OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS

BUREAU DU COMMISSAIRE
AUX DROITS DE L´HOMME

Strasbourg, 14 December 2005

CommDH(2005)9
Original version : French

REPORT

BY MR. ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS,

ON HIS VISIT TO ITALY

10 - 17 JUNE 2005

for the attention of the Committee of Ministers and the Parliamentary Assembly

CONTENTS

Introduction

In accordance with Article 3 e) of Resolution (99) 50 of the Committee of Ministers on the Council of Europe Commissioner for Human Rights, I accepted the invitation sent me by Mr Gianfranco Fini, Italian Minister for Foreign Affairs, to visit Italy officially from 10 to 17 June 2005, and went there with Mr Manuel Lezertua, Director of my office, and MM. John Dalhuisen and Julien Attuil, also from my office. I should like to start by thanking the Italian authorities for the efforts they made, and the resources they deployed, to make the visit a success. I should also like to thank Italy's Permanent Representation to the Council of Europe and its Ambassador for their vital support in ensuring that the visit ran smoothly. Finally, I should like to express my gratitude for their openness and unstinting co-operation to all the authorities I had dealings with in Italy.

During the visit, I had talks with Mr Giuseppe Pisanu, Minister of the Interior, Mr Roberto Castelli, Minister of Justice, Mr Roberto Maroni, Minister of Labour and Social Policy, Ms Stefania Prestigiacomo, Minister for Parity and Equal Opportunity, and Ms Magherita Boniver, Under-Secretary of State for Foreign Affairs. My contacts with the judiciary included the Presidents of the Constitutional Court and Court of Cassation, the Attorney General at the Court of Cassation, prosecutors and judges in Naples, and various members of the Italian Bar Association. I also met the Vice-Presidents and various members of the Senate and National Assembly, the Governors of Naples and Venice, the President and various members of the Interministerial Human Rights Committee, and various municipal and regional authority representatives. I talked to the representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Italy, and various civil society and national and local NGO representatives. I visited the Giudecca (Venice), and Rebibbia Nuevo Complesso (Rome) men's and women's prisons, the temporary holding and reception centre for aliens in Rome – Ponte Galeria, Fiumicino airport – the centre for aliens on Lampedusa, the Nisida and "Casal del Marmo" (Rome) prisons for under-age offenders, the "Scuolo di Volo" centre for unaccompanied minors, a remand centre for minors, the "Campo Nomadi Casilino 900" district (Rome), the Anti-Violence Centre in Venice, and two reception and holding centres for asylum-seekers in Rome.

I. GENERAL COMMENTS

1. A founder member of the Council of Europe, Italy ratified the European Convention on Human Rights (ECHR) in 1955, and has also ratified Protocols 1, 4, 6 and 7. It is party to the European Social Charter and its protocols, including the one which provides for a collective complaints system, and has accepted all the articles in the revised Charter[1]. It has frequently played a driving role in improving international human rights standards, and has usually been quick to incorporate them into domestic law. Having regard to recent developments in this area, it might consider ratifying the ECHR protocols on prohibition of all forms of discrimination (No. 12), abolition of the death penalty in all circumstances (No. 13) and reform of the European Court of Human Rights (No. 14), and making the European Social Charter's collective complaints procedure available to national NGOs.

[1] With the exception of Article 25 of the revised Charter, which covers protection of the claims of workers in the event of insolvency of their employer, and embodies EU Directive 80/987.

2. The high human rights standards generally to be found in Italy's legislation have not, for all that, prevented Italy from supplying a significant proportion of the cases heard before the European Court of Human Rights. In fact, it has the fifth highest number of applications to the Court, and is also the state most frequently found to be in breach of the Convention. Moreover, it has the greatest number of unexecuted judgments. While most of these cases concern excessive length of proceedings, there are other, equally frequent problems – execution of judgments, reopening of proceedings, placement of children, etc. – in areas where the Italian authorities have sometimes been reluctant, or simply slow, to change certain rules or practices in the light of Court judgments. Indeed, three-quarters of these execution problems remain unsolved three years after being referred to the Committee of Ministers. Italy is also slow in co-operating with certain Council of Europe bodies, such as the Committee for the Prevention of Torture or the European Committee of Social Rights, and might be urged to respond more rapidly[2]. That said, I should like to emphasise that the Italian authorities were entirely co-operative in preparing my visit with my Office, and that no checks or restrictions were imposed on me. I was free to visit all the places I wished to see, including those sometimes considered sensitive.

3. Although, as I have said, Italy provides a high level of human rights protection, and its efforts to respect human rights are those one would expect from an advanced democracy, my visit made it clear that there are certain problems, some of them old, others associated with new challenges. The malfunctioning of the Italian judiciary is certainly not new – it is reflected, as noted, in the many cases that arrive before the Strasbourg Court and has long been the subject of domestic debate. This issue is not the less important, however, nor less worrying, for having become a political and social given; serious violations, and considerable private hardship, are the result and a real effort is required to address the structural problems underlying the current failings of the Italian judicial system. Conditions in prisons, which are deteriorating faster than they can be renovated, and are having to accommodate ever more prisoners, are another cause of concern – as are conditions in, and placement criteria for, judicial mental hospitals.

4. A newer range of problems has arisen over the last decade as a result of the considerable migratory pressure that Italy, has come under. This report attempts to examine some of these challenges – ranging from the access to asylum proceedings, the quality of reception of those arriving by sea, the conditions of detention of irregular foreigners to the response to the large scale trafficking accompanying this phenomenon. In all these areas Italy faces problems that it is not alone in Europe in having to confront. It has managed sometimes with success and mostly with humanity, but, as elsewhere, further reflection and greater care is required to esnure that the rights and dignity of all those arriving are respected.

5. The protection Italy provides for vulnerable groups, such as children, minorities and the victims of trafficking in human beings, is greatly to its credit, although certain improvements are still essential, particularly for the Roma community. Finally, my report will inevitably raise the possibility of Italy's setting up non-judicial machinery to promote and protect human rights.

---

[2] Publication of the reports on the CPT's visits in 1996 and 2000 was not authorised until 2003; Italy failed to submit its regular report to the European Committee on Social Rights, which was due in June 2003.

II. JUSTICE IN ITALY

6. The Italian legal system's problems are not new, and are familiar to everyone. In recent decades, indeed, that system has acquired a general reputation for slowness and occasional inefficiency. Many reports by national and international institutions (the Council of Europe being one of the foremost) have described the complex and sometimes labyrinthine workings of the courts in Italy. I do not intend to go over this ground again here, but I shall attempt to contribute to analysis and solution of some of the problems.

7. The legal system plays a key role in structuring the life of the community by ensuring that the rights of individuals are realised and protected. When it fails to function properly, everyone is affected and, though some may benefit, the consequences for most people are serious. In legal proceedings, the rights of both defendants and plaintiffs are restricted and impeded until final judgment is given, and, directly or indirectly, the whole of Italian society is affected by the legal system's meanderings and inertia.

8. During my visit, I talked to the presidents and prosecutors of the supreme courts, judges in ordinary courts and many members of the Italian Bar. I also had a long conversation with the Minister of Justice. They all admitted that the judicial system had serious problems and needed radical reforming – without for all that appearing particularly enthusiastic to begin this necessarily difficult and delicate process. I had the impression that this situation reflected a certain mutual distrust between lawyers and politicians, with each side seeing many of the other's actions as a threat to itself. It is not my purpose here to apportion blame, but to insist that there must be agreement on the improvements needed to ensure that the system functions properly.

9. There have been numerous proposals on reform in recent years, and some of them have been adopted. They are all alike, however, in tackling just one aspect of a broader problem, without necessarily allowing for knock-on effects or practical consequences. Lack of resources – and sometimes determination – has also prevented some of them from being completed.

A. Length of proceedings and backlog of cases

10. Everyone agrees that excessive length of proceedings is an ongoing structural problem in Italy, and that the authorities have done nothing effective to solve it for over ten years. Indeed, the Council of Europe Committee of Ministers' first resolution on execution by Italy of a judgment given by the European Court of Human Rights on length of proceedings dates back to 1992[3]. Subsequently, since there had been no real improvement, and the European Court had continued to find Italy in breach of the Convention, the Committee of Ministers set up special machinery to supervise the general measures needed to solve the problem of excessive length of proceedings in Italy[4].

[3] Resolution DH(92)26, 15 June 1992, concerning the Motta v. Italy judgment of 19 February 1991.
[4] Resolution DH (97)336. The interim Resolution ResDH(2000)135 even introduced a system of annual reports and action plans for reform of civil, criminal and administrative justice in Italy.

11. As the Council of Europe's annual report on the excessive length of judicial proceedings in Italy points out, "the measures already taken, assessed on the basis of statistical data relating to average length of proceedings and the reduction in the backlog of pending cases, seem to have had little effect so far"[5]. The report shows that, in spite of the many complex measures taken by the Italian authorities in recent years, the reduction in the average length of proceedings, which had been observed between 1995 and 2000, slowed down around 2001, and that the trend has now been reversed. In fact, with a few exceptions, the average length of proceedings and the backlog of cases are both increasing, on all levels of the judiciary. Between January 2001 and December 2004 alone, 799 of the 998 decisions and judgments given against Italy by the European Court were concerned with Article 6 of the ECHR, mostly with excessive length of proceedings.

12. In 2004, according to information supplied by the Attorney General in the Court of Cassation[6], the average length of proceedings, up to judgment on appeal, was eight years in civil cases and five years in criminal cases. At 30 June 2004, over nine million cases were waiting to be decided: 4.7 million in the civil courts[7] and nearly 3.4 million in the criminal courts[8]. To this figure must be added the 100,000 cases pending before the Court of Cassation alone[9]. These figures show that nearly 30% of the Italian population are waiting for court decisions. Proceedings already long are actually tending to grow longer with every year that passes. For example, between 2003 and 2004, the average length of appeal proceedings increased by 23% for civil cases and 33% for criminal cases.

13. The consequences of such delays can be dramatic, with the denial of the right to justice within a reasonable time having a knock-on effect on the enjoyment of other civil and, often, fundamental rights. In respect of criminal cases the consequences for the accused are obvious, particularly for the innocent, who must endure protracted damage to their reputation, and for those, regardless of their guilt, who spend lengthy periods in detention awaiting judgment. Beyond the consequences for the accused, however, lengthy delays also deny victims justice and, more generally, contribute to a certain impunity undermining the rule of law and public security. Many were the prosecutors I spoke to, indeed, who complained that prosecutions were too slow to prevent repeat offending prior to convictions, that certain charges were utlimately dropped to prevent an excessive accumulation of cases, and that the skilful manipulation of Italy's complex judicial procedures allowed able lawyers to acquit their clients through the prescription of their offences.

14. Parties in civil proceedings are also harmed by delay. In labour disputes, for example, the average length of first-instance proceedings was 698 days in 2004 – a 14% increase on 2003 – while an average of 686 days was needed to decide appeals. This is, for any one, an awfully long time to be waiting for a judgment. For the foreigner, however, whose residence permit must be renewed annually with proof a valid work contract, it is too long to contest an unfair dismissal or to risk complaining of unfair treatment. In

---

[5] Third annual report on the excessive length of judicial proceedings in Italy, CM/Inf/DH(2004)23 revised, 24 September 2004, para.3.
[6] Also given in his speech opening the judicial year, 11 January 2005.
[7] 4,396,334 in first-instance courts, and 320,241 in appeal courts.
[8] 1,991,711 cases before the "procure", 1,254,003 before first-instance courts, and 136,955 before appeal courts.
[9] 92,545 civil cases and 30,953 criminal cases at the end of 2004.

bankruptcy cases, parties must wait 3,359 days, or nearly ten years, to get a first-instance decision, and during this time some of the bankrupt's rights – the economic right to manage property or have a bank account, and also civil and political rights – are suspended[10]. Unfortunately, this also applies to disputes concerning divorce or the execution of judgments. In vital disputes of this kind, where one or even both parties need a rapid decision, it is unacceptable that delays of this kind should have become the norm. In several judgments on cases of this type, the European Court has called on Italy to solve this problem[11]. I can only echo the concern it has expressed, and urge the Italian authorities to take the measures needed to reduce procedural delays, particularly in areas where speed is particularly important.

a) Measures adopted to reduce procedural delays

15. In an attempt to overcome these difficulties, Italy has introduced a number of organisational reforms, and set up new machinery to reduce the backlog of cases, compensate the victims of delay or simply expedite proceedings. Unfortunately, these measures have not always had the desired effects, and have sometimes perpetuated, indeed aggravated, the problems they were meant to solve.

1) Lay magistrates

16. Act No. 374 of 21 November 1991 authorises honorary judges, or lay magistrates, to deal with minor civil disputes. To reduce the burden on the criminal courts, their authority was extended in 2002 to minor, but common, criminal offences. Simplified procedures were introduced for these criminal cases, with provision for conciliation between victim and accused.

17. The Act provided for the recruitment of 4,700 lay magistrates. At 1 January 2005, i.e. over 13 years later, only 3,818 had been appointed. Many of these honorary judges are former lawyers or retired police officers, and they are given brief training before taking office. Since fulfilling the legal quota has proved difficult, the authorities have tended, in recent years, to open recruitment to people with less experience, particularly young lawyers – and this has inevitably alarmed some professional judges.

18. Nonetheless, their contribution to the administration of justice is now regarded as indispensable. In 2004, they dealt with 48% of cases at first instance. At the same time, lay magistrates are no more immune than other judges to case-overload and lengthening delays. In 2004, over 600,000 cases were pending, and length of proceedings averaged 414 days in civil cases, and 236 in criminal cases[12]. Without wishing to cast doubt on

---

[10] Addendum to the fourth annual report on the excessive length of judicial proceedings in Italy for the year 2004, Cm/Inf/DH(2005)33, 5 July 2005.

[11] For example, the applicant in the Goffi v. Italy case, 24 March 2005, had been involved in bankruptcy proceedings from 1989 to 2002, depriving him for 13 years of the use of some of his property, of respect for his correspondence, and of the right to leave his place of residence.

[12] Third annual report on the excessive length of judicial proceedings in Italy for 2003, document prepared by the Secretariat, CM/Inf/DH(2004)23 revised of 24 September 2004.

an established and useful institution, I would suggest that more basic training might help to improve the quality and efficiency of lay magistrates' work. The most important thing, however, is to recruit the judges needed to make the court system function smoothly.

2) Sezioni stralcio

19. These are special sections of first-instance civil courts, and Act No. 276 set them up to work off the cases pending before the civil courts at 30 April 1995[13]. Each court may have one or two *sezioni stralcio*, comprising a president – a professional judge – and at least two honorary judges. The Act provided for 1,000 honorary judges and, because there were not enough applicants, the appointment criteria were broadened in 1999.

20. The intention was to work through the 640,056 cases pending at 30 April 1995 within a five-year period. The operation should have been completed in December 2003, but, because the backlog had not been cleared, it was extended in 2004 and again in 2005. At 31 December 2004, 76,789 cases were still before the *sezioni stralcio*. In January 2005, the Attorney General at the Court of Cassation reported that only the Milan and Trieste *sezioni stralcio* might be able to complete their programme by the end of the year. In other sections, with a few exceptions, the trend remains positive, and the number of pending cases is being progressively reduced[14].

21. It is, to say the least of it, surprising that various cases – all predating June 1995 – are still awaiting first-instance judgment ten years later, in courts established for the sole purpose of speeding up the processing of cases. Moreover, the *sezioni stralcio* use non-professional judges, but also require the services of ordinary judges, who keep their other responsibilities and workload. These extra duties leave them less time for their normal work - and so increase procedural delays in other cases.

3) *The Pinto Act*

22. Act No. 89 of 2001 on fair compensation in cases where judicial proceedings are excessively prolonged (the "Pinto Act") allows victims of unreasonable delay to apply for compensation. This has helped to reduce the number of applications against Italy in the European Court of Human Rights. In 2004, the General Department of Human Rights in the Ministry of Justice processed 3,240 cases brought under the Pinto Act. In 2004, the Court of Cassation ruled, in several judgments, that compensation (particularly compensation for non-material damage) awarded in "Pinto" proceedings, must be in line with decisions given, and compensation awarded, by the European Court[15].

---

[13] Act No. 276 of 22 July 1997 concerning the "provisions on the definition of pending civil disputes: appointment of qualified honorary judges and establishment of the *sezioni stralcio* in the courts".

[14] *Inaugurazione anno giudiziario 2005*, Relazione sull'amministrazione della giustizia nell'anno 2004, Francesco Favara, Procuratore generale presso la Corte suprema di Cassazione, 11 January 2005.

[15] Judgments Nos. 1338, 1339, 1340 and 1341 of the Court of Cassation, of 27 November 2003, lodged in the Registry on 26 January 2004. These judgments were taken up by the European Court in its decision on admissibility in Di Sante v. Italy, 24 June 2004.

23. This new procedure was hailed as marking a significant step forward in the ongoing dispute between Italy and the European Court. It does indeed prevent the Court from being swamped with applications concerning a structural violation - excessive length of proceedings - on which it has repeatedly given judgment. Nonetheless, although it compensates the victims of violations, it is not a satisfactory solution and still leaves the basic problem intact.

24. Firstly, compensation cases under the Pinto Act are heard by the appeal courts and - as with the *sezioni stralcio* – are added to their existing tasks and attributions. This means that "Pinto" cases slow the processing of other cases a little further. In other words, using the appeal courts without giving them more staff creates a paradoxical situation, in which ordinary proceedings are protracted, so that reparation can be made for earlier procedural delays.

25. Secondly and above all, the Pinto Act merely compensates victims without tackling the root of the problem, since awarding compensation has no effect on proceedings or on the courts responsible for unreasonable delays. It simply allows a court to find that there has been a violation, but does not attack its causes. By compensating victims, Italy sometimes escapes condemnation by the European Court of Human Rights, but continues to violate the right to a fair hearing within a reasonable time. Reparation alone is not enough – the reasons for delay must be tackled head-on.

b) Persistent problems

26. The explanations I was given, and the difficulties I myself noted, show that the structural problem of excessive procedural delay is chiefly rooted in two things: organisation/resources and procedural machinery.

1) Resources and organisation of the courts

27. Italy's legal system is basically under-funded. Quantitatively, its justice budget is by no means negligible[16], but it seems insufficient to reduce the backlog of cases. The judges I talked to told me, for example, that their budget for paper and toner (for printers) in 2004 had been fully used by July, obliging them to use various stratagems to keep going in the following six months. One thing which makes courts feel their lack of funds more keenly is the need to spend large sums on state-of-the-art computer facilities, which many of them still lack.

28. In July 2005, Italy had 8,603 "ordinary" professional judges[17], and close on 4,000 lay magistrates. This figure may seem high, but it needs to be set against judges' wide-ranging responsibilities and heavy case-loads. One suggestion is that every judge should be given a legal assistant. Regrettably, no action has been taken on this. In fact, such assistants might enable judges to improve the quality of their work and decisions. Moreover, productivity gains might well outweigh the cost, and this scheme would also provide sound training for young lawyers or barristers.

---

[16] According to the report, "European judicial systems 2002", by the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ), every person resident in Italy contributed 45.98 euros to the budget of the courts in 2002, representing approximately 0.5% of the Italian national budget.

[17] By way of comparison, France had 7,675 judges in 2004, but the number of cases was far lower.

29. Some of the judges and lawyers I talked to told me that certain towns and large villages still have courts for reasons more connected with local politics and prestige than actual need. Better matching of distribution to requirements would undoubtedly help the system to function more efficiently. It is not for me to question the existing situation, or regional and local balances and peculiarities, which are often sensitive. Nevertheless, adjusting judicial districts might improve the system at no extra cost.

2) Procedural inertia

30. The judges I talked to made it clear that Italian judicial procedures were very respectful of parties' interests, but also very formalistic. The inevitable result is numerous formalities, communications and letters, which encroach on the time they actually spend on the files. Here again, giving judges legal and administrative assistants might accelerate decision-making. Above all, arrangements for communication between parties, and the number of steps that judges are required to take, should be thoroughly reviewed. Simplifying procedures would undoubtedly shorten proceedings and facilitate the work of judges and lawyers.

31. I saw the use made of the appeal courts and the Court of Cassation as another cause of concern. It is not the individual's constitutional right to refer judgments to the appeal courts or Court of Cassation which is the problem, but the ways in which that right is abused. The figures for cases pending before the Court of Cassation - 92,545 civil cases and 30,953 criminal cases at 31 December 2004 – show what I mean[18]. Putting it simply, the Court of Cassation is no longer a body which decides whether the law has been correctly applied, but a kind of third-level court. I was told that this situation reflects Italian judicial culture, the importance Italians attach to this court and their confidence in it.

3) Time limits

32. It is my impression that the use made of time limits is another cause of the excessive length of criminal proceedings. The basic idea behind time limits is that, after a certain time, proportional to the seriousness of the offence, criminal proceedings should lapse. In Italian law, this is covered by Articles 157 to 161 of the Criminal Code. Talking to court officials, I was surprised to learn that time limits can be interrupted or suspended in only a few, very specific circumstances.

33. In fact, these guarantees are too easily diverted from their initial purpose; the weaknesses of the system allow accused persons with skilful lawyers to use delaying tactics to drag proceedings out until the time limit expires. Judges are powerless against these practices, and this makes them even less acceptable. Time limits are intended to put an end to criminal proceedings when the prosecution fails to act for a certain time, and not to provide a first line of defence against conviction.

---

[18] Addendum to the fourth report on the excessive length of judicial proceedings in Italy, CM/Inf/DH(2005)31, 5 July 2005, p. 7.

34. The present time limits are, from the time offences are committed, two years for the most trivial, and 20 for the most serious[19]. Although these are relatively long, the number of time-barred offences has risen steeply, from 84,011 in 1996 to over 260,000 in 2003[20]. It should also be noted that, in over 70% of these cases, time limits expire at the investigation stage. These few figures show how totally vitiated the time-limit system is by the very limited possibilities of suspending or interrupting it, even when enquiries or investigations have begun.

35. A bill,[21] currently before parliament, makes disturbing changes in the calculation of time limits. The intention is to make the time limit equal to the sentence, with a minimum of six years for crimes and four years for lesser indictable offences. The rules on suspension and interruption of time limits are also to be tightened. If the bill goes through, there is a danger that time-barring will become even commoner, and that hundreds of current prosecutions for fraud, offences against national security, slander and corruption will be dropped. A study carried out by the Bologna Appeal Court actually shows that, in the case of offences punishable by five to eight years' imprisonment, the percentage of those time-barred would increase from 9.6% at present to nearly 47% under the new law[22].

36. It is also my impression that the present time-limit system undermines respect for the rule of law and the courts in general. For one thing, the excessive use of delaying tactics by defence lawyers merely seeking to gain time considerably retards the normal judicial process and compels judges to engage in useless formalities.

37. Finally, when prosecutions are repeatedly time-barred, this gives the impression that the criminal justice system is unable to convict and punish criminals, and so robs it of credibility. One of the legal system's prime functions is to protect the community and individuals against law-breakers. To deter is a basic part of its role, and abuse of the time-limit system interferes seriously with that function. This is why one important aspect of judicial reform is reform of the time-limit system, to ensure that it can no longer be exploited to help clearly identified persons, who are facing criminal charges, to escape judgment and conviction. In my view, the only periods which should count towards time limits are those during which the authorities fail to act.

Conclusion

38. Italy has been reluctant to opt for global reform of its legal system, although this is the only comprehensive solution to its problems. On the contrary, it has often tended to go for piecemeal remedies[23]. Cutting down on formalities in criminal and civil proceedings, increasing the judiciary's budget and adjusting the appeal machinery are

[19] Crimes carrying a sentence of over 24 years' imprisonment.
[20] Ministero dello Guistizia, Dipartimento della Giustizia, Direzione generale della giustizia penale, *Prescrizioni di reati verificatesi nel corso dei procedimenti penali (art. 157 C.P. e seguenti)*, anni 1996-2003.
[21] Bill No. 3247, text at 1 July 2005.
[22] Magistratura Democratica, *Risoluzine sulla legge c.d. Cirielli*, 23 February 2005.
[23] For example, the Act on competitiveness, adopted on 15 May 2005, includes provisions to improve certain aspects of the law on bankruptcy and on civil procedure, particularly permission to use faxes and e-mails in proceedings.

all necessary reforms, but improve only parts of the system. As I see it, judges, lawyers, politicians and civil society must agree, as a matter of urgency, that global reform is needed. That is an essential prelude to identifying the laws and practices which must be changed to give Italy an effective legal system, accepted by all its citizens.

B. Reforms in the criminal field

a) Reopening of criminal proceedings and judgments *in absentia*

39. Italy is one of the few European countries where criminal proceedings may not be reopened if new facts come to light, or the European Court of Human Rights gives a relevant decision. The *Dorigo* case[24] is one example; although the European Court had found a flagrant violation of Article 6 of the Convention, the applicant could not be retried and given a fair hearing in the presence of the parties.

40. There have been various bills on this question, but none has been adopted. In spite of its highly restrictive character, the last bill was rejected by the Senate, which feared that the law might be exploited by members of criminal organisations, who had been convicted on evidence given by former criminals. This fear may well be legitimate, but the experience of other European countries shows that the dangers can be controlled.

41. Although Italy still makes no provision for reopening criminal proceedings, recent progress concerning judgments given *in absentia* must be welcomed. For a very long time, there was, as the European Court put it, "a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the lack of an effective mechanism to secure the right of persons convicted *in absentia* […] to obtain a fresh determination of the merits of the charge against them by a court"[25]. The Decree of 21 February 2005 made it possible for persons convicted *in absentia* to have their trial reopened. I can only hope that the desire for reform reflected in this crucial change will also be reflected in the other bills awaiting adoption, and particularly that on the reopening of criminal proceedings.

b) Prohibition of torture

42. Article 13 of the Italian Constitution provides that "acts of physical and moral violence against persons subjected to restrictions of personal liberty shall be punished". Italy has ratified numerous international agreements on protection against torture, and particularly the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (on 29 December 1988). That same year, it ratified the United Nations Convention against Torture, one of whose provisions requires States Parties to make all acts of torture offences under their criminal law[26]. However, although repeatedly urged to do so by civil society and international organisations, Italy has still to make torture an offence in its Criminal Code.

---

[24] *Dorigo v. Italy* judgment, 16 November 2000, Application No. 46520/99.
[25] *Sejdovic v. Italy* judgment, 10 November 2004, Application No. 56581/00, which has since been referred to the Grand Chamber of the Court.
[26] Article 4 of the United Nations Convention against Torture.

4) The law currently applicable

43. Although the concept of torture does not appear in the ordinary Criminal Code, it was recently inserted in the Military Criminal Code. The Code, which dates from 1941, applies to "all army units conducting military operations in other countries", even in peacetime. Section 185bis of Act No. 6 of 31 January 2002 provides that "any serviceman who, for reasons not unconnected with war, subjects prisoners of war, civilians or other protected persons to torture or other inhuman treatment shall be punishable by one to five years' imprisonment"[27]. This article is undoubtedly a step in the right direction, but it could be taken further, since it applies only to servicemen outside Italy, and the sanctions they incur are relatively lenient.

44. Although torture is not a crime in ordinary criminal law, inflicting physical injury on another person is. Articles 582ff. of the Criminal Code define four levels of offence, depending on the victim's injuries[28]. Prison sentences are also determined by the gravity of the injury: three months to three years when the victim is temporarily incapacitated (*incapacità di attendere alle ordinarie occupazioni*) for less than 40 days; three to seven years when he/she is incapacitated for more than 40 days; and six to twelve years for the most serious offences (loss of one of the senses, mutilation, incurable illness, etc.).

45. At the same time, several restrictions apply in cases of physical or psychological injury. Firstly, the only injuries covered are injuries inflicted by another *person*, whether unknown or related to the victim, or having authority over him/her. Above all, the public prosecutor is not always empowered to intervene. In fact, when injuries incapacitate the victim for less than 20 days, only he/she may bring criminal proceedings. This restriction on the prosecution service would seem incompatible with the need to protect individuals and public order, particularly when violence is perpetrated by people in official positions. In cases of police violence, for example, where victims are often reluctant to prosecute, incapacitation must exceed 20 days before the public prosecutor can initiate enquiries on his own initiative.

5) Bills for insertion of the crime[29] of torture in the Criminal Code

46. Bills to make torture a crime have repeatedly been tabled in Parliament, but none has been adopted as a law.

47. Several such bills have been tabled since 2001. These led to a single text, providing for the insertion of an Article 613bis in the Criminal Code. The Chamber of Deputies examined the consolidated text on 22 April 2004. Three amendments were adopted, defining the crime of torture as use by a "public official or person in charge of a public service" of "repeated violence or threats".

---

[27] Legislative transposition of the Decree of 1 December 2001 concerning the military operation, *Enduring Freedom.*

[28] Very slight injury – *lesione lievissima*, slight injury – *lesione lieve*, serious injury – *lesione grave*, extremely serious injury - *lesione gravissime*.

[29] The term "delitto" is here translated as "crime", since Italy applies it to the most serious offences, as compared with "reato", which is an ordinary offence.

48. The adoption of the bill with these amendments by the Chamber of Deputies[30] raises several problems. The main one is that only actions which are repeated are to qualify as torture. This criterion appears in no international definition and, above all, contradicts the spirit and principle of the concept of torture. Moreover, the bill applies only to torture committed by a public or similar official, and not to torture perpetrated by persons not in public office. A more consensual definition of the crime of torture has since been discussed by Parliament, but the Chamber of Deputies may not go back on texts and amendments which it has already adopted in session. Parliament is still discussing whether the adopted text can and should be modified.

49. Some of the people I spoke to told me that the concept of repetition was needed to respect the Constitution, which insists that criminal offences must be exactly defined. My discussions with various representatives of the judiciary reassured me on this point; the Constitution does indeed provide that crimes must be clearly defined in law, but does not insist on specific criteria, such as repetition. I would therefore urge the Italian authorities to insert the crime of torture in the Criminal Code as soon as possible, reconciling policy concerns with the standard international definition.

III. THE PRISON SYSTEM

A. General situation

50. Like those of most European countries, Italy's prisons are overcrowded. At 31 December 2004, 56,068 people – including 2,589 women – were in prison, although the total maximum capacity of the country's prisons is 42,478. The average occupation rate was thus in excess of 130%. As a result of the criminal justice system's shortcomings and slowness, over 35% of prisoners have yet to be finally convicted. When I visited the Rebibbia Nuevo Complesso prison, I saw for myself how bad the overcrowding was. The prison had 1,610 inmates, although its official capacity is 1,070, and its maximum acceptable capacity 1,271. Such overcrowding impacts not only on the material conditions of detention, but inevitably complicates the effective administration of prison life. Different categories of detainee that should be separated – pre-trial detainees from the sentenced, young offenders from the older, the ill and psychiatircally unstable from the rest – can no longer also be so. Staff and resources are stretched and the result, in Italy, as, alas, elsewhere in Europe, in which insufficient attention can be given to the rehabilitation and reintegration of offenders.

51. One of the reasons given for the shortage of accommodation in prisons is the limited range of alternative measures. For example, at 31 December 2004, only 1,642 prisoners were on day release, and some 6,000 were in home detention[31]. Moreover, as the Director of the Prison Service told me, arrangements for work of public utility are at the courts' discretion (which limits their scope) and probation is unknown in Italy. Reform aimed at introducing a broader range of alternative penalties would do much to reduce overcrowding.

52. Overcrowding is compounded by outdated facilities, which often fall short of today's requirements. The Minister of Justice is aware of the problem, and showed me an ambitious building programme, costing 1,000 million euros over the next 15 years. The

[30] *V. Seduta ant. N. 457*, of 27 April 2004.
[31] Ministry of Justice, Prison Bulletin No. 9.

intention is to sell certain prisons which no longer meet modern requirements, are too expensive to maintain or are located in sought-after areas, and spend the proceeds on building new, improved facilities. The Minister hopes to build a total of 24 new prisons, and two are already under construction. This programme is certainly moving in the right direction. Completing it is vital, and it must be accompanied by an increase in prison staff. The present staffing level is inadequate, and I was told that low wages are the main reason why posts remain unfilled. An adequate staff/inmate ratio is essential for efficient prison management and also for the security and welfare of both warders and prisoners.

53. Although not the sole cause, inadequate staffing contributes to the high mortality rate in prisons. Between January and May 2005, 43 prisoners died, and 26 of these were suicides[32]. These figures may be less alarming than those in some other European countries, but they are still relatively disturbing, particularly since it appears that some of the deaths have gone unpunished or are still being dealt with by the courts, although they occurred in the 1990s. In these circumstances, the appointment of a national ombudsman, empowered to receive complaints from prisoners, should be considered.

B. Health in prisons

54. Generally, access to health services is a major problem for prison inmates. Prison pharmacies seem unable to meet their needs, and some prisoners told me that getting appointments with specialists was extremely difficult. Even seeing the prison doctor involves a wait of several days, and this may run to several weeks, when an outside specialist is needed. I do not regard dermatological, dental or rheumatological treatment as trivial, and financial constraints should not prevent people already deprived of their liberty from receiving essential care or treatment.

55. I discussed the problem of access to care at considerable length with the various prison directors and prison authority officials I met, all of whom said that it was causing them concern. For obvious economic reasons, the current trend is to send sick prisoners to outside hospitals. Because these are already overworked, the waiting period for admission - particularly when scheduled in advance – is unreasonably long. This creates a real danger that non-urgent conditions may worsen. On the other hand, all the directors told me that emergency admissions were no problem. All of this indicates that more money needs to be spent on prisoners' health.

C. Activities for prisoners

56. The prison directors told me that possibilities of working in prison are limited by the regulations and by budgetary constraints. In the last 14 years, the number of prisoners working has increased by 3,660, whereas the total number of prisoners has practically doubled, to 56,068[33]. At 31 December 2004, 14,686 prisoners, or approximately 25% of the total prison population, had work. Two-thirds had jobs directly connected with their

[32] In 2004, there were 94 recorded deaths in prisons: 52 cases of suicide, 26 of illness, 10 of "unknown causes", four of overdose, two of murder.
[33] *Ibid.*

prisons (cooking, cleaning, maintenance, etc.). When I visited Rebibbia Nuevo Complesso, 321 of the 1,600 inmates were employed inside the prison on housework, odd jobs, maintenance and agriculture.

57. The director at the Venice–Giudecca prison, which I visited, had set up workshops geared to the Veneto's requirements. In the women's prison, there were three workshops (organic vegetables, laundry and bath products) directly connected with tourism, Venice's principal activity. This outstanding project is a source of pride to both the authorities and inmates, but still has too few places to meet the demand – a problem which the introduction of job-sharing has partly solved.

58. This example seems fairly typical of the general work situation in Italian prisons, although work-sharing is not universal. It was explained to me that the legal requirement to pay prisonners the full minimum wage made it difficult to find and finance work that was not economically competitive. Given the importance both to life in prison and to the likely of succesful resinsertion on release of some useful activity, it seems to desirable, however, to find ways of increasing the the number of jobs provided either by the administration directly or via partnerships with private firms.

59. Apart from working, prisoners can take vocational training courses. Nearly 8,000 prisoners were doing this in 2004[34]. Finally, literacy, school and university courses are also available. Owing to lack of funds, however, I found that these applied - like work – to a limited number of prisoners, and daily exercise periods were the only activity available to the others.

60. The increase in the prison population does not appear to have been accompanied by a corresponding increase in the funds provided for programmes and activities. As a result, prison directors are unable to offer activities on a par with the number of prisoners – which means that prisons offer them no prospects. Funds should be used more effectively, and outside firms provide more jobs, to give prisoners a better chance of finding their feet in the community when they are released.

D. Infants and young children in prisons

61. My visit to the Venice–Giudecca women's prison gave me an opportunity to assess the special arrangements made for young mothers. At the time, some ten children were living in the prison with their mothers. The director told me that there are alternatives (care provided by families, special structures, etc.), but that women wishing to do so may keep their children with them up to the age of three. The prison has a day nursery, and has set up a programme to prepare mothers for children's leaving and help them to find suitable accommodation outside. Most of these mothers have no relatives living nearby. Children who stay with their mothers in prison sometimes get better health treatment than they would outside. I also had the impression that staff were giving these special cases all the attention they required.

