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1. ESTABLISHMENT OF AN INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTION

KEY WORDS: broad mandate, effectiveness, fragmentation, inclusive process, independence, National Human Rights Institution, obligation, ombudspersons, Paris Principles, participatory process, sectoralization, status A, technical advice, transparency, voluntary pledge

1. Italy is one of the States (www.nhri.net) still lacking an independent national institution for human rights (NHRI) and still not fulfilling Paris Principles and the Resolution 48/134 endorsed by the UN General Assembly on December 20, 1993, in addition the Resolution of the Council of Europe (97)11, of September 30, 1997 and all specific pertaining recommendations made by each UN treaty body that have examined the Italian context in the last recent years (CRC/C/15/Add198 of March 18, 2003; CESCR/ ITA/ 04 of November 26, 2004; CCPR/C/ITA/CO/05 of November 2, 2005, CAT/C/ITA/CO/4 of May 18, 2007 and last CERD/C/ITA/CO/15 of March 7, 2008).
2. In particular CERD has applied a special *follow up* procedure on this matter, requesting the Italian Government to provide information about advancements and implementation made within the year following the 2008 CERD Concluding Observations. Such information due in March 2009 was never made public and is still unknown.
3. With reference to the reasons for which Italy has an urgent need for a NHRI, independent and effective, we would like to recall some specific aspects tightly linked to the issue:
 - risk for proliferation and fragmentation of sectorial and local mechanisms;
 - lack for a coherent, integrated and effective strategy for human rights promotion and protection also with regard to a permanent preventive approach;
 - added value and advantage deriving from the experience and best practices of many other countries.
4. With reference to the political will of the Government to undertake the process to the establishment of a NHRI, even if there are important formal declarations made by the previous Prodi and the current Berlusconi Governments, upto now no real and concrete action has been implemented in such direction .
 - **On May 8th , 2007**, Prodi's Government, in the voluntary pledge for membership to the UN Human Rights Council, committed itself in front of the UN General Assembly¹ to "*create the National Independent Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms*".
 - **On December 10th , 2008**, on the 60th Anniversary of the Universal Declaration of Human Rights, the Italian Minister for Foreign Affairs, Mr. Frattini, formally announced a draft Bill for a NHRI prepared by the Government Berlusconi, which nobody has even had the opportunity to read, even if, in repeated occasions, it has been formally requested to be informed about it.
5. With reference to the Parliament, three Legislatures past during which many Draft Laws for the establishment of different types of National Commissions for Human Rights or Ombudspersons specific for some sectors (children, detainees, migrants) have only been proposed but have had no concrete follow up.

¹ Document A/61/863.

