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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

ITALY*

Addendum

Comments by the Government of Italy concluding observations of the Human Rights Committee

[31 October 2006]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

INTRODUCTION

General framework

Under the reporting exercise to international organisations, we deem that it is always necessary to recall our domestic constitutional framework:

The Italian Constitution of 1948 envisages **the protection of all rights and fundamental freedoms** as included in the 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 Basic Law determines the political framework for action and organization of the State. The structural principles of the constitutional system governing the organization of the State are as follows: democracy (as laid down in Article 1); the so-called *personalistic* principle (as laid down in Article 2), which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of labour, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Article 2); the principle of equality and non discrimination (as laid down in Article 3). The latter is also the basic criterion applied in the judiciary system when bringing in a verdict; the principles of unity and territorial integrity (Article 5); and above all the principles of the welfare state and of the state based on the rule of law.

Italy recognizes and guarantees the inviolability of human rights - be it individual or referred to social groups expressing their personality – by ensuring the performance of the unalterable duty to political, economic, and social solidarity (Art.2 of the Italian Constitution). 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 human rights of the child and of women – is 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**. The latter is indeed 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: “All citizens have equal social status and are equal before the law, regardless of sex, race, language, religion, political opinions, and personal or social conditions. It is the duty of the republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country (Art.3 of the Italian Constitution)”.

Within the constitutional framework, **the Constitutional Court** exercises its duty as one of the highest guardian of the Constitution in various ways. The constitutional jurisdiction is exercised by the Italian Constitutional Court, which plays a vital role throughout the life of our State. The Constitutional Court is outside the instances of the specialist courts and deals only with infringements of specific constitutional law (from Art.134 through Art.137-Art.127 of the Italian Constitution). This institution becomes active when it is called on[i].

Within this framework, it is worth recalling the constitutional reform concerning **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 7 January, 2000, integrating Art.111 of the Constitution with five new sections. 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[ii].

To date, the observations of international organizations and mechanisms, including the UN Human Rights Committee, on the measures to be adopted, at the domestic level, in order to improve in particular the efficiency of the system of justice, have been subject to an in-depth examination by the Italian Government.

Along these lines, while acknowledging that **access to information** is one of the basic components of international obligations, we emphasize that the Italian Government is used to keep NGOs, the Parliament, the relevant Authorities, and the public opinion at large informed about the state of implementation of human rights standards.

Within this framework, it is worth recalling that over the years, relevant steps have been taken and a wide range of measures have been adopted, from the introduction of the crime of torture in the Penal Military Code of War to **the signature of the Optional Protocol to International Convention Against Torture, the ratification of which is currently under examination at the inter-ministerial level while some parliamentarians submitted a relevant draft law (A.C. 1174) in June 2006 under the new Legislature**.

Moreover, it is also worth recalling that within the Ministry of Foreign Affairs, the Inter-ministerial Committee for Human Rights 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[iii].

Along these lines, worthy of mention is the work carried out, to date, by **the Inter-ministerial Committee on Human Rights (CIDU)**. Established on 15 February 1978, within the Ministry of the Foreign Affairs (MFA), by Ministerial Decree, 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.[iv]

Current political situation

Within this framework, it seems necessary to recall that in the **last national elections held in April 9-10, 2006, Romano Prodi's Center-left Union coalition won**. The Union coalition, including the Democratic Party of the Left, the Daisy Party, Communist Refoundation, the Greens, the Social Democrats, and six other parties, is currently running the Italian Government.

In May 2006, the Parliament selected Giorgio Napolitano of the Democratic Party of the Left as the Republic's President. President Napolitano formerly served as a lifetime senator, Minister of the Interior, and a Member of the European Parliament.

Given this recent development in the political framework, it is worth considering that new guidelines have been developed and the relating programmes are being implemented. Many projects are under way, many more are about to be launched. It is then necessary to consider that while in the long term the overall effects will be visible, on the other hand, in the short one, we are now in a position to mention the principles and guidelines behind the new governmental policy.

On a more specific note, with specific regard to para.24 of the last relevant UN HRC Concluding Observations (CCPR/C/ITA/CO/5), by which the Committee requested "In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 10, 11, 15, 17 and 20 above", Italy is in a position to reply as follows:

A. The Naples Global Forum And The Genoa G-8 Events.

As to the events occurred during the **Naples Global Forum and the Genoa G-8**, due investigations, in compliance with the legislation in force were promptly initiated by the public prosecutors of the Naples and Genoa Tribunals, respectively. However, there is an up-to-date worthy of mention, as follows:

1. With regard to the alleged episodes of violence occurred during the **Naples Global Forum**, which took place on 17th March 2001, two criminal proceedings are currently underway before the Naples Tribunal: the former (Proc. No. 3087/05 R.G. Trib. – 24608/02) on the case of "Mr. Davide Gallo+12 persons", all participants in the Global Forum; the latter (Proc. No. 9702/04, R.G. Trib. –24147/01 R.G.N.R.) is against "Mr. Carlo Solimene+31", all members of the State Police, who are charged with the following offences: Abuse of power (Art. 323 of the Penal Code); Kidnapping (Art. 605 of the Penal Code); Unlawful search of person and personal inspection (Art. 609 of the Penal Code); Violence (Art.610 of the Penal Code); Aggravated bodily injuries (Arts. 582 and 585 of the Penal Code); Damage (Art.635 of the Penal Code). More specifically, as to the trial on indictment against the police officers, which started on March 9, 2005, there have been 21 hearings, to date.

2. As to the so-called **"Genoa events"**, the judicial proceedings refer to three different episodes involving only law enforcement officers, as follows:

- As to the criminal proceeding following the events occurred on 21st July 2001, at the "**Diaz primary school premises** (Proc. 1246/05 relating to "Mr. Luperi and Others" – before the 1st Penal Division of the Genoa Tribunal)", the trial, which started on 6th April 2005, refers to the following offences: Forgery (Art. 479 of the Penal Code); Slander (Art. 368 of the Penal Code); Abuse of power (Art.323 of the Penal Code); Bodily injuries (Art.582 of the Penal Code); Illegal possession of firearms (Art.699 of the Penal Code); Unlawful search of person and personal inspection (Art.609 of the Penal Code); Violence (Art.610 of the Penal Code); Damage (Art.635 of the Penal Code); Bribery (Art.314 of the Penal Code); Battery (Art. 581 of the Penal Code). Many hearings have taken place to date, in order to record the testimony of 542 witnesses. According to an ad hoc timeframe, two hearings per week have been scheduled.
- As to the events occurred between 20th and 22nd July, 2001, at the provisional penitentiary centre set up at the police station of **the Genoa State Police Mobile Unit in Bolzaneto**, the trial (Proc. 3306/05 – "Mr. Perugini, then vice-police senior officer, and Others" before the Third Penal Division within the Genoa Tribunal) started on 12 October 2005. As per the

aforementioned proceeding, there are two hearings per week, and two additionally ad hoc hearings per month.

- As to the third criminal proceeding relating to the **events which took place between Diaz Street and Avenue Partisan Brigades** (Proc. No. 413/05 – "Mr. Perugini + 4 Others" before the Third Penal Division within the Genoa Tribunal), the trial started on 9 February 2005 and is still ongoing.

