

COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO ITALY
FROM 19 TO 23 JUNE 2023

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SUMMARY

Commissioner Dunja Mijatović and her team visited Italy from 19 to 23 June 2023. The visit focused on the human rights of refugees, asylum seekers and migrants and on women's rights and gender equality. The Commissioner also took the opportunity to follow up on certain issues related to freedom of expression and on other relevant current issues.

Asylum and migration

Italy is at the forefront of migration movements in the Central Mediterranean. The Commissioner is mindful that this situation poses considerable challenges and has repeatedly commended the significant efforts undertaken by the Italian authorities to save lives at sea. She wishes to emphasise that taking action to end the ongoing human tragedy occurring in the Mediterranean, including through responsibility sharing for ensuring adequate rescue capacity and the relocation of those rescued, is a common European responsibility.

However, the Commissioner stresses that the absence of a European search and rescue operation does not relieve Italy from its obligations under international and maritime law. The Italian authorities are urged to ensure that sufficient and adequate search and rescue capacity can be deployed to provide timely and effective assistance to people in distress at sea, including refugees, asylum seekers and migrants. Additionally, the Commissioner urges the authorities to do their utmost to ensure that safe and legal routes are put in place.

The Commissioner calls on the Italian authorities to repeal policies and to end practices that hinder NGO search and rescue operations at sea. The criminalisation of their activities goes against Italy's obligations under international law. More specifically, the implementation of the provisions included in Decree-Law No. 1/2023, paired with the practice of assigning distant places of safety, is hampering the provision of life-saving assistance by NGOs in the Central Mediterranean.

It is the Commissioner's view that co-operation with other countries is a legitimate feature of the migration policies of member states. However, from a human rights perspective, various co-operation activities launched by Italy give cause for concern. This is particularly the case when it comes to Italy's co-operation with Libya and Tunisia, both of which were part of the Commissioner's discussions with the Italian authorities.

Although the high number of arrivals by sea is part of a structural pattern, Italy's migration policy continues to focus on emergency-based solutions. The Commissioner recommends that the authorities direct their efforts towards increasing support for the asylum and reception system and towards enhancing early preparedness and contingency planning rather than derogating, *de jure* and *de facto*, from standards. The increasing tendency to consider crucial human rights safeguards as an impediment to the swift management of arrivals rather than the cornerstone for a more effective and humane response is worrying. In this regard, the Commissioner will continue to follow the implementation of the recent legislative changes.

Women's rights and gender equality

Italy has developed considerably its national legislation and policy as well as its institutional framework for the promotion of gender equality and the prevention and combating of violence against women. However, a marked contrast persists between the legal guarantees in place and the situation on the ground as regards inequalities and gender-based violence suffered by women and girls. Continued violence and discrimination against women and girls remains a prevailing and urgent concern.

To bridge these gaps, the authorities should as a matter of priority tackle systemic shortcomings, most notably through measures to reduce regional discrepancy in terms of equality outcomes; eliminate barriers faced by women in accessing sexual and reproductive health care; combat sexism and gender

discriminatory stereotypes at the societal and institutional level, including among law enforcement and the judiciary, and address the uneven geographical distribution and quality of support services for women victims of gender-based violence as well as the existing deficiencies in their funding.

The Commissioner recommends that the authorities take measures to strengthen the implementation of anti-discrimination legislation, including by ensuring that intersecting forms of discrimination are adequately addressed in the justice system, and ensure adequate and stable funding and improved inter-institutional co-ordination for the implementation of the national strategies and action plans for gender equality and combating violence against women. Continued efforts are also needed to improve women's socio-economic situation. Specifically, efforts should be increased to remove the barriers to women's access to the labour market and to reverse the widening gender pay gap.

The government is moreover urged to ensure that access to sexual and reproductive health services, notably abortion care and contraception, is not undermined through the refusal of health professionals to provide certain forms of health care on grounds of conscience, or by differences in regional policies in this field. Further efforts are also necessary to ensure full respect for women's rights, dignity and autonomy in maternal health care, including during childbirth. More generally, sufficient public funding should be allocated to the health system to ensure the availability and affordability of sexual and reproductive health care for all women throughout Italy. The authorities should also improve data collection and analysis in this area and ensure the provision of mandatory comprehensive sexuality education.

The Commissioner encourages the authorities to amend the criminal legislation, including to base offences of sexual violence, including rape, on the notion of freely given consent. Referring to the relevant judgments of the European Court of Human Rights, she urges the authorities to increase training and capacity building among the judiciary and law enforcement with a view to improving the treatment of women victims of gender-based violence and avoiding their secondary victimisation. The Commissioner also underlines the need for sufficient and reliable funding to ensure the availability, continuity and adequacy of support services throughout Italy. The authorities are moreover encouraged to ensure the systematic and early identification of refugee and asylum seeker women and girls who have been victims or are at risk of gender-based violence or trafficking and to strictly observe the principle of *non-refoulement* for all migrant women and girls, including on grounds of gender-based violence.

Finally, the Commissioner stresses the importance of strengthening institutional co-operation with women's rights NGOs and of recognising their crucial role, at all levels of governance.

Freedom of expression and other current issues

The Commissioner is alarmed by the high number of attacks, intimidation and incidence of legal harassment directed against journalists and media workers in Italy. Accordingly, she urges the government and the Parliament to undertake a comprehensive reform of the relevant legal framework to fully decriminalise defamation and ensure that lawsuits are not used as SLAPPs.

In relation to the national human rights framework, the Commissioner recommends that the Italian authorities urgently establish a national human rights institution with a broad human rights mandate in line with the Committee of Ministers' Recommendation CM/Rec(2021)1 on the development and strengthening of effective pluralist and independent national human rights institutions. Furthermore, she urges the authorities to further align the Italian legislative framework with Council of Europe standards on combating intolerance and discrimination against LGBTI people by including sexual orientation, gender identity and expression and sex characteristics (SOGIESC) grounds in the existing anti-discrimination, hate speech and hate crime legislation.

Lastly, taking note of recent developments that affect the registration of birth certificates of children born through surrogacy or following assisted reproduction technology abroad, the Commissioner

recalls that in all measures concerning children the best interests of the child must be a primary consideration.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Italy from 19 to 23 June 2023. The visit focused on the human rights of refugees, asylum seekers and migrants (Chapter 1) and on women's rights and gender equality (Chapter 2). The Commissioner took the opportunity to follow up on some issues related to freedom of expression, the safety of journalists and on other relevant current issues (Chapter 3).
2. During the visit, the Commissioner met with the Minister of Interior, Matteo Piantedosi, the Diplomatic Advisor of the President of the Council of Ministers, Ambassador Francesco Maria Talò, the Secretary General of the Ministry of Health, Giovanni Leonardi, the Head of the Activities of Monitoring, Analysis and Permanent Information Exchange on Intimidation Acts against Journalists, Prefect Vittorio Rizzi, the Director of the National Office against Racial Discrimination (UNAR), Mattia Peradotto, and the Mayor of Lampedusa and Linosa, Filippo Mannino. She also had exchanges with representatives of civil society, and international counterparts. On 21 July, the Commissioner had an online meeting with the Minister for Family, Birth Rates and Equal Opportunities, Eugenia Roccella.
3. The Commissioner visited the hotspot located in Contrada Imbriacola in Lampedusa, where she talked to asylum seekers, to the authorities in charge and to representatives of civil society. In Rome the Commissioner visited the Casa Internazionale delle Donne, where she had an extensive exchange of views with women's rights organisations.
4. The Commissioner would like to thank the Italian authorities in Strasbourg and in Rome for their assistance in organising her visit and for providing her with additional information following the visit. She expresses her gratitude to all her interlocutors for sharing with her their knowledge, experiences and insights.

1. ASYLUM AND MIGRATION

5. Italy is at the forefront of migration movements in the Central Mediterranean. In 2023, Italy experienced a sharp increase in the number of arrivals that have now reached levels comparable to the numbers registered in September 2016.¹ The Commissioner is mindful that this situation poses considerable challenges and has repeatedly commended the significant efforts undertaken by the Italian authorities to save lives at sea. As she has frequently [stated](#), it is a common European responsibility to take action to end the ongoing human tragedy in the Mediterranean. This includes the shared responsibility to ensure adequate rescue capacity and the relocation of those rescued.
6. Although the high number of arrivals by sea is part of a structural pattern, Italy's policies continue to focus mostly on emergency-based solutions. The Commissioner notes with concern the lack of foresight, early preparedness and contingency planning that undermines Italy's ability to manage the migration flows in an effective and human rights compliant manner. These

¹ See [Migranti e migrazioni in Italia: la dashboard con tutti i numeri](#) | [ISPI \(ispionline.it\)](#).

deficiencies have a significant impact on the communities, such as Lampedusa, that find themselves at the forefront of the emergency and which often lack adequate support.

7. The Commissioner notes that Italy's migration policy has over the years been shifting towards an approach based on deterrence. Unfortunately, this has also translated into an increasing tendency to consider crucial human rights safeguards as an impediment to the swift management of arrivals rather than the cornerstone of a more effective and human rights compliant response. In this regard, the Commissioner follows attentively the recent legislative changes and will continue to monitor their implementation.

1.1. SEARCH AND RESCUE AT SEA

8. The Central Mediterranean continues to be among the deadliest migration routes in the world.² It is estimated that more than 22 000 persons have died or gone missing in attempts to reach Europe since 2014, while more than 2 000 were recorded dead or missing in 2023.³
9. The two main sea routes to Italy are those departing from Tunisia and Libya. There has also been a rise in arrivals on the south eastern coast of Italy from Türkiye since 2020. Although the number of arrivals via the latter route remains low, the Commissioner was informed that this route raises significant concerns because of the lack of search and rescue assets in that area. The danger of this route was showcased by the shipwreck of Steccato di Cutro in which more than 90 people lost their lives in proximity to the eastern coast of Italy in February 2023.

1.1.1. ITALY'S POLICY ON SEARCH AND RESCUE

10. During the visit, the authorities emphasised their longstanding commitment to saving lives at sea. They highlighted that the Italian Coast Guard and the "Guardia di Finanza" play a predominant role in conducting sea rescues in the Central Mediterranean.⁴ They also stressed their readiness to coordinate rescues and extend assistance to migrants in distress beyond the Italian search and rescue (SAR) region, as necessary.
11. The Commissioner is mindful that the critical shortage of SAR assets in the Central Mediterranean is exacerbated by a lack of adequate support from other member states. It was brought to her attention that assistance in distress cases in the Maltese and Libyan SAR regions is often delayed by a lack of co-operation between the responsible rescue coordination centres (RCCs). In this respect, the Commissioner reiterates that human lives should never be put at risk because of disagreements between member states over rescue and disembarkation and that humanitarian considerations should always take priority.
12. Regarding the public debate on search and rescue at sea in Italy, the Commissioner expresses concern over the declarations of high-profile politicians calling for the enforcement of a systematic policy of interception at sea and return of refugees, asylum seekers and migrants in order to prevent their arrival. The Commissioner also wishes to emphasise that the division of international waters into SAR regions is designed to streamline the coordination of rescue activities and that SAR regions should not be interpreted as exclusive areas of intervention. Accordingly, a generalised policy of non-assistance beyond the Italian SAR region would not comply with Italy's obligations under international law.⁵

² [UN rights chief calls for action to address Central Mediterranean Sea migrant crisis | UN News.](#)

³ [Mediterranean | Missing Migrants Project \(iom.int\).](#)

⁴ See, for example, the official [data](#) by the Italian Coast Guard.

⁵ In judgement No. 14998 of the criminal court in Rome, the Italian Coast Guard was held accountable for the death of 268 refugees resulting from the failure to assist a vessel in distress in the Maltese SAR region in October 2013, even though an Italian Navy ship was in the vicinity. The judgement follows a [decision](#) on the same case by the United Nations Human Rights Committee, where Italy was found to have failed to protect migrants' right to life.

13. With regard to search and rescue operations carried out by the Coast Guard, public reports have shed light on the existence of internal guidelines that may affect the timely deployment of their assets. More specifically, a media investigation⁶ focused on a set of guidelines adopted by the Minister of Interior in 2005 according to which a search and rescue incident should be classified as such when weather and/or sailing conditions pose a grave and immediate danger to those onboard. Incidents falling outside this strict definition should be categorised as “law enforcement” operations. These guidelines do not seem to adequately consider other essential factors such as the vessel’s suitability for long-distance journeys or overcrowded conditions.⁷
14. A joint investigation⁸ by a group of journalists has highlighted that these guidelines could have had a role in delaying rescue activities in the case of the Steccato di Cutro shipwreck. The Commissioner notes that an investigation into the shipwreck is ongoing. She wishes to highlight the importance of the authorities’ full compliance with procedural obligations stemming from Article 2 of the European Convention on Human Rights (ECHR).⁹

1.1.2. MISSING MIGRANTS

15. In addition to the obligation to carry out effective investigations, the Commissioner has previously reiterated the importance of member states stepping up their efforts to track missing migrants and to identify those whose death has been ascertained.¹⁰ She was informed that, at present, Italy has no official registry for the collection of data on the bodies of migrants.¹¹
16. As a positive development, the Commissioner welcomes the work of the Laboratorio di Antropologia e Odontologia Forense (LABANOF) of the University of Milan which, under the coordination of the Extraordinary Commissioner for Missing Persons, has been overseeing the implementation of the memorandum for “the identification of bodies belonging to foreign citizens retrieved at sea following the shipwrecks of 3 and 11 October 2013” (“memorandum of Lampedusa”).¹² The document, which should serve as a best practice for similar cases in the future, sets out a procedure for the retrieval, identification and tracking of the bodies of migrants.
17. The Commissioner notes that civil society and specifically the NGO “Comitato 3 Ottobre”, played a crucial role in reaching out to the families of victims and in promoting the application of the memorandum. However, the Commissioner was informed that, with a few notable exceptions,¹³ the procedure foreseen in the memorandum has not been systematically implemented after the October 2013 cases.

