized of the whole Law and the Italian Constitutional Court has been already called upon to judge on its constitutionality. Indeed, as of today the Tribunals of Pescara, Torino, Bologna, Agrigento and Trento have challenged the Law before the Constitutional Court claiming a contrast with Art. 10 Cost.—affirming that International Law principles are recognized in the Italian legal system,—since International Law provides that illegal entrance in a State must be subject to administrative sanctions and not criminal ones; with Art. 3 Const.—the equality clause, implying also a principle of reasonableness of the State action—, since Law no. 94/2009 would lack any legal justification, in light of the fact that in the Italian legal system Criminal sanctions must be used only as *extrema ratio*; as far as the equality principle is concerned, the Law would also introduce an unreasonable difference between the treatment of illegal immigrants and of those already living in Italy; with Art. 2 Const., which establishes that Italy must guarantee fundamental human rights.

The newly introduced Art. 61, s.1, num. 11*bis* of the Italian Criminal Code (introduced by Art. 1, s.1, Law no. 94 and applicable to all crimes in the Criminal Code) provides that a sentence will be increased in case a crime is committed by an illegal immigrant on the

¹⁷ For a comment on this Law, see Hammarberg, T.: It is wrong to criminalize migration. *European Journal of Migration and Law*, 11 (2009) 4, 383–385.

¹⁸ For an analysis of the reasons of the outcomes of the Italian mechanisms of immigration controls see Finotelli, C.—Sciortino, G.: The Importance of Being Southern: The Making of Policies of Immigration Control in Italy. *European Journal of Migration and Law*, 11 (2009) 2, 119–138.

Italian soil. This rule applies only with regard to extra EU citizen and stateless people. Other restrictive regulations are provided for those foreigners who want to get married in Italy: indeed, the original formulation of Art. 116 of the Italian Civil Code, titled “Marriage with a foreigner within the State”, requested that the foreigner, who wanted to get married in Italy—irrespective of getting married with an Italian citizen or a foreign national—had to show to the Italian public officer for the registry and marriage office, that no legal obstacles to the marriage were present, and that all other documents and requirements requested also to Italian citizens were present (e.g. publication of the banns). The new text of Art. 116 of the Civil Code, as modified by Art. 1 s.15 of Law no. 94/2009, obliges a foreigner who wants to get married in Italy to both show that no legal obstacles are present, and to provide for a certification demonstrating the legitimacy of his/her presence in the national territory. Moreover, foreign and stateless spouses, applying for Italian citizenship, must show presence on the Italian territory for a period of at least 2 years (by way of difference with the six months’ residence period formerly required) after the marriage. Citizenship will be granted only if the marriage is still valid and the couple is not separated. More restrictive regulations has been set out for special crimes directly affecting a natural person and in particular those affecting women and children. Among the most relevant, it is worth citing the provision qualifying as a crime (and no longer as a mere “offence”) the employment of children for begging, and punishing it with a three years’ imprisonment.

The conviction for this crime, as well as the one for crimes of enslavement, female genital mutilation or sexual assault committed by a parent or by the legal curator, brings with it the automatic loss and the perpetual disqualification from guardianship. The purpose of these provisions is to enhance children’s protection (in particular Roma and Sinti minors) and answer the increasing social concern deriving from crimes committed in schools. The means chosen to answer these concerns are the increase of punishment, provided mainly with the introduction of a common aggravating circumstance (Art. 61, s.1, n. 11^{ter} of the Italian Criminal Code), applicable to those committing a crime against a minor near or inside schools or other educational institutions. The same aggravating circumstance applies also for group sexual assault crimes committed near a school against an adult.

5. Compliance of Italy with Human Rights Standards

Italy is a party to the following international treaties that prohibit racial and ethnic discrimination and set standards for the treatment of aliens, refugees and asylum seekers: the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the International Convention on the Rights of Children (CRC) and the Convention relating to the Status of Refugees (“1951 Refugee Convention”).

Italy is not a party to the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the European Convention on Nationality and the United Nations 1964 Convention on the Reduction of Statelessness, the three key instruments that protect the rights of migrants and stateless persons.

