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Italy: New legislation violates right to liberty for migrants

Amnesty International is calling on the Italian Parliament to repeal new legislation which manifestly violates the rights of irregular migrants, including by extending the upper limit for detention from six to 18 months. The new legislation also authorises the forcible removal from Italy of EU citizens who fail to fulfil certain requirements, raising the prospect that this provision may be applied in a discriminatory manner and pave the way for the selective deportation of individuals belonging to specific ethnic minorities, in particular the Roma.

On 2 August 2011 the Italian Parliament, in a final decision, endorsed a number of temporary legislative provisions included in law decree 89/2011 adopted by the Government on 23 June this year. With the endorsement of the Italian Parliament, law decree 89/11 was converted into law 129/2011 and its provisions have become permanent.

Among other things, law 129/2011 authorises the extension of the upper limit for the deprivation of liberty of irregular migrants in detention centres from six to 18 months. Amnesty International cautions that, albeit permissible under EU legislation, detaining someone solely for immigration purposes for up to 18 months is incompatible with the right to liberty as recognized in the European Convention on Human Rights and in other international human rights instruments by which Italy is bound.

The recently adopted legislation purports to transpose into domestic law the so-called “EU Return Directive”.¹ Amnesty International had criticised the latter, among other things, for authorising excessively prolonged detention (up to 18 months) and failing to guarantee the return of irregular migrants to their countries of origin in safety and dignity.

In particular, the organization reiterates to the Italian authorities that under international human rights law and standards, detention of irregular migrants with a view to removing them from Italian territory is only permissible when the authorities can demonstrate that there exists a reasonable prospect of enforcing the removal of the person concerned and that removal arrangements are being pursued with due diligence. International law demands that there must be a reasonable prospect of effecting the removal or deportation of the individual concerned, for his or her detention to be lawful: “*Detention pending removal shall be justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence the detention will cease to be permissible.*”² Amnesty International opposes the detention of people solely for immigration purposes, unless, for example, the detaining authorities can demonstrate that there is an objective risk that the individual concerned would otherwise abscond, and that other measures short of detention, such as reporting requirements, would not be sufficient. In any event, in each case the authorities must demonstrate the lawfulness of detention by showing how such a deprivation of liberty complies with the strict requirements of legality, proportionality and necessity set out, for example, in Article 5 of the European Convention on Human Rights.

¹ “Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals”.

² Guideline 7 (Obligation to release where the removal arrangements are halted), Twenty guidelines on forced return, Council of Europe

The new legislation fails to transpose some key safeguards against unlawful detention featured in the Return Directive, including, for example, that detention should not be resorted to if “...*other sufficient but less coercive measures can be applied effectively in a specific case*”. Overall it undermines the promotion of voluntary returns, favouring instead detention and enforced removals. .

Law 129/2011 also authorises the forcible removal from Italy of EU citizens who do not fulfil the requirements set by the EU directive on Free Movement,³ and who fail to comply with an order to leave the country within a certain timeframe. Amnesty International is concerned that this provision may be applied in a discriminatory manner and pave the way to the selective deportation of individuals belonging to specific ethnic minorities, in particular the Roma. Indeed in the recent past the Italian Minister of Interior, Roberto Maroni, has repeatedly expressed his intention to propose the adoption of legislation permitting the forcible removal of EU citizens not fulfilling the criteria indicated in the EU Directive on Free Movement, linking the pressing need for its adoption to the presence of Roma communities on Italian territory. In an interview released to the Italian newspaper, *Corriere della Sera*, in August 2010, Maroni highlighted that “many Roma are EU citizens but do not fulfil the requirements” imposed by EU legislation, and even added that “the problem is that [...] in our country many Roma and Sinti also have Italian citizenship; therefore they have a right to stay, there is nothing we can do”.⁴

Amnesty International calls on the Italian Parliament to repeal provisions of law 129/2011 extending the maximum length of detention for irregular migrants to 18 months, and to guarantee any return of irregular migrants to their countries of origin in safety and dignity. The Italian Parliament must ensure that any limitations on the right to free movement of EU citizens comply strictly with international and European human rights law and standards, including in particular the prohibition of discrimination on the grounds of race, nationality and ethnic origin de jure and de facto.

End/

³ “Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States”

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http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/interviste/Interviste/2100_500_ministro/0931_2010_08_21_Corsera.html?back=%2Ftools%2Fsearch%2Findex.html%3Faction%3Dsearch%26matchesPerPage%3D10%26displayPages%3D10%26index%3DProgetto+Online%26sort%3D%26category%3D%26searchRouts%3D%252Ffit%252F%26searchPage%3D7%26text%3Dspulsioni%26start%3D%26end%3D%26type%3Dgeneric