⁶ [Migranti, ecco le regole che hanno bloccato la Guardia costiera a Cutro - la Repubblica](#)

⁷ These guidelines do not appear to be consistent with the Italian [National Search and Rescue Plan](#), which specifies that the duty to rescue arises whenever authorities are informed of a “situation of distress” and that the available information, when there is a presumption of a real danger to people, should be interpreted in a “non-restrictive” manner. Moreover, reports suggest that these guidelines were rarely applied in practice by the Coast Guard until 2019, when they started to be applied more strictly.

⁸ [Omissione di soccorso: la vera storia del naufragio di Cutro \(editorialedomani.it\)](#)

⁹ As highlighted by the Court in [Safi and Others v. Greece](#).

¹⁰ See the Commissioner’s [Human Rights Comment](#) on Missing Migrants.

¹¹ The Commissioner was informed that the bodies of migrants retrieved at sea are usually moved from cemeteries to mass graves without informing their relatives.

¹² The memorandum was concluded by the Ministry of Interior with other relevant actors, such as the International Organization for Migration (IOM) and the Italian Red Cross.

¹³ Such as in the case of the 18 April 2015 shipwreck.

1.1.3. CONCLUSIONS AND RECOMMENDATIONS

18. To end the tragedy of refugees, asylum seekers and migrants dying and going missing at sea first and foremost deaths and disappearances must be prevented. To this end, the Commissioner urges the Italian authorities to do their utmost to ensure that safe and legal routes are put in place. In this respect, she praises the government's decision to significantly increase quotas for migrant workers and encourages the government to continue to expand it. She also commends the initiatives to promote legal pathways to protection that are led by civil society and international organisations in partnership with the Italian authorities (such as resettlement, humanitarian admissions, the "humanitarian corridors" – including the evacuation scheme from Libya – and the "university corridors") and calls on the authorities to support the expansion of those programmes.
19. The Commissioner stresses that the absence of a European search and rescue operation does not relieve member states from their obligations under international and maritime law. Accordingly, Italy should ensure that sufficient and adequate search and rescue capacity can be deployed to provide timely and effective assistance to people, including to refugees, asylum seekers and migrants, in distress at sea.
20. The Commissioner would like to draw the attention of the authorities to her [Recommendation](#) on the Central Mediterranean and to its follow-up [report](#) wherein she underlines that states' obligations in relation to people found in distress at sea may include intervening in or coordinating rescue operations beyond their own search and rescue region. More specifically, when receiving a distress call the Maritime Rescue Coordination Centre (MRCC) in Rome should take responsibility for the coordination of rescue operations until the territorially responsible RCC assumes operational responsibility. The MRCC should also transfer coordination to the responsible RCC only if that RCC is able to fully meet its obligations under maritime and human rights law, including with regard to safe disembarkation.
21. The Commissioner expresses concern over calls to deploy naval assets to prevent the arrival of refugees, asylum seekers and migrants via interception at sea. She wishes to stress that pushing migrants rescued in international waters back to Libya or Tunisia may amount to a violation of the principle of *non-refoulement* and breach Article 3 ECHR and Article 4 of Protocol No. 4 to the Convention. The Commissioner would like to bring the attention of the authorities to the judgement [Hirsi Jamaa v. Italy](#), where a similar practice was found to have violated the ECHR.
22. The Commissioner urges the Italian authorities to suspend the application of any internal guidelines that could result in delays in the classification of situations of distress at sea as SAR events and consequently delay the launch of search and rescue operations. She also points to the overall tone of political debate on migration and stresses that this may have a chilling effect on individuals, including those working within the Coast Guard and law enforcement agencies, who provide assistance to refugees, asylum seekers and migrants.
23. Italy should adopt a systematic approach to the collection of data concerning migrant deaths and disappearances. The Commissioner encourages the authorities to consider using the "memorandum of Lampedusa" as a model to establish a procedure and a database for the collection of such data. She also urges the authorities to continue their engagement with international organisations that are at the forefront of the search for missing migrants. Civil society and the relatives of the missing should be involved, as appropriate, in the process of search and identification.

1.2. RESTRICTIONS TO THE ACTIVITIES OF HUMAN RIGHTS DEFENDERS

1.2.1. THE CRIMINALISATION OF SOLIDARITY ON LAND AND AT SEA

24. Since 2014, search and rescue NGOs have been providing invaluable assistance in preserving human life at sea and in documenting human rights violations against refugees, asylum seekers and migrants attempting to cross the Mediterranean. The Commissioner observes that the activities of NGOs have been increasingly hampered in multiple ways, including through delays in assigning ports for disembarkation, bans on entry into territorial waters and criminal investigations. The latter exert significant pressure on NGOs and have an impact on their ability to carry out their activities. Some NGO vessels have also been subject to administrative seizures due to alleged non-compliance with technical requirements as set forth by the national authorities.¹⁴ In addition, the Commissioner observes that NGOs continue to be targeted in political debate and are the object of smear campaigns.
25. The Commissioner notes that the overwhelming majority of proceedings launched against NGOs are dismissed at the preliminary stage. Notably, the only criminal proceeding against an NGO currently ongoing is that concerning the “Iuventa” crew (an NGO active between 2016 and 2017). The crew face charges of collusion with smugglers and aiding and abetting illegal migration. The Commissioner shares the assessment made in an official [letter](#) to the Italian authorities by the United Nations Special Rapporteurs on Human Rights Defenders, on Freedom of Assembly and on the Human Rights of Migrants in relation to alleged due process violations in the proceedings and their concern that the pursuit of the case amounts to the criminalisation of human rights activities.
26. The criminalisation of solidarity has also affected a significant number of individuals, including refugees, asylum seekers and migrants on land.¹⁵ In numerous cases prosecutions were based on Article 12 of Legislative Decree No. 286/1998, which regulates the offence of “aiding and abetting illegal migration”. In a recent [ruling](#) the Italian Constitutional Court highlighted the need to carefully weight sentences associated with violations falling under the broad scope of the Legislative Decree. More specifically, the distinction between those acting with criminal intent and those acting for humanitarian reasons should be considered.

1.2.2. DECREE LAW NO. 1/2023 AND RECENT POLICY DEVELOPMENTS

27. On 26 January 2023, the Commissioner addressed a [letter](#) to the Italian Minister of Interior, Matteo Piantedosi, urging the government to consider withdrawing Decree Law No. 1/2023.¹⁶ The Commissioner warned the Minister that the Decree’s provisions could obstruct the provision of life-saving assistance by NGOs in the Central Mediterranean and therefore be at variance with Italy’s obligations under human rights and international law.
28. Notably, the Decree provides that vessels having carried out a rescue should reach the port assigned for disembarkation without delay. The Commissioner observes that this provision has been applied in such a way that NGOs are forbidden from conducting multiple rescues at sea. This forces them to disregard other distress calls in the vicinity if they have not received a clear indication to intervene from the MRCC, even when they have the capacity to assist. By complying with this provision NGO shipmasters would fail to fulfil their rescue duties under international law. Additionally, the Decree contains the duty to comply with “technical requirements” but leaves this notion vague. The Commissioner learned that several NGO vessels have already been

¹⁴ The Commissioner has expressed on multiple occasions her concerns on these issues to the Italian authorities, including in a [letter](#) to the then Prime Minister Giuseppe Conte in January 2019.

¹⁵ See, for instance, the [ruling](#) by the Italian Court of Cassation.

¹⁶ Converted into Law No. 15/2023.

subject to repeated security inspections, which prevented them from swiftly resuming their life-saving work.

29. According to the authorities, the Decree prevents “the systematic activity of recovery of migrants off the Libyan or Tunisian coasts without any form of coordination with the Italian authorities”.¹⁷ In their view, this *modus operandi* does not fall under the scope of the international conventions regulating search and rescue at sea. The Commissioner reiterates that the effective implementation of search and rescue activities, in line with international law, should always take precedence. She is concerned that the authorities’ position is partly driven by unsubstantiated narratives that search and rescue activities by NGOs constitute a pull factor for irregular migration. In this respect she notes that, according to available data, the number of savings operated by NGOs is currently less than 10% of the total number of people disembarked in Italy and that there is no evidence of any correlation between their presence at sea and departures.¹⁸
30. During the visit, the Commissioner was informed that several vessels have already been detained for breaking the provisions of the Decree. In this respect the Commissioner would like to recall the judgement of the European Court of Justice from August 2022, which emphasises that rescue at sea is a duty and that port controls must not be used arbitrarily against NGOs.¹⁹ She also notes that the absence of judicial review of the administrative sanctions results in diminished protection of the work of human rights defenders from acts of criminalisation.
31. It was also brought to the Commissioner’s attention that NGO vessels continue to be assigned distant places of safety, such as ports in central and northern Italy. In her Recommendation on the Central Mediterranean, the Commissioner called on member states to ensure the timely disembarkation of those rescued in a place of safety. She notes that assigning ports at several days of navigation prolongs the suffering of people saved at sea and unduly delays the provision of adequate assistance to meet their basic needs. During the visit, the authorities indicated that this practice is intended to decongest ports in southern Italy. The Commissioner, however, observes that the policy of assigning distant places of safety has been selectively applied to NGO vessels. Moreover, those disembarked were still redistributed on the national territory, including to facilities far from the place of disembarkation.²⁰
32. The Commissioner recalls in this respect that the “Guidelines on Treatment of Rescued Persons at Sea” included in IMO Maritime Safety Committee (MSC) [Resolution 167\(78\)](#) specify that even if a ship can serve as a temporary place of safety it should be relieved of this responsibility as soon as alternative arrangements can be made. In [Resolution 528\(106\)](#) the MSC calls on states to minimise the time survivors remain aboard ships rendering assistance, noting that a search and rescue operation is not concluded until the survivors have been disembarked in a place of safety. The Commissioner suggests that a more effective redistribution of asylum seekers on the national territory could be achieved by swiftly disembarking those rescued and making sure that alternative practical arrangements are subsequently put in place.
33. Lastly, the Commissioner underlines that examples of co-operation between NGOs and the Italian authorities already exist. In the weeks following the visit, the Italian Coast Guard has sought NGO support for complex search and rescue operations. Such instances illustrate the potential for positive co-operation between the Italian authorities and NGOs.

¹⁷ See the Italian authorities’ [reply](#) to the Commissioner’s letter concerning the Decree.

¹⁸ [Migranti e migrazioni in Italia: la dashboard con tutti i numeri | ISPI \(ispionline.it\)](#). See also Rodríguez Sánchez, A., Wucherpennig, J., Rischke, R. et al., *Search-and-rescue in the Central Mediterranean Route does not induce migration: Predictive modeling to answer causal queries in migration research*, Scientific Reports 13, 11014(2023). Available [here](#).

¹⁹ European Court of Justice, Judgement of 1 August 2022, *Sea-Watch eV v. Ministero delle Infrastrutture e dei Trasporti*, C-14/21 and C-15/21, EU:C:2022:604, paragraphs 107-109. Available [here](#).

²⁰ At times, even hundreds of kilometres away, including in centres in the south of Italy.

1.2.3. CONCLUSIONS AND RECOMMENDATIONS

34. The Commissioner observes that the implementation of Decree-Law No. 1/2023, paired with the practice of assigning distant places of safety, is hampering the provision of NGO life-saving assistance. Therefore, she calls on the authorities to abolish the provisions obstructing NGO search and rescue activities and to discontinue the discriminatory practice of assigning distant ports of disembarkation to NGO vessels.
35. As a member state of the Council of Europe Italy is expected to create a safe and enabling environment for human rights defenders, including NGOs involved in sea rescues. Accordingly, the Commissioner calls on the authorities to ensure that the principles set out in the *Sea-Watch* judgement of the Court of Justice of the European Union in relation to administrative and port controls are upheld. Where issues of compliance with technical or administrative requirements arise, these should be solved in a co-operative spirit in order to allow the vessel to resume operations as soon as possible.
36. The Commissioner encourages the authorities to undertake a comprehensive reform of Article 12 of Legislative Decree No. 286/1998 with a view to incorporating stronger safeguards against the prosecution of individuals and organisations engaged in human rights activities, both on land and at sea.

1.3. CO-OPERATION WITH OTHER COUNTRIES

37. Co-operation with other countries, notably with countries of origin and transit, is a legitimate feature of the migration policies of member states. However, any such co-operation must ensure full respect for the human rights of the people affected by such activities. Furthermore, member states should refrain from adopting policies aimed at shifting responsibility for their international obligations.²¹
38. In this respect, various co-operation activities launched by Italy give cause for concern from a human rights perspective. This is particularly the case when it comes to Italy's co-operation with Libya and Tunisia, both of which were part of the Commissioner's discussions with the authorities.

