

**Committee on the Elimination of Racial Discrimination
Review of Italy - 110th Session**

Racial and ethnic profiling practices in police (border) checks and lack of an accessible and effective remedy in Italy

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A) Introduction

[The Association for Juridical Studies on Immigration](#) (ASGI) is a membership-based association operating from Italy and focusing on all legal aspects of immigration. As a pool of lawyers, academics, legal operators, consultants and civil society representatives, ASGI's expertise relates to various areas of immigration and migrants' rights, including but not limited to antidiscrimination and xenophobia, children's and unaccompanied minors' rights, asylum seekers and refugees, statelessness and citizenship. ASGI's members provide their contribution at various levels: administrative, policy-making and legal, both in national and European contexts.

Since 2006, ASGI's anti-discrimination service has been monitoring discrimination (especially institutional discrimination, see ASGI's and CSMedi's report ["When Institutions Discriminate: Equality, Social Rights, Immigration"](#)) against migrants based on nationality, ethnic or racial origin and religion. It aims to implement counter-discrimination strategies through legal assistance and advice, the promotion of strategic court cases, and advocacy, moral suasion

and training. In particular, the [anti-discrimination service](#) promotes a legal support service against ethnic/racial and religious discrimination in Italy, articulated in a central coordination hub, several territorial anti-discrimination antennas based in different regions and a network of professionals on the national territory involved in litigation, training and monitoring in the field of discrimination against foreign nationals or Italians of foreign descent.

Moreover, since recent years, ASGI has promoted various projects which focus on different aspects of possible human rights violations of people on the move. In particular the [Medea](#) project, which is a strategic action based on field research, strategic litigation and advocacy aiming at defending the rights of foreign nationals arriving in Italy or leaving Italy through internal borders and the Balkan route, and the [In Limine](#) project, a project focusing on the hotspot approach, external border management policies and access to asylum procedures.

Both projects have recently devoted attention to the topic of racial profiling mainly in the border areas, which is carried out, for example, with the help of databases or through discriminatory police checks.

Due to the diverse experiences and expertise gained in the last few years, mainly (but not only) within the above mentioned projects, it seems necessary to us to share these results also with the CERD Committee. Our aim is to draw attention to some of the problems we have observed related to the Italian discriminatory ethnic profiling praxis, in the hope that CERD might take them into account in their recommendations to the Italian government.

We will focus on the following problem areas:

- The lack of a clear legal framework in the area of discriminatory ethnic profiling.
- The lack of data collection and of veritable investigations of administrative and police practices. In addition, we will highlight the discriminatory use of public databases.
- The limited legal possibilities to take legal action (lack of available legal remedies) against discriminatory ethnic profiling.
- Specifically, we will also draw attention to the practice of discriminatory ethnic profiling at the Italian/French border.

B) Problems identified in Italy linked to discriminatory racial and ethnic profiling

1. The lack of a clear legal framework in the area of discriminatory ethnic profiling

As previously stated by the Committee on the Elimination of Racial Discrimination (CERD) in particular in the General Recommendation n. 36/2020 par. 38 "**States should develop and effectively implement laws and policies that define and prohibit racial**

profiling by law enforcement officials. Such measures should be accompanied by clear guidance for law enforcement agencies, ensuring that internal policies, including standard operating procedures and codes of conduct, are in line with human rights standards and principles. States should also be aware of laws and regulations that potentially enable or facilitate racial profiling. They should conduct studies to identify such laws and amend or repeal them accordingly". According to the content and the interpretation of the Committee, the lack of specific national laws and policies that prohibit racial profiling would consist of a violation of art. 2 and art. 5 of ICERD. [Italy has already been invited in 2017](#) to "**ensure that the practice of racial profiling is prohibited and fully respected by all law enforcement agencies**". Recently CERD has adopted specific recommendations with this regards towards different Countries (*i.e.* [France 2022](#), [Denmark 2021](#), [Switzerland 2021](#), [Belgium 2021](#)).

Despite the above, one of the fundamental problems remains the fact that a clear legal framework tackling racial profiling in Italy is still missing.

The Italian legal system has as its founding reference for the principle of non-discrimination Article 3 of the Constitution, which enshrines the principle of equality of all citizens without distinction of sex, race, language, religion, political opinion or personal and social conditions, also requiring the State to adopt all the measures that make it possible to overcome obstacles to the full realization of the principle of equality. It thus imposes a positive obligation on institutions to remove the conditions or take the necessary measures to prevent or prosecute conduct that constitutes discriminatory conduct.all the more so on the part of the public administration itself.

Considering that the practice of ethnic profiling during police controls is by definition an action carried out by a public authority, a strong commitment to prevent and combat this practice should follow. It should be pointed out, however, **that there is no specific legislation prohibiting ethnic profiling or regulating tools to prevent and hinder it.**

In the **field of immigration and foreigners' law**, anti-discrimination legislation is concentrated in two provisions of Legislative Decree 286/1998 (Consolidated Immigration Act). Article 43 imposes a general prohibition of nondiscrimination, including on public officials (thus including police officers). Paragraph 2 states, "*In any case performs an act of discrimination: a) the public official or the person in charge of a public service or the person exercising a service of public necessity who, in the performance of his duties, performs or omits acts with respect to a foreign national which, solely because of his status as a foreigner or as a member of a certain race, religion, ethnic group or nationality, unfairly discriminates against him (...)*".

