



MINISTRY FOR FOREIGN AFFAIRS
Interministerial Committee of Human Rights
Comitato Interministeriale dei Diritti Umani

Reply To
List of Issues (CCPR/C/84/L/ITA)
(Relating to CCPR/C/ITA/2004-5)

U.N. HUMAN RIGHTS COMMITTEE
85th SESSION
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(...)

16. Please comment on reports that the Italian authorities have intercepted boats heading for Italy and have expelled many people from the island of Lampedusa in circumstances precluding the examination of applications for asylum.

With regard to the situation under reference, it is worth stressing that the Assistance Centre based in Lampedusa is mandated to provide rescue and first-aid services to the shipwrecked migrants who are subsequently moved, under the supervision of the Security and Public Order Department at the Interior Ministry, into specific Centres as mentioned below.

In this context, it is also worth mentioning the proposal put forward by the Interior Ministry in August 2005 to involve UNHCR, IOM and the Italian Red Cross, in the rescue activities, as well as in the repatriation activities of irregular migrants coming to Lampedusa island back to North Africa, in particular to Lybia. This proposal is aimed to establish on the Island focal points of the Organisations under reference.

Among the most recent relevant Acts adopted by Italy¹, the current Government has introduced amendments to Law Decree no. 416/89, entitled "Urgent provisions on right to asylum, admission and stay of non EU citizens and stateless individuals living in Italy". Such provisions were integrated by the Presidential Decree (D.P.R.) concerning the regulation relating to D.P.R. 31 August 1999, no. 394, as envisaged by Art. 34, para.1 of Act no. 189/02ⁱⁱ.

With specific regard to the **right of asylum**ⁱⁱⁱ, it is worth recalling that by Law Decree no. 416/89, the Government withdrew the "declaration on geographic limitation and on the reservations to Arts.17 - 18 of the 1951 Geneva Convention, as ratified by Act no. 722/54. Such Articles restricted the application for the asylum proceedings to citizens from Eastern European countries. At present, the cited application can be submitted without any restrictions by all non EU citizens who are "under the UNHCR mandate".

By Act no. 189/02, apart from the specific cases envisaged in Arts.1-bis and 1-ter, the local police authority is in charge with the release, upon request, of a temporary stay permit which is valid until the conclusion of the asylum proceeding.

Articles 1-bis, 1-ter, 1-quater, 1-quinquies, 1-sexies, as introduced by Arts. 31-32 of Act no. 189/02, amended the procedures relating to asylum-seekers. More specifically, the cited Act refers to a regulation, to be enforced when resorting to the proceedings under reference. Art. 1-bis establishes *Identification Centres* which are provided for those who apply for asylum in accordance with the aforementioned Unified Text. Art. 1-quater, para. 1, envisages the establishment "At Prefectures, of the *Territory Commissions* tasked with the recognition of the refugee status", while art. 1-quinquies refers to the above regulation for the terms of mandate of the relevant *National Commission*. In practical terms, the newly adopted legislation has introduced the *Territory Commissions*, changed name, role and functions of the Central Commission for the recognition of the refugee status, namely *National Commission*, in

addition to a new procedure: "the stay, under given conditions and circumstances, of the asylum-seeker at ad hoc Centres".

When drafting Regulation, DPR no. 303/04, the Government took into account the proposals put forward by relevant associations and agencies, particularly those from UNCHR, as well as the EU Directive (2003/9/CE), entitled "Basic provisions for the admission of asylum-seekers", as adopted by the EU Council on 27 January 2003.

In order to effectively apply the 1951 Geneva Convention concerning the recognition of the refugee status, art.32 of Act no. 189/2002, first and foremost, makes a distinction, as to the Centres for the stay of the asylum-seekers, namely Identification Centres and the Temporary Stay and Assistance Centres (CPTA). The CPTA were established with the aim of hosting the foreigners to be expelled, or those applicants for the refugee status already expelled whose application is under review.

More specifically, the Law envisages two different procedures for the stay of the asylum-seekers: 1. the *simplified procedure* for asylum-seekers who stay on a compulsory basis in the Centres; 2. the *regular procedure* for those who are not sent in such Centres and get a stay permit valid until the conclusion of the refugee status proceeding^{iv}.