62. According to Ministry of Justice statistics, there were 60 children below the age of three in Italian prisons at 31 December 2004. Remembering that 24 women prisoners were pregnant at that time, this indicates that the number of young children in prisons is still

[34] Ministry of Justice, Prison Bulletin No. 9, figures at 31 December 2004.

limited. Prison is obviously no place for young children but, when the environment is suitable (as it is at Giudecca), I still feel that remaining with their mothers may be less traumatic for both than total separation at this vital point in their existence.

E. Prisoners covered by Section 41bis of the Prisons Act

63. Italy has three types of detention. The first, ordinary type is for criminals who pose no special problems. The second, the "special surveillance system", is for prisoners regarded as dangerous, particularly because of their links with organised crime.

64. The third applies, under Section 41bis of the Prisons Act, to particularly dangerous and prominent inmates, with a background in organised crime. It is essentially intended to cut them off from all contact with their original milieu, and its stated aim is to stop them from restoring and/or strengthening their ties with their former criminal associates, inside or outside the prison. Section 41bis may also be applied to terrorists, but the figures show that all the 41bis prisoners in 2004 had ties with various mafia-type organisations - principally *cosa nostra*, '*ndrangheta* and *camorra*[35].

65. Adopted in 1992, Section 41bis allows the Minister of Justice, either on his own initiative or at the request of the Minister of the Interior, to suspend - for reasons of security and public order - some or all of the normal rules on conditions of detention in the case of persons sentenced for involvement in organised crime or certain serious criminal offences. Originally intended to be temporary, Section 41bis is now the basis for imprisonment of the leading *mafiosi*. The Minister of Justice told me, when I met him, that the current system would run until the end of 2005, and that Parliament would then decide whether to extend it.

66. Confined to a very small number of prisons, the "41bis system" applies to fewer than 700 prisoners, already convicted or awaiting trial. "41bis prisons" are either separate wings of existing, larger prisons – as at Rebibbia Nuevo Complesso – or buildings used solely for prisoners in this category. To reduce the risk of prisoners' escaping or having outside contacts, these special prisons are in remote locations, chiefly in northern Italy.

67. Over the years, the 41bis system has gradually been relaxed[36], in response to domestic court decisions[37] or CPT recommendations. The European Court of Human Rights has also condemned Italy on several occasions, and particularly in 2004[38], for failing to provide adequate legal protection in applying Section 41bis, and failing to respect correspondence and visiting rights. This led to Italy's adopting Act No. 95 of 2004, which makes changes in arrangements for censoring correspondence and strengthens the guarantees provided for 41bis prisoners. It allows them to appeal against the monitoring of correspondence, and the judge must give a decision within ten days. In practice, it seems that prisoners may have to wait several months for a decision, which sometimes arrives when the measure has already been suspended.

---

[35] Hearing of Pierluigi Vigna, national anti-mafia prosecutor, before the Senate's Anti-Mafia Commission, May 2004.

[36] Particularly by giving prisoners more time in the prison yard and allowing them to take physical exercise.

[37] Decisions by the Constitutional Court *sentenze n° 351/96, 349/93, 376/97 and 342/99*.

[38] See the *Ospina Vargas v. Italy* judgment of 14 October 2004, Application No. 40750/98 and the *Madonia v. Italy* judgment of 6 July 2004, Application No. 55927/00.

a) Placement and appeal procedures

68. Both persons awaiting trial and persons already convicted can be placed in Section 41bis detention. The Minister of Justice does this in an individual order, giving reasons, which is valid for one to two years, and is renewable until links with criminal organisations have been severed. It establishes a presumption that the prisoner's membership of a criminal organisation makes him dangerous, and good conduct in prison does not affect this. It can be revoked at any time, once it has been shown that the person charged or sentenced has no further connections with the mafia or a terrorist organisation. The burden of proof is reversed in such cases: it is assumed that these connections still exist, and prisoners must show with absolute certainty that this is not so.

69. The individual placement order indicates the type of detention applying to each prisoner. It lists sections of the Prisons Act whose application is suspended or restricted[39]. Regarding procedural guarantees, it should be noted that the person concerned is not informed that the procedure for application of Section 41bis has been initiated – which means that he is unable to comment or defend himself before the order is adopted. Once adopted, the order is notified to the prisoner, who then has ten days to appeal to the relevant supervisory tribunal.

b) Treatment of prisoners

70. Prisoners covered by Section 41bis are held in special prisons or separate sections of ordinary prisons. In both cases, everything possible is done to stop them having contacts with other people, either prisoners or warders.

71. Prison Authorities Circular No. 3470/5920 of 20 February 1998, amending the 41bis detention system, applies to all prisoners covered by this system and provides for[40]:

1. a daily period of four hours outside the cell, including two hours' open-air exercise in small groups;

2. communal activities in small groups for a maximum of two hours daily, in a room situated in the detention area and specially equipped for cultural, recreational and sporting activities;

3. one, and exceptionally two, visits a month, lasting one hour with not more than three persons, in a suitable room with a glass partition (physical contact with children below the age of 12 is possible for not more than ten minutes at the end of family visits);

4. meetings with defence lawyers, which are not limited in either time or number, but are supervised by the prison authority[41];

---

[39] Restrictions or total suspension may apply to : the right to use the telephone, visits from third parties, participation in cultural, recreational and sporting activities, working for oneself or others, family visits (frequency, duration and number of visitors), prisoners' earnings, parcels, canteen purchases, exercise and censorship of incoming and outgoing mail..

[40] Report, CPT/Inf (2000) 2, §72

5. one telephone call per month for visitors who have had no visits that month, but the person to whom the call is made must take it at a police station or prison;

6. unlimited correspondence, but this – with the exception of letters exchanged with members of parliament and representatives of European or national institutions active in the legal field – is censored and supervised by the prison authority;

7. strict rules on transfers;

8. limited number of parcels; cassette-recorders, CD-players and VHF radios not permitted.

c) Daytime solitary confinement

72. Under Article 72 of the Criminal Code, criminal courts which sentence offenders to life imprisonment may also order solitary confinement during the day[42], in cases where the person concerned has committed several crimes punishable by a life sentence, or by a life sentence and several shorter-term sentences. Solitary confinement is limited to 18 months maximum. According to the Italian authorities, this additional penalty is designed to punish criminals who have committed several offences[43].

73. The decision to place a prisoner in solitary confinement is taken by the courts, and is always distinct from the decision to apply Section 41bis, which is taken by the Minister of Justice. The two systems are thus cumulative. These prisoners are already subject to difficult conditions of detention under a 41bis administrative decision taken while they were on remand, and their activities, already greatly curtailed on conviction, are now restricted even further. From discussions during my visit, it appears that, owing to the seriousness of the crimes they have committed, nearly all 41bis prisoners are placed in daytime solitary confinement when convicted, and that this can do lasting psychological damage. In view of the severity of combining 41bis treatment with daytime solitary confinement, regular psychological monitoring of these prisoners is essential, and the judge responsible for enforcement of these penalties must be informed of the results.

d) Termination of the 41bis system

74. One of the prison authority officials I met told me that the 41bis system is suspended in three cases only: when a prisoner co-operates with the authorities, when a court annuls it, or when a prisoner dies. This makes it clear that the system's severity has more aims than one.

75. Section 41bis obviously serves to sever the ties between a mafia "godfather" and his organisation. Italy's fight against organised crime, which is particularly powerful in that country, is a vital part of guaranteeing and protecting everyone's security. A 41bis-type

---

[41] Meetings are systematically recorded on video, and conversations may also be recorded at the request of an investigating judge.

[42] However, Italian law provides for participation in work activities.

[43] Reply by the Italian Government to the CPT's report on its visit to Italy from 13 to 25 June 2000, CPT/Inf (2003) 17.

system might be justified in these circumstances - but only if its purpose were merely to prevent a prisoner from exerting continued influence on criminal structures outside, i.e. on the committing of further offences.

76. When I visited the 41bis section at Rebibbia prison, I could not help suspecting that the system's purpose was not solely to sever prisoners' connections with the outside world, but also to break their resistance, encourage them to co-operate (and so secure lifting of the restrictions) and demonstrate the power of the state. I was surprised by one prisoner's comment that "lions get treated better", but I knew what he meant when I saw the exercise area. 41bis prisoners spend only two hours out of doors every day. The "exercise areas" are cages measuring approximately 10m², which have bars on all sides – even on top – and are entirely tiled. Each of the four exercise cells has a WC and wash-basin. As long as they stay in this prison, prisoners never see a plant, tree or patch of earth – just the makeshift cages in which they are permanently confined.

77. This treatment and these conditions obviously provide a powerful incentive to co-operate with the police and courts, and so get these restrictions lifted. Some prisoners who do not co-operate have psychological problems[44], e.g. one prisoner in Rebibbia prison who has been mentally disturbed since the 41bis system was applied to him. As I told the Minister of Justice, making living conditions in 41bis prisons more humane does not mean making outside contacts easier. This system is justified by its preventive, not punitive function. This distinction should be emphasised, and every effort made to respect it.

IV. JUVENILE OFFENDERS

78. Italy's special arrangements for young offenders are worth noting. They include separate courts for minors, with specialised investigating judges and prosecutors, and a section for minors in appeal courts. The age of criminal liability is 14. Children may be arrested and remanded only for offences carrying prison sentences in excess of nine years, or other "serious" crimes (rape, aggravated theft, etc.).

A. Juvenile justice

79. In 1998, Italy set up special remand centres for young offenders, the aim being to protect them against possibly damaging experiences in police stations, where premises and staff are not always equipped to deal properly with them. Young offenders are usually caught in the act, and are handed over to the prison police services which run these centres. They may not be held there for more than four days, during which the young offenders' service prepares a report on them for the juvenile court. They are questioned by the police, but also take part in educational and recreational activities suited to their age. This system is laudable in keeping young offenders away from police stations, which are basically unsuitable for the young and vulnerable.

[44] Relational problems, anxiety, depression, paranoia.

80. When I went to Rome, I inspected facilities at one of these remand centres, the *Centro di Prima accoglienza per minorenni*, which can take 30 children, but averages just 10. A total of 1,200 children pass through it every year - a third of all remanded minors in Italy. Although the buildings themselves are new, the facilities struck me as obsolete; the people who run the centre told me that they lack funds to buy better equipment.

B. Young offenders' prisons

81. Juvenile crime is commonest in northern and central Italy, but juvenile detention centres are located in the south. There are 17 young offenders' prisons in Italy, and of these only four have sections for girls. More than 50% of young offenders are foreigners. I visited two young offenders' prisons: the *Instituto penitenziario minorile di Nisida* near Naples, and the *"Casal del Marmo" Instituto penal minorile* in Rome. I should like to thank the directors and their teams for the welcome they gave me, and pay tribute to their work, often done in difficult conditions.

82. These facilities are relatively open, allowing young inmates to move around in different areas. Unlike warders in adult prisons, warders here wear ordinary clothing, which eliminates the prison-like feeling. Inmates are between 14 and 21 years old. They may remain in young offenders' prisons for three years after reaching majority, which allows them to complete their sentences or find alternative solutions with the help of educators and enforcement judges. Failing an alternative, they must serve the remainder of their sentence in an adult prison. The arrangements for girls with young children are those which apply in adult prisons. Children may remain with their mothers up to the age of three. According to the directors, this situation is relatively rare, as it is for adult mothers in prison.

83. Italy has a highly developed system of alternative penalties for young offenders. As a result, the number of under-age detainees is relatively low – usually less than 500 – and the period of detention is relatively short – between four and five months. However, the number of Roma or foreign children seems disproportionately high. Objective factors connected with families or precarious living conditions may account for individual cases, but it is important to ensure that there is no discrimination in practice, and the reasons for these figures must be investigated.

84. The two institutions I visited had numerous programmes to educate, instruct and entertain children. Vocational training is usually linked to the culture and traditions of the city or region. Nisida had a workshop where children made Christmas cribs in ceramic, and children in Rome could learn leather-working. Because funds are short, many of these activities are run by volunteers, with materials donated by firms.

85. Lack of funds was particularly flagrant at the "Casal del Marmo" centre, where walls were peeling, bedrooms were sparsely furnished with iron bedsteads (many of them rusty), the few items of furniture were in bad repair, and the sanitary facilities inadequate. This contrasted with the eminently satisfactory living conditions at Nisida. The Italian authorities need to fund Italy's 17 young offenders' prisons adequately, allowing them to provide decent accommodation, and ensuring that rehabilitation - not just punishment - is the focus of detention.

V. THE PSYCHIATRIC SYSTEM

A. The ordinary mental health system

86. Italy's mental health system is regulated by Act No. 180 of 13 May 1978, the so-called Basaglia Act, on "voluntary and compulsory health examinations and treatment". Article 32 of the Constitution also covers access to health services and respect for human dignity, and prohibits any enforced medical treatment which is not expressly provided for in law[45].

87. Before the Act was passed, mental patients were committed to large, impersonal and often dilapidated institutions simply on the basis of a medical certificate, endorsed by the local police authority. Starting in the 1960s, various people, including Franco Basaglia, questioned this system and campaigned successfully to have it changed. The whole issue was widely debated at the time, and still is today. Ideology apart, the objectors wanted better conditions for patients in psychiatric hospitals, where the range of treatment was very limited and humanity was often lacking. The debate undoubtedly paved the way for new structures and better patient care.

88. Under Act No. 180, mental illness is defined on medical criteria. Patients now have the right to be treated, and not merely "shut away" as a danger to the community. Above all, the Act provided for progressive closure of the existing psychiatric hospitals, both public and private, prohibited the committal of further patients to them, and envisaged new treatment structures[46].

89. Full implementation of the Act did not begin until 1994, when Finance Act No. 724 provided for the closure of all psychiatric institutions operating on Italian territory at 31 December 1996. Official monitoring of the decommissioning of psychiatric hospitals and integration of patients in alternative facilities began in 1997.

a) Decommissioning of psychiatric hospitals

90. In 1997, before decommissioning, there were still 62 public psychiatric hospitals and 14 private institutions catering for a total of 17,078 patients (11,892 in public, and 5,186 in private facilities)[47].

91. Since 1998, under the national decentralisation programme, health services have been the responsibility of the regions and autonomous provinces, which have taken steps to close the old psychiatric hospitals, and place patients in suitable alternative facilities. As time has gone on, certain disparities have inevitably developed between regions, depending on funds available and the political determination of local authorities.

---

[45] "The Republic shall protect individual health as a fundamental right and in the public interest, and provide free medical care for the poor. No one may be forcibly subjected to medical treatment, except as provided for in law. The law may never violate the limits imposed by respect for the human person".

[46] Family support programmes, day centres, open or semi-residential homes.

[47] *Documento conclusivo (luglio 1997) dell'indagine conoscitiva sulla chiusura degli Ospedali psichiatrici,* drafted by the Social Affairs Committee of the Chamber of Deputies.

92. As a prelude to rehousing in new-style facilities, patients have been divided into two categories: "psychiatric" and "non-psychiatric" patients. The latter are people whose problems are not genuinely psychiatric: the elderly and people with mental or sensor impairments living on their own.

93. Some patients have returned to their families. Others have been placed in open facilities run by the regions. There are several types, depending on the gravity of their condition. There are social rehabilitation homes, with non-permanent supervision, for the least seriously ill, and treatment and rehabilitation homes, with full-time supervision, for the most seriously ill. All the people I spoke to, however, admitted that there were not enough of these facilities to meet the requirements. As I could see when I visited the judicial psychiatric hospital (*Ospedali Psichiatrici Giudiziari = OPG*) at Averse, this lack of infrastructure has unacceptable results for patients.

b) Alternative psychiatric services

94. Act No. 180 gives the regions authority to organise new, alternative services, but does not indicate what form these are to take. In 1994, a national project[48], initiated by presidential decree, specified the types of alternative structure which were to be established. Originally scheduled to run for two years, it was later extended and is still operating today.

95. The project set up the Department of Mental Health as the central authority for all regional and local activities concerned with management of alternative services:

- Mental health centres: there are 1244 of these, operating 12 hours a day and six days a week, and co-ordinating action taken. They see and diagnose psychiatric patients, decide on treatment and supervise private centres.

- Day hospitals: these are semi-residential support sections for short-term treatment. They have a total of 1,000 places, carry out full examinations and provide pharmacological treatment to reduce the need for residential care and limit its duration. There are also open facilities, which operate during the day or at specified times. Altogether there are 682 centres of this type.

- Residential facilities: there are 1205 public and private non-hospital facilities, which can take patients full-time.

- Psychiatric diagnosis and cure services ("*SPDC*"): these are closed hospital units providing voluntary and compulsory psychiatric treatment. Including the *Aziende ospedaliere* there are around 5000 places in such closed establishments.

96. In addition to the SPDC, Italy has a total of some 3,200 centres catering for mentally ill patients[49].

[48] Progetto Obiettivo Nazionale "Tutela della Salute Mentale" 1994/1996.

[49] Ministry of Health, Direzione generale del sistema informativo, Ufficio di direzione statistica, *Annuario statistico del servizio sanitario nazionale*, 2003.

c) Hospital internment

97. Under Section 1 of the Basaglia Act, medical examinations and treatment are voluntary. Nonetheless, under Section 2, compulsory treatment may also be ordered when:

- changes in the patient's mental state make treatment urgently necessary;
- the patient rejects (voluntary) treatment; and
- conditions and circumstances make out-patient treatment impossible.

98. Decisions on compulsory treatment are a matter for the mayor, who is responsible for local health. Before committing a patient to hospital, he must obtain a detailed medical opinion, prepared by one doctor and confirmed by a second. His decision is notified to a judge, who may prevent committal. This procedure may seem formally acceptable, but it should be noted that the law does not provide that at least one of the two doctors must be a psychiatrist. Moreover, the second doctor merely validates the first's opinion, without seeing the patient. Although four different persons are involved in taking the decision, it would be more transparent if one of them had to be a psychiatrist, since only a psychiatrist can fully diagnose a patient's condition, review all the relevant factors and decide if committal is necessary.

99. Patients committed in this way may not be forced to remain in hospital for more than seven days, unless the doctor in charge of the psychiatric unit applies, giving reasons, to the mayor, who has power to authorise extension. In practice, since there are not enough facilities to take and treat patients until the crisis ends, the one-week period is frequently exceeded.

B. Judicial psychiatric hospitals (OPGs)

100. Act No. 180 covered closure of ordinary psychiatric institutions, but not judicial psychiatric hospitals (OPGs). Although called hospitals, these are actually prison facilities run by the Prison Administration Department of the Ministry of Justice.

101. During my visit, I was able to see one of the six OPGs, the Averse centre near Naples, and have lengthy talks with the director and his team. I should like to thank them for their patience and helpfulness in the course of a visit which threw light on some of the complexities of Italy's system for protection of the mentally ill.

102. The main building at Averse is surrounded by several smaller ones, which accommodate different categories of patient/prisoner. The most difficult cases are segregated from the others. I also visited a separate, self-managed section for the least seriously ill patients. There are no prison police in this unit, which tries to create the closest possible approximation to living conditions outside. In spite of all the efforts made by staff, I generally had the impression that facilities were obsolete and living conditions barely decent. Basically, the centre lacks funds to renovate certain areas, replace old furniture and provide a range of activities and programmes.

103. Although its total capacity is 189, the Averse OPG had 230 inmates at the time of my visit. The director told me that this overcrowding, which affects all the OPGs, is mainly due to the fact that the lack of suitable structures outside makes it necessary to extend internment. This disturbing situation made a strong impression on me, and I made it my business to study it more closely. I would like to thank all the people who talked to me at Averse, and at the Ministry of Justice, and helped me to understand it better.

104. Articles 199 to 235 of the Italian Criminal Code regulate "personal security measures", one of which may be detention within an OPG of persons considered "a danger to the community" (Article 202). Several constitutional court decisions[50] and a new law[51] had made changes to reconcile judicial psychiatric internment with the basic rights of patients, particularly by providing for increased court supervision. Decisions to place individuals in OPGs are based on several criteria.

a) "Danger to the community" status

105. Security measures involving internment in an OPG apply to "persons who are a danger to the community" and have committed a crime. The Criminal Code also provides for application of security measures to people who are a danger to the community, but have committed no crimes (Article 202). Under Article 203 of the Code, anyone who, although not liable to be charged or punished, has committed an offence in law and is likely to commit further offences, is a danger to the community. The relevant judicial authority decides, on the basis of a psychiatric examination, whether such a person is a danger to the community.

b) Decision by a judge

106. Under Article 205 of the Criminal Code, security measures, including internment, are ordered by a judge in his decision on the crime committed by the patient. Internment may also be ordered in a later decision or at other stages in criminal proceedings.

107. During the investigation phase, the judge may order provisional internment of a patient in an OPG[52]. He revokes this measure when he considers that the person concerned is no longer a danger to the community. This provisional period must, however, be counted when the security measure's duration is being calculated. When a person already serving a prison sentence becomes mentally ill, the judge may also order internment in an OPG until a cure is effected.

108. Finally, Article 148 of the Criminal Code allows a judge to order internment if he considers that a mental illness which develops in prison will prevent a convicted person from serving his/her full sentence. This measure is revoked when the reasons for it cease to apply, and the remainder of the sentence – minus time spent in the OPG – must then be served normally.

c) Duration of internment

109. The director of the Averse OPG explained to me that length of internment is determined by the length of the prison sentence applying to the crime committed. Internment thus has more to do with punishment than treatment. In his initial decision, the judge may set internment at two, five or ten years.

[50] Particularly decisions Nos. 139/1982 of 27 July 1982 and 253/2003 of 18 July 2003.
[51] Act No. 663, the "Gozzini Act".
[52] Article 206 of the Criminal Code

110. Act No. 663 of 1986 allows the judge to review internment before it expires, and annul it if he finds that the internee is no longer a threat to the community. Nonetheless, practitioners told me that early review of internment is extremely rare, owing to the shortage of places in non-judicial structures outside.

d) Maintenance of interned persons in OPGs

111. Under the Italian Criminal Code and the case-law of the Constitutional Court, internees may be kept in OPGs longer than originally ordered only when a judge finds that they are still a danger to the community. Under Article 208 of the Criminal Code, once the set period expires, the judge reviews the internee's condition, to determine whether he/she is still a danger to the community. If this is the case, he sets a new date for a further examination, usually six months later.

112. Article 112 §6 of Decree No. 230/2000 requires OPG directors to report monthly to the courts on internees' mental condition. Judges are thus kept informed of changes in their mental health, and may consider revoking internment at any time, if they consider that the danger has passed.

113. I was told that doctors and judges use several criteria to determine whether internees are a threat to the community: the extent to which they are a danger to themselves, the extent to which they are a danger to others, their ability to live in the community, and the ability of families and, more generally, the community to accommodate them.

114. In practice, internees usually remain well beyond the period initially ordered, because outside psychiatric services or families are unable to take them. On completing their "sentences", they are sometimes released on probation. All too often, lack of suitable outside facilities makes returning to families the only option. This is neither desirable nor desired, since families cannot cope with crises and irrational behaviour - and so patients soon land in an OPG again.

115. More generally, even when internees are no longer a danger to the community, supervising judges have to extend their internment until outside services can take them. "Danger" is not, in other words, an absolute concept, but largely depends on the facilities available.

116. The Director at Averse told me that nearly 40% of internees at that centre are serving extra time, and that lack of outside facilities is the reason in 60% of those cases. This means that approximately 55% of the internees who were in the centre when I saw it should actually be outside the prison system. As shown by the CPT's recommendations after visiting Averse in 1995[53] this situation is not new, and appears to be the main reason for overcrowding in that and other OPGs. In fact, extension is harmful, both for those who have to stay on, when they should be released, and for other inmates, who suffer the effects of overcrowding.

[53] Report on the CPT's visit to Italy, 22 October-6 November 1995, CPT/Inf (97) 12 Part 1, § 179.

117. Judicial psychiatric hospitals treat and monitor internees' mental condition, but they are still prisons, and run by the prison authorities. I find it inconceivable and unacceptable that people should have to remain in prison simply because there are no places for them outside.

118. Regionalisation of the health system compounds the difficulty of finding alternative solutions and catering for internees in outside facilities. I was given one example of this at Averse. Italy has a total of only six OPGs, and so Averse takes patients from other regions. After more than three years in an OPG, an internee cannot return to his/her home region until its health insurance scheme accepts his/her file, and at least six months' residence is required for it to do so. OPG staff must therefore travel to that region to discuss the details of return with its authorities – all of which is highly time-consuming and costly. Moreover, the fact that the few OPGs are widely scattered often complicates, or even severs, patients' family ties, further reducing their chances of being able to go home, or settle close to home. All of this makes it easier to see why internment is extended for 40% of internees.

119. The concept of "danger to the community" also needs to be seen in terms of the facilities available for patients. Under the Basaglia Act, ordinary mental hospitals have gradually been closed, and finding places in the few suitable institutions can be an insuperable problem for families, who find themselves having to look after people with severe mental problems, who cannot reasonably live at home. Obviously, this can trigger a process which ends in the patient's committing a crime and again being interned in an OPG.

120. The lack of ordinary facilities for the most serious patients has two consequences. Firstly, people who would normally be getting more suitable treatment in these facilities are interned in prisons/hospitals as a danger to the community, either because they have committed a crime, or simply because there is a risk of their doing so. Secondly, the medical and judicial authorities are obliged to keep them in the prison-type OPGs, with no prospect of again becoming part of the community.

Conclusion

121. In recent years, over 20 bills for amendment of Act No. 180 have been processed by the Chamber of Deputies' Social Affairs Committee, and the most important of these - the Burani Procaccini Bill - was rejected in April 2004. This is a question on which even specialised associations are divided. While some see all compulsory treatment (including pharmacological treatment) as a form of violence towards patients, others want reform and insist on the need for special facilities for the worst patients. I have no desire to intrude on an internal political and societal debate, but I must point out that the state has a duty to provide suitable facilities for mental patients and their families. There are pathologies which require comprehensive, ongoing care of the kind which only closed hospital units can provide, and these must have enough places to meet the demand. In a society as prosperous and caring as Italy's, it is hard to accept that people suffering from severe mental illness should be consigned to prison facilities, simply because there are no ordinary structures which can take them.

122. Having informed the Minister of Justice and the Director of Prisons of the impressions I had taken away from my visit, I was pleased to hear that a letter had been sent to the regional prison service directors in July, urging them to conclude agreements with local and regional authorities on helping OPG patients to rejoin the community. These efforts will certainly facilitate and expedite the release of many patients whose continued detention is due to administrative problems. I hope they will also pave the way for a comprehensive review of the mental health system, and make it possible to provide more places in facilities where round-the-clock care is available for chronic, long-term patients, who cannot be properly accommodated in families or day centres.

VI. IMMIGRATION AND ASYLUM

A. Political and legal context

123. According to figures supplied by the Ministry of the Interior, there were approximately 2.2 million foreigners living legally in Italy at 31 December 2003, accounting for 4% of the population[54]. Estimates put the number of illegal residents, from Africa, Eastern Europe, the Middle East and China, at another 500,000. For a long time, Italy was an emigration country, and the trend was reversed only in the 1970s. Initially limited, immigration has been soaring since the 1990s. The Balkan conflicts and Albania's political and economic crisis brought immigrants flooding into Italy, and particularly Apulia and Basilicata. In recent years, immigration from the Balkans and Albania has slackened, and migrants arriving by boat in Sicily and the south Italian islands from Tunisia, and above all Libya, have gradually become the main contingent.

124. In fact, as obstacles to entering Europe legally have grown, asylum-seekers and economic migrants have increasingly been following tortuous routes traced out by unscrupulous traffickers, which leave the luckiest and toughest on Europe's southern shores. States like Italy, Malta, Spain, Cyprus and Greece have to help and take in these illegal migrants, who are not especially trying to reach those countries, but Europe in general. The European Union is only starting to harmonise its response to these migration pressures, which are fed by political instability and world economic imbalance. Obviously, its member states need to co-operate more closely to find effective and humane solutions to this problem.

125. In the absence of a co-ordinated EU response, Italy has tried, like other states, to stem the flood by strengthening its immigration laws. The chief innovation was Act No. 189 of 30 July 2002, also known as the Bossi-Fini Act, which covers all aspects of immigration: border controls, residence permits, deportation and rules on asylum.

126. Obviously, countries can - and indeed must - control immigration effectively, but measures taken for this purpose must give incoming migrants access to asylum procedures, and ensure that they are treated decently and humanely, from the time they arrive until (perhaps) they are deported. Economic migrants may break the immigration laws, but that is not a sufficient reason to regard or treat them as criminals. Traffickers must certainly be prosecuted and severely punished, but their victims – people who are running from poverty or conflict, or simply hoping for a better future – must be treated with respect and their dignity honoured.

---

[54] Since their status was regularised in 2003, 240,000 Romanians living lawfully in Italy constitute the largest foreign community, with Moroccans coming next.

127. Reconciling effective immigration control with respect for the rights of migrants is not easy - but it is not impossible, and everything clearly depends on the funds the authorities provide and the determination they show. Italy has been the target of some criticism, particularly concerning detention conditions and procedural guarantees for immigrants arriving on Lampedusa. For my part, my meetings with the Minister of the Interior before and after visiting the island left me impressed by the Government's determination to find appropriate, dignified solutions to the humanitarian and human rights problems generated by this situation. Indeed, some of the suggestions I made at those meetings concerning transparency of procedures on Lampedusa were promptly taken up. Nonetheless, there are still problems, and I shall try to analyse them as fairly and impartially as possible. More generally, the Bossi-Fini Act has radically changed the asylum system and greatly extended the use of detention for illegal migrants, on arrival and prior to removal. The reforms have many good points, but also give cause for concern on numerous questions of principle and practice.

B. The arrival of migrants in Italy

128. Before examining the overall workings of the asylum system, I should like to raise a few points concerning treatment on arrival, which has a direct bearing on rapid access to asylum procedures. Obviously, that treatment depends to a large extent on whether aliens arrive by sea, air or land.

129. I visited the facilities at Rome Fiumicino airport for aliens who enter illegally and then apply for asylum. Eight million people from countries outside the Schengen area arrive at the airport every year, and approximately a thousand of these apply for asylum. The police facilities for aliens arriving or awaiting deportation seemed fully adequate to their needs. For the last year, the Ministry of the Interior has been using cultural mediators to provide cultural and linguistic liaison between the police and aliens arrested at the airport. This has helped to facilitate contacts, and reduce the tensions which can arise in situations like this.

130. However, the thing which impressed me most was a special reception desk for asylum-seekers. In addition to the standard channels manned by the frontier police, there is a separate channel, clearly marked with arrows and signs in several languages, for asylum-seekers only. This is the sole responsibility of the CIR *(Consiglio Italiano Rifugiati*), a collective organisation of NGOs, religious associations and trade unions, which helps asylum-seekers with admission formalities and their asylum applications, and provides them with legal and practical guidance. Decisions on admission, however, are still a matter for the police. This system, which provides independent supervision and ensures that asylum-seekers get immediate advice, exists at most entry points: Milan-Malpenza, and Venice airports, the land frontiers between Italy and Slovenia, and the ports of Bari and Ancona. It existed before the Bossi-Fini Act was passed, and that act has not changed it. I would like to pay tribute to its transparency, and the genuine help it provides for incoming foreigners who wish to apply for asylum.

131. The situation was somewhat different for many of the 12,000 aliens who arrived illegally by boat in 2004. Arrivals on this massive scale present Italy with considerable administrative and humanitarian problems. Boats intercepted at sea – even though

"rescued" is often nearer the truth[55] – are taken to Lampedusa. To understand the scale of this migratory phenomenon, it is worth noting that 9325 persons were rescued at sea in the course of 163 operations in 2003; 11,173 persons were rescued during 171 operations in 2004 and, by 30th September 2005, 11,194 persons had already been rescued in 141 operations. The system operating on the island at the time of my visit, unlike that at other entry points, did not include the presence of independent outsiders, guaranteeing access to asylum procedures. As a result of my talks with the Minister of the Interior, this situation will soon be satisfactorily resolved.

132. In 2004, the Italian authorities received 9,722 asylum applications, and 8,701 of these were processed before the year ended[56]. Overall, Italy received less than 0.2 asylum applications per 1,000 of its population. This compares with an average of 0.6 per thousand of the population for all EU countries. Despite massive arrivals by sea, the pressure exerted on Italy by incoming asylum seekers cannot therefore be termed intolerable in general terms.

C. The law on asylum and ancillary protection

133. The right of asylum is guaranteed in the Italian Constitution, Article 10 of which states: "Foreigners who are, in their own country, denied the democratic freedoms guaranteed by the Italian Constitution, are entitled to asylum on the territory of the Republic, on conditions specified in law."

134. In spite of this constitutional provision, Italy is one of the few Council of Europe states to have no specific laws on asylum. The legal regulations on asylum are currently included in Section II of Act No. 189, which itself refers repeatedly to earlier texts, and particularly Decree No. 286 of 1998. The fact that various texts apply confuses the picture, making it hard to gain a general grasp of Italy's legal position in this area. In principle, the inclusion of rules on asylum in a more general law is not a problem, provided that the right to asylum is properly protected. However, the adoption of a specific law highlights the special character of asylum, as compared with other aspects of migration, and makes for greater accessibility and clarity.

135. The Bossi-Fini Act could not be fully enforced until all the implementing decrees had taken effect, i.e. from 21 April 2005. During my visit in June 2005, I was told several times that application of the Act was too recent for its impact and consequences to be accurately gauged.

D. Asylum procedure

136. First, a reminder of the procedure which applied before the Bossi-Fini Act took effect. Asylum applications were processed centrally in Rome by the Central Refugee Commission. Act No. 189/02 decentralised the asylum procedure, setting up territorial commissions to decide at first instance. These commissions are chaired by the regional governor, and comprise representatives of the police (*Questura*), local authorities and the UNHCR, all of whom also have deputies. Finally, a representative of the Ministry

[55] In 2004, there were 171 rescue operations at sea, or approximately one every two days.

[56] 780 persons were accorded refugee status, and 2,352 were given ancillary protection. Protection was accorded in 36% of cases, and asylum granted in 8.96% of those cases. Source : UNHCR, briefing notes, "*Italy: misleading statistics reported in the Italian media*", 27 May 2005.

of Foreign Affairs may take part in decision-making, when asylum-seekers arrive in large numbers or the ministry's comments may shed light on an individual applicant's situation.

137. Under the implementing decree of September 2004, seven territorial commissions have been established, each responsible for a major Italian region: in Milan for the north-west, Gorizia for the north-east, Rome for the centre, Crotone for the south-east, Syracuse for east Sicily, and Trapani for west Sicily.

138. The UNHCR, whose role on the former Central Commission was merely advisory, has the right to vote and take part in decision-making. The local authorities responsible for reception and assistance may also participate in decision-making. Nonetheless, some NGOs fear that the new territorial commissions may try to strike a balance between the number of refugees admitted and the availability of accommodation or reception structures. My discussion of this point with municipal and regional representatives makes me feel that these fears are unfounded at present. In my view, the introduction of a consistent approach, respecting the rights of asylum-seekers, would dispel any lingering doubts. Generally, the improvements made by the new act, which regionalises procedures and gives the UNHCR an active role, are to be welcomed.

139. It is obviously too early to analyse the workings of the new commissions in detail, but one possibility may be mentioned. Since each commission is responsible for a given area, and asylum applications must be lodged immediately on entering the country, some commissions may well get more applications than others. Illegal aliens arrested in Italy may be sent to an identification centre by the *Questura.* Since they are free to apply for asylum at any point in the procedure, the identification centres at Crotone, Trapani and Foggia are likely to send large numbers of asylum applications to the territorial commissions responsible for their regions. This imbalance must be allowed for, and the commissions be funded and staffed in proportion to their needs.

140. The commissions have authority to process asylum applications and grant refugee status, but they may also grant ancillary protection[57]. As far as recognition of rights is concerned, the law treats persons granted asylum and persons granted humanitarian protection in the same way.

