

# Italy: The Radical Party submits 19 questions for Italy's review by the UN Council on Human Rights

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The Nonviolent Radical Party, Transnational and Transparty (NRPTT) wishes to avail itself of the opportunity provided by the UPR submission system to submit a series of questions concerning Italy, which review is scheduled for later in the year.

The NRPTT, formerly registered under the name of Transnational Radical Party, is a category 1 non-governmental organization in consultative status with the Economic and Social Council of the United Nations.

Since its affiliation with the ECOSOC in 1995, the NRPTT has been active in the promotion and protection of Human Rights the world over and within the UN system allowing the participating in the works of the UN Commission on Human Rights and the UN Council on Human Rights, as well as other meetings in New York and Vienna, of individuals and groups representing situations or regions where rights violations are systematic and structural.

Even before its affiliation with the ECOSOC in the early 1990s, the NRPTT has been at the forefront of the promotion of global campaigns that were instrumental in the creation of the International ad hoc Tribunals for the former-Yugoslavia and Rwanda, the establishment of the International Criminal Court, the promotion of a Universal Moratorium of capital executions and a ban on Female Genital Mutilations.

The NRPTT promotes its objectives through nonviolent means - its symbol is the face of Mohandas Gandhi designed with the words "Radical Party" in some 40 different languages – and in collaboration with other NGOs, decision-makers and opinion leaders trying to foster synergies between institutions and public opinion.

Over the years, the NRPTT has also participated in negotiations in New York and Vienna always including a human rights component every time the United Nations had to take important decisions on a variety of issues.

To assist in the preparation of the second cycle of Italy's Universal Periodic Review, the NRPTT wishes to contribute with questions that address the acceptance and/or refusal of the observations issued in 2010 on Italy.

What the NRPTT wishes to bring to the attention of the UN Council on Human Rights has been the fruit of a long series of actions carried out by the organization itself. Those initiatives have oftentimes provoked sentences and decisions of various national and regional bodies. Despite those condemnations by local and supranational jurisdictions, Italy has not amended her law nor has promoted significant reforms to address the various rights violations highlighted.

The NRPTT believes that the situation in Italy vis-à-vis the Rule of Law has reached an alarming level in which the only law of the land is the uncertainty of the respect of the country's constitutional legality.

The NRPTT looks forward to continuing its work to assist the UN relevant bodies to address the human rights situation in Italy.

## **1. What measure is Italy adopting to fully respect articles 7 and 14 of the ICCPR?**

In January 2013, the European Court of Human Rights adopted a “pilot sentence” on Italy asking the government to adopt a series of legislative remedies to address the systemic violation of article 3 of the ECHR in the national penitentiary institutions. Despite the fact that the recurrences were coming from two penitentiaries, the European Court stated that “inhuman and degrading” treatments are a structural problem throughout the country.

2. Article 3 of the European Convention on Human Rights prohibits inhuman and degrading treatment – as Art. 7 of the International Covenant on Civil and Political Rights (ICCPR) – which are also a violation of art. 27 of the Italian Constitution: “Criminal responsibility is personal. The defendant is not considered guilty until the final judgment is passed. Punishment may not consist in inhuman treatment and must aim at the rehabilitation of the convicted person [...]”.

3. Italy’s appeal in April 2013 was eventually rejected, and the Strasbourg Court fixed the deadline of 28 May 2014 to respond to the Torreggiani sentence.

4. On 8 October 2013, acting under article 87 of the Constitution, the President of the Republic addressed Parliament with a message denouncing prison conditions and stressing the need to respond to the Torreggiani sentence. President Napolitano suggested possible remedies: alternative penalties, ample depenalisation of non-violent crimes as well as pardons and a substantial amnesty.

5. On 6 March 2014, the Committee of Ministers of the Council of Europe, expressed serious concerns on the lack of progress in Italy vis-à-vis the pilot sentence.

6. As at 15 March 2014, only the Chamber of Deputies had held a debate on the work of its Committee on Justice concerning some draft bills that should respond to the presidential statement. Unfortunately, none of the laws, or changes in policies, adopted or promoted by Parliament nor the decrees introduced by the Government in July and December 2013 have fully responded to the Torreggiani.