1.3.1. CO-OPERATION WITH LIBYA

39. Since 2017, co-operation between the Italian and Libyan authorities has been regulated by a three-year memorandum of understanding that has been renewed twice (in 2020 and in 2023). Since the entry into force of the memorandum, Italy has allocated significant financial support to border control projects in Libya and specifically to the Libyan Coast Guard. The Commissioner notes that this co-operation has been strengthened over the years and that Italy has also played a key role in the management of EU funding for border management programmes in Libya, despite serious concerns about the human rights implications of such activities.
40. Concerns over the conditions of refugees, asylum seekers and migrants in Libya are widely shared by international and human rights organisations. According to the [UNHCR](#), Libya does not meet the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea. This position has been consistently upheld in judgements of Italian national courts, including by two judgments of the Supreme Court of Cassation. In the [25th Report](#) of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to Resolution 1970 (2011), the Prosecutor's Office affirmed to having received a wide range of

²¹ See the Commissioner's [Recommendation](#) on the Central Mediterranean, p. 45. See also, for reference, [UNHCR Global Trends report](#). See also the Commissioner's [statement](#) regarding the United Kingdom proposal on offshore asylum processing.

credible information indicating that migrants and refugees in Libya may have been subjected to crimes against humanity and war crimes. In their final [report](#), the United Nations Independent Fact-Finding Mission on Libya found evidence that crimes against humanity were committed against migrants and Libyan nationals in places of detention under the actual or nominal control of the Libyan authorities (including the Libyan Coast Guard). Noting that the Libyan authorities continue to receive significant support from EU member states (including, *inter alia*, to improve their capacity to intercept migrants at sea), the Mission called on the international community to “cease all direct and indirect support to Libyan actors involved in crimes against humanity and gross human rights violations against migrants”.²²

41. Co-operation with the Libyan authorities, in particular the Libyan Coast Guard, has been the subject of numerous interventions by the Commissioner.²³ She has repeatedly called on the Italian authorities to suspend co-operation with the Libyan Coast Guard until comprehensive human rights safeguards are put in place.²⁴ However, during her visit, the Commissioner was informed that Italy’s co-operation with the Libyan Government of National Accord continues. She regrets the Italian authorities’ view, shared with her during her visit, that the current framework of co-operation with Libyan authorities is indispensable in terms of containing the number of arrivals and preventing deaths at sea. The Italian authorities also stressed that support in the management of migration flows is part of a broader framework of political co-operation that is key to continuing the transition towards stability and to improving respect for human rights. However, the Commissioner observes that there is no evidence of progress towards the achievement of these objectives. On the contrary, the findings of the United Nations Fact-Finding Mission and of other international organisations indicate that the human rights situation of refugees, asylum seekers and migrants in Libya has consistently deteriorated since 2017.
42. The Commissioner reiterates that she has observed a direct causal link between Italy’s co-operation activities with the Libyan Coast Guard and the exposure of people intercepted at sea to serious human rights violations.²⁵ It was also brought to the Commissioner’s attention that Italy’s contribution to interceptions by the Libyan Coast Guard has evolved beyond the provision of financial and material support. Reports by civil society suggest that Italian military ships deployed in Tripoli’s port in the context of the “Bilateral Assistance and Support Mission to Libya” may have contributed to the coordination of Libyan Coast Guard operations at sea. Other elements of coordination with the Libyan Coast Guard also give cause for concern. An [investigation](#) by Human Rights Watch, for example, has shown that aerial surveillance assets provided by Frontex – and deployed under the coordination of the Italian Minister of Interior – may have played a role in identifying the positions of vessels that were subsequently intercepted by the Libyan Coast Guard.²⁶
43. It was brought to the Commissioner’s attention that in situations where other vessels (e.g. NGO vessels) in the vicinity could have provided timely assistance the MRCC allegedly prioritised the intervention of the Libyan Coast Guard, thereby delaying life-saving rescue operations. This has been done despite the Libyan Coast Guard having repeatedly been proven to be ineffective in reacting to distress calls and numerous sources reporting evidence of their violent practices (e.g. manoeuvres that put in danger, damage or sink the boat in distress, shootings and armed threats

²² Report of the UN Independent Fact-Finding Mission on Libya, 3 March 2023. Available at: [Libya: Urgent action needed to remedy deteriorating human rights situation, UN Fact-Finding Mission warns in final report | OHCHR](#)

²³ See, for instance, the Commissioner’s September 2017 [letter](#) to the then Minister of Interior.

²⁴ See, for instance, the Commissioner’s January 2023 [letter](#) addressed to the Minister of Interior.

²⁵ She highlighted this in, for example, [observations](#) submitted to the Court in the case *S.S. and others v. Italy*. In those observations the Commissioner highlighted that Italy’s support has increased the capacity of the Libyan Coast Guard to intercept persons at sea and therefore increased the risk of returns to Libya.

²⁶ The Commissioner has previously highlighted how the shift to aerial surveillance in the Mediterranean increases the risk of interception and exposure to human rights violations. See [A distress call for human rights: the widening gap in migrant protection in the Mediterranean](#), follow-up report to the 2019 Recommendation, March 2021, p. 14.

against boats of migrants and private vessels, including Italian fishermen and search and rescue NGOs). The Commissioner also notes further evidence provided by NGOs suggesting that the MRCC in Rome has instructed merchant vessels to disembark people to Libya.

44. The Commissioner wishes to stress that accountability and transparency remain key concerns in relation to the co-operation between Italy and other countries and specifically in relation to co-operation with Libya. As it stands, the memorandum of understanding does not include binding obligations to introduce a human rights monitoring system. Additionally, civil society faces serious challenges in gaining access to the documents that define the details of the co-operation.²⁷ The Commissioner was also informed that the Parliament's authority over the allocation of financial aid to Libya – and to other countries – is limited to the approval of the annual Military Missions Decree (“Decreto Missioni”).

1.3.2. CO-OPERATION WITH TUNISIA

45. Since March 2023, Tunisia has become the main country of departure for refugees, asylum seekers and migrants crossing the Mediterranean to Italy.²⁸ The current framework of co-operation between Italy and Tunisia was established in 2011 through the conclusion of a [bilateral agreement](#) whereby Tunisia committed to accept the readmission of Tunisian nationals arriving in Italy. In recent years, the various governments in office have continued to provide support to the Tunisian authorities.
46. Since the 2011 agreement entered into force, civil society has criticised the disregard of basic safeguards in its implementation. In [J.A. and Others v. Italy](#) the Court found that the repatriation of a group of Tunisians under this scheme lacked substantial evaluation of their individual circumstances and prevented them from contesting their expulsions. Civil society stressed that similar practices seem to persist.
47. In the weeks preceding the Commissioner's visit, Italy intensified its efforts to reach a new agreement with the Tunisian authorities on migration management. In this context, the Commissioner notes that a significant body of evidence of serious human rights violations against refugees, asylum seekers and migrants in Tunisia has emerged. Media reporting highlights that the Tunisian authorities at the highest levels have been openly promoting a racist and discriminatory rhetoric against sub-Saharan migrants. Civil society has documented that this has resulted in a series of violent raids, racist attacks and abuse against them by security forces, including by the coast guard. Discrimination and violence by private citizens have also increased.
48. There have also been increasing accounts about hundreds of migrants, including vulnerable individuals (such as children and pregnant women), stranded in desperate conditions at the border with Libya and Algeria following their removal to remote areas by Tunisian police and border guards.²⁹ Such concerns come in addition to long-standing ones about the lack of an appropriate protection framework in Tunisia, including the failure to establish an asylum system. Reports also indicate a more general deterioration of the human rights situation in Tunisia, including a crackdown on political opponents, on freedom of expression and association and on the independence of the judiciary.
49. During her exchange with the authorities, the Commissioner reiterated the need to make any further co-operation agreement with Tunisia conditional on the inclusion of comprehensive human rights safeguards. She takes note of the government's view that the need to support Tunisian authorities in managing migration flows is part of broader support aimed at

²⁷ In response to a [lawsuit](#) filed by a collective of NGOs and journalists access was denied on public security grounds.

²⁸ [Situation Mediterranean Situation \(unhcr.org\)](#).

²⁹ See, for example, [IOM and UNHCR Appeal for Urgent Solutions to Migrants and Refugees Stranded in Tunisia and Libya Borders | International Organization for Migration](#).

strengthening democratic institutions. The authorities also highlighted the necessity to engage with the Tunisian authorities to tackle human trafficking. However, it is the Commissioner's view that these elements do not detract from, but rather reinforce, the need for a strong human rights component in the co-operation agreement.

50. After the visit, Italy has played a key role in concluding a [memorandum of understanding](#) between the European Union and Tunisia. The memorandum foresees, among other things, closer co-operation on migration. Unfortunately, however, the agreement includes only very general language on human rights and no concrete indication of whether human rights safeguards will be put in place or what those would be.

1.3.3. CO-OPERATION WITH ALBANIA

51. The Commissioner notes that, on 6 November 2023, Italy concluded a [memorandum of understanding](#) ("Protocollo")³⁰ with Albania on disembarkation and on the processing of asylum applications on Albanian territory. According to the memorandum, refugees, asylum seekers and migrants saved at sea by vessels under the control of Italian authorities will be disembarked on Albanian territory, where they will be hosted in two closed centres under Italian jurisdiction. It is the Commissioner's understanding that accelerated border procedures will apply.³¹ Vulnerable people will be exempted from being disembarked to Albania following a vulnerability screening carried out on vessels. The memorandum also provides that refugees, asylum seekers and migrants detained in the centres set up in Albania will be transferred to Italy once the maximum detention period foreseen in Italian legislation is reached, regardless of the status (or outcome) of their application. According to the memorandum, the Albanian authorities will not contribute to the examination of asylum applications, to the establishment and management of the centres, or to search and rescue operations at sea.
52. Following the publication of the agreement, the Commissioner issued a [statement](#) highlighting that the memorandum raises a range of important questions regarding the impact of its implementation for the human rights of refugees, asylum seekers and migrants. Specifically, the Commissioner believes that disembarking people to Albania could unduly delay the provision of adequate assistance to meet their basic needs and thus prolong the suffering of people saved at sea. In addition, she highlights that no adequate vulnerability screening can be carried out on vessels, since this requires specific expertise, careful consideration and essential procedural safeguards, which are in principle not in place aboard ships.
53. In the Commissioner's view, the extra-territorial detention of refugees, asylum seekers and migrants as foreseen in the memorandum could deprive them of crucial safeguards. This raises concerns in particular as regards the applicants' automatic detention and their lack of access to information regarding their legal status, legal assistance, judicial review and to an effective remedy, as well as in respect of monitoring. The Commissioner notes that the memorandum does not foresee any specific provisions to address these questions.
54. The Commissioner notes that the memorandum creates an ad hoc extra-territorial asylum regime characterised by many legal ambiguities. In practice, the lack of legal certainty will likely undermine crucial human rights safeguards and accountability for violations, resulting in differential treatment between those whose asylum applications will be examined in Albania and those for whom this will happen in Italy.

³⁰ "Protocollo tra il governo della Repubblica Italiana e il Consiglio dei Ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria".

³¹ As foreseen in Decree Law No. 20/2023 (see [1.4.5. Other legislative and policy changes](#)).

1.3.4. CONCLUSIONS AND RECOMMENDATIONS

55. The Commissioner calls on Italy to make any present or future co-operation agreement with other countries in the field of migration conditional on comprehensive human rights safeguards. Such safeguards should include the publication of a comprehensive human rights risk assessment, the setting up of independent monitoring mechanisms to assess the human rights impact of specific activities under the agreement and a suspension clause in the event of any activities found to be negatively impacting on the human rights of refugees, asylum seekers and migrants.
56. The Commissioner considers parliamentary and civil society scrutiny essential to ensuring the prevention of and accountability for human rights violations. She urges the Italian authorities to enhance transparency on the terms and actual progression of co-operation activities with third countries and to allow for accurate assessment of their impact in terms of respect for human rights. Similarly, members of parliament should be able to closely scrutinise co-operation activities and fulfil their role in holding government accountable for human rights violations resulting from their implementation.
57. In the context of co-operation on returns, the Commissioner calls on the authorities to ensure that the individual circumstances of each asylum seeker and migrant are assessed and that applicants can put forward arguments against their potential return. This remains crucial for individuals from countries that have signed facilitated readmission agreements with Italy. The application of such agreements should be made conditional on respect for fundamental rights, including in line with Articles 3 and 8 ECHR, Article 4 of Protocol No. 4 to the Convention and the principle of *non-refoulement*.
58. The Commissioner highlights that co-operation with the Libyan government on interceptions at sea has led to refugees, asylum seekers and migrants being exposed to grave and systematic human rights violations in Libya. She calls on the Italian government to suspend co-operation activities that would impact, directly or indirectly, on the return of persons intercepted at sea to Libya.
59. The Commissioner calls on the Italian authorities to refrain from coordinating or facilitating in any way the interception and return to Libya of refugees, asylum seekers and migrants found in distress at sea, as Libya cannot be deemed a safe place for the purpose of disembarkation. This includes ensuring that aerial surveillance activities do not contribute to facilitating return to Libya. Furthermore, the Italian authorities should ensure that vessels subject to its coordination are never instructed to disembark people in Libya and investigate any allegations of this happening.
60. The Commissioner notes that, reportedly, the human rights situation in Tunisia has dramatically worsened, especially for certain categories at risk such as political opponents, members of civil society, refugees and migrants from Sub-Saharan Africa. Examination of the individual circumstances of each person is crucial when assessing whether their return to Tunisia should be considered.
61. The Commissioner is concerned that the memorandum with Albania does not include adequate safeguards to ensure that its implementation will not negatively affect the human rights of refugees, asylum seekers and migrants. She recalls that ensuring that asylum can be claimed and assessed on member states' own territories remains a cornerstone of a well-functioning, human rights compliant system that provides protection to those who need it. She therefore calls on the Italian authorities to continue to focus on improving the efficiency and effectiveness of its domestic asylum and reception systems (see [1.4. Main concerns related to the protection and reception system](#)), and to ensure that the conclusion of the memorandum with Albania does not divert resources away from this important objective.

62. The Commissioner stands ready to further engage in dialogue with the Italian authorities on this matter and she will continue to monitor attentively any future development concerning the implementation of the memorandum.

1.4. MAIN CONCERNS RELATED TO THE PROTECTION AND RECEPTION SYSTEM

63. The Italian asylum and reception systems often come under strain during periods of increased arrivals via sea and land. As of 17 November, 149 581 migrants had arrived in Italy in 2023. This constitutes a marked increase with respect to the same period in 2022 (93 514 migrants).³² Italy has also received a significant number of Ukrainian refugees.³³ In April 2023, the authorities reacted to a sudden surge in arrivals through a declaration of a state of emergency.³⁴
64. Notwithstanding the high number of arrivals recorded in recent years, Italy has received a lower number of asylum applications per million inhabitants compared to other EU countries.³⁵ This is primarily due to secondary movements, since many individuals arriving in Italy tend to move to other countries.
65. During her visit, the Commissioner's discussions focused on some specific concerns related to the protection and reception system. This included [access to territory and to asylum \(1.4.1.\)](#), [the reception system \(1.4.2.\)](#), [the conditions at the hotspot in Lampedusa \(1.4.3.\)](#), [the protection of vulnerable people \(1.4.4.\)](#) and [other legislative and policy changes \(1.4.5.\)](#).

