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HUMAN RIGHTS COMMITTEE

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

**Fifth Periodic Report**

**ITALY\***

[19 March 2004]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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## **Introduction**

### **The preparation of the present Report**

1. The present report, like the previous ones, was drawn up as part of the institutional activities of the Interministerial Committee for Human Rights, which was set up by the Minister of Foreign Affairs in 1978. The Committee includes representatives of the government departments involved in the different sectors of activity, along with bodies, associations and academics with special expertise in the field of human rights. The Committee set up a special Working Group, after which the secretariat drew up a draft Report which was approved by the Committee in plenary session. The Report was distributed to various NGOs for comments and observations.

2. In drawing up the Report account was taken of the observations and recommendations formulated by the UN ad hoc Committee when the previous report was discussed.

3. It was felt that the Report should be divided into two parts, the first dedicated to the follow-up of some of the previous recommendations. It was deemed useful in some cases to refer readers to the discussion of individual issues in the second part of the Report, which provides a framework illustrating the implementation of the provisions of the Covenant in Italy from 1998-2001. For this second part a particular emphasis was placed on a discussion of the Government's policy approach in the individual sectors covered by the provisions of the Pact, including the content of the various national plans adopted in 2001. Account was also taken of the new legislation in this area and of administrative practices and procedures.

### **The political framework**

4. The elections of 13 May 2001 saw a reversal of the previous balance of power between the centre-left (known as the "Ulivo", or Olive Tree coalition) and the centre-right coalition which, emerging victorious from the ballot, immediately gave rise to the second Berlusconi government. After its appointment the government presented a programme of actions in the form of a package, known as the "Hundred Days" package, containing a complex and varied set of measures.

5. In the economic sector, Law 383 of 18 October 2001 concerning "Initial measures for the recovery of the economy" (known as the "Tremonti bis" Law) was intended to relaunch the economy through measures including fiscal incentives for investment. The incentives for investment and development also include a tax credit equal to the taxes paid by companies on profits distributed to shareholders in order to encourage company capitalisation.

6. In the field of the public administration, a sector considered to be strategic in terms of increasing Italy's economic competitiveness internationally, the Government intends to introduce a series of key principles such as efficiency, effectiveness, simplification, accessibility, transparency and quality of service. The central elements of the entire reform process will be technological innovation, the re-engineering of administrative processes and related structures, and the training of staff.

7. Since there have been no significant new developments in the areas in question, the present Report does not include comments on Articles 1, 2, 4, 5, 11, 16, 20, 21 and 22. The report places a particular emphasis on questions related to the presence of aliens in Italy, in view of the importance which such issues have come to hold in the social context.

### **Article 3**

#### **(Equal rights for men and women)**

*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.*

8. The question of full equality between men and women is one of the Italian Government's key objectives and is also being pursued through the decisions of the Constitutional Court which, especially in recent years, has issued a number of rulings on the question of equality. The problem of achieving full equality affects various aspects of the public, civil and social life of the country.

#### **Developments in gender equality in Italy**

##### *In the employment sector*

9. As regards the development of the role of women and the recognition of true equality in the workplace, the following facts need to be borne in mind: from 1993 to 1998 the number of women in employment and the number of unemployed women both increased; and the female activity rate and the pressure exerted on the labour market by women who no longer wish to leave the world of employment when they marry or have their first child are both increasing. The numbers of highly qualified women (entrepreneurs, professionals, partners in cooperatives, managers) are growing, while the numbers of female manual and agricultural workers are falling. At the same time, the numbers of female office workers and women working in the growing (and increasingly significant) services sector are also on the rise.

10. These positive trends contrast with the marked difficulties experienced by women in the labour market. According to the official employment data, unemployment continues to be the predominant condition for young women aged 15-24, to a greater degree than for males of the same age. In Southern Italy, 64.5% of young women of working age are unemployed, compared with 51% of young men. For older age groups too the unemployment rate is again higher for women than for men. Finally, more women are engaged in undeclared employment and in flexible and atypical forms of employment. For very young women, flexibility appears to be a necessary condition rather than one that is actively sought, with regard to both part-time and temporary or set-term employment. The new jobs available tend to be precarious and provide little employment protection.

11. In recent times there has been a particular focus on the promotion of entrepreneurship for women: measures in this respect include the activation of the funding envisaged by Law 215, followed by a multi-media information campaign, the creation of an "observatory", a freephone service and other structures to facilitate women's access not just to this funding but also to all the

other instruments available to support small businesses and for training/guidance, access to credit, the streamlining of business start-up activities, and encouragement and advice during the planning, start-up and consolidation stages. It should also be noted that Law 191 of 16 June 1998 introduced the possibility of adopting tele-working practices for both male and female workers in government offices.

### *In the family*

12. In the lives of working women with children, family chores play a central role, leaving women with little free time. For working men with children the situation is reversed, with free time playing a central role and family tasks relegated to the sidelines. More than half of working women with children work more than 60 hours per week (between paid employment and care responsibilities), with over one third working more than 70 hours per week. This contrasts with the situation for men, only 15% of whom work 60 hours per week or more between paid employment and family tasks. Just 21.4% of fathers with children under two are engaged in childcare on a daily basis. Single mothers on average spend 2 hours less per day on family tasks than married women with children.

13. On the question of equality between men and women in the division of family tasks and responsibilities, the new law on parental leave approved on 8 March 2000 is worthy of note. This law contains provisions on leave for parents with children of up to eight years of age, on incentives for study leave or to ensure that leave periods are used by both parents, and assistance for family members in difficult circumstances. Grants are also envisaged for firms applying people- and family-friendly contractual arrangements such as reversible part-time, telework, flexible starting and finishing times, and hours-banks. New legislation on part-time and atypical work has also been approved.

### **Government initiatives**

14. In order to hasten the elimination of the remaining obstacles standing in the way of full equality between men and women and adopt a new approach to the issues of defence, peace-keeping and the non-violent resolution of conflicts, the Government has proposed two important new measures:

(a) the introduction of voluntary military service for women (through Enabling Act 380 of 20 October 1999). This envisages access by women to all roles, including operational ones, and all career levels, in conditions of absolute equality. The act also contains maternity-related safeguards and a review of the general rules on recruitment to make them more conducive to the assumption of parental responsibilities by men. 21,000 women aged 17-25 have already applied to enter the armed forces.

(b) access by women to civilian service (bill A.S. 4408, currently before the Senate). The objective of this provision is to introduce a national civilian service that is accessible to women on a voluntary basis, and to young men as an alternative to military service. Pilot projects involving voluntary civilian service for young women are already under way in a number of cities, coordinated by the Department of Social Affairs.

15. The Minister for Equal Opportunities has presented a bill containing “Measures to combat Discrimination and Promote Equal Opportunities” (A.C. 6582), the aim of which is to implement in full the principle of equality in accordance with Art. 3 of the Constitution, in the light of the new Art. 13 of the Treaty of Amsterdam. All the causes of discrimination mentioned in these provisions are addressed in the bill: differences of gender, race or ethnic origin, religion or personal beliefs, political opinions, disability, age, sexual orientation, personal or social conditions.

16. The objective of the proposed legislation is to give all those persons who have experienced discrimination, for any cause, the possibility to take urgent legal action to remove its effects. The adoption of positive actions to promote equal opportunities, especially in employment and with respect to all factors of inequality, is also envisaged.

17. A bill presented by initiative of the Parliament containing “Provisions for the prevention and elimination of discrimination on grounds of sexual orientation” (A.C. 5865) is intended to remove any explicit reference to sexual orientation, which is one of the obstacles still lying in the way of the full affirmation of the principle of equality. In the Italian legislation there are at present no positive provisions to prevent sexual orientation being used as a factor for discrimination.

18. In 1999 the Department for Equal opportunities organised a Conference on the experience, problems and legislative framework governing *de facto* families, with particular reference to the rights and problems of homosexual couples; more generally, changing family models and lifestyles were discussed as factors to be taken into account in legal and administrative actions to combat discrimination and guarantee equal opportunities for all individuals.

## Article 6

### (The right to life)

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crime in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.*

3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*



5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

### **Benefits for the victims of terrorism and organised crime**

19. The aim of Italian legislators has been to provide help, through a series of economic and other benefits (employment-related, exemption from medical and other costs, educational grants etc) for all those persons (and their family members) who have suffered fatal or serious injuries as innocent victims of terrorism or organised mafia-style crime.

20. In this respect, a series of legislative provisions ((Law 466 of 13 August 1980, Law 302 of 20 October 1990, and Law 407 of 23 November 1998) have been issued, governing the administrative aspects of the procedures that need to be followed, the types of benefit and eligibility requirements.

21. In the last five years (1998-2002), financial benefits amounting to Lire 42,625,648,661 (€2,014,310.329) have been granted.

22. Following the entry into force of Law 407/1999, as amended and supplemented by Law 388 of 23 December 2000, 751 lifelong allowances amounting to Lire 4,506,000,000 (€2,327,154.783) have been granted.

23. It should be underlined that Art. 82 of Law 388/2000 extended the possibility of granting the lifelong allowance (paid monthly) to the surviving family members of victims of organised mafia-style crime also; as envisaged by Law 407/1998 the allowance was available only to the victims of terrorism and their families.

## **Article 7**

### **(Torture and other inhuman treatment)**

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

### **“The events of Naples”**

24. On 15, 16 and 17 March 2001 the “3<sup>rd</sup> Global Forum” organised by the Italian Government in cooperation with the United Nations, the OECD, the European Union and various Italian and international Foundations and University centres took place in the city of Naples. On 17 March, the concluding, national-level demonstration took place. This included a procession in which about 7000 people took part.

25. From the very beginning of the event a number of incidents manifesting intolerance took place. The most serious occurred in Piazza Municipio, where there was a substantial police barricade and where a group of rioters started a heavy barrage of stones and various types of blunt objects.

26. To keep the demonstrators under control, the police carried out a number of charges which enabled the situation to return slowly to normal.

27. The police detained a number of demonstrators and arranged for charges and arrests to be made.

28. To date, a number of criminal proceedings are still pending in the Naples Public Prosecutor's Office. These include proceedings involving members of the Polizia di Stato (the State Police) for alleged ill-treatment of the demonstrators. On 26 May 2003 the Naples Prosecutor's Office issued a request for the indicted persons to be committed for trial.

29. Following the warrant for house arrest issued by the examining magistrate of the Naples Court, those police officers involved in the case were suspended as a precautionary measure with effect from 26 April 2002, in accordance with Art. 9.1 of Presidential Decree 737/1981. Through a provision of 11 May 2002 resulting from the cancellation of the arrest warrant on that same date by the review section of the Court, these same officers were re-admitted to service in accordance with Art. 9.3 of Presidential Decree 737/1981, with effect from the day following their release.