7. Over the last couple of years, the prison situation has deteriorated; in fact, in her speech before the Chamber of Deputies on 24 January 2014, the then Minister of Justice stated that as at the end of 2013 the regular capacity of Italian prisons was of 47.599 places, however those figures suffered a relevant downturn (of some 4.500 places) because of ordinary maintenance of several institutions as well as buildings renovations. As a consequence some 4500 places need to be subtracted to the 47.500 officially declared; those figures had been calculated at “4 December 2013”. As at that date, there were “64.056 people detained, 11.880 awaiting a first judgment, 12.049 with a non definitive sentence, 38.828 with a definitive sentence, and 1.189 interned”. Furthermore, the Minister also stated that within the framework of a plan to build new prisons a total of “12.324 new places have been or are being realized, 5.012 of which are ready to be used”. The Minister did not elaborate if they were in fact already being used.

8. On several occasions, both Government, Parliament and police unions have stated the in order for the new, and the old, penitentiary institutions to operate according to the law the Government should hire some 5.000 new policemen.

9. The European Court on Human Rights has also denounced Italy’s violation of article 6 of the HR European Convention on the “unreasonable duration of criminal proceedings” - Art. 14, 1c of the ICCPR. In January 2014, the Minister of Justice denounced a situation in which there are some three and a half million ongoing criminal proceedings, which duration goes beyond five years - a

burden that clogs the work of courts all over the country. The situation of civil justice is even worse with over five million ongoing proceedings with an average duration of seven years, as denounced by the Organisation for Economic Co-operation and Development (OECD).

#### **10. What measures are being discussed to avoid the abuse of pre-trial detention?**

Art. 14.2 of the ICCPR recites that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”. By admission of the Ministry of Justice some 40% of those detained in Italy do not have a final sentence (Italy’s system envisages three degrees of judgment), around 10% of have never seen a judge. Bar Associations signal that half of that 40% is finally acquitted.

#### **11. Will Italy consider a reform of art. 41 bis of its Prison Administration Act**

Article 41-bis of the Prison Administration Act allows the Minister of Justice or the Minister of the Interior to suspend certain prison regulations. It is used against people imprisoned for particular crimes: Mafia involvement; drug-trafficking; homicide; aggravated robbery and extortion; kidnapping; importation, buying, possession or cession of huge amounts of drugs; and crimes committed for terrorism or for subversion of the constitutional system. It is suspended only when a prisoner co-operates with the authorities, when a court annuls it, or when a prisoner dies. The Surveillance Court of Rome is the court competent on nationwide level on appeals against the 41-bis decree. Such a special treatment is in breach of article 7 of the ICCPR as it constitutes treatments in violation of human dignity and certainly is not in line with art. 27 of the Italian Constitution.

#### **12. How will the newly established Prisoner Ombudsman operate?**

In February 2014, Parliament converted into law a governmental decree concerning criminal matters that, among other things, established the “Garante nazionale dei diritti dei detenuti” a national independent ombudsman for the rights of prisoners. The need to swiftly adopt the decree implementing legislation did not include the specifics on the competences and prerogatives of such a figure.

#### **13. How Italy intends to align the definition of torture with international standards?**

On 6 March 2014, the Senate of the Italian Republic finally introduced, in ‘first reading’ (Italy has a perfectly bi-cameral parliamentary system where bills must be discussed in both Chambers) the crime of torture in her penal code. The text does not adhere to the letter and spirit of the UN Convention as it is not specifically applied to public officers, and implies a reiteration of the act to be considered such. Finally, should the acts provoke the death of the person the law mandates life in prison as the ultimate sentence, something that is not in line with art. 27 of the Constitution.

#### **14. When will Italy establish a National Independent Human Rights Institution?**

In Spring 2013, Parliament finally ratified the Optional Protocol to the UN Convention on Torture (OPCAT), but it did not proceed to establish an independent Human Rights institution along the lines of the Paris principles. The absence of such an agency will not allow the comprehensive monitoring mechanism envisaged by the OPCAT.

15. Since the beginning of the XVII legislature (March 2013), several draft bills have been introduced on the matter but none is fully in line with the Paris principles. Of particular concern is the lack of guidelines for the selection and appointment of the members of the Institution as well the lack of clarity of their prerogatives.