3. Within this framework, as to the role of **Carabinieri corps**, it is important to mention that 12 Carabinieri servicemen of the 9th Battalion "Sardinia", deployed for keeping public order during the Genoa G8 Summit, have been committed for trial. These Carabinieri servicemen have been indicted due to their responsibility for abuse of power against persons under arrest and for not preventing other servicemen co-accused of abuse against persons under detention. The trial is currently underway.

4. In light of Article 11 of Presidential Decree No.737/1981, no disciplinary measures have been applied so far to the Police staff who are subjected to criminal proceedings in connection with the cited events, due to the fact that, even if sanctions were imposed, these would necessarily have to be suspended. The reasoning behind this provision is self-evident: to avoid any interference with the criminal action for events that are still being evaluated by the Judicial Authority both in terms of the detection and historical reconstruction of facts and of defence safeguards.

A disciplinary evaluation of individual behaviour will therefore follow the conclusion of the relevant criminal cases without a possibility to invoke any statute of limitations. It should be noted in particular that, after the year 2001, thanks to various initiatives, including in the training field, taken by the Department of Public Security at the Ministry of Interior, no remarks have been made with regard to the policing of major events. Besides, on the occasion of ordinary events which are important in terms of public order management such as sport events, a substantial decrease has been registered in the episodes requesting the use of force or deterrence measures.

5. The Public Order Office within the Department of Pubic Security at the Ministry of the Interior has always been attentive towards the problems that have emerged. **As far as the disciplinary profile is concerned**, the circumstances of ill-treatment have been put always under careful exam.

Furthermore, the above Department, following the experience matured vis-à-vis the management of public order and security duties on the occasion of great events, both in Italy and abroad, in the last five years, worked out the training programmes for the personnel belonging to managerial and leading qualifications of the State Police.

The vocational programmes included specific hours of lessons devoted to the management of public order on the occasion of events envisaging the participation of a great number of people and to the use of force by the personnel working there. In the year 2001, a Directive to *Questori* (Province Chiefs of State Polices) was disseminated with the aim at raising awareness of the correct and cautious use of the dissuasive means supplied, particularly with regard to the tear artifices and to the truncheon. Similarly, the Carabinieri Army corps has drawn the attention of its local HQs. to the necessity to assure, through appropriate measures, the regular performance

of public demonstrations, during which the enjoyment of the rights as guaranteed by the Italian Constitution must be and is fully secured.

Against this background, as to the above-mentioned proceedings, **the Italian Authorities will continue to keep the UN Human Rights Committee informed on the progress and outcome of it.**

B. The Roma Camps And The Role Of The State Police.

While recalling the information provided above (in Answer No.1 relating to the disciplinary proceedings), it is necessary to mention that within the framework of the ordinary controls by the Police for public order and security reasons, no evidence of violations emerged.

1. Police forces have proceeded to identify illegal migrants to be expelled, to control assets and properties, and to repress offences perpetrated. More generally, apart from criminal investigation police activities relating to measures to be enforced in the act or upon order by the judiciary, all actions carried out by the Forces in the **Roma camps** as recalled in Observation No11, were taken by Public Security Authorities of the Province.

As to the eviction from some camps or some buildings following Police controls, this matter arose *inter alia* due to the issue of the release of stay permits. In this regard, it is necessary to recall that the same rules of **procedure are applied to all foreigners,** regardless of their native country or ethnic group: The necessary evidence for everybody remains the verification of a **legal entry into the country**, the possession of a regular work permit or a permit for study or health reasons or the reunification with a legally resident family member[v].

2. With regard to the provisions applied to Roma people and the legitimacy of the measures taken by the Police against Roma people living in the centres of Rome, Milan and Verona, they were extensively reported further to the accusations against Italy of racial segregation. In this regard, a Collective Complaint 27/2004 was lodged by the European Roma Rights Centre before the European Committee for Social Rights within the Council of Europe. The complaint deals with a case of discrimination preventing the enjoyment of rights and with the non-issuance of stay permits and illegal methods and behaviour by Italian Authorities. In this respect, it must be emphasized that, in terms of both procedures and conditions, current regulations do not differentiate citizens from other countries on the ground of their ethnic origin.

On 7th December, 2005, the cited Committee concluded as follows:

- That insufficiency and inadequacy of camping sites constitute a violation of Article 31§1 of the European Charter taken together with Article E;

- That forced eviction and other sanctions constitute a violation of Article 31§2 of the European Social Charter taken together with Article E;

- That the lack of permanent dwellings constitutes a violation of Articles 31§1 and 31§3 of the European Social Charter taken together with Article E.

We have also taken stock of the fact that these observations are present, with different rationales, in most international documents regarding the human rights situation in Italy.

Fully aware of such observations and recommendations issued by the international monitoring bodies of the UN and the Council of Europe, the Italian Authorities, since the very first stages of the new governmental activity (from May 2006 onwards) have shown a common position and a strong will to acknowledge and protect the specificity of Roma people, Sinti and Travellers through a comprehensive Bill. In particular, two proposals have been presented to the Senate, regarding the "Acknowledgement and protection of the Roma people, Sinti and Travellers minorities" (AS 266/2006) and "The Acknowledgement and protection of the Rom, Sinti and Travellers populations and safeguard of their cultural identity" (AS 52/2006), respectively. Against this background, a working group has been established in October 2006 at the Inter-ministerial Committee of Human Rights within the Italian Ministry of Foreign Affairs, whose experts drafted a document reassuming all the international observations and recommendations addressed to Italy and regarding the Roma and Sinti situation. The issues outlined in this document should constitute the working basis for a comprehensive bill, strongly supported and sponsored by the Ministry of Interior and the Ministry of Social Solidarity. The next meeting of the working group will take place in November 2006: the working plan envisages, first of all, the elaboration of effective strategies to identify the legal status of the members of these groups, many of which are Italian citizens. Furthermore, among the initiatives undertaken so far, at the governmental level, it is worth mentioning the constitution of an ad hoc research group within the Ministry for Rights and Equal Opportunities.

3. On a more general note, by recalling our Answer under Lett.A., it is also worth reiterating that the **Italian Constitution recognizes and protects human rights and envisages the punishment for any physical and psychological violence perpetrated against persons whose liberty is restricted**. Within this framework, the use of force and weapons by the Police is allowed only under specific circumstances: they must respond to specific circumstances under which a conduct not permitted can fall within the institute of the so-called "objective causes for the exclusion of the crime (*cause oggettive di esclusione del reato*)", namely specific cases within which a conduct prohibited by Law may be allowed or envisaged as is the case with the police officer reacting to violence or to threats from an armed thief. These cases are expressly envisaged by Law and have been under constant consideration by the judicial Authorities, up to the Supreme Court (*Corte di Cassazione*) that cleared up their limits. Moreover, due care and attention is paid to these issues as emerged from ***ad hoc*** **memos, vocational training and refresher courses which are organised for the entire category of law enforcement officials:**

4. **Human Rights Training for State Police Staff.** By working in a social context characterised by a variety of ethnic groups, cultures and religions, the Italian State Police has launched a number of activities over the years which - in addition to the development of the professional knowledge and skills of police officers - aim at raising awareness of the respect of the ethical principles in the profession, as closely connected to the protection of individuals at risk of discrimination due to their belonging to ethnic minority groups - particularly vulnerable to be exploited and involved in criminal activities.