1.4.1. ACCESS TO TERRITORY AND TO ASYLUM

66. Pushbacks at the borders of Council of Europe member states remain one of the Commissioner's most pressing human rights concerns. Reports by civil society have highlighted that asylum seekers arriving at Italy's eastern ports on private ferries leaving from Greece have been immediately pushed back and held on the decks in worrying conditions. In the case [Sharifi and others v. Italy and Greece](#) the Court found multiple violations of the ECHR in relation to similar practices.³⁶
67. Another practice that was repeatedly brought to the Commissioner's attention is the direct readmission of adults and children taking place at the land border between Italy and Slovenia, through the application of a bilateral readmission agreement. The evidence suggests that, due to the lack of individual assessment, these readmissions amount to pushbacks. This was confirmed by a landmark judgement issued by a court in Milan, which found that migrants had been subjected to inhuman and degrading treatment and risked chain *refoulement* to Bosnia and Herzegovina. In the aftermath of the judgement the practice has been suspended. However, [media reports](#) highlight that enforcement of the readmission agreement has resumed. While civil society carries out significant border monitoring work, Italy does not have an official border monitoring system in place.
68. In addition, access to asylum remains particularly difficult for those who do not arrive by sea. In this case, refugees and migrants must appear before the local police office (the "Questura") to express their intention to apply for asylum. Insufficient availability of cultural mediators,

³² [Sbarchi e accoglienza dei migranti: tutti i dati | Ministero dell'Interno](#).

³³ At the end of 2022, 146 000 Ukrainian refugees had received temporary protection in Italy. Although the situation of Ukrainian refugees was not discussed with the authorities during the visit the Commissioner notes that Italy's response to the Ukrainian refugee crisis has been regarded as positive, especially thanks to the assistance provided by the existing Ukrainian community and civil society.

³⁴ The Ministry of Interior pointed out that the decision was taken to expedite procurement procedures and to overcome other operational challenges.

³⁵ See [Statistics | Eurostat \(europa.eu\)](#), available [here](#).

³⁶ In a [letter](#) to the Italian Minister of Interior Matteo Piantedosi, the Commissioner asked for clarifications about this practice.

translators and adequately trained personnel adds to the difficulties faced by Questura in processing the large number of applications. Most Questura lack a proper appointment booking system, which generates long queues on the streets. It has reportedly become common practice for migrants to sleep rough for days or even weeks in front of police buildings as they wait to try to secure a first appointment. Questura have also not established a system to prioritise vulnerable applicants. In practice, when and if an appointment to lodge an application is made it is scheduled months later. The Commissioner was also informed that some Questura have started to impose arbitrary requirements for lodging applications.³⁷

69. The Commissioner notes that the inability of asylum seekers to lodge their asylum application hinders their access to basic services, since no legal status is granted until the application is formalised. In addition, applicants who remain excluded from the reception system are not entitled to any form of accommodation and have no access to legal employment.³⁸

1.4.2. MAIN CONCERNS RELATED TO THE RECEPTION SYSTEM

70. The Commissioner was informed that the reception system offers very different standards across the national territory. The conditions in many reception centres, especially in those frequently put under pressure, remain dire. [Media reporting](#) and [declarations](#) by local authorities continue to demonstrate the lack of coordination in the transfer and redistribution of asylum seekers throughout Italy. The Commissioner notes with concern that the lack of medium and long-term integration strategies paired with the lack of early preparedness and contingency planning at the national and regional level consistently undermine efforts to improve and harmonise reception standards. According to [data](#) provided by civil society, the number of available places in the reception system has been reduced in recent years. The situation is exacerbated by the lack of adequate resources allocated to the reception system. In [Decree-Law No. 133/2023](#), the government included the possibility to systematically derogate from reception standards by authorising reception facilities to host more people, in excess of their official capacity, in case of significant migratory pressure.
71. More specifically, the Commissioner was informed that the system of first reception centres, which has a critical role in the screening of applicants, in the provision of first assistance and in the identification of vulnerable persons, continues to be affected by considerable shortcomings. At the time of this report, there were only nine operational first reception centres in Italy. The “hotspots” partially fill this gap in the areas more affected by arrivals by sea. However, these facilities regularly host people beyond their official capacity for prolonged periods of time. Reportedly, reception conditions remain poor and access to essential services (healthcare, legal and psychological assistance) is insufficient. It should be noted that the services provided at hotspots are designed for short stays and do not meet the standards required for longer periods.
72. The second line reception system, known as the “Sistema di Accoglienza e Integrazione” (SAI), is generally regarded as a positive model. It consists of locally managed projects that, on average, offer better reception standards. However, the participation of municipalities is voluntary. As a result, the national government often resorts to establishing extraordinary reception centres (“Centri di Accoglienza Straordinaria” - CAS) which usually consist of large centres accommodating a high number of asylum seekers. In exchanges with the Commissioner civil

³⁷ Depending on the region, police stations can demand documents such as proof of private domicile or a lease agreement.

³⁸ See paragraph 36 from the [Guide on the case-law of the European Convention on Human Rights on Immigration](#), “It may thus raise an issue under Article 3 if the asylum-seekers, including persons intending to lodge an asylum application, are not provided with accommodation and thus forced to live on the streets for months, with no resources or access to sanitary facilities, without any means of providing for their essential needs, in fear of assault from third parties and of expulsion”. See also the Grand Chamber’s judgement [M.S.S. v. Belgium and Greece](#).

society criticised the lack of resources made available to CAS to provide tailored support, particularly to the most vulnerable.

73. The Commissioner notes with concern that [Decree No. 20/2023](#) (converted into Law No. 50/2023) further deteriorates access to essential services for asylum seekers. According to the Decree, a clear distinction is made between asylum seekers (who will be hosted in governmental centres, such as the CAS, or in new temporary facilities) and beneficiaries of international protection (who will have access to the SAI). In addition, several essential services (such as legal assistance, psychological assistance and language courses) will no longer be provided at governmental or temporary centres.

1.4.3. THE HOTSPOT OF LAMPEDUSA

74. On 19 June 2023, the Commissioner carried out a visit to Lampedusa and to the hotspot located in Contrada Imbriacola. The visit involved extensive discussions with local authorities and civil society organisations operating on the island.
75. In 2022 and in 2023, the hotspot (with an official capacity recently extended to 640) regularly accommodated between 1 000 and 2 000 people. This led to severe overcrowding and dire hygienic conditions. Persons were often forced to camp outside the facilities and access to essential services (e.g. health care, legal and psychological assistance) was lacking.
76. Because of the difficulties associated with transfers to the mainland asylum seekers can spend extended periods of time at the hotspot. In March 2023, in its judgment in the case of [J.A. v. Italy](#) the Court found that the prolonged stay of asylum seekers at the hotspot of Lampedusa was devoid of legal basis, with no judicial or administrative review or access to an effective remedy. Therefore, the applicants' *de facto* deprivation of liberty amounted to a violation of Article 5 ECHR. In addition, the Court found that, given the poor reception conditions at the centre, the prolonged stay of the applicants at the hotspot constituted a violation of the prohibition of inhuman and degrading treatment. These findings were confirmed by the Court in three different judgments in October 2023.³⁹
77. Following the declaration of a state of emergency in April 2023, management of Lampedusa's hotspot was assigned to the Italian Red Cross. Moreover, the government started to increase the transfers of asylum seekers to the mainland (including regular transfers by plane). As a result, the Commissioner noted some improvements in the conditions at the reception centre during her visit. Measures were taken to make sanitary and shelter facilities available to those waiting to be accommodated within the centre, including the provision of camp beds and outdoor sunshades. Overall, hygiene conditions appeared to have improved. She also received assurances that, in contrast to the past, parts of the facility reserved for vulnerable individuals were adequately safeguarded.
78. However, several challenges persist, particularly in relation to overcrowding, and continue to make the provision of essential services difficult. When the capacity of the centre is exceeded asylum seekers are still forced to camp outside the facilities. The high number of survivors of gender-based violence, women at risk and unaccompanied children hosted at the centre necessitates the strengthening of the screening and referral system. The initial interview for screening and identification represents the sole real opportunity for applicants to communicate specific needs and vulnerabilities.
79. The Ministry of Interior is responsible for conducting the applicants' screening and identification. During this process, at the pre-identification stage applicants are required to complete a

³⁹ See [A.B. v. Italy](#), [A.M. v. Italy](#) and [A. S. v. Italy](#).

questionnaire (“foglio notizie”) that gathers personal information that contributes towards the pre-determination of their legal status. The Commissioner considers that the options presented to applicants (i.e. “work”, “family reunification”, “escaping poverty” and “asylum”) appear misleading and do not adequately disclose the possible consequences connected with ticking one box rather than another. Moreover, the Commissioner notes that the questionnaire focuses on the reasons for entry rather than enquiring about the individual reasons for leaving the country of origin and for seeking safety. Applicants are reportedly not automatically provided with a copy of the signed document.

80. The Commissioner acknowledges that the authorities, international organisations and civil society make extraordinary efforts to extend assistance to those arriving on the island. Nevertheless, the inherent limitations of the centre make it extremely challenging to maintain decent reception standards in the long term.⁴⁰ The limited capacity of hotspot and the logistical challenges associated with arranging transfers to the mainland demand urgent improvement of planning at the national level. The Commissioner also notes that, with respect to the past, the number of arrivals in Lampedusa is exacerbated by the lack of a search and rescue operation. This made it possible to reduce the number of autonomous arrivals (by proactively rescuing migrants in distress at sea) and to relieve the pressure on the island by disembarking people at other ports in southern Italy.⁴¹
81. In recent years, requests for increased support made by the community of Lampedusa have frequently been disregarded by the authorities. In this context, the Commissioner views the increased attention given to Lampedusa by the government, including through the provision of additional financial support, as a step in the right direction.⁴² The Commissioner was also informed that following the appointment of a new health director by the Provincial Health Agency (“ASP Palermo”) the delivery of health care services to inhabitants and to refugees, asylum seekers and migrants has seen some improvement.⁴³

1.4.4. THE PROTECTION OF VULNERABLE PEOPLE

82. The Commissioner notes that the Italian legal framework for the protection of vulnerable asylum seekers lacks effective implementation in many areas. In practice, vulnerable applicants (such as unaccompanied children, victims of torture, victims of trafficking, victims of gender-based violence, victims of rape and other forms of sexual violence, persons with disabilities) end up staying in hotspots and temporary reception centres more than others because of the lack of available places in dedicated facilities. In this respect, the absence of comprehensive vulnerability screenings and early identification systems at hotspots and reception centres remains another key concern. Typically, vulnerable individuals are not identified until their asylum interview takes place or remain unidentified.

Unaccompanied children

83. The Italian legal framework underwent significant reform in 2017 with the adoption of the “[Zampa Law](#)” (No. 47/2017), which includes crucial human rights safeguards for unaccompanied children. The law is in alignment with the Council of Europe guidelines, including on the adoption of a multidisciplinary approach to age assessment. However, many provisions of the law are not

⁴⁰ In the weeks following the Commissioner’s visit, for instance, a significant number of arrivals placed the hotspot under severe strain, with over 7 000 people arriving on the island in less than 48 hours.

⁴¹ See data from the Minister of Interior [elaborated](#) by “Istituto per gli Studi di Politica Internazionale” (ISPI).

⁴² [Sindaco Lampedusa, 45 milioni, forte segnale del governo - Notizie - Ansa.it](#).

⁴³ This included the establishment of permanent paediatric and gynaecological clinics. Additionally, the Commissioner welcomes the deployment of a medical team specifically tasked with providing medical assistance at landings. However, the Health Director is not responsible for the provision of healthcare inside the hotspot.

effectively implemented, including, for instance, the duty to promptly assign a legal guardian.⁴⁴ In principle, the law provides for the creation of separate reception centres designed to meet the needs of children. Yet the lack of a functioning first reception system significantly hampers the identification of unaccompanied children.

84. The Commissioner is concerned about the provisions on unaccompanied children included in [Decree-Law No. 133/2023](#). The Decree provides that in the event of a lack of available places in dedicated facilities unaccompanied 16- and 17-year-olds may be provisionally accommodated in dedicated areas within centres for adults. The Commissioner notes that this provision could result in the extensive accommodation of unaccompanied children in reception centres that cannot meet their specific needs. The Decree also provides that in the case of mass arrivals the age assessment procedure may be expedited, and medical assessments may be used to ascertain the age.
85. In this connection, the Commissioner notes that in its judgement in the case of [Darboe and Camara v. Italy](#) the Court found that the placement of two children in overcrowded reception centres, with serious difficulties in accessing essential services, amounted to a violation of Article 3 ECHR. The Court also highlighted that the failure to promptly place the applicants in a centre for unaccompanied children amounted to a violation of Italy's positive obligations stemming from Article 8. In that case the Italian authorities failed to apply "the principle of presumption of minor age", which the Court deems to be an inherent element of the protection of the right to respect for private life of unaccompanied children.
86. The Commissioner would like to draw the attention of the authorities to the Recommendation of the Committee of Ministers on "[Human rights principles and guidelines on age assessment in the context of migration](#)", which stresses the need for respect for the best interests of the child and the principle of presumption of minority for persons undergoing age assessment.⁴⁵ The Recommendation provides that a medical examination for age assessment purposes should only be undertaken when reasonable doubts remain about the person's age. Additionally, it should be used only once the other measures of the multidisciplinary approach have been exhausted and if it complies with the principle of the best interests of the child.

Victims of gender-based violence and/or trafficking

87. In the context of migration, the issue of victims of gender-based violence and trafficking is critical. Estimations by civil society highlight that the majority of women and girls arriving in Italy are in need of specific assistance, particularly on account of gender-based violence. The Commissioner welcomes, in this respect, the Government's decision to include all refugee and asylum seeker women in the category of vulnerable applicants, allowing them to have access to dedicated reception facilities within the SAI.
88. However, the overall response to trafficking and gender-based violence is weakened by the lack of an early identification system for victims. Insufficient training among medical and reception personnel, together with linguistic and cultural barriers, contribute towards this situation. The lack of aggregated data collection on gender-based violence across relevant settings remains another unresolved issue (see also [section 2.3. Violence against women](#)).

⁴⁴ This also relates to the insufficient number of available legal guardians. See the fourth [Monitoring Report on the Legal Guardianship System](#) (2021) published by the National Authority for Children and Adolescents.