## **16. How will Italy address the need to reform the Justice system for the mentally ill?**

In spring 2012 and 2013, Parliament adopted laws to close down the so-called “Ospedali psichiatrici giudiziari” (Psychiatric Judicial Hospitals) devolving their competences to regional administrations with the prospect of releasing hundreds of mentally ill people transferring them to sanitary institutions if not dangerous. Neither the central government nor the regions have taken any step to implement those decisions.

## **17. When will Italy set up special institutions for prisoners with children?**

In 2011, Parliament adopted legislation concerning mother prisoners foreseeing the incarceration of women and men with children up to the age of six only in very serious circumstances and promoting the construction of Istituti a Custodia Attenuata per detenute Madri (ICAMM), special institutions with a lesser degree of security. As at March 2014, only one of the proposed new institutions, the one in Venice, has been inaugurated leaving some 40 mothers behind bars with their children in other penitentiaries in Florence, Rome and Turin.

## **18. Will Italy finally abolish life imprisonment in its various forms?**

Article 27 of the Italian Constitution envisions a justice system dedicated to the rehabilitation of criminals. Keeping life imprisonment, and denying the right to prisoners – those condemned to the so-called “ergastolo ostativo” (life imprisonment without parole) under art. 4 bis Prisons Administration Act - to enjoy some form of limited liberation after some 20-25 years of life in prison goes against the Constitution and is also in breach of a 2013 sentence of the European Court of Human Rights.

## **19. Will Italy establish an integrated and independent body to monitor the application of laws concerning equality addressing discriminations on grounds of sexual orientation, gender identity and expression?**

The respect of the rights of Lesbian Gay Bi-sexual Transgender and Intersex (LGBTI) people in Italy is often undermined by incomplete legislation. Over the last decade, implementing EU directives, Italy has adopted legislation prohibiting discrimination on sexual orientation and - to some extent - gender identity in the field of both public and private employment.

20. In April 2013, a National Strategy to prevent and contrast discrimination on grounds of sexual orientation and gender identity (2013-2015) was also adopted. The National Strategy was defined by the national Office for the promotion of equal treatment and the removal of discrimination on grounds of racial or ethnic origin (UNAR) without legislation on the expansion of UNAR's competences keeping its work vulnerable to political will or changes in government.

21. In 2010, Italy established The Observatory for security against acts of discrimination (OSCAD) to help individuals who belong to minorities to enjoy their right to equality before the law and guarantee protection against any form of discrimination also based on sexual orientation and gender identity. Despite the establishment of these two bodies, Italy lacks an integrated and independent equality body to pursue a multi-ground equality agenda.

## **22. Will Italy adopt measures to allow equal treatments of same-sex couple?**

Same-sex couples are discriminated against in the law if compared with different-sex ones. The State does not provide any solutions to everyday problems to which this discrimination gives rise. No law is currently being discussed in Parliament to address such unequal treatment.

## **23. Will Italy complement gender reassignment laws with more specific regulations?**

Gender reassignment In Italy is legally granted, changes in documents are guaranteed, and medical procedures are available free of charge. Nevertheless, lack of specific regulation in procedures causes uncertainty and differentiation around the country. Furthermore, sterilization is still widely considered a necessary pre-requisite for gender legal recognition. The health care system does not provide free hormone therapy for secondary sexual characteristics in all Regions.

24. As at March 2014, there is no specific regulation of an eventual modification of personal data for intersex/dsd individuals, whose gender identity may not correspond to their medically assigned sex.

**25. Is Italy developing policies to updates health and social workers on LGBTI issues?**

The health care system fails to consider the special needs of LGBTI persons. Training of health personnel and social workers does not include LGBTI issues in a structural way. The differences in sexual development (dsd/intersex) are still considered health issues, instead of possible natural variations in human sexual development.

**26. Will Italy include gender identity as a factor for asylum seekers?**

Interpretation of the Italian law is that persecution on the ground of sexual orientation is a factor to obtain refugee status or humanitarian protection. Gender identity remains neglected.

