

HUMAN RIGHTS COUNCIL

20th Session of the Working Group on the Universal Periodic Review (UPR)

Stakeholder Submission on:

The Human Rights Situation in ITALIA

Submitted by:

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(NGO's in Consultative Status with the ECOSOC)

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1. RIGHTS OF THE CHILD

FOCUS ON: Recommendations n°3, 4, 6, 28, 67, 75, 146, 82, 117, 91, 137

1.1 SOURCES

APG23 has been a member of the National Observatory on Childhood and Adolescence at the Premiership¹. The Association collaborates with the National Coordination of Foster Care Services (C.N.S.A), it is part of the working table of the National Associations/ Family Networks and also an ordinary member of the National Forum of the Family Associations.² APG23 receives foster care placement requests from Social Services, Juvenile Courts and privates regarding children who need to be welcomed in families and Family Homes.^{3,4}

1.2 CONCERNS

1.2.1) National Action Plan for the protection of the rights and development of children and adolescents

On 9th May 2011, the Government has approved the Third National Action Plan for the protection of the rights and development of children and adolescents developed by the National Observatory on Childhood and Adolescence. A notable limitation of this Plan is that it does not provide for economic resources to fulfil the underlined guiding principles, thus resulting in a mere list of objectives that are hard to realize.

Moreover, the way the Observatory has been conceived makes it too complicated, little efficient at an operational level and it is not therefore an effective instrument to put pressure on the Government's actions regarding children.

Recommendations

A) Rebuild the National Observatory on Childhood and Adolescence, clarifying its role and its functions.

B) Allocate immediately funds to realize the National Action Plan and encourage the Regions to allocate the necessary budget for the activities that are planned at a regional level. Strengthen and make sure that all human, technical and financial resources that are necessary to implement policies concerning children's rights are complete, coherent and uniform at a national, regional and local level.

1.2.2) National Authority and Regional Authorities for Children and Adolescents

On 30th November 2011, the National Authority for Children and Adolescents has been elected.

In some Regions, regional Authorities or public guarantors have been established. Their main task is to promote the rights of children and adolescents, but there is no possibility of dissenting on Government acts or Magistrates' courts' rulings on minor cases.

Recommendation

C) Elect Regional Authorities for Children and Adolescents in all Regions and give, from a legal point of view, the possibility for the National Authority of contesting/filing appeals against acts and injunctions that are harmful and/or inappropriate for the promotion of children and adolescents' rights.

1.2.3)- Child right to a family. institutionalization as an extreme resource.

After the law 149/01 that has approved the closure of institutes before 2006, alternative measures are now under the Regions' responsibility. The 25th October 2012, the Government and the Regions have approved the National standards for foster care. Unfortunately, neither the Ministry of Social Policy nor the Regions have spread these Standards and no Region has adopted them. We are also lacking precise actions for children with severe and highly severe disabilities, which could result in their institutionalization in psycho-pedagogical centres, or permanence in hospitals/health centres. We are still lacking a full recognition of the role of family Associations in the different phases of foster care: starting from the educational phase, through the evaluation/matching phase, until the support, the monitoring and the follow-up of foster families, even towards the Magistrates' courts. At a national level we need legislation giving full dignity to welcoming centres based on the natural family model, like the "Multi user complementary Family-homes", that are run by parental figures or couples who permanently reside there.⁵ This kind of answer should be preferred, making a difference with educational Communities and/or other forms of welcoming, that are closer in their

¹ Which at present has to be rebuilt.

² In 2012 the Association has welcomed 602 children in its new centres. Together with other associations, it has created the "Preferire la Vita" (Prefer Life) Consortium <http://www.preferirelavita.it/>

³ <http://www.forumfamiglie.org/>

⁴ During the year 2012 it has assisted 189 new foreign citizens entering Third Countries. 15 Roma minors have been welcomed in the Association's new residential (fostering/adoption) or daily centres and 50 Roma families have been followed on a long-term and continuous basis For APG23 data for the year 2012 see : http://casafamiglia.app23.org/downloads/files/Un_anno_con_gli_ultimi_APG23_2013.pdf

⁵ See http://casafamiglia.app23.org/it/93-Convegno_Casa_Famiglia/109-Rivedi_il_Convegno/ as well as http://www.newsrimini.it/news/2013/maggio/22/rimini/case_famiglia_felice_intuizione_di_un_mondo_diverso

typology and planning to small institutes. Norms are very different in rules and definitions according to the Region so that they can even seem contradictory.