⁴⁵ See also the Parliamentary Assembly resolutions, such as [resolutions no. 1810\(2011\)](#), [2136 \(2016\)](#) and [2449\(2022\)](#).

1.4.5. OTHER LEGISLATIVE AND POLICY CHANGES

Deletion of the special protection permit

89. Prior to the adoption of Decree Law No. 20/2023 the Italian protection system included a one-year renewable residence permit for “special protection”. Until recently, this permit was generally granted to those who, although not qualifying for international protection, could not be repatriated to a country where they risked being subject to torture or inhumane and degrading treatment (Article 3 ECHR). The same protection could be granted to those who would face a violation of their right to the protection of private and family life in case of repatriation (Article 8 ECHR).
90. Decree-Law No. 20/2023 abrogated the special protection linked to Article 8 (while the protection against refoulement – in line with Article 3 ECHR – was maintained). According to the authorities, Italy’s international obligations do not require it to adopt a national permit on special or humanitarian grounds. The Commissioner believes that this legal change will increase the number of people irregularly residing in Italy, exposing them to the increased risk of exploitation and preventing them from having concrete opportunities to integrate.

Expansion of accelerated border procedures

91. Decree-Law No. 20/2023 provides that applicants coming from countries deemed safe will be channelled into an accelerated border procedure. It also includes the possibility to detain, for up to four weeks, applicants who do not meet the certain requirements (e.g. lack of documents, demonstrable financial autonomy). Detention will take place in designated areas (“zone di trattenimento”) within hotspots, repatriation centres (also known as “Centri di Permanenza per i Rimpatri”, CPR) and in any other facility the authorities consider “suitable”. The authorities have underlined that all vulnerable individuals will be excluded from accelerated procedures.
92. The Commissioner notes the numerous and enduring human rights risks arising from practices of immigration detention across Europe. She stresses that, in principle, no one should be detained on the sole ground of having sought international protection and underlines that emphasis should be placed in the first instance on the development of effective alternatives to detention.⁴⁶ In the event of a lack of effective alternatives detention should follow an individual judicial examination of the applicant’s vulnerabilities and specific needs, in accordance with the principles of necessity, proportionality and non-discrimination, and should be subject to regular judicial review.⁴⁷ Access to facilities and independent monitoring by civil society should be ensured along with access to essential services, including legal assistance.
93. The Commissioner notes that, according to an [implementation decree](#) issued by the government, asylum seekers can avoid being detained if they are able to provide a financial surety of 4 938 euros. She notes that asylum seekers are required to present the financial surety before the end of the screening and the identification procedures and that no third party can act as guarantor. Such a system appears disproportionate, undermines the very aim of offering a viable alternative to administrative detention and bears the inherent risk of discriminating against people without financial resources.⁴⁸

⁴⁶ Alternatives to detention should be subject to the same rigorous safeguards that apply to detention, including an individual examination to assess whether the measure is necessary, proportionate and meets the individual’s specific needs.

⁴⁷ Regarding the Court’s case law on when administrative detention of asylum seekers and rejected asylum seekers is considered arbitrary and in violation of Article 5 ECHR, see European Court of Human Rights, [Guide on Article 5 of the European Convention on Human Rights](#) (right to liberty and security).

⁴⁸ The use of financial surety schemes is foreseen in Article 8.4 of the Reception Conditions Directive (available [here](#)). See [Legal and practical aspects of effective alternatives to detention in the context of migration \(coe.int\)](#), pp.113-114.

94. In [Decree-Law No. 124/2023](#) the government extended the maximum terms for administrative detention in repatriation centres (CPRs) to 18 months. Civil society has repeatedly denounced the worrying conditions that migrants experience in these centres as well as the lack of accountability for human rights violations that have reportedly taken place therein.⁴⁹ Very few essential services are provided, amidst extremely poor hygienic conditions, and access to certain essential services (healthcare, legal and psychological assistance) is lacking. Despite a clear prohibition in the law, the Commissioner was informed that children and vulnerable individuals are at times detained in CPRs. Regrettably, NGOs and international organisations have very limited access to these facilities.

1.4.6. CONCLUSIONS AND RECOMMENDATIONS

95. The Commissioner would like to draw the attention of the Italian authorities to her [Recommendation on Ending Pushback in Europe](#). She urges the authorities to refrain from returning persons without carrying out individual assessments of the circumstances of each person arriving at a border, as required to prevent violations of the principle of *non-refoulement*, the prohibition of collective expulsions and observance of the right to effective remedies. She also calls on the authorities to develop initiatives for effective and independent border monitoring, in close co-operation with international bodies and civil society.⁵⁰
96. Improving access to a fair and efficient asylum procedure to include safeguards such as information, interpreters and legal assistance should be an area of focus. The Commissioner recalls that the right to seek international protection is a fundamental right that cannot be made conditional on the provision of specific documentation or other similar formal requirements.
97. The Commissioner calls on the authorities to direct their efforts towards increasing support to the reception system and enhancing early preparedness and contingency planning rather than derogating, *de jure* and *de facto*, from reception standards. To this end, the government should adopt and update a national reception plan, in coordination with other key stakeholders involved in the reception system. She also urges the authorities to reintroduce access to SAI and to essential services for all refugees and asylum seekers, including legal assistance, psychological support and language courses.
98. The Commissioner calls on the authorities to take all adequate measures to improve the reception conditions at hotspots and access to essential services. She notes that delays in the onward transfers from hotspots – particularly from Lampedusa – could create situations of prolonged deprivation of liberty without any clear legal basis or access to an effective remedy and which could amount to arbitrary detention. Accordingly, she urges the authorities to ensure that those arriving at the hotspots can be transferred to their onward destination without undergoing prolonged limitations to their personal freedom.
99. The legal framework concerning the protection of vulnerable persons must be applied consistently throughout the national territory. The Commissioner urges the authorities to thoroughly implement the procedures and safeguards included in Law No. 7/2017, specifically with regard to legal guardianship and age assessment procedures. She also calls on them to consider withdrawing any provisions that derogate from the standards included in the law.
100. The Commissioner underlines the urgent need to enhance the capacity of the first reception system and to implement effective vulnerability screening procedures at the hotspot level. She

⁴⁹ See, for example, [reporting](#) by civil society. Media [investigations](#) have also shed light on the widespread prescription of psychopharmaceutical drugs to those detained in these facilities. Available [here](#).

⁵⁰ In her Recommendation on Ending Pushbacks in Europe the Commissioner set out the principles for effective border monitoring (see Chapter 3 of the [Recommendation](#)). She also recalls the criteria for independent border monitoring set out by the Committee for the Prevention of Torture (CPT), pp. 15-16 of the [30th General Report of the CPT](#).

also calls on the authorities to systematically apply the standard operating procedures developed for the early identification and referral of unaccompanied children and vulnerable persons.

101. Improving the reception conditions at repatriation centres (CPRs), including by ensuring better access to essential services in order to meet the basic needs of those who are detained should be another area of focus. The Commissioner urges the authorities to grant international organisations and civil society unimpeded access to the facilities and to ensure accountability for any human rights violations that take place therein.
102. The Commissioner encourages the authorities to reintroduce the special protection permit as per Article 8 ECHR. She wishes to stress that Italy remains bound by Article 8 ECHR with regard to the assessment of return decisions and that the authorities should ensure that those who cannot be returned because of Article 8 considerations should not be left in a legal limbo.
103. The Commissioner stresses that the introduction of accelerated border procedures should not result in asylum seekers being deprived of the right to an individual, thorough, substantive and fair examination of their application. Additionally, applicants should not be automatically channelled into an accelerated border procedure without having the opportunity to put forward individual elements against the assumption that their country of origin can be deemed safe and to have their protection needs examined.
104. The Commissioner fears that the widespread application of administrative detention will have dramatic implications for the human rights of refugees, asylum seekers and migrants. She also stresses that detention in the context of asylum procedures should never be applied as a blanket provision. When applied, each decision should be taken in strict compliance with human rights safeguards. She strongly recommends that the authorities develop alternatives to detention, drawing on relevant international guidance.⁵¹

2. WOMEN'S RIGHTS AND GENDER EQUALITY

105. The Commissioner commends the ratification by Italy (2013) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), in addition to the other major international instruments establishing obligations with respect to women's rights such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol setting up an inquiry procedure and a procedure for individual communications.
106. Italy has considerably developed its national legislation and policy for the promotion of gender equality and the prevention and combating of violence against women and has set up institutions to co-ordinate and monitor their implementation. However, a marked contrast persists between the legal guarantees in place and the situation on the ground as regards inequalities and gender-based violence suffered by women and girls. Continued violence and discrimination against women and girls remains a prevailing and urgent concern.
107. The Commissioner is pleased to note that the Italian authorities have identified and started to address a series of outstanding gaps in these areas, as reflected in the relevant national legislation and policies. While commending these efforts, she wishes to stress the importance of stepping up work to ensure that political and legal undertakings are translated into effective,

⁵¹ See, for example, Steering Committee for Human Rights (CDDH), [Human rights and migration: Legal and practical aspects of effective alternatives to detention in the context of migration](#), adopted on 7 December 2017; CDDH, [Practical guide – Alternatives to immigration detention: Fostering effective results](#), adopted 18-21 June 2019.

adequately funded measures capable of advancing gender equality and protection from gender-based violence for all women throughout Italy.

108. In the following sections the Commissioner will discuss specific concerns pertaining to gender equality, women's sexual and reproductive health and rights and violence against women. These relate, in particular, to systemic shortcomings as evidenced in the regional discrepancies in equality outcomes; the numerous barriers faced by women in accessing sexual and reproductive health care; the persistence of sexism and gender stereotypes at the societal and institutional level, including among law enforcement and the judiciary; and the uneven geographical distribution and quality of support services for women victims of gender-based violence as well as the existing deficiencies in their funding. The Commissioner considers that these issues deserve the authorities' priority focus.

2.1. GENDER EQUALITY

109. The Commissioner notes that Italy's Constitution recognises the principle of equal rights of citizens irrespective of sex. She appreciates the substantial legislation developed by Italy to promote gender equality, notably the National Code of Equal Opportunities for Women and Men (Legislative Decree No. 198/2006) that introduces obligations concerning gender mainstreaming.⁵² Furthermore, she welcomes the adoption of the [National Strategy for Gender Equality 2021-2026](#) and the inclusion of gender equality among the priorities of [Italy's National Recovery and Resilience Plan](#). The Commissioner also notes with interest the incorporation of the concepts of multiple and intersecting forms of discrimination into Italy's legislation and the relevant policy framework.⁵³
110. Notwithstanding this progress, the Commissioner notes with concern reports which highlight the limited effectiveness and implementation of Italy's anti-discrimination legislation and the barriers to women's effective access to justice, including a lack of awareness of their rights, the cost and length of procedures, insufficient legal aid, gender bias within the judiciary and the lack of reparations.⁵⁴ She also shares the concerns expressed by international bodies, including the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)⁵⁵ and by NGOs⁵⁶ about the emerging signs of a tendency in Italy to reinterpret gender equality policies in terms of family and motherhood policies. The Commissioner notes, moreover, that the National Strategy for Gender Equality 2021-2026 still lacks an action plan to set out the details of its implementation, including the necessary resources.
111. [Reports](#) also indicate that despite the existing legal obligations gender budgeting is only used by some, but not all, ministries. In addition, NGOs have shared their concerns that certain data is difficult to obtain (see [section 2.2. below, Women's sexual and reproductive health and rights](#)) and that centralised statistics are issued with delays, particularly in areas managed at the

⁵² Recent legislation promoting pay equality and equality at the workplace is discussed in the following paragraphs. Other relevant legislation includes Law No. 215/2012, introducing mechanisms to achieve gender balance and equality in local government and regional councils, Law No. 107/2015, which provides for the inclusion of education on gender equality in the national education and training system, Legislative Decree No. 80/2015 on measures for reconciliation between care, work and family life and Law No. 81/2017 promoting flexible working arrangements in the public and private sectors.

⁵³ Referenced in the National Strategy for Gender Equality 2021-2026 and the National Strategic Plan on Male Violence against Women 2021-2023. Legislative Decree No. 215/2003 on the implementation of Directive 2000/43/EC (Racial Equality Directive) recognises "the differential impact that similar forms of discrimination can have on women and men".

⁵⁴ CEDAW Committee, Concluding Observations on the seventh periodic report of Italy, 24 July 2017, paragraphs 17(a) and (c); [Submission](#) to the CEDAW Committee by "Italian civil society organisations for CEDAW", coordinated by D.i.Re - Donne in Rete contro la violenza, 1 February 2021.

⁵⁵ GREVIO, Baseline evaluation [report](#), Italy, adopted on 15 November 2019, paragraph 35; CEDAW Committee, Concluding Observations, Italy, 2017, paragraph 21(d).