**27. When will Italy eliminate the criminalization of undocumented migrants?**

Despite some recommendations adopted at the first Universal Periodic Review invited Italy to review the crime of “illegal immigration”, there has been no change in the law that considers a criminal act being caught without proper papers or visiting permits. Such a measure, entered into force during the summer of 2009, significantly contributed to a relevant number of incarcerations creating additional problems to an already ailing prison system.

28. The change in the law radically changed the nature and scope of the immigration centers making them resemble more detention camps than temporary accommodations places for migrants. In April 2011, the European Court of Justice deemed that “illegal immigration” as an illegitimate crime.

**29. Will Italy review the quality, nature, and scope of Immigration Centers?**

After a significant increase of arrivals of migrants during the so-called “Arab Spring”, Italy adopted measures to face the problem opening new centers that did not wholly conform with national and international regulations. Despite being temporary, several centers remained operatives for many months. To manage the most significant numbers of arrivals, the Ministry of the Interior suspended the criminalization of undocumented migrants up to a date generating great confusion for those that reached Italy in the following days, mainly from Tunisia, as the date set was antedecent to the arrival of the second wave of migrants.

30. The majority of those arrived in April 2011, stated that they intended Italy as a country of passage expressing a desire to proceed to northern Europe. While there remain problems vis-à-vis the Dublin Convention on asylum seekers, given Italy’s geographical position the government has only recently converted centers situated close to migrants’ port of entry into Center for First Aid and Assistance creating a mechanisms to swiftly transfer them to other places where they can also apply to the various forms of protection envisaged by the national legislation.

31. National non-governmental organizations and international monitoring entities such as the Human Rights Rapporteur of the Council of Europe have oftentimes stigmatized the poor

conditions of the immigration centers. As late as December 2013 migrants staged mass demonstrations in several centers to denounce the conditions in which they were kept.

**32. Can Italy explain how the immediate repatriation of undocumented migrants differs from refoulement?**

Over the years, Italy has signed bilateral agreements with some countries for the immediate repatriation of undocumented migrants. There are weekly flights from Milan and Rome to repatriate individuals without giving them a chance to be heard on the motives of their presence in Italy. This amounts to a violation of the principle of non-refoulement.

**33. When and How will Italy Finally Implement her National Strategy of Roma Inclusion?**

In February 2012, Italy adopted a National Strategy for Roma Inclusion to overcome “nomad camps” and foster their social, working and educational inclusion. As highlighted by European Commissioner Nils Muiznieks in his visit to Italy in December 2013, there is no clear plan or calendar for the effective implementation of the strategy.

34. The so-called “nomad camps” built during the state of emergency (2008-2011) have proved to be places of segregation often far from inhabited centers, surrounded by fences, guarded by private security and surveillance cameras with no access to basic services, infrastructures and sufficient sanitary conditions. Spontaneous settlements show even worse sanitary and infrastructural aspects albeit better conditions in terms of closeness to services and social life.

35. Despite a large number of projects of by associations all over the country, the education of Roma children who live in the camps appears insufficient and distant from the one of the rest of the population.

**36. What measures will Italy adopt to fully implement the UN Convention on the Rights of Persons with Disabilities?**

On 3 March 2009, Italy ratified the UN Convention on the Rights of Persons with Disabilities that provides specific obligations to revise or update any regulation on the matter. The set of measures adopted under a “two-year action program (2012-2015) to promote the rights and inclusion of people with disabilities” drafted by the National Observatory on the Status of Persons with Disabilities on 28 December 2013 cannot be considered in line with the UN Convention.

37. According to the International Classification of Impairments, Disabilities, and Handicaps (*ICIDH*) adopted by the WHO in 1980s, disability is a condition not only to be attributed to various impairments that can affect people but also to the inter-relationship between people and their impairments in the contexts where they live and work. The two-year action program does not take into account that definition of disability - a structural lack that has a negative impact on the current system of welfare for the disabled. The adaptation of the contexts in which people interact with disabilities can reduce their deficit, and therefore the costs incurred by the State as a partial compensation of the social disadvantages suffered by people with disabilities. Those resources could be dedicated to helping people with severe disabilities.

38. Italy has made no progress in the implementation of her Plan for the Elimination of Architectural Barriers (PEBA) that mandates the central government and local administrations to adapt all the necessary practical measures to comply with Law No. 41 of 1986.