

American University Washington College of Law

## Digital Commons @ American University Washington College of Law

---

Human Rights Brief Fall 2018 Regional Coverage

Human Rights Brief 2016-2019 Regional Coverage

---

Fall 2018

### Europe Coverage

Human Rights Brief

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbregionalcoverage-fall2018>



Part of the [Human Rights Law Commons](#)

---

# Italy's "Salvini Decree": Implications on Refugees and Asylees in Italy

October 25, 2018  
by Kate Morrow

Under Italy's new "Salvini Decree," people seeking asylum in Italy, along with those who have already been granted refugee protection by the state, face [longer processing times and the risk of losing their refugee status](#). In the so-called interest of security, the decree tries to expand Italy's ability to revoke refugee status, which is traditionally construed narrowly under binding international agreements.

The "[Salvini Decree](#)" was drafted by Interior Minister Matteo Salvini and [signed](#) by President Sergio Mattarella on October 4, 2018, taking immediate effect as an emergency decree under [Article 77 of the Italian Constitution](#). The decree's stated purpose is to protect Italians from serious crimes like trafficking and terrorism, and it attempts to do so by combining national security policy with immigration policy.

Most of the decree addresses Italy's "Humanitarian Protection Permits," which grant legal status to those who do not fit into the definition of "[refugee](#)" from the [United Nations 1951 Convention on the Status of Refugees](#) ("the Convention"). Previously, these permits granted protection from a variety of issues, but this decree limits permits to [six categories](#): work exploitation survivors, trafficking survivors, domestic violence survivors, natural disaster survivors, individuals in need of medical care, and individuals earning civil merit. Even more concerning to human rights, the decree allows the government to [revoke citizenship](#) from already naturalized Italian citizens if they are convicted of certain crimes, such as terrorism. Most concerningly, the decree [broadens the offenses](#) for which refugee status can be revoked and asylum claims can be automatically dismissed.

Salvini asserts that the decree "[respect\[s\] the Constitution, but we won't be made fools of,](#)" and that it is "[a step forward to make Italy safer.](#)" He further insists that the security-focused decree does not violate international law. Critics of the decree argue that it violates EU and other international laws and that it "[considers the immigrant's condition to be automatically that of a criminal.](#)"

Italy is party to the [1951 Convention on the Status of Refugees and its 1967 Protocol](#), both binding international agreements. Article 2 of the Convention requires persons with refugee status to abide by the laws of the state in which they reside. Article 32 of the Convention explicitly states that refugee status can only be revoked based on concerns for national security or public order. Italy has used the language of national security to justify the decree, which expands the list of crimes that Italy considers national security concerns for which refugee status can now be revoked.

Article 32 of the Convention requires due process to be followed in criminal matters dealing with persons with refugee status. If convicted after the proceedings required by due process, the government must allow reasonable time for a person to seek admission into a different state without violating the principle of *non-refoulement*, which requires states not to send fleeing persons back to the country they are fleeing from. While this expansion of “national security” may not be prohibited by the Convention, it threatens the asylum system’s core value that states have an obligation to protect persons from persecution by making it easier to revoke that protection for less serious crimes.

Asylees whose applications are still being processed are also affected by this decree, but laws regarding their rights are largely determined by individual states. There may be a moral obligation to provide due process for asylum seekers while their applications are being processed rather than automatically dismissing their claim for being “[socially dangerous](#)”, but there is technically no binding international instrument regarding the rights of persons whose status is in process. Additionally, because Italy’s Humanitarian Protection Permits apply to persons who would not receive refugee status under the Convention, there is similarly no legal obligation implicated by the decree’s changes to this program.

While this emergency decree is infuriating to some, it remains within the boundaries of binding international human rights law—but not without seriously pushing at those boundaries. Whether there is a “violation” of human rights depends on how the decree is implemented. Under [Article 77](#) of the Italian Constitution, the next step is for Parliament to codify the decree, potentially with changes. If Parliament passes legislation on the decree in any form, it will be a move in restricting rights that goes against the value of protecting persons from persecution, but if Parliament does not pass legislation, the decree will expire after a sixty-day period. Nevertheless, if not an outright violation of human rights, the language itself is concerning as it addresses the rarely considered issue of revoking a person’s refugee status. It moves away from the values of open borders, freedom of movement, and the obligation to protect that are at the foundation of the [European](#) and international asylum systems.