The subsequent Article 44 regulates the procedures for appealing against discriminatory actions conducted by a private individual or a public administration by providing the possibility of appealing before the judicial authority in order to a) demand the cessation of the unlawful conduct, b) demand the removal of the effects of discrimination. Based on the provisions of paragraph 4 of the same article, *“when the plaintiff provides factual evidence, including from statistical data, from which the existence of discriminatory acts, pacts or conduct can be presumed, the defendant bears the burden of proving the non-existence of discrimination”*. The literal wording of the provision thus introduces a procedural mechanism that favours the discriminated persons in terms of the burden of proof. In practice however, as we will also demonstrate later, the systematic praxis behind police controls prevents this benefit from being realized both because of the substantial impossibility of having factual elements and because of the absence of statistical data to corroborate evidence of potential discriminatory behavior.

Considering the **national legislation on police checks**, the Italian legislation imposes a general obligation for anyone to provide information on their personal identity, status or other personal qualities to a public official who requests it in the course of his duties, under penalty of the offence punishable by Article 651 of the Criminal Code, which provides for arrest of up to one month or a fine of up to € 206.

On the other hand, Article 294 of the executive regulation of the **Consolidated Law on Public Security¹ (hereinafter T.U.L.P.S.)** provides that *“Identity cards or equivalent documents must be shown at the request of public security officers and agents”*, which can lead to an arrest of up to two months or a fine of up to € 103 under Article 221 T.U.L.P.S.

Another provision is found in Article 4 of the same T.U.L.P.S., which authorises the public security authorities to subject dangerous or suspicious persons, as well as persons who cannot identify themselves or refuse to prove their identity, to surveillance.

With specific reference to foreign nationals, Article 6, para. 3, of **Legislative Decree 286/98** punishes with arrest and a fine of up to €2,000 *“a foreigner who, at the request of public security officers and agents, does not comply, without a justified reason, with an order to produce a passport or other identification document and a residence permit or other document certifying lawful presence in the territory of the State”*.

Lastly, reference should be made to the hypothesis provided for by Article 349 of the **Italian Code of Criminal Procedure**, which allows for the detention of identification by the judicial police against the person against whom investigations are being carried out, or *“of persons able to report on circumstances relevant to the reconstruction of the facts”*, and Article 4 of Law 152/1975,

¹ Testo unico delle leggi di pubblica sicurezza

which allows in exceptional cases of necessity and urgency, which do not allow a timely measure by the judicial authority, that the judicial police may proceed, in addition to the identification, also to an immediate personal search *“for the sole purpose of ascertaining the possible possession of weapons, explosives and burglary tools, of persons whose attitude or presence, in relation to specific and concrete circumstances of place and time, do not appear justifiable”*.

These provisions, which apply to police and identity checks, mean in practice that police and law enforcement authorities can and do carry out checks without much restriction, especially on foreigners. In most cases, the check leaves no written record. In particular, following a simple identity check, the person concerned does not receive notification of any measures.

The anti-discrimination provisions of Articles 43 and 44 of Decree-Law 286/98 often remain completely ineffective, as they do not provide for concrete mechanisms to take away the informal character of the checks and thus make them controllable or open to legal challenges. Indeed, the greatest difficulty in bringing an action against police checks deemed discriminatory on racial or ethnic grounds carried out against foreign nationals concerns the informality of such checks. As authoritative doctrine has pointed out, these are often little-investigated practices *“taking place in a grey area of application of police discretionary power and not leading to any legal consequences, they leave no trace either in courtrooms, court files or statistics”*².

From what has been illustrated so far, it is possible to note that in the Italian system there are no effective and immediate remedies for challenging police checks based on ethnic profiling. In other words, either the conduct of the foreign citizen who is asked for his or her personal details or documents results in reactions considered criminally relevant that lead to criminal proceedings, in which they can assert their rights as suspects and then as defendants, or there is a risk that there will be no trace of the police check based on ethnic profiling.

An important example of this is the Rome Court's judgment No. 9969/2014. In this case, the father of a young man who claimed to be a victim of racial profiling was charged with the offences under Art. 651 (refusal to provide personal information) and Art. 341-bis (insulting an official) of the Criminal Code for refusing to provide his personal details and identification, saying phrases that were perceived as insulting.

Even though in this case there was ultimately no criminal prosecution (because it was not possible to prove the insult), it nevertheless provides a significant illustration of the complexity of the procedures for proving ethnic profiling of controls and can be seen as a kind of school case. The reactions of non-EU citizens against controls on an ethnic basis do not in fact usually lead to their refraining, but on the opposite cause the enforcement authorities to

² G. FABINI, *Polizia e Migranti in città. Negoziare il confine nei contesti sociali*, Carrocci editore, Roma, settembre 2022, p. 107.

initiate criminal prosecution according to Art. 651 of the Penal Code or Art. 6, para. 3 of Decree-Law 286/98, *e.g.* for violence or threatening a public official (Article 336 of the Criminal Code), resisting a public official (Article 337 of the Criminal Code) or insulting a public official (341-bis of the Criminal Code).