On a more specific note, the *Identification Centres* must be distinguished from Centres which were set up by Unified Text no. 286/98 and concerning the foreigners to be expelled. The different structure and functions of the two types of Centres entails and triggers different "formalities for the stay" of the foreigners, as reiterated by Art. 1-bis, para. 4, of the Law Decree no. 416/89 (converted in Act no. 39/1990), and by Art. 14 of the Unified Text no. 286/98^v.

At present, while the National Commission (the composition of which is reported in the Presidential Decree adopted on 8 February 2005)^{vi} is based in Rome, the Territory Commissions are in the following municipalities: *Gorizia, Milano, Roma, Foggia, Siracusa, Crotone, Trapani*.

Within this framework, it is worth recalling the EU Council Decision adopted on June 8 2004, which was translated into the Italian system by the Presidential Decree, DPR no.242/2004. This Regulation aims at streamlining computerised and data processing systems to better deal with data on migration, migrants, and the status of refugees, with the Dublin and Geneva Conventions.

Moreover, Act no. 189/02 envisaged the creation of a "Protection System for Refugees and Asylum-Seekers", which paved the way for the establishment of a **National Fund** on the policies and services relating to **asylum**.

As a consequence, the cited Fund resources are allocated to local authorities when providing assistance and protection services to asylum-seekers, refugees, and foreigners under humanitarian protection. By means of this Fund, 4265 foreigners were hosted between the years 2001-2003, of whom 2148 asylum-seekers, 728 refugees, and 534 foreigners under humanitarian protection. Most of the involved

municipalities are in the North (20), a certain number is in the Centre of Italy (14), the remainder is in the Southern part (12) and in the Islands (4).

By Order of the President of the Council of Ministers, no. 3326/2003, "additional urgent measures were adopted in order to combat the illegal migration". Its Art. 3, while derogating Act no.189/02, envisaged the adoption, by the Interior Ministry, of ad hoc Decrees to further the allocation of resources to the local authorities involved in the above assistance process. The Department on Civil Rights and Migration at the Ministry for Home Affairs issued a Memo, on June 2004, concerning the first Decree allocating resources, between January and April 2004, to the relevant municipalities, in accordance with art. 32 of Act no. 187/2002. The contributions amounted to 18,52,00 Euros, *per diem*, per person. This also reported the allocation of additional resources amounting to 5 million Euros between May and December 2004, in accordance with art. 80 of the 2003 Finance Law. Such additional funding gave the opportunity to make 200 more places available: the local authorities included in the Protection System provide protection to asylum-seekers applying for the refugee status. The admission in the ad hoc Centres is decided by the Central Service on the basis of the municipalities projects or upon indication by third bodies, such as Prefectures, State Police HQs., Associations, etc..

During the stay in the Centres under reference, foreigners have access to the national health-care system, to education and to a legal counsellor in order to be promptly informed on how to apply for the recognition of the refugee status^{vii}.

Admissions to Rescue and Assistance Centres between the years 2003 and 2004

Years	M	F	MF	M	F	MF	M	F	MF
2003	1464	68	1532	1342	648	1990	2806	716	3522
2004	1517	70	1586	1476	803	2279	2993	873	3866

(For further information, please read below indications provided under question no.21).

(...)

21. How are foreigners held in temporary stay and assistance centres informed of their rights, and to what extent do they have access to a lawyer? (Periodic report, paras. 263 ff.) In addition, please comment on reports that detention conditions in temporary stay and assistance centres for foreigners are unsatisfactory in terms of overcrowding, hygiene, food and medical care. Are independent inspections carried out in these centres, and do non-governmental organizations have access to the centres? (Periodic report, paras. 263 ff.)

As to the respect for human rights of migrants hosted in the Temporary Stay and Assistance Centres (CPTA), the Ministry of Interior (Department on Civil Rights and Immigration) drafted in the year 2002 "Guidelines" to better manage the Centres for immigrants. This text envisaged the supply of services, provided for adequate standards, and highlighted the need to ensure the highest standards of professionalism as to the managing bodies, all involved in the social sector.

The cited Department supervises the Prefectures involved and are in charge with Centres devoted to the immigrants stay. These Prefectures, on their own, must supervise the correct functioning of the Centres, particularly the respect for fundamental rights of immigrants, in line with the Directive of the *ad interim* Interior Ministry, Hon. E. Bianco, adopted on August 30, 2000.