30. The results of the criminal proceedings are still pending.

### **“The Events of Genoa”**

31. On 19, 20 and 21 July the G8 Summit took place in Genoa. Particularly serious events occurred during the demonstrations organised to coincide with the Summit.

32. The following excerpts from the final report of the investigation carried out by the Joint Committee (whose proceedings were held in the 1<sup>st</sup> standing Committee of the Senate), to which the results of the administrative investigation arranged by the Minister were reported, provide a comprehensive overview of these events.

33. The preliminary investigations to ascertain whether any members of the police force were criminally responsible for alleged violence against the demonstrators are still under way in the Public Prosecutor's Office in Genoa.

#### *19 July*

34. From the point of view of public order, no significant incidents occurred on 19 July: the march of “Migrantes” organised by the Genoa Social Forum went off peacefully and without incident. This event attracted a large number of demonstrators and took place in a relaxed atmosphere and according to plan, at the same time as the demonstration by Iranian women. Some violent incidents took place from the evening on, when the Forte San Giuliano provincial Carabinieri headquarters was subjected to stone-throwing and acts of vandalism.

*20 July*

35. On 20 and 21 July the intention of taking a “soft” approach to public order ran up against mass provocation that was the result of the mingling – which the organisers did not prevent – of a crowd of about 10,000 violent demonstrators with the peaceful marchers. This made it impossible to separate the violent from the non-violent demonstrators. The violent incidents were also caused by forays by “black block” groups into the peaceful demonstrations. These took place, according to the statements of police representatives, both during the demonstration, which in part degenerated into street clashes, and in the form of an attempt by some demonstrators to break through the barriers erected to protect the “red zone”.

36. The police charges against the procession began when it was crossing a non-prohibited zone (the intersection of Via Tolemaide and Corso Torino), although the area was very close to Piazza Verdi, which the order issued by the Questore (officer in charge of the police force and public order) on 19 July had indicated as being the end-limit for the march.

37. From the duty report by the police officer responsible for that area and the submission made by the Questore, Colucci, at the hearing, it emerged however that the police units who had arrived in Via Tolemaide following a report by the radio room informing them of clashes taking place there even before the arrival of the demonstration, were subjected to a heavy barrage of Molotov cocktails and stones and that the first rows of demonstrators, mainly interlopers equipped with various forms of protection, were setting fire to tyres and vehicles. The demonstration was already in progress even before the procession reached Piazza Verdi, with the clear intention of crossing over the established boundaries. During his hearing, Minister Scajola informed the Committee of an administrative investigation carried out by the ministry itself to clarify the precise course followed by the events described above.

38. The dramatic events of Piazza Alimonda, which ended with the death of Carlo Giuliani, unfolded against this background of clashes between groups of violent demonstrators and the police during the afternoon of 20 July.

39. A contingent of about 100 carabinieri, which had intervened in Via Caffa to help other units already engaged in that area, found itself encircled by groups of demonstrators and forced to retreat in disarray towards Piazza Alimonda. In the square, two carabinieri jeeps used for logistical support functions for the units were cut off by the group of demonstrators and attacked. One managed to get away, while the other was blocked and subjected to a violent attack. One of the carabinieri inside the van, which was besieged by tens of demonstrators, fired a pistol-shot which killed the demonstrator Carlo Giuliani. Giuliani who had been about to throw a fire extinguisher at the carabinieri, who had been hit a violent blow on the head with a metal bar wielded by another demonstrator. In relation to this specific episode, and in consideration of the case still pending before the tribunal which will be required to pronounce on the individual responsibilities of the persons involved, the Joint Committee focused on the overall circumstances leading up to this tragic event.

*21 July*

40. On 21 July clashes again occurred between demonstrator and the police, as well as damage to private buildings, shops, vehicles and street furniture.

41. The periods of greatest tension occurred when the head of the procession came up against a group of about one hundred people confronting the police, provoking incidents, the throwing of tear gas and police charges. During the demonstration, the police searched some vans considered to contain objects that could be used as weapons, and in some cases confiscated material and made arrests.

42. Once the final procession of the Genoa Social Forum was over, as a consequence of the violent clashes that had taken place the Questore of Genoa arranged for patrols to be carried out in the area.

43. On the basis of the information coming in, it was agreed that the Pertini (formerly Diaz) school building in Via Battisti should be searched by the DIGOS (Divisione Investigazioni Generali e Operazioni Speciali – General investigative and special operations division) and the Flying Squad with the help of a unit with responsibility for security in the premises involved in the operation. The operation began at about 11.30 p.m.-12 midnight. Different reconstructions of the raid have been given in terms of the sequence of events and the premises actually searched. At the same time members of the State Police raided the premises of the Pascoli-Diaz school, where the press centre and the legal offices of Genoa Social Forum were based, as well as the first-aid room for people injured in the demonstrations, which was located opposite the building being searched. The fact that equipment in these premises was tampered with and damaged was also reported by the chairman of the Italian National Press Federation, Serventi Longhi.

44. Following the search, weapons, objects that could be used as weapons, and material that according to the inspection report could be traced to the most violent fringe groups responsible for the violent incidents in Genoa during the G8 Summit, were seized.

45. At the end of the operation 93 people were arrested, including 3 journalists. During the operation in the Pertini-Diaz School, many of those present in the building, and 17 police officers, including 15 from the flying squad, were injured. 62 people were arrested. This episode is perhaps the most telling example of the organisational failings and operational shortcomings that emerged during an international event of this importance.

46. During a meeting of the Provincial Committee for Public Order and Security on 12 June 2001 for the organisation of police operations to accommodate individuals arrested during any disorder taking place during the Summit, it was decided to set up separate registration and medical centres in premises in Genoa at some distance from the places where the demonstrations were to take place, for the subsequent transfer of detainees to prisons outside the city.

47. This decision was based on the need to avoid using the prisons of Genoa, since they are located in the centre of the city, where some of the demonstrations were scheduled to take place. It was also decided to set up another two centres, one in the carabinieri facility in Forte San Giuliano, for individuals arrested by the carabinieri, and the other in the Bolzaneto facility of the State Police flying squad, for individuals arrested by the other police forces. Both were defined, in an order issued by the Minister of Justice on 12 July 2001, as “sites used for

detention purposes as annexes of the medical and registration centres of the *case circondariali* [short-term prisons for persons awaiting trial or with short sentences] of Pavia, Voghera, Vercelli and Alessandria, and the prison of Alessandria”. This order clarifies that “the administrative management of the activities falling with the remit of the prison service in the above-mentioned structures is the responsibility of the Management of the Genoa-Pontedecimo prison, as provided for by the Director of the Prison Service Administration’s G8 Coordination Office”.

48. During the period when it was in use, a total of 222 persons were registered at the Bolzaneto facility. Teams from the flying squad were also used as back-up for the prison officers, but only outside the buildings used to accommodate the detainees and for support tasks for the transfer of the detainees to the prisons. After 24 July this structure was no longer used for detention purposes as an annex to the medical and registration centres. From 26 July, the daily newspapers started to publish first-hand accounts and reports of violence and incidents against the detainees in the facility. Consequently, both the Justice Minister and the Chief of Police gave instructions for an investigation to be opened. On 30 July and 4 September two reports were submitted to the Chief of Police and the Minister of Justice respectively. (The second report was drawn up by the inspection committee set up on 2 August to investigate “episodes of physical and psychological violence allegedly committed by members of the prison administration against individuals registered in the Genoa-Bolzaneto prison”. The first draft of this report contains a comprehensive reconstruction of the operational arrangements of the facility and discusses 11 cases reported in the press or by the detainees, as well as other cases of violence witnessed by a nurse on duty at Bolzaneto).

## Conclusions

49. The report on the investigation, of which some excerpts have been reproduced here, concludes with a series of evaluations by the Joint Committee.

50. In general terms, the Committee underlined the success of the G8 Summit in Genoa. The Summit achieved all of its objectives from the points of view of content, the administrative and logistical aspects, and security and public order, notwithstanding some failings in the organisational phase that could be traced back to the previous Government (training of police personnel and relations with the anti-globalisation movements).

51. This outcome was the result of the Berlusconi Government’s decision to keep to the agenda drawn up by the Amato Government, while at the same time developing and supplementing this agenda and at all times following the recommendations of the President of the Republic, and involving the poor countries of the world in the initiatives designed for their support and for the protection of human rights and the defence of the environment. The countries taking part in the summit agreed with this choice of issues, which started as a working proposal of the Italian agenda and developed into the political conclusions of the summit itself.

52. It should be pointed out that for the first time the issues considered to be deserving of attention by a G8 summit were not far removed from those inspiring the truly peaceful elements of the anti-global groups, a fact which gives rise to hopes for a constructive dialogue in the future.

53. In the light of the various hearings and information data it collected, the joint committee underlined that the Genoa Social Forum (GSF) is a composite movement that encompasses the following:

(a) a pacifist, non-violent wing, formed mainly by movements inspired by Christian ideas and whose objective is to provide a voice for the poor of the world in the face of economic globalisation processes;

(b) a “politicised” wing, which adopts positions that range from disturbances intended as symbolic violation, to sabotaging decision-making processes (in the case of Genoa the key words were “breach the red zone”);

(c) a violent wing, in which significant segments of the politicised wing (for example the “white overalls” and the social centre groups) engage in seriously aggressive actions against the representatives of the institutions and seek to justify this conduct through an instrumental and distorted application of the concept of civil disobedience.

54. To these should be added other groups inspired by guerrilla tactics, whose sabotage-based approach translates into attacks designed to cause very real damage, seek direct confrontation and cause insurrection in the streets (for example, the black blocks). In a situation of this sort the line chosen by the Berlusconi Government and the action taken by the police – according to the joint committee – were, in terms of public order, undoubtedly positive.

55. The Berlusconi government had set itself the objective of engaging in dialogue with the GSF to enable the G8 summit to proceed smoothly, and to safeguard in full the right to express and demonstrate dissent in a peaceful manner. In this light, funds were also allocated to provide facilities for the GSF and the police were given precise instructions to ensure that they handled public order issues in a moderate and firm manner. This also led to the commitment to defend the “red zone” as effectively as possible by putting in place large numbers of police and controlling the conduct of the demonstrations which, when held peacefully, followed their natural course.

56. The police put every possible effort into their task and paid a heavy price in doing so, including in terms of their physical safety. It cannot be denied that there were some shortcomings and confusion on the coordination side. However, it must be remembered that the police had to deal with 6-9,000 violent individuals (out of an total of 200,000 persons (according to the Ministry of the Interior) or 300,000 (according to the GSF). The police found themselves facing an outbreak of fully-fledged urban guerrilla warfare that unfolded in a variety of ways and, in view of its radical nature and the fact that it developed within large demonstrations, could have led to a much more serious final balance sheet than was actually the case.