⁵⁶ [Report](#) submitted by Italian women's rights NGOs coordinated by D.i.Re - Donne in Rete contro la violenza, "Upcoming recommendations of the Committee of the Parties in respect of Italy", April 2023.

regional level such as healthcare. These difficulties persist despite the legal requirement for the National Statistical Institute (ISTAT) and public administration to collect data disaggregated by sex and to prepare gender-sensitive statistics.⁵⁷

112. The Commissioner notes positively that gender equality falls under the responsibility of structures at the highest level of government, including the Ministry for Family, Birth Rates and Equal Opportunities and the Department for Equal Opportunities (DEO) of the Presidency of the Council of Ministers, established in 1996. She furthermore welcomes the establishment within the DEO, as of January 2022, of an inter-institutional committee mandated to ensure co-ordination between central and territorial institutions with responsibilities in relation to the implementation of gender equality policies and to identify and promote good practices; and, as of February 2022, of the [National Observatory for the Integration of Gender Equality Policies](#), which includes, among others, representatives of civil society organisations, trade unions and of the academia. However, she notes the concerns expressed by civil society interlocutors about the functioning of DEO, including with respect to its consultations with NGOs. Moreover, she regrets that, contrary to past practice, no standing parliamentary committee is currently in charge of gender equality. The Commissioner also notes the reported differences in the performance of gender equality structures at the regional and local level.
113. The Commissioner observes that in practice gender inequality is deeply rooted in Italian society and remains pervasive in daily life. Numerous reports across the board raise serious concerns about the entrenched stereotypes regarding the roles and responsibilities of women and men in the family and in society, the continued negative portrayal of women in the media and the sexist hate speech and tolerance of violence against women in public debate, both online and offline.⁵⁸
114. Italy ranks 14th in the [European Union Gender Equality \(EIGE\) Index 2022](#), with a score of 65.0 out of 100 points (3.5 points below the EU score). While Italy has recorded one of the largest overall long-term improvements in the EU as regards its overall gender equality outcomes, its scores remain variable across different domains. Italy's biggest improvement has been in the domain of power and its highest score is in the domain of health (89.0 points), with a score of 98.6 points in the subdomain of access to health services. However, concerns remain with respect to women's access to sexual and reproductive healthcare services (see [section 2.2](#) below).
115. Gender inequality remains most pronounced in the domain of work, where Italy ranks last in the EU with 63.2 points. The Commissioner notes the long-standing difficulties faced by women belonging to certain groups in accessing the labour market, including young women with higher education qualifications living in the south of Italy,⁵⁹ women living in rural areas, women with disabilities, Roma, Sinti and Caminanti women and refugee, asylum seeker and migrant women.⁶⁰ Women face difficulties especially in re-entering the labour market after childbirth, including because of the critical shortage, particularly in southern Italy, of places in nursery schools. The National Strategy for Gender Equality highlights in this respect that parenthood has a significant negative impact on women's employment, with the difference in employment rates between mothers and fathers reaching 30 percentage points. It also indicates that 38% of women change

⁵⁷ Idem.

⁵⁸ CEDAW Committee, Concluding Observations, Italy, 2017; GREVIO, Baseline evaluation report, Italy, 2019; Joint [submission](#) by Pangea Onlus and other NGOs to the CEDAW Committee, 8 February 2021; Report submitted by Italian women's rights NGOs coordinated by D.i.Re, April 2023 (fn. 66 above).

⁵⁹ The incidence of young women who are not in education or employment (NEETs) in the 15-29 age bracket is 19.7% in the north and 34.2% in the south of Italy (National Strategy for Gender Equality 2021-2026, p. 9, ISTAT data 2020).

⁶⁰ See also CEDAW Committee, Concluding Observations, 2017, paragraph 37(e).

their employment status for family reasons (compared with 12% of men) and 33% of women stop working after having their first child, with rising rates as the number of children increases.⁶¹

116. As in other countries, the effects of the COVID-19 pandemic have exacerbated gender inequalities. It has notably caused many women to slip back into a dependent socio-economic status and has greatly increased their childcare and long-term caregiving responsibilities and time spent doing unpaid care and household work.⁶² According to official data, from December 2019 to December 2020 the decrease in women's employment was approximately 2.5 times greater than for men.⁶³
117. The gender pay gap in Italy appears to be widening, particularly in the private sector. While the overall gender pay gap is estimated at around 5% ([Eurostat 2021](#)), the Commissioner notes that according to the official information it is around 20% in the private sector and reaches around 24% if hours worked are taken into account. The gap widens further as skills and specialisation increase (33% for graduates) and in male-dominated sectors (26.4% in financial services companies).⁶⁴
118. Against this background, the Commissioner welcomes the amendments (Law No. 162/2021, the "Gribaudo Law") to the National Code of Equal Opportunities, which widen the scope of gender discrimination cases at the workplace and introduce requirements for greater pay transparency, through biennial reporting obligations, as well as incentives for companies that obtain a [gender equality certificate](#). She also welcomes the information provided by the Italian authorities regarding the initiative to put forward a [code of conduct for private companies](#) to support women's re-entry into the labour market.
119. Lastly, while Italy has a high enrolment rate of women and girls at all levels of education, they continue to be underrepresented in the fields of science, technology, engineering and mathematics (STEM). Civil society actors have informed the Commissioner about persistent prejudice among teachers concerning the ability of girls to successfully pursue studies and career paths in these fields. The Commissioner is therefore encouraged by the government's recent initiatives to promote STEM competency at all levels of education, with specific attention paid to gender equality and schools in the south of Italy.⁶⁵

2.2. SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS OF WOMEN

120. The Commissioner wishes to stress from the outset that unimpeded access to sexual and reproductive healthcare is crucial to preserving the right of girls and women to health as well as other rights, including the right to life, the right to be free from torture and ill-treatment, the right to privacy, gender equality and the right to be free from discrimination. It is from this perspective that she sets out her observations below.
121. The Commissioner is seriously concerned about the reported barriers faced by girls and women in accessing abortion care. Law No. 194 /1978 on the social protection of motherhood and the voluntary termination of pregnancy provides for access to abortion care during the first 90 days of pregnancy for social, economic, health or family reasons and beyond 90 days if the woman's life or health is at serious risk (so-called "therapeutic" abortions). Nevertheless, women's access to abortion care is frequently hindered by procedural rules, including mandatory counselling and a seven-day waiting period (except in emergencies); lengthy waiting times for appointments; the non-implementation, in most regions, of the new national guidelines (2020) on the provision of

⁶¹ National Strategy for Gender Equality 2021-2026, p. 6.

⁶² EIGE, Country Profile Italy, 2022; Human Rights Watch, [submission](#) to the CEDAW Committee on Italy, 12 February 2021.

⁶³ National Strategy for Gender Equality 2021-2026, p. 9.

⁶⁴ *Idem*, p. 7.

⁶⁵ <https://pnrr.istruzione.it/avviso/dm-65-nuove-competenze-e-nuovi-linguaggi-riparto-delle-risorse/>.

abortion procedures in day hospitals, outpatient clinics and public health counselling centres (“consultori”);⁶⁶ the reluctance of medical staff to perform abortions after the 90-day time limit; and social stigma.⁶⁷ NGOs have also noted regional initiatives aimed at integrating certain private counselling services within the “consultori” with the objective of preventing voluntary abortions and countering declining birth rates. NGOs have stressed that these initiatives can undermine the neutrality of the “consultori”, which is essential for respecting women’s free choice.⁶⁸

122. These barriers are crucially compounded by the widespread refusal (objection) to perform abortion by medical and other health staff on grounds of conscience. According to information provided to the Commissioner by the authorities, in 2021, the percentage of health staff registered as “conscientious objectors” was 63.6% of gynaecologists, 40.5% of anaesthetists and 32.8% of non-medical personnel. According to civil society organisations, the ratio of objecting staff is so high that the health care guaranteed by law is not available in practice. Civil society representatives also stressed that the scarcity of available health professionals and the long waiting lists also cause women to seek abortion beyond their region or even abroad. Further concerns were raised about the non-implementation of certain safeguards under Law No. 194/1978, including the prohibition for health staff to refuse abortion care in cases of emergency and pre- and post-abortion care. Importantly, while the law requires regional authorities to ensure that abortion care is available in all authorised facilities, thereby precluding institutional refusals of health care, some hospitals appear to operate exclusively with objecting staff.
123. The Commissioner also learned that in the absence of clear official information on hospitals providing abortion care, it was an association of gynaecologists that took the initiative to publish an updated [map](#) of such hospitals. In this context, the Commissioner welcomes the information provided by the authorities regarding the steps taken in collaboration with the regions to improve the collection, reporting and publication of data on sexual and reproductive health.
124. The Commissioner takes note of the position of the Italian authorities that the high rate of objections on grounds of conscience among medical staff does not constitute a problem because the number of abortions has been falling and the ratio between non-objecting gynaecologists and abortion procedures performed has remained stable at the national level in recent years. However, she wishes to refer to the decisions of the European Committee on Social Rights which found that Italy’s failure to ensure consistent access to abortion care, including the overly broad practice of invoking objection on grounds of conscience, constitutes a failure to uphold the right to protection of health and non-discrimination.⁶⁹
125. In the same vein, the Commissioner was informed that numerous pharmacies refuse on grounds of conscience to dispense contraceptives. Although the relevant regulations impose the duty of referral to other health professionals in such cases, there are no measures in place to enforce this obligation. As regards the affordability of contraceptives, the Commissioner learned that nationwide access to free contraception through the national health service (Servizio sanitario nazionale, SSN) ceased in 2016 and only a few regions provide free hormonal contraception to women up to the age of 26. The Commissioner was also informed that a recent initiative by the Italian Drug Agency (AIFA) aimed at the introduction of free hormonal contraceptives for all women was suspended pending further consideration.

⁶⁶ [Comments](#) by the association LAIGA, European Social Charter, thematic groups 2: health, social security and social protection regarding Italy, 1 July 2021, pp. 6-8. Available at www.coe.int/en/web/european-social-charter/italy.

⁶⁷ www.politico.eu/article/italy-abortion-burial-causes-outrage/.

⁶⁸ LAIGA, Comments, 2021, pp. 8-10.

⁶⁹ Complaint No. 87/2012, *International Planned Parenthood Federation - European Network (IPPF EN) v. Italy*, Decision on the merits, 10 September 2013, and Complaint No. 91/2013, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Decision on admissibility and the merits, 12 October 2015.

126. The Commissioner would like to draw the attention of the authorities to the Issue Paper "[Women's sexual and reproductive health and rights in Europe](#)" published by her office in 2017. The paper outlines notably the obligation of states to ensure, where national laws or practices allow medical professionals to refuse the provision of certain forms of health care, that access to the relevant service is not undermined as a result.⁷⁰ She also recalls the Court's case law in this matter, according to which Article 9 ECHR, which enshrines the freedom to manifest one's religion of belief, "does not always guarantee the right to behave in public in a manner governed by that belief".⁷¹
127. The Commissioner also notes that in 2010 the authorities issued [guidelines](#) (followed by other recommendations) to improve the quality, safety and adequacy of maternal health care, including interventions in childbirth. The implementation of the guidelines is monitored by a specialised committee within the Ministry of Health (Comitato Percorso Nascita nazionale, [CPNn](#)). However, civil society [reports](#) indicate that progress in this area has been characterised by highly differentiated results across regions and an overall persistence of obstetric violence, including violations of women's dignity and autonomy.
128. In a broader context, the Commissioner is concerned about the reported deterioration of women's access to sexual and reproductive healthcare due to the reduction in public funds allocated to healthcare, including health counselling centres. NGOs have highlighted that this affects all women but has particularly negative consequences for women belonging to disadvantaged groups. The Commissioner finds this all the more worrying as health counselling centres are key spaces within the national health system for women to access their right to health, including safe and legal abortion. She therefore welcomes the information provided by the authorities regarding planned investment in the network of health counselling centres, including under the National Resilience and Recovery Plan.
129. In Lampedusa the Commissioner noted that the local medical team faced a shortage of cultural mediators, which posed specific challenges in view of the increasing number of arrivals, including of pregnant women, to the island. She was informed that women with advanced pregnancies or those experiencing complications were being urgently transferred to hospitals, mainly to Sicily or other appropriate locations. The Commissioner was pleased to learn that migrant women, irrespective of their immigration status, are entitled to the same access to maternal health care as Italian women and cannot be deported during their pregnancy and six months after childbirth. She also notes positively that pregnant migrant women are considered vulnerable individuals, qualifying for the relevant assistance both in the first reception centres and SAI (see also [section 1.4.4.](#) above).
130. More generally, the Commissioner was informed that migrant women's access to health care is very limited, as beyond emergency treatment health care is only available to residency permit holders. Asylum seeker and refugee women face long waiting periods for the issuance of residency permits and this causes delays in accessing health care. The Commissioner shares the concerns expressed by civil society that the new rules restricting the possibilities to obtain special protection (see [section 1.4.5.](#) above) put migrant women and girls at heightened risk of violations of their sexual and reproductive health and rights.
131. Finally, the Commissioner notes the lack of mandatory comprehensive sexuality education in schools. Civil society representatives have described the situation as critical, with sexuality

⁷⁰ See also CEDAW Committee, [General Recommendation No. 24](#): Article 12 - Women and health, 1999, paragraph 11 and Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 22 \(2016\)](#) on the right to sexual and reproductive health, paragraph 14.

⁷¹ *Pichon and Sajous v. France*, Application No. 49853/99, decision of 2 October 2001; *R. R. v. Poland*, Application No. 27617/04, judgment of 26 May 2011, §206 and *P. and S. v. Poland*, Application No. 57375/08, judgment of 30 October 2012, §106.

education being mostly delivered on an *ad hoc* basis and without monitoring of the implementation of this part of the curriculum. The Commissioner also learned with regret that various initiatives taken by the authorities to implement gender-sensitive education (which is part of the mandatory curriculum) and to harmonise sexuality education in schools have been hampered due to growing resistance from certain movements, often relayed through disinformation campaigns about the content of such education.⁷²

2.3. VIOLENCE AGAINST WOMEN

132. The Commissioner is concerned about the high levels of violence against women and tolerance of domestic violence prevailing in Italian society. A national survey carried out in 2019 showed that in some regions up to 50% of men considered violence in relationships acceptable, at least in certain circumstances.⁷³ In 2023, until 12 November, 102 women were intentionally killed, of whom 82 in a “domestic/relationship context”; of these, 53 were killed by partners or former partners.⁷⁴
133. Italy’s progress as well as its shortcomings with respect to combating violence against women and domestic violence have been extensively addressed by GREVIO.⁷⁵ The Commissioner notes GREVIO’s positive evaluation of Italy’s legal and policy framework in this area, which addresses violence against women in a gendered way, in line with the requirements of the Istanbul Convention and in accordance with its four-pillar approach focused on prevention, protection, prosecution and co-ordinated policies. She also welcomes the good practices identified by GREVIO in Italy’s legislation, including Legislative Decree No. 80/2015 and Law No. 232/2016 granting women victims of gender-based violence paid leave of up to three months and Law No. 4/2018 on support measures for children orphaned as a consequence of domestic violence.
134. The Commissioner welcomes Law No. 69/2019 (“Red Code”) that criminalises additional forms of violence and introduces further measures for the protection of child victims of rape; the provisions of the Legislative Decree No. 149/2022 (the “Cartabia reform”) which introduces inter-institutional co-ordination duties in civil proceedings taking place in the context of domestic or gender-based violence and Law No. 53/2022 which establishes an integrated data collection system on different aspects of the phenomenon of gender-based violence, including relevant judicial proceedings. The Commissioner also learned with interest of a [bill](#) recently put forward by the government which, among other measures, promotes the training of magistrates dealing with cases of violence against women, strengthens inter-institutional information-sharing obligations and introduces the possibility for provisional compensation to be paid to the victim or, in the event of death, those entitled to it, before the finalisation of the legal proceedings.
135. The Commissioner shares, however, the concerns expressed by NGOs with respect to the limiting, through the “Cartabia reform”, of *ex officio* prosecutions in respect to physical violence and in particular injury (Article 582 of the Criminal Code) to situations where the injury caused to the victim requires 40 days or more of recovery time (previously, injuries requiring between 20 and 40 days of recovery were prosecuted *ex officio*). The offences of harassment, kidnapping and private violence (involving coercion by force or threat) also became prosecutable *ex parte*/on complaint. The Commissioner furthermore regrets that despite recommendations by GREVIO and the CEDAW Committee,⁷⁶ no effective measures were taken by the authorities to amend the

⁷² See also GREVIO, Baseline evaluation report, Italy, 2019, pp. 36-37.