141. The Bossi-Fini Act turns the old Central Commission, which used to handle questions of asylum, into the National Commission for Refugee Status (*Commissione nazionale per il diritto di asilo*, CNDA). This new body is responsible for setting up, co-ordinating and supervising the territorial commissions, compiling national statistics, and taking decisions on terminating and revoking refugee status. Like the territorial commissions, it is chaired by a regional governor and comprises one representative each of the Ministry of the Interior, the Ministry of Foreign Affairs, the Council of Ministers and the UNHCR, whose role in this case is merely advisory.

142. Now that the Bossi-Fini Act has come into force, there are two types of asylum procedure – standard and simplified. The standard procedure applies only to aliens who enter the country legally, and must be completed within 35 days. The simplified procedure applies to aliens who enter illegally. It is shorter and, above all, these "illegals" are automatically remanded in custody.

---

[57] Section 32, 1 – quater – 4 of Act No. 189/2002.

a) Standard asylum procedure

143. The Bossi-Fini Act contains detailed rules on the processes and time-limits applying in the standard procedure. Within two days of the application's being made, the *Questura* sends it to the territorial commission, which must then hear the applicant within 30 days. Applicants are given a three-month temporary residence permit, which is renewable until the procedure is completed. The commission adopts a written decision, giving reasons, within three days of the hearing. Deportation orders are made against unsuccessful applicants, who may then apply, giving reasons, to the regional governor for permission to remain in the country until the appeal procedure is completed.

144. A negative decision by the Territorial can be appealed before a single judge within 15 days, though the appeal is not automatically suspensive of a possible expulsion[58]. The decree[59] implementing the new legislation does, however, grant the Prefect the authority to remain in the territory until the appeal is complete. Such requests will be admissable only if motivated and comprising new elements or raising particular risks if returned. The law provides that appeals may be lodged from abroad through Italian diplomatic channels. One single administrative decision on asylum applications generally suffices to expel the applicant, which seems to me to excessively liimit the protection offered. Moreover, Italy's slow and complex procedures make the chances of being able to appeal from abroad - above all, successfully - seem very slim.

145. I should like to add one more general comment concerning the requirement that territorial commissions must give their decisions within three days of hearings. All their four (sometimes five) members are not necessarily specialists on asylum problems - at least to start with – may well find it hard to decide so quickly. The same applies to time limits under the simplified procedure.

b) Simplified asylum procedure

146. This applies to two types of applicant: aliens who apply after being arrested for crossing (or attempting to cross) the frontier illegally, or who are illegally resident, and aliens already covered by a deportation or removal measure when they apply. The first are placed in an identification centre as soon as their applications are received. These applications are sent within two days to the territorial commission responsible, which hears the applicant within 15 days and gives a decision not more than three days after that. Applicants then have five days to apply for review of that decision. The simplified asylum procedure consequently offers one more layer of appeal than the ordinary procedure. During this review procedure, they remain in the identification centre. If the decision is upheld on appeal (to the same Territorial Commission with one further member from the National Commission) the applicant may lodge a non-suspensive appeal with an ordinary court. Under the simplified procedure, applicants may be detained for a maximum of 20 days. If the territorial commission has given no decision, on expiry of this time-limit, they are released and given a three-month residence permit, which is renewable until the procedure is completed. If the decision is negative, it is

[58] Article 1(6) of the Bossi-Fini Law.
[59] Article 17 of Decree n° 303/2004.

accompanied by a removal order. Applicants in the second group – those who are already subject to a removal measure when they apply – are placed in temporary holding and reception centres. The subsequent procedure is the same, with the difference that applicants may be held for up to 60 days, pending a decision. In other words, the simplified procedure is not a rapid one. Applied with the necessary resources and rigour, it seems to offer the same procedural guarantees as the standard procedure.

147. Act No. 189/2002 reaffirms that asylum-seekers must not, in principle, be held in detention. However, under Section 31 of the Act, any asylum-seeker arrested in breach of the law (on entry, while resident or while trying to evade a frontier check) must be detained in an identification centre. Under the Act, the chief of police may also request that an asylum-seeker be placed in an identification centre for a maximum of 30 days, for the purpose of:

- verifying his/her identity or nationality (in doubtful cases or when he/she has no papers)
- verifying certain aspects of the application, in cases where this would otherwise be impossible
- determining whether the asylum-seeker may be admitted to the country.

148. Under the Act's implementing decree, these centres are closed. However, a centre's director may authorise "semi-release" from 8am to 8pm for certain applicants. Longer absences may also be permitted for personal, health or family reasons, or for pressing reasons connected with examination of the application. Although possible in theory, this seems to be little done in practice, and anyone who fails to observe the rules on absence is regarded as having withdrawn his/her asylum application.

149. There are various types of reception and holding centre for aliens. The Bossi-Fini Act provides for the setting-up of identification centres (CDIs), to check aliens' identity when this is necessary. There are also temporary residential and assistance centres (*Centri di permanenza temporanea e assistenza* = CPTAs), where aliens are held prior to removal. There are currently three identification centres: at Foggia (200 places), Crotone (300 places) and Trapani (210 places). Four more are planned: at Gorizia (150 places, opening in May 2006), Milan (200 places), Rome and Syracuse (details still to be determined). Until the latter become operational, some centres are being used simultaneously as reception centres, CDIs *and* CPTAs - which adds to the confusion, and mixes aliens who are being identified with those who are waiting to be deported.

150. Trying to control migration flows, and ensure that asylum procedures are not diverted from their purpose of protecting the victims of persecution, is a legitimate state function. It should nonetheless be remembered (as the Bossi-Fini Act itself points out) that centres where people are detained or, more generally, deprived of freedom to come and go as they please, are not the right place for asylum-seekers.

151. Detaining asylum-seekers is acceptable only for short periods and specific reasons. The Act makes a distinction between those who enter legally, are covered by the standard procedure and have full freedom of movement, and those who are covered by the simplified procedure and kept in holding centres. This offers a "bonus" to those who

can probably be processed more easily, because they enter legally, and their papers are in order. But it also makes the simplified procedure more difficult for "illegals", although no distinction is actually made between their applications and others.

152. In practice, very few asylum-seekers enter the country legally and also have identity papers. I can understand Italy's wishing to facilitate and regularise procedures, but distinctions should not be made on administrative criteria alone and, above all, detention should not be the norm, but be ordered only in cases where examination shows it to be necessary.

E. Temporary residence and assistance centres

a) Management and functioning of CPTAs

153. The CPTAs were established in 1998, to keep deportees under official supervision, i.e. in detention. They are used for aliens in breach of the law, aliens not entitled to enter or reside in Italy, and aliens awaiting deportation or removal, when this is not immediately possible for reasons connected with health, identification, travel documents or non-availability of transport.

154. Italy's 15 CPTAs differ in size and also in the way they operate. Like the ones I saw at Ponte Galeria (Red Cross) and Lampedusa (National Misericordia Confraternity), they are run by charitable associations, many of them with religious connections. These associations conclude agreements with the Ministry of the Interior, which acts as their supervisory authority. Because management is delegated, Ministry personnel are not omnipresent, but deal only with security. As I saw at Ponte Galeria and on Lampedusa, the staff who actually run the centres are extremely dedicated and attentive to the needs of inmates.

155. The functioning of the CPTAs is regulated by a circular issued by the Ministry of the Interior on 31 August 2000, which contains a charter of the rights and duties of migrants in detention. Since this was not enough to secure uniformity in the management and functioning of centres, the Ministry told me that it had also issued "Management Guidelines for CPTAs" on 27 November 2002.

156. These texts give the migrants concerned certain rights and guarantee them certain services. They may, for example, practise their religion, talk to their lawyers in private and express themselves in their own or another language of their choice - with an interpreter's assistance if necessary. They may also receive visits from relatives, diplomatic representatives and religious ministers. Finally, under the circular of 30 August 2000, the associations running the centres must provide detainees with accommodation, food, medical assistance, clothing, toilet items and 5€ phone cards, and despatch ten letters for them every ten days.

157. Association members working in centres are the only NGO representatives authorised to enter them. Many NGOs and immigrants' rights organisations told me that they were refused admission. Even though Section 32 of the Bossi-Fini Act gives UNHCR representatives access at all times, I think it essential that responsible and independent organisations be able to inspect them and verify that detention and expulsion procedures are transparent and in line with norms.

b) Living conditions in CPTAs

158. Living conditions in CPTAs vary widely, depending on infrastructure, management methods and the types of group interned in them. When I visited the CPTA at Ponte Galeria (Rome), it housed 265 aliens for a total capacity of 300. I had the impression that the Italian Red Cross was running the centre in a wholly satisfactory manner. Inmates are accommodated in "small houses", each taking a maximum of eight, and their origins and background are taken into account in placing them. Each unit has a small courtyard and is surrounded by a high wire mesh fence. The house doors and gates in the fences are open during the day, allowing inmates to move around freely in an area larger than their own unit.

159. Apparently, things are not always like this. I was told that not all CPTAs have adequate structures (inmates housed in tents, no recreation areas, little outside contact). Inmate numbers vary, depending on migration flows and arrests. Some CPTAs are frequently overcrowded, and hygiene suffers in consequence[60].

160. Some CPTAs have been strongly criticised for failing to provide adequate access to medical care, and protect inmates' mental health[61]. I personally had the impression that conditions at Ponte Galeria are satisfactory, since the centre has modern medical facilities and provides any treatment needed. The Italian Red Cross monitors inmates' health from arrival to departure. However, seeing just one CPTA is no basis for passing judgment on all of them.

161. Finally, I noted that an identification centre was being constructed alongside the Ponte Galeria CPTA. This reflects the Minister of the Interior's desire for multi-purpose centres, dealing with everything, from reception through the processing of asylum applications to deportation. This will make for faster processing of applications - but there must be no reduction in the guarantees and protection provided for inmates.

F. The special situation on the island of Lampedusa

162. The island of Lampedusa, just 113 kilometres from the Tunisian coast, is Italy's southern outpost. With an area of 20 km^2 and 5,500 inhabitants, it is a popular summer destination for Italian holidaymakers. For nearly ten years, however, it has also been one of the chief gateways to Europe for migrants from Africa, the Middle East and Asia, arriving via North Africa.

163. A CPTA was provisionally established beside the island's airport in 1998, to house migrants arriving by sea, mainly from Libya. It consists of pre-fabs, each taking some 15 migrants, and its maximum capacity is 190. When I visited, it had 178 male inmates. Its location makes it fairly cramped, and there is very little space between and around the pre-fabs.

164. The centre is run by a religious organisation, *Misericordia*, and has about 25 staff. As at Ponte Galeria, inmates are housed and fed. Those I spoke to told me that they were treated humanely and respectfully by *Misericordia* staff, and by the police responsible

[60] Amnesty International report, Italy: temporary stay – permanent rights, June 2005, EUR30/004/2005.

[61] For more details see the report of Médecins sans frontières - Italy, *Rapporto sui centri de permanenza temporanea i assistenza*, January 2004.

for security and order. The centre's staff, and particularly its director, told me they were happy to be doing this work, in spite of the serious problems caused by large-scale arrivals.

165. In the meantime, however, there have been some very disturbing press allegations of ill-treatment on Lampedusa. These allegations must be thoroughly investigated, any guilty parties punished, and conclusions drawn concerning structural weaknesses which may have been contributory factors.

166. In fact, summer brings a steady increase in the number of boats landing on the island, and the centre often operates far beyond its maximum capacity. Last year, there were times when it had up to 1,200 inmates. When aliens arrive in large numbers, they stay only a short time – about two or three days – and are then transferred to other centres in Sicily or mainland Italy.

167. As I saw for myself, the centre is wholly unable to accommodate numbers like this, even for a limited period. I have said that space is at a premium, and there certainly is no room for extra accommodation - even temporary accommodation. The congestion and overcrowding at the time of this huge influx defy imagination. The centre falls totally short of the minimum standards of space and hygiene needed to accommodate numbers beyond its official capacity in decent conditions. Moreover, facilities (particularly sanitary facilities, whose condition is often deplorable - doors off their hinges, blocked toilets, broken washbasins) have deteriorated rapidly as a result of overcrowding.

168. The Ministry of the Interior was aware of these conditions, and had planned to build another centre on the island – but local opposition blocked the project. The present intention is to convert an existing army barrack complex, and use it to house up to 300 people. I was shown the plans and told that work would be starting shortly and were scheduled for completion by the summer of 2006. Since my visit, I have been informed that the Ministry of Interior intends to change the status of the centre on Lampedusa to a "first aid and shelter centre", with the aim of subsequently transferring the migrants as rapidly as possible to other centres, to be built or extended[62], on the mainland. I can only welcome these initiatives and urge the Italian authorities to complete them as soon as possible. It is indeed urgent that the capacity of the existing centres be increased to cater for large-scale arrival of immigrants and that the administrative, logistical and humanitarian response be improved so as to avoid the repetition of the unfortunate events that have occurred in the past.

169. Shortly before my visit[63], the Ministry of the Interior opened an office in the CPTA, and two police officers are now permanently stationed on the island, to deal with immigration questions. Previously, migrants had to be taken to Agrigento (in southern Sicily, 250km. from Lampedusa) for all official procedures. On the other hand, the district court judge, who is theoretically required to hear all aliens due for removal, is still based in Agrigento, and must travel to Lampedusa by helicopter or boat when necessary.

[62] A tented structure will be opended in Empedocle, the centre in Agrigento will be restructured and reopened and the centre at Caltanisseta will be enlarged.
[63] In May 2005.

G. The removal of certain aliens

170. Many of the people I spoke to during my visit raised the question of the circumstances in which some aliens are removed. As the Italian authorities told me, many aliens who reach the island are returned on charter flights to other countries, and particularly Libya. Thus, of the 3,000 aliens who landed on Lampedusa between September 2004 and March 2005, 1,647 were sent back to Libya and 126 to Egypt[64].

171. My information is that Libyan nationals and "Egyptians" are sent to Libya. I was also told that these removals are based on summary identification of the migrants concerned, who are normally removed very soon after reaching the Lampedusa centre. Unlike those at other points of entry, these removals lack transparency and are not independently monitored by outside agencies.

172. The frontier police are legally entitled to refuse admission to aliens who present themselves at frontiers without papers, as well as those who try to enter illegally and are arrested at, or just inside, frontiers. This also applies to those who are not entitled to enter, but are admitted provisionally for humanitarian reasons – including those who land on the coast or are intercepted at sea and taken to Lampedusa. However, in accordance with the principle of non-return laid down in the Geneva Convention, the law specifies that aliens who apply for asylum may not be refused admission. The conditions in which these aliens are removed, and the criteria applied, are thus decisive in guaranteeing that the principle of non-return is respected.

a) Identification of aliens refused admission

173. Aliens scheduled for removal are first summarily identified, so that the Italian authorities can determine their countries of origin. Most of those who reach Lampedusa have either lost their papers or even destroyed them (often on traffickers' advice), to make identification harder. According to the authorities, many of those sent to Libya are actually Egyptians, but cannot be sent to Egypt unless the Egyptian consular authorities in Italy identify them formally. In practice, nationality is assessed during a short interview with a police officer assisted by an interpreter – during which the migrant might request asylum - on the basis language spoken and accent. I do not feel that decisions with such far-reaching consequences as the determination of an individual's nationality and subsequent return can be decided on the basis of the his or her presumed accent or mother-tongue in such summary interviews.

174. For many reasons, the Italian authorities do not always use professional interpreters at interviews[65], and this increases the risk of the procedure's being biased and lacking in transparency. In spite of the cost, the use of professional interpreters is essential to ensure that aliens' statements are translated accurately.

---

[64] Statement by the Minister of the Interior, Giuseppe Pisanu, to the Senate on 29 June 2005.

[65] Some NGOs told me that an Egyptian woman friend of an official in the governor's office at Agrigento acted as interpreter for interviews conducted in May 2005.

175. It is understandable that states should seek to remove aliens who enter illegally, do not ask for asylum, or are not entitled to special protection. Nonetheless, these people must be given time to apply for asylum[66]. Many of them are physically and mentally distressed after dangerous journeys, and do not really know where they are or what awaits them. This makes it unlikely that they will be able to apply for asylum at once, or even indicate that expulsion may expose them to persecution or violation of their human rights, during the initial and only interview described above.

176. Expulsions resulting from the refusal of entry are effected on the baisis on Article 10 of the 2002 law on immigration and asylum, which covers the return of individuals apprehended whilst illegally entering the territory. Unlike ordinary expulsion proceedings, the return of individuals under these conditions does not require the authorisation of a judge. The expulsions carried out on Lampedusa, therefore, are effected by the administration without any external control, in the absence, in the centre, of any independent authority or organisation. This system appeared to me to lack transparency to offer insufficient gaurantees to arrring immigrants and potential asylum seekers.

b) Countries to which deportees are sent

177. Italy seems to regard Egypt and Libya as states to which deportees can be sent without violating the principle of non-return or exposing them to treatment incompatible with Article 3 of the European Convention on Human Rights. As I have already suggested in an opinion[67], democratic countries which are generally safe may still, on occasion, be unsafe for certain persons or groups.

178. Without going into details, these two countries' democratic credentials are, to say the least, open to improvement. It should also be remembered that Libya has not ratified, or even signed, the 1951 Geneva Refugee Convention. The fact that Italy has concluded bilateral agreements with these countries, and co-operates with them on such questions as respect for human rights and protection of asylum-seekers, does not dispense it from scrutinising the individual situation of every deportee, as required by international humanitarian and human rights law.

179. The Italian authorities have admitted that deporting aliens to Libya is merely a first stage, and that the Libyan authorities must then decide whether to send them on to their countries of origin. Nonetheless, the international principles governing deportation, and particularly the principle of non-return, require states to ensure that deportees are not potential asylum-seekers. They must also satisfy themselves that the first receiving state will not remove deportees to a second state, where they are exposed to the risk of torture or death[68]. By failing to give aliens practical access to asylum procedures, Italy is

---

[66] The Council of Europe's guidelines on forced return summarise the law applying in this area. Guideline 2 on adoption of the removal order states that "a removal order shall only be issued where the authorities of the host state have considered all relevant information that is readily available to them, and are satisfied […..] that [….] enforcement of, the order, will not expose the person [….] to a real risk of being executed, or exposed to torture…", Committee of Ministers of the Council of Europe, Twenty Guidelines on Forced Return, 4 May 2005, CM(2005)40.

[67] See Opinion of the Commissioner for Human Rights on certain aspects of the proposal by the Government of Finland for a new Aliens Act , CommDH(2003)13.

[68] Twenty Guidelines on Forced Return, Guideline 2: "If the state of return is not the state of origin, the removal order should only be issued if the authorities of the host state are satisfied, as far as can reasonably be expected,

indirectly violating the principle of non-return, and leaving a state, which is non-democratic and also unwilling to commit itself to respecting international refugee law, to determine the fate of people who may qualify for asylum or face violation of their most fundamental rights.

180. I discussed my concern that the Italian authorities might be removing potential asylum-seekers with the Minister of the Interior. He assured me of his firm determination to see the law fully respected, but agreed that the procedure's lack of transparency left it open to doubt, criticism and possible abuse. Since the partnership between civil society and the Italian authorities in the migration field had already shown its worth – both for entry into Italy with the CIR and for management of the CPTAs – he accepted my suggestion that the UNHCR be allowed to open a permanent office on Lampedusa, with access to the centre. He later contacted me personally to let me know that his department had been in touch with the UNHCR and that the office would be opening shortly. He extended this offer of co-operation to the IOM and the Italian Red Cross, and I imagine that practical action to consolidate this agreement is now well on the way to completion. This is a most welcome initiative, since it will certainly dispel any doubts concerning removals, and provide more effective guarantees of full respect for national and international law.

H. Expulsion procedures

181. Prior to the Bossi-Fini Act, most removal orders contained an invitation to leave the territory within 15 days. After the entre into force of the Act, the accompaniment to the border has become the norm. In the event of its being impossible to carry out the expulsion immediately, the individual is detained in a CPTA. Aliens may appeal against the regional governor's decision to deport them in a district court. They must do this within 60 days, and the court must give a decision within 20 days of the appeal's being lodged. However, the appeal does not suspend the deportation measure.

182. On the strength of a ruling by the Constitutional Court, the Bossi-Fini Act was amended[69] to provide for judicial supervision of removal orders. Now, when aliens are notified by the *Questura* that they are to be expelled with immediate effect, the matter is referred within 48 hours to a district court judge, who must then decide, again within 48 hours, whether this measure is valid. The deportee is brought before the judge at the CPTA and is assisted by a lawyer. The judge's decision is open to non-suspensive appeal.

183. If the authorities are unable to deport an alien within the set time-limit, he/she is released and ordered to leave the country within five days. Aliens who fail to comply may be charged with a criminal offence, carrying a prison sentence of six months to four years, and a prohibition on entering Italy for five to ten years[70]. Although they are forbidden to remain, the reasons for their non-expulsion (lack of travel documents, lack

---

that the state to which the person is returned will not expel him or her to a third state where he or she would be exposed to a real risk" of torture or death, CM(2005)40.

[69] Legislative Decree No. 241/2004 transposd by Parliament into Act 271/2004.

[70] Article 14, para.5 – ter of Legislative Decree No. 286/98, amended byLlegislative Decree No. 241/04.

of funds) also prevent them from returning to their own countries. Aliens who cannot be deported thus become "legal illegals" if they remain in Italy after the five-day period. It should be noted that illegal aliens have free access to emergency health care.

184. Although I heard no allegations of official violence in connection with expulsions, I did suggest to the Minister of the Interior that the presence of an impartial outside observer might help to ensure full respect for human dignity - and protect Italy's good name in this area. I shall be pleased to hear from him that permission for Italian Red Cross doctors to accompany deportees until they board their aircraft is being negotiated. When deportees are carried on non-commercial flights, these doctors should also travel on the aircraft.

185. According to information supplied by the Ministry of the Interior, Italy expelled 59,965 aliens in 2004. It should be noted that this figure is down on previous years[71]. The Minister did make the point that the cost of these removals is considerable – some 21 million euros in 2004. It must also be said that the Italian authorities, like those in other European countries, often find consulates unhelpful. Many states simply refuse to supply information on their nationals or co-operate by furnishing the necessary documents. Like other countries in southern and eastern Europe, Italy is the victim of its own location, and has to meet single-handed the cost of removing economic migrants who use it as a gateway to Europe. As I have repeatedly insisted[72], it is vital that all the EU countries share responsibility for these would-be immigrants, ensuring that they are helped, and their fundamental and humanitarian rights respected. In co-operation with the African states concerned, the EU could also introduce an effective, co-ordinated policy to give people at present wandering the world in desperation – like these - and their families conditions at home which would allow them to stay there.

I. Anti-terrorist decree and expulsion

186. Shortly after my visit, Italy adopted a legislative decree on action against terrorism[73]. This makes it possible to restrict suspected terrorists' access to lawyers during their first 24 hours in custody. Above all, Article 3 allows regional governors – and not judges, as previously - to order expulsions, for the purpose of preventing acts of terrorism. Moreover, mere indications or suspicions of a person's being a threat to national security are sufficient ground such an administrative decision. Finally, the Decree again derogates from ordinary law by stipulating that only the administrative courts may hear appeals against these orders, though the lodging of an appeal does not supend the expulsion. Since it was adopted, the authorities have been using the Decree to arrest, question and expel aliens presumed to have terrorist connections, but in respect of whom, one supposes, the necessary proof to press criminal charges has not been found.

187. According to the information provided by the Italian authorities, such explusions, as with all ordinary expulsions, cannot be conducted where there is a risk o persecution. This guarantee is certainly indispensable, it is, in my view, equally indispensable that

[71] 65,163 in 2003 and, above all, 88,501 in 2002.
[72] See the 4th annual report of the Commissioner for Human Rights, January-December 2003.
[73] Legislative Decree No.144 on emergency measures to combat international terrorism, 27 July 2005.

the appreciation of this risk be thoroughly conducted by a judicial authority and not left in the hands of an administrative agent representing the Government, in this case the Prefect. The possibility of a non-supsensive *Post facto* judicial appeal cannot be considered a sufficient guarantee.

188. The norm in dealing with terrorists should be prosecution, not expulsion. Expulsion may be the easy option, but it simply shifts the threat, and does not eliminate it. As I have repeatedly insisted, anti-terrorist measures must not ride roughshod over democracy, respect for basic rights and other vital principles. Accelerated procedures, which are adopted for special reasons, must not deprive individuals of the right to defend themselves properly. I would therefore urge the Italian authorities to review the Decree forthwith, to ensure that the rights enshrined in the European Convention on Human Rights and the principle of non-refoulement are fully respected.

J. Facilities for asylum-seekers

189. The implementing decree on the Bossi-Fini Act does not specify the rights of asylum-seekers while their applications are being processed. This means that previous rules still apply. They are given residence permits, which do not allow them to work, and are usually issued three to five months after submission of their applications. They give them the right to a social security number, a residence card and a daily allowance of 17.56 euros during 45 days – an allowance which is paid, on average, after a six-month delay[74], and for which accommodation in a reception centre may be substituted. It should be noted, however, that these measures apply to asylum-seekers who are not in custody, i.e. mainly those who enter the country legally.

190. The National Programme for the Reception of Asylum-Seekers and Refugees (*Programma Nazionale Asilo*, PNA) was launched in 2001, at the instigation of the Ministry of the Interior, the UNHCR and the Association of Italian Municipalities, with co-funding from the European Refugee Fund. Involving numerous national and local NGOs, it covers decentralised accommodation in human-scale housing (often flats), as well as legal and social assistance. Having operated for three years, the PNA was replaced in 2004 by a new programme, the SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati*), with additional funding. The law now leaves the ANCI (Association of Italian Municipalities) to manage the funds, to which the "8/1000", a special income tax levy, is added. Some 19 municipalities are involved in the SPRAR, providing a total of 2,250 places.

191. There are clear disparities in the quality of the facilities and assistance provided for asylum-seekers under the SPRAR, which meets an infinitesimal part of the actual requirements. The budget itself is insufficient and is very unevenly divided, favouring some areas over others, particularly in the south and, above all, Sicily (although it receives a large number of asylum-seekers). It is true that the system's shortcomings are palliated by the many other schemes run by charities or associations, but the main responsibility lies with municipal and regional authorities, which must provide reception facilities, assistance and accommodation for asylum-seekers.

[74] Report by Ms Gabriella Rodriguez Pizzaro, the United Nations Special Rapporteur on Migrant Workers, on her visit to Italy from 7-18 June 2004, E/CN.4/2005/85/Add.3, 15 November 2004, p. 19.

192. In Rome, I was given details of the city's expenditure on running or subsidising reception and accommodation centres for asylum-seekers. This comes to 4.8 million euros per annum for 19 centres, which can take up to 1,100 people. The municipal representative told me that Rome's position was a special one, owing to the fact that the old procedure was centralised in Rome by the Central Refugee Commission – with the result that asylum-seekers waiting to be processed tended to settle nearby. Now that procedures have been decentralised, the number of asylum-seekers living in the capital should decrease. The city's generous spending on accommodation for asylum-seekers also makes for concentration. I visited two reception centres, one run by the city, the other by the Jesuit Refugee Service. At both, I was impressed by the attention staff gave residents and by the special programmes – literacy, Italian and vocational training – provided for them. The interests and aims of asylum-seekers and their families were always carefully considered before integration schemes were devised for them.

193. Being a matter for local authorities, assistance for asylum-seekers is not uniform throughout the country. Expenditure depends to a large extent on local policy preferences, and this makes for regional disparities. It is up to the national authorities to ensure that asylum-seekers enjoy equal rights throughout the country, and so do not congregate in the most open-handed towns.

K. Unaccompanied under-age migrants

194. Unaccompanied under-age migrants are referred to the juvenile courts and, when they cannot return to their families, cared for by local authorities. All unaccompanied minors must be reported to the Committee on Foreign Minors (CMS), which is answerable to the Ministry of Labour. Italy receives few asylum applications from unaccompanied minors, for two reasons. Firstly, they do not usually come from countries in crisis. Secondly, and above all, the protection they receive is so good that using asylum as a pretext (like minors in many other countries) is unnecessary.

195. In 2004, 5,573 unaccompanied minors – mainly Romanians (37%), Moroccans (20%) and Albanians (16%) – were registered by Italian municipalities. However, this figure covers declared minors only, and is not the real total. Many unaccompanied minors remain outside the system, either because they do not want the help it offers, or because involvement with forced labour or prostitution rings prevents them from taking it. Reception centres find that many children stay only a short time before running away. Trafficking in human beings is often behind these situations. This is why Turin City Council has set up a special centre, where exploited children may stay for up to 60 days, and which they may leave only when accompanied by an educator. This stops them from running away, and gives the authorities time to establish their identity and, above all, win their trust, as a prelude to planning a future for them.

196. Unaccompanied foreign minors have the same rights as Italian minors who have been abandoned, including residence cards, and access to schooling and medical care. However, they are not allowed to work. As with asylum-seekers, reception and protection of minors are matters for the local authorities. Here again, treatment varies greatly. Some towns' special centres can meet all the region's requirements, while others are inadequate. I was told that the shortage of places forced some towns to house unaccompanied minors in adult centres.

197. Under Implementing Decree No. 303/2004, minors may not be placed in detention centres for aliens – although I was told that some foreign minors, on arriving in Italy, had been detained in identification centres with adults. Under Act No. 189/2002, minors who cannot be returned to their own countries may be given study or work permits when they come of age - if they have lived in Italy for three years, and have followed integration programmes for at least two. I had a chance to discuss practical aspects of this new rule (introduced by the Bossi-Fini Act) when I visited the *Centro minori stranieri non accompagnati "Scuola di Volo"* in Rome. The first point is that most unaccompanied minors are over 18 when they enter Italy. The second is that proving continuous residence for three years is very difficult. Minors not covered by the ordinary regularisation procedure when they come of age may still be allowed to remain if they can show that they are working and integrated within the community. Italy's protective arrangements for unaccompanied minors could be improved, particularly by providing more reception centres, but nonetheless seem adequate.

VII. LEGAL ALIENS

198. Italy has recent policies on illegal migration and asylum, but it also has procedures for legal migration. Since the early 1990s, for example, successive Italian governments have progressively tightened up the rules on admission and residence, but have also legalised large numbers of "illegals" at regular intervals. Between 1986 and 1998, some 800,000 aliens were regularised in four "waves" (1986, 1990, 1995 and 1998). This happened last in 2003, when, according to the Ministry of the Interior, 641,638 aliens were regularised, having first had to show that they had had jobs in Italy for over three months.

A. Annual immigration quotas

199. For several years, Italy has had annual quotas, based on nationality and labour market needs, for foreign workers. It also has preferential quotas for countries which help to combat illegal trafficking in migrants and has signed agreements on readmission[75]. The Prime Ministerial Decree for 2004 provided for 79,500 jobs (including 50,000 for temporaries), and workers from eight of the new EU countries were also allowed to enter[76]. Employers wishing to import non-EU workers must guarantee them decent housing, undertake to pay their return fares, and give them work contracts.

200. This positive approach, which allows job-seekers to enter the country legally, instead of trying to evade the law, is to be welcomed. In practice, the quota system might be even more beneficial, if it really matched employers' needs. Employers I spoke to in the Veneto voiced their frustration at the methods used to determine national, regional and local requirements. Apparently, the work permits issued are not always enough to meet local needs, and some employers are unable to fill vacancies. In 2004, for example, employers estimated that they needed 6,000 non-EU workers, but were allowed to recruit only 2,300. Better balancing of quotas and requirements would strengthen Italy's policy on controlled economic migration, and reduce the number of undeclared workers, of whom there are many in seasonal or unskilled occupations.

---

[75] In 2004, these countries were Albania, Bangladesh, Egypt, Morocco, Moldova, Nigeria, Pakistan, Sri Lanka and Tunisia..

[76] There are no restrictions on the free movement of workers from Malta and Cyprus.

B. Right to vote and participate of legal aliens

201. Autonomy of Italy's regions allows local authorities to give aliens the right to vote and participate in the life of the community. These positive initiatives should be emphasised, since they do much to help aliens to integrate by giving them a position and role in Italian society. On 27 July 2004, the Municipality of Genoa passed a local law, allowing aliens who had been legally resident in Italy for five years, and in the municipality for two, to vote and stand for election. Consulted by the region of Emilia-Romagna on voting rights for non-EU nationals in local elections, the Council of State gave a favourable opinion[77], although a circular issued by the Minister of the Interior had opposed this[78].

202. Rome has an Aliens Council, comprising four well-known people, who are elected to represent the city's 298,000 foreign residents. They may table items for discussion by the Municipal Council, and attend meetings of its committees (without the right to vote). As in other Italian cities, each of Rome's 19 districts also has a foreign councillor. During my visit, I met the African and American representatives on the Aliens Council, and had a long discussion with them concerning the situation of foreigners legally resident in Italy. According to the various people I spoke to, the main difficulty for legally resident foreigners – apart from housing problems – is obtaining and renewing residence permits.

C. Obtaining and renewing residence permits

203. When the Bossi-Fini Act took effect, conditions for obtaining residence permits were tightened. Foreigners to have benefited from the 2002 regularisation procedure were able to obtain residence permits. However, unlike previous resience permits, the new permits are renewable annually. The acquisition of a residence card now requires the proof of regular residence in Italy for at least 6 years, a valid employment contract and adequate housing.

204. Many associations, and the members of the Aliens Council in Rome, have expressed dissatisfaction at the way in which applications for the issue or renewal of residence permits are processed. First of all, because municipal services lack the staff needed to process applications, applicants often have to wait several days to submit them. Secondly, and above all, the time taken to obtain a permit often exceeds its validity. Some applicants wait two years for a permit valid for just one and then, since this has already expired, have to reapply at once. More resources, or simply more efficiency, are obviously needed to ensure that administrative inertia does not spawn "legal illegals".

---

[77] Opinion 2004/8007 of the Council of State on voting rights in local elections for nationals of non-Community countries.

[78] Circular from the Minister of the Interior (2004/4) on voting rights in local elections for nationals of non-Community countries.

VIII. THE ROMA COMMUNITY

205. The Act on Standards for the Protection of Linguistic and Historical Minorities was adopted in 1999[79]. It transposes Article 6 of the Italian Constitution, and covers protection of Italy's historical language communities[80] and protection measures in specified areas. The Roma were excluded from the Act on the ground that they had no links with any definite area. Indeed, they have no special status in Italian law. My discussions with the Italian authorities and Roma representatives also showed that – much to the latter's regret – there is no comprehensive policy on solving their problems.

206. Some estimates put the number of Roma living in Italy, principally in the centre and south of the country, at 120,000. There are thought to be 60-90,000 Italian Roma, and 45-70,000 "foreign" Roma (born outside Italy or in Italy of non-native parents), mostly from the Balkans – former Yugoslavia, Bulgaria and Romania.

207. As the ECRI[81] report points out, the Italian authorities tend to think that Roma are nomads who prefer to live in camps. Common prejudice sees them as foreign, although much of the Roma community is Italian.

A. Access to employment

208. The representatives of the Roma community I talked to told me that their problems were determined by their nationality, even though they often lived in the same districts and had the same aims. Some 40,000 of the Italian Roma are sedentary, while the rest are travellers engaged in traditional activities, e.g. as horse-breeders and travelling showmen. Social change certainly makes it hard for them to perpetuate these occupations, but so does the authorities' failure to implement certain laws. For example, Act No. 337 of 1968 on theatrical and musical entertainments requires local authorities to provide special site for travelling fairs and circuses. Increasingly, however, these sites are apparently used for other purposes, depriving showpeople of a living and gradually forcing them out of business. I was also told that local authorities sometimes forbid them to perform, on the ground that robbery and petty crime increase when they are present. I therefore urge the Italian authorities to implement the laws on travelling fairs and circuses fully, and prosecute all acts or comments of a racist character.

209. Non-Italian Roma have difficulty in obtaining residence permits or acquiring nationality. The relevant legislation requires a valid employment contract. Without formal work, they are consequently unable to regularise themselves even though many have lived in Italy for several decades. This situation has obvious negative consequences for their access to health care and education.