57. Indeed, throughout the G8 Summit, the violent and subversive wing of the demonstrators took advantage of the tolerance shown by their peaceful counterparts. The latter did not take any action to report, isolate or expel violent and subversive elements, who were allowed to move around with the processions or march at their head or, more often than not, to hide within the body of the procession.

58. This made it impossible for the forces of law and order to use their tried and tested techniques to control the marches, prevent disorder, isolate violent elements and protect the peaceful demonstrators, and exposed them to treacherous attacks and often thwarted their efforts. The instrumental and distorted use of the concept of civil disobedience by violent elements ended up by drawing many of the non-violent demonstrators into conduct that provoked a response by the police, with the result that the peaceful, profound and sincere spirit of the truly non-violent members of the movement, who account for a considerable part of the area under contention, was contaminated. The need that emerged during the investigation to ensure a greater degree of coordination by the police forces in future and to work for more effective cooperation by institutions with information and prevention responsibilities in other countries, including through initiatives to harmonise the international legislative framework, should also be underlined.

59. The Joint Committee then analysed and highlighted the factors that emerged from their enquiries with respect to three of the most hotly debated incidents.

60. As regards the disorder in Via Tolemaide, it was observed that two different versions had been drawn up. One asserted that the march was turned back since it turned into a violent demonstration after it had almost come into contact with the police barricades at the end of the non-prohibited route, with marchers attacking the police and trying to break through the barriers. The other version asserts that the march was charged by the police, without any violent provocation.

61. As time went on the situation that arose following the actions by the demonstrators generated a further series of violent and disorderly clashes throughout the area, leading inter alia to the attacks in Piazza Alimonda and Via Caffa. It is against this background that, after being cut off, the Land rover was attacked and the three carabinieri in it found their lives at risk. Placanica took out his regulation revolver and fired the shot that killed Carlo Giuliani just as he (Giuliani) was throwing a fire extinguisher at the officer. This is how an event that should never have happened – the loss of a human life – occurred. The fundamental cause was the blind violence of groups of extremists who endanger the lives of the young people who become entangled in their criminal initiatives. In this negative framework the only positive element to emerge was the role played by Giuliani's father who, showing a great sense of responsibility and civic spirit, addressed an appeal to the demonstrators to act reasonably and made every effort to restore a peaceful climate.

62. As regards the episode in the Pertini-Diaz school, the Joint Committee noted the legitimacy of the decision to carry out the search, even if the document officially demonstrating this legitimacy was not among those in its possession. A number of shortcomings were noted in coordination at the decision-making and operational levels (especially as regards the line of command and the way it worked in practice). From the hearings and material obtained by the Committee it seemed clear that the decision to carry out the search had been based on the sound conviction that weapons were hidden in the school. It also emerged clearly that the decision to deploy an operational force that was adequate to tackle strong resistance to the search was the right one. This determined resistance to the police is clearly documented and was such as to require a considerable degree of force to counter and overcome the conduct of the occupiers, in order to ensure the safety of the personnel and achieve the objectives of the police action. It must be said that information regarding some excesses carried out by individual members of the

police force also emerged. The task of ascertaining the facts is now in the hands of the competent judicial authority, in whose activity the Joint Committee was not able, and does not intend, to interfere.

63. As regards the events in the Bolzaneto facility, the Committee noted a number of separate points. Firstly, it observed that the necessity and legitimacy of creating this structure (and the similar one in the San Giuliano facility) are not in question; nor is the clear legitimacy, including in administrative terms, of the management of events by prison officers (penitentiary police).

64. More specifically, from the administrative and management point of view, there is no question as to the full respect for the rules and procedures in the matter of medical examinations, searches and body searches of the detainees and their treatment pending their transfer to prison, the objective at all times being to maintain order among the detainees given the difficult relations both between the detainees themselves and between them and the personnel.

65. The complaints regarding the long periods of time spent in the facility can be attributed to the high numbers arrested, the fact that large groups arrived at the same time and the unexpected decision to reduce the number of reception centres from seven to two. As regards the alleged acts of violence, on the actual perpetration of which a judicial enquiry is under way, it is felt that, as in the case of the Diaz-Pertini school, the findings of the judicial authority should be awaited. The fact remains that the incidents referred to, if true, are very serious in nature. The reports by the Questura [office responsible for police force, public order and relative administrative services] of Genoa, which apparently obtained evidence through "eavesdropping" that some of the arrested persons had arranged previously to formulate unfounded accusations against the operators, were also noted, although during his hearing the Questore did not specify which facility he was referring to. Another crucial point appears to be the investigation arranged by the Department of Prison Administration, since an individual who could potentially be subject to examination under that same investigation was himself appointed to the Committee set up for this purpose.

66. To conclude, the Joint Committee reiterated that violence is not and must not be used as an instrument of political action and that in a democratic country legality is a fundamental value. It underlined the inviolability of the constitutional principles of freedom of expression and respect for the individual even, and perhaps above all, when deprived of his or her freedom as a result of arrest, as well as the need to protect the safety of citizens and public order. The Committee expressed the hope that, where criminally significant facts or breaches of discipline emerge, the judicial authorities and administrative bodies should identify those responsible and ensure that the appropriate penalties are applied.

## Article 8

1. *No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*

2. *No one shall be held in servitude.*

3. (a) *No one shall be required to perform forced or compulsory labour;*



*(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;*

*(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:*

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;*
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;*
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;*
- (iv) Any work or service which forms part of normal civil obligation.*

67. In Italy, in order to provide better information on the problems involved in conscientious objection, an ad hoc office for conscientious objection and civic service has been set up in the Prime Minister's Office. Through this National Civic Service Office, the Prime Minister's Office intends to establish direct contact, mainly in schools, for all young men who are required on reaching the age of majority to indicate whether they wish to opt for conscientious objection. Schools are considered as having a special role to play in disseminating information and raising people's awareness of the principles of social service, which in its present form provides a real opportunity to learn useful skills that are also applicable to the world of work, and in any case allows participants to take a first step towards employment. The use of young conscientious objectors in the staff of authorised training bodies, or to substitute employees, is prohibited. A particular emphasis is laid on the creation of new skills, with respect to which young people are considered as key actors.

68. The higher profile role that civic service has acquired through the creation of the ad hoc office should also be considered in parallel with the reform of compulsory military service and the extension to women of access to the armed forces, which of course also has gender equality implications.

## **Article 9**

### **(Right to personal liberty, freedom and security)**

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

2. *Anyone who is arrested shall be informed of any charges against him.*

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.*

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

*Reform of preventive detention.*

### **Compensation for unjust detention**

69. In relation to Art. 9 of the Convention, and in case the point has not been made on previous occasions, Articles 314 ff of the penal code (p.c.) introduced the concept of compensation for unjust detention by effect of a subsequent provision or for violation of Articles 273 and 280 of the penal code. The concept of judicial error, already envisaged in the repealed code, concerns the eventuality of unjust imprisonment following a review of the case and is governed by Art. 643 of the penal code.

70. More specifically, in paragraph 1 of Art. 314 p.c., the irrevocable sentence of acquittal is considered as a pre-condition for the action to obtain compensation from the state. Paragraph 2 envisages compensation for the objective illegitimacy of the precautionary measure adopted and implemented in the absence of the requirements of Art. 273 or Art. 280 p.c., deemed by the decisions of the courts as being mandatory.

71. The right to fair compensation is however conditional on the claimant's not having given cause for detention through gross negligence or intentional wrongdoing.

72. The procedure to obtain fair compensation is governed by Art. 315 p.c., which refers in turn to Art. 643 insofar as this is applicable. The application should be made to the Ministry for the Economy and Finance, while competence to decide on the application lies with the Court of Appeal, which so provides through an order that can be challenged in the Court of Cassation. In the event of the death of the claimant the right to compensation falls to the spouse, and to descendants and ascendants, brothers and sisters, and persons related through affinity (first degree) or adoption.

73. As regards the payment of the sum concerned, court decisions have considered the concept of "just compensation" to be wider than that of concrete damage, since the relevant factors include not just the economic loss and loss of earnings, but also encompass discredit, social standing, and the suffering of the victim of the legal error, the fundamental aim being to

enable the victim as far as possible to make a normal return to society in conditions of tranquillity. The sum paid may not exceed one billion old lire (Art. 315) and may be paid in the form of a lifelong allowance rather than as a lump sum.

### **Football violence**

74. Although the national football championship in 2002-2003 saw a 28% increase in the number of matches with episodes of intemperate conduct, if only episodes of low- (1<sup>st</sup>), average- (2<sup>nd</sup>) or high- (3<sup>rd</sup>) level gravity – therefore excluding very minor incidents (0-level) – are taken into consideration, the figures were almost identical to those of the previous football season (2001-2002), during which there was a considerable reduction in the number of incidents.

75. Positive indicators of the progress of the championship also emerge from an analysis of other statistical coefficients used to evaluate the impact of sports events on public order and security. For example, with respect to the 2001-2002 football season, the number of persons arrested and those reported but still at large increased by 51% and 18% respectively, as testimony to the enhanced capacity, including in preventive terms, of law enforcement structures.

76. The achievement of these results is in part the result of the intensive and wide-reaching preventive work carried out by the “Supporter Units”, which were set up in August 2000 with the task of preventing disturbances during sports fixtures and identifying, including through subsequent investigations, those responsible for disorderly incidents. The Supporter Units focused their efforts on obtaining information – including through weekly meetings with representatives of the extreme “Ultras” groups – that might be useful in the organisation of public order services and in identifying and reporting those responsible for criminally punishable behaviour, with a view also to the adoption by the provincial public security authority of those preventive measures envisaged by the current legislation.

77. No less important has been the informational activity, which has seen the staff of the Supporter Units engaged during the run-up to matches in on-going dialogue and awareness raising initiatives designed to obtain all possible useful information regarding the numbers of fans interested in following their teams to away-matches, the types of transportation to be used, journey times, and the existence of any reasons for resentment or rivalry towards the fans of opposing teams.

78. For the highest-risk away games, some members of the operational units were sent to escort the fans. They also carried out important back-up activity for the local police forces, which took the form of constant liaison with referents from the Ultras groups and the identification, in the immediate aftermath of incidents, of those responsible for any episodes of intemperance.

79. The Supporter Units obviously also had a more strictly investigative role. After matches where incidents took place, they watched the films recorded by closed circuit systems in the sports facilities and those made by the forensic divisions with a view to identifying those responsible and reporting them to the judicial authority.