⁷³ National Strategy for Gender Equality 2021-2026, p. 5, ISTAT data 2019. Available at www.istat.it/it/archivio/235994.

⁷⁴ Data available at [Omicidi volontari e violenza di genere | Ministero dell'Interno](#). In 2022, 125 women were killed, of which 82 in a “domestic/partnership context”, with 61 killed by partners and former partners. *Idem*.

⁷⁵ GREVIO, Baseline evaluation report, Italy, 2019 and additional documents, available at www.coe.int/en/web/istanbul-convention/italy.

⁷⁶ GREVIO, Baseline evaluation report, Italy, 2019, paragraphs 190-191; CEDAW Committee, *A.F. v. Italy* (148/2019), 20 June 2022.

criminal legislation so as to clearly base sexual violence offences (Article 609bis of the Criminal Code) on the notion of freely given consent.⁷⁷ She learned in this respect that courts continue to take varying approaches to the interpretation of sexual violence offences (either on the basis of coercion or on the basis of consent), which results in inconsistent practice. This divergence persists despite the jurisprudence of the Supreme Court which applies a consent-based interpretation of rape and sexual violence.⁷⁸

136. In regard to the [National Strategic Plan on Male Violence Against Women 2021-2023](#), NGOs who spoke with the Commissioner expressed their disappointment at the lack of adoption of an operational plan detailing roles, responsibilities, timelines and financial allocation for its implementation. Moreover, they stressed that there was a lack of transparency on the status of implementation of the plan and noted deficiencies and discrepancies in its implementation at the regional level. Civil society reports also indicate a major reduction in the budget allocations for the prevention of violence against women in 2023, compared to 2022.⁷⁹
137. At the institutional level, the Commissioner notes positively the establishment, in March 2022, of a National Steering Committee with functions of political guidance and strategic coordination of institutional actions at the central and local level. She also welcomes the reappointment, as of September 2022, of the National Observatory on Violence against Women and Domestic Violence, which carries out monitoring, analysis, study and proposal functions, including support for DEO in the preparation of the National Strategic Plan on Male Violence against Women. The Commissioner is also pleased at the establishment, in February 2023, of the Parliamentary Commission of Inquiry on Femicide and other forms of Gender-Based Violence (previously, a commission within the Senate). However, she notes the difficulties reported by, among others, GREVIO and NGOs regarding the co-ordination work carried out by DEO and the National Steering Committee and the fact that the latter has an unstable mandate.
138. The Commissioner observes that there is an urgent need to combat sexism and prejudice against women among law enforcement, prosecution and judicial authorities, which contribute towards the low prosecution and conviction rates in cases of violence against women and impunity for perpetrators.⁸⁰ She notes that following the Court's judgment in the case of *Talpis v. Italy*,⁸¹ Italy took measures to promote the training of judges tasked with examining cases of violence against women. However, NGO reports indicate that no mandatory training exists for judges and other legal professionals in this area. Moreover, recent proceedings have once again exposed the secondary victimisation experienced by victims of gender-based violence in their interaction with the courts. Reported incidents include biased remarks and arguments made by judges, including with respect to the sexual orientation and previous relations of victims, and in one case the acquittal of the accused on account of the short duration of the assault.⁸²
139. A further problem raised by civil society is the insufficient consideration given to gender-based violence when determining child custody,⁸³ with preference often given to maintaining the

⁷⁷ A [bill](#) proposed in 2021 to amend Article 609bis of the Criminal Code was not debated.

⁷⁸ NGO report to the committee of the parties to GREVIO, April 2023, p. 30.

⁷⁹ [ActionAid lancia "Black FreeDay" con Claudia Gerini | ActionAid](#).

⁸⁰ See *J.L. v. Italy*, Application No. 5671/16, judgment of 27 May 2021 – violation of Article 8 ECHR due to the secondary victimisation of the applicant. This was on account of the guilt inducing, moralising and sexist language and the arguments used by the national court, including in its judgment, which acquitted those accused of raping the woman.

⁸¹ *Talpis v. Italy*, Application No. 41237/14, judgment of 2 March 2017. The execution of this judgment is subject to enhanced supervision ([group of cases](#) including *Talpis v. Italy*, *De Georgi v. Italy*, *M.S. v. Italy* and *J.L. v. Italy*).

⁸² See the [Communication](#) to the Committee of Ministers from D.i.R.E. - Donne in rete contro la violenza (18/07/2022) in the case of *J.L. v. Italy* (Application No. 5671/16); see also [La "palpata breve" non è reato, bidello assolto a Roma - la Repubblica](#).

⁸³ Article 31 of the Istanbul Convention requires states parties to ensure that in the determination of custody and visitation rights of children incidents of violence covered by the Convention are taken into account and that the exercise of any visitation or custody right does not jeopardise the rights and safety of the victim or children.

relation between the father and the child even when this puts the safety of the mother and the child at risk. The Commissioner was informed that migrant and refugee women face heightened vulnerability regarding their parental rights, with children often being removed from them in cases involving domestic violence. In this respect, she notes that parental responsibility, custody and the best interests of the child in cases of violence are flagged in the National Strategy for Gender Equality as issues requiring key action. The Commissioner would welcome any further details from the authorities on measures taken in this area.

140. Support services for victims of gender-based violence, including shelters, anti-violence centres (“centri antiviolenza”, CAV)⁸⁴ and the helpline 1522 (“Telefono Rosa”) are operated by NGOs. The Commissioner is worried about the uneven geographical distribution and apparent shortage of support services in some regions (with a total of 468 shelters and 401 anti-violence centres operating across Italy, as of June 2023).⁸⁵ During her visit, the Commissioner was surprised to learn that the total capacity of shelters for women victims of domestic violence in Rome was of only some thirty places.
141. The Commissioner is moreover worried about the persistent deficiencies in the funding of CAV and shelters, which is largely based on public contracts awarded by the regional and local authorities to the lowest bidder. She notes GREVIO’s assessment of this system as a bad practice, as it favours those service providers that tend to minimise costs at the expense of quality. Civil society representatives have stressed that funding for service providers continues to be unstable and scarce, which forces NGOs to operate with voluntary or poorly remunerated staff and leaves them struggling to cover the basic costs of their programmes. The Commissioner was therefore pleased to learn about recent budgetary measures to increase the annual resource allocations for the funding of service providers operating CAV and shelters. However, at the time of the visit, the actual allocation of funds by regional and local authorities was overdue, reportedly because of delays relating to the examination of bids.
142. The Commissioner further notes the need identified by civil society and in the National Strategic Plan on Male Violence Against Women 2021-2023 to achieve greater consistency at the national level in terms of the quality of the support services offered. In this respect, she welcomes the information provided to her by the authorities regarding an agreement reached, in September 2022, between the government, regions and municipalities aimed at setting out stricter criteria for the accreditation of service providers. She wishes to recall, in connection to this, the importance of ensuring minimum standards to safeguard the accessibility of CAV and shelters as well as of other support services to women with disabilities.⁸⁶
143. Additional concerns were raised by NGOs regarding access for refugee, asylum seeker and migrant women to the existing protection and support framework. The Commissioner is worried that the authorities’ approach to arrivals at sea poses a significant risk of *refoulement* of women arriving from Libya, where there is evidence of large-scale gender-based violence. Worrying deficiencies in the identification and referral of victims of gender-based violence within the asylum system, including because of poor access for NGOs to reception centres and places of detention, are also consistently reported. Accelerated procedures and sudden transfers of persons from hotspots to other reception centres or to repatriation centres may also result in victims of gender-based violence and/or trafficking not being identified early enough (see [section 1.4.4](#), above). The Commissioner notes the persistence of these gaps, which were also quoted in

⁸⁴ Anti-violence centres provide various specialist support services, including career advice, psychological assistance and other measures to empower women to exit gender-based violence situations.

⁸⁵ Official information provided to the Commissioner.

⁸⁶ See also Italian Disability Forum, [submission](#) to the CEDAW Committee, January 2021.

previous years by GREVIO and the Group of Experts on Action Against Trafficking in Human Beings (GRETA).⁸⁷

144. Another issue that was brought to the Commissioner's attention is the impact of the abrogation of special protection (see [section 1.4.5.](#) above) on women asylum seekers who are victims of gender-based violence. Concerns are amplified by the recent addition of Nigeria, Gambia and Côte d'Ivoire to the list of safe countries of origin,⁸⁸ despite the reported systematic violations of women's rights in these countries, including the widespread perpetration of forms of gender-based violence covered by the Istanbul Convention.⁸⁹
145. A further issue which deserves attention is the implementation of the legal provisions on the residency permit for victims of trafficking and domestic violence.⁹⁰ Several interlocutors pointed out that the effectiveness of these provisions is undermined by the need to open criminal proceedings and the lack of expertise among law enforcement officers.
146. As regards the empowerment of women victims of gender-based violence, the Commissioner welcomes the introduction, in 2020, of the "freedom income" ("reddito di libertà") that consists of monthly support amounting to 400 euros allocated for a maximum period of twelve months as well as the recent launch of the "microcredit of freedom" ("microcredito di libertà"). The Commissioner invites the authorities to provide her with further updates on these allocations.
147. Last but not least, the Commissioner remains concerned about the reported lack of consistency in terms of effective consultation and co-operation with NGOs at the national level, including on the development of the Strategic Plan on Male Violence against Women, and the variable level of co-operation experienced by NGOs at local and regional level. She warmly commends the work of women's rights NGOs, which forms the backbone of Italy's support system for women victims of gender-based violence and wishes to stress the importance of recognising their crucial role, at all levels of governance.

2.4. CONCLUSIONS AND RECOMMENDATIONS

148. The Commissioner calls on the Italian authorities to ensure that national gender equality policies and legislation are interpreted with a view to giving full effect to Italy's obligations regarding the protection of women's right to equality and non-discrimination in all areas of life. She recalls that according to the [Council of Europe Gender Equality Strategy 2018-2023](#) gender equality "entails equal rights for women and men, girls and boys, as well as the same visibility, empowerment, responsibility and participation, in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men."
149. While mindful of the complexities of Italy's regionalised system, the Commissioner is concerned about the pronounced geographical disparities in the realisation of women's rights. She underlines that the government bears the ultimate responsibility for guaranteeing the coherent implementation of the relevant national legislation and policies and the effective realisation of human rights, including the rights of women, across the territory of Italy.

⁸⁷ GREVIO, Baseline evaluation report, Italy, 2019 (paragraph 275); GRETA, [Report](#) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, adopted on 7 December 2018 (see, for example, paragraphs 19 and 127).

⁸⁸ Decree of 17 March 2023, "Periodic updating of the list of safe countries of origin for applicants for international protection".

⁸⁹ See UN Women, Global Database on Violence against Women, available at <https://evaw-global-database.unwomen.org/en/countries>.

⁹⁰ As per Law No. 119/2013. The provision is also referred to as "Articles 18 and 18 bis" (of Legislative Decree No. 286/1998).

150. The Commissioner recommends that the authorities take measures to strengthen the implementation of anti-discrimination legislation, including by ensuring that intersecting forms of discrimination are adequately addressed in the justice system.
151. The Commissioner stresses the critical need to ensure adequate and stable funding for the implementation of the national strategies and action plans for gender equality and on combating violence against women. Operational plans with clear targets should be put in place to allow for adequate measuring of the progress achieved and the necessary adjustments in the light of the lessons learned. It is further necessary to improve inter-institutional co-ordination at the various levels of governance of these strategies and plans, with stable mandates being provided to the responsible bodies, and to ensure regular monitoring and evaluation of the co-ordination activities.
152. The authorities are urged to continue their efforts to improve the socio-economic situation of women, including through measures aimed at mitigating the adverse effects of the Covid-19 pandemic on their work opportunities and empowerment. In particular, increased efforts should be made to remove the barriers to women's access to the labour market, including by improving the availability of childcare support, and to reverse the widening gender pay gap, giving specific attention to the private sector. The Commissioner encourages the authorities to systematically implement measures to promote gender equality in employment and to reduce occupational segregation in both the public and private sector. She also encourages them to consistently pursue the recent initiatives to improve girls' and women's participation in STEM fields and ensure adequate evaluation of and follow-up on the measures taken.
153. The Commissioner urges the authorities to ensure that women's access to sexual and reproductive health care, notably access to abortion and contraception, is not undermined as a result of laws, policies or practices that allow medical and other professionals to refuse to provide certain forms of health care on grounds of conscience or by differences in regional policies in this field. Appropriate measures should be taken across Italy to ensure that institutional refusals to provide health care are prevented and adequate protocols should be put in place to guarantee effective and reliable referral services. Adequate oversight and monitoring mechanisms should be established for this purpose. The Commissioner also recommends that the authorities undertake further efforts to ensure full respect of women's rights, dignity and autonomy in maternal health care, including during childbirth.⁹¹
154. In the Commissioner's opinion, without an increase of the budget allocated to the health sector it will be difficult to ensure the full realisation of the right to health, including sexual and reproductive health and rights, for all women. Special attention should be paid to supporting the health counselling centres, in order to ensure that essential level health care remains available and affordable to all women across the Italy's territory. The Commissioner also urges the authorities to continue efforts to improve data collection and analysis, particularly disaggregated data, with a view to effectively responding to deficiencies in the realisation of women's sexual and reproductive health and rights.⁹²
155. The Commissioner further calls on the authorities to take resolute steps to ensure the provision of mandatory comprehensive sexuality education.
156. The authorities are encouraged to amend criminal legislation to base offences of sexual violence, including rape, on the notion of freely given consent, in line with the Istanbul Convention. Further amendments should be considered to counter any negative effects for victims of gender-based

⁹¹ Council of Europe Commissioner for Human Rights, Women's sexual and reproductive health and rights in Europe, Issue paper, December 2017; see, in particular, pp. 12, 39-42 and 60-61.

⁹² *Idem*, pp. 12-13 and p. 29.

violence of recent reforms regarding *ex parte* and *ex officio* prosecutions, particularly as regards the reporting and investigation of offences of physical and sexual violence.

157. The authorities are urged to enhance efforts, including through awareness-raising campaigns and other appropriate measures, to combat sexism and gender discriminatory stereotypes at the societal and institutional level in line with international standards, including the Istanbul Convention and the [Recommendation CM/Rec\(2019\)1](#) of the Committee of Ministers of the Council of Europe on preventing and combating sexism.
158. The Commissioner considers it urgent to improve the treatment of women victims of gender-based violence and to avoid secondary victimisation. The implementation of the relevant judgments of the European Court of Human Rights is of primary importance in this respect. The Commissioner recommends that the authorities evaluate the response of law enforcement agencies and the judiciary to complaints of gender-based violence, including sexual offences, and further strengthen training and capacity building among them. In this context, attention should be given to improving awareness of and the response to violence against lesbian, bisexual and trans women and intersex persons.
159. The authorities' attention is drawn to the importance of giving adequate consideration to the protection needs of women and children when determining child custody in cases involving gender-based violence, including domestic violence. Attention should be paid to avoiding discriminatory treatment of refugee, asylum-seeker and migrant women who are victims of gender-based violence, because of their immigration status or intersectional bias.
160. The Commissioner urges the authorities to increase the availability and ensure the stable, timely and adequate funding of anti-violence centres and shelters for victims of violence against women and domestic violence throughout Italy. As an immediate step, the authorities should ensure that any existing delays in the allocation of resources to support services providers are promptly addressed. Further measures should also be taken to enhance the quality of support services for victims of gender-based violence, including through the implementation of consolidated standards that ensure, among others, the accessibility of these services to women with disabilities.
161. The authorities are urged to ensure the systematic and early identification of refugee and asylum seeker women and girls victims of or at risk of gender-based violence or trafficking; strictly observe the principle of non-refoulement for all migrant women and girls, including on grounds of gender-based violence; increase collaboration with, and support to civil society organisations working with refugee, asylum seeker and migrant women; and ensure wider access of such organisations notably to reception and repatriation centres. In this respect, the Commissioner wishes to refer the authorities to the recommendations of the Council of Europe Expert Group on Action against Violence against Women and Domestic Violence (GREVIO) and of the Group of Experts against Human Trafficking (GRETA).
162. The Commissioner strongly urges the authorities to fully support the crucial work of women's rights NGOs by, among others, acknowledging their expertise and strengthening the institutional framework for consultation and co-operation with such organisations.

3. ISSUES RELATED TO FREEDOM OF EXPRESSION AND OTHER CURRENT ISSUES

3.1. FREEDOM OF EXPRESSION AND SAFETY OF JOURNALISTS

3.1.1. DEFAMATION LAWS AND THEIR IMPACT ON THE WORK OF JOURNALISTS

163. In Italy defamation remains a criminal offence, as defined in Article 595 of the Criminal Code and Article 13 of Law No. 47/1948 (Press Law). Legal action against defamation can be taken through both criminal and civil proceedings and is punishable through fines and imprisonment (up to six years in aggravated circumstances).
164. The Commissioner observes that while there are thousands of lawsuits filed against Italian journalists, only a few of them end with a conviction. Several of the Commissioner's interlocutors highlighted that this is an indication that these lawsuits are mostly Strategic Lawsuits Against Public Participation (SLAPPs). The time-consuming nature of litigation and the high costs associated with this undermines the ability of journalists and media workers to carry out their work and can discourage journalistic investigation and reporting, potentially leading to self-censorship.⁹³
165. The Commissioner, together with other international organisations and human rights bodies, has repeatedly called on the Italian authorities to remove the imposition of prison sentences and disproportionate fines in relation to defamation. She also notes that the Italian Constitutional Court has declared Article 13 the Press Law unconstitutional.⁹⁴ The Constitutional Court also stresses the need for judges to only consider ordering prison sentences in cases of "exceptional severity" and has invited the Parliament to reform the defamation framework. The Commissioner regrets that the Italian Parliament has still not approved legislation to implement the judgment of the Constitutional Court.

3.1.2. MEDIA FREEDOM AND SAFETY OF JOURNALISTS

166. Media freedom in Italy continues to be threatened by various forms of intimidation.⁹⁵ Against this challenging backdrop, the Commissioner welcomes the successful development of a mechanism for the protection of journalists that is widely recognised as good practice. The Coordination Centre for the Activities of Monitoring, Analysis and Permanent Information Exchange on Intimidation Acts against Journalists (the Coordination Centre) has the mandate to prevent, identify and counteract intimidation and violence against journalists, including by adopting specific protection measures.
167. During the visit, representatives of the Coordination Centre highlighted threats on internet and social media as a growing phenomenon. They stated that a significant number of threats concern journalists working against hate speech. They also stressed the importance of raising awareness and the provision of training for journalists in order to tackle the issue of under-reporting of such threats.

3.1.3. CONCLUSIONS AND RECOMMENDATIONS

168. The Commissioner expresses concern at the high number of attacks, intimidation and incidence of legal harassment against journalists and media workers in Italy. Accordingly, she urges the

⁹³ On average, preliminary investigations in criminal proceedings on press defamation take two and a half years. In the few cases where there is an indictment, they can take as long as four years or more.

⁹⁴ Ruling No. 150/2021, available [here](#).

⁹⁵ See the data provided by the Coordination centre for the activities of Monitoring, Analysis and Permanent Information Exchange on Intimidation Acts against Journalists (available [here](#)) and by the NGO Ossigeno per l'Informazione (available [here](#)).

Parliament to undertake a comprehensive reform of the relevant legal framework in order to fully decriminalise defamation and ensure that lawsuits are not used as SLAPPs.

169. The Commissioner commends the work of the Coordination Centre and considers that its experience could be used as an example for other member states to improve the monitoring of violence and threats against journalists and support efforts by decision makers to protect the freedom and ensure the safety of journalists and media workers. She takes this opportunity to acknowledge the commitment of the Coordination Centre to holding exchanges with civil society organisations working on these issues and stresses the importance of maintaining close co-operation with such organisations, which provide essential information that complements the Centre’s monitoring activity.⁹⁶

3.2. CURRENT ISSUES

3.2.1. NATIONAL HUMAN RIGHTS INSTITUTION (NHRI)

170. The Commissioner notes with concern that Italy is one of the few Council of Europe member states that have not established an accredited National Human Rights Institution (NHRI) in compliance with the [United Nations Paris Principles](#). While institutions such as the National Guarantor for the Rights of Persons Deprived of Liberty, the National Authority for Children and Adolescents and the National Office against Racial Discrimination (UNAR) carry out important human rights monitoring activities, none of them has the broad human rights mandate and guarantees of independence and pluralism required for NHRIs.
171. The Commissioner also notes that the Italian authorities have in recent years repeatedly committed to establishing a NHRI. However, she regrets that the bills put forward in this respect have never moved past the stage of examination by parliamentary commissions.

3.2.2. LEGAL FRAMEWORK FOR PROTECTION FROM DISCRIMINATION, HATE SPEECH AND HATE CRIMES ON SOGIESC GROUNDS

172. Italy lacks comprehensive national anti-discrimination legislation covering sexual orientation, gender identity and expression and sex characteristics (SOGIESC) grounds, although some regions have enacted more broad ranging laws. In 2021 the “Zan Bill” on combating homophobia, transphobia and other forms of discrimination was defeated in the Senate.⁹⁷ The Commissioner has on several occasions expressed regret about the authorities’ failure to adopt the bill.⁹⁸
173. During the visit, the authorities highlighted that, according to data gathered by UNAR, discrimination on SOGIESC grounds is less prominent than discrimination on other grounds, such as ethnicity. They also stressed their commitment to continue monitoring all forms of discrimination and to respond as necessary. In the Commissioner’s view, the available data does not make the adoption of specific anti-discrimination, anti-hate speech and hate crimes provisions on SOGIESC grounds any less urgent from a human rights perspective.

3.2.3. SPECIFIC CONCERNS REGARDING THE RIGHTS OF CHILDREN

174. In the weeks leading up to the visit, the Commissioner observed rising concern about the rights of children born through surrogacy or following the use of assisted reproduction technologies

⁹⁶ While the Coordination Centre’s official monitoring activity relies on data from formal criminal reports, civil society organisations work to ensure that other incidents of threats and harassment (e.g. SLAPPs and violent episodes during demonstrations), which may be not formally reported by the victims, are also included in the monitoring exercise.

⁹⁷ The bill was intended to amend the national legislation on combating discrimination, hate speech and hate crime (“Legge Mancino”, No. 205/1993) to include SOGIESC grounds.

⁹⁸ See her [Human Rights Comment](#) on political manipulation of LGBTI-phobia.

(ART), including children born to same-sex couples. This emerged following the issuance of a [Directive](#) by the government in January 2023 instructing local authorities to discontinue the automatic transcription of foreign birth certificates of children born through surrogacy and inviting them to register only the biological parent. The Directive also indicates that a special adoption procedure, namely “adozione in casi particolari” is the legal path for recognition in Italy of the relationship between the child and the other parent registered abroad. These guidelines are based on recent rulings of the Supreme Court of Cassation which clarified that foreign birth certificates can only be transcribed in Italy with respect to the biological parent and that access to adoption should be granted to the other parent registered abroad in order to ensure children’s fundamental right to recognition of their relationship to both parents.⁹⁹ Following a number of inadmissibility decisions by the European Court of Human rights,¹⁰⁰ the government issued a second [Directive](#), clarifying that these guidelines should also be followed in cases of children born following ART.

175. The Commissioner was informed that on the basis of these guidelines some prosecutors have begun to retroactively challenge the integral transcription of foreign birth certificates of children born through surrogacy or following ART. [Media reporting](#) suggests that in practice this has affected in particular situations in which the parents registered abroad were same-sex couples. Furthermore, a bill has been discussed in Parliament with a view to criminalising surrogacy, even abroad, making it a “universal crime”.
176. The Commissioner also notes that in the past there have been different interpretations regarding access to adoption procedures for same-sex couples, in the absence of clear provisions in the law on civil unions. Some courts have allowed persons in same-sex relationships to adopt each other’s children.¹⁰¹ In addition, some mayors have recognised the foreign birth certificates of children born through surrogacy or following ART, including to same-sex couples, even though surrogacy is illegal in Italy and access to ART is only granted to different-sex couples.
177. The Italian authorities have assured the Commissioner of their utmost commitment to the protection of children’s rights and prioritisation of their best interests. However, it was brought to the Commissioner’s attention that the Constitutional Court ruled in 2021 that the procedure of “adozione in casi particolari” does not fully comply with the authorities’ obligation to safeguard the best interests of the child.¹⁰² While the Constitutional Court has invited the Parliament to amend the legislation accordingly, no measures have been taken in this respect so far.

3.2.4. CONCLUSIONS AND RECOMMENDATIONS

178. The Commissioner recommends that the Italian authorities urgently establish an independent and effective National Human Rights Institution with a broad human rights mandate in line with the [Committee of Ministers’ Recommendation CM/Rec\(2021\)1](#) on the development and strengthening of effective, pluralist and independent National Human Rights Institutions.
179. The Commissioner urges the authorities to bring the Italian legislative framework further in line with Council of Europe standards on combating intolerance and discrimination against LGBTI

⁹⁹ See ruling No. [38162](#) (November 2022). See also ruling No. [12193](#) (May 2019).

¹⁰⁰ Decisions nos. [59054/19](#), [47998/20](#) and [23142/21](#) and [10810/20](#).

¹⁰¹ See, for instance, a [ruling](#) by the Court of Milan.

¹⁰² The Constitutional Court [found](#) in this respect that this adoption procedure has only a limited effect (compared to “full parenthood”) and is particularly lengthy. Furthermore, it can only be initiated upon the request of the adopter and with the consent of the biological parent, and thus exposes the child to the risk of unforeseen withdrawal by the non-biological parent. The procedure can also be halted by a sudden withdrawal of consent by the biological parent.

people. This should include relevant amendments to the existing anti-discrimination, hate speech and hate crime legislation to include SOGIESC grounds.¹⁰³

180. In relation to the transcription of foreign birth certificates of children born abroad through surrogacy or following assisted reproduction technologies, the Commissioner recalls the duty of the authorities to ensure that in all actions concerning children the best interests of the child shall be a primary consideration.¹⁰⁴ In light of this, she invites the authorities, including public prosecutors, to refrain from retroactively challenging the transcription of foreign birth certificates already effected in Italy, as this action would negatively impact on the right of the child to a personal identity, which includes name and family relations as recognised by law and the right to preserve that identity without interference. In addition, retroactive challenges to the transcription of foreign birth certificates can undermine the principle of legal certainty.

¹⁰³ The [Committee of Ministers' Recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity](#) (2010) and the European Commission on Racism and Intolerance (ECRI) [General Policy Recommendation No. 17](#) on preventing and combating intolerance and discrimination against LGBTI persons provide useful guidance in this respect.

¹⁰⁴ Article 3 (1) of the [United Nations Convention on the Rights of the Child](#).