---

[79] Act No.482/99 of 20 December 1999.

[80] Communities speaking Albanian, German, Catalan, Croatian, Greek, French, Friulian, Provençal, Romanch, Occitan, Sardinian and Slovenian.

[81] European Commission against Racism and Intolerance, second report on Italy, 23 April 2002.

B. Living conditions

a) Access to housing

210. The Roma community is varied in its origins, practices and financial resources. Some live in ordinary housing – social or private – but many live in "districts". There are two types of Roma district, official and non-official. Residents in official districts in Rome live in prefabricated dwellings; in other cities and towns, they sometimes live in caravans or tents. In unofficial districts, Roma also live in prefabs, caravans or makeshift shacks.

211. During my visit, I went to the *Campo Nomadi Casilino 900* in Rome, which counts as unofficial. I should point out, however, that this does not stop the Municipality from getting involved in the life of the camp. Today, about 650 people live in the camp, which was originally occupied by Roma from Yugoslavia, who started arriving in 1969. A few of the residents have Italian nationality, but the great majority are foreigners, although some of them have been in Italy for decades. Living conditions resemble those in other camps in Italy: minimum access to water and electricity, and no roads, lighting, sewers or drainage. People live in broken-down caravans or homes knocked together out of salvaged materials. The camp, in other words, is best described as a shanty-town.

212. The camp representative did tell me, however, that significant progress had recently been made, thanks to active intervention by the municipal authorities. For the last two years, for example, a self-managed surveillance and security programme has been operating. This involves the Roma community more fully and improves relations with the police. Refuse is also collected regularly, which reduces the risk of disease and improves hygiene in the camp. The municipality has provided a few chemical toilets.

213. The municipal representatives present during my visit know that the camp is inadequate, and told me that the city was anxious to provide decent accommodation for its Roma residents. The problem, alas, goes well beyond the *Campo Nomadi Casilino 900* in Rome, and is reflected in the collective complaint concerning housing for Roma in Italy, which was recently declared admissible by the European Committee of Social Rights[82].

b) Access to health care

214. A mobile medical centre visits the *Campo Nomadi Casilino 900* regularly and was present on the day I went there, which gave me a chance to talk to the medical staff. The doctors told me that extremely harsh living conditions, added to poverty and integration problems, have serious effects on the health of Roma in the camp. As well as the usual chronic diseases, many of them suffer from skin and respiratory conditions, which are often difficult to treat. Medical monitoring is complicated by the fact that their only access to care is via the mobile centre or hospital casualty departments. Access to dental treatment is even more difficult, and lack of care and poor hygiene cause irreparable damage, even in young children.

[82] Case No. 27/2004, *European Roma Rights Centre v. Italy*, declared admissible on 6 December 2004.

215. Here again, this specific situation seems to reflect the general health situation of a not inconsiderable section of the Roma community in Italy. In theory, they have the same rights as other people, but direct access to medical treatment is impeded by various factors, including lack of papers and ignorance of the system. Poverty also prevents them from consulting doctors when they need to, and access to treatment too often takes the form of last-minute hospital intervention.

c) Education

216. The transport problems of Roma children living in camps far from schools, and the often precarious financial situation of their parents, limit their access to schooling. This, combined with a certain distrust of schools on the part of some Roma parents, makes for abnormally high absenteeism. However, it must be emphasised, as ECRI does in its report on Italy[83],that some efforts have been made in this area, particularly by appointing cultural mediators. Italian courses for adults and vocational training have also been introduced.

217. I was particularly struck by one very simple problem. Roma parents told me that registering their children in schools was very difficult. Schooling up to the age of 13 is not a problem. In fact, school attendance is compulsory for all children up to that age, and identity papers and residence permits are not required. Above that age, normal residence permits must be produced. Most Roma children who are not Italian nationals do not have residence permits, although many of them were born in Italy. As I saw at the *Campo Nomadi Casilino 900*, lack of formal status and of a legal place of residence recognised by the authorities can prevent them from gaining access to schooling. Parents are clearly discouraged by this inextricable situation. Without schooling, their children stand very little chance of finding work, particularly in Italy, where qualifications are becoming increasingly important; and without work, they can neither integrate nor obtain papers. They actually want their children to go to school, but get no support from the authorities. It is, in my view, inconceivable that children who want to go to school should be unable to do so for purely administrative reasons. Solutions allowing young Roma to attend school normally are urgently needed.

IX. PROTECTION FOR THE VICTIMS OF TRAFFICKING

218. The appalling problem of trafficking is one which affects the whole of Europe. For purposes of prostitution, clandestine labour and crime, increasingly well-organised networks are forcing men, women and even children to live in inhuman conditions. It is up to every state to take effective preventive and punitive action in co-operation with its neighbours. Italy's efforts in all these areas are particularly laudable.

219. Legislative Decree No. 286/98, which came into force in 2000, and particularly its Article 18, made considerable improvements in the protection provided for victims. Under that article, victims of trafficking who co-operate with the police and courts may be given a renewable six-month residence permit "for reasons of social protection". By 31 October 2003, 3,757 such permits had been issued. They allow victims to work, study and receive social and medical assistance under a special protection and social assistance programme. They may later be converted into ordinary work permits.

---

[83] European Commission against Racism and Intolerance, second report on Italy, 23 April 2002.

220. More generally, the Decree acknowledges and supports the fundamental role played by local authorities and NGOs. Protection and assistance programmes are run by the public authorities and by associations. The institutions working to help victims are varied, providing legal assistance, physical protection, shorter or longer-term accommodation, psychological counselling, etc.

221. A new Act to combat trafficking more effectively was passed in 2003. Among other things, it deprives traffickers of certain rights, to ensure that they cannot continue operating while in prison, and introduces more severe penalties for members of trafficking rings. It also supplements the provisions of Legislative Decree No. 286/98 concerning work or residence permits for victims. This improved protection for victims, combined with stiffer penalties and new resources for investigation, have facilitated the fight against trafficking in Italy. Thus, the number of prosecutions for trafficking rose from 1,300 in 2002 to 2,200 in 2003.

222. There are now reception and vocational training centres for the victims of trafficking. Finally, assistance and voluntary return programmes have been introduced. A special fund has been set up for victims (to cover legal aid, training and other measures to help them integrate) based on state subsidies and also on the confiscated assets of traffickers. Italy has also launched international programmes, in partnership with NGOs, to facilitate the return of victims, and particularly unaccompanied minors, to their own countries.

223. Italy thus has laws which make it possible to protect victims and prosecute members of trafficking rings effectively, and which often surpass the minimum European standards. It is also making substantial preventive efforts, in co-operation with other governments and NGOs, by running awareness-raising programmes both in Italy and countries of origin. I should like to pay tribute to the action it has taken to combat trafficking, which combines firm punishment with protection for victims and advanced measures to put an end to this evil.

X. INSTITUTIONS FOR THE DEFENCE OF HUMAN RIGHTS

A. A national human rights institution

224. In 1997, the Italian Government set up an Interministerial Committee for Human Rights (CIDU) in the Ministry of Foreign Affairs. This comprises representatives of several ministers and of various public authorities. The Minister of Foreign Affairs also appoints three leading human rights specialists for a period of three years. Civil society is not represented, although the Committee often consults it. The Committee's tasks include monitoring all laws and regulations with a bearing on Italy's international commitments, ensuring that Italy respects international agreements, and liaising with civil society.

225. When I met the members of the CIDU and its Chairman, Mr Calvetta, we discussed the possibility of establishing a national human rights institution, based on the Paris principles. Mr Calvetta told me that the Italian Government was determined to set up

such an institution, taking the model developed in the French-speaking countries as a starting point and adapting it to Italy's culture and traditions. As I obviously told him, my office would gladly help the Italian authorities to plan this project, which I welcome.

B. Ombudsmen

226. Although Italy is not a federal state, it resembles Germany and Switzerland in having only regional ombudsmen, and no national ombudsman. They operate in various regions, but the whole of the country is not covered. Their powers and resources vary, depending on the region's history and intentions, but they play a fundamental role, since Italy gives the regions very extensive powers, particularly concerning housing and health. I am convinced of the value of the work they do in protecting individuals and, more generally, defending human rights, particularly in the absence of a national ombudsman. I would therefore urge regions which have no ombudsmen to appoint them (electing them if necessary), and the others to give their ombudsmen the powers and resources they need to do their job effectively.

227. Finally, the usefulness of appointing a national ombudsman has been under discussion for the last 20 years. The existence of regional ombudsmen and a possible national human rights institution makes no difference here. Numerous European countries benefit from having a national ombudsman, regional ombudsmen and, in some cases, a human rights commission based on the Paris principles. Italy may be largely decentralised, but numerous powers still lie with central government. Supervision by an ombudsman should ease relations between the public and the authorities. Moreover, an independent and respected ombudsman would certainly reduce the number of cases brought in civil and administrative courts, and so relieve their excessive case-load. This being so, I would urge the Italian authorities to consider appointing a national ombudsman, following the example already set by 37 of the Council of Europe's 46 member states.

XI. OTHER SUBJECTS OF CONCERN

228. During my visit, my attention was drawn to various problems which I was unable to raise in my discussions with the authorities. Nonetheless, given their importance, I should like to outline them briefly.

229. Italy, and particularly the great Italian cities like Rome and Milan, is experiencing a severe housing crisis. My report has raised this question in connection with housing for Roma and foreigners. But it is larger than that, since finding decent housing is a problem for all Italian residents, both native and foreign. Speculative building, the rapid growth of certain cities and lack of social housing are making it impossible for the least well-off to find accommodation in the private sector. On the other hand, investment in social housing is insufficient to meet all the needs. Public spending, tax relief for home-owners and the relaunching of building programmes must be comprehensively considered, with a view to providing decent housing for everyone.

230. Police violence and prosecution of the police officers responsible are subjects of concern to civil society. Police reactions to certain demonstrations, such as those in Genoa in 2001 and particularly those against the Iraq war in 2004, have involved

excessive use of force and even firearms. Investigations and prosecutions are under way, and some trials have already taken place. Like the NGOs, I think it essential that the truth be established, and guilty parties tried without delay.

231. Finally, independence of the media was a question raised by various experts I spoke to. They particularly referred to the Gasparri and Frattini Acts. Under the Gasparri Act[84], the 20% limit on media holdings now applies across the board, and not to each sector separately. This means that a media group may now control more than 20% of, say, television or the press, provided that its share of the total market is less than 20%. The Frattini Act[85] establishes an administrative body to ensure that members of the Government do not exploit their powers in their own interest, and prohibits them from having direct responsibilities in firms. Where these laws are concerned, I rely entirely on the opinion recently given by the European Commission for Democracy through Law – the Venice Commission – on compatibility of the Gasparri and Frattini Acts with the Council of Europe's standards on freedom of expression and media pluralism[86]. In its opinion, the Venice Commission calls on the Italian authorities to support the press in the face of pressure from advertisers, and expresses doubt as to whether the Gasparri Act can fully guarantee media pluralism in Italy. As for the Frattini Act, it considers its criteria vague and its sanctions insufficient, and questions its real impact on the conduct of certain members of the Government.

CONCLUSIONS AND RECOMMENDATIONS

232. In accordance with Article 3, paragraphs b, c and e, and Article 8 of Committee of Ministers Resolution (99) 50 the Commissioner makes the following recommendations to the Italian authorities:

Concerning the functioning of the judicial system

1. Implement a reform programme to reduce procedural delays and the backlog of cases, *inter alia* by simplifying procedures;

2. Increase the financial and human resources of the courts, particularly by appointing legal assistants and lay magistrates;

3. Examine and process cases still pending before the *sezioni stralcio* as rapidly as possible;

4. Modify the time-limit system to limit abuses and delaying tactics, by taking account only of periods when the public authorities fail to act;

[84] Act No. 112/04 on the principles governing the broadcasting system, RAI and the authority established by the government to strengthen the laws on broadcasting in Italy, adopted on 3 May 2004.
[85] Act No. 215/04 on settling conflicts of interest, adopted on 13 July 2004.
[86] Opinion 309/2004 of 13 June 2005, CDL-AD(2005)017.

Concerning reform of criminal law

5. Adopt legislation making it possible to reopen criminal proceedings when new evidence comes to light or the European Court of Human Rights gives a relevant decision;

6. Insert the crime of torture, as defined in international law, in the Criminal Code;

Concerning the prison system

7. Take rapid action to reduce overcrowding in prisons, by promoting alternative measures and increasing prison capacity;

8. Recruit prison staff to fill current vacancies, and ensure a reasonable staff/prisoner ratio;

9. Give prison inmates better access to health care;

10. Expand the activities, and particularly the possibilities of working, available to prisoners;

11. Provide the funds needed to ensure that young offenders' prisons function effectively, and to cover renovation;

Concerning the Section 41 bis system

12. Improve conditions of detention for prisoners covered by Section 41 bis, particularly by humanising living and exercise areas, and providing more activities;

13. Provide ongoing psychiatric support for these prisoners, particularly when daytime solitary confinement is added to the other Section 41 bis measures;

Concerning the mental health system

14. Make compulsory placement in a psychiatric institution conditional on a psychiatrist' favourable opinion;

15. Increase the number of places available in psychiatric facilities in hospitals, particularly for chronic and long-term patients;

16. Guarantee that patients interned in judicial psychiatric hospitals (OPGs) are not forced to remain because no outside places are available;

Concerning asylum procedures and asylum-seekers

17. Keep asylum-seekers in detention only when this is strictly necessary, and having studied each case individually;

18. Improve conditions of detention in identification centres (CDIs) and temporary residence and assistance centres (CPTAs);

19. Provide the funds which the territorial commissions need to operate;

20. Establish a second instance for asylum applications going through the ordinary procedure that suspends the expulsion order;

21. Ensure that the social rights of asylum-seekers are respected throughout Italy, particularly in the matter of access to health services;

22. Launch a programme to provide all asylum-seekers with decent accommodation and with meals until the asylum procedure is completed;

Concerning the principle of non-refoulement

23. Ensure that the principle of non-return is firmly respected when migrants are intercepted at sea or are being removed;

24. Ensure that each case is examined individually, making it possible for aliens arriving in Italy to apply for asylum;

Concerning the removal of illegal aliens

25. Ensure that the expulsion of aliens considered to pose a threat to national security be controlled and authorised by a judicial authority;

26. Authorise the presence of a member of the Red Cross on non-commercial flights carrying deported aliens;

Concerning the special situation on Lampedusa

27. Review the management and distribution of arrivals on the island of Lampedusa, to ensure that the number of occupants does not exceed the centre's maximum capacity;

28. Pending opening of the new centre, improve living conditions in the existing centre, particularly by renovating the sanitary facilities;

29. Thoroughly investigate allegations in the press in October 2005 concerning ill-treatment and harassment, and punish any guilty parties;

30. Accept the permanent access of a UNHCR representative to the centre, to guarantee transparency of procedures;

Concerning illegal aliens

31. Facilitate practical arrangements and procedures for the obtention of residence permits and access to housing;

Concerning the Roma community

32. Provide easier access to residence permits and, when appropriate, Italian nationality for foreign members of the Roma community who have been resident in Italy for many years;

33. Continue the programmes designed to help Roma to enter the labour market;

34. Implement, as a matter or priority, a national programme to provide Roma in shanty-towns with decent living conditions;

35. Allow children without papers, including Roma children, to continue their schooling on reaching the age of 13;

Concerning human rights institutions

36. Promote the appointment of a national ombudsman and the establishment of a national human rights institution based on the Paris principles;

37. Institutionalise and strengthen the powers of regional ombudsmen;

Concerning media freedom

38. Implement the Venice Commission's conclusions, to ensure that the Council of Europe's principles on support for the media, media concentrations and supervision of the media are fully respected.

APPENDIX

ITALIAN CONSIDERATIONS FOLLOWING THE REPORT OF THE HUMAN RIGHTS COMMISSIONER, Mr. ALVARO GIL-ROBLES, ON HIS MISSION TO ITALY (June, 10-17 2005)

[Rome, December 2005]

PART I

GENERAL CONSIDERATIONS

1. INTRODUCTORY CONSIDERATIONS

Being aware that the domestic legislation of a State is not the only parameter for the protection of fundamental freedoms, Italy deems that the old pattern, by which the State is the only guardian of the rights of its citizens, is outdated.

The **Italian Constitution** of 1948 had already foreseen it. This envisages the protection of all rights and fundamental freedoms included in relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Human Rights Universal Declaration or the International Covenant on Civil and Political Rights. The protection and promotion of rights – be it civil and political, economic, social and cultural, be it referred to freedom of expression or to the fight against racism or to the rights of the child and of women – constitute one of the fundamental pillars of both domestic and foreign Italian policies.

In our view, the basic rule, if any, which should guide modern democracies in the protection of rights is the effective implementation of the principle of non-discrimination, one of the main pillars of our constitutional code upon which the domestic legislative system is based, when referring to different categories of people, such as women, minorities and other vulnerable groups.

The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. In practical terms, before affecting such rights, the Italian legal system provides individuals with a wide range of protection means. No arbitrary conduct against fundamental freedoms is allowed by the Italian legal system. Mention may be made, on a comparative note, of the Italian measures against terrorism and the ones adopted in other countries.

We believe that a legal system based on freedoms should have its own unity and inner coherence so that it can be evaluated as a whole. By isolating single elements, placing them under a magnifying lense, this can cause the loss of the whole picture or, even worse, break down the inner balance of the system. We also believe that a legal system aimed at ensuring the highest level of guarantees requires that the related proceedings must emphasize the content of such rights instead of diluting the impact of its most significant aspects. We, thus, give priority to a system devoted to the protection of freedoms.

As to the system of guarantees, the Italian Constitutional system of procedural guarantees, including the right to defence, is an example, but not the only one. They are expressed inter alia by the so-called “principle of the double level of adjudication ” which takes place, at the domestic level, through a system of appeals, characterised by three possible levels of trial. Each stage constitutes a further level of judgement, controlling the previous one before the superior judge. Such a system can produce some inconvenience: the proceedings go too long. The system of appeals and the three possible levels of trial, while offering the most extensive range of guarantees, delay the conclusion of the controversy. This is an old and long-debated issue of difficult solution that we are facing, given the difficulty to harmonise conflicting needs, such as the high level of guarantees, on one hand, and, on the other, the rapidity of the proceedings.

These considerations refer also to other aspects concerning the right to freedom that, in our view, must prevail on the rationality or the rigidity of the procedures. The latter should be instrumental to the protection of freedom and not be considered separately. We should think about those countries where the death penalty is still in force: many executions are taking place following insufficient (or too rigid) procedural guarantees.

An additional consideration refers to the “rationale” behind the Italian legislation on fundamental rights. When an Italian legal provision apparently seems to affect the basic individual needs expectations, in reality we are facing a "modus procedendi" aimed at protecting fundamental rights, such as the right to life, safety, personal freedom and security. This is somehow a method of “damage containing”; by which a higher requirement is protected while other simply legitimate requirements of the individual are temporarily compressed. Two examples, even though many others could be made.

The “security rooms” - where people are placed as soon as they are arrested - have been criticized as structures of punitive nature. In fact, such rooms are furnished and structured in a way so as to prevent the persons under arrest from hurting themselves or attempting suicide. It is in fact well known that persons arrested for the first time, because of the trauma they undergo, are exposed to some kind of self-injuring attitude while, on the contrary, persons that have gone through a trial and have been convicted, are already used to the idea of being deprived of freedom. Through the security rooms, such as those the Police and Carabinieri forces in Italy are endowed with, suicides of persons just detained for the first time have almost disappeared: they probably sleep badly or find the environment less comfortable, but surely they have not got any pretext to attempt to their own safety!

We are perfectly aware of the fact that “nobody is perfect” and that some legal institutions in the Italian system, as well as in other Western countries, can be improved. We intend to move towards this direction, with only one limit: any future initiative should aim at enlarging the sphere of human freedoms and rights rather than reducing it. This means that in some situations it will be unfortunately necessary to make some choice.

2. Concerning the Italian justice system

Turning to other issues, the observations of international organisations, including the Council of Europe, on the measures to be adopted in Italy in order to improve the efficiency of the justice system have been the subject of an in-depth examination by the Italian Government.

With regard to the principle of “due process of law”, this has been implemented, at the constitutional level, by Act no. 2/1999 which entered into force on 7th January 2000 and integrated by five new sections Art.111 of the Constitution. Such amendments were inspired by the principle of “due process of law” stemming from the common law system and aiming at enhancing the accusatory model within our legislative system. The principles thus emanating are as follows: the procedural system is regulated only by statute (“due process of law”); impartiality of judges; taking evidence after hearing both parties to the proceedings and derogations admissible thereto when the defendant provides his/her consent, when it is impossible to take evidence by hearing both parties, or when there is evidence of illicit conduct; “equality of arms” between the prosecution and the defence; the reasonable duration of the process (in this regard, we recall the so-called Pinto Law to deflate the backlog of complaints filed before the Strasbourg Court); the right to be promptly informed.

Within this framework, the principle according to which the penal sanction must be considered as a last resort has been reiterated, inter alia, with a view to reducing the number of the so-called “mere querelles”. This issue has been attentively tackled by decriminalisation legislation adopted over the last 25 years, since the entry into force of Act no. 689/81 (for further details, please read below Appendix no. 1).

The excessive duration of judicial proceedings in Italy are a matter of concern, which is taken into consideration by every level of the system. This is a matter of concern for the negative impact both on Italy position at the international level and on the foreign investments to be brought in our Country. Such problems, particularly in the civil sector, do not facilitate the economic sector and thus affects the “competitiveness”. Therefore, the utmost attention is paid to how to remedy to this plague that entails financial consequences affecting especially the State’s budget, including the financial consequences stemming from the application of Act no. 89/2001 (the so-called Pinto Act).

Therefore, a brief judgment is not a just and fair judgment, as well as a long judgement is not unfair for itself. Moreover the length of a procedure is often directly connected to the level of judicial guarantees. All the advanced democratic systems are facing in a more or less serious way the phenomenon of the length of the process.

In Italy among the structural causes of such phenomenon it is useful to draw the attention on the principle, as established in the Italian Constitution, of “the obligatory nature of the penal action”. Such principle, beyond every appraisal of merit, is an objective deterrent to the reduction of the number of penal proceedings. The decriminalisation process does not produce all the effects we wish, especially if we consider, on one hand, that the penal sanction stems from international instruments, on the other the situation which Italy faces vis-à-vis the fight against new and long-standing organised criminal organisations, including terrorism network.

In the civil proceedings field, the structural cause of the delays stems inter alia from the low costs to file a complaint before justice of peace: until December 2004, such proceeding was free while now it costs approximately 30.00 euros. As a matter of fact, the amount of suits for jurisdictional protection is constantly increasing. This trend represents one of the most relevant factors when assessing the judicial situation, within the framework of which we have to recall the backlog of past years. In this regard we talk about "a judicial debt".

Despite the increase in judicial settlements (+ 115% in 2004, with an average length of 44 and 45 days, for the controversies between enterprises and between enterprises and consumers, respectively), a natural inclination of Italy to resolve disputes before a judge determines a development of the means to deflate the process that is not in line with the planned purposes. Nevertheless, positive circumstances drive Italy to continue along this way, particularly in setting aside prejudices and promoting settlement proceedings, in addition to the increase in the allocation of funds for the Italian justice system.

By taking into account the relevant data, including those concerning the high cost of the justice system, the initiatives adopted and those under implementation, it seems feasible the reduction of the length of judicial proceeding in the coming years, without completely changing its timeframe/the duration or the relevant patterns, particularly in the medium term (see Appendix n.1, also for specific information provided by the Italian Ministry of Justice in addition to that one already submitted)

3. Concerning the reform of criminal law

With regard to the well-known problem of the lack of the insertion and formal definition of the crime of torture in the Italian Criminal Code, does it mean that in Italy torture is tolerated? The absence of such crime from the Criminal Code does not mean in any case that in Italy torture exists. Torture does not exist because this is a practice far from our mentality and because some sections of the Criminal Code severely punish such behaviours, even though the term "torture" is not included in the Code itself. Moreover, we are considering the possibility, in relation to the adjustment of our legal system to the Statute of the International Criminal Court, to insert the crime of torture in our system, through a wider and comprehensive definition than that of the relevant international Conventions. However, the substance will not change, with or without the word "torture" in the Criminal Code. Art.32 of Bill no. 6050 (2005), as introduced before the Senate by Hon. Pianetta, envisages inter alia that: “Anybody who harms an individual under his/her control or custody with serious pains and sorrows, physical and psychological, is punished with detention penalty of up to ten years ...”

In this context, a step forward was made in early 2002 by the introduction of the crime of torture in the Military Penal Code in Time of War (Art. 185 bis of the aforementioned Code). Such provision may be applied to all “the task forces members abroad participating in military armed interventions”, including interventions “in time of peace”. Art. 185 bis of the cited Code provides that “the forces personnel that, on grounds pertaining to war, commit acts of torture or other inhuman treatment…harming prisoners of war or civilians or other protected persons… is convicted to detention penalty of up to five years”.

4. Concerning the penitentiary system

The **Prison population** strongly increased over the last decades: in 1980 the average number of inmates present was about 30.000, while in the year 2004 it was beyond 56.000, and in the current year it did not drop under 59.000, out of a capacity of 43.000 places.

As for the actual accommodation possibilities for prison population, despite the interventions carried out in the penitentiary structures in order to adapt them to the rules of the new enforcement Regulations of the penitentiary Act, the conditions of increasing overcrowding make it difficult to ensure the necessary detention spaces. Some prisons are currently under renovation in order to adapt them to the standards provided for by the above-mentioned new Regulations; at the completion of those works, almost 3000 more places will be available for prisoners (100 of which are available from November 2005). Along these lines, a programme to build twelve new prisons is ongoing (Rieti, Marsala, Savona, Rovigo, Sassari, Cagliari, Tempio Pausania, Forlì, Oristano, Trento, Varese and Pordenone). All those projects are inspired by new criteria included in the new Penitentiary Regulations, which provide for modern and comfortable cells, equipped with toilets and shower, a small kitchen and wall sockets for TV, radio and computer.

In every wing, adequate common spaces will accommodate the whole of treatment activities: education, spare time, religion, sport and work. Classrooms are provided to enable prisoners to carry on their education path. There will be one library and spaces for treatment activities. Special classrooms for theoretical lessons and workshops for practical exercise are provided for vocational training courses. Suitable handicraft workshops with very modern equipments will be at working prisoners’ disposal. Indoor spaces (recreation rooms, theatre-cinema halls) for leisure activities are foreseen, as well as open spaces for outdoor exercise. A gymnasium and a football field will enable sport activities. Different religious worships will be practised in different rooms.

On June 2005, 24.899 subjects were assigned to the Probation Service, 2.710 were in semi-liberty, and 10.661 subjects were in home detention, for a total amount of 38.370 persons serving their sentences in the community.

With reference to the issue of the poor access of non-nationals to measures alternative to detention, it must be noted that the Supervisory Court, body of the ordinary Magistracy, orders the relevant provisions, which is independent and autonomous from the Penitentiary Administration.

However, most of foreign non-EU prisoners are illegal. This means that they do not have a residence permit to stay in Italy. This situation prevents the Supervisory Magistracy from granting them measures alternative to detention, since those prisoners do not fulfil one or more requirements provided for by the law (for instance, a permanent address or a permanent job). It is not therefore possible to make any comparison between the number of foreign prisoners and the number of non-nationals living in our Country, since the latter are legal immigrants (whose percentage among the prison population is very small), whereas most foreign prisoners are illegal; there are no definite data as for illegal non-nationals in liberty.

The high number of illegal immigrants in our Country also affects the number of non-nationals in Italian prisons. Indeed, the clandestine immigrant has precarious economic conditions, lives a poor affective life, is socially excluded: these conditions, together with very poor schooling level, lead them to have deviant behaviours and to be easily involved in organised crime activities, performing tasks of low-cost unskilled “labour”. As a consequence, the non-national involved in criminal activities is easily arrested and is held in prison, pending trial, because s/he has neither permanent address, nor identity papers, nor means of subsistence. As a matter of fact, these subjects, due to their condition of clandestine offenders live in prison, as this is the only possible place to stay for them until the end of their trial.

The law provides that the foreign prisoner is informed, in a language that can be understood by him, of the penitentiary rules, of his/her rights and duties and of the possibility to be assisted by an interpreter. They are also entitled to contact their consular authority in order to inform it of their status of detention and to request assistance.

5. Concerning the enforcement of Article 41 bis

The special detention regime provided for by Art. 41-b of the Penitentiary Act (introduced in 1992 and amended in 2003) is a prevention measure, aimed at interrupting the contacts between the imprisoned boss of a criminal, terrorist or mafia organization and the members of such criminal organization, who are at liberty and operating outside prison.

That special regime aims at preventing such person from keeping contacts, even though imprisoned, with his/her criminal group operating outside prison, receiving news and information and giving orders, through direct and indirect occasions for contacts with the outside world. Therefore, it is not a worsening of the penalty, but it is just a measure to prevent the commission of further crimes through the orders given by the person imprisoned.

The obligations and prohibitions contained in the Decree by the Minister of Justice applying the 41-b regime entails a drastic reduction of communication means with the outside world; a lower number of visiting hours with relatives (one hour per month, according to such modalities to prevent the possibility of confidential communications, due to the presence of a

glass division); visits with persons different from relatives and cohabitants are forbidden; detention in a single cell and limitation of daily outdoor stay – maximum four hours (two hours to be spent in sociality rooms in groups composed of no more than five persons); the limitation of the number of parcels receivable from the outside (up to two parcels for month).With the exception of the above-mentioned limitations, prisoners under the 41-b regime have access to any opportunity provided for by the Penitentiary Act.

The decree by the Minister of Justice applying the 41-b regime **is valid for six months.** After that period, the decree can be extended for a further six month-term, provided that there is evidence that the conditions which justified it (top position of the person imprisoned and criminal organization operating outside) still exist.

Complaints against the decree of enforcement and extension of the special 41-b regime may be lodged by the prisoner to the Supervisory Court, body of the ordinary magistracy. The Supervisory Court weighs the legitimacy of both the whole provision and the single obligations and prescriptions included in the provision itself. The Supervisory Court has the power to annul the whole provision or some obligations and restrictions provided by it, which are considered useless for the aim pursued.

The health-care service for prisoners under the 41-b regime is not different from common prisoners' health-care, since they can have recourse to any mean available to the Penitentiary Administration and, where such means prove to be inadequate, they can have access to health-care in outside care centres.

At 13th October 2005, 582 prisoners are subjected to the 41-b special regime; 575 of them are men and 7 of them are women. Non-nationals are just 4.

6. Concerning the psychiatric system

In light of Article 32 of the Italian Constitution, all people in the Italian territory access to health care services. The essential levels of health-care – LEA are based, in accordance with the relevant 2001 Presidential Decree, on the following principles/features: to be necessary, appropriate, homogeneous. All citizens are entitled to receive health-care services included in the "essential level" at no cost in terms of access or against payment of a small share for services that are not fully covered by the national Health System. Health care system is based upon the following pattern: Collective health care[87]; District health care[88]; Hospital care[89].

By adopting Act no. 180/78, Italy closed up the psychiatric hospitals which have been replaced by the so-called National Health Service (Servizio Sanitario Nazionale) established by Act no. 883/78. Italian authorities have thus opted out for intervention measures, well-accepted also by WHO, which envisaged the establishment of Mental Health Departments (Dipartimenti di Salute Mentale) throughout the country, to which local facilities, hospitals and so-called residential and semi-residential facilities are linked.

---

[87] Collective health care in life and working environment includes (all prevention activities addressed to the population and to individuals): Protection from the effects of pollution and industrial accident risks; Veterinary public health; Food hygiene control; Prophylaxis for transmissible diseases; Vaccinations; Early Diagnosis programs; Forensic Medicine;

[88] **District health care** includes (health and social care services distributed throughout the country): Primary care; Pharmaceutical assistance; Local emergency; Specialist day hospital service; Services for the disabled and prostheses; Home care services for the elderly, chronically ill people; Mental health care services; Semi-residential and residential structures for the elderly, disabled, terminal patients, drugs addicted people, and alcoholics, HIV positive persons; Hydro thermal treatments;

[89] Hospital care includes: First aid and emergency response; Ordinary hospitalisation; Day Hospital and day surgery; Long term hospital stays; Rehabilitation hospital; Home-based services provided by hospital staff; Blood and transfusion services; Tissue for grafts and transplants.

Against this background, we acknowledge that some episodes concerning the lack of adequate assistance have occurred. Such events did not depend on the lack of facilities but on some organisational shortage: All relevant facilities are in line with the standards laid down by Law, despite some shortage of personnel. In this regard, it is worth recalling that a clear picture of the care services can be taken only by considering different key indicators, namely the so-called facilities indicators (their adequacy to standards), the process-indicators (activity carried out by stakeholders on the basis of scientific evidence), and the outcome indicators (what happens to the patients).

As to the treatment for mentally ill people who complete their stay in the so-called judicial psychiatric hospitals, it is worth emphasizing that their release process may be postponed due to the difficulties to find out rehabilitation solutions, particularly for those with serious problems. Such difficulties do not stem from the lack of facilities, rather from the clear need of an adequate response to be provided, once these people are released (most of these people have committed household criminal behaviour). To better tackle such situation, a joint working group between the Justice Ministry and the Health Ministry is currently working towards the implementation of ad hoc cooperation protocols between the Judicial Psychiatric Hospitals and the Mental Health Departments.

Within this framework, we would like to recall that the so-called Compulsory Health Treatment (Trattamento Sanitario Obbligatorio – **TSO)** is a measure restricting personal freedom and is to be adopted only upon decision of the Public Health Administration (despite the lack of consent of the patient). Such measure can be taken for the protection of the individual's health and of population's. Therefore this is a measure to be adopted **only under exceptional circumstances**. Moreover, this is proposed exclusively by a physician who ascertains the health conditions of the patient and must be issued **only upon a Mayor's decision** as representative of the Public Health Administration. Such process takes place on a double track: on one hand, the Mayor's measure must mention the place and the facility hosting the patient, on the other, relevant stakeholders will assist the patient in order to get his/her consent. Furthermore, it is worth recalling that such treatment, on one hand, is decided by physicians, aware of their responsibilities, on the other, psychiatrists are involved in the cited process. Along these lines, provided that the treatment under reference must be limited to the rehabilitation of the patient, its duration cannot be set in advance, apart from the obligation over physicians to promptly inform the Mayor and the probate justice about the course of the care intervention (as set forth by the current, relevant legislation).

The right to health-care, acknowledged by the Italian Constitution, is fully assured to the entire prison population, without any distinction between Italian prisoners and non-national prisoners.
The first duty of the Penitentiary Administration is to provide prison population with an adequate health-care service, equal to the health-care provided to free people.

In every prison, there is at least one physician, employed by the Penitentiary Administration, helped by indentured medical doctors and nurses, whose number varies according to the number of prisoners. The most required specialist health-care services are provided through agreements with specialist medical doctors, and are paid by the Penitentiary Administration. If the required specialist care is not provided in the prison, scheduled specialist examinations at local hospitals are carried out; moreover, prisoners can also be hospitalised at the Clinic centres of the Penitentiary Administration.

7. Concerning the asylum-seekers
8. Concerning the principle of non refoulement
9. Concerning the expulsion of illegal immigrants
10. Concerning the so-called "Lampedusa case"

The serious dimension of the phenomenon of the flow of foreigners irregularly entering our Country is an ever-growing concern. It is therefore with this in mind that Italy is engaged in the implementation of a comprehensive legislation on asylum, as requested by the High Commissioner for Refugees and by the main NGOs. In doing so, we must naturally take into account the aims of the EU, especially following the political integration process provided by the Amsterdam Treaty vis-à-vis the right to freedom of movement and asylum.

Facing problems such as asylum or illegal immigration, the respect for the fundamental rights of men, women and children is the primary criterion guiding our action. The countering of illegal immigration is not in fact marked by mere repressive intentions, instead, above all, it tries to avoid further suffering and violations against these people. Illegal immigration is the first circle in Dante's Hell as a consequence of trafficking in human beings, trade of organs, exploitation of prostitution, illegal work developing into new forms of slavery.