2. The lack of data collection and of veritable investigations of administrative and police practices related to racial profiling

As stated by the CERD in particular in the General Recommendation n. 36/2020 par. 50 **“States should regularly collect and monitor disaggregated quantitative and qualitative data on relevant law enforcement practices, such as identity checks, traffic stops and border searches, which include information on the prohibited grounds for racial discrimination, including its intersecting forms, as well as the reason for the law enforcement action and the outcome of the encounter. The anonymized statistics generated by such practices should be made available to the public and discussed with local communities. The data should be collected in accordance with human rights standards and principles, data protection regulations and privacy guarantees. This information must not be misused”.** According to the content and the interpretation of the Committee, the lack of collection and monitoring of disaggregated qualitative and quantitative data on the exercise of public powers such as identity checks, would consist of a violation of art. 6 of ICERD since it would have a negative impact on the right to access to an effective remedy. Recently CERD has adopted specific recommendations with this regard towards different Countries (*i.e.* [France 2022](#), [Switzerland 2021](#), [Belgium 2021](#)).

a) Lack of data on racial profiling

Despite these international obligations, the problem of ethnic profiling in police checks in Italy is much more widespread and systematic than one might imagine. The poor perception of the extent of the phenomenon certainly depends on the complexity for the Civil Society Organisation's to carry out a generalised and geographically homogeneous monitoring in different areas of the country, but above all it stems from the absence of a public mechanism to report the modalities with which the controls are carried out and above all the data disaggregated by nationality of the subjects controlled.

The lack of data is confirmed by the [contribution](#) drafted by the Institute of Race Relations, which highlights the lack of reports from private organisations but above all the lack of a public tool for collecting and sharing data on police checks and the related risk of ethnic profiling. [Similar considerations](#) are made by Amnesty International Italia. However, despite the lack of official data, it is interesting to note that the report [Being black in the EU - Second European Union minorities and discriminatory survey](#) published by the Fundamental Rights

Agency (FRA) identified Italy as the country with the highest percentage of ethnic minority citizens who reported having been checked for racist reasons (70% of respondents) in the survey year (2018).

Discriminatory behavior by police authorities indeed does not emerge from the data collected by the existing governmental agencies established to combat ethnic and racial discrimination, OSCAD and UNAR.

OSCAD - the Observatory for Security against Discriminatory Acts, is an interforce agency set up in 2010 within the Public Security Department - Central Directorate of Criminal Police of the Ministry of the Interior and is mandated to prevent, counter and monitor hate crimes. As specified in its [website](#), *“whoever is the victim of an act of discrimination constituting an offence on grounds of race/ethnicity, religious belief, sexual orientation/gender identity and disability can contact the Observatory at the e-mail address oscad@dcpc.interno.it”*.

[OSCAD reports](#), which since 2014 contribute for Italy to the the annual report of the Organisation for Security and Cooperation in Europe - OSCE (<http://hatecrime.osce.org/italy>), include information taken from the police database (SDI) and information gathered directly by the OSCAD. As also noted by [OSCE - ODHIR](#) in its recommendations, since 2018 these reports include police-recorded hate crimes, but not data recorded by the prosecution and judiciary.

Regarding OSCAD, ASGI notes that it is not an independent body and that the data compiled by OSCAD do not provide information about the perpetrators of the crimes. The consequence is that if the perpetrators of racially motivated hate crimes include law enforcement officers, this information remains unknown.

Moreover the OSCAD website does not specifically refer to discriminatory conduct perpetrated by law enforcement officers and/or police checks perceived as discriminatory and/or racial profiling and that in general there is no specific attention (publications, data, courses followed by law enforcement agencies) on the OSCAD website to the problem of racial profiling.

A similar lack of action and data collection on racial profiling can also be found in the work of UNAR - the National Office against Racial Discrimination (UNAR), the national institution in charge of promoting equality and counter discrimination based on racial or ethnic origin. As noted by various international bodies³, including CERD⁴, UNAR does not meet the

³ See for example ECRI's Conclusions on the Implementation of the Recommendations in Respect of Italy (2019), page 5, available at <https://rm.coe.int/interim-follow-up-conclusions-on-italy-5th-monitoring-cycle-/168094ce16>; Report of the Working Group of Experts on People of African Descent on its mission to Italy (2016), para 84, available at <https://digitallibrary.un.org/record/848569>.

⁴ CERD/C/ITA/CO/19-20 - Concluding observations on the combined nineteenth and twentieth periodic reports of Italy (2017), para 12-13.

standard of independence expected for national bodies fighting racism, as it acts under the direct responsibility of the Department for Equal Opportunities of the Presidency of the Council of Ministers. Moreover, the Office has very limited powers that mainly consist of moral suasion and requires radical structural reform to be able to effectively counter discrimination, including racial profiling.