80. In terms of prevention, the activity carried out by the competent Section of the Preventive Policing Central Directorate should also be noted. In addition to providing guidance and coordination for the Supporter Units, this section also made a fruitful contribution to the work of the “National Observatory on Violence at Sports Events” for the purpose of drawing up the risk profile for each match. This Observatory is made up of appropriately qualified officials from the Central Directorate, the office for Public Order, the Railway and Highway Police Service, senior officials from the Football League, the CONI (Italian National Olympic Committee), the State Railways and Trenitalia, the security representative from the “Autogrill” motorway service station company, and Carabinieri and Finance Police officers. The Observatory monitors episodes of violence and intolerance in the sports context and promotes coordinated initiatives for the prevention of violent conduct. The Observatory met on a weekly basis in the Department of Public Security and was a useful instrument in achieving synergistic collaboration between the security structures and sports bodies.

81. Including on the basis of recommendations from the Observatory, the Department assigns reinforcements to the various Questure from the Flying Squads of the State Police, the Carabinieri and the Finance Police.

82. Although the results can most certainly be judged as positive, it must be pointed out that the activity of the Supporter Units, which was particularly effective and fruitful in preventive terms with those groups of fans who were open to dialogue and the idea of respecting the rules, was at the same time undermined in terms of operational purposes and results achieved by the lack of receptiveness of the most violent fringe groups, towards whom the initiative was mainly repressive in nature.

83. Some “hard-core” groups continue to reject any form of encounter or dialogue, as evidenced once again by the potential aggressiveness of their members, which broke out on a number of occasions into mindless collective acts of damage and widespread aggression against people, property and the police, with detrimental effects on public safety.

84. And it is to these same groups – who form a far from negligible element of the multi-hued world of football support – that nearly all of violent incidents during football matches can be attributed.

85. To all this must be added the question of the suitability of certain football facilities from the safety point of view. For example, of 32 sports complexes with a crowd capacity of over 20,000 – which are required to have video-surveillance systems place – 6 proved not to have these installed, while the remaining 26 have closed-circuit systems that are obsolete or insufficient to cover all supporter transit areas.

86. Moreover, of 122 sports facilities that host League A, B and C football matches, only 53 (43%) meet the security requirements envisaged by the Ministerial Order of 18 March 1996 in terms of practicability, while the remaining 69 (57%) are impracticable and football matches are played either following “authorisations in derogation” issued on a case-by-case basis by the mayor or subject to their meeting requirements laid down in “temporary permits”.

**Restrictive measures for the prevention of violence in stadiums**

87. Law 45 of 24 February 1995, which confirmed with amendments Decree Law 717 of 22 December 1994, contained urgent measures for the prevention of violence in conjunction with sports competitions.

88. At present, the Consolidated Text proposing new and more incisive measures to combat “Episodes of violence on the occasion of sports events”, is currently under consideration by the Justice Committee of the Chamber of Deputies.

**Naziskins**

89. The “Naziskin” (skinhead) movement came into being in England at the end of the 1960s and established itself in Italy in the early 1990s. It has put down particularly strong roots in the regions of North-Eastern Italy and in Rome, and is closely connected with racism and xenophobia, often with strong elements of anti-Semitism.

90. In Italy, for many years no particularly serious incidents occurred, especially in the light of Italians’ traditional tolerance of foreigners. Only at the beginning of the 1990s was there a sudden outburst of episodes of racial intolerance, xenophobia and anti-Semitism. This was linked to the sudden increase in immigration by non-EU nationals, which until then had been negligible. It was in that period that groups of skinheads first appeared in some regions of Northern Italy. These groups, taking immigration as their pretext, were responsible for the first acts of violence against immigrants.

91. More recently, the huge increase in clandestine migratory flows, which has also led to an increase in illegal activities such as the exploitation of prostitution, drug dealing and “micro-crime”, has undoubtedly played a part in instilling feelings of concern and unease in some sections of public opinion.

92. This unease, especially amongst the most ill-adjusted young people with a very narrow cultural and moral framework of reference, has at times found a violent outlet in the form of criminally punishable conduct which, it must be said, has not thus far reached uncontrollable levels and has remained largely episodic in nature, notwithstanding its highly objectionable nature and gravity.

93. In this context, not least with a view to preventing the insurgence of a more extensive phenomenon that could have involved the young extremists most inclined to intolerance and led to the formation of systematic groupings amongst them, the state immediately embarked on a rigorous line of action.

94. This has taken the form of increasingly well-honed training of the law enforcement officers with responsibility for addressing this new phenomenon, and of legislative measures to combat not only the most visible external manifestations of the phenomenon but also its ideological-propagandistic aspects.

## **Article 10**

### **(Treatment of accused persons and convicted persons)**

1. *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

2. (a) *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*

(b) *accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*

3. *The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*

### **Condition of female prisoners**

95. Within the more general framework of measures to improve the conditions of prisoners, the Italian Government has devoted particular attention to the condition of female prisoners, in relation to their role as mothers. At the initiative of the Minister for Equal Opportunities, the bill entitled "Alternative measures to imprisonment for the protection of the relationship between female prisoners and their children" (A.C. 4426) has been approved by the Justice Committee of the Chamber of Deputies. The new measures will make it possible to transform prison sentences into the alternative measure of house arrest, placing the offender under the supervision of a social worker, or day release, if the sentence (or what remains of it to be served) is less than 4 years and the child/ren living with the mother is/are under ten years of age. Until now this was only possible for sentences of less than three years and up to the child's fifth birthday. The crimes of mafia conspiracy, international drug trafficking and armed robbery are excluded.

## **Article 12**

### **(Admission of aliens)**

1 *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

2. *Everyone shall be free to leave any country, including his own.*

3. *The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*

4. *No one shall be arbitrarily deprived of the right to enter his own country.*

### **The question of legal and illegal immigration to Italy**

96. The experience of recent years, with the increase since 1997 of legal and illegal migratory flows in all industrialised countries, confirms the theory that sees growing differences and imbalances in the rates of economic and demographic development and the state of poverty and under-development in which two-thirds of the human race still live as the factors fuelling migratory flows.

97. Drawing on its own experience as country of emigration, Italy has understood that flows of migrants into the country are not an exceptional situation to be governed using emergency measures, but a natural phenomenon that cannot be stopped, and a source of new vitality to fuel economic development and enable the meeting of different worlds, which is beneficial to nations' growth and cultural openness. At the same time, however, Italy considers free and uncontrolled immigration to be counter-productive: such an eventuality would not only be unsustainable for the socio-economic system, which would not be able to provide work, and the social guarantees of which all advanced nations are justly proud, for an infinite number of individuals, but is in any case precluded by agreements entered into with our European partners.

98. Only an effective cooperation and development aid policy for the countries most affected by emigration, coordinated at the international and European levels, can impact on the structural causes of under-development and, albeit only in the medium- to long-term, help stem forced migratory movements.

99. These considerations gave rise to an awareness that the country was in need of a new legislative instrument that would be able to bring migratory flows back within normal bounds, in the firm conviction of being able to govern a structured and programmed flow of foreign workers who could be integrated into Italian society. This need translated into the new legislation on immigration, Law 40 of 6 March 1998, and the consolidated text on immigration approved through Legislative Decree 286 of 25 July 1998.

100. Italy, which in view of its geographical position in the centre of the Mediterranean is one of the main external borders of the Schengen area, has gradually become a destination country for a flow of migrants attracted by the changes that have taken place in global economic equilibria. In recent years the flow has progressively increased, not on the basis of a prudent programming of entries but largely following unofficial channels. The Consolidated Text on immigration was subsequently amended by Law 189 of 30 July 2002, the better to tackle immigration-related problems. The key elements of this law concern innovations that will have a substantial impact on two aspects of the phenomenon:

(a) the need to adopt the firmest possible measures to combat illegal and clandestine immigration and associated criminal phenomena;

(b) the need to encourage the full acceptance of foreign citizens who intend to make an honest living in our country and become integrated into our society, in the context of a programmed flow of non-EU workers into Italy.

101. This law also provided for the possibility of “legalising” the position of those employed workers already in Italy whose employers have submitted legalisation applications. As a result of this legislation and Law 122/2003, the legalisation process has been initiated for about 700,000 non-EU workers present in Italy, a considerably higher number than expected and far higher than in the previous “amnesties” for immigrants (244,000 non-EU immigrants were legalised in 1995, and 251,000 in 1998).

102. These periodic amnesties became necessary to legalise the position of foreigners who would otherwise be condemned to live in a state of perpetual illegality. Reducing this area of illegality as far as possible was a pre-condition for the introduction of an active quota-based inward migration policy.

### **The flow-programming decree**

103. In the report on illegal immigration and the presence of aliens in Italy that was presented to Parliament in May 1998, the number of clandestine immigrants was estimated as being in the range of 200,000 to 300,000.

104. To enable legalisation to take place, on the basis of the recommendations contained in the programming document the Government issued a “flow-programming decree” which established an additional quota of 38,000 persons for 1998. Up to that ceiling, the issuing of residence permits for reasons of employment and self-employment was envisaged for non-EU citizens resident abroad or already present in Italy before the entry into force of Law 40/1998, provided they had submitted their applications no later than 15 December 1998. Applications had to include the appropriate documentation demonstrating the applicant’s presence in Italy before 27 March 1998, the existence of a contract for subordinate employment or contract work and evidence of suitable accommodation. The possibility of legalisation for clandestine immigrants claiming entitlement on the basis of family re-unification was also envisaged.

105. At 28 December 1999 243,233 applications for employment reasons (of which 36,339 for self-employment) had been submitted. Of these, 130,887 were accepted and 11,879 rejected. 7,337 applications for family reunification reasons were submitted, of which 5,368 were accepted and just 166 rejected (see Annex 1: Migratory flows 1997-1998-1999).

106. A Commission for Integration Policies was set up in the department for Social Affairs in 1998 in support of this new approach by the government. Its remit includes the study of the phenomenon, but also the provision of substantive answers to the questions raised by the government on matters concerning immigration and inter-cultural policies and initiatives to combat racism.

107. In 2000, the Ministry of Welfare underscored its interest in the issues of immigration and the employment integration of immigrants by setting up a Commission to draw up a plan for the employment inclusion of foreign workers. Initiatives to combat discrimination are also being considered in this context.

108. The most recent legislative provision in this area and the first to implement the new rules on immigration is a flexibly structured document designed to improve the matching of labour market supply and demand and set separate quotas (given the ceiling of 63,000 on the



number of foreign workers entering Italy) for self-employed and employed workers and special quotas for countries that have signed cooperation agreements on migratory matters. For 2001, the Presidential Decree of 9 April 2001 envisaged the entry of 83,000 foreign citizens; the Prime Minister's Orders of 15 October 2002 and 6 June 2003 authorised the entry of 79,500 foreigners for each of these two years.