# Spain Wants You to Stop Making Fun of God

November 27, 2018  
by Nicholas Ripley

Cursing the name of the almighty Creator, considered a national pastime by many secular citizens worldwide, could land you in jail in several predominantly Christian European countries—including Spain. In September of 2018, Spanish film [actor Willy Toledo was detained](#) for questioning by a judge in connection to the trial of three feminist protesters accused of insulting the Catholic Church. Toledo twice ignored summons for questioning, arguing that he has not “committed any offense and so there is no need to appear before a judge.”

In July of 2017, three women were arrested for marching through Sevilla with a giant vagina statue (named “Coño Insumiso” or “Insubordinate P\*\*\*y”), imitating a religious procession. Toledo showed his support for the protestors in a Facebook post, writing: “I s\*\*t on God, and I have enough s\*\*t left over to s\*\*t on the dogma of the sanctity and virginity of the Virgin Mary. This country is unbearably shameful. I’m disgusted.” The Spanish Association of Christian Lawyers quickly denounced him for “covering God and the Virgin Mary with ridicule.”

Article 525 of the [Spanish Penal Code](#) criminalizes “vilification” of religious “feelings,” “dogmas,” “beliefs,” or “rituals.” While not technically a blasphemy law, the offense of speaking [disparaging words about God](#) and the inclusion of “dogmas” and “beliefs” makes it similar in effect, depending on the interpretation and discretion of the judge. These religious insult laws are punished with jail time in Spain. For example, in 2012, famous [Spanish underground artist Javier Krahe was jailed](#) for his 1978 54-second film on “how to cook Jesus Christ.” He was accused of “offending religious feelings,” with a bail set at €192,000, and was discharged within the same year.

All wealth-rich countries have some forms of prohibited speech out of necessity, like [fighting words and offensive speech](#) in the United States or [Volksverhetzung](#) (inciting hatred and Holocaust denial) in Germany. Restrictions on speech can serve to fight against populist hate movements like Nazism at best and [stifle minority dissent](#) at worst. The only way to draft constructive speech-restricting legislation is to consider the hierarchy of cultural oppression and aim up, as outlined in [Amnesty International’s contribution](#) to the Racist Hate Speech and Freedom of Opinion and Expression thematic discussion organized by the United Nations Committee on Elimination of Racial Discrimination. However, restricting the speech rights of religious minorities, including those of the non-religious, does not do this.

The international reaction to Toledo’s detention has been swift. Humanists UK, which helped found the End Blasphemy Laws campaign in 2015, released a [statement on The Guardian](#) condemning the arrest. Humanists UK regularly uses its platform on the UN Human Rights Council to criticize States that maintain their blasphemy laws. They claim States like

“Pakistan and Saudi Arabia, who use blasphemy laws as justification for the execution of non-religious people, often cite the hypocrisy of European blasphemy laws.”

Spain’s actions regarding religious speech violate the [International Covenant on Civil and Political Rights](#) (ICCPR). Specifically, Article 18, which guarantees the right to freedom of thought, conscience, and religion, as well as Section 2 of Article 19, which protects the freedom to seek, receive, and impart information and ideas of all kinds, are violated. In July 2011, the UN Human Rights Committee [commented on the relationship](#) between blasphemy laws and the ICCPR, stating that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant,” except in specific circumstances outlined therein. However, the international campaign to repeal blasphemy laws has so far been led primarily by [civil advocacy and non-governmental organizations](#). These campaigns have had to argue for increased free speech protections without infringing on the validity of laws that prohibit incitement of hate.

While decisive action by international bodies is unlikely at this point due to the United Nation’s [preference for non-legal efforts](#) regarding speech laws and Spain’s relatively powerful position in the UN, non-governmental organizations have been effective in advocating for legal reform in the past. For example, [France, Malta, England, Wales, Norway, Denmark, and Iceland](#) have all removed blasphemy laws in response to successful campaigns from civil advocates. More discourse on the anachronism and irrationality of laws that punish criticism of the church, especially as the power structures of the Catholic Church are being [rightfully reevaluated](#), will be necessary in civil reform efforts going forward.