

Legal and Policy Developments in the Condition of Migrants and Roma in Italy

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AT PRESENT in Italy, a very serious attack is underway against the basic elements of human rights culture, especially regarding the legal situation of migrants, and Roma in particular. Instead of fighting against poverty the Berlusconi government and the right wing coalition with the Northern League, are fighting against the poor. The criminalisation of undocumented foreigners is going further, trying to include also people who have legal status, introducing new crimes and, in general, creating new obstacles to make their life quite difficult or impossible. “Zero tolerance for Roma, illegal immigrants and criminals” has become a State priority, with anti-immigrant rhetoric playing on a sense of insecurity among citizens. This xenophobic policy has created a climate of intolerance and racism, encouraging very serious episodes of violence, especially against Romani people. The negative stereotypes that a democratic society should overcome instead risk becoming commonplace in a political and cultural climate that tolerates, or even incites, racism, violence and exclusion; sometimes explicitly. Roma in particular have become the target of systematic violence and verbal and physical aggression. They have been forcibly removed from camps where they live, and their personal belongings destroyed.

To better understand the recent legal changes in Italy, some background information is useful. The Italian immigration law (Act 286/1998) is based on annual quotas for people who want

to enter Italy to work. These quotas have consistently been far lower than demand (about 740,000 applications for the 170,000 places made available in 2007). People who are not within the quotas remain illegal because the system is very strict. Moreover, it is very easy for a foreigner who is legal to become illegal: For example, if he is without a job when it is necessary to renew the permit, he is granted six months to find work, otherwise he loses his permit and can be expelled. In practice, it is very difficult to change one’s status from illegal to legal; so many migrants remain without papers, accepting very bad working and living conditions.

A decree of the President of the Council of Ministers, approved on 21 May 2008, declared a “state of emergency” in three Italian regions – Lazio, Lombardy and Campania. The decree claimed that settlements of “communities of nomads” in these areas have caused “great social alarm, with the possibility of serious repercussions in terms of public order and security for local populations” and appointed as Delegated Commissioners the Prefects of Milan, Rome and Naples. According to this decree, usually reserved for natural disasters, the Delegated Commissioners are given wide-ranging powers, with much derogation from the ordinary legal system.²

The priority of identification and census of persons, including minors and family units, results in serious breaches of the ordinary administrative

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² See Article (2) of the Order of the President of the Council of Ministers on 30 May 2008 (Order No. 3678): 1. The Delegated Commissioner within his area of competence, where applicable, also derogating from the rules of law in force, concerning the environment, territorial landscape, health and hygiene, the territorial planning, the local police, roads and traffic, except the obligation to guarantee the indispensable measures for the protection of health and environment, provides for the completion of the following initiatives:

a) definition of action programmes to solve the state of emergency;

procedure as it provides an opportunity for the authorities to disregard all procedural safeguards in place, such as the possibility, in the case of forced evictions, to do away with the obligation to communicate the measure to affected parties.

Unfortunately, the decree of 21 May 2008 only confirms, at a legal level, what often happened *de facto* before the decree was enacted.

This decree, creating special provisions on the basis of ethnicity, breaches the fundamental rights of the Italian Constitution regarding equality of individuals. The collection of fingerprints from Roma under the decree is a gross violation of Article 14 of the European Convention on Human Rights.

Due to heavy protests³ at the European level regarding, in particular, the collection of fingerprints, a ministerial directive modifying the decree was approved, but the basic elements of the law remain untouched.

Even before Silvio Berlusconi took power, when Romano Prodi was President of the Council of Ministers, a legislative decree⁴ was enacted in response to social alarm about crimes committed by foreigners, and Romanians in particular. The decree stipulated a special form of expulsion (*allontanamento*) for EU nationals: It was obviously aimed against Romani people, whose

removal is possible when their presence in the territory is “incompatible with a civil and secure” society. The highly discretionary range of power afforded authorities represents a serious infringement of European Directive concerning freedom of circulation of EU nationals.

The “security package”

Law 125/2008, which entered into force in July, concerns the “security package” and is quite symbolic of the immigration policy of the Berlusconi government, a clear demonstration of the devastating political power of the “Northern League” party inside the right-wing coalition.

