



INTERNATIONAL COMMISSION OF JURISTS

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COMMUNIQUE DE PRESSE – COMUNICADO DE PRENSA

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Italy: Migrants rights are undermined by rushed EU law implementation

The International Commission of Jurists (ICJ) today expressed its concern at the move by the Italian Government to extend the maximum length of administrative detention for undocumented migrants to up to 18 months. The measure is contained in certain provisions of the draft legislation ratifying Law Decree no. 89 of 2011, approved on 14 July by the House of Representatives and now under consideration by the Senate, which aims at implementing EU Directive 2008/115/EC ("the Return Directive").

While this period of detention is permitted by Article 15 of the Return Directive, Article 4 leaves Member States free to adopt provisions more favourable to third country nationals. There is therefore no EU law requirement to introduce such an extension, which is not in line with international law.

The ICJ recalls that under international human rights law, and in particular under the *European Convention on Human Rights* (ECHR) and the *International Covenant on Civil and Political Rights* (ICCPR), detention pending deportation is justified only if the deportation is pursued with due diligence and is realistic and possible. Otherwise, detention is considered to be arbitrary. "We fail to see how a deportation can be realistic when it has not been possible to execute it in such a long period", said Massimo Frigo, Legal Adviser with the ICJ Europe Programme, "this extensive length can only result in leaving the migrant to bear the inefficiency of the expulsion procedures of the hosting State or the inactivity of the State of origin, which is unacceptable under Italy's international law obligations".

The ICJ is also concerned that alternative measures to detention are not considered as prominent measures in the Law Decree, which seems to give preference to administrative detention. It notes that the Human Rights Committee has established that for detention to be necessary and proportional, it must be shown that other less intrusive measures have been considered. "Detention is a measure of last resort. By privileging detention, Italy is not in line with its obligations under Article 9 ICCPR " said Massimo Frigo.

Finally, the ICJ wishes to express its strong concern at the fact that these measures, which interfere with human rights, have been issued and considered under the emergency procedure of a Law Decree. "While it is now urgent that Italy implements the Return Directive to be in line with EU law, the Government and the Parliament had more than two years to do that under a normal parliamentary procedure with full scrutiny", said Massimo Frigo, "It is their inactivity which has caused this situation and we deeply regret that it is the migrants who, once more, are losing their human rights protection without proper democratic scrutiny."

For more information, please contact Massimo Frigo (0229793805 or massimo.frigo@icj.org)

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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