- **From 2004 to 2006**, during the XIV Legislature (from May 2001 to April 2006), Draft Bill no. 3300, "Istituzione della Commissione italiana per la promozione e la tutela dei diritti umani in attuazione alla Risoluzione n. 48/134 dell'Assemblea Generale delle Nazioni Unite del 20 dicembre 1993" (*Creation of the Italian Commission for the promotion and protection of human rights as per Resolution no. 48/134 UN General Assembly of December 20, 1993*)- first undersigner Senator Antonio Iovene and undersigned by other 28 senators- presented to the Senate in 2004, could not even start its legislative *iter* for discussion. Notwithstanding specific UN Recommendations (2.11.2005; 26.11.2004; 18.3.2003) and pressure on behalf of the civil society, it was not even assigned to the competent Commissions of the Parliament.
- **June 2006**, at the beginning of the XV Legislature (from April 2006 to April 2008), the Draft Bill with no. 247 was again presented to the Senate - first undersigner Sen. Antonio Iovene, undersigned by other 32 senators- and was assigned to the Constitutional Affairs Commission and Justice Commission of the Senate.
- **December 2006**, the Draft Bill was also presented to the Chamber of Deputies - first undersigner Hon. Tana de Zulueta. In December 5, 2006, the *Comitato*, and the *National Institutions Unit of the Office of the High Commissioner for Human Rights of the United Nations*, co-organized an International Workshop, held in Rome at the Chamber of Deputies, to which a UN experts delegation participated together with institutional representatives, parliamentarians, academic experts, media and representatives of the civil society and NGOs. Due to the strong impact of the workshop, the Draft Bill presented at the Chamber of Deputies was unified with the Draft Bill for an Ombudperson for the Rights of Detainees and of Persons Deprived of their Personal Liberty.
- **On April 5, 2007** the Chamber of Deputies approved Draft Bill no. 1463: "Commissione Nazionale per la promozione e la protezione dei diritti umani e la tutela dei diritti delle persone detenute o private della libertà personale" (*National Commission for the Promotion and Protection of Human Rights and the Safeguard of the Rights of Detainees and Persons Deprived of Their Personal Liberty*), resulting from the unification of Draft Bills presented by Hon. Mazzoni (no. 626); Hon. Mascia, Hon. Forgione, Hon. Farina, Hon. Frias and Hon. Russo (no. 1090); Hon. Boato and Hon. Mellano (no. 1441) and Hon. De Zulueta (no. 2018).
With regard to its *iter* for Parliamentary discussion, notwithstanding specific Recommendations of CESCR no. 32 and CCPR no. 7 – even then no consultative procedure, inclusive, transparent and participatory, taking into account and involving civil society, was applied.
- **In May 2007**, Draft Bill no. 1463 was approved by the Chamber of Deputies and then past over, as foreseen by the Italian juridical system, to the Senate and assigned in September by the President of the Senate jointly to the Commissions Constitutional Affairs and Justice. Nevertheless, Draft Bill no. 1463 was never included on the agenda, and therefore with no date for examination, and never discussed in the Senate.
- **June 2008**, at the very beginning of present the XVI Legislature (from April 29th, 2008 and still open), again new Draft Laws were again presented to the Senate (Sen. Marcenaro DDL 1223) and to the Chamber of Deputies (Hon. Maran DDL 1918 and Hon. Giulietti DDL 1720) which have not yet even been included on the Agendas for discussion of both bodies.

6. During the present Legislature, the Government has repeatedly declared its political will in order to establish an Ombudperson for Children. The Government has in fact approved and presented to the Chamber of Deputies a Draft Law² which is presently used as core document for the discussion in the Parliament. However, we would like here to highlight two important aspects of the matter:

- a) such Draft Law is not in line with Paris Principles and International standards. There are many critical points concerning the lack of the necessary characteristics of hierarchical and

² DDL C. 2008 "Garante nazionale per l'infanzia e l'adolescenza" approved by the Council of Ministers on August 1, 2008 and presented to Chamber of Deputies on December 11, 2008.

functional independence and the lack of adequate economic and specialized human resources³;

- b) there is a high risk that present proliferation of initiatives for sectoral human rights mechanisms will postpone sine die or even put aside the establishment of an independent NHRI plenipotentiary and with broad mandate.

7. In addition, with reference to the many proposals regarding sectoral national ombudspersons (besides the Ombudsperson for Children also Draft Laws for the establishment of an Ombudsperson for detainees have been presented to the Parliament), we consider more appropriate and effective for the Italian situation, also based on the wide international experience and best practices on this matter, the creation of an independent national institution plenipotentiary and with broad mandate.

8. The choice for the establishment of a National Independent Institution for Human Rights, unique and independent, with broad and strong power, within which a set of specific sections will operate (e.g. for children, migrants, detainees, for economic, social and cultural rights,) is the *strategic* and *far-sighted* political *concrete* action to be taken:

- a) *Far-sighted*, since it allows to effectively realize the specific human rights and required sectorial specializations avoiding fragmentation of efforts and capabilities, which imply the risk of a non coordinated and unbalance national policy in this domain.
- b) *Strategic*, since it would incorporate in its institutional policy the core principles of universality and indivisibility of human rights.
- c) *Concrete*, since the creation of one, unique and plenipotentiary institution for human rights promotion and protection would be the most economic, both in terms of financial and human resources, and effective strategy.

9. Present concrete experience of NHRI, in Europe and abroad, is to be in line with Paris Principles. European countries, such as Sweden and UK, whose giuridical tradition is rich of ombudspersons and specialized agencies for human rights, are also moving towards a gradual coordination and – when possible – merging together such mechanisms with a specific or limited mandate in order to set up a well defined mechanism as practice has shown how human rights need a systematic and comprehensive approach.