For geographical reasons, Italy is one of the most exposed main points of transit and destination of such immigration flows and, as such, one of the leading countries in countering such phenomenon. Therefore through a series of initiatives - promoted both at the national and international levels - Italy wants to be in the front-line in the action for prevention, fight and suppression of such despicable phenomenon.

Without reiterating what was just mentioned, when dealing with non refoulement-related issues, including the expulsion of illegal immigrants and particularly the so-called Lampedusa case, the respect for the fundamental rights of men, women and children is the primary criterion guiding our action.

The second criterion could be the transparency. In August 2005, the Italian Government presented a proposal to involve **UNHCR, IOM and the Italian Red Cross** in the rescue activities, as well as in the repatriation procedures towards North Africa, in particular Libya, of illegal immigrants landed on Lampedusa Island. By this proposal, Italy aims at establishing on the above Island focal points of the cited Organisations.

A specific legislation entered into force in April 2005. This envisages the establishment of seven territorial commissions for the recognition of the refugee status, simplification of the relevant procedures and the creation of a Centre for the identification of asylum seekers. Such initiatives have been adopted in order to reinforce and improve practical measures, ensuring adequate health care, legal aid, interpreters and cultural mediators to immigrants.

11. Concerning the fight against terrorism

The world is no longer the same after the 11 September, no one doubts it. Even though the risks of generalised conflicts are remote, people seem to have lost their sense of security also due to a certain atmosphere of uncertainty that marks our era.

Terrorism – but a similar argument can also be used for other relevant phenomena such as organised crime at the national or transnational levels, or for the trafficking in human beings or the submission of persons to new forms of slavery – represents a threat against all liberal and tolerant societies.

One of the basic elements for a firm, strong and clear response to terrorism, is beyond doubts, our capacity to adjust our Western legal systems to the particularly treacherous and evasive nature of the new global terrorism. Prevention and suppression must promptly go hand in hand according to a new judicial approach but fully respecting our constitutional values.

To fight the enemies of freedoms we cannot in fact alter the law in force unduly limiting the freedom of citizens. If we did so, we would be conceding our opponents a real victory. There cannot be a barter between security and freedom, but just mutual support in order to guarantee one of the fundamental freedoms of the great tradition of European democracy: freedom from fear.

The challenges of international terrorism and other similar phenomena, such as organised crime, unfortunately deeply affect Italy that has not resorted to any exceptional measures. Italy hopes that it will not be the case: Italy did not ask for it during the 70's – 80's in its fight against domestic terrorism, nor during the 90's following unusual attacks against the State by Mafia. Therefore Italy hopes not to have to do it in the future. We believe that this is a merit of our country in an era when many countries belonging to all the regions of the world adopted exceptional measures suspending freedom and guarantees.

The situation that we just described and the initiative adopted over the last three years confirm the constant engagement of the Italian Government, aiming at ensuring the effective respect of human rights, through a progressive action taking into account the evolution of the social situation.

Law Decree no 144/05 concerning the fight against terrorism was converted into legislation by Act no.155/05 which was adopted by the largest majority of Parliamentarians, amounting to approx. 95%. This measure strictly reflects the cited general principles of respect for freedoms, warrants, and transparency. Within this framework, the expulsion measure is always based upon findings and clear evidence proving the charges over the foreign citizen, including evidence as « a danger for the national security ». As to para. 188 of the relevant Report, it is worth stressing that no accelerated procedure has been envisaged nor adopted. In this regard, it is also worth stressing that relevant measures are adopted upon the findings of serious guilty which allow the Minister of Interior to act with aim of protecting the national security and the public order: The judicial protection is always secured vis-à-vis such decision.

Last, it is important to recall that the cited decision, which is included in the legal systems of most European countries as a basic, preventive measure for the protection of the national security, is an administrative measure and not an alternative to the judicial actions.

12. Concerning the legal immigrants in Italy

The Italian Legislative framework and the government policies are based on **the principle of integration of foreign citizens in the national-social context and on the recognition of their full right of access to housing, medical assistance and education.** All workers –

Italian and foreigners – have equal rights and equal social benefits. The Bossi-Fini Law (Act no.189/2002) on the regulation of the migrant flows introduces a new system allowing the foreign citizens to be admitted in Italy for working reasons only if they have a regular working contract and a housing. Their integration in the working field ensures also social integration. Therefore we can affirm that **in our country there is no intolerance towards foreign workers. There are about three millions men and women, legally residing in the country.**

Recently Italy has concluded bilateral agreements for cooperation in the field of regular immigration with France, Switzerland, Portugal and Malta. We hope to get the same agreements also with the countries of the region of Maghreb. A monitoring system has also been created, called INTI (Integration of Inter-county Nationals) for a better control of the integration of foreigners.

Finally, in this framework, a significant initiative is the recent legislation of "adjustment of the State legislation to the Constitutional Act n.3/ 2001, (Act n. 131/2003)" giving local government bodies **the possibility of implementing specific forms of civic participation within the framework of their competencies**. On the basis of this legislation, even though the right to vote is not extended to foreigners, neither at the central nor at the local level, some municipalities, first of all the Municipality of Rome, introduced specific legislation providing for the establishment of "Municipal Counsellors", elected representatives of non- EU citizens.

13. Concerning the Roma community

The Italian Roma community cannot be considered as a group which is practically segregated from the rest of the population, since the Italian legislation provides for specific measures in their favour, including **enrolment in the registry office, free movement, work licenses and education**. In practical terms, Italian legislation does not provide for any distinction among citizens on the grounds of their own ethnic, linguistic or religious origin.

With regard to the circumstance that no stay permits are released for Roma people, mention shall be made of the necessary conditions for their release, which do not differ from the rules set out for aliens, apart from the country or ethnic, linguistic or religious group of origin. The basic principle is the evidence of the regular entry the territory, to have a regular work contract, or to have come for study and health reasons, or family reunification with a family member who is regularly resident in Italy. Moreover, domestic legislation provides for the possibility of challenging each decision regarding the release of stay permits, as well as the subsequent expulsion measures.

Employers have been the main actors of recent regularization procedures, which did not provide for any distinction among aliens. As to the issue of **employment**, Ministry of Labour and Social Policies concluded "Programme Agreements" with different Regions, with the main purpose of starting experimental projects and innovative methods to facilitate the integration of Non-EC immigrants, including the Roma community, who regularly stays in our country. In particular, some funds have been allocated for projects to be implemented at the relevant information desks concerning the access of aliens to territorial services. Funds were allocated for the implementation of the project entitled "Initiatives against Social Exclusion and for women's empowerment". This consists of activities of reception, accompany, and cultural mediation, labs in Italian language, a legal service, workshops and vocational training and work orientation services.

With regard to **the improvement of living conditions** of the Roma community, as laid down in Title V, Chapter III and IV of the Consolidation Act on Immigration, this competence is of Local Bodies. In this regard, local institutions are still proceeding with the adoption of all pertinent interventions, in particular those ones on the situation of the campsites. Within this framework, as good practice, mention shall be made of the initiative agreed upon between the Prefecture of Naples and the relevant local bodies, aiming at setting up small camps: this is a positive trend which proves to be more functional and more bearable from the point of view of the housing arrangement. Similar initiatives are going to be implemented in Milan and in Rovereto. It must be pointed out the situation of "Casilino 900 camp" which is not an authorised camp, and the outstanding efforts made by the Municipality of Rome to carry out rearrangement works of this area. The "Casilino 900 camp case" does not reflect all the integration initiatives, promoted by the Local Institutions, in tandem with the civil society (and positively started in several camps where the relevant structure and organization seem to meet the needs of the several communities).

Within the framework of the "Permanent Conference", as set up in the Territorial Government's Office - Prefecture of Rome, several initiatives and projects have been planned, that have to be defined with the relevant Bodies and Agencies, and focus on integration measures for the Roma community who live in several camp-sites of the capital.

As to the issues regarding the Roma children **access to education**, it has to be outlined that Roma students have the right and the duty to fulfil their scholastic obligation as all other students, according to the Italian legislation which does not discriminate between Italian and foreign students, legal or illegal ones. It is worth stressing that with the Legislative Decree adopted on March 2005 the scholastic obligation has been extended to all the youth of 18 years old. However, even though the school institutions are willing to take care of them, this population actually shows a scarce inclination towards integration (including the school community) and, consequently, the inborn tendency to refuse the regular attendance at school in the places, in which they settle temporarily. In order to promote a relevant attendance at school, the Ministry of Education has allocated specific financial resources for the schools affected by high percentage of immigrants, including Roma students, in order to implement educational activities aiming at favouring their effective integration. Moreover, by means of cooperation measures with relevant Bodies, representatives of Associations, civil society at large, and schools organise all those extra-curricula activities with the aim at enhancing the attendance of Roma students. The Ministry of Education gives periodical instructions in order to finalise the use of the allocated funds. From data collected by the same Ministry, in the school years 2003-2004, a high number of Roma students attended school nation-wide, as follows: 1456 in the kindergartens; 5175 in the primary school; 2591 in the middle school; 84 in the secondary school.

The basic legislation on the protection of minorities, approved in the framework of the fundamental linguistic unity expressed by the Italian language has been adopted aiming at protecting the language and the culture of Albanian, Catalan, German, Greek, Slovenian and Croatian populations, as well as those ones of French –Provencal, Friulan, Ladino, Occitan, Sardinian – speaking communities. In practical terms, while enforcing Art.6 of the Constitution which stipulates, "the Republic protects linguistic minorities by means of ad hoc legislation", **an organic legislation for the protection of historical linguistic minorities has been adopted with the aim of fully implementing the general principles established by the European and the International Organisations to which Italy is a member.**

During the debate at the Parliamentary level, the situation of Roma people was excluded from the cited legislation because of the opportunity of proposing and approving an ad hoc Act, in line with the specific aspects of this minority, if compared to the protection provided for the so-called "historical ethno-linguistic minorities". **In fact the basic criteria for the label of "linguistic minority" depends on the stability and the duration of the settlement in a delimited area of the country, which is not the case for Roma people.** The formulation of an appropriate legislative measure would enable to equalize the status of half of the approx.150.000 Roma people resident in Italy to that of the Italian citizens. As regards the remaining Roma people communities - characterized in all cases by nomadism, they already enjoy the right to freedom of movement and circulation, if composed from citizens of the European Union, while they are under rules regulating the stay of foreigners, if composed from no EU citizens.

In brief, those Roma people who do not have Italian citizenship face some difficulties when applying for the release of stay permit or for their *naturalisation*. That is why the relevant legislation includes the release of a working contract among conditions and pre-requisites. Therefore, some difficulties are due to getting a job. They may also entail some difficulties as to the access to health-care services and to education. In practical terms, in order to obtain a stay permit, it is necessary to get a job. Thus, when Roma people face difficulties when applying for the release of a stay permit, this is not a matter of discrimination but of lack of a basic condition, as envisaged by Law.

14. Concerning the establishment of a National Commission on Human Rights (NHRC)
Within its activities, the Interministerial Committee for Human Rights, working with the Ministry of Foreign Affairs, has drawn up a study on the feasibility of a draft legislation aimed at establishing the National Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms in the Italian Legal System, in compliance with the UN Resolution 48/134 of 20 December 1993.

The National Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms, would have the duty to promote respect for and observance of human rights and fundamental freedoms in Italy, as established by the UN Covenants, the Council of Europe and the European Union, as well as protected by our Constitution.

The Commission would be tasked with protecting all the rights and the fundamental freedoms – right to life and personal integrity, right to dignity and fair treatment, right not to be discriminated; economic, social and cultural rights, individual, civil and political freedoms, as well as new aspects of rights deriving from social, scientific and technical progress – as established by the International Covenants and endorsed by Italy.

As regards the subjects to be protected, the Commission would be responsible for the entire population on the national territory, with particular attention to vulnerable categories such as national and religious ethnic minorities; women and minors, the elderly and differently-baled person, detainees, asylum seekers, refugees and immigrants, homosexuals.

Nevertheless, in order to avoid competence overlaps and waste of resources, the Commission would work in connection with the bodies still existing and working on the national territory with similar objectives, such as the National Observatory for Infancy and Childhood set up with Act no. 451/97, in compliance with the specific UN Covenant; the National Commission for Gender Equality set up with Act no. 164/90 of 20 June 1990 in accordance with Art.3 of

the Italian Constitution; the National Office Against Discriminations set up with Legislative Decree of 9 July 2003 in accordance with Directive 2000/43/CE for equal treatment apart from race or ethnic origins; the Interministerial Committee for Human Rights, which has been working since 1978 at the Ministry of Foreign Affairs. Once established, the Commission will set close relations with the cited bodies and cooperate with them.

The Commission will play an important role in the mediation and institutional reporting between Agencies, Committees, European and UN Commissions or other international institutions, whether existing or under creation, including the future European Agency for Human Rights, as well as similar institutions operating in other Countries.

In compliance with the relevant UN Resolution, the Commission would enjoy operative and financial autonomy and will be independent from Government's judgements and assessments. Although autonomous, the Commission should submit to the Government, on an advisory basis, opinions, proposals and recommendations.

The structure of the new institution, aiming at guaranteeing exchange of information between the State and civil society in the field of human rights, as well as guaranteeing pluralism in opinions and beliefs, should be composed of: a Collegial body teamed up of five appointees chosen among representatives of the cultural, academic and institutional sectors; a Council on human rights, vested with competence to advice the Commission and represent civil society, composed of no more than sixty appointees; a Secretariat General and a Commission Office, that should play an infrastructure role and tasked with the conduct of activities, the administration, and the support to the Commission's activities.

As above-mentioned, worthy of mention is the work carried out, to date, by the Inter-ministerial Committee on Human Rights (CIDU). Established within the Ministry of the Foreign Affairs (MFA), by Ministerial Decree, on 15 February 1978. CIDU is composed of representatives from the main Italian Ministries, responsible in human rights field.

CIDU monitors the compliance of international standards nation-wide and is also tasked with the drafting of Italy's reports relating to international human rights standards adopted under the umbrella of the United Nations and the Council of Europe's.

Also worthy of mention is the recent monitoring process initiated by CIDU – to assess at the domestic level the state of the implementation of Recommendations and Observations put forward by relevant, international machinery. By this activity, CIDU aims at assessing recommendations and, where necessary, at determining the corrective measures to be adopted. This is the very first time that such a process is carried out by Italian authorities, in a structured way.

15. Concerning the right to freedom of media. The aim of **Act no.112/2004** is to achieve a comprehensive reform of the provisions governing the broadcasting system, by taking into account the considerations in this regard made by the President of the Republic in his message to the Chamber of Deputies on 23 July 2002, in which he underscored the need for a system-level law inspired by the Constitutional value of pluralism in communications media, by the new division of legislative competencies following the reform of Article 117 of the Constitution, by the development of competition with due respect for the new EU legislation in this area, and by the technological innovations driven by the advent of digital technology.

The reform starts with the process of convergence among communications media (radio and television broadcasting, publishing, Internet), promoting the formation of an integrated communications system.

The possibility of using TV sets for interactive services and the opportunity for integrating editorial content in the press with video programmes open up new prospects for the development of the market. In this wider multimedia context the division of the communications market into limited segments, each with an anti-competitive ceiling on audience share, no longer appears to be compatible with the strong impetus exerted by new technologies, which is encouraging companies to seek cross-fertilisation and synergies. The new limit of 20% needs to be applied to the integrated communications system, thereby fostering the growth of all the companies concerned without involving any risk for the weakest, with a view to achieving the responsible and balanced development of competition. It is in this vein that the provision preventing the owners of more than one national TV network to acquire stakes in newspaper publishing companies until 31 December 2010 should be interpreted.

The principles regarding the protection of competition remain firm, however, and in particular the ban on attaining a dominant position in each component market of the integrated communications system. The 20% limit on the transmission of programmes by any one content provider remains unchanged. Cross-ownership arrangements between the television and publishing sectors provide an opportunity for the development of companies and, indeed, the entire sector. Another pillar of the law is the great boost it provides to the digital system.

The law answers to the necessity to bring the rules governing RAI-Radiotelevisione S.p.A. (the State Broadcasting Company) into line with the Additional Protocol to the Treaty of Amsterdam and the Communication on the subject of state aid and to provide for the gradual privatisation of RAI. It envisages the privatisation of the corporation along the lines of the tried and tested public company framework, with a broad shareholder base. The privatisation process is entrusted to the Interministerial Committee for Economic Planning (CIPE), which within four months of the date of completion of the merger of RAI and RAI Holding – that took place on 17 November 2004- should establish the timetable, stages and the percentage to be divested.

The administration and management of the company is entrusted to a nine-member Board of Directors who, until such time as 10% of the capital of RAI has been divested, will be selected as follows: seven will be elected by the Parliamentary Supervisory Committee on a one person, one vote basis, and two, including the Chairman, will be appointed by the Minister for Economic Affairs and Finance. The Chairman must obtain the approval of two-thirds of the Supervisory Committee. The privatisation will allow private shareholders to choose one or more members of the Board of Directors and therefore it will facilitate depoliticising RAI. A key feature of the law is the introduction of a requirement for the separation of accounts, as required by the Additional Protocol to the Treaty of Amsterdam. This will ensure transparency in the use of public funds and advertising revenues by the public service licensee.

As far as the governance of RAI is concerned, we believe that the privatisation of the corporation, enabling directors appointed by the private shareholders to serve on the Board, and the new procedures for electing Directors to ensure that the opposition parties are

properly represented, with an impartial chairman elected with a two-thirds majority vote in favour on Parliamentary Oversight Commission, has certainly helped to gradually distance RAI from politics, which is a long-standing phenomenon and something that is certainly not encouraged by the present government (further information in Appendix 4).

Act no. 215/2004 **(the s. c. "Legge Frattini")** does not deal solely with the mass media and information sector, but covers all possible conflicts of interest between government responsibilities and professional and business activities in general. Because of its particular nature, the mass media and information sector is the subject matter of a number of specific provisions in that law (see in particular article 7). These particular provisions do not replace the general rules governing any type of company, but are additional to them. The combined provisions of articles 1, 2 and 3 of this law set out its general scope.

Article 1 states that the Prime Minister, Ministers, Secretaries of State and Extraordinary Government Commissioners are all "*holders of government office*" (and are therefore the parties to which this law applies). Article 1, c. 1 also imposes, on the holders of government office, obligation to devote themselves exclusively "to *promoting the public interests*", and prohibits them from "*taking actions and participating in collegial decisions when they are exposed to a conflict of interest*".

With specific regard to the issue of alleged media concentration and ownership, this could not simply be singled out by the law as a reason of incompatibility with a government position because such provision would have been in contrast with articles 42 and 51 of the Italian Constitution which protect the fundamental right of individuals to hold private property and the freedom to be elected to public offices. Furthermore the prohibition of ownership to this effect would have led to a "Forced Sale", determining an irreversible situation upon expiry of public office, which would also contravene to the same articles of the Constitution.

The law limits ownership by providing for the suspension of its management rights during the public mandate. Act no. 215/2004 details the rules for the resolution of conflict of interest. In its clause 2 relating to incompatibility with holding a government position, 'property' could not be singled out because such provision would have been in contrast with clauses 42 and 51 of the Italian Constitution which protects the fundamental right of individuals to hold private property and freedom to be elected to public offices. Furthermore the provision of 'property' amongst 'incompatibilities' would have lead as a consequence of "Forced Sale" of a company or taking part in the shareholding, to an irretrievable situation at the expiration of public office in contravention of the said clauses of the Constitution. Contrary to other provisions of incompatibility (such as the practice of professional activities), which legally provide for a right of quiescence and which will be restored at the expiration of the *'munus publicum'* (see below Appendix n.4).

PART II - APPENDICES

Appendix 1

LE SYSTEME DE LA JUSTICE/THE JUSTICE SYSTEM

a) Système de la Justice en Italie

A travers la Loi n. 80 du 14 mai 2005, convertissant, avec des modifications, le Décret-Loi n. 35 du 14 mars 2005 (Journal Officiel n. 111 du 14-5-2005 – Supplément ordinaire n. 92), le législateur italien a décidé le Plan d'action pour le développement économique, social et territorial afin de réaliser un projet articulé d'interventions et de mesures visant une inversion positive de tendance dans le système judiciaire, notamment pour ce qui est de **la durée des procès** civils.

i. Justice civile. Les effets des modifications normatives dont il est question vont permettre, au cours du prochain quinquennat, de créer les conditions pour une opération complexe de rationalisation de la procédure civile. Il en découlera la réduction de la durée moyenne des procédures civiles et la limitation de la longueur excessive des délais procéduriers.
Il faut mentionner aussi les nouvelles normes concernant l'arbitrage (délégation du Parlement au Gouvernement à effectuer d'ici novembre 2005), moyennant l'encouragement de cette forme particulière de résolution extrajudiciaire des différends, vont permettre aux parties ayant choisi cette voie de ne devoir pas recourir à la justice civile. Par conséquent, il y aura un effet de réduction du nombre des procédures judiciaire.
Les nouvelles normes concernant le *giudizio di cognizione ordinario*[90] (entrant en vigueur le 1 janvier 2006, donc pour les affaires saisies après le 1 janvier même, en conformité avec l'art. 8 de la Loi n. 80 du 14 mai 2005 convertissant le Décret-Loi n. 35 du 14 mars 2005) vont aboutir à une réduction des phases procédurières, par le biais d'une gestion plus rationnelle des audiences de la part du juge. Cela signifie que ce dernier pourra jouir d'un plus grand pouvoir d'ordonner la déchéance des parties au cas où celles-ci présenteraient des demandes tardives de défense et d'instruction. En l'espèce :

- On est prévu l'emploi des technologies de l'information (*internet* et courrier électronique) dans les communications et les significations relatives aux procédures et, dans la procédure d'exécution, afin de donner plus de publicité aux ventes coactives de biens meubles enregistrés et de biens immeubles;
- Sous peine de déchéance, le défendeur a l'obligation d'indiquer sa ligne intégrale de défense dès la présentation du mémoire de réponse, en simplifiant ainsi l'organisation temporelle des audiences;
- Toujours sous peine de déchéance, les parties ont la possibilité de présenter les documents et d'indiquer des nouveaux moyens de preuve dans un délai péremptoire de trente jours, que le juge octroie au cours de l'audience de première comparution;
- Il est prévu de pouvoir utiliser une expertise technique préventive afin de régler le différend, lorsqu'il s'agit de vérifier et d'établir les créances découlant d'inexécutions ou d'infractions non prévues par le contrat (contrats ou blessures dues à un accident de la route);

[90] Activité juridictionnelle de cognition : activité effectuée par le juge pour vérifier un droit controversé dans le cadre d'une procédure qui se termine par une mesure [N.d.T.].

- Il est prévu des nouvelles règles pour les procédures d'urgence et conservatoires (entrant en vigueur le 11 septembre 2005. En effet, elles ne seront plus composées forcément de la double phase préventive de la conservation et de la phase suivante du fond – cette dernière ne devenant que facultative. Par conséquent, il ne sera plus possible, dans l'avenir, de traîner les différends simplement pour les prolonger. En effet, il a été établi le principe général d'après lequel les mesures d'urgences aux termes de l'art. 700 du c.p.c. et les mesures conservatoires ne requièrent pas la phase suivante du fond afin de continuer à produire effet.

La procédure d'exécution (entrant en vigueur le 11 septembre 2005) sera accélérée d'une façon considérable. En effet, il est prévu que le juge sera aidé par quatre professionnels pouvant résoudre des phases du différends (telles que la vente du bien exproprié et le partage du produit) qui ne sont pas tout à fait juridictionnelles et qui à présent alourdissent le travail de l'autorité judiciaire compétente. Notamment, afin d'accélérer les opérations de vente des biens saisis et les actes suivants, les catégories de professionnels auxquels le juge peut déléguer certaines opérations ainsi que la composition du plan de répartition ont été élargies: non plus seulement les notaires, mais également les avocats, les conseils fiscaux et les experts comptables.
En dernier lieu, la rationalisation du procès de cassation (à effectuer entre sis mois à partir de l'entrée en vigueur de la Loi n. 80 du 14 mai 2005) va décharger la Cour Suprême de travail. Cette rationalisation prévoit l'introduction de l'irrecevabilité d'un grief ne formulant pas clairement une question de droit, ainsi que la limitation du droit de recours immédiat pour ce qui est de décisions concernant des questions incidentes par rapport au jugement principal.
De plus, il a été prévu que la Cour de Cassation, lorsqu'elle ne se réunit pas en assemblée plénière, est liée au respect du précédent juridictionnel, ayant été déjà prononcé par la même Cour en assemblée plénière. Cela évite une autre décision différente sur une question ayant déjà été résolue.

Statistiques civiles. Une analyse de la situation par rapport à toutes les matières concernées indique que les bureaux des **juges de paix** ont un nombre moyen de dossiers en suspens substantiellement constant (206 jours pour l'année 2001; 233 pour l'année 2002; 215 pour l'année 2003 et 223 pour l'année 2004) face à une augmentation des affaires en entrée, ce qui démontre une capacité de règlement des affaires satisfaisante.
En ce qui concerne les Tribunaux (premier degré), si l'on prend en considération toute les matières, on constate une diminution tant du nombre final des affaires pendantes que du nombre moyen des dossiers en suspens; on est passé de 601 jours pour l'année 2001 à 494 jours pour l'année 2004. Ces données comprennent également celles concernant les **sezioni stralcio**.
On enregistre la même situation en ce qui concerne le deuxième degré près le Tribunal (de 1375 jours pour l'année 2001 à 779 jours pour l'année 2004.
En ce qui concerne les Cours d'Appel, on constate une augmentation du nombre moyen des dossiers en suspens, qui passe de 653 jours pour l'année 2001 à 835 jours pour l'année 2004 ; cette situation s'accompagne toutefois d'une considérable augmentation du nombre d'affaires réglées surtout pour l'année 2004, ce qui confirme l'efficacité de l'intervention visant à augmenter le personnel destiné à ces juridictions.
En ce qui concerne les sezioni stralcio (sections judiciaires provisoires), le nombre des affaires réglées on a été maintenu constant ; on peut donc prévoir qu'avant la fin du premier semestre 2006, toutes les affaires encore pendantes seront définies.

ii. Justice pénale. En matière pénale le Décret-loi du 23.11.2001, et ses intégrations successives, a crée la Commission «Nordio», qui a conclu la partie générale du code pénal. Le Décret-loi du 29 juillet 2004, et ses intégrations successives, a crée **la Commission pour la modification du code de procédure pénale**, qui a conclu dans ces derniers jours ses travaux.
En ce qui concerne le code de procédure pénale, le principal objectif poursuivi était l'assouplissement des formalités afin de rendre les temps de déroulement du procès plus rapide.
Afin d'atteindre cet objectif on a tracé une séparation nette entre les procès contre les prévenus en liberté et les procès contre des personnes arrêtées en flagrance. Dans ce deuxième cas on a prévu la procédure immédiate (rito direttissimo)de façon obligatoire.
En dehors des cas de flagrance, les enquêtes préliminaires doivent avoir une durée appropriée, mais leur prolongation peut être octroyée seulement par une requête motivée, qui spécifie les enquêtes encore à mener, et seulement pour le temps strictement nécessaire à les accomplir.

Aussi dans la révision des normes sur les mesures de précaution on a visé à la réduction des temps, tant en prévoyant que la mesure de détention préventive sera appliquée par le juge à l'issue d'une audience en chambre du conseil pendant laquelle on procède à l'audition de l'intéressé et on administre les moyens de preuve essentiels pour la décision, que car on a réduit les délais de détention préventive. Tout cela pourra produire une ultérieure accélération des temps de règlement du procès, d'une part parce que la personne mise en examen pourra à ce moment-là demander d'être jugée immédiatement, et de l'autre parce que l'échéance des délais de détention préventive invitera à la réduction des temps de déroulement de l'instance ou de la phase, mais aussi à éviter les pauses dans le passage d'une phase à l'autre et d'une instance à l'autre, qui à présent occupent des espaces temporels insoutenables. A ce propos il faut souligner que la liste des causes de suspension des délais de la détention préventive a été réduite de façon draconienne.

En vue d'une accélération on a encore prévu, aussi pour le classement aux archives, que le faible importance du fait, en raison de son caractère occasionnel et des blessures de moindre importance du bien juridique lésé, pourra entraîner la clôture de la procédure.
Encore, les débats ont été ainsi structurés: une audience préliminaire, pour sa réglementation anticipée, et un calendrier d'audiences pour l'administration des moyens de preuve.

Le système des recours a été entièrement modifié, en prévoyant que l'appel sera le remède admis seulement pour le prévenu condamné qui veut obtenir un nouveau examen du fond de sa condamnation. Le pourvoi en cassation a été structuré d'une façon telle a le rendre, d'une façon effective et exclusive, un control de légitimité d'un jugement rendu par un juge.
Les significations des cas de nullités et d'incompétence ont été revues afin d'éviter que les vices des actes puissent être gérés, seulement afin d'obtenir une prolongation de manière instrumentale. Le même esprit a animé les travaux de la Commission qui avait comme objet le code pénal. Le pivot de la reforme est l'introduction du principe de la nature offensive de l'infraction, pour lequel la seule violation formelle de la norme n'implique pas la punibilité faute de blessure effective ou mise en danger du bien protégé. D'un point de vue pratique, on verra une accélération des règlements des procès pour insignifiance du fait, tandis que la Commission a poursuivi une série d'objectifs connexe, savoir:
a) l'élimination de la contravention comme infraction;
b) la révision des différents cas d'espèce de contravention – contenu soit dans le code soit dans la législation spéciale - afin d'élever au rang de délit les rares hypothèses d'infraction qui méritent d'être gardées, et convertir les autres en «infractions administratives» ;

c) l'élimination de plusieurs cas d'espèce de délit, qui représentent des conduites peu dangereuses pour la société.
A ce propos il faut souligner que la partie spéciale du code est presque accomplie, et sera présentée à bref. On pourra donc remarquer les nouveautés dirigées à une simplification de divers cas d'infraction.

Une autre innovation est la discipline des «circonstances» qui impliquera l'élimination du pouvoir discrétionnaire du juge dans leur évaluation. Par conséquent il est prévisible qu'on aura une réduction des appels qui se basent à présent sur une évaluation erronée des circonstances et sur le manque de reconnaissance des «atténuants génériques», que le projet Nordio a éliminé.
La liste des peines devienne plus spécifique, et on prévoit la conversion de la peine privative de la liberté en peines alternatives, de prescription, d'interdiction ou d'annulation, directement appliquées par le juge de fond, avec un remarquable effet de déflation pour le juge de l'exécution et une épargne de ressources qu'on peut destiner à l'accélération des procès.

Substantiellement la ligne stratégique suivie jusqu'ici, qui donne de bons résultats, s'articule sur deux points principaux: **la multiplication des énergies professionnelles avec l'attribution de la compétence pour beaucoup d'offenses au Juge de paix ou au seul Juge**, comme la politique pour favoriser les rites alternatifs, par lesquels on décide essentiellement sur la documentation à disposition, sans débat. Une telle stratégie peut donner certainement des résultats dans un moyen ou long terme. Il faut se référer à la soi-disant **Loi « Cirielli »** approuvé récemment par le Parlement qui, en réduisant les temps de la **prescription** pour ceux qui ne sont pas condamnés, vise également à réduire la période des procédures convenables. Ceci traite, cependant, les sujets sensibles parce qu'on ne devrait pas oublier le fait que la dimension de la justice, avec laquelle chaque réforme devrait se confronter, est indiquée par trois facteurs - **temps, coûts et exactitude** – sans oublier de toute façon que les dimensions du temps, des coûts et de l'exactitude n'existent pas individuellement mais sont corrélés parmi eux-mêmes. Ce qui signifie que le temps est seulement un des facteurs à considérer et que si un juge excessivement lent n'est pas un juge efficace, une justice récapitulative n'est pas efficace non plus. De toute façon, la durée exorbitante des procédures n'est pas exclusivement raccordable aux lois insatisfaisantes ou imparfaites ou aux garanties de forme, mais également à une organisation judiciaire qui ne répond pas aux critères de gestion. Quelques exceptions excellentes sont une preuve de cela, et sont constituées par les secteurs départementaux judiciaires qui se caractérisent pour leur efficacité et productivité, grâce également à l'exécution des protocoles des 'best practices', à la réalisation des procédures, à l'établissement des tables de négociation avec les avocats qui constituent les contre-parties essentielles dont on ne pourrait pas tenir compte, pour une meilleure organisation de l'ordre judiciaire.

On peut citer comme laboratoires d'efficacité judiciaire certain secteurs départementales (tel que la Cour de Turin avec le "Programme de Strasbourg". Même le Conseil supérieur des magistrats, le jour après le constitutionnaliser du principe de la durée raisonnable des procès (1999), intervenue avec deux discussions respectivement adoptées le 15.9.1999 et le 7.6.2000 avec lesquels on a voulu stimuler les directeurs des bureaux juridiques et les magistrats pour se rendre conscients en mettant en application une organisation différente du travail juridique, puisqu'il pourrait être consenti par les moyens et les structures disponibles. En ce qui concerne l'évolution de la jurisprudence italienne, au sujet de l'interprétation des normes domestiques, à la lumière de la jurisprudence de la Cour européenne, on devrait noter la tendance ce qui s'établit rapidement dans les chambres de justice, selon laquelle le juge

domestique à une obligation d'interpréter, rechercher et appliquer - parmi plusieurs interprétations possibles d'une norme nationale - que ce qui est plus compatible avec la Convention et avec l'interprétation donnée par la Cour. Un tel fonctionnement a pu également être un tasseau dans le mosaïque complexe de l'adaptation de temps de la justice italienne aux normes européennes.

Il est dans ce secteur qu'on pourrait insérer dans une manière expérimentale une collaboration avec la mission italienne au Conseil de l'Europe, qui pourrait périodiquement indiquer les paramètres temporels des procédures considérées par la Cour européenne compatibles avec la Convention. De telles indications pourraient constituer l'objectif sur lequel pour appliquer une méthode de travail, une nouvelle organisation de la structure judiciaire, et une gestion plus raisonnable du personnel.

