

Undesirable and Unreturnable

Case Study: Italy

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Introduction

The present paper shall provide a general overview of the situation of immigration in Italy, particularly in relation to individuals who may be expelled from the territory of the Italian Republic for different reasons. Usually, the expulsions are regulated under Italian law against individuals who have allegedly committed certain types of crimes, or when they have been prosecuted for certain crimes. The paper shall address the legal framework and measures that have been taken to deal with individuals who cannot be returned to their country of origin.

In the Italian context different words are used to address immigrants. There are 'regular immigrants' who possess the legal qualifications to stay in the country. 'Irregular immigrants' and 'clandestine immigrants' are also used. According to the Italian legal immigration rules, a foreigner who enters the country can be 'regular' or legal immigrant, if he/she applies for a visa or gets a permit of residence. After the expiry of the visa or the permit, if this is renewed, the foreigner is a 'regular resident' or 'immigrant'. If the foreigner stays in the country without renewing its documents, he/she becomes an 'irregular immigrant'. If the foreigner does not comply with the legal requirements for the entry into the country, he/she is defined as a 'clandestine'. In the last two cases, the expression used is also 'illegal immigrant' as in both cases the individual is not fulfilling the legal obligations for staying in the country.

Recently (21 Jan 2014) the Senate approved a new law dealing with the de-penalisation of the crime of illegal immigration, to scrap a law that makes entering the country without the proper paperwork a criminal offence and means migrants can be tried and fined up to 5,000 euros before being deported. Migrant boat arrivals in Italy from North Africa surged last year to more than 40,000, almost four times as many as in 2012.

Under the current law, illegal migrants can be kept in immigration centres for up to 18 months before being deported.

The law, introduced by a conservative government in 2009, has been widely criticized for making migrants more vulnerable to exploitation in the workplace and to human rights abuses.¹

The Italian Context

Italy has become an immigration country relatively recently (mid-end 1990s), if compared to other European countries. Regular and irregular immigration flows have created a variety of responses in the public opinion, in the mass-media, in the political debate and in the legal framework.

According to the perception of immigration, it results that the public opinion perceives the immigration phenomenon more as an issue of public order and personal security.² This element is particularly relevant when dealing with the legal framework of immigration and the reaction by the public opinion and the national institutions. This perception is also relevant when enhancing national policies and taking individual decisions. Therefore, the fact that individuals may be considered as a threat to national

¹ <http://www.reuters.com/article/2014/01/21/us-italy-migrants-crime-idUSBREA0K1D520140121>
Check the final and amended text.

² Giuseppe Campione, 'L'immigrazione necessaria. Appunti sulla situazione italiana', Scripta Nova: Revista Electrónica de Geografía y Ciencias Sociales, Universidad de Barcelona [ISSN 1138-9788] , Nº 94 (18), 1 de agosto de 2001 <http://www.ub.edu/geocrit/sn-94-18.htm>
Marzio Barbagli, *Immigrazione e sicurezza in Italia*, il Mulino, Bologna 2008 (nuova ed., pp. 236); Marzio Barbagli, *Immigrazione e reati in Italia*, Il Mulino, Bologna 2002 (2nd ed., pp. 217); Marzio Barbagli, *Immigrazione e criminalità in Italia*, Il Mulino, Bologna 1998 (pp. 179).

security and as criminals that threaten individual security, the support by the public and by the national authorities makes a strong case for expulsion. However, the attention has recently shifted towards the possible risks for national security, due to the instability in the Middle East, and in particular to the unstable situation in Libya. It has been considered that some individuals who may be affiliated to extremist Islamic movements, who are active in North Africa, might use the illegal immigration channels to enter Europe, particularly through Southern Italy.

Some studies have addressed the issue of the level of criminality and the types of crimes committed by immigrants in Italy. A study conducted in 2008 shows that the number and type of crimes committed by immigrants in the previous twenty years Italy has increased substantially. This phenomenon includes all types of crimes.³ However, the great majority of them are related to micro-criminality, such as robbery, prostitution, money-laundering, drug-trafficking and homicide.

There are also specific problems in the application and enforcement of the law in these cases. In fact, in Italy there is a compulsory criminal action, which means that criminal acts must be followed by the judicial action, this leads often to long legal proceedings, due to the inefficiency of the bureaucracy and the accumulation of cases in front of the judges.