Recommendations

D) Fully apply national standards for foster care

E) Create a database of children with disabilities who can be adopted and ensure specific professional and economic help and support to those families who are willing to adopt or foster children with disabilities

F) Attribute a more specific role and fully recognize family associations during the whole process of the foster care project.

G) Issue precise guidelines that will give full dignity to multi user and complementary Family-homes and to all welcoming centres which follow the model of a natural family with the stable presence of parental figures and provide for fiscal aid, so as to favour their creation and development

1.2.4) Actions to protect the child right to life from the moment of conception

The Preamble of the Declaration of the Rights of the Child, states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. Article 32 of the Italian Constitution safeguards health as a fundamental right of the person and therefore implicitly protects the soon-to-be-born child. The State has the obligation not only of refraining from taking wilful and illegal measures (“negative obligation”) but also of taking the necessary measures to protect the life of those who are under its jurisdiction (“positive obligation”). A State that allows abortion – like Italy – not only has the obligation of controlling abortion access and preventing crimes (forced abortion), but also of adopting positive measures to avoid abortion (positive obligations deriving from the right to life).⁶ Abortion is a derogatory and extreme measure if compared to the right to life, it is an exception and its range is limited because of this principle.^{7 8 9}.

Recommendations

H) Elaborate a national plan with uniform guidelines to promote and protect the right to life of the soon-to-be-born child, giving a specific and active role to civil society.

J) Prepare a tangible and prompt survey on the causes leading expectant mothers to ask for abortion, in order to create specific policies and action plans that aim at helping these women.

K) Put in place all necessary actions to promote anonymous childbirth as an extreme alternative to abortion.

L) Adopt specific legal and economic means in favour of pregnant women in a quandary creating a special fund for difficult pregnancies.

M) Verify through a national survey the possible social existence of instigation, favouring and coercion of abortion, guaranteeing an independent, full and systematic monitoring to establish and develop actions that strongly oppose these practices.

1.2.5) Access of children with disabilities to education

Concerning the integration of children with disabilities in school, a strong change in practices is compelling. It is necessary to lower of some units the average reference values related to the number of students per classroom. Indeed, the increase of such values generates classrooms that have too many pupils, which means it is hard to make integration in school possible. The actual right to assistance is too often guaranteed only with the intervention of the Magistrates. The right to education, to school integration, to have an assistant teacher are subjective rights and they must not be dependent on arbitrary limits or budget needs.¹⁰

Recommendation

N) Allocate resources to stabilize and train teachers and to make the right to assistance effective, removing previously established numerical limitations that hinder educational projects specific to the person.

⁶ On this point see: July 17th 2013, “Abortion and the European Convention on Human Rights”, by Dr. Grégor Puppincq Irish Journal of Legal Studies and Communication from a NGO (European Centre for Law and Justice) (20/09/12) in the case of A, B and C against Ireland (Application No. 25579/05).

⁷ During the year 2012, APG23 has collected n.76 (over 681 women) testimonies of instigated and/or forced abortion but it has noticed that, despite law 194/78 aims first of all at protecting conceived children and their mothers, it is unable to actually guarantee both protections; the practice of abortion is highly widespread as a tragic contraceptive method. These data were directly collected by our operators - Testimonies on instigated abortion for the year 2011 n.35/ year 2010 n.24. See also <http://www.apg23.org/news/anche-in-italia-costrizione-e-induzione>. <http://zambrano-andrea.blogspot.it/2012/01/coercizione-allaborto-litalia-deve.html>

