



## Statewatch Analysis

### Italy: The internal and external fronts: security package and returns

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**The “security package” introduced under Law 94/2009 turns a number of decrees into law. Exceptional measures allegedly to meet “emergencies” are targetted at refugees, migrants, Roma and direct *refoulements* to Libya**

Past articles in *Statewatch* have highlighted legal developments in Italy in which discriminatory legislation was introduced through successive “security packages” and a plethora of other measures adopted by local councils. Criminal offences committed by migrants, as well as their routine activities, have been targeted and subjected to heightened controls. Exceptional measures to deal with situations treated as “emergencies” have been introduced, such as the deployment of soldiers in cities (at stations and other sensitive locations) and special plans to deal with Roma people, involving their identification and fingerprinting, as well as their eviction from makeshift camps (see *Statewatch*, Vol. 18 no. 2). They now seem open-ended after both the measures were renewed, with an increase in the numbers of soldiers deployed. These measures have been accompanied by an aggressive media discourse against migrants and, most worryingly, by political representatives and government officials.

These legislative attacks on foreigners have spilled over into other areas, for example there were attacks against homosexuals in September and October 2009, that were perpetrated by youths and fascists. There have also been instances of violence against migrants by members of the public security forces, of which interior minister Roberto Maroni is in an apparent state of denial (see *Statewatch* Vol. 18 no. 3). The violent incidents have continued, particularly in detention centres where mobilisation against the “security package” has been ongoing during the summer. Mobilisation against these discriminatory measures peaked during a large demonstration in Rome that passed off peacefully on 18 October 2009, which organisers said brought 200,000 people onto the streets.

#### The internal and external fronts

This article seeks to identify some key features of Law 94/2009 that turned a number of measures from past security package decrees into law, introduced new measures and abrogated others. It also modified some measures and introduced new proposals during its passage through parliament. In some instances the changes were positive. For instance,

the crime of illegal residence, which was introduced to avoid the Returns Directive requirement that a guilty verdict under criminal law be required for an immediate expulsion with accompaniment to the border, went from entailing a mooted custodial sentence to a fine that is so high that it is unlikely many of the so-called “clandestines” will be able to pay it. A number of controversial issues have been raised since it came into force on 24 July 2009. Courts in Pordenone, Pesaro and Trento have challenged the law’s constitutionality for reasons including the criminalisation of mere “social and personal conditions” rather than acts committed wilfully and the law being “unreasonable”. The constitutional court will have to resolve these claims. A regularisation procedure for foreign housekeepers and carers was established after it became clear that many households would suffer from losing their services. The possibility of filing requests was open from 1 to 30 September, and a total of 294,744 applications emerged from “illegal” employment to be granted regularisation.

While it largely concerns migration, the security package also deals with organised crime (drawing a closer link between the punishment for assisting illegal immigration and that meted out for other forms of criminal activity) and offending public officers who are carrying out their duties. There are harsher sentences for people who drive after drinking alcohol or consuming proscribed drugs, measures against graffiti and a tougher policy against people subjected to the special *41 bis* prison regime (for serious offences including involvement in organised crime and terrorism).

The government responded angrily to criticism of the measures, particularly charges that they result from the racism of some of its members, (*Avvenire*, the newspaper of the bishop’s conference, spoke of new “racial laws” in reference to those adopted under the fascist regime). The government argued that it is a matter of respecting the rule of law. It also launched repeated attempts to portray criticism from abroad as “anti-Italian” and “ill-informed”. Following UNHCR’s criticism of the return of migrants intercepted at sea to Libya at the start of May, defence minister Ignazio La Russa dismissed the UN agency dealing with the rights of refugees as “not being worth a dried fig”.

Months later, on 1 September, there was a request for clarification from the EU Commission as to what measures had been adopted to ensure that the right to seek asylum had not been violated by the return of an intercepted vessel - this time carrying 75 would-be migrants - to Libya. Berlusconi replied by calling for “none of them...[Commissioners’ spokespersons] to be able to intervene publicly on any subject”, arguing that they should not unduly interfere in a domestic political debate. He said that he would raise the matter in the Council (representing the EU governments) and threatened to block the Council’s operation by refusing to vote. He called for Commissioners’ resignations if his instructions for their spokesmen’s silence were not adhered to. When challenged over the Italian government’s repeated failure to implement binding European Court of Human Rights interim measures, adopted under Rule 39 of its rules of procedure to suspend expulsions while the Court had an appeal against the measure pending, Maroni stated that:

*We respect the European Court’s decisions, and I stress decisions. However, when I receive a fax from an official that says that it is necessary to suspend the expulsion while awaiting the Court’s decision, I prefer to continue and expel an alleged terrorist.*

Thus, the only means available to the Court for preventing the repatriation of people at risk of suffering torture, inhuman or degrading treatment on return to their home country (most cases concerned Tunisia), was dismissed as an insignificant “fax from an official” (see *Statewatch news online*, September 2009).