The CMW, adopted by the UN General Assembly with resolution 45/158 of 18 December 1990 and in force since 1 July 2003, points out that “the human problems involved in migration are even more serious in the case of irregular migration” (Preamble). It therefore encourages “appropriate action... in order to prevent and eliminate clandestine

movements and trafficking in migrant workers” (ib.). It is worth noting that the measures it deems should be taken, within the jurisdiction of each State concerned, are not directed to irregular migrants, but to those who cause the phenomenon. It in fact calls for “appropriate measures against the dissemination of misleading information relating to emigration and immigration” and the imposition of “effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation” (Art. 68). It instead urges signatories to assure the protection of the fundamental human rights of irregular migrants (Preamble). Indeed, it affirms that “every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law” (Art. 24) and that appropriate measures should be taken “to ensure that migrant workers are not deprived of any rights ... by reason of any irregularity in their stay or employment”.¹⁹

The new Italian law, on the contrary, has tightened the norms related to the irregular status of foreigners, and has transformed irregular migration into a criminal offence instead of the administrative breach that it used to be. This change has significant repercussions in the concrete life of the migrant and his family. To start with, it will be difficult for the irregular migrant to find lodging, since whoever rents an apartment to people in his condition runs the risk of imprisonment. It will be difficult if not impossible for him to send remittances back home through money transfer services, since this requires the presentation of a regular permit to stay in the country. This is a serious concern for the welfare of the families who have stayed behind in the home country and also deprives their countries of origin of that income that their poor economies badly need. Law n. 94 does not seem to be “family-friendly”. Since all legal acts regarding the civil status requires the presentation of a regular permit to stay, an irregular migrant cannot be registered as a parent of a child who may even have a legal status in Italy. The child will therefore have to be identified as one with unknown parent.

At regional level, Italy is also a party to the Council of Europe’s Convention on Human Rights and Fundamental Freedoms (ECHR)²⁰ and the European Social Charter, whose

¹⁹ For an overview on the implementation of the Convention see Abimourched, R.–Martin, S.: Migrant Rights: International Law and National Action. *International Migration*, 47 (2009) 5, 115–138.

²⁰ The European Court of Human Rights has recently developed its jurisprudence related to racial discrimination in highly significant ways. The Court has rightly been applauded for abandoning its requirement that racial discrimination be proved “beyond reasonable doubt” and for endorsing the concept of indirect discrimination, allowing it, in the last five years, to begin to find states from “Eastern Europe” in violation of the Convention for having discriminated against especially Roma applicants. While welcome, these new developments should not detract from the need to continue asking difficult questions, including the following: why has it taken decades for the Court to start finding a violation of Article 14 on grounds of race? Why are cases, such as *Menson v. United Kingdom* concerning the slow reaction of the police in investigating the lethal attack of a black man, not found admissible? Can we expect the Court, created in a region which largely built itself upon colonialism, to generate mechanisms fit to tackle racism? In the past, judges themselves have provided the most virulent critique of the Court’s inability to tackle racism. Migrants still remain to benefit from their progressive stance in relation to Article 14 claims based on grounds of race. See Dembour, M.-B.: Still Silencing the Racism Suffered by Migrants. The Limits of Current Developments under Article 14 ECHR. *European Journal of Migration and Law*, 11 (2009) 3, 221–234.

preamble establishes the principle of non-discrimination and whose Art. 19 sets out obligations for the equal treatment of migrant workers.

At European level, Chapter III of the EU Charter on Human Rights (included in the Lisbon Treaty, entered into force on 1 December 2009) is devoted entirely to equality. Italy is likewise bound by European Union Directives, in particular European Union Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the “Racial Equality Directive”) and European Union Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of European Union Member States (the “Freedom of Movement Directive”).²¹

The Directive sets out common standards and procedures in the Member States for returning irregularly staying third country nationals (the Returns Directive). While its impact in terms of harmonising national legal frameworks can be questioned, from the Member States’ point of view the agreed standards will underpin their common efforts at removing a higher number of irregular immigrants. From the point of view of immigrants, it will mean longer pre-removal detention periods and a ban on re-entering legally the Union’s territory for the foreseeable future.²²

The Emergency Measures, described above in paragraph 2, according to some scholars, have led directly to the impermissible discriminatory treatment of Roma and Sinti by: (a) defining the very presence of the Roma and Sinti (called ‘Nomadi’ in the Emergency Measures) as grounds for a state of emergency, creating an intimidating, hostile, degrading environment; (b) directly discriminating against Roma and Sinti by mandating a compulsory census on the basis of their accommodation in camps for nomads created by the government; (c) allowing the creation of an ethnic database of Roma and Sinti without adequate safeguards; (d) allowing unlawful searches of the homes of Roma and Sinti; and (e) permitting destruction of Roma and Sinti settlements and effective evictions without provision for adequate alternate housing.²³