⁸ On this point also see Dr. V. Tarantini's testimony available at: <http://www.mpv.org/mpv/allegati/6378/061702mpv.pdf> ; see <http://www.documentazione.info/il-legame-tra-contraccezione-e-aborto-0>; <http://www.mondobimbiblog.com/2011/04/aborto-come-metodo-contraccettivo-vi-ricorre-unimmigrata-su-tre/>; <http://serviziomigrazione.provincia.cagliari.it/centroAI/it/newview.wp?contentId=NEW1044> ; <http://www.ladige.it/articoli/2013/03/01/aborti-media-25-giorno>

⁹ Procedural and institutional measures aiming at helping and discouraging from abortion are seriously lacking. Official data show us that about one fifth of conceived children are aborted. At a statistical level, it is difficult to posit that these are cases where *extreme measures* are taken because of “*serious physical or psychological health risks*” of the expectant mothers (see art.4 L.n.194/78)

¹⁰ More children with disabilities are put in the same class because of expenditure ceilings. See: <http://www.ilfattoquotidiano.it/2013/10/12/disabilita-battaglia-di-padre-perche-figlia-abbia-insegnante-di-sostegno/738968/> ; see also Sentenza n.181/2013-T.A.R. Toscana; T.A.R. Lazio Roma Sez. III bis, 17/11/2010, n. 33536 Giur. It., 2011, 4, 960 nota di COMINO; T.A.R. Lazio Roma Sez. III bis, Sent., 06-07-2011, n. 5959; Cons. di Stato, Sez. VI, 21 aprile 2010, n. 2231, in Giur. Cost., 2010, 1827, con nota di Madeo, *Insegnante di sostegno: possibile presenza per tutte le ore di frequenza scolastica dello studente disabile grave*.

1.2.6) Roma children

A large group of Roma people that came to Italy after the dismantling of Former Yugoslavia and that has lived in Italy for many years is still without citizenship and in many cases died without having one; this situation of statelessness will go on with their sons and the sons of their sons that were born and live in Italy. The pathway to acquiring identity documents and a citizenship is full of bureaucratic obstacles that are often impossible to overcome. It is extremely important to prepare administrative paths, solutions and diplomatic acts that could eliminate the “factual statelessness”¹¹.

Recommendations

O) *Reform the current law on citizenship taking measures to make it easier for statelessness Roma and Sinti people, who have lived in Italy for many years, to acquire citizenship, being particularly careful in identifying and removing barriers through specific agreements with Consulates and competent Embassies.*

P) *Take into account the 1954 Convention relating to the Status of Stateless Persons. We strongly advise adopting measures to reduce statelessness, in particular amongst Roma and Sinti children.*

Q) *We invite the State Party to accede to the 1961 Convention on the Reduction of Statelessness, following the 1954 Convention relating to the Status of Stateless Persons.*

1.2.7) Children with incarcerated mothers

Despite the creation and application of the laws 8 of March 2001 n.40 and 21 of April 2011 n.62, 52 children whose mothers are incarcerated still live in prison.¹² Despite these laws, the number of children in prison remains high and stable. A prison can never be an appropriate environment for a child who needs to grow up finding suitable answers at an intellectual/relational and emotional level; the consequences of such an environment for a young child are tragic.¹³

Recommendation

R) *Actually implement and broaden to all children, irrespective of their age and quantification of their mothers' sentences, the protections provided for in the national laws concerning children with incarcerated mothers, choosing alternative measures to detain mother and son(s), for example in family-like centres that are recognized at a national level.*

1.2.8) Foreign children that are born in Italy

To reform Law 91/1992 the soonest possible is a social emergency¹⁴. This would allow easier procedures for foreign children born in Italy and for children who arrived in Italy at a young age to acquire the Italian citizenship.¹⁵

Recommendation

S) *Reform law n. 91/1992 on Italian citizenship so as to protect the rights of foreign children who are born and/or live in Italy since an early age, introducing a “jus soli” linked to the existence of an inseparable relationship of the child with the territory, regardless of requirements of formal permanent residence.*

2. JUSTICE AND DETENTION

FOCUS ON: Recommendations n°29 ,49

2.1 SOURCES

APG23 has been involved in prison work since the early 1990s. We aim to encourage rehabilitation and social reinsertion.¹⁶ Only 8% of those who complete the programme return to criminal activity, compared with a national average of 70-75%. In the last 25 years 1.300 prisoners and ex-prisoners were welcomed into family homes and other centres of APG23 3.000 prisoners and ex-prisoners with drug addiction have followed the APG23's therapeutic programme.