Also, statistics are not always regularly updated and sometimes the information provided is not divided into useful categories, therefore the collection of data which are available may not correspond to the real situation in the country. For instance, it would be useful to know which types of immigrants commit certain crimes and how they are also prosecuted. Statistics on these issues are not always clear. For instance, in the year 2000, 77% of the reported cases to the Italian authorities were against unknown persons,⁴ this makes difficult to clearly understand the proportion of crimes committed by citizens and by foreigners.

³ Marzio Barbagli, *Immigrazione e sicurezza in Italia*, il Mulino, Bologna 2008 (nuova ed), p. 53.

⁴ Odillo Vidoni Guidoni, *La criminalità*, Carocci, Roma 2004, p. 34.

The Legal Framework

The Italian laws related to immigration have been changing over time and have been affected in many ways by national events, news, demographic and immigration factors. The political debate, and the use of immigration issues by political parties for their different interests, has in some ways created more confusion rather than applying a more rational and impartial set of policies and rules to deal with the phenomenon of immigration. Due to the fact that Italy was not a main country of immigration, it is only in the late 1990's that specific national law has been adopted to address different aspects of immigration in Italy. Different laws and reforms have been adopted over the past twenty years. Changes and amendments to the law, and inconsistencies within the legal system, for instance in relation to expulsion foreseen by the Penal Code (Codice Penale), have also generated an element of uncertainty in relation to the treatment of foreigners in the country. Sometimes, the national government has adopted urgent measures to deal with irregular immigrants, through the use of *sanatoria*, which means *ad hoc* legislation that tries to legalise the position and status of certain types of immigrants.

When we look at the legal framework applicable to foreigners, it is important to consider different legal rules, both national and international, including the Council of Europe (CoE) and European Union (EU), which would apply in the Italian context.

Also, when dealing with expulsion of foreign citizens, and the possible limitations of its application, it is relevant to distinguish between immigrants, refugees and people who may fit into temporary forms of protection, and the different regimes that would apply under the existing legal obligations. In the next section different rules that apply to foreigners shall be described to provide an overview of the provisions that may become relevant in specific cases of expulsion.

The Sources of Italian Law Related to Foreigners

The starting legal text dealing with foreigners is Art. 10 of the Italian Constitution,⁵ which entered into force on 1st December 1948. The text is very broad and includes a series of indications, which were inspired by the new post-World War II republican government, after the end of the fascist regime, and says:

'The Italian legal system conforms to the generally recognised principles of international law.

The legal status of foreigners is regulated by law in conformity with international provisions and treaties.

A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law.

A foreigner may not be extradited for a political offence.'

This article is particularly important for three main reasons:

- 1) it refers to the legal value of international treaties and obligations that would bind the Italian state;
- 2) it refers to the foreigners in general, and the need for national law to regulate their status;
- 3) it mentions the right to asylum, as a different legal concept from the refugee status, foreseen by the 1951 Geneva Convention, and the conditions under which foreigners can claim asylum and, very much linked to this status, the conditions for their possible extradition.

All these elements are relevant when dealing with situations of individual cases of expulsion of foreigners, because the national legislation is limited by constitutional provisions and national law, enacted by the parliament, has to take into consideration these conditions. However, Italy has not yet approved a specific law in relation to the application of asylum. The last attempt was a proposal in 2001, which did not reach the final stage of approval by the Parliament.⁶ Furthermore, in Italy the Constitutional Court is the organ which should supervise the conformity of national legal provisions to the

⁵ Costituzione della Repubblica Italiana, Gazzetta Ufficiale, 27 December 1947, n. 298.

⁶ Italian Parliament, Atto Camera n. 5381, XIII Legislatura, 7 March 2001, available at: <http://www.parlamento.it/japp/bgt/showdoc/frame.jsp?tipodoc=Ddlpres&leg=13&id=7387>

principles of the Constitution.⁷ Therefore, there should be a stronger control and limitation on the legislative and administrative powers, through the judicial review and the control of constitutionality of the norms.