Statistiques pénales. Les données confirment le bon train des règlements d'affaires de la part des **Tribunaux monocratiques**, qui a partiellement compensé l'augmentation du nombre des affaires soumises à leur examen, due au meilleur fonctionnement des Offices du Procureur, qui ont réduit le temps des règlements. En ce qui concerne les **Tribunaux en tant qu'organes collégiaux**, il faut relever une réduction du temps moyen pendant lequel les causes restent en suspens, qui passe de 656 jours (2001) à 621 jours (2004). Les données relatives aux Cours d'Appel montrent une augmentation du temps moyen pendant lequel les causes restent en suspens, mais avec une réduction par rapport aux données fournies en avril (relevé du 3/3/2005) dérivant des nouveaux bureaux fonctionnant (797 à 650).
Les **Juges de Paix** connaissent une augmentation totale, due au fait que leur compétence en matière pénale date du 1/1/2002 et que par conséquent ce n'est qu'au cours des années suivantes que ces Juges sont parvenus à fonctionner à plein régime; en tout cas la donnée sur le temps moyen pendant lequel les causes restent en suspens révèle une durée qui n'est pas considérable pour l'année 2004 (temps moyen en 2004 = 228 jours).
En outre, en ce qui concerne plus expressément le **temps moyen moyen** (point 117), on met en évidence une réduction du temps moyen pour 2004 (de 385 à 372 jours), due à de nouveaux bureaux fonctionnant. Pour les Tribunaux collégiaux aussi la réduction par rapport à l'année 2003 a augmenté (de 706 à 621 au lieu de 634, donnée fournie en avril 2005. En ce qui concerne l'augmentation des causes en suspens devant les Juges de Paix nous nous reportons à ce qui est dit ci-dessus. Le temps moyen ne comprend pas le laps de temps qui s'écoule dans le passage d'un bureau à un bureau supérieur. Ce laps de temps dépend souvent du comportement des avocats et peut varier de six mois à un an.

iii. Reforme du système judiciaire et ressources humaines. Avant de décrire les lignes directrices **de la reforme du système judiciaire, en cours d'approbation devant le Parlement**, il faut rappeler que la Loi n. 48/01, et son décret de mise en œuvre DM 23.1.2003, est opérationnelle depuis longtemps. Cette loi a augmenté de 158 unités les ressources humaines des Cours d'appel, compte tenu de leur situation de carence. Mais revenons au projet de Loi de reforme du Système judiciaire, il, par des interventions sur l'ensemble des lois qui à présent régissent la carrière des magistrats, a le but d'améliorer le professionnalisme des juges et l'efficience du système judiciaire par : une sélection d'entrée en magistrature plus sévère, en exigeant – à côté de la formation universitaire – diverses expériences professionnelles dans le milieu juridique; l'introduction d'un mécanisme méritocratique – par le biais de concours de caractère pratique – de progression dans la carrière qui privilège la capacité des magistrats plus que la simple ancienneté de service; la prévision de une école de la magistrature, indépendant du ministère de la justice et du Conseil Supérieur de la Magistrature, comme garantie de la professionalité des magistrats; le

caractère temporaire des fonctions de direction, qui valorise la formation d'instruments professionnels d'organisation de la direction. En respectant pleinement le principe d'indépendance du pouvoir judiciaire, la reforme tend à améliorer la qualité de la justice, par des nouvelles méthodes de travail et d'évaluation des magistrats, ainsi qu'élever les standards des structures de l'organisation judiciaire et donc améliorer, souhaitablement, les temps de règlement des litiges en réduisant les appels pour application incorrecte du droit.

iv. Sommes destinées à la Justice. En 2004 on a consacré environ **786 millions euros**, dont 137 pour indemnités aux magistrats honoraires et environ 649 millions pour les autres frais de justice. A ces chiffres il faut ajouter les émoluments aux magistrats ordinaires et aux employés administratifs, pour un montant de 2.599.451.613 euros pour un total de 51.272 employés, dont seulement 1.654 préposés au Ministère de la Justice. L'aide juridictionnelle, en matière civile depuis le 1.7.2003 jusqu'au 31.12.2004 a coûté à l'Etat 4.200.053, 08 € et en matière pénale, seulement pour 2004, 61.953.238 euros pour les 71.523 personnes admises. Seulement par rapport à l'an 2004 pour la Loi Pinto on a communiqué au ministère de la Justice, (compétent seulement pour les retards devant le juge ordinaire) 1886 « décrets » de condamnation pour un montant de € 11.439.244,68, tandis que pour 2005 il résulte déjà (au 14/6/05) la communication de 421 « décrets » de condamnation pour € 3.391.633,21.

Dans ce contexte-là, il faut considérer le montant vis-à-vis l'application de la Loi Pinto dans la période 2001-2005: (accueil total des affaires intentées sur la base de la Loi Pinto) Année 2001, sur 1292 affaires, n.759 accueillis avec un montant correspondant à euros 3.185.345,55; Année 2002, sur 4586 affaires, n. 1645 accueillis avec un montant d'euros 13.164.130,33; Année 2003, sur 2372 affaires, n.1645 accueillis d'euros 7.288.867,85; Année 2004, sur 2931 affaires, n.1979 accueillis avec un montant correspondant à 11.948.659,55 euros; Année 2005 (jusqu'au 19/10/2005), sur 1540 affaires, n.1222 accueillis avec un montant correspondant à euros 9.022.853,73. Total des affaires accueillis dans la période entre 2001-2005, n.8282, avec un montant correspondant à euros 44.609.857,01.

v. Mesures générales prises en exécution des arrêts de la Cour européenne des Droits de l'Homme

Durée raisonnable des procédures judiciaires

Par ses Arrêts no. 1338, 1339, 1340 et 1341 du 26.01.04, la Cour de Cassation (Grande Chambre) a substantivement conformé sa jurisprudence à celle-ci de la Cour européenne, notamment résultant de l'arrêt *Scordino* du 27.03.03.

Par l'Arrêt n. 3396/05 la Cour de Cassation confirme la jurisprudence *Scordino* aussi pur les personnes morales.

Expropriation indirecte

Par le Décret de l'8 juin 2001, no. 327 (art. 43) l'Etat italien a prévu, dans une mesure législative, cet institut, jusqu'à ce décret d'origine jurisprudentielle.

L'arrêt du 29.04.05 du Conseil d'Etat a précisé que, même dans le cas de transformation irréversible du bien dans la structure publique d'espèce, le requerrant garde toujours son droit à la restitution du sol dans sa condition originaire, sauf que l'Administration émet une décision d'acquisition du sol au patrimoine publique conformément au dit art. 43. Dans ce cas seul, le recourrant ne peut demander qu'une compensation monétaire.

Procès pénal par contumace
Décret-loi du février 2005 portant sur la modification de l'art. 175 du code de procédure pénale en matière de réouverture de certains délais procéduriers au bénéfice de l'accusé absent.

Arrêt *Soldati* de la Cour de Cassation no. 48738/2005 qui met à la charge du Ministère Public l'épreuve de la soustraction doleuse à la connaissance des actes procéduriers par l'accusé.

Rémission du propriétaire dans la disponibilité de l'immeuble loué
En ce qui concerne la compensation pour l'indisponibilité de l'immeuble due à la longueur de la procédure d'expulsion du locataire, le propriétaire peut utiliser le remède *Pinto* et les remèdes générales de la compensation civile à la suite des actes illégitimes fautifs, prévus par l'art. 2043 du code civil, même à l'encontre des omissions de l'Autorité Publique (Arrêt no. 500/1999 de la Cour de Cassation e Loi no. 205/2000).

En plus, dès l'entrée en vigueur de la Loi no. 431/98 sur les locations urbaines, le propriétaire peut demander, comme compensation pour l'occupation légitime prolongée de l'immeuble par le locataire, une augmentation automatique du loyer du 20%, à la quelle s'ajoute, en cas d'occupation ultérieure *sine titulo*, une compensation, pour le dommage ultérieur, après l'art. 1591 du code civil (dans l'affaire *Provvedi* la Cour de Strasbourg a reconnu ce dernier comme un remède efficace dans l'esprit de la Convention).

Mesures communes à toute typologie de recours (en particulier sur la réouverture des procès pénaux à la suite des Arrêts définitifs de la Cour)
En ce qui concerne la recommandation **en matière de réouverture de procédures pénales à la suite d'un jugement de la Cour européenne**, il faut souligner que dans l'attente de l'approbation d'une loi spécifique par le Parlement (approbation prévue dans les prochains mois) **les juges italiens ont pris le chemin de se conformer aux arrêts de la Cour Européenne, par le biais de l'utilisation de la procédure d'exécution prévue par les art. 666 et 670 du Code de Procédure Pénale, afin de rouvrir les procédures pénales et de se conformer de cette façon aux indications de la Cour européenne (il ressort que cela s'est avéré dans certains cas parmi lesquels le cas *Dorigo*).**

Projet de Loi n. 2441, *présenté par M. Pepe qui est à l'examen du Parlement et intitulé* « Modifications du Code de Procédure Pénal concernant la révision suite aux arrêts de la Cour européen aux Droits de l'Homme. L'article 1 prévoit l'introduction de l'art.630 bis c.p.p. "Hors des cas prévus dans l'article 630, la révision des arrêts et des décrets pénaux de condamnation peut être demande sur requis si la Cour européenne a vérifié qui dans le procès la viol de l'article 6 de la Convention européen pour la Protection des Droits de L'Homme a eu lieu…L'Art.2 prevoit vis-à-vis les règles transitoires que "la requete de revision peut etre decise entre 180 jours de la date d'entrée en vigueur de la Loi en reference dans le cas dans lequel l'arret de la Cour européen ou la decision du Comité des Ministres a eu lieu avant de la date su-mentionnée. La révision des arrêts et des decrets pénales de condamnation pour un des crimes envisagés à l'article 51, paragraphe 3-bis et 3-quater du Code de procédure pénale, ne peut pas être demandée si le viol des dispositions de l'art. 6 de la Convention a eu lieu avant de la date d'entrée en vigueur de la Loi en référence.

Séminaire annuel de formation, tenu auprès du Conseil Supérieur de la Magistrature, pour la sensibilisation des magistrats italiens à la jurisprudence de la Cour.

Projet de Loi présentée par M. Azzolini portant sur une procédure centralisée d'exécution des arrêts de la Cour par la Présidence du Conseil des Ministres, accompagnée par une relation annuelle au Parlement.

Projet de Décret portant sur l'insertion des Arrêts de la Cour dans le Casier judiciaire national (voire le Schéma de Décret Présidentiel concernant: "Règlement pour l'inclusion dans le casier judiciaire national des arrêts de la Cour européen aux Droits de l'Homme "qui envisage: Art.1 les arrêts définitifs de la Cour européen sur l'Italie concernant les mesures judiciaires et administratives définitifs des autorités nationaux déjà inscrites, seront inscrites dans le casier judiciaire central suite à la préexistante inscription auxquels ils se referont, sur demande du Département aux Affaires de Justice auprès du Ministère de la Justice.

Faillite

Décret-loi 14 mars 2005 qui contient, parmi les autres, mesures pour l'accélération de la procédure de la faillite.

Project de décret délégué, en cour d'examen au Sénat, visant à éliminer les incapacités et restrictions à l'encontre du failli.

Arrêt de la Cour de Cassation du 09.09.05, concernant l'affaire *Sgattoni*, par le quel la Cour a confirmé l'efficacité du remède interne de la Loi Pinto abstraction faite de la date de dépôt du recours interne ou de celui présenté à la Cour de Strasbourg.

Sur note plus generale, **dans le cadre de la reforme des procédures de faillite**, on demande qu'il soit intégré ce qui suit, comme communiqué par le Service Législatif du Ministère de la Justice : « L'art.1, alinéas 5 et 6 de la loi 14 mai 2005, N.80, donne au Gouvernement le pouvoir de mettre en place une reforme structurelle des procédures de faillite qui font l'objet du décret royal du 16 mars 1942, n.267. Il s'agit d'une loi par laquelle le Parlement délègue au Gouvernement la tache d'introduire de nouvelles dispositions : elle sera appelée « loi de délégation » par la suite.

En donnant ce pouvoir, le législateur voulait s'aligner aux autres pays membres de l'Union européenne et introduire ainsi une nouvelle discipline concernant la procédure de faillite, capable de simplifier celle suivie jusqu'à présent et capable également de gérer de manière plus simple et rapide la continuation de l'activité de l'entreprise ainsi que la protection des créanciers.

Cet objectif a été atteint grâce à l'action conjointe de normes à l'application immédiate et notamment d'une part celles contenues dans l'art.2, alinéas 1, 2 et 2bis du décret-loi du 14 mars 2005 n. 35, converti en loi n. 80/2005, qui ont directement modifié certaines dispositions de la loi de faillite, notamment l'art.67 qui règle l'action de révocation des faillites prévue par la loi et les art. 160, 161, 163, 167, 180 et 181 en matière de concordat avant la déclaration de faillite. Ces normes ont aussi introduit l'art. 182bis qui règles les compromis extra-judiciaire en matière de créances. D'autre part, le Gouvernement a aussi défini les critères et les principes qui règlent la mise en place de cette reforme structurelle des procédures, contenue dans l'art. 1, alinéas 5 et 6 de la loi de conversion susmentionnée.

Le 23 septembre 2005, le Conseil des Ministres, sur proposition conjointe du Ministre de la Justice et du Ministre des Economies et des Finances, a approuvé le projet de décret législatif « Reforme structurelle de la législation en matière de procédures de faillite et d'autres semblables » ; un projet qui est actuellement à l'examen des compétentes Commissions du Parlement pour approbation.

Les objectifs qui inspirent les critères et les principes de cette reforme touchent à plusieurs, importants aspects et notamment, pour ce qui est intéressant d'observer ici, la sphère subjective d'extension de la procédure de faillite, une plus grande rapidité dans les procédures qui sont appliquées aux litiges dans la même matière (art. 1 alinéa 6, lettre a) n.1), le changement quant aux conséquences personnelles de la faillite (art.1, alinéa 6 lettre a) n.4), la réduction du délai de prescription fixé pour l'action révocatoire des actes frauduleux commis par le failli (art.1, aléa 6 lettre a) n. 6) le changement dans la procédure suivie pour établir le passif, dans le but d'accélérer les temps et la simplification des termes de présentation des demandes (art. 1 alinéa 6, lettre a) n.9); la mise en place, de la part du syndic, d'un projet concernant les payements des créanciers par le biais de la liquidation de l'actif (art.1, alinéa 6 lettre a) n. 10), la modification de la répartition de l'actif, avec une réduction de la longueur de la procédure et une simplification des modalités requises (art.1, alinéa 6 lettre a) n. 11), le changement dans la discipline qui règle le concordat après la déclaration de la faillite, par une réduction de la longueur de la procédure et par une éventuelle division des créanciers par catégorie (art.1, alinéa 6 lettre a) n. 12). L'introduction de la notion de « Esdebitazione » (procédure par laquelle le failli lui même pouvant jouir de ce bénéfice aura la possibilité d'effacer ses dettes non payées après la clôture de la procédure de faillite) (art.1, alinéa 6 lettre a) n. 13) et, pour finir, l'abrogation de la procédure sommaire et de l'administration contrôlée.

En ce qui concerne les objectifs poursuivis par les critères et les lignes de conduite de la reforme, nous avons d'une part celui ouvertement déclaré de réduire la longueur des procédures et de simplifier les différentes étapes de la procédure de faillite (la constatation du passif, la liquidation de l'actif, la répartition de l'actif, le concordat après la déclaration de faillite, la clôture de la procédure de faillite, etc.) ainsi que de régler les litiges naissant de la faillite même et, d'autre part, celui d'éliminer tout caractère de sanction de la procédure de faillite et d'introduire, selon des conditions bien précises, la notion de « esdebitazione » pour les personnes physiques.

La réforme des procédures, en cours d'approbation, est inspirée par ces objectifs, à tel point qu'elle élargit la procédure de la chambre du conseil à toutes les procédures naissant et découlant da la procédure de faillites, car elle constitue un modèle de procédure « neutre » capable d'assurer la rapidité et la non dispersion de la procédure, tout en préservant les principes du contradictoire entre les parties et de l'égalité des armes. Ceci dit, voilà les normes qui vont, plus directement, contribuer à la réalisation des objectifs indiqués jusqu'à la :

Art. 9bis. Faillite déclarée par un tribunal non compétent
Afin de réduire les délais et afin d'éviter toute interruption dans la procédure, il est prévu qu'au moment du jugement en appel selon l'art.18 de la loi de faillite, la Cour d'Appel, au lieu d'annuler le jugement de faillite prononcé par le Tribunal non compétent (comme il est le cas à présent) ordonne par décret la transmission immédiate de tous les actes au Tribunal compétent pour qu'il se charge de poursuivre la procédure de faillite, à moins que celui ci, dans les vingt jours qui suivent la réception des actes, demande le règlement de compétence, conformément à l'art. 45 du Code de procédure civile.

Art. 9ter Conflit positif de compétence
Règle le principe selon lequel, lorsque la faillite a été déclarée par plusieurs tribunaux, la procédure est poursuivie par le tribunal compétent qui s'est prononcé le premier.

Art. 15 Instruction qui précède la déclaration de faillite
En ce qui concerne l'instruction qui précède la déclaration de faillite, on garde la procédure de chambre du conseil mais on introduit des délais plus brefs pour la convocation des parties et pour instruire la défense ; des délais qui peuvent devenir encore plus courts pour des raisons d'urgence bien précises.

Art.16 Déclaration de faillite
Etant donné que dans la procédure le délai fixé dans l'alinéa n. 5) de l'art.16 de la loi de faillite pour l'examen du passif n'est presque jamais respecté, le nouvel alinéa n. 4) introduit justement un délai de rigueur de cent quatre-vingt jours à partir de la date de déclaration de faillite.
De même, afin d'éviter une recrudescence des demandes d'admission présentées hors délai, et dont la conséquence serait un retard dans la phase de vérification des crédits, le nouvel alinéa 5) introduit également un délai de rigueur au-delà duquel les demandes d'admission présentées sont considérées hors délai (voir aussi art. 93, alinéa n.1 et art. 101 alinéa n.1 de la loi sur les faillites).

Art. 18 Appel
Bien que l'on n'élimine pas le double degré de juridiction dans la procédure de faillite, on a supprimé le passage où il y a opposition au jugement qui déclare la faillite : il s'agit d'une phase de premier degré qui a lieu devant le tribunal même qui a émis le jugement.
On pourra donc s'opposer au jugement en question directement en appel dans le délai ordinaire de trente jours. Le jugement en appel, bien que prévoyant le contradictoire, résulte simplifié par la mise en place d'une seule audience à l'issu de laquelle la Cour prononce l'arrêt.

Art. 24 Compétence du tribunal de faillite
La nouvelle norme à l'examen, pour des raisons de simplification et accélération de la procédure, établit que, sauf dispositions contraires, dans le cas de litiges causés par une faillite, il faut appliquer les normes sur les procédures en Chambre du Conseil, comme prévu par les art. de 737 à 742 du code de procédure civile.

Art. 25 Pouvoir du juge délégué
L'alinéa n. 5) introduit le délai de quinze jours dans lequel le juge délégué doit avoir pris des mesures concernant les plaintes présentées contre les actes du syndic et du comité des créanciers.

Art. 26 Plainte à l'encontre des décrets émis par le juge délégué et par le tribunal
Cet article constitue, d'un point de vue de la procédure, l'un des piliers de la structure législative car il introduit le modèle des procédures dans la Chambre du conseil. Le but de ce modèle est celui de régler, de façon plus rapide et simple, la plupart des litiges qui naissent au cours des procédures de déclaration de faillites.
Le dernier alinéa fixe à trente jours – à partir de la date d'audience à laquelle les parties ont été convoquées - le délai dans lequel le collège peut confirmer, modifier ou annuler par arrêté motivé le jugement qui fait l'objet de la plainte.

Art. 36 Plainte contre les actes du syndic et du comité des créanciers.
Le recours contre l'arrêté motivé du juge délégué qui a statué sur les plaintes présentées à l'encontre des actes du syndic et du comité des créanciers doit être examiné par le Tribunal en

chambre du conseil dans un délai de trente jours par un arrêté motivé à l'encontre duquel aucun recours n'est possible.

Art. 36bis Délais du procès
Toujours dans le but d'accélérer les procédures de faillite, il a été prévu que les délais fixés par les art. 26 et 36, ne soient pas suspendus pendant la période férié de 45 jours en été.

Art. 41 Rôle du comité des créanciers
Afin d'éviter des longues périodes d'interruption dans la procédure, il est établi que même les décisions du comité des créanciers doivent être adoptées dans un délai maximum de quinze jours à partir du jour de présentation de la demande au président.

Art. 48 Courrier envoyé au failli.
Dans le cadre de cette reforme qui prévoit aussi un changement en matière de conséquences personnelles du failli afin d'éliminer tout aspect de sanction lié à la faillite, la discipline qui règle la gestion du courrier au failli a été modifiée, tout en gardant les limitations à la liberté étroitement liées aux exigences imposées par la procédure. En effet, le failli, ainsi que le représentant légal de la société ou de l'organisme objet de la procédure de faillite, seront à l'avenir dans l'obligation de remettre directement au syndic tout le courrier qui leur est adressé, y compris celui électronique, alors que maintenant le courrier mentionné, lié à la procédure de faillite, est livré au syndic directement par le biais du bureau de poste ou d'autres bureaux analogues.

Art. 49 Les obligations du failli
Même en ce qui concerne les obligations du failli et conformément aux critères de cette loi qui limitaient la liberté de résidence seulement à des nécessités étroitement liées à la procédure de faillite, des règles plus souples ont été introduites remplaçant cette obligation de résidence du failli par l'obligation de communiquer aux autorités chargées de la procédure tout changement de domicile de l'entrepreneur de la société ou des gérants de la société faillie. Il a été aussi prévu, toujours dans ce même but de souplesse, que dans le cas de légitime empêchement ou pour toute autre raison motivée, le juge délégué puisse autoriser les sujets concernés à se faire représenter devant les autorités chargées de la procédure par un mandataire.

Art. 50 Registre public des faillis
Afin de mettre en place cette loi qui prévoit l'élimination des sanctions personnelles dans une procédure de faillite et afin de se coordonner avec les nouveautés introduites par les concepts de réhabilitation et « esdebitazione », l'article qui prévoyait un registre public des faillis ainsi que la procédure de réhabilitation ont été tous les deux abrogés.

Art. 69 bis Expiration du délai de l'action de révocation.
Dans le but de réduire les délais pour déposer l'action de révocation dont la discipline a déjà fait l'objet de la récente rédaction de dispositions contenues dans le décret-loi n. 35/05, converti en loi n. 80 de 2005 - et tenant compte du critère de la loi de délégation qui nécessitait d'une réduction des délais pour la proposition de l'action, le nouvel article 69-bis a été inséré dans la loi de faillite. Il prévoit que les actions de révocation peuvent être acceptées seulement dans les trois ans qui suivent la déclaration de faillite et dans les cinq ans qui suivent les actes frauduleux. Une telle disposition aura, entre autres, pour effet d'empêcher que les actions révocatoires soient exercées plusieurs années après la déclaration de faillite, avec des répercussions négatives sur la durée des procédures de faillite.

Pour se conformer aux directives de la loi de délégation en matière d'accélération et simplification des demandes des créanciers l'art. 1, alinéa 6, lettre a) n. 9, prévoit entre autre que l'audience pour la vérification de l'état du passif doit être effectuée dans un délai de rigueur de 120 jours à partir du dépôt de la déclaration de faillite (art. 16, deuxième alinéa, n.4) et que les demandes d'admission au passif doivent être présentées au plus tard avant le délai de rigueur de 30 jours avant l'audience fixée pour l'examen de l'état passif, faute leur inadmissibilité ou le traitement de ces dernières de la même façon que les demandes hors délai (disposition combinée des articles 16, 2e alinéa, n. 5), 93, premier alinéa et 101, premier alinéa). Toujours afin d'éviter de possibles répercussions négatives sur la durée des procédures de faillite, même en ce qui concerne les demandes hors délai, il a été introduit le délai final de douze mois à partir de l'approbation de l'état des créances. A l'expiration de ce délai et tant que l'actif n'aura pas entièrement été réparti, les demandes hors délai seront admises seulement à condition que le requérant démontre que le retard ne lui est pas imputable (art. 101).

Toujours pour assurer la rapidité de la procédure de faillite à la fin de l'examen des demandes des créanciers, le jugé délégué est censé approuver l'état passif tout de suite et non plus dans le délai de15 jours comme prévu par l'art. 96 abrogé.

Un des moments clefs de la réforme du procès de vérification du passif concerne la matière des recours pour attaquer l'état passif, les trois différentes procédures à cognition pleine (opposition à l'état passif, révocation et appel à l'encontre des crédits admis) ont été remplacées par une seule procédure plus rapide en chambre du conseil qui, dans un délai raisonnable et sans formalités inutiles, garantit néanmoins aux parties la défense et le contradictoire, et se termine par un décret qui ne peut pas faire l'objet d'une demande en appel mais seulement d'un pourvoi en cassation.
En outre, en l'absence de contestations de la part du syndic ou d'autres créanciers, le tribunal peut accepter une requête (même de façon provisoire) par décret prononcé au cours de l'audience de comparution des parties. En revanche, en présence de contestations, ou quand le tribunal se prononce de façon provisoire, ce dernier dispose de façon définitive par décret motivé dans un délai de vingt jours à partir de l'audience.

D'une importance particulière sont aussi les modifications apportées à la procédure en ce qui concerne l'examen des déclarations de créance hors délais. Dans ce cas aussi, la procédure plus complexe de pleine juridiction a été même remplacée par une procédure identique à celle prévue pour l'examen de l'état passif, qui assure une rapidité maximale, tout en garantissant le contradictoire et le droit de défense des créanciers.

En outre, toujours dans le but d'accélérer la procédure de faillite ainsi que d'accorder aux créanciers les bénéfices fiscaux normalement liés à la présentation de la demande d'admission au passif, il a été introduit – aux termes du nouvel article 102 – la possibilité pour le Tribunal, sur la base d'une requête motivée du syndic et après consultation du comité des créanciers et du failli, de décréter de ne pas procéder à l'établissement du passif, s'il résulte qu'il n'y a aucune perspective de réaliser un actif à redistribuer aux créanciers, à l'exception des frais de procédure et des crédits pré-deductibles.

Egalement significatives sont les nouveautés en fonction de la simplification et de l'accélération des procédures relatives à la phase de liquidation et de la distribution des biens. Les nouvelles dispositions en la matière s'inspirent aux critères d'efficacité et de

simplification opérationnelle, à travers l'adoption de nouveaux choix aussi sur le plan de l'individuation de plus opportunes obligations procédurales, caractérisées par la simplicité et la rapidité. Dans telle perspective, une des nouveautés principales réside dans le fait que, dans la mesure du possible, l'activité de liquidation des dettes devra être menée non plus avec différentes opérations, non coordonnées, occasionnelles et qui ne rentrent pas dans une stratégie unitaire, mais dans le cadre d'un programme de liquidation rationnelle, établie par le syndic et approuvé par le juge délégué, après approbation du comité des créanciers. Le programme doit être préparé par le syndic dans un délai de 60 jours après la rédaction de l'inventaire, dès que les nécessaires éléments d'évaluation sur l'importance, la qualité et la valeur de marché des biens inclus dans les actifs auront été rendus disponibles (article 104-ter). La possibilité de permettre la réalisation du programme avant même la publication du décret exécutif d'état passif (contrairement à ce qui se produit dans le régime actuel), se pose de manière cohérente sur la même ligne avec l'exigence de favoriser la rapidité de la procédure. Pour les mêmes finalités de simplicité et de rapidité, il a été aussi prévu que l'approbation du programme de liquidation remplace les autorisations qui seraient nécessaires pour l'adoption de chacun des actes prévus dans le même programme.

Pour ce qui concerne aussi la vente des biens immeubles et des entreprises qui comprennent des immeubles, ont été prévues des normes qui visent à réaliser l'objectif d'obtenir le maximum possible selon des modèles de rapidité, flexibilité et transparence, totalement détachés des schémas procéduraux rigides prévus pour les exécutions individuelles et, par conséquent, non plus ancrés aux distinctions anachroniques basées sur la nature mobilière ou immobilière des biens : le syndic réalise les ventes et les autres actes de liquidation à travers des procédures compétitives, même avec l'aide de professionnels (article 107). Les nouveaux schémas procéduraux mirent essentiellement dans deux directions : celle de rendre la procédure moins formelle et, parallèlement, d'élargir de manière significative les formes de publicité. Dans une telle optique, une nouveauté significative consiste dans la possibilité d'utiliser le système « d'offres privées » même pour la vente d'immeubles, s'il est considéré comme plus avantageux..

Pour ce qui concerne l'approbation du projet de répartition, il faut signaler la prévision, inspirée aux exigences déjà rappelées plusieurs foies, selon laquelle le recours contre le projet de répartition est traité en chambre du conseil dans les formes prévues par l'article 26 (article 110). D'ailleurs, même en cas de recours, le juge délégué déclare exécutif le projet de répartition, après avoir mis en réserve les sommes correspondantes aux crédits qui font l'objet de contestation.

La même procédure en chambre du conseil aux termes de l'article 26 est prévue dans le cas de contestations sur la reddition des comptes présentée par le syndic.

Art.118 Clôture de la faillite

Il apparaît d'intérêt remarquable, dans le but de réaliser une économie de procédure et de réduire la durée des procédures de faillite, la prévision selon laquelle cette procédure peut être immédiatement clôturée en cas d'insuffisance de l'actif dans le cas où, déjà avec la relation du syndic selon l'art.33 (à présenter dans un délai d'un mois à partir de la date de déclaration de faillite) ou avec des rapports successifs récapitulatifs, il a est constaté que sa continuation ne permet pas de satisfaire, même pas en partie, les créanciers, ceux pré-deductibles et les frais de procédure.

La réclamation en Chambre du Conseil, contre le décret qui déclare la clôture ou en rejette la demande, est admise en vertu de l'article 26 (art. 119).

Réhabilitation civile
En harmonie avec l'abolition du registre public des faillis la procédure de réhabilitation civile (articles 142, 145 loi régissant la faillite) a été supprimée.

***Esdebitazione* (nouveaux articles 142, 143 et 144).**
Pour la première fois est introduit dans le système italien l'institution de la *esdebitazione* en faveur du failli en tant que personne physique pour les dettes restantes à l'égard des créditeurs non satisfaits mis en concurrence. L'accès au bénéfice est soumis à l'existence de conditions précises et à l'inexistence de certaines circonstances d'empêchement.

Pour obtenir la *esdebitazione* , le failli doit avoir coopéré avec les organes de la procédure de faillite ou concordataire, il ne doit pas avoir retardé ou contribué à retarder le déroulement de la procédure, il ne doit pas avoir violé l'obligation de remise au syndic de la correspondance relative aux rapports d'*esdebitazione* dans la procédure, il ne doit pas avoir bénéficié d'autres procedures de *esdebitazione* dans les dix années qui précèdent la demande, il ne doit pas avoir distrait l'actif ou exposé un passif inexistant, il ne doit pas avoir causé ou aggravé la situation économique, ni avoir fait recours de façon abusive au crédit. En outre, ce dernier ne doit pas avoir été condamné, par jugement devenu *res judicata,* pour banqueroute frauduleuse ou pour des crimes contre l'économie publique, l'industrie et le commerce ou encore pour d'autres crimes liés à la gestion de la société, à moins qu'il ait obtenu la réhabilitation. Le deuxième alinéa du nouvel article 142 de la Loi sur les Faillites précise que l'*esdebitazione* ne peut pas être accordée dans l'hypothèse où les créditeurs en concurrence n'ont pas été au moins en partie satisfaits.

Le troisième alinéa du nouvel article 142 L. F. précise par contre que l'*esdebitazione* ne peut pas concerner les dettes dérivant d'obligations alimentaires, les dettes pour les dommages et intérêts découlant de faits illicites non contractuels, ainsi que ceux qui dérivent de l'application de sanctions pénales et administratives.

Art. 151 Schéma décret législatif
Toujours en matière de limitations personnelles à l'égard du failli, la disposition mentionnée efface les conséquences de caractère punitif contenues dans des normes qui ne font pas partie de la loi de faillite qui, bien que basées sur une longue tradition historique, sont désormais privées de fondement substantiel et dont l'unique fonction est celle d'attribuer à la faillite un caractère punitif.

En premier lieu, l'incapacité pour le failli d'exercer le droit de vote (électorat actif) pendant les cinq années suivant la faillite est supprimée (art. 2 alinéa 1, D.P.R. 20 mars 1967, n. 223) ; cette suppression engendre aussi la disparition d'autres limitations personnelles (surtout en matière d'exercice des professions intellectuelles) liées à l'absence de la pleine jouissance des droits civils.

La limitation imposée au failli en ce qui concerne la discipline de l'activité de consultant pour la circulation des moyens de transport, contenue dans l'alinéa e) de l'article 3 de la Loi du 8 août 1991, n. 264 est expressément abrogée. Par ces dernières dispositions, le système législatif italien s'est conformé à la jurisprudence européenne.

Dans ce cadre-là, vis-à-vis l'exécution des arrêts de la Cour européenne des Droits de l'Homme, il faut mentionner la décision ***Sgattoni*** (non citée dans le rapport), où la Cour a reconnu le caractère d'efficacité du recours préalable (Loi Pinto) appliqué aux procédures de faillite. Dans cette optique de conformité aux arrêts de la Cour Européenne, **il faut mentionner aussi l'art. 151 qui abolit tout de suite les restrictions personnelles découlant de la faillite**.

vi. En ce qui concerne **les données statistiques mentionnées** dans le rapport du Commissaire aux Droits de l'Homme, la note, ci jointe, n. 2005/DS du 2/12/2005 de la Direction Générale de Statistique du Ministère de la Justice a examiné la méthode avec laquelle ces données statistiques ont été utilisées, afin d'évaluer l'état de la justice italienne et notamment la situation de la longueur des procédures judiciaires en Italie. Dans cette note il est affirmé, en résumé, que les données statistiques ont été tirées de trois différents aperçus, envoyés par la sous-mentionée Direction Générale de Statistique, lors de trois différentes occasions, c'est-à-dire : A) à l'occasion du troisième rapport sur les progrès de l'activité juridictionnelle, relative à la période jusqu'à 2003; B) à l'occasion d'une réunion du Comité des Ministres d'avril 05 (données envoyées en mars 05, relatives à la période jusqu'à 2004 et mises à jour jusqu'à mars 2005); C) à l'occasion d'une réunion du Comité des Ministres en juin 2005 (données envoyées en juin 2005 et toujours relatives à la période jusqu'à 2004, mais mises à jours à la lumière de nouvelles données transmises par des bureaux judiciaires qui, à l'époque, n'avaient pas répondu aux demandes de renseignements). Il faut ajouter que ces données sont citées de manière incohérente (voir page 8 point 12, page 9 point 14, page 10 points 18-20), parce que l'on n'a pas utilisé, comme point de repère, une seule source mais, de façon confuse, les trois sources au même temps, de sorte que les différents paragraphes du rapport, en se referant chacun aux données d'une source différente et non homogène (en modifiant l'année de référence, le valeur absolue ou celle de pourcentage etc.), semblent offrir un résultat finale pas fiable, justement à cause de ce manque de coordination ainsi que d'homogénéité entre les données statistiques de départ. En définitive, les données statistiques disponibles ne résultent pas encadrées selon les méthodes traditionnelles (qui supposent l'homogénéité des données d'analyse), ce qui fait que les propositions d'interprétation, développées sur cette base, en résultent faussées.

The Introduction of the crime of torture

1) As to the introduction of the **crime of torture**, Italy complies with all the obligations that stem from the signature of the relevant Convention. The Italian legal system provides sanctions for all conducts that can be considered to fall within the definition of torture as set forth in Article 1 of the Convention Against Torture, and that this sanction is ensured through the system of incriminating facts and aggravating circumstances. While other systems provide only a single provision, the Italian system considers the concept of torture within a wide range of conducts.

At the chronological level, it should be mentioned that under the current legislature (XIV) several bills concerning the introduction of the crime of torture have been under consideration by Parliament. The bills were signed by Members of Parliament of opposed political sides. Over 100 Members of Parliament, including both Members of the Chamber of Deputies and Senators, joined in the campaign "We cannot stand torture" launched by the Italian Section of Amnesty International: an initiative widely shared by all political parties and supported by 266 local bodies and more than 30,000 citizens. A Member of Parliament out of nine signed one of the bills: this may be seen as a sign that the time is ripe for the introduction in the legislation of the crime of torture as defined in international law.

Despite this common concern, mention should be made of the interruption of the procedure to enact the bill in Parliament subsequent to the adoption by the Chamber of Deputies, on April 22, 2004, of an amendment providing for a limited definition of the crime of torture.

By recalling Bills no. A.C. 1483; A.C. 1518; A.C. 1948, as translated into the Consolidated Text–Bill no. 4990 (entitled "Introduction of Articles 613-bis and 613-ter of the Penal Code concerning Torture"), the crime of torture is committed by "anyone who inflicts a physical or psychical torture on an individual, subjecting him or her to inhuman treatment or grave sufferings".

In this context, however, a step forward was made in early 2002 with the introduction of the crime of torture in the Military Penal Code in Time of War (Art. 185 bis of the aforementioned Code). It is worth reiterating that such provision may be applied to all "the task forces abroad for military armed interventions", including "in time of peace". Therefore, Art. 185 bis of the aforementioned Penal Code provides that "the forces personnel that, on grounds pertaining to war, commit acts of torture or other inhuman treatment…harming prisoners of war or civilians or other protected persons…, is convicted detention penalty of up to 5 years".

In brief, although the crime of torture has not been formally introduced in the Penal Code, it should be noted that a relevant legislative framework, prohibiting its perpetration, is in force.