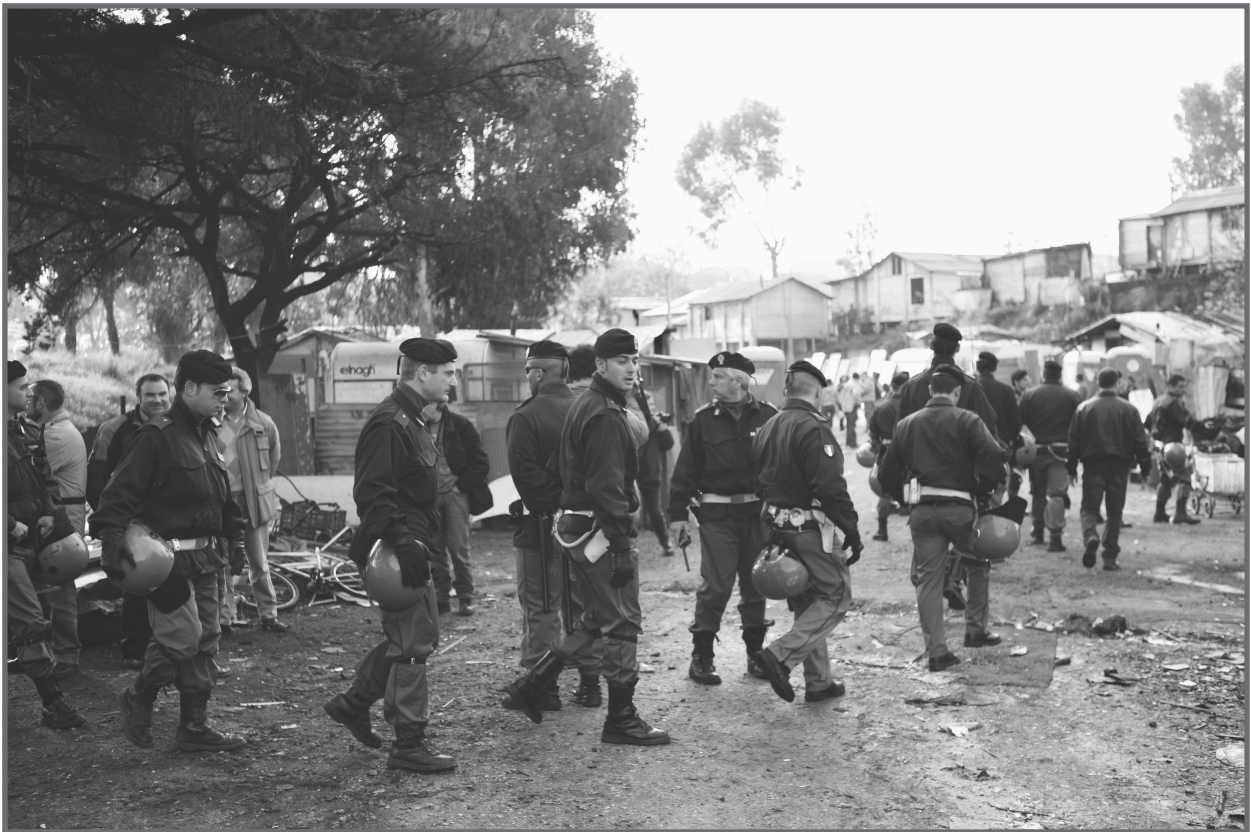
The act introduces a new aggravating circumstance inside the penal system: Criminal offenses committed by undocumented migrants carry the possibility of a one-third increase in the punishment compared to the same offenses committed by persons with legal status. It is the first time that such an aggravating circumstance has been introduced in the ordinary penal system, and it is a serious breach of the fundamental principle of equality before the law, as it penalises people for who they are rather than for what they do.

Moreover, undocumented migrants sentenced with this aggravating circumstance

- b) *monitoring of the authorised camps occupied by the nomad communities, and the identification of unauthorised settlements;*
- c) *identification and census of persons, including minors, and of families present in the places mentioned in paragraph b), by taking fingerprints;*
- d) *adoption of the necessary measures, empowering the police, against the persons mentioned in paragraph c) who are to or could be expelled by virtue of an administrative or judicial measure;*
- e) *if the existing camps do not satisfy the habitation needs, programme for specification of new suitable sites for the authorised camps;*
- f) *adoption of measures to clean out and restore the field occupied by abusive settlements;*
- g) *carry out the first interventions suitable to restore the minimum levels of social and health services;*
- h) *interventions to promote the social inclusion and integration of the persons transferred into the authorised camps, with particular reference to the measures of support and to projects regarding minors, to actions for combating the phenomena of abusive trading and the phenomena of begging and prostitution;*
- i) *monitoring and promotion of initiatives applied in the authorised camps to support the school attendance and vocational training, and the participation in the activity of realisation and recovering of the habitations; and*
- l) *adopting all the necessary measures to solve the state of emergency.*

³ In particular, due to the fact that 50% of Roma in Italy are Italian nationals and another 20% are citizens of other EU countries.