Along these lines, Prefectures must also control that services to be provided by the managing bodies of these Centres are in compliance with the Guidelines: in particular, the entire management system aims at securing the respect for the various minorities and ethnicities hosted in the Centres; an adequate health-care assistance, legal counselling (The State provides a lawyer to indigents (Art. 97 c.p.p.)), an interpreter and a cultural mediator, etc.).

Within this framework, it is worth noting therefore that the so-called Bianco Directive (The August 2000 Directive of the then Hon. E. Bianco), which was issued pursuant to Art. 22 DPR no. 394/99 and entitled "Regulation for the implementation of the Unified Text no. 286/98, envisaged that "the representatives of Italy-based UNHCR, under authorization of the Ministry of Interior, are entitled to access the Centres, whenever requested, except for prevailing security reasons and the regular functioning of the Centres..."

In this regard, it is worth recalling the recent visits to the Centres (CPTA) throughout the country, made by international organisations, such as the CoE - CPT (Art.3 ECHR), the FIDH and the CHR Special Rapporteur on the human rights of migrants, Ms. Pizarro: all the cited bodies and organisations' representatives have acknowledged the good management and functioning of the Centres.

In particular, by visiting several Centres, the CPT-CoE declared that such Centres were in line with the respect for human rights, except for Agrigento - ASI B9 CPTA, which was subsequently closed by the cited Department. The Agrigento Centre is under restructure. The Head of the Department on Civil Rights and Immigration at the Interior Ministry, on occasion of the last CoE-CPT visit to Italy, decided, on December 3, 2004, in accordance with the recommendation of the Committee, the immediate closing down of the Agrigento Centre. Along these lines, on 30.3.2005, at the expiry of the Memorandum with the managing body of the Centre, the CPTA "Regina Pacis", located in Meledugno - Lecce, was also closed.

Worth reiterating, once more, the difference between the **Temporary Stay and Assistance Centres (CPTA)**, when the foreigners are expected to be expelled, and the so-called **Identification Centres**, when asylum-seekers are being hosted and waiting for the examination of their application before the Territorial Commissions.

As to the CPTA, the provisions in force - Law Decree no. 451/95, converted by Act no.563/95 - authorize the Interior Ministry to provide for assistance measures and prompt action, inter alia, by means of adequate infra-structures, in order to ensure first-aid to the irregular foreigners, waiting for their identification, or eventually, for their expulsion. In particular, art.20 of the DPR no.394/99 concerning the stay in the

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CPTA, sets that the stay can be arranged in the closest Centre, provided its availability. Such integration to the previous system allows to arrange the accommodation in a better place, while in the past there was no care for the availability: the rule was to arrange the accommodation in the closest Centre, even though overcrowded.

The cited Centres were arranged with the aim of providing rescue and assistance services to the irregular foreigners, and of considering their legal position within the Italian borders, including the expulsion or the asylum proceedings. As to the so-called CPTA, it is worth mentioning that since early 2005, new structures have been envisaged in order to be able to host more people and to better respond to the increase in the disembarkations.

At present, restructuring measures have been envisaged and/or implemented vis-à-vis the following Centres: Lampedusa, Bologna, Brindisi, Caltanissetta, Lecce-Otranto, Milano, Modena, Roma, Torino, Trapani-Serraino Vulpitta.

As to the establishment of additional infra-structures, a Centre for 220 persons has been created in Foggia, and a new one for 200 units is about to be finalised in Bari. In the Northern-East part of Italy, a new Centre (CPTA) will be opened by the end of 2005 in Gradisca d'Isonzo (Gorizia), and able to host 252 units.

Along these lines, local authorities are carrying out a mapping exercise to find out feasible posts so as to establish new Centres. Nevertheless, such exercise has already faced some socio-economic difficulties.

Despite these problems the planning exercise keeps going. The relevant authorities are now focussed on the dismissed airport in Milo at the Trapani Municipality which could host 200 persons.

In addition to these areas, Prefectures have been engaged in building up and finding out relevant structures - namely UTG - by means of memoranda with associations, bodies, or private sector, namely Caritas Centre in Gorizia, 32 units; Como, Lo Tavernola, managed by the Red Cross, 200 units; Benincasa Centre in Ancona, 40 units.

This network can host, up to 3250 units, in order to expeditiously deal with emergencies. Moreover, the Interior Ministry has envisaged to supply the existing Centres with prefabricated structures^{viii}.

ⁱ The 1998 Unified Text on Immigration (D.L. 286/98) introduced a system to program the migratory flow, on the basis of which the Government action was taken with the aim of fighting against discrimination. The linkage between labour contract and stay permit was strengthened by the entry into force of the following texts: 1. Act no. 189/02, entitled "Amendment to the provisions on migration and asylum" (as recently renamed Unified Text on the provisions concerning the provisional system on migration and on the status of the foreign), which envisaged the so-called "stay contract for working reasons"; 2. Law Decree no. 195/02, converted by Act no.222/02, entitled "Urgent provisions to legalise the informal labour of the non-EU citizens".

ⁱⁱ More recently, it is worth noting that: 1. Act no. 272/2004 took into account the judgment of the Constitutional Court concerning the validation process for the expulsion of the foreigners. This Act has therefore amended the previous system concerning the foreign who stays within the domestic borders, without a clear motivation and regardless of the local police authority's order to

leave the country; 2. The DPR no. 334/2004, which entered into force on February 2005, has better defined the functions of some bodies in charge with the relevant procedures of release (arts. 4 - 5) or denial (art. 6) of the visas, as well as the formalities for the release of the stay contract (art. 8), the requirements concerning the residence permits (arts. 10, 11 e 13), while paying due regard to the conditions for the social protection (art. 21) or the cases concerning the prohibition of the expulsion and the non refoulement (art. 22), as well as the stay in the so-called CPTA (art. 20).

ⁱⁱⁱ The Constitution provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution. The Government grants refugee status or asylum. The Government fully cooperates with the Office of U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees, and providing temporary protection to refugees fleeing hostilities or natural disasters. Such refugees are granted temporary residence permits, which must be renewed periodically and do not ensure future permanent residence. In 2003, the Ministry of Interior approved approximately 725 asylum requests; experts estimated there were 500,000 illegal aliens resident in the country, and large numbers of immigrants continued to arrive from Africa, Eastern Europe, the Middle East, and China. Most illegal immigrants are denied entry at the border. Those who do enter, usually via the sea, are sent to Temporary Stay and Assistance Centres (CPTA) for processing.

^{iv} Art. 1-bis of the Law Decree no. 416/89, converted in Act no. 39/90, set two different stay procedures in such Centres: the former is compulsory, while the latter is optional (Art. 1-bis, comma 1). This Article envisages also those cases when the stay is compulsory (Art. 1-bis, comma 2).

^v Art. 1-ter, para. 4, of Law Decree no. 416/89 envisages the effects of the case when the foreign leaves without authorization the Identification Centre.

^{vi} IDENTIFICATION CENTRES – as of 2004:

Location	Number
Agrigento	110
Brindisi	180
Catanzaro	75
Lecce	180
Modena	60
Roma	300
Bologna	95
Caltanissetta	96
Crotone	129
Milano	140
Ragusa	60
Torino	78

To be soon realised

Location	Number
Bari	300
Foggia	300
Perugia	300
Trapani	220

RESCUE AND ASSISTANCE CENTRES:

Location	Number
Lampedusa	190
Lecce-Otranto	75

^{vii} The local bodies provide for services aiming at the full and effective integration into the social system of refugees and people with stay permit for humanitarian reasons or temporary protection. Several initiatives aim at favouring the vocational training courses to promote access to labour market. Moreover, there is a network involving stakeholders of the real estate sector (estate agencies, municipalities, and relevant associations) to support "the housing search" and solve the housing problem.

^{viii} The CPTA for immigrants are aimed at the stay of Non-EU citizens, as envisaged by the amended Unified Text on Immigration no. 286/98 (Art.14). The Unified Text, in fact, was modified by Act no.189/2002 (art.12), so as to contrast the irregular migration within the domestic borders, by proceeding with the enforcement of the expulsion measures. At present, there are in use the following Centres: 1. Agrigento- Lampedusa; 2. Bologna; 3. Brindisi; 4. Caltanissetta; 5. Catanzaro; 6. Lecce; 7. Milano; 8. Modena; 9. Roma; 10. Torino; 11. Trapani; Crotone; Ragusa. As to the living standards and, more generally, to the respect for human rights at the Centres, they are set by the cited Unified Text and by the Ministry Decree, the latter renamed "the Bianco Directive (30/8/2002)".