Considering the activities implemented within its mandate, UNAR has dedicated little to no attention to racial profiling. For instance, UNAR monitors discriminatory incidents by receiving reports from victims, witnesses and associations through a Contact Centre and by actively searching potentially discriminatory content on printed and online media. The data collected, potentially a significant source to map racial discrimination in Italy, is presented each year in a report to the Italian Parliament. The latest available [report of 2021](#) states that during that year UNAR recorded 1.460 cases of discrimination, the majority of which was acquired through media monitoring. Among the totality of cases, 54,3% were based on grounds of race or ethnicity⁵. Concerning the domain in which the incident of discrimination occurred, the report identifies only 20 cases which concern “law enforcement agencies” (“*forze di polizia*”), however no further detail is provided on the grounds of the discrimination nor the acts that this label concretely includes. ASGI notes that there is a severe problem of under-reporting to UNAR on racial profiling, and that the data available does not seem to be taken into adequate consideration. The Office has not published any communication, research nor advocacy material on the issue.

It seems therefore significant to point out that, without the efforts of the CSO’s involved in collecting qualitative and quantitative data on racial profiling, data on this topic would be almost inaccessible. However, the demonstration of the potentially discriminatory impact of police checks should not be left to civil society organisations, but carried out first and foremost by the public administration itself. Moreover, it is clear that the system of access to an effective remedy in cases of racial discrimination is based precisely on the existence of statistical data (for the provision of proof), which only the public administration, by virtue of its role and its international obligations, can and must make available to victims and associations working on behalf of victims of racial discrimination.

b) Problematic use of databases enhances racial profiling

It is interesting to underline how databases are actually used in the context of police controls.

During the checks on the territory, the police forces in Italy have at their disposal the so-called SDI operational dashboard to interrogate and simultaneously enter the data of the checks carried out on persons, vehicles, documents (police force office to which they belong, patrol,

⁵ Although UNAR’s legal mandate only covers the grounds of race and ethnicity, the Office currently tackles discrimination also on grounds of religion, sexual orientation, gender identity, age and disability.

date time, type of place, address), with the possibility of extending the search to the Schengen database⁶.

The information collected during police checks then flows into the Data Processing Centre ("Centro Elaborazione Dati" - CED) of the Ministry of the Interior, which contains various archives set up by the various police forces.

Today, the CED stores data and information⁷

1. obtained from police investigations, or
2. resulting from public administration documents or
3. from court judgments or orders
4. acquired in the course of administrative activities
5. or in the prevention or suppression of offences.

As highlighted above, for each check carried out by interrogating the SDI Operational Dashboard, there is therefore an acquisition of both data relating to the place, date and time and the patrol carrying out the check and information useful for identifying the persons (or vehicles) subject to the check (Surname, First Name, Place and Date of Birth; Document: Type, number and place of issue)⁸. The CED also provides for the keeping of access and transaction logs, including read-only ones, which are currently stored in the Centre's information assets, contributing to subsequent checks on certain operations carried out.

On the basis of the records, it should therefore be possible to extrapolate and process certain data (e.g. how many people were stopped on a given day, how many of them were born in Italy, how many were identified as having a residence permit) that would be useful to check whether people who turn out to be born abroad are checked more frequently. On the other hand, it does not seem possible to include information on the purpose of the control.

In this regard, the Italian Ombudsperson for Data Protection (Garante per la Protezione dei Dati Personali), in an opinion already issued on 17 November 2005, stated precisely in relation to the functioning of the CED that

- when accessing a specific function of the system, no information, even summary information, is required about the specific purpose that the controller intends to pursue.
- In his opinion and also with regard to the principle that personal data must be processed for explicit, specified and verifiable purposes (Article 11 of the Code), it is necessary to implement a system that requires the person authorised to access to indicate, at least for certain classes of data or operations processed, the purpose of the operation (which must

⁶ See: <https://www.poliziadistato.it/statics/29/allegato-1--descrizione-s-i.pdf>

⁷ See: <https://canestrinilex.com/risorse/inutilizzabilita-dei-precedenti-di-polizia>

⁸ See: <https://www.poliziadistato.it/statics/29/allegato-1--descrizione-s-i.pdf>

be recorded in the security audit documentation), possibly using a predefined list of codified reasons, in order to facilitate the easy use of the system.

In the same opinion, the Garante also made recommendations concerning the production of statistics. In particular, auditing tools should also be aimed at the periodic production of statistical reports that do not contain personal data, relating to the number and categories of data recorded, to access, to other forms of use of the system, and to its users.

In this sense, it is worth mentioning the establishment of the Data Security Office in 2020, which reports directly to the Head of the Secretariat of the Department and ensures the activities of information gathering, analysis and verification of the data processing carried out, information and advice for the benefit of the respective officers in relation to the National Electronic Centre (CEN) of the State Police, to the information and processing systems and to the communication networks of the State Police at the central and peripheral levels.

The right of access to data stored in the National Police Database is the possibility for any person to request confirmation of the existence of personal data and the communication of such data in an intelligible form and, if it is found that the data have been processed in violation of applicable laws or regulations, to request their deletion or transformation into anonymous form (Article 10, paragraph 3, Law 1/4/1981, No. 121).

There is in addition the AFIS (Automated Fingerprint Identification System) database. The use of this database is particularly causing discrimination against foreign nationals (or even those naturalized Italian nationals).

In fact, data concerning foreign nationals collected in connection with the administrative procedures for issuing and renewing residence permits are entered and stored in this database. The AFIS database, however, is used by the police for the suppression of crimes (the identity record). Data collected from Italian citizens for administrative identification purposes (as in the case of issuing passports and identity cards) do not end up in that database.