¹¹ The Italian citizenship for children who have foreign parents and are born in Italy still has to be governed by law. On this point see <http://www.apg23.org/ambiti-d'intervento/immigrazione/documenti/com/apg23.proposte.ddl7337dic.pdf> pag.1 and also: La 'Condizione giuridica di Rom e Cinti in Italia'- 2011 Giuffrè Editore

¹² At 30.06.2013 according to the Department of Prison administration 51 incarcerated mothers, 52 children and of these women, 23 pregnant mothers are still in prison. Data are available at http://www.giustizia.it/giustizia/it/mg_1_14_1.wp

¹³ On this point see: G. Biondi, Lo sviluppo del bambino in carcere, Franco Angeli – Milano 1995

¹⁴ On this point many initiatives were organized by civil society; APG23's Appeal available at: <http://www.donoreste.it/news/sette-appelli-lanciati-dalla-comunita-papa-giovanni-xxiii-al-mondo-politico>; Campagna 'L'Italia sono anch'io': <http://www.litaliasonoanchio.it/>

¹⁵ According to the National Statistical Institute (ISTAT)'s most recent data, foreign population residing in Italy at 31st December 2010 accounted for 4.570.317 people, about 22 % (993.238 units) of whom were children. Among those, about 650.000 are born in Italy (the so-called second generations). I with this pace of growth, in 2019 they will be two millions, one million and 770 thousand will be born in our Peninsula, but only 7% will be able to become an Italian citizen if the current legislation on citizenship stays in place. In the school year 2010-2011, 711.046 non-Italian citizens were enrolled in the national school system, which means 7,9 per cent of the whole school population. 78,4 per cent of foreigners (3 over 4) enrolled in nursery school and 53,1 per cent of those enrolled in primary school (about 2 over 4) are born in Italy. Source: ISTAT

¹⁶ ApgXXIII in Italy today; 240 prisoners and ex-prisoners are following a personalised programme 90 prisoners and ex-prisoners with drug addiction problems are following the Community's therapeutic programme 40 prisoners are visited each week by members of the prison service, who offer moral support, particularly to those serving long sentences. To know more on the experience of working with prisoners of apg23's voluntary workers, see Nadia Bizzotto's testimony, available at: <http://www.famigliacristiana.it/articolo/la-storia---nadia-fra-gli-uomini-ombra.aspx>.

2.2 CONCERN

The adoption of Law n. 356/92, has introduced new rules concerning the execution of custodial sentences. According to this new system, some crimes are considered particularly alarming from a social point of view and those who have been convicted will not enjoy extramural treatment, unless they cooperate with the judicial authorities, like the so-called whole-life orders. Many prisoners serving a life sentence cannot enjoy any penitentiary benefits and are sentenced to die in prison.¹⁷ Prisoners sentenced to life imprisonment at 30th of June 2012 were 1546, of which about 1000 will spend the rest of their lives in prison.¹⁸ In our opinion, the condition of these prisoners violates article 3 of the ECHR and article 4 of the Charter of Fundamental Rights of the European Union.¹⁹ It also violates article 7 of the International pact on civil and political rights. It contrasts also article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁰ Life imprisonment goes against article 27 and article 2 of the Italian Constitution, which states that the penalty aims to re-education: the person and his dignity should come always first. The dramatic problem of prison overpopulation and the urgent need to take alternative measures to prison still remain. APG23 and other civil society actors have long been making propositions to experiment other alternative forms of detention.²¹

Recommendations

T) Take all normative measures to eliminate the so-called whole-life order and to guarantee in any possible way re-education.

U) Urgently take alternative measures to the deprivation of personal freedom in the sentence institutes, giving a specific role to actors of civil society who have presented propositions to experiment alternative forms of detention to prison.