## The wide-ranging security package

The emphasis on guaranteeing security above all other concerns, which has been explicitly linked to the situation of immigrants in Italy and illegal immigration *per se*, has led to a number of measures being introduced, effectively in instalments and with continuous developments and ramifications. A much-expanded “security package” law was signed by president Giorgio Napolitano (with reservations) on 15 July 2009. In a troubled passage through parliament, the law was only approved on 2 July following three votes of confidence (one for each article), with the government staking its survival on the measure in order to prevent divisions within the coalition and to curtail debate. On signing the security package, Napolitano noted that the addition of several measures meant that it lacked heterogeneity and that some measures lacked coherence with the overall principles of the legal order and penal system.

### A non-comprehensive list of the measures that have been adopted includes:

- *custodial sentences of between six months and three years for people who lease accommodation, or allow its use to people who do not have a residence permit when the contract is required or renewed;*
- *a duty for companies providing money transfer services to require and keep a foreign customer’s residence permit, and to inform the public security local authorities within 12 hours if it is not produced, alongside the identification details of the customer. The failure to do so results in the company’s license being revoked;*
- *the criminalisation of foreigners’ irregular entry and residence in Italy, to be sanctioned with a substantial fine (of between €5,000 and €10,000) and expulsion rather than imprisonment (as had been originally envisaged). This measure entails a duty for civil servants or those in charge of public services to report anyone they find to be in such a situation. The fine and sentence can be substituted by the application of an expulsion measure entailing a five-year ban on re-entry;*
- *submission of a residence permit is required to register for any public services, with the exception of “temporary sports and recreational activities”, health services and “obligatory schooling services”. Efforts were made for the requirement to include these fields but were narrowly averted due to widespread opposition, notably by doctors who publicly expressed their intention not to report “irregular” patients;*
- *restrictions in all aspects of migrants’ relationships with public authorities, including municipal residents’ registers for marriage, for which foreigners will have to produce a “document that certifies the regularity of their stay in Italian territory”. This also applies to the issuing of certificates by public authorities. Birth certificates for children were excluded from this requirement at the last moment;*
- *conditions for obtaining citizenship following marriage to an Italian are altered, with two years’ legal residence in Italy after the wedding required (previously six months) and three years if the third-country national or stateless person lives abroad (unchanged), although both time frames are halved by the presence of offspring or adopted children;*
- *in the penal code, illegal presence on Italian territory of the person found guilty entails an increase in sentencing of up to a third for a given offence, applicable to third-country nationals and stateless people, but not to EU-country nationals;*
- *a €200 “contribution” is required for procedures concerning citizenship (previously a €14.62 seal was required when submitting the form), and between €80 and €200 for the issuing or renewal of a residence permit (except for people granted asylum). Revenue will be divided between the interior ministry’s civil liberties and immigration department’s projects for international cooperation and assistance for third countries in*

*the field of immigration, and the immigration department's costs resulting from proceedings concerning immigration, asylum and citizenship.*

*· it authorises and regulates the setting up of ronde (citizens' patrols) to surveil the territory and report crimes to public security bodies.*

### **Detention and integration agreements**

The length of detention with a view to expulsion in *centri di identificazione ed espulsione* (CIE, identification and expulsion centres), increased three-fold, with the previous limit of two months (involving an extension after 30 days if expulsion or identification proved impossible) becoming the standard term, renewable twice up to a maximum of six months. The *questore* (police chief in a given city) may authorise continued detention on the basis of a "lack of cooperation by the third country national in question, or delay in obtaining documentation from the third country", with a second extension allowed if such conditions "persist". Lawyer Guido Salvi, speaking at a seminar organised by ASGI and *Magistratura Democratica* (MD), noted that this does not significantly change the likelihood of expulsion or repatriation when conditions enabling it depend, for example, on third countries failing to issue or send travel documents, turning it into an extension of detention. Italian language tests and an integration agreement will be introduced as requirements for obtaining a residence permit. The agreement, which has yet to be developed, will operate on the basis of "credits", the loss of which would result in a permit being withdrawn. It involves a commitment to work towards attaining "integration goals" during the duration of their residence permit.

### **Repatriations to Libya**

From 6 to 10 May 2009 the first operations involving direct refoulements to the port of Tripoli of migrants seeking to reach Italy, who were intercepted at sea, were carried out. The first of these involved the return of 231 people by customs police and port authority boats on 6 May; the second saw 77 people returned following their rescue by an Italian oil company towboat on 8 May. The last group comprised 163 people intercepted in Maltese waters who were taken back to Libya on 10 May in an Italian navy ship, *Spica*, from where they were believed to have set off. Thus, 471 people were returned to Libya in five days in an operation described by interior minister, Roberto Maroni, as an "historic success". He argued the removals have contributed to practically ending arrivals by boat and are fully compliant with international law.