Moreover, although Italian and EU regulations require that the processing of biometric data even if collected for police purposes or in the public interest be governed by law or regulation that protects the rights of the holders, in the present case the data are equated with police data and processed as such without an express and reasoned regulatory act. This results in discriminatory treatment against foreign citizens and even more so against Italian citizens who have naturalized, whose data with the acquisition of Italian citizenship (and therefore with the cessation of any need for control or police) continue to remain in a database used for the repression of crimes and subjected to the relevant processing.

Interestingly, following access to records at the Ministry of the Interior, ASGI found that: *"the number of photo tags acquired and stored within the Central Identity Records database of the Scientific Police Service (AFIS), corresponding to third-country nationals, with specific indication: Tags acquired to subjects who declared nationality: A) of a third country of the European Union 13,516,259, B) of a member state of the European Union (Italy excluded) 1,654,917, C) Italian 3,289,196"*. Data refer to July 28, 2022.

In fact, foreign nationals are photo-signed upon arrival on Italian territory, in cases of renewal, issuance, conversion of residence permit and these data flow into the Criminal Records Database.

Therefore, the data of foreign nationals collected at the time of photobleaching for the renewal/conversion/issuance of the residence permit and thus outside of police activities represent the largest part of the data collected in the criminal records, are retained and are subject to the discipline provided for data collected for police, investigation, crime suppression purposes.

Moreover, further problems arise from the fact that the data in the databases (*e.g.* criminal proceedings) are not constantly updated. The increased frequency of checks to which foreign nationals are subjected, combined with the inclusion of their data in several databases, make the consequences of not keeping them up to date even more serious.

c) Problematic access of databases

The accessibility of these databases to third parties, *e.g.* for monitoring action conducted by associations such as ASGI, is particularly problematic.

At the beginning of 2021, after the publication in a local newspaper of an article concerning the carrying out of a vast territorial control operation in the city of Ancona, ASGI decided to submit a request for access to the files aimed at collecting the following documents/information:

- (1) Order of service issued by the Questore of Ancona giving order to carry out extraordinary territorial control services obscured in all its parts except for the information relating to the characteristics of the persons to be controlled and in particular those relating to the nationality and/or somatic characteristics;
- (2) Number of persons controlled divided by gender and nationality from 4 January 2023 to 1 February 2023;
- (3) Indication of the database in which identification operations are recorded;
- (4) Description of control procedures (control of documents only or also fingerprints).

The aim of the request was to verify whether control activities had been directed more towards persons identified or perceived as non-Italian or belonging to minorities.

The request was rejected by the Ancona Police Headquarters on the assumption that the data would be withheld from access on the basis of the provisions of the Ministerial Decree of 16 March 2022 concerning: *“Discipline of the categories of documents excluded from the right of access to administrative documents, in implementation art. 24 paragraph 2 Law 241/1990 as amended by art. 16 Law 11 February 2005 no. 105 2005 no. 105”* in particular reference is made to the inaccessibility of the requested data pursuant to Articles 2 and 3 letter a), e) and f) of the above mentioned Ministerial Decree”⁹.

An appeal against the refusal was lodged before the Regional Administrative Court. The Court dismissed the appeal on these grounds:

- 1) The mere possibility of the existence of unfair or abusive practices is not enough to legitimize the claims to carry out general control over the activities of public administrations.
- 2) to satisfy the request the Administration would have to process data and this activity exceeds the right of access
- 3) there is no specific database in which extraordinary control activities are recorded in the territory. Data relating to such police operations shall be recorded in the database that the State Police uses for all other activities. This would therefore be a request relating to data that do not exist

The decision of the TAR not only appears contradictory but at the same time highlighted well the difficulties of collecting evidence about discrimination in police activities through the processing of data requested by associations.

3. Limited legal possibilities to take legal action (lack of available legal remedies) against discriminatory ethnic profiling

As stated by the CERD in particular in the General Recommendation Gen. Rec. 36 para. 40: “States must assure to everyone within their jurisdiction effective protection and remedies against any acts of racial discrimination which violate his or her human rights and fundamental freedoms contrary to the Convention, as well as the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

From the problems described above (e.g. lack of a clear legal framework in the area of discriminatory ethnic profiling, the lack of data collection, lack of access, problematic use of

⁹ https://www.interno.gov.it/sites/default/files/2022-03/dm_atti_sottratti_accesso_16-03-2022.pdf

databases etc.) it is very obvious to conclude that the very concrete problems also arise on how victims of discriminatory racial profiling can take effective legal action against it. Italian legal practice in this regard is still far from using meaningful mechanisms that create access to effective legal action.

Possible solutions to make access to the remedy effective have been tried and tested in other countries or have been proposed by international NGOs¹⁰, such as:

- Concrete and very practical legal frameworks/rules that not only prohibit racial profiling, but also establish clear legal procedures (with relevant reversal of the burden of proof) to take legal action against it.
- Access to systematic information and databases to obtain evidence of discriminatory use of racial profiling.
- Systematic release of a measure/registration of police controls.