### **Provisions for legal immigrants**

109. Within the envisaged quotas, in certain circumstances aliens already present in Italy for another reason are allowed to engage in employment, as long as they apply to their local Questura for the conversion of their permit of stay.

110. Persons holding a permit of stay for study or training reasons may engage in:

(a) subordinate employment, after obtaining authorisation from the appropriate provincial employment office and the conversion of their permit of stay;

(b) self-employment, after checking they meet the envisaged requirements for the entry of foreign nationals for self-employment and having their permit of stay converted.

111. Persons holding a permit of stay for seasonal work may engage in permanent subordinate employment, with the consequent conversion of their permit of stay, as long as they had obtained a permit of stay for seasonal employment the previous year and, at the expiry date, had returned to their country of origin.

### **Migratory flows from the Balkans**

112. During the 1990s Italy had to address phenomena that called for an innovative approach to regulation in view of the need to provide "temporary protection" for persons fleeing their own country, which had been overcome by widespread violence or by war, even though they were not subject to persecution on an individual basis.

113. The recurrence of substantial flows of evacuees into Italy created the need to draw up a more flexible legal instrument than a law, to be adopted in emergency situations. Art. 18 of Law 40/1998 therefore envisaged that "an order by the Prime Minister...shall establish...temporary protection measures to be adopted, including in derogation from the provisions of the present law, for significant humanitarian needs, in the event of conflicts, natural disasters or other particularly serious events in countries not belonging to the European Union".

114. This provision was used for the first time in the spring of 1999 to grant temporary protection in Italy for evacuees from Kosovo and from the Balkans in general.

115. On 26 March 1999, a few days after the start of the NATO operations, the Prime Minister issued an order declaring a state of emergency in order to deal with the possible, exceptional exodus from the war zones. On 18 June this was extended to 31 December 1999.

116. From 30 May, when the first stage of the humanitarian operation was considered to be complete, action was taken to manage and assist the evacuees from Kosovo until 6 July 1999, when the airlift for the repatriation of refugees to Kosovo began. This operation ended on 20 July 1999 with the return of 3,894 evacuees.

117. During this period, 1,792 evacuees obtained residence permits and left the reception centre in order to move on to other Italian cities or cross the border to countries like France, Germany, or Switzerland, to join relatives living there.

118. On 31 August 1999 the evacuees' stay in the former military base at Comiso came to an end with the transfer of the remaining evacuees to secondary reception facilities. During their stay at the Comiso reception centre, the evacuees received food and lodging and all necessary medical assistance. The work of volunteers was of great importance in assisting the Kosovar evacuees.

119. To improve the evacuees' quality of life, they were encouraged to enter employment in jobs suited to their skills and experience.

120. More generally, and therefore not just with respect to the evacuees in Comiso, on 12 May 1999, in accordance with the provisions of Art. 20 of Consolidated Text 286/1998 (which replaced Art. 18 of Law 40/1998), the Prime Minister issued, as mentioned above, an order containing temporary humanitarian protection measures for persons from the war zones in the Balkans.

121. Over 18,000 permits of stay for temporary protection purposes were issued.

122. Help and assistance were provided for refugees in existing facilities and in structures set up for this specific purpose, through the prefectures. The numbers receiving assistance peaked in May 1999 at about 8,000, in addition to those hosted at the Comiso centre by the Department for Civil Protection, part of the Prime Minister's Office.

123. In statistical terms, the illegal immigration of Yugoslav citizens of Albanian ethnic origin from the Kosovo region increased progressively from 1997 and throughout 1998, and started to rise even more steeply from the last few months of 1998.

124. The total number of aliens landing in Italy from 1 January 1999 to 30 September 1999 was 40,893 (of whom 22,777 were Kosovars). The extent and gravity of the phenomenon, especially as regards the activity of criminal organisations involved in the transportation of clandestine immigrants by sea, are made all the more evident by the numbers of persons arrested for aiding and abetting illegal immigration (257 – mainly Albanians running boatloads of immigrants) and boats seized (106).

125. Another phenomenon that emerged from the second half of May 1999 was the arrival in the ports of Bari and Brindisi of large groups of Kosovar refugees with false papers on board the scheduled ferries running on a daily basis between those ports and the Albanian ports of Valona and Durrës.

126. From 21 May to 5 August 1999, 8,562 Kosovars entered Puglia this way. After 5 August no further arrivals of refugees were recorded on scheduled sailings.

127. As regards developments after the end of the conflict and the entry into Kosovo of military forces operating under the aegis of the UN, there was a noticeable, progressive decline in the number of refugees arriving on the Apulian coast.

128. At present the subsidiary protection provided in Italy takes the form of permits of stay issued for individual humanitarian reasons (Art. 5.6 of Consolidated Text 286/1998) and for social protection reasons (Art. 18). Permits for individual humanitarian reasons are granted in many situations, especially when the alien, although not obtaining recognition of refugee status (for example, because he has not been subjected to individual persecution and therefore the conditions envisaged by the Geneva Convention for the recognition of this status do not apply) would be exposed, if repatriated, to risks concerning his fundamental well-being, for example, in the event of a civil war being waged in his country (at present, 1,679 permits have been issued under this heading).

129. Residence permits for social protection reasons (widely applied in cases involving the trafficking of women) are an important new feature introduced through Law 40/1998. The role of the local authorities and associations working with the women in question and acting as guarantors for them in their dealings with the police and legal authorities is vital to the issuing of such permits. The determination to do everything possible to help those seeking to escape the clutches of criminal traffickers is a key element in reducing the trafficking of women for the purposes, mainly, of prostitution.

130. Art. 18 of Consolidated Text 268/1998 is a truly innovative provision for two reasons. The first is that its aim is primarily the social protection of victims of trafficking; the second is that it uncouples the granting of a residence permit for reasons of social protection from the need to collaborate in investigations. The condition for the permit to be issued is the existence of "...situations of violence or serious exploitation of a foreign national and real danger for his or her safety as a result of attempts to escape from ...an association involved in the above-mentioned criminal activities or as a result of declarations made during pre-trial investigations or during proceedings ...". The aim of the provision on residence permits for social protection reasons is to succeed in removing the greatest possible number of women and girls from the clutches of organised criminal gangs.

### **More specifically: victims of trafficking**

#### *The objectives*

131. The experience built up thus far in this area has highlighted the need for effective liaison with the victims' countries of origin. This pre-supposes a specific knowledge of the social, judicial/legal and family backgrounds of the victims, in order to provide suitable assistance for those who so request for their return to their own country.

132. With this in mind, the Ministry of the Interior's Department for Civil Liberties and Immigration has promoted a number of initiatives for the assisted repatriation of the victims of trafficking and for the development of initiatives for the prevention of the phenomenon in their countries of origin.

### **Project for the prevention of trafficking of people**

133. The Project for the Prevention of Trafficking of People is an action financed pursuant to law No. 212 of 26 February 1992 promoting “Cooperation with the countries of Central and Eastern Europe”. 206,582 euros have been earmarked for this action.

134. At present, four countries in Central-Eastern Europe, which are particularly affected by the trafficking of persons for the purposes of exploitation, are involved in the implementation of the Project. These countries are: Albania, Rumania, Moldavia and the Ukraine.

135. Three organisations from the private social sector working in the specific field of immigration are working together to implement the project. These organisations are: the International Organisation for Migration (IOM) for the implementation of the project in Albania and Rumania; the Italian organisation Caritas, for the Ukraine; and the REGINA PACIS foundation, for Moldavia.

136. The project includes the following activities:

(a) the organisation of meetings with the officials and staff of the diplomatic missions in the countries involved, with the local institutions and with the NGOs working to fight the trafficking in persons and protect the victims. The aim of these meetings is to explain the Project and its objectives and to request cooperation in order to identify the most suitable measures that need to be implemented to provide assistance for the victims and foster their social integration. The meetings are also intended to inform them of the protection and social integration measures on behalf of the victims provided for in Italy and in the countries of origin and to focus the attention of the local population on the trafficking of persons with a view to prevention;

(b) the organisation of conferences, meetings and local information campaigns aiming at preventing the trafficking in persons;

(c) the production and dissemination of informational material, for example, a video showing victims who directly relate their experience; this video can be used as informational and educational material for local radio or TV programmes identified as being suitable vehicles for the information campaign.

137. The sum of 46,481 euros has been allocated to each of the four countries involved in the project to carry out these activities.

138. The bodies cooperating with the Ministry of the Interior to take forward the project draw up a detailed progress report every quarter. On completion of the project, by the end of 2003, a closing conference will set forth the results achieved in each of the four countries involved.

### **Project for assisted returns**

139. The national Project to provide assistance with voluntary assisted returns and reintegration into their home countries for victims of the trafficking in human beings is currently in its second year.

140. The first year of funding, which ended in September 2002, enabled the assisted return of 80 victims.

141. The second year of funding, which started last April, will end in April 2004. It will enable the return of another 80 victims, who will be repatriated following the same criteria as for the first round.

142. The project is being taken forward using funding provided for by Article 18 of the Consolidated Act on Immigration – Legislative Decree 286/1998 and subsequent implementing Regulations (Art. 25 of Presidential Decree 394 of 31 August 1999). These funds were allocated by the interministerial commission for the implementation of Article 18 established within the Department for Equal Opportunities in the Prime Minister's Office.

143. The initiative is being carried out in cooperation with the IOM and its 70 Focal Points set up in the countries most affected by the trafficking in human beings.

144. The procedure for taking the victims in hand and helping them return to their countries of origin is the following:

(a) the IOM receives notification of the names of the victims who have opted for voluntary and assisted return to their home countries from the services operating locally (*Questure*, police, local government structures, non-profit associations). After ascertaining that the conditions for return are satisfied, it submits a "return proposal programme" to the Project Leader at the Ministry of the Interior and applies for authorisation.

(b) Once authorisation has been granted, the IOM starts the return procedure. This consists of organising the return journey, preparing documents, paying travel expenses, providing assistance at departure and arrival airports and, where necessary, escorting victims to their final destinations as well as paying them 516.00 euros as an "initial accommodation allowance".

(c) Once the returnees have arrived in their home countries, the process of social, employment and family integration begins. When family re-integration is not possible, the IOM identifies and arranges alternative forms of assistance. It pays the victims two employment grants of €516.00 each – as provided for by the programme – in two instalments at a distance of several months.

145. Assistance to victims in their home countries for re-integration purposes is provided for a period of at least six months.

146. Through the local Focal point, the IOM submits a progress report to the Ministry of the Interior on the social, employment and family re-integration process, the objective of which is to demonstrate that the victim has escaped the criminal organisations involved in human trafficking. This is a precondition for granting the two employment grants.