- *Basic Training*. In order to raise awareness and continue the discussion on a variety of initiatives undertaken in the field of human rights protection by the United Nations and other international organisations over the last fifty years, the Central Directorate for Police Training Institutes of the Department of Public Security incorporated the subject of human rights law in the curricula of training courses for police officers of all ranks (from constable superintendent) including a study of the relevant instruments, as well as of possible methods to effectively implement them when performing police duties. As a rule, 20-60 periods are devoted to this

subject, which is addressed in its various aspects under diverse disciplines ("professional ethics", "protection of human rights", "victimology (*vittimologia*)", "inter-cultural communication", "international humanitarian law", "public service ethics", etc.), depending on the level of the training course.

Training activities are conducted by university lectures and experts designated by non-profit organisations, active in this specific field, as well as by State Police senior officers who attended a ad hoc intensive course on human rights, held by the Centre for Human Evolution Studies (CEU) in cooperation with University of Rome "Tor Vergata" at the State Police College. In addition, every year a number of trainers- police officers- attend university master courses and other post-graduate specialisation courses in this specific subject at the above Centre and University, jointly with other State Police trainers of various ranks, attending the 2nd course on "human rights and international humanitarian law" held at the National Police College by the Catholic University "Sacro Cuore" in cooperation with the Italian Red Cross.

- *Permanent Training*. The subject of human rights law has been fully incorporated in the training programmes for police personnel for at least eight years now and represents, in its different aspects, a professional updating area of study (continuous training) for all serving police officers.

By way of an example, it is worth pointing out that the 2003 professional refresher course for police personnel was specifically devoted to the study of the "Code of the Police Ethics", adopted by the Council of Europe-Committee of Ministers in 2001. The main subjects of the **training** courses are focused in particular on issues related to the determination of the "mission" to be performed by the law enforcement service in a democratic society; State Police human-centred training; the fight against discrimination in all its forms and policing guidelines to be followed by police operators as regards the respect for the right to life, the fight against torture and any inhuman or degrading treatment, and the correct use of force and impartiality.

In addition to refresher courses for the police personnel, the Public Security Department at the Ministry of Interior also developed specific teaching aid material, available at the State Police offices, such as ad hoc videocassettes (VHS) devoted to "The European Code of Police Ethics" and "The Charter of Fundamental Rights of the European Union".

Within this framework, it is worth recalling the courses for State Police Deputy inspectors aimed at underlining the role of Police in the prevention and protection of human rights from any form of violation as well as promotion of their full respect in carrying out public order and security and criminal policing activities, such as investigations, arrests, detention, use of force, etc..

Within the cited courses, specific attention is paid to the role of the Police in a multi-ethnic and multicultural society. Equally, specific attention is paid to the conditions and the protection of human rights of specific groups, including minorities, refugees, asylum-seekers, women, children and elderly people.

Between several relevant awareness raising and educational activities, the Central Directorate of the State Police also carried out the following activities: Translation and distribution among stakeholders of the "Rotterdam Charter on the Police Role within a Multi-ethnic Society"; Translation and distribution of Recommendation Rec.(2001)10, entitled "Ethics Code for a democratic Police", as adopted on September 19, 2001 by the Ministers' Committee of the

Council of Europe; A Publication for the Police entitled "The Police activities within a multicultural society", which was drafted jointly with COSPE (Italian acronym for "Cooperazione e sviluppo nei Paesi emergenti", an Italian NGO) and members from the following communities: Chinese, Roma people, Nigerian, Jews and Islamic; Drafting of a Handbook for the training of trainers, entitled "Human Rights and the Police", which was edited by the above-mentioned C.E.U. and printed out by the Public Order Department.

5. **Human Rights Training for Carabinieri Army Corps**. Within the framework of the police activities human rights law is a specific subject, taught by professors from *Libera Università Internazionale di Studi Sociali* (LUISS) at the **Carabinieri** Corps' training schools. Such subject is broadly considered at the relevant educational Institutes. Specific attention is paid to the behaviour to be taken during the performance of duties, which must be inspired by humanity and respect for human rights.

At every regional Command, the General Command carries out lectures regarding human rights-related issues. From January 2004 onwards, 750 officers, 1.500 marshals, and 10.000 *brigadieri*, lance-corporals and servicemen of the Carabineri have attended ad hoc human rights courses or those provided by the training school. This subject is also summarized in specific publications distributed to all Commands. The Carabinieri Army Corps is used to distribute at all ranks the publication entitled "the human rights protection system within the framework of the Police activities" which expressly recalls the ECHR provisions devoted to **the prohibition of torture and to personal liberty**.

More in detail, it is worth mentioning the specific activities undertaken so far by Carabinieri: *General educational courses*: a. In September 2000, the Institute for military-legal studies was established at the School for Carabinieri officers, which includes a specific programme on human rights law. With the aim of better performing military and criminal investigation police functions, such courses are focused on domestic and international law, in particular *ius in bellum.* Specific attention is also devoted to the International Bill of Human Rights and to the all relevant international standards; b. With specific regard to the schools for cadet-officers, human rights law is taught by university professors and high-ranking officers. This includes the following subjects: history; racism; the phenomenon of the fundamentalism as a threat to "life, security, freedom"; theory of law and proceedings; the ECHR and the ICC; EU counter-terrorism law while protecting human rights; the new international order; old and new emergencies – peace missions and conflicts; protection of civilians; c. With specific attention to the schools for the so-called "auxiliary Carabinieri", an ad hoc programme run by officers with a specific expertise is in use at every school. This course is taught to soldiers under military service and is considered as an important measure to raise awareness of human rights law (the knowledge of which will be useful also at the expiry of the military service term).

Specialisation courses: a. Higher Institute for the General Staff of combined forces for high-ranking officers. An ad hoc Inter-Forces Course on international humanitarian law was initiated to train "Legal Counsellors of the Armed Forces"[vi]; b. International Institute of International Humanitarian Law in San Remo. Several officers attend every year the relevant course at the aforementioned Institute. Specific attention is paid to subjects relevant to international peace missions; c. The Italian Red Cross is in charge, by Law, with the dissemination of information on international humanitarian law and awareness campaigns addressing Armed Forces and relevant organizations[vii]. d. Post-graduation Institute Sant'Anna in Pisa[viii]; e. Rome University "Tor Vergata" and the Studies Centre for Human Evolution organize a specific upper-level course for

Carabinieri officers on "protection and promotion of human rights"[ix]; f. Personnel to be deployed with peace missions must attend an additional five-week course, the programme of which includes: "history of the crisis area – *introduction to local culture*"; "legal framework of the mandate"; "*HUMINT activity*"; "international and international criminal law"; "international humanitarian law" (the latter is taught with the contribution of the Italian Red Cross): this course focuses on the relevant international standards; codes of conduct and publications, such as the "Practical Handbook for the personnel in Police Missions".

6. **Human Rights training for the penitentiary system personnel**. Several measures aimed at disseminating human rights law have been also adopted by the Department of the Penitentiary Administration (DAP) at the Justice Ministry. In order **to prevent any arbitrary conduct, relevant educational and training activities focussing on "education to legality" have been undertaken so that specific attention has been paid to all those issues relating to the fight against intolerance, racism or xenophobia**.