Immigration Law

The first law that addressed issues of immigration and refugees was the so-called 1990 Legge Martelli.⁸ This law, in particular, tried to provide a clearer definition and distinction between immigrants and asylum seekers, and introduced the regulation of expulsion and refusal of entry for foreigners. It is only in 1998 that a specific law, called Turco-Napolitano law,⁹ from the name of its promoters, was adopted to deal in a more organic way with the treatment of foreigners, and was then integrated by a specific law that provides the details of its application (Testo Unico Immigrazione, TUI),¹⁰ so giving a specific content to the quite broad provisions of the constitutional text. Until then the legal system provided a variety of norms, which made the regulation quite complex and inconsistent, with gaps and unclear obligations. In 2002, the Legge Bossi-Fini,¹¹ amended some sections of the previous legislation, trying to tighten the conditions for access to immigration and also introduced some sanctions for individuals who entered the Italian territory illegally. These norms were challenged by some national courts in front of the Constitutional Court, particularly in relation to the detention of individuals from 1 to 4 years for those who do not respect the expulsion decree and stay on the Italian territory illegally. However, the Constitutional Court considered in its decision n. 22/2007¹² that the balance between crime and sanction foreseen by the Law Bossi-Fini

⁷ Costituzione della Repubblica Italiana (Italian Constitution), Art. 134.

⁸ Legge 28 febbraio 1990, n. 39, conversione del d.l. 30 dicembre 1989, n. 416, recante *Norme urgenti in materia di asilo politico, di ingresso e soggiorno dei cittadini extracomunitari e di regolarizzazione dei cittadini extracomunitari ed apolidi presenti nel territorio dello Stato*.

⁹ "Disciplina dell'immigrazione e norme sulla condizione dello straniero", Legge n. 40, 6 March 1998, *Gazzetta Ufficiale* n. 59 del 12 marzo 1998 - Supplemento Ordinario n. 40.

¹⁰ Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, Decreto Legislativo, 25 luglio 1998, n. 286 (GU n.191 del 18-8-1998 - Suppl. Ordinario n. 139). This text was applied from 1998 until 2008.

¹¹ Legge Bossi-Fini (legge 30 luglio 2002, n. 189)

¹² Sentenza della Corte Costituzionale n. 22 del 22 gennaio 2007.

did not violate the criterion of reasonableness and declared inadmissible the request of constitutional legitimacy that were raised.

Criminal Law

The Italian criminal law is mainly regulated in the Penal Code and the Code of Criminal Procedure. These rules apply to anybody within the jurisdiction of the state. There are some specific rules that concern the expulsion of individuals for security reasons.

Numbers of People and Crimes

In February 2015, a total of 17.463 foreigners were in jail: most of them come from Morocco and Tunisia, followed by Nigeria and Algeria.¹³ However, almost half of the cases are not concerning final decisions, but they were awaiting a trial or a final decision.

Statistics regarding foreigners and justice are available at http://www.giustizia.it/giustizia/it/mg_1_14.wp

Administrative Custody

Usually in cases of individuals who entered in the country illegally or is found in Italy without regular permit, the Italian law foresees also the possibility of administrative custody, which can be extended after the first 180 days, for periods of 60 days, up to a

¹³ Ministero di Grazia e Giustizia, Detenuti stranieri presenti - aggiornamento al 28 febbraio 2015 (see Annex 1)
http://www.giustizia.it/giustizia/it/mg_1_14_1.wp?previousPage=mg_1_14&contentId=SST1123928

total of 12 months, when awaiting from the country of origin the authorisation for the repatriation of the individual.

This form of detention is called administrative custody, because is not the consequence of a criminal sanction, but it is based on a decision of the administrative authorities, in particular the “questore”. However, this is a form of detention, with other names and is raising issues of conformity with criminal law principles.¹⁴

Expulsion

Under the Italian legal system there are three different situations when a foreigner can be expelled from the country. These were regulated by the Uniform Law on Immigration (Testo Unico sull’Immigrazione, TUI) of 1998.¹⁵

VEDERE CASI E LEGISLAZIONE AGGIORNATA SU

<http://www.altalex.com/index.php?idnot=51626>

A new law was passed on 30 October 2014¹⁶ including different provisions to adapt the Italian law to the EU law to solve some infraction procedures and prevent others. The law came into force on 25 November 2014.