10. Recalling what expressly recommended by Paris Principles: the creation of a NHRI be carried out through a transparent, participatory and inclusive process of all social forces of the civil society; as they clearly refer to a broad conception of civil society including non governmental organizations and associations active in the field of human rights and in the social sector, trade unions, professional categories, philosophical and religious thinking and university; finally they recommend the involvement and active participation of civil society at least in three phases of the life of the national institution for human rights, such fundamental requirements should be clearly kept in mind at governmental level in the process of establishing a NHRI in Italy.

11. More specifically, particular attention should be given in the following three steps of such endeavour:

- a) *Creation*: as the decision making moment marking the beginning of the iter leading to the creation of the NHRI cannot exclude the involvement of civil society, that has to express its

³ As defined in art. 5 of the Draft Law the Ombudsperson is not provided with its own structure, but in order to fulfill its duties will utilize human, financial and instrumental resource presently available within the Department for Rights and Equal Opportunities of the Presidency of the Council of Ministers (Dipartimento per le Politiche della Famiglia e presso il Dipartimento per i Diritti e le Pari Opportunità della Presidenza del Consiglio dei Ministri) in addition to the financial coverage foreseen by art. 7 (equal to € 200.000,00). Therefore, it takes into consideration only “the salaries of the Ombudsperson” and therefore is not adequate for the effective management and fulfilment of its functions.

opinion about the role and the functions of the NHRI, mandate and powers, and finally the issues that it will have to deal with.

- b) *Composition/Appointment of NHRI Members*: credibility and legitimacy of the NHRI are important and its members are expression of the principle of pluralism and variegated reality (social, ethnical, religious, and cultural) which each national entity represents. From this depends most of the democratism of the institution, again it is fundamental that civil society is involved both in the identification of appointment criteria for its members and in the consultation that will entrust assignments. In both cases, a broad, participatory and transparent process of consultation is desirable.
- c) *Mechanisms and Methods of Cooperation Between the NHRI and Civil Society*: such mechanisms must be defined in the law establishing the institution, with the reservation that further definition or specification is remitted to the regulations the NHRI must adopt once it has been established.

12. In addition, we would like also to express here our serious concern about the low coverage given by national media to human rights issues especially related to violations and critical situations concerning the internal Italian scenario – besides violations and issues related to third country citizens or Rom, such as internal South/North juvenile migration, domestic violence, elder rights, disabled rights, health rights, poverty, minor criminality, prisons, ecc. and last but not least the issue concerning the creation of a National Independent Human Rights Institution.

13. We would like to express also our concern about the fact that media did not stress adequately the seriousness of some statements made by some politicians during the debate in the Chamber of Deputies when the Draft Bill n. 1463 who publicly defined the establishment of a national human rights institution as an issue concerning “*third world countries*” and not “*..in countries as Italy with a high level juridical civilization, with a culture and tradition for order and the “right”, a NHRI is useless, plethoric and expensive...*”.

14. RECOMMENDATIONS:

- 15. The Italian Government should implement the voluntary pledge undertaken on May 8, 2007 in connection with Italy’s membership to the UN Human Rights Council, and start a transparent, participatory and inclusive process, including the hearing of the civil society, in order to establish a National Independent Human Rights Institution in line with the Paris Principles.
- 16. The Italian Government should make any effort to establish a NHRI able to be accredited with Status A within the UN Human Rights Council.
- 17. The Italian Government should avail itself of the Technical Advice (juridical advices, hearings, joint studies and training programmes, etc) of the National Institutions Unit of the Office of the UN High Commissioner for Human Rights in order to take advantage of its expertise with regard to the application of the Paris Principles and the best practices of many countries that have already complied with the requirements contained in the UN Resolution 48/134 of December 20, 1993 creating NHRI independent and effective.
- 18. The Italian Government should consider the opportunity of creating the National Ombudsperson for Children and the National Ombudsperson for Detainees as parts of the National Independent Human Rights Institution.