In particular, human rights law has been dealt with within training, specialisation and refresher courses. To this end, in the year 2004, approximately 70 relevant courses took place. All the penitentiary staff attending such courses agreed on the importance of thoroughly examining the international dimension of human rights. Within this framework specific attention is paid to this issue from Gruppo Operativo Mobile at DAP that is in charge with managing the special detention regime, the so-called 41 bis. In a wider framework, the relevant 2005 Plan for training activities devoted a specific section to in–depth reflection on the deontology principles vis-à-vis relevant legislative reforms and the implementation of human rights standards. Its aim is to raise awareness of human rights education at every level of the penitentiary system and to enhance the connection between the protection of human rights and the implementation of the principles of deontology, paying due attention to Art.27 of the Italian Constitution.

C. Illegal Immigrants; The Lampedusa Island Case, and The Relationship between Italy and Libya.

In order to effectively tackle the issue of the illegal migratory flow[x] directed to Sicily via sea, more specifically to **Lampedusa Island**, the Italian Authorities have significantly improved the relevant reception activity.

1. The stay of the foreigners in the **Lampedusa Centre**, which has been recently transformed in a Centre for Rescue and First Reception (*Centro di Prima Accoglienza*), is strictly limited to the time necessary to transfer the immigrants from the Lampedusa Island in other facilities.

By Inter-ministerial Decree of February 16, 2006, the above Centre underwent the cited modification in its legal status, in accordance with the so-called *Puglia Act* (No.563/1995).

This new legal status – more coherent with the activities performed by the Centre under reference – entails that **shipwrecked** who are subsequently moved, under the supervision of the Security and Public Order Department at the Ministry of Interior, into other Centre stay in the Island for the time strictly necessary so as to get the humanitarian and the socio-health first-aid services. **Their stay do not further more than 48 hours**.

More specifically, under the so-called *Legge Puglia*, the new legal status of this Centre entails itself that the Non EU migrants should stay in the Centre for a strictly necessary period and should be then transferred to an Identification Centre (for the potential asylum seekers) or to a

Temporary Stay Centre (for the potential expulsed people), avoiding to overcrowd this facility and create dysfunctions in providing services.

Thus, **the juridical status of the Centre has been progressively adapted to the function it has to carry out all along under the growing pressure of the migratory flow**. In this framework, the system of transfer of illegal immigrants will be improved with the purpose not to exceed the maximum capacity of the Centre (300 persons).

Up to date, despite the high rate of shipwrecked, **the Police forces, in respecting the cited timeframe, have always carried out the identification task, on a timely and regular basis**.

2. Each of the illegal migrants disembarked in the Island, after having received the first necessary aid, undergo an interview in the language of his/her understanding, in order to know about the reasons of such travel to Italy, and to give the opportunity to apply for asylum. Moreover, the migrants are supplied with a multi-lingual pamphlet (which is also put up in the common spaces within this Centre), entitled "The Charter of Rights, mentioning the list of fundamental rights".

3. Specific attention is paid to the role to be played and the tasks to be performed by the **socio-health service personnel**. In this regard, It was decided to further rationalize the operational plan envisaged when the relevant staff (both from Médicins Sans Frontières[xi] - who conduct the *triage* at the arrival in the harbor - and from the Management Body) estimate that migrants are affected by undetectable or nosographically serious pathologies. To this end, the Lampedusa outpatients Clinic (Poliambulatorio), which is the only health centre open to public in the Island, is in charge with the additional health screening service.

On a more specific note, between the initiatives improving the stay conditions of immigrants in the Lampedusa Centre, as to the health and psychological aid services currently provided at the Lampedusa Centre, the convention for the management of this structure - in force for the year 2006 - clearly sets forth the characteristics of the **medical Centre**, which, in case of a number of 500 people hosted in the Centre, provide for a 24h/24 service by doctors and a medical service with professional personnel and ambulances.

In case of particular pathologies, the medical personnel of the Centre shall get immediately in contact with the Lampedusa *Poliambulatorio* (health-care centre)[xii] and, if necessary, the patients will be transferred to the closest hospital by helicopters.

Apart from a **new health facility** which is currently under construction (please see paras. below), as for **the hygienic services** of this Centre, renovation works have been recently approved (ten new showers have been recently built). Moreover, works for the improvement and re-adaptation of the Centre have been also approved, in line with the proposals by Prefet (*Prefetto)* in Agrigento and based upon a preliminary planning presented by the Civil Engineer Service in Agrigento.

4. Along with these urgent measures, **the construction of a new Centre will also take place** on an area so far occupied by barracks of the Italian Army Corps. By overcoming some resistances, this project has been finally accepted by the local community. The aim is to put the new centre in place **before next year**.

At present, the Ministry of Interior continues, in tandem with the Ministry of Defence, its coordination activity aimed at the building of this new Centre for migrants, which will be placed, at the end of a difficult logistics research and upon the consent from the local community, in the area previously devoted to Army Corps Barracks, entitled **"L. Adorno"** (in *Imbriacola* area).

- With specific regard to the migratory flow phenomenon, this choice seems to be the best one under several aspects, at the technical, operational and logistics levels. The adaptation/renovation works are speedily going on – after the execution of all the necessary administrative activities to transfer the cited area from the Ministry of Defence to the Ministry of Interior, including the transfer of the military personnel therein.

  On September 4, 2006, it took place the formal handing over of the works to the technicians in charge with carrying out the project under reference. In particular, the Ministry of Interior is currently monitoring and controlling the renovation works that include, *inter alia*, the building and/or the renovation of urbanization works to advantage of the local community (such as the clearing of bombs and mines dating back to the WWII as well as the streamlining of the local upper level waters).

On a more general note, within this framework, by an O.P.C.M. (Ordinanza Protezione Civile No. 3476 of December 2, 2005), a delegate Commissioner was appointed in order to work out in Lampedusa all the activities aimed at acquiring the adequate reception structures for the illegal immigrants. His task is to co-ordinate and to facilitate the connection among all the administrations concerned. Besides, another area has been identified where a provisional camp will be set up in cases of emergency for those immigrants waiting to be relocated.

More specifically, in parallel to the above transfer, it has been launched by the Office of the delegate Commissioner (*Ufficio del Commissario Delegato*) a series of works of ordinary and extraordinary maintenance, pursuant to Article 1 of the cited O.P.C.M. No. 3476 of December 2, 2005, which were necessary to improve both the living conditions in the currently working Centre and the quality and the efficiency of aid and rescue services to be rendered. Additional measures included, *inter alia*, interventions, aimed at building or at renovating hygienic, infirmary, kitchen and other services devoted to the Managing Body personnel as well as to the Police forces', are underway.

5. At the **cooperation level**, since March 2006, representatives by OIM, UNHCR and the International Red Cross have been based in Lampedusa Island in order to exclusively provide cooperation services, in line with their institutional goals so as to enhance the reception and the protection system of the illegal migrants disembarking in this Island.

6. The respect for human rights of migrants hosted in the Temporary Stay and Assistance Centres (CPTAs). On a more general note, it is worth recalling that the Ministry of Interior issued a number of Directives, including the so-called *Bianco* Directive (2000) and the 8 January 2003 Decree, by which the 2002 Guidelines to improve the management of the Centres for immigrants were confirmed. These Guidelines define **the minimum quality and quantity standards of the services that should be offered to the hosted people living in the Centres**. They represent the minimum, essential protocol, on the basis of which the Law establishes that the contracting parties (the local *Prefettura* and the Managing Body), signatories of the convention, could improve the quality of the services, their diversification, the number of

personnel who should serve in order to respond more effectively to the needs of the hosted people.

Along these lines, as for the **specific training of the personnel engaged in these reception Centres**, it is worth mentioning that they belong to public or private bodies well known for their competence, professional skills, and institutional vocation in the social voluntary field. **The staff regularly attend refresher training courses in their respective fields of competence**.

The Guidelines On The Management of the Centres specify that the Managing Body is obliged to register the personal and judicial data of each new person hosted and to draw a specific weekly report of the presence which should be sent to *Dipartimento per le Libertà Civili e l'Immigrazione* (Department on Civil Rights and Immigration). The Managing Body has a **criminal liability for the validity of these data**.

The Guidelines oblige the Managing Body to ensure to foreign nationals all the information on the Immigration Law, on the duties and obligations as a general service offered to each individual. Furthermore, the Interior Ministry - Department on Civil Rights and Immigration - **supervises the activity of the Prefectures involved in the Centres' functioning**. These Prefectures, on their own, must supervise the correct functioning of the Centres, particularly the respect for fundamental rights of immigrants, in line with the 2000 Directive, namely the *Bianco* Directive.

To this end, while controlling that services are provided by the managing bodies in compliance with the Guidelines, the Prefectures supervise the following elements: The entire management system; The respect for the minorities and members of ethnic groups hosted in the Centres; An adequate health-care assistance service[xiii].

As a matter of fact, the above mentioned Guidelines set: **The obligation of health assistance** to be provided by medical personnel on a 24h/24 basis. Moreover, during the SARS alert between 2004 and 2005, the Ministry of Interior used ad hoc containers in order to hospitalize the suspected cases or those patients who suffered from potentially infectious pathologies; **Legal counselling** (The State provides a lawyer to indigents (Art. 97 of the Criminal Proceedings Code)); and **An interpreter and a cultural mediator[xiv].**

As for **the carefulness of the access and exit registers of the foreign nationals who transit through Lampedusa Centre**, it is important to underline that the Managing Body records the newly arrived and the relating personal data, including judicial proceedings. This also draws up a specific weekly report (including data such as the number of people hosted) to be subsequently sent to *Dipartimento per le Libertà Civili e l'Immigrazione:* **The Managing Body is thus penally liable for the validity and the correctness of the data contained therein**.

7. The return measures to Libya. The table below shows the number of illegal immigrants who have landed in Italy since 1999.

Illegal immigrants landing in Italy

	1999	2000	2001	2002	2003	2004	2005
Individuals landing in	356	447	923	9,669	8,819	10,497	14,855

Lampedusa							
Individuals landing in other Sicilian places	1,617	2,335	4,581	8,556	5,198	3,097	7,969
Individuals landing in Apulia	46,481	18,990	8,546	3,372	137	18	19
Individuals landing in Calabria	1,545	5,045	6,093	2,122	177	23	88
Individuals landing in Sardinia	0	0	0	0	0	0	8
TOTAL	**49,999**	**26,817**	**20,143**	**23,719**	**14,331**	**13,635**	**22,939**

➢ Despite the strong migratory pressure and the serious danger posed by this phenomenon to public order and security, the administrative action towards immigrants has been always conducted in full compliance with the law.

Every single case was and is considered with accuracy. All foreigners illegally landed on the Island of Lampedusa, are identified and each of them is given the opportunity to apply for political asylum and to inform the Authorities about alleged personal prosecution in their home or origin country. Members of the same family remain together and are transferred as speedily as possible to adequate equipped centres.

Minors have been promptly transferred and entrusted to the care of local communities and the relevant measures of protection and assistance are activated. Those foreigners who expressed the intention of applying for asylum were transferred to the national centres for the reception of refugees. However, it occurred that many of them, through violent actions, escaped from the cited centres before the procedure itself could be completed.

All illegal immigrants sent back to Libya and Egypt, were received by their home countries and did not suffer any ill-treatment[xv].

The legitimacy of the relevant measures. With specific regard to **the situation in Lampedusa**[xvi], all measures concern illegal landings. Therefore, once rescue services are provided and with the exception of those cases where the adoption of protection measures is prescribed – such as cases of alleged risks of prosecution in the home or country of origin - the applicable provision to irregular foreigners is that of the measure pursuant to Article 10 of the Unified Text on Immigration[xvii].

8. Italian-Libyan Cooperation on Migration-related Issues. As for concerns related to the treatment of illegal immigrants returned to Libya, any return to Libya has resulted in the planning and monitoring by Italy of the ensuing escort of the persons concerned to their countries of origin.

All operations have been promptly carried out with no problem. Cases of ill-treatment have been reported neither to Italy nor to our Embassy in Tripoli**.** On the other hand, a major role at the international level as well as a growing attention to Libya at the European Union level should be recognised. The conclusions of the JHA Council held on 3rd June 2005 confirm, in fact, this trend and echo, at the EU level, the action already undertaken in our national capacity towards Libya. In fact, on June 3, 2005, the European Union JHA Council endorsed various proposals put forward by Italy and approved a final text (ASIM 24 RELEX 291), in order to start dialogue and cooperation between the European Union and Libya. Said document reflects the action carried out by Italy and envisages many initiatives already undertaken at the bilateral level.

For a long time, **Italy has been supporting the Libyan commitment to reinforcing co-operation in the field of migration**, based on an accurate assessment of policies towards Arab and other African countries in relation to the treatment of foreign nationals. Libya's Arab and African-oriented policy is based on brotherhood with those countries' peoples and absolute absence of any oppressive intention towards clandestine migrants. Over the years, the Libyan Government has been taking a series of actions aimed at revitalising the Organisation of African Union and developing initiatives to support all neighbouring countries. By way of example, mention should be made of the COMESSA Forum (Community of the Sahel and Saharan States) and the corridor for humanitarian aid to the Darfur population through Bengasi, the Oasis of Coufra and the desert paths connecting to Sudan.

Along these lines, **Italy submitted, in agreement with the IOM (International Organization for Migration), a project - called "Across Sahara"** - to the European Commission for the development of regional cooperation as well as of institutional capacity of Libya and Niger in the field of border management and fight against illegal migration.

Against this background, it must be emphasised that there is currently **no agreement with Libya on readmission of illegal migrants**, the collaboration which we refer to is the one signed in Rome **on 13 December 2000 On The Cooperation In The Fight Against Terrorism, Organized Crime, Drug Trafficking and Illegal Immigration**. The agreement is in force since 22nd December 2002 **(Official Journal Communication No. 111, S.O., 15 May 2003)**. On this basis, the respective Ministers of the Interior started several consultations, especially in the second semester of 2003, with the aim at implementing a program of technical assistance to the Libyan Authorities, as well as various forms of collaboration to combat illegal immigration.

The aim is to improve the institutional capacities when managing immigration and to provide the Libyan law enforcement officials with a more effective training, in compliance with the European standards.