The prohibition of expulsion of foreigners (*non-refoulement*) to a country where their lives could be endangered is included in the Italian national law, and it foreseen by the Immigration law of 1998 (Decreto Legislativo 25 luglio 1998, n. 286). The law states that under no circumstances foreigners can be expelled if they can be the object of persecution in the country of destination for reasons of race, sex, language, citizenship, religion, political opinions, personal or social conditions (art. 19(1)D.Lgs. 286/1998). For the case of refugees, there is a specific rule which is based on art. 33 of the 1951

¹⁴ On the Italian practice see: Giuseppe Campesi, La detenzione amministrativa degli stranieri in Italia: storia, diritto, politica, "Democrazia e Diritto", 3-4, 2011, pp. 177-226.

¹⁵ Testo Unico sull’Immigrazione, decreto legislativo 23.7.1998 n° 286/98, Articles 13, 15 and 16.

¹⁶ Legge 30.10.2014, n. 161 (legge europea 2013 bis), Gazzetta ufficiale del 10.11.2014

Geneva Convention which has been incorporated in the Italian law (legge 722/1954), and its 1967 Protocol (ratified by Legge n. 90/70). This prohibition is valid both for expulsions and rejections at the frontier. In these cases the Italian authorities provide a residence permit for humanitarian reasons (permesso di soggiorno per motivi umanitari).

Art. 19(2) of the same TUI (206/1998) identifies some protected categories of individuals who cannot be expelled from the country (but the text does not say anything about the possible rejection at the border). In these cases, the foreigner can be expelled only with a decision by the Minister of Interior, for reasons of public order or security of the State. Apart from this case, it is not allowed the expulsion in relation to:

- a) foreigner below the age of 18, apart the cases when the minor has the right to follow the parent or guardian who has been expelled; if the expulsion for public order or security of the State is against the minor, the competent authority to act in this case is the Juvenile Court (Tribunale per i minorenni) and not the Minister of Interior;
- b) foreigner who have a residence permit (they can be expelled only by a decision of the Minister of Interior for reasons of public order or security of the State);
- c) foreigner who are cohabiting with family member within the second degree of kinship, or the spouse, of Italian nationality;
- d) pregnant women and within the 6 months after giving birth, including the husband or cohabiting partner, or father cohabiting with the child younger than 6 months.

In these cases, the foreign citizen has the right to receive:

- in case a) to the foreign minor, a residence permit for minority of age;
- in case c) to the foreigner cohabiting, a residence permit for family reasons;
- in case c) a residence permit for medical care

In case of very bad health conditions, which require urgent treatment and that are essential for the survival of the individual, and would not be available in the country of origin, and that do not allow the individual to travel, may impede the adoption, or execution, of a decree of expulsion.

Art. 19(2 bis) TUI identifies also some conditions for the expulsion of people with disabilities, elderly people, single parents families, minors, victims of psychological, physical or sexual violence should be compatible with the individual cases. This rule has

been introduced with Directive 2008/115/CE, but the legislation only says that the inclusion in one of these categories must be “duly identified” without saying anything in relation to the modalities of the expulsion.

In 2011, Italy incorporated the EU directive 2008/115/CE concerning the repatriation of irregular citizens of third countries, with *decreto legge* 89/2011 which amended some sections of the *Testo Unico Immigrazione (TUI)*. The decree has introduced the voluntary repatriation principle, and has limited to specific cases the possible cases of forceful expulsion of foreigners. These include for instance the risk of absconding or flight risk by the individual, and in any case, the individual situation of the foreigner has to be taken into consideration.

Public Order and Security Law

Finally, it is important to remind that issues of public order and security are regulated by a specific law. The law was enacted during the pre-republican regime and before the adoption of the Italian Constitution.

Also, anti-terrorism legislation foresees the option of expulsion of foreigners who are involved in international terrorist activities.¹⁷

Expulsions and Repatriations

In relation to individuals who are, or should be, expelled from Italy, for the reasons mentioned before, there are several cases that have been identified. Most of them have reached the ECtHR and have been decided. One of the early cases, which involved Italy in a similar situation, was the Öcalan case.