As part of the Emergency Measures, the Italian government has conducted an official census of Roma and Sinti, which has included a collection of fingerprints, photographs, information on ethnic background and religion, and other personal data. This ethnicity-specific census is in direct violation of ICCPR Art. 17 (guaranteeing the right to respect for family life), as well as ICCPR Art. 26 (the right to non-discrimination). Documentation carried out by non-governmental organizations indicate that many Roma and Sinti felt coerced into complying with this census, either because they felt they did not have any other choice, or because police and NGO census takers provided false information about the nature and purpose of the census to Roma and Sinti living in the camps.

²¹ For an overview of EU migration and non-discrimination policy see Peers, S.: Key Legislative Developments on Migration in the European Union. *European Journal of Migration and Law*, 9 (2007) 4, 451–456.

²² See Baldaccini, A.: The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Returns Directive. *European Journal of Migration and Law*, 11 (2009) 1, 1–17; Acosta, D.: The Good, the Bad and the Ugly in EU Migration Law: Is the European Parliament Becoming Bad and Ugly? (The Adoption of Directive 2008/15: The Returns Directive). *European Journal of Migration and Law*, 11 (2009) 1, 19–39.

²³ See e.g.: Discrimination against Roma in Italy worries UN rights experts. UN press release, <<http://www.un.org/apps/news/story.asp?NewsID=27373&Cr=Human>>

There are documented cases in which both Italian and non-Italian Roma and Sinti were subjected to the census under explicitly forceful and intimidating circumstances. For example, in the semiformal Camp Tor di Quinto-Baiardo and the formal Camp Tor de Cenci in Rome, where part of the census was conducted in July 2008, officials were reportedly aggressive and violent toward residents, including searching residents' homes using dogs and without a court order. The Italian government has not made clear what it will do with the sensitive information, including fingerprints and information on minors, collected in the database. In the course of implementation of the Emergency Measures, Roma and Sinti communities were subjected to unlawful searches. A number of their settlements were destroyed without advance notice, consultation, or respect for due process of law. The authorities have carried out evictions without providing assurances of adequate alternative accommodations. Several such raids took place in Milan and Turin in 2007. These forced evictions without remedy are in direct violation of Articles 2 and 17 of the ICCPR as well as Art. 11 of the ICESCR.

6. Conclusions

Building equal opportunities for Roma and Sinti minorities requires the establishment of human living conditions. National governments must make clear their political will and support for the promotion of these minorities through the implementation of adequate infrastructure projects. The United Nations and other institutions, such as the European Union, must also make a considerable contribution to such programmes. Members of the minority and their own organizations should be included, from the planning to the implementation of an infrastructure for such projects, to a far greater extent than has thus far been the case. Only if we systematically resist racism and discrimination will majority and minority groups be able to coexist peacefully, with equal rights in all countries of the world.

Certainly, States have the right to control their borders and make sure that it is not a porous entry for criminals, who may also take advantage of the misery and desperate conditions of would-be immigrants. However, justice and solidarity are not antonyms, they come hand in hand, just like public security and welcome. National common good, in any case, has to be considered in the context of the universal common good.

As seen in previous paragraphs, Roma and Sinti contribute to create an atmosphere of insecurity among citizens living in the suburbs of cities like Rome, Milan and Naples. As such, States have a duty to take effective measures to guarantee public security of their citizens. National counter-crime strategies should, above all, seek to prevent acts of violence, robberies, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law.

While the complexity and magnitude of the challenges facing States and others in their efforts to balance public security issues and human rights can be significant, international human rights law is flexible enough to address them effectively. Effective public security measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States' duty to protect individuals within their jurisdiction. At the outset, it is important to highlight that the vast majority of counter-crime measures are adopted on the basis of ordinary legislation. In a limited set of exceptional national circumstances, some restrictions on the enjoyment of certain human

rights may be permissible.²⁴ These challenges are not insurmountable. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. These two types of restrictions are specifically conceived to provide States with the necessary flexibility to deal with exceptional circumstances, while at the same time—provided a number of conditions are fulfilled—complying with their obligations under international human rights law.

²⁴ See, Human Rights Committee, general comment N° 31, para. 6, and Siracusa Principles on the limitation and derogation of provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex).