

The Migration Working Group will start its **2010/2011 season** with a **special workshop** on

Recent trends in Italian immigration policy: admission, criminalization and new integration requirements

Emilio Santoro (University of Florence): *The hidden ratio of Italian immigration law and the admission system?*

Piero di Bari (judge, Corte d'Appello di Bologna, co-director of the journal "Diritto, Immigrazione e Cittadinanza"): *The useless utilization of criminal law for migration control. Criminalizing irregular migrants: a new step towards institutional racism?*

Costanza Hermanin (EUI, SPS): *Europeanised or not? Italian integration policy and the permit of stay "with credits"*

Discussant: **Giovanna Zincone** (FIERI, Turin)

Background documentation

Overview on the "Security Package"

Compiled by Costanza Hermanin

1) Law 125/2008 of 24 July 2008

Legge 24 Luglio 2008, n. 125, Conversione in legge, con modificazioni, del decreto-legge 23 Maggio 2008, n. 92, recante misure urgenti in materia di sicurezza pubblica.

Has introduced:

Amendments to the Criminal Code (many, only some are pointed out):

- (Art. 11 bis) **Irregular status as aggravating circumstance** – ruled out by Constitutional Court in June 2010 – Ruling No 249 and 250/2010
- (Art. 19) Imprisonment from 1 up to 4 years for those who transgress expulsion or push back orders.
- Emergency powers to local councils/mayors
- Renames Centers for temporary permanence as **Centers for identification and expulsion (CIE)**
- +...other amendments to criminal and civil code
- + ...other new provisions

2) Law 94/2009 of 15 July 2009

Legge 15 Luglio 2009, n. 94, Disposizioni in materia di sicurezza pubblica

N.B. Applies to third country nationals only

Has introduced:

Amendments to the Consolidated Immigration Act(D. Lg 286/1998)

- **(Art. 4_bis) Integration agreement** with credit points to be signed at the moment of the application for the permit of stay. Non attainment of credit threshold may involve the loss of the permit of stay. Does not apply to refugees, people under other forms of international protection, EU citizens and their family members, third country nationals who have made use of the family reunion clauses, disabled, unaccompanied minors, victims of smuggling.
- (Art. 5. 2-ter) Introduces a tax (80 to 200 euros) for the issuing of a stay permit. Does not apply to asylum seekers .
- (various articles) Enlarge the spectrum of crimes for which a stay permit can be refused to a TCN, also in the absence of a definitive conviction.
- **(Art. 6. 2& 3) Establishes the need to show identity documents** such as the stay permit to access sport and leisure activities, (initially also healthcare, then withdrawn) and education to the public officials who have to register inscription to those activities /access to those services. In case the foreigner refuses to show these identification documents (s)he is punished with a fine up to 2000 euro and up to 1 year imprisonment (beforehand: fine up to 400 euros and imprisonment up to 6 months)
- (Art. 9.2-bis) Introduces a language test for those applying for EC long term resident card.
- **(Art. 10-bis) Illegal entry and stay in the territory of the State:** is punished with a fine from 5 000 up to 10 000 euro. The crime is to be assessed by a justice of peace. An expulsion order will follow, unless the person applies for asylum.
- (Art. 12 on human trafficking, new art,. 12.5-bis) sanctions with 6 months to 3 years (convertible in fine under 2 years) imprisonment those who **locate or sell housing** to individuals who do not have a regular stay permit at the moment of the signing/renewal of the contract.
- (Art. 14.5) Increases maximum detention time in CIE to 180 days.
- (Art. 22.12) Those who **employ irregular migrants** are punished with 6 months to 5 years imprisonment and with a sanction up to 5000 euro for every person irregularly employed.
- (Art. 29.23.) Additional criteria for family reunion: need to demonstrate proper housing, revenue and health insurance.

Amendments to the civil code:

- **(Art. 116) The foreigner who intends to get married** in Italy has to present her ID and her stay permit.
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Amendments to citizenship law (Law 91/1992)

- (Art. 5) Increases up to two years the time for accessing Italian citizenship by spousal transfer.

Other articles:

- **“Ronde / Civic patrols” (art. 3.7-3.10 Law 94/2009)**. These are new provisions, not amendments to existing statutes, but they are located among other articles amending statutes on civil protection. The articles authorize to use (but not to employ) personnel to control activities of entertainment and spectacles carried out in public spaces. The service does not involve the attribution of any official qualification. The use of weapons or other objects for physical coercion is excluded. The personnel wishing to perform these services are inscribed in public registries detained by the local prefect. The implementing guidelines issued by the Ministry of Interior have established that members of civil patrols are not allowed to show any political or other affiliation, cannot wear uniforms and may not be paid by local councils for their work.

Other amendments to the criminal code

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Follow-up: the Constitutional Court on the Security Package

In a decisions deposited in June 2010 – No 226/2010,- the Italian Constitutional Court upheld the legitimacy of the so-called “ronde” – the private civil patrols introduced through Law 94/2009 and the so-called “security package” which also criminalised irregular migration. The “ronde” were first introduced in northern Italian towns governed by the Northern League Party and then included by the Minister of the Interior Roberto Maroni (NL) in the Security (Act art. 3.7-3.10) . Their official task is to help monitoring public security and order at the local level.

In their decision of June, the Italian supreme judges stroke down only those part of the Security Law which established that civil patrols can also act in situations of “social disadvantage”. Thus, the Court upheld the legitimacy of those articles in the law which foresee that civil patrols – once registered and authorised by local authorities - may act to “monitor public security”. And in fact, the decision of the Constitutional Court was not grounded on the state's monopoly of the exercise of power, but rather on the mere fact that social stability is a regional are regional competence, which shall not be regulated by national law.

This judgment of the Court comes just a few days after another decision on the security package (No 249 and 250/2010). On 10 June 2010, the judges assessed the core feature of the 2009 Security Act – the crime of irregular entry and stay – striking down only the norms which established irregular status as a general aggravating circumstance, but not those articles which established general criminal sanctions for undocumented status.

With the three decisions the Court is showing a commitment to keep a low profile in its assessment of the securitization of illegal migration in Italy. In both circumstances it intervened only on marginal provisions of the security package, leaving alive its core and most debatable contents.