¹⁷ Sull'applicazione in Italia della legge Pisanu e sui consistenti dubbi sulla sua costituzionalità, si rinvia a Bonetti P., *Terrorismo e stranieri nel diritto italiano. Disciplina legislativa e profili costituzionali. Il parte. Il terrorismo nelle norme speciali e comuni in materia di stranieri, immigrazione e asilo*, in *Diritto, immigrazione e cittadinanza*, 2005, fascicolo 4, p.22

The case involved Abdullah 'Apo' Öcalan who founded the PKK (Partîya Karkerên Kurdîstan; Kurdistan Workers Party) in 1978 and who led armed activities in Turkey and against Turkish objectives in Europe, with 30,000 estimate victims, since 1984. He had several arrest warrants (including one from the West Germany). He found refuge in Syria. However, Syria was afraid of the possible Turkish reaction, and sent him to Moscow. But after few days, the Russian government ask Öcalan to leave. In the meantime, an Italian MP flew to Moscow and flew back to Italy with Öcalan. On 12 novembre 1998, when he landed in Fiumicino, Öcalan gave himself up to the Italian police. The case raised strong legal and political debate.

The Italian authorities could not extradite Öcalan to Turkey, due to the fact that the death penalty was still foreseen by the Turkish law. The Italian government hoped that Germany would ask for the extradition of Öcalan. However, the German authorities did not act, for the risk of possible reactions by the numerous (more than 2 and a half million) Turkish community in Germany. If asylum (under art. 10 It. Const.) was given, this could have created strong tensions with the Turkish government, which threatened to boycott the Italian products. The Italian authorities convinced Öcalan to leave the country 'spontaneously'. The case lasted for 65 days. On 16 January 1999, Öcalan flew to Nairobi, Kenya, where the Turkish intelligence arrested him. In the following months, he was sentenced to death. However, the Turkish President, Bulent Ecevit commuted the death sentence into life imprisonment.

The case was also discussed in legal terms, and in 2003 and 2014 the ECtHR has also decided on a case concerning Turkey and the provisions of detention.¹⁸

The other cases decided by the ECtHR that have been identified are:

caso Saadi c. Italia del 28 febbraio 2008

Ben Khemais (n. 246/07) art.3 e 34

Trabelsi (n. 50163/08)

¹⁸ ECtHR, Öcalan v. Turkey, decision 18 March 2014, Ric. nn. 24069/03, 197/04, 6201/06 and 10464/07. Öcalan v. Turkey, decision 12 marzo 2003 Ric. n° 46221/99.

caso Mannai (ricorso n. 9961/10)

ECtHR, 24 March 2009, eight cases against Italy, all concerning Tunisian citizens in relation to art. 3 ECHR: *Abdelhedi c. Italie* (n° 2638/07), *Ben Salah c. Italia* (n° 38128/06), *Bouyahia c. Italia* (n° 46792/06), *C.B.Z. c. Italia* (n° 44006/06), *Darraji c. Italia* (n° 11549/05), *Hamraoui c. Italia* (n° 16201/07), *O. c. Italia* (n° 37257/06), *Soltana c. Italia* (n° 37336/06).

In all the cases, the ECtHR has recalled the previous *Saadi c. Italia*, [GC], n. 37201/06, (28 Feb 2008) where the real conditions which are present in Tunisia are described.

In particular, for individuals who are suspect of terrorism are at risk of torture, inhuman and degrading treatment.

The cases were related to expulsions of individuals based either on the 2005 anti-terrorism law (legge Pisanu 2005) or on the 1998 TUI.

In the case *O. v. Italy* (n. 37257/06) of 24 March 2009, the ECtHR pointed out that the expulsion of a Tunisian citizen, on 1 September 2006, in application of the antiterrorism law (art. 3, legge n. 144/2005 “Misure urgenti per combattere il terrorismo internazionale”) were in violation of art. 3 ECHR.

Expulsions and the Council of Europe

Italy has been scrutinised and often criticised by the Council of Europe in relation to the expulsion of foreigners. Cases and practices have been considered in the light of the European Convention on Human Rights (ECHR). In particular, the last report of the Italian government to the Human Rights Commission of the CoE (preparation October 2014, <http://documenti.camera.it/leg17/dossier/pdf/AC0367.pdf>) See also, Thomas Hammanberg Report, Following his visit to Italy on 13-15 January 2009, CommDH(2009), Strasbourg, 16 February 2009.