4. Practical examples of discriminatory ethnic profiling

a. Experiences of profiling suffered by citizens of African or Asian descent: testimonies collected by Yaya Project

The [Yaya project](#) is an initiative promoted by the Yaya Coordination and Occhioimedia-Cittadini del Mondo of Ferrara and sponsored by Goldsmith College of the University of London, with the aim of introducing a debate on the issue of racial profiling in Italy. Between January and June 2023, [some 20 testimonies of profiling were collected through an online form](#) referring to experiences of profiling suffered by citizens of African or Asian descent.

Most of the testimonies collected concern citizens domiciled in the territory of Ferrara (Emilia Romagna), the project having its operational headquarters in this city. The reports thus concern ethnically profiled police control interventions within urban contexts.

We have excerpted some testimonies which we believe helps to highlight, on the one hand, the ways in which the police relate to the foreign national during a police check and, on the other hand, on the discriminatory perception experienced by the Afro-descendant person being checked.

Testimony n.1: X.X Burkina Faso national, aged between 18 and 25

XX: The incident I am telling you about happened in 2022... I was stopped by law enforcement precisely in front of the station right at the bus stop, while I was sitting on the steps (at the entrance of the station)

¹⁰ See: <https://www.justiceinitiative.org/uploads/353acfb-085c-44bd-8051-016f66b0f633/regulating-police-stop-and-search-20191106.pdf>

waiting for the bus to go to work...All of a sudden, I felt a hand on my left shoulder from a person then when I turned around, I saw a policeman asking me to provide ID and before I gave him any, I asked him "whether touching a person in this way without his consent was an appropriate behavior" but he gave me no answer and insisted that I provide him with ID. Then I respectfully gave him everything he needed and after the check he left me there at the stop then walked away.

Question: Why do you think they stopped you?

Because of the difference of my skin color, they demand and are convinced that I might be a danger. I live regularly in this Country working and paying regular taxes. I wonder why there are so many prejudices, injustices, discrimination... always towards my person. This events had obviously an influence in my life

Testimony n.2: XY Burkina Faso national, aged between 18 and 25

XY: In 2021 around the end of the fall season I was stopped by law enforcement (...).On that day,I experienced on my skin a form of discrimination by law enforcement that I never imagined would happen to me. At that time the 2019 covid restriction was talked about very often but not like two years before... However, from my home every week I used to go there... at Lidl (the supermarket..) once or twice but it was one day I left the house then after walking about ten steps I met some law enforcement officers in the car. All of a sudden, I saw them get out of the car and they turned to me and asked where I was headed, I replied to them i was headed to the supermarket reply adding "what a problem it was " but they said nothing. Nonetheless they asked me to provide the ID and very calmly and respectfully I showed them. After the check, they gave me the document back with a "slip of paper" so I asked them what it was and they told me that it is a fine because I left the house without wearing a mask scolding me for doing it on purpose. Looking around I saw other people who were without masks and made it clear to the two officers that I did not find it fair that I was being fined while the others were not. Despite all this I made it clear to them that there was no requirement to use a mask outdoors...then they asked me if I was "trying to teach them how to do their job" then after several attempts to justify my innocence in the face of this injustice they didn't even listen to me then got back in the car and went on their way. I returned home with a conscience stricken by the injustice.

With these usual stereotypes towards blacks, these injustices, prejudices, discrimination, etc., were already things that affected my life before something like this happened to me by law enforcement because I was seeing and continue to see similar things towards other blacks even worse than what happened to me, so, although I live in this country in good standing and abiding by the laws but mine is always affected by seeing in particular this phenomenon by law enforcement.

Testimony n. 3: YY Italian national of african descent aged between 18 and 25

YY: In November 2018 I was stopped by the military those on Urban patrol duty i.e. public safety officers. In that year I was attending the third year of high school (evening course)... On the day I was stopped I had a class in the lab, when I finished the class I left school and took my bicycle home. When I arrived on Po Street... I saw a patrol car overtaking me. However I didn't even suspect that they could stop me but after going up that hill... I saw them again coming towards me ... but I continued on my

way. All of a sudden they flashed two headlight shots towards my direction but I didn't understand what they meant and I went on my way. Afterwards all of a sudden three officers jumped forcefully from the car yelling "Hey we told you to stop" and I told them I didn't quite understand their message and that was the reason why I didn't pay attention. They asked me where I was headed and I told them politely that I was going home and that I was coming from school after which they asked me for my ID and I provided the ID. Two officers remained keeping an eye on me with their weapons resting on my chest, as if they suspected that I was hiding something on me but most importantly they kept staring at my backpack... and they started whispering to each other but they didn't search it. The ones who were in the car made an ID check and, after 5 minutes in the cold, gave me the ID back and then one of them said You're OK! We stopped you because we thought you were like the others" but I put the question to them saying...what do you mean like the others? Unfortunately I had no answer and the only sentence they added at the end.

Question: Is the reason justified or not, in your opinion?

YY: No

Question: Has the fact or possibility of being stopped affected your life in any way?

For sure

Testimony n.4: ZZ african descent italian nationals over 60 years old

ZZ: It has been many years now, but I remember the episode every time I pass by the underground station in Piazza Duomo (Milan). That day I got off the subway and I was running not to be late for work. I did not realize that two uniformed policemen were running after me. They stopped me screaming and asking me what I was running from, calling me "you." I replied that first of all they had to call me "lei" (respectful approach). One of the policemen immediately accuses me of being overbearing and declares me under arrest... Upon arriving at the police station under MM Duomo, the policeman reported to his boss that he had led me there because I was trying to run away and was bullying. I quietly reply that I was running so as not to be late for work. Luckily, the second policeman who was present from the beginning did not dispute my version. The chief policeman isolated himself with his officers and set me free.