147. Another precondition for victims' inclusion in the Programme established by the Project is his/her cooperation with the police and judicial authorities in taking action to combat traffickers/exploiters. This is done by lodging formal reports or providing information concerning the facts and people who have victimised the assisted person.

148. At the conclusion of the Project a national conference will provide an opportunity to present the results achieved through the initiative.

149. The main objective the Ministry of the Interior aims to achieve through this initiative is to provide, through system actions, for the assisted repatriation of the victims of trafficking who do not intend to remain in Italy and benefit from the opportunities envisaged by Art. 18 of the Consolidated Act on immigration and related provisions.

150. The attainment of this objective will make it possible to achieve a number of other objectives, of which the most important are:

(a) using the knowledge acquired to provide support for the work of the Questure and commissions, the network of operators in the sector and the freephone number;

(b) obtaining fuller information in the fight against trafficking and collecting useful data for a better understanding of this form of migration and its specific features, thus contributing on the one hand to reinforcing collaboration between Italian operators in this sector and operators in the countries of origin of the victims, and on the other to creating wider channels for exchanges of information and expertise by local projects in Italy and those set up in the countries of origin.

#### *Initiatives and activities*

151. The project will be implemented through the IOM, to which the Ministry will entrust the more strictly technical tasks connected with the repatriation of the interested parties and accompanying them and taking them in hand in their countries of origin.

152. The choice of the IOM as implementing agent was dictated by a number of factors, including:

(a) the international nature of the organisation, of which Italy has been a Member State since 1952;

(b) the specific experience it has acquired, in keeping with its mandate, in the assisted repatriation of the victims of trafficking, including through the implementation of national projects;

(c) the international network of IOM anti-trafficking Focal Points in all the countries of origin of female victims of trafficking (Albania, Nigeria, Macedonia, Rumania, Lithuania, Moldavia, the Ukraine etc), for a total of 90 Focal Points;

(d) the organisation's relations with the countries of origin of the victims, where the IOM is present with its own missions and specific functions and privileges.

153. To achieve the objectives of the project, operations will be organised as follows:

(a) preparation of informational material;

- (b) verification of interested parties' wish for repatriation and assessment of individual situations and rehabilitation programme in their country of origin (psycho-social profile);
- (c) notification of the case to the IOM office in the country of origin; verification of the interested party's position in their country of origin (missing person report, conditions and attitudes of their family, practicable re-integration pathways);
- (d) organisation of the return journey (papers, cover for costs, assistance at departure and arrival ports, escort to final destination);
- (e) preparation of initial reception in protected facilities, if necessary;
- (f) monitoring of state of health of interested party, with particular reference to transmittable diseases;
- (g) payment of "employment grants" to facilitate social and employment re-integration of the victims of trafficking, to be paid in instalments against declaration by local IOM regarding the use of the payment to good effect;
- (h) assistance and monitoring by the IOM Anti-trafficking Focal Points with a view to family and social-employment re-integration;
- (i) where appropriate, alternative forms of reception where family re-integration is not feasible.

#### *The Structures*

154. As the body promoting the initiative, the Ministry of the Interior will carry out the general coordination and management functions, as well as project monitoring and verification functions.

155. The IOM, as implementing agent entrusted with the technical implementation of the initiative, will:

- (a) make available those of its structures in Italy and in the countries of origin and transit that enjoy the immunities and guarantees reserved for international bodies;
- (b) maintain contacts relating to similar initiatives in other countries, with NGOs and the institutions working with the IOM offices in the countries of origin;
- (c) cooperate with other bodies and associations working in this sector, to ensure the best possible outcome of the assisted repatriation operation;
- (d) act as a point of reference for the notification of cases requiring assistance with a view to repatriation.

*Analysis of the data*

156. The statistical data regarding the different types of crime connected with prostitution (recruitment, instigation, abetting, exploitation, etc) illustrate the amount of activity carried out by the police to combat this area of criminal activity and at the same time provide information that can be used to monitor the extent of “prostitution”.

157. A study of the results achieved from 1987 to 2001 shows an essentially stable trend between 1987 and 1990: on average, about 1,000 crimes were recorded each year, with 1,300 persons reported.

158. Subsequently, both the number of crimes and the number of persons reported increased constantly to 1998, apart from a dip in 1997.

159. A comparison of the data for 1998 (2,893 crimes and 3,883 persons reported) with those for 1999 (2,519 crimes and 4,091 persons reported) shows the trend beginning to rise again for persons reported. The upward trend is confirmed, including for the number of crimes, by the data for 2000, which saw an increase on the previous year of 39.4% for the number of crimes (3,511) and 26.6% for the number of persons reported (5,178).

160. The statistical indicators for 2001 show a clear downwards trend in the phenomena, both in terms of the number of crimes (3,005 compared with 3,511 in 2000) and the total number of persons reported (4,161 against 5,178 the previous year).

161. This decline was reversed, however, during the first seven months of 2002. This period saw 2,045 crimes and 2,970 persons reported, compared with 1,568 crimes (therefore an increase of 30.4%) and 2,440 persons reported (an increase of 21.7%) in the same period of 2001.

*Operational strategies*

162. In the context of the actions to combat crime connected with the trafficking of human beings and the exploitation of prostitution, the Department for Public Security has adopted specific initiatives envisaging coordinated two-pronged plans of action: one preventive and designed to monitor the situation more effectively at the local level, and the other repressive, with a view to intensifying investigations in this sector.

163. The two plans of action also draw on the contribution made by voluntary associations which, in addition to performing their role for the social rehabilitation of the victims of exploitation, have also shown that they are able to provide a valuable contribution to the police forces in carrying out their institutional tasks.

164. The above-mentioned initiatives have already made it possible to obtain additional information on this type of crime and to open investigations designed to break up the groups considered to be most active.

165. Lastly, since the beginning of 2002 specific services have been planned in some of the regions most severely affected by the phenomena, with the aim of tracking down and expelling from Italy a large number of non-EU nationals illegally present in the country, who have been earmarked by criminal organisations for prostitution.



166. More specifically, new “high impact” operational modules have been adopted, the aim of which is to develop – in a short timescale – particularly effective countermeasures against this form of crime or others (such as drug-dealing), which often see the involvement of non-EU nationals illegally present in Italy.

167. During the various stages of this police operation, which was coordinated by the Criminal Police Central Directorate in coordination with the Central Directorate for the Highway, Railway, Postal and Frontier and Immigration Police, and ended in the first five months of 2002, 199 people were arrested, 168 of whom were non-EU nationals. During the same operation 33 seizures of property were carried out.

168. These positive results suggest that further similar plans to combat these crimes should be launched with a view to putting these operational modules onto a “systematic” footing.

169. The new initiative known as “Vie libere”, which has been under way since the beginning of last August and is scheduled to continue until the end of December, is being implemented in a number of provinces and is designed, in particular, to combat prostitution-related crimes that have a strong non-EU element, and to combat illegal commercial operations. During the first three stages (“Vie libere”, “Vie libere 2” and “Vie libere 3”), 1,852 persons were arrested, 1,176 of whom non-EU nationals (63.4%). As regards the actions to combat the exploitation of prostitution and the abetting of clandestine immigration, 312 persons were arrested, 262 of whom non-EU nationals (84.2%).

#### *Residence permits for social protection reasons*

170. The special residence permit “for social protection reasons” envisaged by Art. 18 of the Consolidated Act has a duration of 6 months and may be renewed for 1 year or for a longer period if required for legal reasons; it can be withdrawn if the programme is suspended or in the event of conduct that is not compatible with its aims.

171. The permit provides access to social assistance and educational services, registration in the employment lists and the possibility of entering employment.

172. Important recent police operations have made it possible to break up criminal organisations involved in clandestine immigration, enslavement and the exploitation of prostitution, thanks in part to an efficient liaison network set up to link the police offices and NGOs, the social services and associations in general.

173. 1,154 residence permits were issued in 2001 for social protection reasons. During the first five months of 2002 the number of such permits was 465.

174. Moreover, in order to achieve a more profitable synergy between police operators and not-for-profit organisations, referents have been selected in the Questure with the task of providing a priority channel for communication with those in charge of or operating the freephone services set up by the Department for Equal Opportunities on behalf of the victims of trafficking.

*International cooperation*

175. The strong degree of cooperation at the European and international levels in strategies to combat criminal organisations involved in the trafficking and exploitation of women and children is matched by the active participation of the Department of Public Security in the various fora for international cooperation, with a view to improving the exchange of strategic information and for operational initiatives in connection with individual cases.

176. Worthy of note in this respect is the role played by the Interpol Service, which is the reference point for our police forces for the exchange of information with the forces of the International Criminal Police Organisation (Interpol) member states.

177. As regards the countries of origin of the trafficking, a liaison officer has been appointed in Rumania, and an Interforce Liaison Office has recently been set up in Montenegro. Although their responsibilities mainly involve the exchange of information and the capture of fugitives from justice, they also provide a point of reference for information on clandestine immigration, including that involving the trafficking of human beings.

178. A similar function is carried out, for the areas regarding Greece and Turkey, by the liaison officer seconded to Athens, especially with reference to the notification of departures from Greek and Turkish ports of ships headed for Italy with clandestine immigrants on board.

179. Special attention has been focused on trafficking originating in Albanian territory. In this context, officials from the district Flying Squads and the Italian Interforce Police Mission in Albania have taken part in meetings to discuss the main problems arising in the investigations being conducted into Albanian criminal organisations and identify specific forms of cooperation, including with the direct participation of Albanian liaison officers.

180. In September 2000, new strategies were launched – again with input from the Italian Interforce Police Mission in Albania – to combat crime in Albania more effectively.

181. The Department of Public Security and its officials are also taking an active part in the initiatives being taken forward in this sector in the various international forums.

182. Another important element of the protocol is the protection of the victims of trafficking, an issue which was studied in considerable depth during the working sessions, including at the initiative of the Italian delegation which, with reference to the special permit of stay for social protection purposes, has played a particularly pro-active role.

183. Finally, the recent creation of the “Interpol Working Group on the trafficking of women”, which sees the regular participation of officers from member states’ police forces with particular expertise in this area, is worthy of mention as an important opportunity for analysis and discussion at the international level of the trafficking in human beings.

**Foreign nationals granted temporary protection**

184. Foreign nationals granted temporary protection are persons who have fled their own country (displaced persons) as a result of war, civil war, external aggression, generalised violence or grave violations of democratic freedoms, or else to find refuge from natural disasters.

*What the law envisages*

185. The “Consolidated Act containing provisions governing immigration and the status of aliens” adopted through Legislative Decree 286 of 25 July 1998, contains a key provision, Art. 20, which makes it possible to deal with humanitarian emergencies caused by exceptional events such as conflicts, natural disasters or other particularly serious occurrences in countries that are not members of the European Union.