⁴ Decree 32/2008.



Local police forces accompanied demolition teams when they embarked upon the task of clearing away some of the barracks in the Casilino 900 Romani camp near Rome on 9 April 2008.

PHOTO: SIMONA CALEO

can be excluded from any alternative measure regarding their imprisonment, greatly reducing the possibility to shorten it.

Law 125/2008 also stipulates new forms of expulsion for non-EU migrants and also for EU citizens (*allontanamento*), clearly directed at people coming from Romania, especially Romani people.

These expulsions are “security measures” that can be imposed by a judge in cases where a non-citizen is found guilty of a crime and sentenced to only two years imprisonment. Previously, 10 years was the minimum sentence required to enact this kind of measure). Failure to comply with a removal or expulsion order is itself a crime entailing imprisonment for between one and four years.

Another new crime regards housing: Renting homes to foreigners residing irregularly in Italy is a criminal offence and landlords may be sentenced to prison for between six months and

three years, and face the confiscation of the home in the case of a final verdict. While ostensibly intended to punish exploitation in the housing market, in reality it represents another way to further the social isolation of migrants.

Another feature of the law provides increased powers to mayors. In particular, they can adopt urgent measures “for the purpose of preventing and eliminating serious dangers that threaten public safety and urban security”, ensuring also the cooperation of local police forces with the state police force. Especially in towns administrated by members of the Northern League, this highly discretionary power has been used to introduce many ordinances providing administrative sanctions against petty “criminal” activities, with a special emphasis on begging.

Another feature concerns registration in the *anagrafe*, the residential registry that is compulsory for people staying longer than three months in Italy and a prerequisite for obtaining access to social and

health services. Mayors are imposing new bureaucratic obstacles to registration, hindering citizens like Roma from Romania who as EU nationals, previously needed no more permit to stay in Italy.

Besides the security package, another legislative decree entered into force in November, 2008,⁵ limiting the right to family reunification (a paradoxical contradiction with the supposed aims of the government, as the presence of family means stability and integration, thus more “security” in the society).

First of all, the income required for migrants to ask for reunification increases according to the number of family members. It excludes in particular parents over 65 years of age who, if they have other children that can support them in their countries of origin, cannot come to Italy unless the other children are medically certified to be unable to support them for serious health reasons. Parents over the age of 65 must now pay social security insurance in advance as a pre-condition of reunification. Moreover, if there are problems in the certification of documents produced by the competent foreign authorities, Italian consulates can require a DNA test that the applicants must pay for. Considering the incredible slowness of Italian bureaucracy, these additional requirements will likely reduce the possibility of legal entry.

The legal situation is getting even worse, considering the new proposal of laws that are now in discussion in the Parliament. In particular, a new security package (DDL/733), just approved in the Senate, will cause a further turning of the screw not only against undocumented migrants, but also against foreigners with a regular permit to stay.

Here are some specific provisions of the draft law:

1. A new legal provision which will punish undocumented migrants with a fine: Hundreds of thousands of undocumented foreigners will be affected at a stroke, with serious consequences

also for people who are deemed to help them through illegal actions. The likely result will be the increased isolation of migrants.

2. Applications for a residence permit, and also for its renewal, will entail the payment of a tax of up to 200 EUR; the same tax will apply to citizenship claims.
3. Money service providers will be required to check and photocopy the identity card of people using their services: If the individuals are foreigners, they must also produce a residence permit. In the case that the permit is not available, the providers must inform local public security authorities and send them a copy of the identity documents of the foreigner.
4. New obstacles will be introduced for registering in the residential registry, including an inspection by the municipality to ensure that the foreigner lives in suitable accommodation, with a minimum quota of square metres required for each person.
5. Passing an Italian language test will be necessary to receive a long-term residence permit. Applicants will have to sign a “pact of integration”: The foreigner will be compelled to meet the specific targets of integration or lose the right to remain in Italy.
6. A special register to control the homeless will be appointed.

Italy is now in a sort of black hole relating to rights of migrants and Roma in particular; the xenophobic and racist approach of the Italian government seems impossible to arrest. Civil society, including non-profit organisations, trade unions and churches, try to oppose this awful path, but the power of the right wing coalition is too strong and the political opposition in the Parliament is quite weak. On the judicial level, some challenges have been brought before civil and administrative courts, but with no positive decision to date.

⁵ Decree 150/2008.