Question: Why do you think they stopped you?

ZZ: Because of the color of my skin

Question: Did they also search you?

ZZ: Yes. Bag/backpack

Question: Have you ever been stopped more than once in the same day?

ZZ: Yes

Testimony n.5: ZY afro-descent, 25 years old

ZY: when I finished class I took my bike straight... I saw a police car coming at 40 km/h then they immediately stopped in front of my trajectory and I had been stopped. There were two of them in the car and the one who was next to the one who was driving, lowered the window seat then he asked me to

provide documents and I took my wallet out of my pocket and showed him and after doing the check the officer asked me again when my permit expires and I answered him politely with respect but the officer didn't trust and he turned to me arguing: " but look if you bullshit me here we end up bad eh!" I told him that I wasn't lying and to make him believe I called my tutor for confirmation and while I was talking to it the officer continued to do the checks from the device he was holding then he said " everything okay you don't need to call" after which before he gave me back my ID he asked me again where I was headed and I answered him politely and finally they let me go.

After analysing the different answers, two main results with high consistency emerge:

- the behavior of the public authorities appear to be in most of the situations not in compliance with standards of respect that a sensitive conduct, such as police checks, must require not to be perceived as an injustice and a violence by those who are subject to such controls;
- the feelings of the people checked are mostly characterized by a perception of violence/degrading treatment. Most of the testimonies referred to the feeling of being a target of a disproportionate action and being targeted only because of the ethnic feature which is exactly in contrast with major concerns expressed by the international bodies and CSO's involved in ethnic profiling.

b. Discriminatory Police and/or Border Controls: Data Investigation Observation in Ventimiglia

In the last two years, ASGI had been involved in a quantitative data collection activity at the Ventimiglia train station related to ethnic profiling. The research has been implemented by the International University College of Turin together with ASGI and a series of other locally active associations and NGOs¹¹. The context, methodology and outcomes are described in the following:

(1) Context in Ventimiglia

ASGI has been monitoring the situation at intra-European borders for several years. Since the de facto and later also formal reintroduction of Schengen border controls by France at the French-Italian border in 2015, concrete and constant problems have arisen for persons on the move. Indeed, since that time, persons on the move have been exposed to particular hardship and rights violations. This [can be seen strikingly in Ventimiglia](#), where this geographical bottleneck between France and Italy [exacerbates the problems of this group of people](#) like a burning glass. Here, there are daily push-backs, most of them illegal (between 50-100 per day),

¹¹ "Systematic Ethnic Profiling Praxis at the Ventimiglia Train Station – Final Report of Quantitative Data Collection in 2021/2022", International University College of Turin (IUC), 2023

resulting in people on the move getting stuck in Ventimiglia, which in turn leads to consequential problems in terms of access to accommodation, legal and health advice, food, etc.

While ASGI is not represented by lawyers on the ground on the border, ASGI is nevertheless regularly on observation missions in Ventimiglia. ASGI works closely with a number of organisations (e.g. 20K, Kesha Niya, Caritas, Diaconia Valdese, We World, Médecins du Monde, Médecins Sans Frontières, Anafè, Caffim, etc.), which provide much-needed help and support on the ground, and in this regard, fill in for the absence of government support.

Very impressive and visible to everyone are the following aspects, among others, which motivated the present data collection investigation:

- In Ventimiglia (especially at and around the railway station) there has been a massive police presence of different Italian police groups (partly also together with French colleagues) for years.
- As a support service for the French border controls, the Italian police officers control the access to the railway tracks towards France and apply an obvious ethnic profiling. Policemen normally stand at the top of the stairs where people who want to catch the train need to pass by, or at the extremities of the platform, checking if anyone tries to have access to the train crossing the rail tracks from the rear part of the railway area. When a train arrives at the station on some occasions policemen get on the train to control the presence of any hidden person. Ultimately, the result is that only people with obvious “foreign” characteristics are checked (and possibly excluded from access to the railway tracks unless they show identity or travel documents required to cross the border).
- The hereby described data collection was motivated by this reality and sought to make visible the systematic use of ethnic profiling by the Italian police.

(2) Methodology

For data collection, the IUC proceeded as follows:

It created an electronic questionnaire (together with the other actors in Ventimiglia), which in turn was accessible and fillable by mobile phone via a cloud for each data collector.

IUC asked the following questions in the electronic questionnaire:

- Date of the survey
- Organization carrying out the survey
- Time of the survey
- Train number (i.e. AA1111), headed to...
- Number of ITALIAN police officers present at the station
- Number of FRENCH police officers present at the station

- Total number of persons on the platform
- Total number of "WHITE" people at the platform
- Total number of people apparently FOREIGNERS (African or asiatic feature)
- Number of police officers carrying out the police controls on the platform (Italian and French)
- Total number of persons controlled by police
- Total number of "WHITE" person controlled
- Total number of persons of "FOREIGN" feature controlled by police
- Total number of persons not allowed to reach the platform
- Total number of "WHITE" people not allowed to reach the platform
- Total number of persons of "FOREIGN" feature not allowed to reach the platform
- How many persons not allowed to the platform look minors
- Free comments and observation (gender of people checked, act of violence perpetrated by police, etc)

The following organisations/persons participated in the data collection: ASGI, 20K, We world, ASGI, Diaconia Valdese, Caritas, Anafè-Caffim, Diaconia Valdese, Researcher from the University of Turin and from the International University College of Turin.