It is also worth mentioning that by Act no. 74/05, entitled "Voluntary granting of a contribution to the Fund of the United Nations for the Victims of Torture", a voluntary annual national contribution amounting to 120.000,00 Euros for the 2004-2008 period has been recently allocated.

The judicial proceedings concerning the Naples Global Forum and the Genoa G-8 events

2) With specific regard to the judicial proceedings relating to the **Naples Global Forum** and the **Genoa G-8 events**:

Following the request put forward by the public prosecutor of the Naples Tribunal, the magistrate for the pre-trial examination (GUP) decided on July 13, 2004 to commit for trial two police senior officers and 29, policemen and police officers, due to events occurred in the Naples police station "Virgilio".

As to the events occurred during the March 2001 Global Forum held in Naples, the trial on indictment before the Naples Court is underway and concerns the following offences: participation in abuse of power (arts. 110, 323 p.c.), unlawful search of person and personal inspection (art. 609 p.c.), violence (art. 10 p.c), kidnapping (art. 605 p.c), damage and bodily injuries (arts.582 e 585 p.c.). However, it is worth mentioning that the magistrate for the pre-trial examination (GUP) issued judgment for the dismissal of charge for some of the above-mentioned criminal charges. In compliance with relevant legislation, the Naples public prosecutor immediately started due investigations.

As to the events occurred in Genoa, the so-called "Genoa events", the judicial proceedings refer and concern three different episodes:

1. As to the events occurred in the police station in Bolzaneto, the trial has started on 12 October 2005. The Genoa public prosecutor has therefore requested the committal for trial of members of the following forces: police, army, penitentiary police and health care providers, who have been charged of crimes as follows: battery (art. 581 p.c.); bodily injury (art. 582

p.c.); abuse of power against demonstrators under arrest (art. 608 p.c.); violence (art. 610 p.c.); abuse (art. 594 p.c.); assault (art. 612 p.c.); forgery (art. 479 p.c.): omission of medical report (365 p.c.), abetting (370 p.c.). All these crimes have been aggravated by taking into account the weak position of the victims, the violation of duties and the abuse of power, in addition to the futile and vile motivation (art. 61, nn 1,5,9 p.c.) and the misconduct of officer (art. 323 p.c.);
2. As to the events occurred at the Genoa police headquarters, the pre-trial stage was recently concluded, and the trial has started on 17 November;
3. As to the events at primary school "Diaz", the pre-trial stage was also concluded, and the trial has started on 14 October 2005.

b) The Penitentiary System/Le système carcéral

The principle of "the rehabilitation/correctional function of the penalty", as laid down by Art. 27 of the Italian Constitution, triggered the introduction into the Italian legal system of the so-called "alternative measures to detention". While facilitating the re-socialisation of the convicted, these measures are effective means to tackle the problem of **overcrowded prisons**.

The Italian penitentiary Administration is committed to making all possible efforts in order to increase the quality of prison life (considering the single prisoner as a point of reference, and using at best the limited available resources), as well as in order to take all the measures useful to find any other instrument able to increase the current resources.

The problem of prison overcrowding is the constant concern of the Italian Penitentiary Administration. This is daily working in order to lessen the seriousness of that situation in every prison, by adopting provisions which tend, while keeping into account prisoners' lawful expectations and health conditions and while complying with the current norms, to uniformly distribute prison population in the detention spaces available.

The Penitentiary Administration daily action goes along with a constant planning of projects able to normalize, within a longer term, the current situation and to re-establish the necessary separation of the various categories of prisoners.

The deflationary effect of the measures alternative to detention is unfortunately a datum less meaningful than it should be in absolute terms, since there is a large number of alien national prisoners (about 32% of prison population) who do not possess the requirements necessary to be granted those measures either because they do not have a steady point of reference in the community, or because of their status of clandestinity, which prevents them to stay in Italy. For this reason, within the framework of the international cooperation, bilateral agreements additional to the Strasbourg Convention of 21st March 1983 were signed, aiming at allowing the execution of prison sentences in the State of citizenship of the alien national. It is anyway difficult to enforce such provisions, since many prisoners, without identity papers, do not indicate the Country they are from.

The Penitentiary Administration is however more and more active, through the cooperation with local bodies, with civil society, in identifying and activating those channels which make the granting of penitentiary benefits easier also for that category of prisoners.

The Penitentiary Administration commitment is strong also in order to constantly monitor the assignment of the staff throughout the Country, by transferring staff with the purpose of a better use of them in order to face critical situations in different prisons. These transfers of staff are necessary in order to re-activate the detention wings which were closed for rehabilitation works; such works were necessary in order to make these structures fit to the standards provided for by the Penitentiary Act, and in order to increase the available places.

Such efforts go along with the commitment by the Management of the Penitentiary Administration in order to get more financial resources for the penitentiary system; such resources, though constant in absolute terms, have gradually reduced in the last years due to the high increase of prison population.

Access of prisoners to health services
Despite the progressive reduction of financial resources (per person), the Penitentiary Administration is still strongly engaged in ensuring the continuity of health services, by providing a high standard of medical services in each prison (according to a coefficient identified on the basis of the ratio prisoners present/prison capacity).

In each prison there is a health service meeting the requirements of prophylaxis and care of the prisoners. During the last years, the organisation and the functioning of some structures of the health service have been carried out and improved, and namely:

- the psychiatric service, through the establishment of a specific unit in almost all the prisons, also through agreements with the Mental Health Department of Local Health Services;
- first-level care units for prisoners afflicted with HIV (“Marassi”, Genoa; “Opera”, Milan; “Rebibbia”, Rome; “Secondigliano”, Naples) or suffering from symptomatic forms of medium seriousness; intermediate level units for care subsequent to the phase of maximum seriousness (Massa, Modena, Pisa);
- units for disabled prisoners, structured in two levels of care, are currently under construction.

Upon admission to prison, a first general medical examination is always carried out, in order to ascertain possible physical or psychological illnesses of the subject; periodical and frequent medical checks are then carried out, but, upon request of the person concerned, the physician must carry out a medical examination, even every day. S/He must immediately report the presence of illness requiring particular research and specialist care. Moreover, prisoners are always allowed to ask to be seen by a physician of their own choice, or to undergo surgery or therapeutic treatments at their own expenses in prison infirmaries or in prison hospitals.

In order to facilitate the prisoners access to local health services, special healthcare units for prisoners were established in public hospitals; two new units have been recently opened: one in Rome at the “Sandro Pertini” hospital and one in Milan at the “San Paolo” hospital. A further unit is going to be opened at the Bel Colle hospital in Viterbo.

Special care is paid to mothers in prison. Indeed, particular health-care services are provided for pregnant women and puerperae. A specialist medical service of obstetrics and gynaecology is provided in prisons for women and in all the prisons with special wings for women. A special paediatric care service is ensured to children under the age of three living in prisons with their mothers (as to **the psychiatric assistance**, please read below Appendix n.2)

Work opportunities

The rate of working prisoners, as of 31 December 2004, amounted to 25,1% of the prison population. A significant rate of prisoners is engaged in the so-called inner manufactures, that is managed by the Penitentiary Administration, that is in domestic services of maintenance – some of them on a full time basis, some of them on a part time basis. In the field of external manufactures, the call centres activity is enjoying particular success.

As far as vocational courses are concerned, 15% of the prison population chooses courses having computer science as subject, as it offers an important contact point between the detention condition and the working world.

By the entry into force of Act no. 193 of 22 June 2000 (*Legge Smuraglia*), the possibility to obtain tax advantages has been given to the companies which employ prisoners; and in that direction, the Penitentiary Administration does its best to promote the presence of the entrepreneurial world inside prison, in order to increase the employment possibilities of the prisoners.

As regards what has been underlined in the last part of **Para 53** of the Report, it is to be noted that the Penitentiary Administration has recently established permanent relationships with the "Ombudsman of the persons deprived of their personal freedom", set up by some Regions and also by other Local Bodies, aiming at the improvement of livelihood conditions inside penal institutions and, above all, at the raising of the quality of prison life.

The 41-b regime

Prisoners under the so-called 41-b regime are allowed the same possibilities of accessing healthcare services, treatment and study opportunities as well as of having interviews with treatment professionals, as any other prisoner. They are also allowed to maintain periodical family relationships.

The Penitentiary Administration is strongly committed to improving life conditions within the detention wings accommodating that category of prisoners; those wings necessarily must comply with very high security standards.

The Penitentiary Administration is aware of the negative effects on psyche which detention characterised by such strong limitations may imply, and has therefore increased the healthcare service, also of psychiatric nature, for those prisoners: indeed, beside being visited by the medical staff on duty in the prisons, they can now be visited also by a specialist doctor of their own choice upon their request.

A psychological support is not excluded for the cases to whom the punishment of day isolation is applied; that punishment is not a mere modality of life nor of prison discipline, but it is a real penal sanction inflicted by the conviction judgement, and the Penitentiary Administration must enforce it "*from the beginning of the penal execution of the sentence*". But the enforcement of the day isolation does not exclude the possibility for the prisoner to participate in working activities, to start a study course as a private student, to take part in religious ceremonies and to have interviews with treatment professionals. The accommodation in an individual cell is provided, within normal detention wings. With the aim at improving the detention facilities for the prisoners under the so-called 41-b regime, the Penitentiary Administration is concretely and currently committed to carrying out building measures.

Following an attentive and methodological analysis of each case and further to a prudent exercise of the discretionary power of the Penitentiary Administration in proposing to the Minister of Justice the enforcement of the art. 41-b, a slight but meaningful decrease of the cases of the regime extension is occurring: **over the last three years, the number of prisoners under that regime decreased from 659 to the present 587**.

Concerning the juvenile justice

The Human Rights Commissioner, Mr. A. Gil-Robles assesses positively in his report the Italian juvenile justice system as to the measures adopted, the implementation of alternative measures and the professionalism of personnel.

During his mission, Mr. Gil-Robles visited some juvenile centres: the First Aid Centre in Rome, the Roma Juvenile Detention Centre - Casal del Marmo, and the Juvenile Detention Institute in Nisida-Naples.

By taking into account all relevant remarks put forward by Mr. Gil-Robles focussing on shortage vis-à-vis furnitures and equipments at the relevant facilities, the Italian authorities have undertaken, since a week later his mission, the necessary process to allocate resources for the restructure works. In August 2005, an ad hoc process to find out the company in charge with providing the necessary services has started. The furniture have been brought and partly placed. The last stage will be devoted to refresh the painting of the indoor walls.

On a more specific note , as to some paras of Mr. Gil-Robles Report, we would like to stress, as follows:

Para. 79: First Aid Centres hosting youngsters under arrest, are under the direction of the juvenile justice Administration that involve penitentiary police personnel. Nevertheless, such Centres are managed by civilians from social and educational fields. Therefore, Law does not envisage such Centres as detention Centres. In accordance with DPR no. 44/88 and Legislative Decree no. 272/89 these Centres aim at preventing that juveniles be brought to detention centres prior to justice' relevant decisions, including for istance the confirmation of the arrest measure.

Those youngsters who are hosted in the cited centres are provided with psychological and medical care services. They can resort and have at their own disposal a justice for juvenile affairs, and cannot be subjected to police examination.

Para. 81: The presence of girls detainees is residual, that is why the ad hoc branches for girls detainees are a few throughout the country. According to the current relevant legislation, including that one devoted to mothers detainees, it is worth mentioning that authorities tend to adopt alternative measures or those measures replacing the detention ones for girls and mothers detainees.

Para 84: As to the programmes and activities arranged in the detention Centres which were visited by Mr. Gil-Robles in Rome and in Nisida, these activities are financed with resources from the Justice Ministry, some others are put in place with the resources allocated by the Municipalities and Provinces concerned, in line with Title V, part II of the Italian Basic Law and with Act no. 328/2000, devoted to "the integrated system of social services for the juvenile detention centres".

The involvement of civil society is envisaged by the Penitentiary legislation that facilitates the contribution, the social participation and cooperation – particularly for the juvenile sector- of individuals, associations, bodies and other relevant stakeholders, especially in the rehabilitation process.

****

Appendix 2

PSYCHIATRIC SYSTEM

The health care system to assist mentally ill people in Italy: progress to date and current situation

1. Legal Framework

The psychiatric reform, implemented by Act no. 180/78 and better expounded by the sanitary reform Act no. 833/78 set out, at the legal level, the different approach when tackling the mental illness, following the scientific research's outcome in the field of both the psychodynamic and psychobiology and by putting in place a more oriented and defined action the supply of psycotrope drugs.

The relevant reform legislation pursued three main goals:
1) Decriminalizing the mental disease, until that time under responsibility of the public prosecutor Office;
2) Promoting the social rehabilitation while reducing the time of hospitalisation;
3) Recommending assistance model more extended throughout the country, to be easy to be acceded to and based upon both multi-disciplinary interaction between different professional stakeholders and integrated interventions.

Such objectives have been reinforced by two programmes entitled "Projects towards Goals for the Protection of Mental Health" which took place between 1994 and 1998. By these two projects four key-areas have been highlighted in order to improve the psychiatric sector:

a) The construction of a services network to supply an integrated intervention vis-à-vis the rehabilitation and the management of the acute stage and states of crisis of patients;
b) The development of the work management at the departmental level by providing the services network with technical and managerial responsibility to guaranteeing the integrated and continuative functioning of the cited services;
c) The extension of the professional competencies of the relevant staff in order to face all psychiatric pathologies, with particular regard to the most serious ones, through diversified interventions that include the participation of a higher number of persons, including relatives;
d) The effective replacement of the psychiatric hospital with the implementation of programs for the new accommodation of patients.

The intervention straegy put forward has been the basis for the implementation framework devoted to the organic reorganization of the services for the psychiatric care service.
Its most significant elements are as follows:

1) The establishment of the Mental Health Department (Dipartimento di Salute Mentale – DSM) as a coordination body in charge of guaranteeing the unity and the integration of the psychiatric services in a certain given area of the country;
2) The determination of the typology of the organizational components of the DSM (territorial structures, hospital services, structures for activity in a semi-residential regime and structures for activity in a residential regime) and the definition of relevant standard, in relation to the population;
3) The determination of the DSM responsibilities and of every organizational component;
4) The establishment of synergies with other "neighbouring services" (basic health care programmes, scholastic medicine, medical guard, social advisory bureaux, infanthood neuropsychiatry).

When planning the activities devoted to contrast the spread of mental diseases, the mental health-care services, must give priority, over a three-year term, to prevention, care and rehabilitation measures for serious mentally ill people without setting aside the request for intervention of less affected people by such diseases. Such priority is taken by considering the necessity to avoid that such diseases can harm the autonomy and the enjoyment of the citizenship-related rights with the high risk of endurance and social marginalisation. In order to realise such interventions, the most effective measures are as follows:

· The implementation by relevant services of working practices aimed at taking part actively and directly in the territory (schools, workplaces, etc), in collaboration with civil society and health care providers at large;

· The elaboration of personalized therapeutic-rehabilitating plans, with a specific timeframe and assessment process;

· The involvement in the cited plans of other health-care services, of the generalists and of the other social services and of the other resources of the territory, especially as regards working activities, the livelihood, and the so-called relationship assets (the establishment and fostering of affective and social relations);

· The application of the most effective therapeutic strategies in light of the Medicine Based on Tests of Effectiveness criteria (Evidence Based Medicines);

· The involvement of the families in the formulation and in the implementation of the therapeutic plan;

· The start-up of specific programs of recovery for patients who do not follow or leave the service in order to reduce the rate of suicides among patients;

· The support to the establishment and the working of self-help groups between relatives and patients and social cooperatives, especially those devoted to access to the labour market;

· The implementation of awareness raising campaigns of serious mental diseases to be addressed to population, with the aim of reducing prejudices and of facilitating solidarity, which would increase the possibility of addressing serious mentally ill patients to the mental health-care services.

The mapping exercise of specific objectives to be pursued by the Mental Health Departments is based upon clear indications on both the organizational model and the quality of the aid processes, in particular on the following elements:

· Guidelines and professional consent procedures for a good clinical practice, as to the intervention modalities;
· An assessment process for the Continuous Improvement of Quality (CIQ): organizational quality, professional quality, perceived quality by customers, as well as by relatives;
· The correct documentation of activities and performances carried out in favour of every single patient within the departmental information system to which to address the medical report concerning every patient.

Sanitary and social integration

The issue of the complexity of needs and the relating complexity of responses is widely considered in the latest reform law, Legislative Decree no.229/1999, when tackling the issue of social and sanitary integration. Article 3-quater contains the first organic and systematic definition of the *district*, as operating branch of the Local Health Unit (Unita' Sanitaria Locale).
The district has the responsibility to guarantee accessibility, continuity and timeliness of the health care service, by elaborating programs of activities that involve all the operating structures of the USL. The district realizes the integration between sanitary services and social services: health service integrated plans assure a unitary answer to those needs of health for which it is necessary a sanitary protection as well as a social protection. Beside the function of producer of performances in the primary attendance, through organized structures at the departmental level, in which the generalists and the paediatrists are involved, the district assumes a management role for the coordination and integration of the activities to be carried out by both services and the departments of USL, between the later and the municipality social services in order to respond to the health care needs of the population, at the local level.

2. The Mental Health Departments
The establishment of the Departments of Mental Health has been formalised by all Regions and the Autonomous Provinces. The Departments are 211.

The data refer to:

- the inner public structures at the departments of mental health (mental health centre, peripheral outpatients' departments, diurnal centres, residential structures, territorial and hospitals day hospital, services of diagnosis and cure);
- the university psychiatric clinics linked to the national health-care service;
- the private mental health care services, the technical management of which is carried out by the Mental Health Departments (the type of relating relevant structures include the following ones: diurnal centres, residential structures, territorial and hospitals day hospital, nursing home);
- the private structures linked to the National Health Care Service that are autonomous as to both the administrative management and the technical direction (the typology of relating structures may include: diurnal centres, residential structures, territorial and hospitals day hospital, nursing home);
- the personnel of the Departments of Mental Health;

- the seconded staff personnel working at both the public structures of the DSM and the private structures, under the technical direction of the DSM.

Guiding standards

Staff: 1 operator every 1500 inhabitants.

- Mental Health Centres: one structure every 150.000 inhabitants working 12 hours per day, 6 days per week;
- Diurnal Centres: one structure every 150,000 inhabitants with a timetable of opening at least 8 hours per day for six days per week;
- As to facilities at the hospitals level (day hospital and Psychiatric Services of Diagnosis and Care), the standard is 1 place every 10,000 inhabitants;
- As to facilities at the residential structures, the standard is 1 place every 10,000 inhabitants, that can be doubled for those health Units in which psychiatric hospitals were included, and the closing of which has led to the establishment of ad hoc residences. Another standard regards the maximum number of places for each structure, amounting to twenty places per each structure.

➢ **Structures**

➢ **Mental Health Centres and medical centres**
➢ **Mental Health Centres**

There are 707 MHC with a population rate amounting to 1,83. This is nearly the double if compared to the standard; however the rates in all Regions exceed the cited one.

➢ **Rescue Structures**
➢ **Psychiatric Services of Diagnosis and Cure**

The national amount is of 321, with 3.997 (accommodation/)beds.

e) D.H.Centres

There are 154 DHC, of which 147 are public with 356 places, and 7 are private with 19 places.

f) University Private Clinics

There are 8 UPC with 162 places.

g) Private Health Care Centres

There are 56 PHCC with 3.975 places.

h) Public relevant places (accommodation)

The total number (sum of the p.l. of the SPDC, the DH and the university clinics) is 5,295, to which corresponds a value of the proportion/rate population/beds of 0,92, a bit less than the standard.

Seconded private relevant facilities

To the 3,975 places of the above-mentioned private health care centres, 19 places at the private DH Centres must be added for a total of 3.994.

Totale places (accommodation/beds)

The national total is 9.289 places. The distribution in terms of percentage between public and private places is, at the domestic level, of 57.0% vis-à-vis the public sector, and 43.0% vis-à-vis the private one.

Diurnal Centres

There are 612 DC, with a balanced proportion vis-à-vis the population. The rate is 1,59, more than the relevant standard.

Distribution for type of management

The majority of the diurnal centres is under public management; in detail it is as follows:
520 DC are public (85% of the total);
35 DC are private but under technical management of DSM (5.7% of the total);
57 DC are private with autonomous technical management (9.3% of the total).

Residential Structures

They amount to 1,552, for a total of 17.101 residential places (accommodation/beds).
The national rate in terms of accommodation/population is 2,96, more than the standard. The average should be placed at 1 place every 10,000 inhabitants. This rate can reach 2 every 10,000 inhabitants in the Regions concerned to the process of closing down of the former psychiatric hospitals. Such process has been carried out in all Regions, except for Valle d'Aosta, Molise and the Autonomous Provinces of Bolzano.

Distribution of the number of structures for type of assistance and management

The percentage distribution of accommodation/beds/places is increasingly higher than that one of structures. There are 17.101 places which are divided as follows:
Public S.R. 912 (58.8% of the total);
Private S.R. under technical management of DSM amounting to 255 (16.4% of the total);
Private S.R. with autonomous technical management amounting to 385 (24.8% of the total).

Staff

The staff at the Mental Health Departments have been divided into two categories: the former includes all the professional figures envisaged by the so-called Objective Project entitled "Tutela salute mentale 1998-2000", which consider the relationship/rate between MHD staff/population; the later, instead, refers to a wide range of other professional figures, that also work within the framework of the MHD activities, and are reported under the item "other professionals". The total is of 34.446 operators, of which 30,711 relating to the former category, and 3,735 to the later category. There has been an increase in the staff personnel of approximately 4000 units since 1998, when the total number of the relevant workers amounted to 30.442.

Seconded and Long-Term Professional (professional figures from the "Objective Project")

The detailed analysis of 30.711 relevant workers at the MHD supplies the following information:

The several professional figures are distributed as follows (number and percentage on the total):

Doctors	5.561 (18,1%) ;
Psychologists	1.850 (6,0%) ;
Sociologists	120 (0,4 %) ;
Therapetists of the psychiatric rehabilitation	171 (0,6%);
Educators	2,095 (6.8%);

Social workers	1,551 (5.1%);
Nurses	14,760 (48.1%);
Technical Operators	(OTA) 2,698 (8.8%);
Auxiliary personnel	1,300 (4.2%);
Administration Units	605 (2.0%).

The national rate MHD workers/population, calculated on the basis of the professional figures from the Objective Project (30,711), equals to 0,80 MHD operators every 1,500 inhabitants. Even though such rate is still lower than the standard envisaged in the so-called "P.O.N. (Programma Operativo Nazionale - that is equal to 1 operator every 1,500 inhabitants)", such value is increased if compared to the previous survey dating back to March 31st 1998, when it was 0,75.

Other Staff

In order to represent this category of staff, defined with the term "other", this has been grouped under five categories: 1) generic and psychiatric nurses; 2) sanitary assistants; 3) technical personnel; 4) workers from social cooperatives; 5) entertainers and art, cultural sector workers. It has been, however, necessary to insert a sixth grouping in order to represent a numerous ensemble of other figures, which are not homogenous. Such group has been defined under the term "other figures". The total of the staff "other" is thus of 3.735 units, distributed under the six groupings as follows (number and percentage):

generic and psychiatric nurses	1.496(40,1%);
sanitary assistants	85(2,3%);
technical workers	99(2,7%);
social cooperative workers	846(22,7%);
cultural/social sector workers	125 (3,3%);
other figures	1.084(29%).

Psychiatric assistance within the framework of the Penitentiary system services.
The Italian Penitentiary Administration, being aware of the fundamental contribution offered by the psychiatric science and of the necessity of a suitable support for persons deprived of their personal freedom, has recently improved the relevant service by putting the specialists of this field in the position to establish and manage a therapeutic relationship with the patient, in order to constantly monitor the condition of the prisoner's psychic trouble. Such specialized branch has been extended to any penal institution.

The Penitentiary Administration is greatly engaged in involving the local health service in the management of the prisoner suffering from psychiatric pathologies in order to support his/her future reintegration into family and society at the time of release.

Finally, attention is constantly paid to the Judicial Psychiatric Hospitals, with the effort of improving the welfare standards as well as the typologies of intervention.

As to the key issue/circumstance of "danger to society", which is the foundation for the application of the relevant detention security measure, namely the access to the judicial psychiatric hospital, this is exclusively evaluated by the Magistracy without any intervention by the Penitentiary Administration.

Appendix 3
Foreigners/Etrangers

Immigration et asile

La **Loi 189/2002 distingue nettement entre les requêtes** d'asile qui impliquent que les requérantes sont envoyés auprès des Centres d'Identification (CD) ou de Séjour Temporaire (CPTA), et les requêtes qui n'impliquent pas ce type de procedure. Selon le type de séjour de l'étranger, il y a une différente procédure pour l'examen de la requête : la procedure semplifiée (pour les requerants qui rentrent dans la categorie de l'art.1 bis, para.2) et la procedure ordinaire (pour les requerantes asile qui n'ont pas probleme d'identification. Toutefois, la même procédure ordinaire ne doit pas se dérouler qu'en 35 jours (para. 2, art.1 quater), là où la procédure simplifiée se déroule en 20 jours.

Pour l'assistance aux requérants asile et aux réfugiés, la législation italienne (Loi Martelli) prévoyait la seule distribution d'un **contribut économique**, correspondant à euros 17,56 par jour pour 45 jours, en lassaint que les services de benefiance et assistance publique établis par les mairies adoptent les mesures additionnelles, à parité de conditions avec les citoyens italiens nécessitants d'aide.

A partir du 2001, eu regard à l'harmonisation de la discipline communautaire concernant l'accueil des requérants asile, le Ministère de l'Intérieur, en collaboration avec l'Association Nationale des Mairies italiennes (ANCI) et avec la Délégation italienne auprès de l'UNHCR a établi un système local, coordonné d'accueil (qui s'appelait programme national sur l'asile) qui a été apprécié aussi à niveau de l'UE. Tel système a trouvé dans la Loi 189/2002 son spécifique réglementation et représente avec les structures gouvernementales des Centres d'Identification l'instrument national à travers lequel on a accueilli la Directive européenne CE/9/2003 sur les conditions minimes d'accueil pour les requérants asile.

Dépenses pour les requérants asile: année 2002, euros 6.596.758, pour 8350 personnes; année 2003, euros 9.153.201.00, pour 11586 personnes; année 2004, euros 5.534,381.00, pour 7.500 personnes.

Dépenses pour le système de protection des requérants asile et les réfugies: Année 2002, euros 7.486.015.00, pour 2193 personnes; année 2003, euros 8.956.521.00, pour 2013 personnes; année 2004, euros 9.783.041, pour 2476 personnes.

Programme d'Assistance pour les Réfugies. Jusqu'au 2003, une contribution a été donnée, en collaboration avec l'ACNUR. Cette activité était directe soit à l'assistance soit à l'intégration du réfugié dans la société locale. Les ressources destinées pour telles mesures ont été: année 2002, euros 1.458.802, pour 1118 personnes; année 2003, euros 2.798.021, pour 2.796 personnes.

Pour mettre en place la Directive 2003/9/CE, **l'article 11 du Décret Législative 30 mai 2005 n.140 a prevu que si la decision sur la demande d'asile n'a pas été adoptée en 6 mois de la introduction de la demande et le retard ne depend pas du requerant, il/elle pourra travailler jusqu'à la fin de la procedure de reconnaissance de l'asile**. On souligne que

l'article 15 du Décret Lgs. su-mentionné envisage l'entrée en vigueur du Décret même, en 90 jours suivants son publication sur la Gazette Ufficial du 21 juillet 2005 (entrée en vigueur le 20 octobre 2005).

Le décret du Ministère de l'Intérieur du 14 juillet 2003 visant les dispositions en matière de lutte contre l'immigration illégale se situe dans un système réglementaire – en vigueur au niveau national et international – fondé sur le secours des immigrés interceptés en mer et destiné à rendre efficaces les opérations des unités navales nationales (faisant partie de différents corps) ainsi qu'à faciliter la collaboration internationale.

Dans les eaux territoriales, ainsi que dans la zone contiguë et en pleine mer, un bateau en service de police qui repère un navire destiné ou impliqué dans le transport illicite de migrants, peut, sous certaines conditions, procéder à l'inspection de ce navire et "la confisquer en l'accompagnant jusqu'à un port de l'Etat". Des modalités d'intervention différentes peuvent être prévues dans le cadre de la collaboration avec d'autres Etats et conformément au droit international en vigueur. **Il ne s'agit donc pas d'une formule prévoyant la simple interdiction navale ou le renvoi au port d'origine, comme indiqué dans le Rapport, mais plutôt d'un système visant à rendre plus efficace la collaboration dans le secours et la correcte gestion des flux migratoires via mer, au niveau national et international.**

Concernant "l'identification **des étrangers refoulés**" il faut noter ce qui suit : malgré la forte pression migratoire illégale organisée dans les détails par les bandes criminelles et les situations de crise grave pour l'ordre public et la sécurité, l'action sur le plan administratif à l'égard des immigrés a toujours respecté scrupuleusement la loi ainsi que considéré attentivement toute situation juridique individuelle. Toutes les personnes qui ont débarquées de façon illégale à Lampedusa ont été identifiées et ont eu la possibilité de demander l'asile politique et faire connaître des situations éventuelles de persécution personnelle dans les lieux d'origine ou de provenance. Les membres de la même famille sont restés unis et ont été transférés, au plus tôt, dans des Centres appropriés et équipés. Les mineurs ont été tout de suite transférés et confiés aux soins des collectivités locales pour les mesures de tutelle et d'assistance prévues. **Tout ceux qui ont manifesté l'intention de demander l'asile politique ont été transférés en grand nombre près les Centres nationaux destinés à l'accueil des réfugiés**. Nombre d'entre eux, à travers des actions violentes et organisées dans le détail, sont échappés de ces structures avant même d'avoir terminé les procédures. **Tous les immigrés clandestins refoulés en Libye ou en Egypte ont été accueillis par les Pays d'origine et n'ont pas subi de mauvais traitements**.

Il est donc opportun de souligner les références réglementaires applicables et préciser les pratiques judiciaires et administratives adoptées en la matière. **Le Texte Unique sur l'Immigration et la Condition de l'Etranger statue une discipline très variée au sujet de refoulement (art. 10) par rapport à celle prévue en matière d'expulsion (art.13)**. A part la différentiation quant aux prémisses de facto qui sont à la base des mesures respectives (tentative ou rapidité de l'entrée illégale dans le territoire national quant au premier cas et la présence réelle dans le deuxième), le refoulement est une mesure moins afflictive par rapport à l'expulsion: l'immigré refoulé peut entrer régulièrement en Italie par la suite (bien qu'il puisse satisfaire les conditions), alors que la personne expulsée ne jouit pas de cette possibilité pendant une période de dix ans à partir de l'exécution de cette mesure. Dans ce cadre,

l'expulsion nécessite de validation de la part du Juge de paix (art. 13, alinéa 5-bis), alors que l'exécution du refoulement ne prévoit aucune intervention de la part de l'Autorité judiciaire. Les deux mesures peuvent être supportées par l'adoption d'une mesure de rétention dans un centre de rétention temporaire et d'assistance (art. 14).

Faisant référence **à la situation de Lampedusa**, toutes les mesures sont dues aux arrivées illégales. Donc, une fois le secours effectué et à l'exception des cas pour lesquels est prévue l'adoption de mesures de protection vis-à-vis des immigrés – par exemple sur la base de risques éventuels de persécution dans les lieux d'origine et de provenance - la formule d'éloignement applicable aux étrangers en situation irrégulière est celle du refoulement aux termes de l'art. 10 du Texte Unique.

Dans ce contexte-là, il faut souligner que la considération que la Libye n'a pas signé la Convention de Genève sur le statut de réfugié, n'influence pas en soi les formes de protection à l'égard des étrangers, étant donné que le principe de "non refoulement", ainsi que les autres normes fondamentales sur les droits de l'homme sont accueillies dans le texte de la Convention sur l'Organisation de l'Unité Africaine que ce pays a signée. D'ailleurs, la Libye a eu en 2002 la Présidence de la Commission des droits de l'homme des Nations Unies. En outre, il faut noter un développement positif des relations entre la Libye et l'UNHCR. Cette dernière prévoit en effet de conclure un mémorandum d'entente avec le gouvernement libyque pour réglementer des formes de collaboration plus incisives en matière de protection de réfugiés.

Concernant **la "situation particulière sur l'île de Lampedusa"**, il faut tout d'abord noter que nous avons décidé de transformer le Centre dans un "Centre de secours et de premier accueil". Dans cette façon, la configuration juridique du Centre sera adapté à la fonction qu'il a assumé au fil du temps sous l'impulsion de la toujours croissante vague migratoire. Dans ce cadre, le système de transfert des immigrés clandestins sera renforcé afin de respecter toujours une capacité de 300 places au maximum. En outre, l'accueil pourra être amélioré ; partant la convention avec la "Misericordia" sera renouvelée.

Parmi les autres initiatives destinées à l'amélioration des conditions d'accueil des immigrés, nous avons décidé d'acquérir un terrain attenant à la structure de Lampedusa afin de bâtir de nouveaux services hygiéniques, et nous avons localisé une autre zone où installer, dans les cas d'urgence, un village de toile destiné aux étrangers se trouvant dans l'attente d'un nouveau placement.

Parallèlement à ces interventions d'urgence, la construction du nouveau centre sera entamée en utilisant la zone occupée maintenant par une caserne de l'Armée. Cette dernière solution, après avoir surmonté les dernières difficultés, a été finalement acceptée par la communauté locale. Notre but est de la mettre en place avant l'été prochain. En outre, **nous avons décidé de développer la capacité d'accueil en Sicile** par le biais de ces trois initiatives reliées entre elles :
1° - la construction à Port Empédocle d'une tensostructure pour les activités de secours e de premier accueil ;
2° - la restructuration et la réouverture du Centre d'Agrigente ;
3° - l'agrandissement et la rationalisation du Centre de Caltanisseta qui deviendra une moderne structure plurifonctionnelle pour le contrôle de l'immigration clandestine.

Concernant la possibilité pour **les organisations internationales** d'accéder dans les CPTA, il faut remarquer que celles-ci **peuvent être autorisées, chaque fois, à accéder aux Centres, après vérification préalable de la condition de sécurité à l'intérieur des centres**, afin de garantir l'intégrité des visitateurs mêmes.

Concernant l'implication directe dans la gestion des CPTA d'Organisations telles que **l'UNHCR, l'IOM et la Croix Rouge**, il faut remarquer que, en acceptant totalement les suggestions du Commissaire, M. Gil-Robles, le Ministre de l'Intérieur a envoyé à ces trois organisations une proposition de collaboration pour la gestion des flux migratoires sur l'île de Lampedusa. **Une table de travail permanente et continue avec ces Organisations**, mis en place auprès du Ministère de l'Intérieur, est en train de définir un modèle pilote qui sera expérimenté à Lampedusa et exporté ensuite dans d'autres réalités territoriales. En outre, le Ministère de l'Intérieur avec l'UNHCR, l'IOM et la Croix Rouge Italienne a présenté un projet – dans le cadre du programme communautaire ARGO 2005 – pour la gestion des flux migratoires en situation d'urgence dans l'île de Lampedusa. D'autres projets seront définis pour la gestion des mineurs non accompagnés.