186. In such circumstances it is therefore possible for the Government to decide, through an order issued by the Prime Minister, on temporary protection measures to accommodate any evacuees arriving in large numbers on Italian territory in a timely and appropriate manner.

*Temporary protection during the recent Balkan crisis*

187. Art. 20 of Legislative Decree 286/1998 was applied for the first time during the recent Balkan crisis.

188. Following this crisis, about 30,000 foreign nationals of diverse ethnic origin (Kosovars, Serbs, Montenegrins) entered Italy. For over 18,000 of them, the following measures were envisaged through the Prime Minister’s Order of 12 May 1999 (issued pursuant to Art. 20):

- (a) issue of a residence permit for temporary protection;
- (b) assistance in structures selected or set up in Italy with costs charged to the Central Directorate for Immigration and Asylum Services.

189. The remaining 12,000 foreign nationals submitted applications for the recognition of the status of refugee.

190. Once the crisis was over, the IOM, acting at the behest of the Central Directorate for Immigration and Asylum Services and in agreement with the United Nations High Commissioner for Refugees (UNHCR), launched an information and awareness-raising campaign for assisted and protected repatriation, and distributed an information note and questionnaire to all the foreign nationals enjoying temporary protection.

191. The repatriation programme implemented by the IOM envisaged actions, including financial, to foster the initial re-insertion of the refugees in their countries of origin.

192. Of those foreign nationals who took part in the repatriation programme:

- (a) some, who had lost the right of residence in Italy, were expelled as envisaged by law (with an expulsion order and police escort to the border, or through an expulsion order with notice to leave Italian territory within 15 days);
- (b) others, having demonstrated that they were engaged in employment and had access to accommodation, obtained a residence permit for employment reasons;

(c) others still, having demonstrated the existence of serious reasons preventing them from returning to their areas of origin, obtained residence permits for humanitarian reasons; in these cases, a prior evaluation by the Central Commission for the Recognition of Refugee Status was required.

### **Asylum seekers and refugees**

#### *What the law envisages*

193. Law 189 of 30 July 2002 (the “Bossi-Fini” Law) containing “Amendments to the legislation in matters concerning immigration and asylum” introduces substantial changes with respect to the previous legislation. The Central Commission for the Recognition of Refugee Status has now become the National Commission for the Right of Asylum.

194. This Commission, chaired by a Prefect, is appointed by decree of the Prime Minister following a joint proposal by the Ministers of the Interior and Foreign Affairs.

195. The Commission is made up of a senior official from the Prime Minister’s Office, an official from the Prefects’ service based in the Department for Civil Liberties and Immigration and a senior official from the Department of Public Security. A representative of the UNHCR in Italy also takes part in the meetings.

196. The Commission’s tasks include the guidance and coordination of the Local Commissions and the training and up-dating of their members, the collection of statistical data and decision-making powers in matters concerning the withdrawal or cessation of the status granted.

197. The law has radically changed the previous procedure and decentralised the procedures for examining asylum applications by setting up Local Commissions appointed by decree of the Minister of the Interior.

198. In order to discourage fraudulent applications a fast-track procedure is envisaged in which applicants are held in identification centres and the procedure is carried out more quickly, with due respect for the necessary guarantees.

#### *Recognition of refugee status*

199. Persons applying for refugee status in Italy are required to submit an application setting out the reasons for their request, including the persecution they have been subjected to and any potential retaliation should they return to their own country. Where possible, applications should include back-up documentation.

200. The applicant may submit the application:

- (a) To the frontier police, on arrival at the border.

Before allowing the alien to enter Italian territory, the frontier police check that there are no obstacles to entry.

If obstacles exist, entry is denied and the applicant is turned back; applicants may not however be turned back to a state where they are at risk of persecution.

If there are no such obstacles, the alien is invited to elect a place of domicile in Italian territory and to go to the Questura with responsibility for the area in question to initiate the procedures required to obtain recognition of refugee status.

(b) At the Questura, within 8 days of entry to Italy, if the alien is already in the country. However, if there are justified reasons, the alien may submit an application even after this deadline.

#### *Hindrances*

201. In accordance with Art. 1 of Law 39/1990, persons intending to apply for refugee status are turned back at the border in the following cases:

(a) when the interested party has already been granted refugee status in another country;

(b) when, after leaving their own country and before entering Italy, he has stayed in another country that has signed the Geneva Convention on refugee status;

(c) if he has committed war crimes or crimes against humanity;

(d) if he has been convicted in Italy for one of the crimes for which arrest *flagrante delicto* is envisaged, or is a danger to state security, or belongs to mafia or similar criminal organisations or organisations involved in drug trafficking or terrorism.

#### *The procedure*

202. The Questura compiles:

(a) the standard form for the determination of which state has competency to examine the asylum application; this is sent to the Dublin Unit in the Central Directorate for Immigration and Asylum Services. This unit ascertains, on the basis of the Dublin Convention, whether Italy is the competent state;

(b) the record of the statements made by the applicant, containing the answers to a series of standard questions: personal details, date and means of departure from the country of origin, periods of residence or transit in other countries, date and border of entry to Italy, membership of organisations (political, religious, social etc), address where applicant intends to receive correspondence and reasons that have led him to leave his country of origin and/or for which he does not intend to return there. The applicant's right to privacy is protected in accordance with the Italian legislation and European standards. Humanitarian and human rights organisations play an important role in this context; any reports from them regarding specific cases are taken into due consideration. Public resources and those of the associations are integrated to facilitate solutions in cases requiring attention.

203. The alien is invited to declare in the report whether he wishes to attend an individual hearing with the Central Commission for the Recognition of Refugee Status to set out, if necessary with the help of an interpreter, his reasons for submitting the application.

204. The report and application are sent to the Central Commission for the Recognition of Refugee Status.

205. The applicant is issued with a temporary permit of stay containing the following wording: "Dublin Convention 15.6.1990", which authorises him to stay in Italy for a period of one month. The permit may be extended until Italy's competence to deal with the application has been ascertained.

206. When the application is submitted, the alien is required to hand in his passport, if he has one.

*Who decides on the application*

207. Pre-examination to ascertain responsibility for examining the application for recognition of refugee status.

208. The standard form is examined by the Dublin Unit in the Ministry of the Interior's Central Directorate for Immigration and Asylum Services in order to ascertain which state of the European Union is responsible for examining the application. Once this pre-examination has been carried out, the Dublin Unit:

(a) asks another EU Member State to take charge of the applicant, if competent to do so on the basis of the Dublin Convention;

(b) sends the form to the Central Commission for the Recognition of Refugee Status for its decision, if Italy is competent to deal with the case.

209. Applications for which the Dublin Unit has given the go-ahead are evaluated by the Central Commission.

210. The Central Commission examines all the applications for which Italy is responsible (see summary data for period 1990-2000) on their merits.

211. The Commission interviews applicants both at their own request (advanced when the report of their statement is drawn up at the Questura), or if the Commission itself so decides in order to obtain more detailed information on the reasons for submitting the application.

212. Applicants are required to meet their own travel and accommodation costs.

213. The decision on whether to grant or reject the application is taken by the Commission in the form of a ruling with grounds, which is notified to the applicant through the Questura of their elected place of residence.

214. The right to a proper proceeding is guaranteed through legal advice from humanitarian associations and at the applicant's request. On their arrival, applicants staying in reception centres are also provided with legal assistance: they are informed of their rights in submitting appeals, and of the spheres of responsibility of each institution concerned.

*Type of assistance to which applicants are entitled pending the decision on their application*

215. Temporary permits of stay (Dublin Convention of 15 June 1990) and provisional permits of stay for asylum applications entitle applicants without means of support or accommodation in Italy to obtain financial assistance from local authorities and an initial assistance allowance from the Central Directorate for Immigration and Asylum Services.

216. The initial assistance allowance amounts to Lire 34,000 per day, for up to 45 days. The application, submitted to the police office with responsibility for the applicant's chosen place of stay, is sent to the Prefecture of the province in question along with certification that the applicant meets the requirements (i.e. that he has actually submitted the application for the recognition of refugee status and is destitute).

217. If the Prefecture does not authorise the allowance, the applicant may appeal to the Regional Administrative Court within 60 days of notification or to the President of the Republic within 120 days.

218. If the Central Commission accepts the application, it sends the Questura a certificate for the issue of a residence permit lasting two years and a special travel document entitling the applicant to travel abroad, except to his country of origin.

219. The rules governing residence permits for asylum reasons are similar to those for other residence permits; however, in view of the refugee's special circumstances, the permit cannot normally be withdrawn and must be extended on expiry, except for cases of cessation of refugee status or expulsion.

220. In accordance with the Geneva Convention, the refugee enjoys the same treatment as Italian citizens in matters concerning:

- (a) religious freedom and freedom of religious instruction;
- (b) primary education;
- (c) access to courts and legal assistance;
- (d) protection of industrial (trade marks, inventions etc), literary, artistic and scientific property;
- (e) health and financial assistance;
- (f) employment and social insurance;
- (g) tax.

221. Refugees legally resident in Italy are also entitled to treatment no less favourable than that applied to other foreign nationals legally resident in Italy in matters such as:

- (a) purchase of movable and immovable property;
- (b) self-employment;
- (c) professional status;
- (d) education other than primary level;
- (e) freedom of movement.

222. Refugees also enjoy special treatment in the matter of military service, reunification for family reasons, and the acquisition of Italian citizenship as a result of naturalisation.

223. In certain circumstances refugees are entitled to financial benefits as part of the Programme of Support Actions agreed each year by the Central Commission for the Recognition of Refugee Status with the UN High Commissioner for Refugees.

*Programme of Support Actions*

224. The types of action envisaged are as follows:

- (a) Initiatives providing assistance for the support of individuals or families who, during the period immediately following the recognition of refugee status, have primary needs that cannot otherwise be met during the insertion phase;
- (b) initiatives for socially vulnerable persons (sick, disabled, elderly persons or families with dependent children still in education, students enrolled at universities or training courses) or exceptional cases of proven gravity or urgency;
- (c) initiatives to support employment integration with the aim of enhancing those aspects of the Programme promoting refugees' social and economic self-sufficiency;
- (d) primary assistance actions (90 days) for those refugees who, following recognition, have received or were entitled to receive the initial assistance allowance, even if they did not actually receive it.

225. Refugees are required to submit their application for the allowance to the Prefecture of their province of residence on the appropriate form, with the following documents:

- (a) copy of valid residence permit (head of household and members of household);
- (b) copy of certificate of recognition of refugee status.

226. The Prefecture deals with the preliminary procedures and sends the application, with the required documents, to the Central Commission for the Recognition of Refugee Status.