The data collection took place in the period between November 2021 and March 2022, in part several times (but at least once) a month, on several days (mostly 2-4 days) in succession. The organisations spent the whole day observing the practices starting from the early morning until the last train at night in order to have a clear picture of the dynamics also in different parts of daytime. In addition, the situation was periodically checked again in June 2022 and January 2023. The observations attempted to record the entire departures of trains to France in each case.

The competent authorities were informed of the data collection by means of a general letter (written and signed by ASGI). In practice, this letter was asked for several times by the police officers at the police station and some participants in the delegation were subjected to identity checks.

The data collectors acted exclusively as observers. They estimated the actual situation and then entered it into the questionnaire available online on their mobile phones. Thus, the observation consisted only of a quantitative survey.

(3) Results of the data collection

→ **High police presence:** An above-average police presence was found for all moments of data collection. While the actual number can vary, the average of 4-6 police officers were recorded. However, it was not uncommon to see more than 10 (up to 14) police officers on the

track towards France. The Italian police officers often come from different police units (Polizia, Guardia di Finanza, Vigile, Military, Border Police etc.). Occasionally, the controls were also carried out together with the French police.

→ **Aim of the controls:** The controls are almost exclusively aimed at filtering out those persons who do not have valid documents to leave the country for France. According to the Schengen Border Code, art 7 par. 2 stresses out that *“While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”*. Nonetheless, contrary to the French practice to “temporarily” reintroduce border controls, according to art. 25 et seq. of SBC, Italy has never officially reintroduced such controls which implies that the Italian authorities are operating contrary to the general provision of art. 22 SBC. These persons are denied access to the railway track and are then taken to a special police office at the station for further data collection.

→ **Ethnic profiling:**

- The data confirms the visible impressions of systematic ethnic profiling by the Italian authorities. During the whole period of the investigation, 125 departures of trains from Ventimiglia to France were checked. A total of 247 people were checked (out of an estimated total of 5000 people on the railway track). Only 7 of them were "obviously" white. 240 were persons with "foreign" features. 117 persons were denied access to the railway track. None of them was "obviously" white.
- The police very openly controlled practically only foreigners. Even the fact that there were "observers" on the platform did not stop the police from using ethnic profiling.
- As far as we know, no foreigner has been able to introduce legal actions against the ethnic profiling. Indeed, the lack of a clear legal framework makes legal action very difficult.

C) Conclusion & Recommendation

From the experiences described above, ASGI unfortunately has to conclude that racial and ethnic profiling is still very present in Italy. Indeed, one does not perceive that the situation has qualitatively changed in recent years.

On the basis of what has been described above, it seems possible to state that in Italy:

- there is not any specific legislation that defines and explicitly prohibits ethnic profiling, nor policies and regulating tools to prevent and counter discriminatory racial profiling;
- victims of discriminatory racial and ethnic profiling by law enforcement agencies de facto cannot access effective remedies against these acts, nor seek adequate reparation or satisfaction for any damage suffered as a result of the discrimination;
- there are no data, statistics or information on ethnic profiling published by public authorities and easily accessible that would allow to outline the issue of discriminatory racial profiling;

- the police control database is not easily accessible by third parties even for control purposes or protection of rights;
- there is a lack of an independent racial profiling reporting mechanism with autonomous investigative powers in cooperation with civil society organisations.

ASGI therefore urges the CERD Committee to re-engage with the Italian state on the following points:

- (1) introduce national legislation that explicitly prohibits the practice of ethnic profiling and provide for legal measures against discriminatory police actions (Gen. Rec. 36/2020) (Art.2+5);
- (2) undertake effective measures to eradicate ethnic profiling (art.5);
- (3) develop operational guidelines/protocols in conjunction with foreign communities to outline non-discriminatory policing methods (Art. 2+5);
- (4) introduce stop and search forms containing the grounds for the stop or search, the object(s) that officers are looking for, the outcome, the name and station of the officer(s) conducting it and information on the personal details of the individual/s stopped or searched is recorded; such as name, address and ethnic origin – all of which the person can refuse to give;
- (5) ensure the delivery of the check registration to the person concerned in order to promote the right to take action to protect their right not to be discriminated against;
- (6) record checks and develop a collection of disaggregated data on the recipients of police checks with subsequent regular publication;
- (7) ensure that any use of artificial intelligence (for example in databases) by law enforcement agencies fully complies with human rights law, including the right to non-discrimination and the right to privacy, and AI instruments are regulated by law and designed for transparency;
- (8) establish an independent body to receive and investigate potential violations by police personnel (Art. 6);
- (9) carry out adequate and continuous mandatory training of police control authorities in order to prevent discriminatory interventions in police controls (Art. 7).

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