The focus of the ECtHR has been on two main issues: violations of art. 3 ECHR, concerning the right to life and prohibition of torture, inhuman and degrading treatment; and art. 34 concerning the right of individual recourse to the ECtHR, that imposes on member States the obligation not to limit or jeopardise such right.

Violation of Art. 3 ECHR

The main case concerning the violation of art. 3 ECHR was decided by the ECtHR in 2008. The *Saadi* case¹⁹ was then followed by a series of other similar cases. Mr Saadi, of Tunisian citizenship, had been expelled from Italy after he was condemned and jailed. Mr Saadi, had been sentenced to several years in prison by a Tunisian court. The ECtHR considered that Mr Saadi would have been subject to inhuman and degrading treatment by the Tunisian authorities if repatriated, and therefore he should not be sent back to his country of origin due to the possible violation of art. 3 ECHR. In Italy he had been accused of international terrorism and the Italian government had requested assurances by the Tunisian diplomatic authorities that Mr Saadi would not be subject to human rights violations. However, the ECtHR considered that these conditions did not allow the deportation of Mr Saadi back to Tunisia.

The UK also intervened in the case, to support the Italian arguments in relation to individuals who are suspect of terrorism. However, the ECtHR stated that the security concerns of States may be right, but that the absolute prohibition of torture and other cruel or inhuman treatments cannot be balanced against the security of the State in question.

One year later, in February 2009, the ECtHR, in case concerning another Tunisian citizen suspected of terrorism, Mr Ben Khemais, who had been expelled back to Tunisia, the Court condemned Italy (ric. n.246/07) because despite a provisional order by the ECtHR in June 2008, in relation to deportation, proceeded with the expulsion and violated both art 3 and 34 ECHR.

Violation of Art. 34 ECHR

A similar case, decided in 2009, dealt with the possibility of expulsion of a Tunisian citizen, while pending a decision in front of the ECtHR. The *Ben Khemais* case²⁰

¹⁹ (sent. 28 febbraio 2008, causa n. 37201/06)

²⁰ Ben Khemais c. Italia, Ricorso n. 246/07, deciso il 24 febbraio 2009.

addressed the possible violation of art. 34, which guarantees the right to individual complaint in front of the ECtHR. Therefore, the ECtHR considered that the expulsion of the individual, pending a decision of the Court, would have violated this right.

Agreements with Third Countries

Some Southern Mediterranean countries are parties to bilateral readmission agreements with countries that are EU member states. Italy has signed several agreements with Tunisia, Libya, ????? Tunisia, Sri Lanka, Nigeria and Pakistan, which have led to dangerous consequences. Among the sixteen readmission agreements signed before 2001, it is worth recalling the “*Scambio di note tra l'Italia e la Tunisia concernente l'ingresso e la riammissione delle persone in posizione irregolare*” (Exchange of notes between Italy and Tunisia concerning the entry and readmission of people without legal status) concluded on 6 August 1998,²¹ and which included also technical and operational activities and financial contributions.²² Most of these agreements were established in the field of regulating migrant workers, and followed the same patterns. In principle they foresee that Italy can send back to countries, of which the individual was presumed to be citizen. This presumption is based on different types of documents, including photocopies, self-declarations and witnesses. Italy was not able to sign agreements for presumed citizens of Morocco and Tunisia; therefore Italy has to go through a complex procedure of identification before repatriating individuals from those countries.

The difficult situation of migrants from the Northern African countries, mainly through the Mediterranean, as led Italy to negotiate some agreements that try to facilitate the

²¹ P. Cuttitta, *The Case of the Italian Southern Sea Borders: Cooperation across the Mediterranean?* Documents CIDOB, Migrations (2009). Other bilateral agreements with Tunisia were signed on 13 December 2003 on police co-operation matters; on 28 January 2009 (between the Minister of Interior Roberto Maroni and Rafik Haj Kacem (former-minister under the Ben Ali regime) trying to accelerate the release of safe-conducts, by Tunisian consular authorities, and which are needed to proceed with repatriation of irregular migrants without travel documents and identified as Tunisian citizens. Finally, on 5 April 2011, after the revolution and change of government in Tunisia, a fourth agreement has been signed. See more at: <http://www.affarinternazionali.it/articolo.asp?ID=1722#sthash.HDQm8V8e.dpuf>.