3. MIGRANTS

FOCUS ON: Recommendations n°13 57 24 34 37 40 48 62 90 119 125 47 55 74 85 134 135 107 110 131 141 145 153 156 157 22 and from n°15 to n°20

3.1 SOURCES

In 2012, 368 foreign citizens were welcomed in APG23's centres and foreign families were given health and social care; in 2012, hundreds of foreign citizens have passed in our prompt reception facilities for homeless people. Some APG23 voluntary members are present in CARA centres²² in Trapani (Sicily). APG23 is also part of the SPRAR network.²³

3.2 CONCERNS

3.2.1) Right of persons with disabilities to citizenship

Articles 21 and 26 of the EU Charter of Fundamental Rights explicitly state that it is prohibited to discriminate persons on grounds of their disability. It also underlines the right of the person with disabilities to benefit of measures designed to ensure his/her independence, social and occupational integration and participation in the life of the community. Italy ratified the UN Convention on the Rights of Persons with Disabilities in March 2009 through the Law 3 that in Article 18 recognizes the right of persons with disabilities to liberty of movement and to a nationality. Currently, Italian law forbids persons with an intellectual disability to complete the procedure for a demand for citizenship on the grounds of the impossibility for such a person to express his/her will, because of his expressive and cognitive limitations and to allow his/her tutor to swear an oath on his/her behalf.²⁴

¹⁷ See video-testimonies produced together with APG23, available on the following websites; <http://www.youtube.com/watch?v=EOjG0gi8erU>; <http://www.youtube.com/watch?v=njb1DTt65CQ>; <http://www.youtube.com/watch?v=6mA2xfSt7E>; <http://www.youtube.com/watch?v=ZR0EQGVrQdg>; <http://www.youtube.com/watch?v=zmjWSkRehmk>.

¹⁸ Data taken from the relation given by Andrea Pugiotto, full Professor of Constitutional Law at Ferrara University at the conference « Life Imprisonment and Democracy », that was held in Rome, at Bologna's Palace, Italian Senate, the 2nd October 2012 proceedings available at <http://www.carmelomusumeci.com/pg.news.dettaglio.php?id=113&cat=2&lang=it> and on video <http://www.radioradicale.it/scheda/361396/ergastolo-e-democrazia>.

¹⁹ Which is today part of the Lisbon Treaty

²⁰ Italy ratified it in 1989. To have legal references concerning life sentence abolition as an inhuman and degrading act see an available study here: http://www.penalecontemporaneo.it/area/3-societa/-/2127-una_quaestio_sulla_pena_dell_ergastolo/.

²¹ This has also been done at a European level, but the Italian State has given no answer. For APG23's proposition, ECP – An Educational Community with prisoners, see: <http://www.apg23.org/ambiti-dintervento/carcere/document.2009-09-08.0266013087#section-3> and <http://www.apg23.org/ambiti-dintervento/carcere/document.2009-09-08.0266013087>. For the presentation in Europe, see: http://ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/it_associazione_comunita_papa_giovanni_xxiii_en.pdf

²² Asylum-Seekers Reception Centres

²³ System of Protection for Asylum Seekers and Refugees. APG23 is present in the Forlì City Hall and has a partnership for 2014 Sprar projects Reggio Calabria Province (RC)- Randazzo City Hall (CT) as well as FER projects (Funds) in the Forlì-Cesena- Savignano sul Rubicone City Halls

²⁴ Case of n.1 boy who was welcomed in APG23's facilities and whose request for citizenship was rejected. On this point and for other cases see press articles available at: http://www.aduc.it/notizia/negata+cittadinanza+disabile+tar+imponere+riesame_127590.php; <http://www.superando.it/2013/01/29/disabilita-intellettiva-e-cittadinanza-negata/>; http://www.migrantesonline.it/pls/siti/v3_s2ew_consultazione.mostra_paginat?id_pagina=10629&target=0

Recommendation V) To remove barriers that do not allow foreign persons with disabilities to get citizenship

3.2.2) Identification and Expulsion Centres (CIE)

Administrative detention centres (CIE) for migrants have often been inaccessible to civil society. Their structural characteristics make these centres absolutely inadequate to guarantee decent living conditions. Police bodies fail to manage daily riots, carried out by migrants.²⁵ This is also a sign that these centres are inadequate.