On the Italian Ministry of Interior's website several press releases (among others, the following press releases from the former Interior Minister Hon. Pisanu: 27 September 2004; 12 October 2004; 25 November 2005; and lastly 19 January 2006) on the activities and programmes on migration and migration-related issues carried out with Libya are available (www.interno.it). Moreover, the former Minister of Interior provided detailed information on this bilateral collaboration before the Parliament (hearings on 8 October 2004 and on 29 June 2005, respectively). Prior to the cited interventions by the former Minister of Interior, two former Under-Secretaries of State, Hon. Ventucci and Hon. Antonione explained the terms of reference of such agreements (press-release of the following Parliament sessions: on 19 June and on 10 December 2003, respectively).

Relevant initiatives have been implemented in the following areas : a) Professional training; b) Assistance for the repatriation of illegal migrants to Third Countries; c) Supply of goods and services; d) Setting up of reception centres for illegal migrants; e) Operational and investigative cooperation.

D. The Reform Of The Judicial System.

Along the Guidelines recently introduced by the newly appointed Minister of Justice, Hon. C. Mastella, there is no need for wide and broad reforms. Rather, there is a clear need to be more focussed on how to reorganise and rationalise the judicial system in compliance with the Italian Constitution. To this end, it will be necessary to introduce new measures, including general administrative initiatives and plans of action, in line with the Framework Programme by **the European Committee for the Efficiency of the Justice, as established at the Council of Europe,** so as to improve the efficiency and the effectiveness of this System**.**

1.Within this framework, there is a basic condition to launch the strategy which has been briefly described above: a closer cooperation between the Ministry of Justice and the Superior Council of Magistracy **(Italian acronym, CSM[xviii])**. There is the need of an active dialogue between the two cited bodies in order to achieve a better organisation of the judicial offices, including the upper level positions, and the educational and training programmes for the magistrates while aiming at achieving better standards of "productivity" by enhancing the structural and human resources.

With care to saving the content of the above Guidelines, we can mention that the rationale behind this new approach is that the organisational plan of an office must be based upon **the principle of the rationalisation of the existing resources**. More specifically, this System should envisage an obligation for the head of each judicial office to elaborate an initial plan, and thus an additional obligation to periodically reporting on the results reached. In case of negligence, the System should envisage also a liability for mismanagement or, according to the cases, the possibility to be moved to other positions due to guiltlessness incapacity to a managing role.

2. The issue of the **Reform of the Judicial System**– *vexata quaestio* – does not have to be minimised to a spectrum of provisions aimed at demolishing the *status quo ante*: there is the need **to re-launch a dialogue** based upon different visions of the role and the organisation of the judicial system within the institutional balance. The jurisdiction as category researching and freely expressing the techniques to describe the reality (the truth), indeed, represents the mediation between the theoretical, abstractness of statute law and the constitutional principles.

Ergo, the justice cannot be compared to the civil servant: there is only a service relationship between the judicial System and the domestic administrative structure: Between themselves, there is neither a structural connection, nor a hierarchy ramification, nor a similarity in terms of status or of career.

By taking into account Act No.150/2005 and the related Decrees (namely Legislative Decree No.106/2006 on the role of the public prosecutor; Legislative Decree No. 109/2006 on the disciplinary offences; and Legislative Decree No. 160/2006 on the access to magistracy and the related career) of the Reform which were proposed by the former Justice Minister, Hon. Castelli, it is worthy of mention that they were mainly characterised by a bureaucratic nature. By

acknowledging this *status quo*, the need for a revision emerged over the last months, accordingly.

At the procedural level, soon after the refusal by the Head of State to sign a draft Law Decree aimed at sterilising the aforementioned Reform (the so-called Castelli Reform), the newly established Government passed, on the occasion of the Council of Ministers' sitting of 9 June 2006, a Bill aimed at suspending the entry into force of the cited relevant Decrees: This Bill, which was signed by the Head of State on June 12, 2006, aims at postponing the entry into force of the amendments to the Judicial System, as envisaged by the cited Reform.

This Bill is currently under consideration at the Parliamentarian level.

E. The Freedom of Expression And The Audio-visual System.

1.The so-called "**conflict of interests issue**" has been, for a long time, a key issue within the Italian political debate, involving the public opinion, the media sector and international community. Under the past Legislature, the Parliament adopted Act No. 215/2004, in order to deal *inter alia* with "The rules for the resolution of the conflict of interests". However, this Act has been always considered not to be completely exhaustive of the subject. Therefore, under the current Legislature, a draft Law has been presented, in July 2006, by some Parliamentarians from the Union coalition (currently running the Italian Government), in order to deal with "Measures on incompatibility and conflict of interests involving government post-holders, and the introduction of a competent Authority for the public ethics and the prevention of conflict of interests".

The aim of this initiative is to introduce and clearly defines the system of incompatibility between government positions and occupational or entrepreneurial activities, or in case of ownership of assets, which may generate conflict of interests. This draft Law also aims at preventing that the Government can be influenced by private interests. The conditions, as set forth in the cited Text, are crucial for the correct functioning of an effective democratic system.

On a more specific note, this draft Law sets a system of incompatibility between members of Government (Prime Minister, Ministers, Vice-Ministers, Under-Secretaries and Extraordinary Commissioners) and the following activities or functions:

- Any public and private employment and any public office which does not refer to a Parliamentary mandate (in this case the person concerned shall take a leave permit upon assuming a government office);
- The practice of entrepreneurial activities;
- The practice of any function which involves high responsibility (president, director, auditor..) or any advisory service in public bodies, public controlled companies, concessionary companies or private entrepreneurial bodies (in this case the person concerned shall suspend the aforementioned offices or functions);
- The practice of any professional activity;
- The ownership of any assets which may lead to conflict of interest (in this case the person concerned shall apply solutions of trustee management or use any other appropriate method).

This draft Law provides for the introduction of a competent Authority that acts as a corporate body, consisting of five members, as designated by the Parliament, for a non-renewable seven-year term.

The Authority, which shall operate in total autonomy and independence, is in charge with detecting all those activities leading to a conflict of interests. This body has also the power of pre-empting or preventing the possible conflicts by adopting ad hoc actions and, more generally, a wide range of measures. In some cases, this may request the competent bodies to make the following decisions: the cessation or removal from the office; the rescission of public or private employment contract; the suspension from professional activities, in case of authorized business activity or in case of any other consent; the repeal of the respective measure taken by the competent public administration.

By considering that its position is crucial to the issue under reference, the Government approved this initiative and proposed some amendments to make the discipline more comprehensive and effective. In fact, the cited provisions may also be applied to government positions in local bodies and/or for those who take up similar positions or perform similar functions.

At present, it seems thus appropriate the enactment of a delegated law and the fixation of a deadline to the Regions for the adoption of an effective discipline based on national pre-arranged principles.

2. With specific regard to the legal system upon which the Radio-TV broadcasting system is based, **the Italian Government approved, by consensus, in its sitting of October 12, 2006, a Bill envisaging new provisions regulating the transition of the Italian television sector to digital technology**.

The aforementioned Bill aims at meeting the needs of the Italian broadcasting system for a wider competition and a real **pluralism**, as demanded for years by the Constitutional Court, the Competition and Communications Regulatory Authorities, as well as by the European Union and other international organisations.