Reporting to the senate on 25 May 2009, Maroni defended the repatriations by citing the "principle of cooperation between states" and the "development of friendly relations between states" in the UN Charter and the UN Convention and Protocols against transnational organised crime. He then turned to the UN Convention on the law of the sea that allows the interception of a stateless vessel in international waters and the additional protocol to the Convention against transnational organised crime and to combat illegal immigration that allows the interception of vessels and seeking assistance from other countries. As for cooperation with Libya, he stressed that the friendship, partnership and cooperation treaty of August 2008 had envisaged intensifying cooperation between the two countries in a number of fields including countering illegal immigration (see *Statewatch news online*, November 2008).

Maroni noted that joint Italian-Libyan patrols at sea had been envisaged by the treaty, that Italy had already given Libya three motorboats on 14 May 2009 (with the provision of three further ones imminent) and that an inter-force Libyan-Italian command in Libya to coordinate operations at sea is planned. In light of this, Maroni argued that all the "undue

charges directed [at us] of having acted outside international law” had been answered, and that returns are “an effective policy to counter illegal immigration, that the Italian government intends to pursue without hesitation”. He supported his claim by citing a substantial decrease in arrivals by sea compared to 2008. He added that all cooperation between Italy and Libya takes place within the framework of respect for human rights and that allegations of Italy having violated the right to seek asylum are untrue. He claimed that Libya is a perfectly safe destination for asylum seekers despite its failure to recognise the UNHCR, because the organisation has an office in Tripoli and the IOM (International Organisation on Migration) also operates in Libya.

*Fortress Europe* has published a list of documented refoulements at sea that shows that between 6 May and 8 September 2009, at least 1,329 people were returned to Libya, 24 of whom (Somalis and Eritreans) have instructed an Italian lawyer to submit an appeal to the European Court of Human Rights. Their observatory on deaths at Europe’s borders documents the abuses suffered by migrants in Libya as a result of this co-operation. In September, it reported that several of the people returned to Libya were still in detention camps, where they had spent four months. It also documented the repression of Somali detainees (and some Eritreans, according to an eye-witness) involved in a mass escape attempt on 9 August 2009 in Ganfuda prison, Benghazi. Truncheons and knives were used by prison guards in an operation that led to six deaths and scores being wounded. Fifteen photographs of the wounds inflicted on the detainees are posted on the Fortress Europe website.

What the minister did not mention seriously undermines his claims. This is laid out in a complaint submitted by a number of associations to the European Commission, the UN Commission on Human Rights and the Council of Europe Commissioner for Human Rights. Firstly, there is the matter of non-compliance with Italian, EU and international law, in terms of both the actions and their effects. The fact that would-be migrants were taken onto Italian vessels effectively placed them on Italian territory, and hence under its jurisdiction as decreed by the Italian penal code (art. 4, “Italian ships and aircraft are considered territory of the State”) and the code of navigation. The refusal of entry (“direct or indirect”) is prohibited by the Geneva Convention on refugees, the ECHR, and a variety of other international human rights instruments including the UN Convention against torture and other cruel, inhuman or degrading treatment, even in the event of agreements with countries to which they are repatriated. Obligations imposed by the search and rescue (SAR) and safety of life at sea (SOLAS) conventions, ratified by Italy, mean that a “safe place” must be found for people rescued at sea and that there is a:

*need to avoid making asylum seekers and refugees rescued at sea disembark in those territories where their life and freedom would be at risk.*

Taking them to Italy would have fulfilled this requirement. Libya has not signed the Geneva Convention on refugees and serious human rights violations against migrants have been extensively reported.

The non-refoulement principle is another “absolute and inderogable” norm, applicable both on the State’s territory and in an extraterritorial context (“wherever they effectively exercise their jurisdiction”), that was contravened. This principle forbids expulsion, return or extradition to a State where someone would be at risk of being subjected to torture, inhuman or degrading treatment. Likewise, protocol 4 of the European Convention on Human Rights forbids the collective expulsion of foreigners. Italy has enacted a mass return of foreigners to a country, deemed to be that of departure, without administrative actions being adopted on an individual basis as required by Italian law (issuing of an expulsion order, right of appeal). Not allowing any potential asylum seekers on board the

intercepted vessels to identify themselves is a further violation, particularly if one considers that UNHCR said it was “likely that there [were] individuals... in need of international protection”. It added that:

*In 2008, around 75% of those who have arrived in Italy by sea applied for asylum and 50% of them were granted some form of international protection.*

The complaint notes that EC Regulation 562/2006 concerning border crossings was also violated as regards respecting the dignity and human rights of migrants, proportionality, the rights of refugees and non-refoulement, the carrying out of minimum checks to establish people’s identities, and the fact that “Entry may only be refused by a substantiated decision stating the precise reasons for the refusal” (art. 13) with a related right of appeal.

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