Recommendation Y) Close CIE and increase the protection of fundamental rights of regular and irregular foreign citizens.

3.2.3) Right to asylum at the maritime borders

In 2011 and 2012, APG23 has directly monitored the situation of refugees in Greece (Patras)²⁶ and has collected direct testimonies. Third-country adults and children irregularly arrived on Adriatic ports were sent back from Italy to Greece. They did not have access to the protection procedure and the principle of non-refoulement to unsafe countries was disregarded.

Recommendation W) Ensure non-refoulement and real access to the right to asylum and international protection at all frontiers, especially the maritime ones. Apply, therefore, the Humanitarian Clause and the sovereignty clause of the Dublin II Regulation, avoiding sending asylum-seekers back to unsafe countries and guaranteeing a real protection.

3.2.4) Asylum-seekers refugees

Reception capacity and standards of the welcoming networks in Italy are still very limited if compared to the number of asylum-seekers and refugees living in Italy. Prolonged stay in Asylum-Seekers Reception Centres (CARA) for identification procedures, long bureaucratic procedures to have the asylum claim accepted, lack of an adequate absorption of reception in the SPRAR network and shortcomings in the set-up of effective integration measures, make it difficult and complicated to protect the fundamental rights of asylum seekers.²⁷

Recommendation

Z) Make sure that all asylum-seekers receive full reception **a)** Strengthen reception systems in terms of their accommodation capacities. **b)** Guarantee the right to integration through effective access to a national program that would ensure working, housing, social and cultural integration; **c)** Give practical substance, at a multi-level governance optimizing the resources put into the different areas of the system, so as to guarantee adequate standards.

4. MINORITIES- ROMA

FOCUS ON: Recommendations n°2, 13, 57, 25, 30, 34, 43, 47, 52, 81, 132, 89, 92, 94, 112, 118, 131, 153, 156

4.1. SOURCES

In 2012, APG23 has welcomed in its centres 25 children and 19 adults of the Roma and Sinti minorities.²⁸

4.2 CONCERNS

The 28th February 2012, the Government has drawn up a document of national Strategy for the inclusion of Roma, Sinti and Caminanti communities.²⁹ In this way, it is now possible to overcome the emergency phase that would influence action especially in the big urban areas. Institutional action, however, still remains much undefined both in realization timing as well as in the methods of territorial implementation and participation of the RSC communities to decisional processes. Until now, no real measures have been taken to solve problems concerning the legal status of Roma people coming from Former Yugoslavia or to define possible administrative and diplomatic ways and solutions that would allow overcoming the so-called “factual statelessness”. Besides, planned regional tables on inclusion only exist in some regions.

Recommendation Z.d) Establish real and effective implementation of national strategies for inclusion.

²⁵ See: <http://ilpiccolo.gelocal.it/cronaca/2013/08/15/news/i-sindacati-di-polizia-il-cie-di-gradisca-va-chiuso-1.7583590>; and <http://www.brindisioggi.it/riapre-il-cie-il-sindacato-di-polizia-chiede-rinforzi/>; <http://ilreferendum.it/2013/07/26/sindacato-di-polizia-i-cie-sono-lager/>

²⁶ Reports sent to Special Rapporteur year 2011/2012

²⁷ On this point see 2012 report of the EXTRAORDINARY COMMISSION FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS <http://www.senato.it/documenti/repository/commissioni/dirittiumani/16/Rapporto%20carceri.pdf> pag.90 e ss.

²⁸ People and families who have a precise and stable relationship with APG23 are 50 families, of whom 102 adults, 206 children. Data collected by APG23 Family nucleus's voluntary workers according to intervention areas -Bologna 15 - Faenza7 – Forlì 6- Rimini 15 -Verona 4- Pisa1 -Cuneo 2

²⁹ http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/22/0251_STRATEGIA_ITALIANA_ROM_PER_MESSA_ON_LINE.pdf