The Italian broadcasting system needs more competition and pluralism. This is the only way to ensure more growth opportunities to firms operating in this sector, to diversify supply's quality and to get a better feedback from citizens. The Bill indeed aims at meeting all these requirements, in line and in accordance with the analyses of the aforementioned authoritative institutions.

The Bill's aim is basically to tackle two structural weak points: the *oligopolistic structure of the system*, where economic resources, techniques and audience are owned by the two main broadcasters –a unique situation in Europe- and *the highly jeopardized situation of the frequency spectrum*, the efficient management of which - according to current legislation - is hampered by a long and well-established *de facto* monopoly of the frequencies.

On July 19, 2006, the European Commission brought a default action against Italy, claiming that some basic elements of Act 112 of 2004 and of the radio and television Consolidated Text clashed with European Union's regulations relating to a streamlined management of the frequency spectrum, to a non-discriminatory access to the frequencies and the right to use them, as well as with several remarks on existing barriers to the access of new operators and with a request for a prompt correction of the existing situation through appropriate initiatives as a *conditio sine qua non* in order to abort the action against Italy.

In the wake of the Commission's observations and remarks, the Italian Government declared, in its message of reply of September 13, 2006, its willingness to adapt its national legislation to the EU provisions, subject of violation (in particular, Art. 4 of the Framework Directive, Arts. 3, 5, 7 of the Directives on Authorizations, Arts. 2 and 4 of the Directive on Competition) and its readiness to promote to this end the necessary legislative initiatives. Particularly, the Government pledged to submit within October 2006 a Broadcast Reform Bill aiming at regulating the transition from the analogical to the digital technology, in compliance with the EU legislation.

The main points of the Bill are the following: The adoption of provisions aimed at limiting the concentration upon each operator of proceeds from advertising in the TV sector (up to 45% of the total proceeds) and at combating the consolidation of dominant positions and the creation of new barriers to the entrance in the market of new operators; The overcoming of normative barriers and regulations hampering the access of new operators into the digital terrestrial television's market, with a view to a greatest opening of the market; The reduction of phenomena of overlapping and redundancy in the usage of frequency resources by each operator, in accordance with EU and national principles of a streamlined radio-electric spectrum; The adoption of ad hoc measures to guarantee the redistribution of radio and television networks' market; The freeing of frequencies and the granting of general conditions of objectivity, transparency, proportionality and non-discrimination in the access to and in the use of frequency resources, in accordance to what requested by the European Commission; The granting of access to the wide band to all the operators dealing on the market; A system of sanctions more streamlined in terms of mechanisms ad more effective in terms of impact, in line with the remarks and recommendations elaborated by the Communications Regulatory Authority and transmitted to the Government on July 12, 2006.

Amongst the measures envisaged for the achievement of the above mentioned goals, it is worth mentioning the following: A provision according to which those operators owning three networks have to already start the transition of one of them to digital technology (the new deadline for the transition is fixed within 15 months as from the approval of the law); The establishment of a roof of 20% for the broadcasting capacity for each content provider in the digital television system. Last but not least, this Bill repeals some of the provisions of Act No.112 of 2004.

[i] For example, it supervises the preliminary stages of referenda and it is competent to judge in case of presidential impeachment. Procedurally, the Constitutional Court is empowered to judge (Article 134). When sitting to decide on a case of impeachment against the Head of State, the court consists of its three panels of judges (fifteen judges) and sixteen additional members, who are drawn by lot from a list of citizens elected by the Parliament (Article 135 (7)); otherwise, as to its "ordinary mission", the Constitutional Court consists of and works with its fifteen judges: one-third being appointed by the president, one-third by the parliament in joint session, and one-third by ordinary and administrative supreme courts.

a. Complaints of unconstitutionality may be submitted to the Italian Constitutional Court by central and local Authorities claiming that a state or a regional Act is unconstitutional. Therefore, the Court monitors Authorities to see whether they have respect the Constitution in their actions. It also arbitrates in controversies between the highest State organs and decides in proceedings between central and local Authorities.
b. The courts must examine *ex officio* (the public prosecutor) or upon request of the plaintiff/defendant whether the provisions to apply are in compliance with the Italian Constitution. When a court considers that an act is not in line with the Constitution, pursuant to Article 134 it suspends the proceedings until a decision by the Italian Constitutional Court is taken.
c. The Constitutional Court decides on (and its decisions may not be appealed to): 1. disputes concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. conflicts arising over the allocation of powers between branches of government within the state, between the state and the regions, and between regions; 3. accusations raised against the President in accordance with the constitution.
d. The Constitutional Court decides on the validity of legislation, on its interpretation and whether its implementation, in form and substance, is in line with the Basic Law. Thus, when the Court declares a law - or an act with the force of law - unconstitutional, the norm becomes ineffective the day after the publication of the decision.

[ii] 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 derogation 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; the right to be promptly informed.

[iii] 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 categories of individuals to be protected, the Commission would be responsible for the entire population in 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 competencies overlaps and waste of resources, the Commission would work in connection with the bodies still existing and working in 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 Inter-ministerial 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.

[iv] 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.

[v] The regulations always allow the challenge of any decision contrary to the release of stay permits and the relating measures of expulsion. Within this framework, it is therefore worth noting the **limited use by Roma** people of the opportunity to **legalize their status** on the State territory which is not a sign of discrimination against them. Even the recent legislation, by which the employer is a key-player, does not differentiate conditions among foreigners; therefore, the aforementioned low percentage of Roma people who seemingly have availed themselves of the procedure can only imply the lack of labour contracts or the presence of criminal records. Similarly, no discriminations have been made for the **access to the asylum proceedings**, since all applications are examined, on a case-by-case rule, through the examination of acts, documentation and individual interviews on the assumption of a real substantiated risk of persecution.

[vi] The programme on legal-related issues takes two working weeks, and includes lessons and conferences, which are held by scholars and officers with a relevant expertise.

[vii] The campaign addressing Armed Forces is implemented at the central and local levels: the former is realised, at the cited Institutes, by ad hoc courses on international humanitarian law in armed conflict, with the aim of training military personnel pursuant to Act No. 762/85; the latter is carried out at the Headquarters and includes brief introductory seminars on international humanitarian law in armed conflict.;

[viii] The Major State of Carabinieri has signed an ad hoc MoU with the cited Institute to better train its personnel when participating in international missions, such as peace-keeping operations, peace-building, human rights monitoring, humanitarian aid, electoral monitoring missions.

[ix] This programme includes *inter alia*: theory and history of human rights law; philosophy and anthropology; conflict management and conflict resolution; protection of human rights.

[x] *The CPTAs general framework.* In order to effectively apply the 1951 Geneva Convention concerning the recognition of the refugee status, Art.32 of Act No.189/2002, first and foremost, makes a distinction, as to the Centres for the stay of the asylum-seekers, namely **Identification Centres and the Temporary Stay and Assistance Centres (CPTAs)**. The CPTAs were established with the aim of hosting the foreigners to be expelled, or those applicants for refugee status already expelled whose application is under review.

With the aim of guaranteeing a higher protection of the rights of the asylum-seekers, Italy has set up seven territorial committees for the examination of the asylum applications. The Territory Commissions, which include UNHCR representatives, are in the following municipalities: Gorizia, Milan, Rome, Foggia, Siyracuse, Crotone, Trapani. Such initiatives have been adopted *inter alia* so as to reinforce and improve practical measures, ensuring adequate health care, legal assistance, interpreters and cultural mediators to immigrants.