Suite à **l'article publié par l'hebdomadaire «L'Espresso» sur le Centre de Lampedusa**, il faut souligner que d'une part on n'est pas surpris de constater que dans des cas de grave urgence et surpeuplement des situations difficiles et des manquements se vérifient. Il est bien connu, en effet, qu'à cause de la fréquence des débarquements très massifs d'immigrés clandestins, organisés expressément suivant des modalités spécifiques par des bandes criminelles qui gèrent les trafics en Libye et dans les Pays d'origines des flux, le Centre de rétention temporaire de Lampedusa fonctionne toujours plus souvent en situations extrêmes. Lorsqu'il arrive que dans une période de 24-48 heures le nombre de personnes hébergées dépasse parfois cinq fois la capacité maximale de réception, c'est-à-dire 186 unités, le Centre devient un endroit où les personnes ne peuvent trouver qu'un abri de fortune et ne garantit aucunement les niveaux standard d'hygiène, de sûreté et de gestion. D'autre part, au contraire, nous sommes fort surpris par la façon de décrire le comportement de certaines unités des forces de l'ordre, si l'on considère que l'approche traditionnelle de tous les représentants des forces de l'ordre à l'occasion des débarquements d'immigrés clandestins vise toujours à privilégier les activités de secours et d'accueil. Lors de l'important afflux d'immigrés clandestins arrivés sur les plages des Pouilles entre 1998 et 2001, l'engagement des Forces de Police dans l'assistance des immigrés a fait l'objet de nombre d'éloges publics. En se référant tout spécifiquement aux opérations de secours ayant eu lieu à Lampedusa, le 4 mai 2005, le Président de la République a accordé une Médaille d'Or du Mérite Civil au drapeau des Forces de Police engagées sur place. La non identification du journaliste Fabrizio Gatti à l'intérieur du Centre – la prise des empreintes digitales a permis l'identification de la personne qui avait été enregistrée quelques années au paravant lorsqu'elle avait fait semblant d'être un ressortissant roumain et s'était infiltrée illégalement dans un autre centre de rétention –démontre la situation d'urgence dans laquelle se trouvait le personnel de Police chargé des vérifications. Cette situation a empêché en effet d'effectuer les approfondissements nécessaires grâce auxquels la personne aurait été identifiée. Dans ce cas spécifique, la volonté de rendre plus acceptables les conditions des nombreux immigrés présents l'a emporté sur la nécessité de maintenir un système de contrôle de haut niveau. Après la publication de l'article en question, deux enquêtes ont été entamées – l'une judiciaire et l'autre administrative. Ces enquêtes serviront à mettre en lumière tous les épisodes décrits. Certains de ces faits font partie du domaine pénale et concernent la sphère des responsabilités individuelles. S'ils seront confirmés dans le cadre judiciaire, ils seront poursuivis avec la plus grande rigueur.

Pour ce qui est du **Décret de Loi n°144 du 27 juillet 2005, devenu la Loi n° 155 du 31 juillet 2005**, et notamment pour ce qui est de la considération contenue dans le Rapport, de privilégier la poursuite pénale des terroristes, il est à remarquer que la mesure d'expulsion est une mesure administrative et est adopté à l'égard d'un étranger considéré comme dangereux pour la sécurité nationale et pour lequel n'existe pas d'éléments suffisants pour entamer une procédure judiciaire. Cette mesure est adoptée après un examen détaillé cas par cas seulement lorsque des informations de police et d'intelligence démontrent la dangerosité de la personne. Autrement, l'application de la mesure pénale est le système préférable. Il faut noter que la mesure d'expulsion des personnes soupçonnées d'être terroristes est présente dans les législations de tous les principaux pays européens.

Cette typologie de mesure d'expulsion aussi est soumise aux dispositions générales en matière, établies par la législation italienne en vigueur, selon lesquelles les expulsions ne peuvent pas être adoptées si l'étranger, dans le Pays de destination, risque la persécution pour des raisons de race, de sexe, de langue, de nationalité, de religion, d'opinions politiques, de conditions personnelles ou sociales, ou risque d'être renvoyé vers un autre Etat où il n'est pas protégé des persécutions.

Un aspect supplémentaire de la protection de la personne est déterminé par la possibilité d'accès à l'asile politique. Si le statut de réfugié est reconnu, la mesure d'expulsion est nulle.

b) Entry and stay of foreign citizens

The process of regularization that was carried out between 2002 and 2003 can be considered as a measure fostering integration and enhancing the tools to combat illegal immigration and exploitation. About 640,000 non-EU migrant workers illegally residing in Italy have regularized their status. The decision to regularize these immigrants originated, on one hand, from the need to eliminate all the pockets or irregularity so that the new Law, entered into force on September 2002, has been fully enforced; on the other one, the regularization created the preconditions for a real process of integration. It has been one of the largest processes of regularization ever carried out in Europe, to be compared only with the relevant process recently concluded in Spain.

The regularization increased of about 50% the foreign population legally residing in Italy and produces significant changes in the breakdown of the main foreign communities with Romanians ranking first (followed by people from Albania, Morocco, Ukraine, China, Philippines, Poland, Tunisia, Senegal and Peru) and with a general increase of the "European" components of the foreign population residing in Italy, to the detriment of some traditionally predominant nationalities, as the Moroccans.

The sectors of the labour market expressing the main need for foreign manpower, the issue of integration into the labour market of second generations migrants, the potential of migrant entrepreneurship, the necessity to implement skills upgrading measures addressing migrants in order to avoid unemployment: these are only some of the issues at stake emerging from the 2002 regularization, elements to be taken into consideration in order to elaborate for management of the migratory phenomenon both at local and central level.

About process of entry for work reasons, Italy has concluded bilateral agreements on labour migration with countries of origin of the main inflows. Negotiations are currently under way with a number of countries, like - among the others - Romania, Egypt, Morocco and Tunisia. We consider this kind of bilateral agreements an effective way of managing migration and a strengthening one to legal channels of entry for work reasons.

Our agreements aim at providing for the preconditions for this process of entry. In particular they provide for: the exchange of information between the competent administration concerning manpower availability, on the side of the country of origin, and the needs of the labour market as well as the professional profiles required in the country of destination, on the other; the visibility given on the Italian labour market to a list of nationals of the country of origin willing to migrate in Italy for work reasons; the development of cooperation with authorities of the country of origin concerning the pre-selection phase aimed, for example, to adjusting the databases of candidate migrants in compliance with Italian standards in order to facilitate the consultation by Italian entrepreneurs; the guarantee to foreign workers of equal rights and protection with the nationals of the host country. Furthermore, bilateral agreements can provide for language courses, vocational training courses and civic orientation programmes to be held in the country of origin. According to our Immigration Law, as amended in 2002, these training and education programmes have to be approved by the Italian Ministry of Labour and Social Affairs and are implemented in the country of origin by a number of different actors and organisations. These programmes can aim either at training workers to be placed in the Italian labour market or to develop productive and entrepreneurial activities in the country of origin.

Most importantly foreign workers who have attended these programmes acquire a preferential title to enter Italy for work reason within the annual quota system: preferential quotas are granted to counties that signed with Italy bilateral agreements, both readmission agreements and cooperation agreements in the field of labour migration.

The names of foreign workers who have attended training programmes abroad will be inserted in lists divided on the basis of the country of origin and containing all the characteristics of the workers. These lists will be made available, through our provincial bodies, to Italian employers. The annual decree will grant the foreign workers comprised in these lists with a specific quota for entries for work reason. Furthermore the decree itself can provide that, in case of fulfilment of this specific quota, further entries of trained workers can be authorised on the basis of actual needs of the market. We tested this mechanism of training programmes held abroad with pilot projects in Tunisia, Sri Lanka and Moldavia, the last ones implemented with IOM technical assistance. We also believe that this mechanism can represent en effective tool for the management of migration as it promotes a better management of labour demand and supply, a more qualified immigration and an easier integration in the country of destination.

Italian integration policies are implemented in a context of wide access to different services for immigrants. In particular legal immigrants, who reside in Italy for at least one year, benefit from different social integration and social assistance measures at the same conditions as for Italian citizens.

Concerning housing policies, Regions in collaboration with Municipalities and Third Sector Organisation, provide first reception centres for newcomers. Immigrants, who legally reside and work for at least two years in Italy, have access to public social housing and to intermediary services implemented by Social Boards established at local level to facilitate the matching of housing demand and supply.

Within the framework of the Community Action Programme for the Fight Against Discrimination, the Ministry of Labour and Social Policies, received resources to finance a project which is now being implemented. It focuses on the problem of Immigrant access to housing. A monitoring activity identified which best practices implemented at the Italian Local level can constitute efficient solution for the problem of immigrant's access to housing and can therefore diffused also at a European level. At the same time, innovative policies implemented in other European member states can constitute examples for Italian policy makers. The results of this monitoring analysis, held on the Italian territory, will be presented in a Seminar "Promoting best practices for Immigrants' access to housing", with the main objective of identifying discrimination related issues as to the immigrants' access to housing and of exchanging among different stakeholders innovative policies and successful models of immigrants integration processes when acceding to housing.

******

Appendix 4
THE RIGHT TO FREEDOM OF MEDIA

Comments made by the representatives of the Italian Ministry of Communications regarding the "Draft Opinion" (No. 309/2004) of the Venice Commission on Act no. 112/04 On The Reform Of The Radio and Television Broadcasting System

I have examined the new draft opinion of the Venice Commission on the compatibility of the "Gasparri Act" with the Council of Europe's standards in the field of freedom of expression and pluralism and the media, and further to my comments submitted on 23 March 2005, I am making these additionsl submissions.

The first point is that there still remains the ambiguity judgment in paragraph 79 regarding the 20% of the programmes that each national broadcaster may air.

In this connection, I can do no more than reiterate the arguments already put to the Commission.

We have to bear in mind that pluralism is protected by setting *ex ante* restrictions, while competition is protected through *ex post* measures. Furthermore, whereas competition law prohibits the abuse of a dominant position and agreements, acquisitions and mergers that are detrimental to competition, protecting pluralism entails the need to prevent the establishment of a dominant position to the detriment of pluralism.

It is within this framework and to this end that articles 14 and 15, and the transitional provisions of article 25(8) have to be read, quite clearly setting down the following restrictions:

The restriction preventing the same supplier of programme contents being the holder of permits to broadcast more than 20% of the television or radio programmes using terrestrial digital technology (s. 15(1)).

This restriction will come into force after "switch-off", that is to say, after the final switchover from the analogue to the terrestrial digital system (by the date provided by the law no. 66/2001 of 31.12.2006).

The restriction preventing a national television broadcaster (using analogue technology) which is also supplier of programme contents broadcast with terrestrial digital technology from airing more than 20% of the television programmes, calculated on the basis of all the programmes transmitted using analogue and digital technology combined.

The digital broadcasts must cover at least 50% of the population in order to be included in this calculation, and must not be simultaneous repeats of programmes previously broadcast using analogue technology.

This restriction applies (following the report of the Communications Regulatory Authority under Law No. 43/2004, on the terrestrial digital television programme offering) during the "switch-over" period, which is to say the period when analogue and terrestrial digital broadcasting technologies are used simultaneously, beginning on 31 December 2003 and ending on 31 December 2006.

It should also be understood that the 20% threshold, identified as being the ideal upper limit for guaranteeing pluralism, was chosen as a result of the comparison which was made by the Constitutional Court in judgment no. 420 of 1994 with the parallel legislation governing publishing (article 3(a) of law no. 67 of 25 February 1985, according to which, a dominant position is created when a publisher of daily newspapers has a circulation in any one calendar year in excess of 20% of the total circulation of all daily newspapers.

In addition to the 20% programme threshold, article 15 of law no. 112 provides a second *ex ante* threshold as the upper income limit of 20% of the aggregate revenues of the "Integrated Communications System" (SIC) applicable to companies operating in the media as a whole.

The Integrated Communications System (SIC) comprises all the main media business sectors, and may be considered to be the result of the multimedia convergence process in which apparently heterogeneous media (radio, television, newspapers, the Internet, cinema) are gradually drawing closer together and becoming integrated.

This convergence and successful marketing linking heterogeneous media products (for example the sale of CDs or books jointly with newspapers) requires the legislator to consider the position of a company working in the communications industry within an economic system that comprises all the main media. Moreover, precedents to the SIC existed in earlier legislation (article 15(5) of law no. 223/90, and article 2(1) of law no. 249/97) prohibiting the constitution of a dominant position in the fields of audio and television communications, multimedia, and publishing, including electronic publishing. The SIC is simply the outcome of the developments in older sectors governed by earlier legislation, necessarily bound up with the innovation brought about by technologies that have subsequently become current.

It is useful to point out once again that in addition to the *ex ante* thresholds examined above, law no. 12 places the further threshold for guaranteeing pluralism by prohibiting the constitution of a dominant position on any individual market comprising the integrated communications system (article 14 and article 15(2), first indent). This means that a company operating in the communications industry is not only required to comply with the 20% upper limit on the SIC revenues, and in the case of radio or television broadcasting companies, the 20% upper limit on programmes, but is also prohibited from creating a dominant position on any individual market as these are identified by the Communications Regulatory Authority. It is the responsibility of the Communications Regulatory Authority to identify these markets, and to do so by applying the principles set out in articles 15 and 16 of the European Parliament and the European Council directive 2002/21/EC of 7 March 2002 (the framework directive), considering not only revenues but also levels of competition within the system, entry barriers, the economic efficiency of the company concerned, the audiences for the radio and television programmes, and the quantities of published products, and cinematographic or audio recording works.

I cannot agree with the opinion that audiences are ignored in law no. 112 and that the 22% ceiling on SIC revenues does not take individual markets into consideration. On the contrary, the SIC ceiling is in addition to, and further strengthens the restriction on acquiring a dominant position on individual markets, which are also appraised in terms of their audiences. Furthermore, the opinion does not take into account the important fact that it was precisely on the basis of the provisions of law no. 112 that AGCOM issued resolution no. 136/05/CONS at the end of the procedure to ascertain whether or not a dominant position existed, even if not actually classified as dominant, to justify action to be taken by the Authority to protect pluralism, in the form of seven pro-competition measures adopted against Italy's two largest operators in the television industry, RAI and RTI.

These remedies mainly consisted of requiring the two leading operators to invest in the complete changeover to terrestrial digital broadcasting, while at the same time earmarking 40% of the frequency bands to independent programme content suppliers. This facilitates a low-cost market entry by new operators, because of the abatement of the infrastructure investment costs.

The Authority also set lower advertising ceilings and imposed greater transparency in the sale of advertisements, and requested the general radio and television franchisee to submit an editorial plan to create a new general interest programme.

These are obviously measures designed to foster pluralism, which has been made possible precisely thanks to the entry into force of law no. 112, demonstrating the effectiveness of the new law in moving towards the abolition of the so-called “RAI/Mediaset duopoly”.

THE GENERAL RADIO/TELEVISION PUBLIC BROADCASTING SERVICE

Contrary to the statements made in paragraph 149, the reform introduced by law no. 112 has actually given greater independence and organisational autonomy to the public radio and television broadcasting service franchisee than it had in the past. For the law has now placed RAI (which was previously classified as a "Company of national interest" and therefore governed by special laws) on an equal footing with all other joint stock companies, also in terms of their organisation and management (article 20(1)). The new RAI Articles of Association adopted following the merger of RAI and RAI-Holding, which initiated the privatisation of the franchisee company, make provision for the main statutory innovations in this regard.

To further distance the RAI franchisee from government policies, law no. 112 did away with the previous statutory provisions that gave the government the sole responsibility for deciding on the substance of the service contracts concluded with the franchisee, and for overseeing compliance with its obligations, and has given the Regulatory Authority, acting jointly with the Minister of Communications, the power to lay down guidelines regarding the substance of any further obligations in addition to those laid down by the law, monitoring compliance, and imposing penalties in the event of non-compliance.

Law no. 112 has therefore strengthened the tasks of Agcom while at the same time weakening those of the government.

As for the governance of RAI, the system used for appointing the members of the Board of Directors strengthens the powers of the Parliamentary Oversight and Policy Committee by empowering the Ministry of the Economy, as the shareholder, to appoint only one of the Directors, while the Chairman - whose appointment must be approved by the Oversight Committee with a two thirds majority - acts as guarantor.

It is therefore not the case, as paragraph 168 would have it, that the Ministry of the Economy controls the Board of Directors. The Ministry of the Economy is the shareholder (whose equity interest in RAI will be reduced as a result of privatisation) but its influence is exercised over one single director (out of 9).

The remarks made in paragraph 175, regarding a certain control exercised by the Prime Minister over three public channels, in addition to his own three channels, continues to be unacceptable and is in sharp contrast to the technical and legal, but not the political, basis of the opinion which the Commission was asked to provide. The Commission’s own statements

in that opinion regarding the powers of the Oversight Committee, the Communications Regulatory Authority, the procedures for appointing the Board of Directors, and the imminent entry of new private shareholders into the corporation, totally belie even the slightest suggestion of any such control over the public television service.

Even talk about a monopoly of the Italian television industry – which has 14 national free-to-air television channels and 650 local television stations – is anachronistic and fails to reflect a situation in which the number of different opinions, which is already high, is bound to increase still further with the development of terrestrial digital broadcasting.

* * * *

Bearing all this in mind, the conclusions of the opinion cannot be accepted, for the following reasons:

- the startup of terrestrial digital broadcasting as a result of law no. 112 has increased the number of channels by between fourfold and sixfold, and has consequently increased the television offering and enhanced pluralism;

- the 20% programme and revenue thresholds in the SIC is additional to the ban on a dominant position on individual markets, which are identified by the Communications Regulatory Authority using criteria laid down by European law, and taking into account other elements such as audiences;

- the SIC takes account of the convergence of the media, adjusting the criterion that already existed in Italian law (the Mammì Act and the Maccanico Act) to keep pace with technological and market developments; no one company can ever acquire a dominant position on any one market. The whole purpose of the SIC is to enable companies, particularly press publishers, to accede to the television market while at the same time, under skewed statutory provisions in their favour, it places a limit on television companies which are prohibited, until 2011, from acquiring equity interests in newspaper publishing companies, and on companies with revenues in excess of 40% from the telecommunications market, by prohibiting them from exceeding 10% of the aggregate SIC revenues;

- as far as RAI is concerned, the role given to the Oversight Committee emphasises the detachment of the public television service from government, giving more room to the opposition;

- the provisions governing the broadcasting of public notices by the franchisee Corporation at the request of the Prime Minister's Office – Publishing Department (and not by the Prime Minister himself) – are related to the duties of the Prime Minister's office to issue public notices of social relevance, in its capacity as a government department, and refer to the function of the Prime Minister and not his/her person (being in office temporarily, it being the case that is governed by a democratic system);

- as for the question of government control over the franchisee corporation, a distinction has to be drawn between the Ministry of the Economy's shareholding, which is at the moment virtually total, but is going to be reduced as a result of privatisation, and the power to influence the governance of the company, which is limited to the right of the Minister of the Economy to appoint one of the nine members of the Board of Directors, it is the case that the Prime Minister has no kind of control over the public channels, and does not therefore interfere in any way with the work of the franchisee Corporation.

Comments made by the representatives of the Italian Ministry of Communications regarding the “Draft Opinion” (No. 309/2004) of the Venice Commission on Act no. 215/04 Regarding Conflict of Interest

Under resolution no. 1387/04 (*"Monopolisation of the electronic media and possible abuse of power in ITALY"*) the Parliamentary Assembly of the Council of Europe expressed the fear that in Italy pluralism of information was not *de facto* or *de jure* guaranteed. Article 13 of that Resolution required a request for an opinion be put to the so-called "Venice Commission" (a technical/legal organ of the Council of Europe) regarding the compatibility of the Gasparri and Frattini laws with Council of Europe standards regarding freedom of expression and pluralism in the media.

With specific regard to law no. 215/2004 dealing with conflicts of interest, this is stated both in paragraph 3 of the Parliamentary Assembly Resolution 1387 (2004) and in paragraph V of the Draft Opinion of the Venice Commission. In both instances, the aforementioned law is considered as part of an analysis of freedom of expression and the pluralism of the media in Italy.

In March last year, a number of considerations were submitted regarding the *preliminary draft opinion* on the compatibility of law 215 with Council of Europe standards. Despite this, however, the "*draft opinion"* on the agenda for the 10-11 June Venice Commission meeting reiterated most of those comments.

I believe we should note, first of all, that law no. 215/2004 does not deal solely with the mass media and information sector, but covers all possible conflicts of interest between government responsibilities and professional and business activities in general. Because of its particular nature, the mass media and information sector is the subject matter of a number of specific provisions in that law (see in particular article 7). These particular provisions do not replace the general rules governing any type of company, but are additional to them.

Before addressing the substance of the comments in the Venice Commission report, it may be useful to briefly introduce the question by explaining the scope of law 215, in order to prevent any later misunderstandings regarding its interpretation.

The combined provisions of articles 1, 2 and 3 of the law set out its scope.

Article 1 states that the Prime Minister, Ministers, Secretaries of State and Extraordinary Government Commissioners are all "government post-holders" (and are therefore the parties to which this law applies). Article 1(1) also imposes on government post-holders the obligation to devote themselves exclusively "to dealing with public interests", and prohibits them from "performing any acts and taking part in any collective decisions in conflict of interest situations".

Article 2 lists all the activities that are incompatible with holding a government post. The choice between incompatibility and ineligibility to stand for election has to do with the different purposes of these two institutions in the Italian legal system, as unanimously acknowledged in constitutional legal literature.

More particularly, the purpose of ineligibility to stand for election is designed to guarantee the regularity of the electoral process, placing restrictions on the fundamental right of all citizens to stand for election, whereas the purpose of incompatibility, which is more appropriate for the particular situations to which law 215 applies, is to guarantee that the elected representatives perform their responsibilities properly when they are in personal situations which could, in theory, jeopardise that proper performance.

The causes for ineligibility to stand for election do not therefore stem from any personal situations linked to the *status* of the candidate, but from circumstances that might influence the electoral process such that it would not be considered a genuine demonstration of the will of the electorate.

Art. 3 defines the concept of "conflict of interest" with reference to two different and alternative situations (as evidenced from the use of the disjunctive conjunction "or"):

a) the existence of one of the situations of incompatibility listed in article 2;

b) the objective consequences of the action by public office-holders on their property or that of their spouses or relations to the second degree.

The regulation conflict of interest is completed by detailing the powers, functions and procedures of the independent administrative Authorities responsible for oversight, prevention and imposing penalties to combat such cases, together with the applicable penalties. For companies in general, this responsibility lies with the Competition Authority which was instituted by law no. 287/1990 (article 6); for companies in the printed press and media sector, the responsibility lies not only with the Competition Authority but also with the Communications Regulatory Authority instituted by law no. 249/1997.

In this connection, it is worth recalling that in the Italian legal system, the independent administrative Authorities (otherwise defined as "highly impartial Administrations") have been created in recent years as new administrative entities, without any political ties likely to condition their work. These new authorities are characterised by their independence of political parties, because they are not the expression or the instrument of a political majority or of minority groups, and above all of government, for it is an essential organisational requirement that they have no organisational relations whatsoever with the Executive.

Moreover, these Authorities are characterised by their neutrality with regard to the parties with conflicting interests to be resolved and third parties, and are therefore *iusdicenti* in any conflict in which the main players to be regulated confront one another. Hence their status as arbiters or, in some sectors, as economic judges, not politically conditioned by any preferences in terms of regulating interests, all of which are placed on the same plane, including public interests, to ensure strict compliance with the law.

These Authorities have wide-ranging powers to conduct investigations and impose penalties in accordance with current legislation. They can also act at their own initiative, guaranteeing the principle of *audi alteram partem* and the rules of administrative transparency. Their powers do not exclude the powers of the courts or of any other authorities with regard to criminal, civil, administrative or disciplinary offences, and indeed they are required to report any cases of criminal offences to the judicial authorities.

Moving on to address the substance of the Resolution of the Parliamentary Assembly of the Council of Europe and the "draft opinion" of the Venice Commission, both texts emphasise the alleged in effectiveness of law 215 to resolve real situations of conflict of interest on the basis of serious considerations, in the light of compatibility with European standards and the case law of the European Court of Human Rights, and call for the following clarifications.

The first point in the report considers that the description of cases of conflict of interest in law 215 is excessively specific and peculiar in comparison with the general definition of "conflict of interest" given in article 13 of Recommendation (2000) 10 of the Committee of Ministers of the Council of Europe (containing "A Code of Conduct for Public Officials"). According to this definition "*Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties"* and the concept of private interest includes

"any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations".

But the notion of conflict of interest adopted by this law contains all the elements in this definition:

a) Article 3 defines both "prior and potential conflict", referring to the cases of incompatibility given in article 2, and "conflict in a specific case" (an act or the omission to perform a due act having a specific effect on the property of a government office-holder or a member of his or her family);
b) Article 3 specifies and concretely spells out the concept of *"private interest"*;
c) it considers all the cases of acts or conduct whether individual or collective, referring to a government post-holder, and even including the case of merely "*formulating a proposal"*;
d) the act which creates a conflict of interest is not only the one performed by the government post-holder, but also the act not performed which should have been performed, thereby excluding decisions taken in situations of conflict due solely to inertia;
e) the case of the advantage obtained (as well as the obligation of "*disclosure"* referred to in article 5) has also been extended to include the spouse, relatives up to the second degree, and any companies which the individual owns;
f) the law also considers cases of *"top-down conflict"* (relating to cases in which the government post-holder reserves favourable treatment to a company belonging to him or her, or to their relatives) and cases of *"bottom-up conflict"* , (when the company working in the communications sector belonging to the government post-holder acts in violation of laws 223/1990, 247/1999, the Law instituting the Communications Regulatory Authority, and law no. 28/2000, the *par condicio* law, giving special support to the government post-holder).

The second point raised in the Report stems from the idea that law 215 does not include the *"ownership as such"* of a company among cases of incompatibility or cases of conflict of interest. This is partly inaccurate, because the whole approach of the law considers the "ownership" of the company from various points of view:

S There exists "conflict of interest" pursuant to article 3 of the law even when *" the act or the omission has a specific and preferential effect on the property of the post-holder, his or her spouse or relatives to the second degree, or any companies controlled by them"*. This situation is therefore wholly independent of any situations of incompatibility referred to in *
article 2, considering that the consequences of the act performed for the purposes of identifying a conflict of interest are of relevance both *in se* and from the point of view of the benefits accruing to the property of the government office-holder or his or her spouse;
S Article 5 requires the government office-holder, his or her spouse and even relatives up to the second degree, to declare their assets and shareholdings, including those held up to three months prior to taking up the office *("disclosure"*);
S pursuant to article 6(3) the Competition Authority (responsible for conflicts in respect of every type of entrepreneurial activity) monitors the entrepreneurial activities of the government post-holder (declared pursuant to article 5), and whenever an act is identified which, pursuant to article 3, might constitute a concrete case of conflict of interest (in other words, an act with a specific and preferential effect on the property of the post-holder or that of his or her relatives) it conducts the necessary examination, imposes a penalty on the company, and submits a report to Parliament against the post-holder (*political censure*);
S under article 7, the Communications Regulatory Authority performs the same monitoring activity specifically in the mass media industries, imposing fines on companies, even in cases where they provide privileged support to the government office-holder;
S the fines imposed on companies, by definition, strike at the owner of the company and not the manager, because they have an effect on the assets, which relate directly to the proprietorship.

On the basis of these considerations, the criticism in the draft opinion regarding the failure to include "ownership" among the cases of conflict of interest would appear to be groundless, because – on the contrary – ownership is one of the autonomous elements of relevance to the notion of conflict of interest, and is the object of penalties which directly affect it.

It is true that no provision is made for the *"ownership as such@* of a company as one of the cases of incompatibility under article 2 (relating to the identification of cases of incompatibility with taking up government office); but, as we have already pointed out, this would not have been possible because it would have been in conflict with articles 42[91][1] and 51[92][2] of the Italian

Constitution, which protects the right of ownership and free access to elected posts in government as fundamental rights of the individual person.

Furthermore, the inclusion of "*ownership as such*" among cases of incompatibility would have required the company or shareholding to be *"coercively sold";* this effect would create a

permanent and irreversible *de jure* situation which could not be reversed after relinquishing the government post. In this case, too, it would have been a blatant violation of the articles of the Italian Constitution already mentioned.

This would have been quite different from all the other cases of incompatibility (such as the exercise of a profession) which provide for *de jure* situation to be suspended temporarily and then "revived" juridically upon leaving public office.

This comparison reveals that a rigid and categorical differentiation of treatment between possible cases of incompatibility linked to company ownership and the other cases could, if unjustified, constitute a violation of article 3 of the Italian Constitution and of the other precepts mentioned above.

Any proprietor who is coerced into disposing of his property permanently forfeits access to it; whereas other temporary situations of incompatibility (linked to professions or paid employment) temporarily suspend the grounds for incompatibility, which can subsequently be made good.

It is all too obvious that coercively depriving a proprietor of a company, with all its know-how, history, goodwill, etc, can never be compensated merely by money, however much that may be.

We believe that despite the real difficulty of the subject-matter and the sensitivity of the interests at stake, law 215 has succeeded in remaining compliant with the principles of the Italian Constitution.

First and foremost, as already indicated, it is compliant with the principle enshrined in article 3 of the Constitution, because any *"owner as such@* who would be forced to sell, would have

---

[91][1] *Article 42 of the Constitution; Property may be public or private. Economic goods may belong to the State, to public bodies, or to private persons.*

Private ownership is recognised and guaranteed by laws which determine the manner by which it may be acquired and enjoyed, and limitation on it, in order to ensure its social function and make it accessible to all.

Private property, in cases provided by law, and subject to payment of compensation, may be expropriated for reasons of public interest.

The law shall establish the rules and limits of legitimate and testamentary succession, and the rights of the State over inherited property."

[92][2] *Article 51 of the Constitution. "All citizens of either sex shall be eligible for public office and for elective positions on conditions of equality, according to the rules established by law. The Republic issues specific measures to foster gender equality. The law may recognise Italians who do not belong to the Republic as having equivalent status to citizens for the purposes of their admission to public and elective office.*

Any person elected to public office shall be entitled to the time necessary for the performance of those duties and to retain their employment.

to reconstruct the property *ex novo* on ceasing the hold government office, unlike what happens in virtually all the other cases of incompatibility.

Moreover, it also safeguards the constitutional rights to engage freely in business enterprise – which cannot be considered a kind of *"shameful label"* - as a condition to be removed in order to accede to public office, and to protect private property, which can only be expropriated on the grounds of general public interest.

The mandatory disposal of a company in this way would be in contrast with constitutional principles, because the sale would not be performed under free market conditions, but would place the vendor in a state of total weakness compared with the buyer, skewing the conditions of parity which are safeguarded by the Constitution and guaranteed by the free market..

Our Constitution acknowledges expropriation as a lawful instrument for the purposes of the pursuing the general public interest, but it is something that cannot in any way be invoked in this case, because expropriation presupposes that the asset will be put to public use in the general interest, and does not include the transfer of private property from one party to another.

More specifically, where article 42 of the Constitution provides limits on private property, it refers to only two ways in which the authority of the State may interfere with the status of the proprietor: one is expropriation, as already indicated, for which the equitable indemnity must be paid, but it is important above all to note that it has nothing at all to do with the either the transfer of the property belonging to a private individual to another private individual, or with placing the property on the market for public sale. The second way in which the State may interfere with private property is by regulating its use: all property may be used subject to the restrictions laid down by statute.

In conclusion, it would be utterly and totally unconstitutional to impose an obligation to sell property, or to put the property under statutory Administration.

The extremely serious damage caused to the proprietor would distort the market by almost totally eliminating the vendor's negotiating strength, obliging the vendors to accept a valuable consideration which would be below the true value of the assets. Furthermore, this would be tantamount to punishing not a conflict of interest, or the act through which the conflict is brought into being, but the suspicion or the possible eventuality of a conflict occurring.

These are the reasons why the law 215 addresses the only safe case from the point of view of the law, consistently with the principles enshrined in the Italian Constitution: it regulates asset use, but does not remove the right to asset use.

This, moreover, would appear to be the approach taken in all the other European legal systems that govern this matter (for example Austrian, German, English and Spanish law). There is not one case in any of these systems, apart from the rules restricting property use, in which the suspicion of a conflict, rather than acts committed in a state of conflict of interest, is punished by enforcing the sale of the property.

During the framing of law 215 consideration was also given to case of transferring property to a trustee, and to the case of the *blind trust*.

The first case was deemed not to be effective, because the trustee company (which is well-known in the Italian legal system) has to be created transparently, because it acts in the name and on the behalf of the party which at all events retains ownership of the assets placed in trust: it did not therefore seem to be the appropriate solution.

Since the *blind trust*[93][3] is a typical creation of *common law* it cannot be adopted into the Italian system because there is no specific legislation governing it, and the Convention signed in The Hague on 10 July 1985, which was ratified by the enactment of law no. 364/1989, merely requires cross-border recognition of the *trust*.

Furthermore, the *blind trust* only refers to movable assets or assets that can be easily converted into movable property. It is not possible to *"blindly manage"* a specific company. Moreover, it would not be effective either, because the management of an economically powerful company

would also be obvious to the proprietor, even in the case of a *blind trust*, such that the proprietor could easily find out about its contingent conditions and structure.

Neither was it possible to envisage selling property and then breaking it up and selling it in an indeterminate and indeterminable number of minority equity interests, on which to impose the *blind trust*. Quite apart, for the moment, from the consideration of the massive economic damage that this operation would cause to the owner of the property, the Italian Constitution would not permit this process of splitting up the ownership of assets.

Another point raised in the *draft opinion* focuses on the considerable increase in the workload which the monitoring of situations of conflict of interest would place on the Authorities under

Law 215. Put very succinctly, the powers vested in the Authorities are powers that are already being institutionally exercised in the fields for which they are competent. We should like to reiterate here the fact that these Authorities act as "umpires" and in some cases as "economic judges" over the areas for which they have oversight. In order to ensure that they are best able to perform their functions, article 19 of law 215 makes provision for the personnel of both the Competition Authority and the Communications Regulatory Authority to be increased.

One further comment raised in the report refers to the alleged ineffectiveness of the penalties adopted.

In this connection we would reiterate that law 215 provides that in the cases of top-down conflict and in the cases of bottom-up conflict, fines (article 6(8), article 7(3)) can be imposed on companies and administrative penalties can be imposed on the government post-holder (article 6(1)) and on the companies (article 7(1) and (34) [94][4]).

In addition to these penalties, the government post-holder can also be subject to political sanctions, resulting from the obligation on the part of the independent Authorities to submit their report to the Speakers of both Houses of Parliament.

From this it follows that the fact that if government post-holders have acted in pursuit of their personal interests rather than the national interest, this is bound to become public knowledge. This sanction is extremely important, because it is obvious that transparency in the performance of official government duties and the publicising of such offences are the best possible way to prevent and combat the pursuit of private interests in the course of performing public duties.

---

[93][3] *In a trust, property is temporarily assigned to the trustee, albeit subject to the performance of a number of management obligations and the requirement to return the property (international law speaks of "property segregation"), while guaranteeing that the owner of the property has a neutral relationship to their property.*

[94][4] *The fine and administrative penalties imposed on media companies are given in Law no. 223 of 1990 (governing the public and private radio and television broadcasting services), law no. 249 of 1997 (instituting the Authority and the telecommunications and radio and television broadcasting systems) and Law no. 28 of 2000 (the so-called 'par condicio' law). These three laws lay down the main general provisions governing radio and television broadcasting, the overall structure and organisation of the media industry and media policy through the mass media. Each law places a number of different obligations and prohibitions on companies trading in this sector, and penalties for violations against them, giving the Communications Regulatory Authority specific regulatory and oversight powers over the industry and the authority to investigate violations and issue penalties.*

Furthermore, the importance of the political penalty emerges clearly from a reading of the "*Explanatory Memorandum*" to Recommendation (2000)10 containing the code of conduct for public officials, which emphasises the fact that this particular code does not apply to holders of elective office who, unlike public officials, are accountable to their Parliament and their electorate.

In conclusion, we believe that we have exhaustively demonstrated that law 215 is consistent with the European standards laid down in the code of conduct for public officials which, as the "*draft opinion*" della Venice Commission itself states, also apply *mutatis mutandis* to government post-holders.

Filename: Italy 14.12.2005.doc
Directory: D:\Giroud
Template: C:\Documents and Settings\Tecsuprg\Application Data\Microsoft\Templates\Normal.dot
Title: Itlaie
Subject:
Author: Julien Attuil
Keywords:
Comments:
Creation Date: 13/12/2005 11:28 AM
Change Number: 17
Last Saved On: 15/12/2005 4:29 PM
Last Saved By: Formisan
Total Editing Time: 21 Minutes
Last Printed On: 16/12/2005 8:05 AM
As of Last Complete Printing
Number of Pages: 115
Number of Words: 57,546 (approx.)
Number of Characters: 307,298 (approx.)