²² 15 miliardi of liras for three years, and 500 million liras for the creation of identification centres in Tunisia.

repatriation of individuals who are coming from those countries (either as citizens or in transit). A total of 28 agreements of this type have been signed by Italy and 21 have been ratified and they are in force.²³(Source) Similar agreements have been signed with Libya and Egypt. The first agreement with Egypt focused on police cooperation, organized crime and terrorism was sealed on 18 June 2000. Later on, an agreement on employment on 29 November 2005 and on 9 January 2007 the Cooperation Agreement on readmission was signed in Rome. On 22 December 2009 a Memorandum of Understanding was signed in relation to irregular migration. In the case of Libya, a Friendship Treaty was signed on 31 August 2008, but due to the events and the fall of the Gadhafi regime, it was suspended by the Italian government on 26 February 2011. Later on, an MOU between Italy and the Libyan National Transitional Council was signed on 17 June 2011²⁴ that makes reference to four previous agreements signed by the Libyan and Italian governments.²⁵

These agreements are foreseen by several legal instruments which developed since 1998, such as art. 9(4) Legge Martelli, TUI arts 2, 3 and 21, later modified by the Law Bossi-Fini.²⁶ Which foresee that the Minister of Foreign Affairs and the Minister of Interior (Home Office) must promote the proper measures with relevant countries to accelerate identification and issue of documents necessary to improve the effectiveness of the measures foreseen by the law.

They raise issues of unconstitutionality, because these agreements, under the recent practice of the Italian government, are not submitted to the parliamentary ratification, which is foreseen by art. 80 of the Italian Constitution.

²³ OECD, Federal Office of Immigration, Integration and Emigration, Migration for Employment Bilateral Agreements at a Crossroads: Bilateral Agreements at a Crossroads, OECD Publishing, 14 Dec 2004, p. 58.

²⁴ Available at <http://download.repubblica.it/pdf/2011/migrazione.pdf>

²⁵ Italian-Libyan cooperation in combating terrorism, organized crime, trafficking in narcotic drugs and psychotropic substances and illegal immigration, signed in Rome, 13 December 2000, and subsequent Protocols of cooperation on migration of 29 December 2007, with its Additional Act of February 4, 2009, and 7 December 2010.

²⁶ See also Decreto Legislativo, 25 luglio 1998, n. 286, **above**, art. 11(4).; L.2002 n. 189 (Bossi-Fini), art. 10.

These agreements may violate some rules of international law, including the right to leave any country, including the country of origin (Art. 12(2) of the 1966 International Covenant on Civil and Political Rights; and Art.2(2) Protocol n.4 to the ECHR).

Furthermore, the prohibition of *refoulement* towards countries where individuals may be subject to torture, inhuman and degrading treatment is forbidden under art. 3 ECHR; and the general prohibition under the 1951 Geneva Convention for the protection of refugees.

Provisional Conclusions

The Italian legal system seems to provide a series of possibility to national authorities to expel or deport foreigners for different reasons that are foreseen in Italian law.

Most of the cases are justified under the provisions related to the fight against illegal immigration. However, these measures may affect individuals who, for different reasons, may not be repatriated.

Criminal law provisions also address foreign citizens who have committed certain types of crimes, and who may be considered a danger for national security and public order. So, the expulsion can be a measure to protect national security but also as a punishment for the foreigner who commits certain types of crimes.

In some cases, the Italian authorities have the opportunity to provide a residence permit based on humanitarian reasons.

In other cases, the Italian authorities have tried to sign agreements with some States, such as the case of Tunisia. But these agreements are usually regulating immigration and repatriation. They are not meant to deal with cases of individuals who may face specific violations of fundamental rights in case they are sent back to the country of origin.

The recent examples provided by the decisions of the ECtHR affect mainly Tunisian citizens, and this shows that the guarantees, and even the agreement with that country are not considered adequate by the judges of the Court.