Act No. 189/02 envisaged *inter alia* the creation of a "Protection System for Refugees and Asylum-Seekers", which paved the way to **the establishment of a National Fund on the policies and services relating to asylum**. As a consequence, the cited Fund resources are allocated to local Authorities when providing assistance and protection services to asylum-seekers, refugees, and foreigners under humanitarian protection. By Order of the President of the Council of Ministers, No. 3326/2003, entitled "additional urgent measures were adopted in order to combat the illegal migration". Art. 3, while derogating Act No.189/02, envisaged the adoption, by the Interior Ministry, of ad hoc Decrees to further the allocation of resources to the local Authorities involved in the above assistance process.

In June 2004, the Ministry of Interior issued the first Decree – which takes into account the resources (five million euros) provided for by the 2003 Financial Act - allocating resources to the main municipalities in accordance with Art.32 of Act No.187/2002. The contributions amounted to 18,52.00€, per diem, per person.

[xi] In order to ensure to the disembarked immigrants a prompter social humanitarian assistance, the Prefettura in Agrigento signed in 2004 an ad hoc MoU with "Médecins sans frontière" which is still in force. This organisation is authorized to make a preliminary screening of the illegal immigrants in order to implement specific measures and ensure the necessary hygiene in the Lampedusa Centre. Recently, Médecins Sans Frontière has requested, in particularly serious conditions detected by the first screening, to extend their assistance activity even to the Poliambulatorio of the island. To this end and in order to draw up a possible MoU for the future cooperation, the ASL (local health-care Centre) and MSF have started preliminary contacts. These requests were accepted and will be defined in the MoU, to be signed by the Prefet in Agrigento.

[xii] On 21st July 2006 the *Prefetto* of Agrigento held a meeting aimed at analyzing the matter. The meeting was attended by representatives from *Azienda Sanitaria Locale No. 6* (Local Health Service Unit) in Palermo, *Questura* of Agrigento, *Ufficio Sanità Marittima e Aerea* (Maritime and Air Health Office) of Palermo, members of the organization *Medici Senza Frontiere (MSF)* and of the *Confraternita delle Misericordie d'Italia*, a body responsible for the management of the First Assistance and Reception Centre for foreigners in Lampedusa.

During the meeting, participants agreed to choose the *Poliambulatorio* – i.e. the only public health facility existing in the island – as the reference centre to be contacted by health-care workers (belonging both to *MSF* and to *Confraternita delle Misericordie d'Italia*) in case of clinical situations relating to illegal immigrants, which are considered uncertain or particularly delicate. The person responsible for the *Poliambulatorio* shall make the necessary and most appropriate decisions – if need be in co-ordination with the structures of the Health Agency concerned – also for the management of clinical cases which health-care workers deem susceptible of further in-depth analysis.

On that occasion, in order to face possible health difficulties and/or emergencies in the Centre due to a massive presence of non-EU citizens, participants agreed that, if necessary, the *MSF* personnel could be allowed by *Prefetto* of Agrigento (under Article 6 of the Memorandum of Understanding signed by that organization and the managing body) to operate in the Reception Centre in order to support health activities carried out by *Confraternita Misericordie d'Italia*, in cooperation with this Association.

[xiii] The protection of the hosted people is an essential principle, guaranteed by the Constitution and reflected in the Legislation in force

[xiv] As to legal counselling, the competent Authorities will transmit the report to the National Bar Association in order to further raise awareness of the matter. As to cultural mediators, given the right to be promptly informed in the language of one's understanding as guaranteed by the Italian legal system, their role was envisaged and introduced in programs to be carried out by the Penitentiary System Administration.

[xv] The summary given below contains the activities implemented after the landings of huge flows of illegal immigrants in Lampedusa in October 2004:

F**rom 29 September through 8 October 2004,** 1,787 illegal immigrants reached the Island of Lampedusa on 20 small vessels which were sighted and rescued by our police forces even at a considerable distance from the coast. Despite the serious danger posed to public order and security because of an overcrowded temporary staying centre (its maximum capacity amounts to one tenth of the persons actually hosted at the time) and the manifestly pre-arranged action by powerful criminal organizations all foreign nationals concerned were immediately given medical care, supplies (clothes, food, personal hygiene products) and any other support. They were identified and each of them was given the opportunity of explaining his/her personal situation, communicating possible persecution suffered in their home or origin countries and applying for political asylum.

544 foreign nationals who expressed their intention of obtaining protection from Italy because of alleged persecutions were transferred to reception centres located in other provinces in order to submit their asylum applications. Out of them 181 immediately received a temporary permit of stay pending the decision by the Commission, whereas reporting procedures for further 223 foreign nationals took place at a later stage. 140 individuals, however, escaped by eluding controls.

Complying with the Italian legislation on immigration and by fully respecting the applicable international provisions 1,153 foreign nationals (most of them of Egyptian nationality) were returned to Libya on 11 charter flights. In this regard, mention should also be made of the fact that the relevant **measures were taken at the individual level, on the basis of Legislative Decree No 286 of 25 July 1998** (Consolidation Act on Immigration and the Status of foreign nationals). In this context it is worth reiterating that the request to access to the Centre as put forward from UNHCR representatives on 4th October, was accepted on 6th October, due to the difficult security conditions present at that time.

[xvi] With reference to the legitimacy of the relevant measures adopted after the cited disembarkation episodes occurred **from September 29 through October 6, 2004,** it is important to underline the legal framework which constitutes their basis. The Unified Text on Immigration and the Conditions of Foreigners sets forth a much more varied discipline on **respingimento** (Art. 10) if compared to that envisaged for **expulsion** (Art.13). Apart from the basic differences lying at the origin of each measure (attempt or a speedy illegal entry to the national territory in the first case, real presence on the territory in the second case), the former measure is less afflictive if compared to the latter. Indeed, while the immigrant sent back under Art-10 can afterwards legally enter to Italy (provided s/he fulfils all the envisaged requirements), the expelled person, for a period of ten years since the execution of the measure, is not in the same position. In this framework, the expulsion requires a confirmation order by the justice of peace (Art. 13, para. 5-bis). Instead, the execution of a *Art-10 measure* does not envisage any intervention by the judicial authority. Both measures can be supported by the adoption of a retention measure in a Centre for temporary stay and assistance (Art. 14), the precondition of which is the impossibility for the Province Chief of State Police (*Questore)* to carry out immediately these measures for several fixed reasons. Therefore, if the foreigner's identity is certain, there is no need for the individual assistance and if the vehicle and the travel documents are available, it is not necessary that the Province Chief of State Police *(Questore)* adopts the cited measure. In these cases, the Police authority implements the so-called "escorting police measure to the borders" (which does not require a judicial validation).

[xvii] With specific regard to the cases related to the measures adopted after the disembarkation episodes occurred from 29 September to 6 October 2004, these provisions were legally issued without the validation of the justice of peace (*Giudice di Pace)*. As for the notification to the foreign

nationals concerned by such measure, under the Italian Law, this can be implemented even without a formal act, but through the delivery of a copy of that provision.

[xviii] Independent body of self governance of the Italian magistracy entitled the Superior Council of Magistracy.