227. The decision on the application is taken by a joint Commission made up of officials from the General Directorate and the UNHCR.

*In the event of refusal*

228. The provision turning down the application for recognition of refugee status is notified to the alien through the Questura. The alien is invited to leave Italy within 15 days of notification; if he does not comply he is escorted to the border. If it is not possible for the alien to be sent back to his country of origin, where he may be subjected to discrimination that puts his life or personal freedom in danger, the Questura may if so requested send him to a third country.

229. However, the alien may if the conditions are satisfied obtain a residence permit for other reasons (for example for family reunification, employment, pending emigration).

230. Unsuccessful applicants may appeal to the civil court within 60 days of notification.

*Cessation of refugee status*

231. Aliens who have been granted refugee status may lose this status:

(a) when they apply for the return of their national passport, whether or not they declare when doing so that they renounce refugee status;

(b) when certain circumstances arise, notably:

(c) the refugee once more, and voluntarily, enjoys the protection of the country of which he is a citizen, or

(d) having lost his citizenship, he re-acquires it voluntarily, or

(e) he acquires a new citizenship and enjoys the protection of the country that has granted it, or

(f) he returns voluntarily to his country of origin, which he had left as a result of persecution or the fear of persecution, or

(g) in the country of origin the reasons for which refugee status was granted no longer exist (for example, following a change of regime).

232. In cases (a) to (e) cessation of refugee status is not automatic, but follows a specific ruling by the Commission for the Recognition of Refugee Status.

233. Refugee status may also cease following repeal by the Commission if it should ascertain that the alien made false declarations regarding his identity and personal circumstances.

*The expulsion of refugees*

234. Refugees legally resident in Italy may be expelled only for reasons of public order and national security, by order of the Minister of the Interior (Art. 11.1 of Law 40/1998). The alien may appeal against this decree to the Regional Administrative Tribunal (TAR) of Lazio (Art. 11.11 of Law 40/1998).

235. The refugee may not, however, be expelled to a country where he may be subjected to persecution or risk being sent to another country in which he is not protected from persecution (Art. 17.1 of Law 40/1998).

*The asylum bill*

236. Article C of the Treaty of Amsterdam, which was ratified in Italy by Law 209 of 16 June 1998 and entered into force on 1 May 1999, envisages the communitarisation of asylum and migration matters. It can therefore be envisaged that in coming years Community-level legislation governing the full range of asylum matters will be put in place.

237. A government bill (A.C. 5381), which was approved by the Senate on 5 November 1998 and which introduces substantive amendments to the procedure for the recognition of refugee status and implements Art. 10 of the Italian Constitution, is currently before the Chamber of Deputies.

238. According to this bill, the Constitutional principle whereby asylum is granted in cases where the applicant is being prevented from enjoying democratic freedoms is subject to two conditions: present danger to life or grave restrictions to personal freedom.

239. The notion of refugee is very wide and includes persecution on grounds of sex and membership of a given ethnic group.

**Border controls and clandestine immigration**

240. As far as border controls and measures to combat clandestine immigration and the exploitation of clandestine migratory flows are concerned, Italy has been – and continues to be – very active in international fora to promote the definition at the bilateral or multilateral level of a policy to govern migratory flows, with the involvement of the countries of origin. In addition to assistance for these countries to improve their border controls and simplify procedures for the re-admission of their expelled nationals, this policy also envisages the right of countries signing the agreements (to date Albania, Tunisia and Morocco) to obtain privileged numerical entry quotas for reasons of employment and the possibility of agreeing directly with the Italian embassies in their countries lists of workers who intend to emigrate, on which our enterprises can draw should they so need (see Annex 3: Quota policies and bilateral cooperation agreements).

241. It should also be noted that the most significant event of 1999 was the entry into force of the Treaty of Amsterdam, which envisaged the communitarisation of immigration and asylum policies.

## Integration policies

242. Finally, as regards integration policies, the Italian Government has followed the recommendations of the programming document and for 1998 and 1999 has divided up amongst the Regions the quotas envisaged by the National Fund for Migratory Policies. Moreover, after the rules implementing Law 40/1998 were issued, bodies for the promotion of integration and representation were set up and are now operational: these include the council for the problems of immigrants and their families; the national body for the coordination of social integration policies; the inter-ministerial committee for the coordination of government actions against the trafficking of women and children for the purposes of sexual exploitation; and the local immigration councils.

243. More recently, the Consolidated Act on immigration and the status of aliens (Legislative Decree 286/1999) was adopted with a view to coordinating the various legislative provisions regarding the admission and stay of aliens in Italy. This new provision expressly confirms that aliens present on Italian territory are entitled to the fundamental human rights (Art. 2.1) including, obviously, legal protection with respect to any provisions directly concerning them.

244. Aliens legally resident in Italian territory are entitled to the same civil rights as Italian citizens; a special “status” is envisaged that includes entitlement for foreign nationals holding residence permits to take part in public life.

245. More specifically, in matters concerning entry and residence for foreign nationals the Consolidated Act systematically brings together all the provisions governing immigration and the condition of foreign nationals, including Law 40/1998.

246. The primary and key objective of these provisions is to govern the complex phenomenon of immigration by favouring integration between Italian citizens and foreign nationals in a unified framework of rights and duties. Entry and residence are covered by the regulations, especially as regards the requirements for legal presence in Italy, including through a specific policy to establish quotas for migratory flows.

247. In this respect, Art. 3 of the Consolidated Act introduced an effective instrument for the regulation of flows, which envisages a three-year immigration planning document which the Prime Minister presents to Parliament, and the issuing of one or more decrees setting entry quotas for employment purposes for each year.

248. Particularly significant is Art. 9, which governs the issuing of residence permits for aliens who have been legally present in Italy for at least 5 years, as long as they are not subject to legal proceedings for, or been convicted of, any of the offences for which arrest *in flagrante delicto* is envisaged.

249. Rights of residency for humanitarian or social protection reasons are also guaranteed. In this respect specific measures are envisaged to protect certain particularly vulnerable categories of individuals, such as the victims of criminal organisations or minors released from prison, including with a view to encouraging them to cooperate with the police in combating crime.

250. With respect to residence for employment reasons, the possibility of entering self-employment has been introduced.

251. Also deserving of mention are the provisions contained in Title V of the Consolidated Act concerning the social integration of aliens legally resident in Italy, such as the right of access to health structures and medical assistance, accommodation, and a whole range of social services. Art. 11 of the Consolidated Act envisages the establishment of special reception services at the main border posts for aliens seeking asylum or humanitarian protection or who intend to enter Italy for other reasons, for a period of over three months.

252. These reception services include all those activities in support of aliens to facilitate their stay in Italy (guidance, legal protection and information, interpretation, etc). An experimental reception service is currently being provided at Rome-Fiumicino airport, in collaboration with the Italian Council for Refugees. Prefectures in those Provinces with a substantial flow of asylum seekers or aliens in general are taking the necessary steps to introduce these services in as short a time as possible.

253. As regards extraordinary assistance initiatives for aliens illegally present but not formally in detention, it is envisaged that Prefects may set up provisional facilities throughout the country. They may also arrange for actions on behalf of aliens needing help and assistance, with sole regard to the period required for them to be identified for expulsion or legalisation purpose (in the case of asylum seekers, for example).

254. The legislative provisions governing the establishment of these temporary reception centres and related initiatives are Law 451/1995 as confirmed by Law 563/1995 (known as the "Puglia" Law) and the subsequent implementation regulation 233/1996, which provided for three centres to be set up in Puglia (in Otranto, Brindisi and Lecce).

255. The measures contained in the above-mentioned provisions play a key role in providing assistance for aliens illegally present in Italy, as they are the only instrument envisaged to set up humanitarian reception services during the transition period needed for the identification operations to be carried out and followed up as appropriate by the adoption of expulsion provisions or the issue of permits of stay for asylum reasons.

256. In terms of social integration, specific measures such as language and vocational training courses and the creation of a council for the problems of foreign nationals, together with a national coordination body, are all measures designed to ensure that aliens residing in Italy on a continuous basis are at no disadvantage with respect to citizens.

257. In relation to the provisions of Art. 12 of the Covenant, some of the more significant provisions of the Consolidated Act are worthy of note:

(a) Art. 4 prohibits the issue of entry visas to aliens who have been expelled, unless they have obtained special authorisation or else the 5-year period during which entry is prohibited has ended, or to aliens whose presence constitutes a threat to public order or state security;

(b) Art. 6.3 introduces an offence concerning unjustified failure to display a passport or other identity document or residence permit or permit of stay, when requested to do so by the police;

(c) the provisions of Art. 12, which are intended to combat clandestine immigration, are particularly significant. In addition to the basic offence, whereby activity designed to abet the illegal entry of aliens to Italy is punished by imprisonment of up to three years and a fine of up to 30 million lire, special aggravating circumstances are envisaged which result in a considerable increase in the penalty. These enter into play when the offence is committed by three or more persons in combination, or for the exploitation of prostitution or of minors to be used in unlawful activities. In these cases arrest *in flagrante delicto* is always allowed, as well as the seizure of the means of transport used to commit the offences;

(d) Art. 13.13 envisages offences concerning re-entry to Italian territory, without the necessary special authorisation from the Ministry of the Interior, by aliens who have been expelled. The penalty in this case is from two to six months;

(e) Art. 22 is intended to punish, by detention for three months to one year, the illicit use of foreign workers not in possession of residence permits, or whose permits have expired or been withdrawn or cancelled.

258. A particular emphasis is placed on the right to family reunification and the protection of minors, which are governed by Title IV of the Consolidated Act.

259. Family reunification is classed as a subjective right of foreign nationals legally resident in Italy for employment, study, asylum or religious reasons, for a period of not less than one year (Art. 28).

260. The exercise of this right is conditional only upon the availability of accommodation and income (Art. 29).

261. Particular protection is envisaged for alien minors, whose position is subject to the legal status of the parent with whom they live or the alien who has custody over them (Art. 31). For these minors expulsion is prohibited although they have the right to leave the country to follow a parent or guardian who has been expelled (Art. 19).

262. Title V governs “citizenship rights” and envisages a series of provisions concerning health, education, accommodation, participation in public life and social integration. Essentially, these provide legally resident foreign nationals with access to these and related services on an equal footing with Italian citizens.

### **Temporary stay and assistance centres**

263. Temporary stay and assistance centres, as envisaged by Art. 14 of Legislative Decree 286/1998, are the instrument selected to enable the provisions for the repatriation to their country of origin of aliens who have entered Italy illegally to be carried out more effectively. They are also intended to ensure the correct functioning of expulsion procedures which, on the basis of the system envisaged by the reform of 1998, is a pre-condition for the correct implementation of an immigration policy based on annual quotas.

264. In keeping with other European legal systems, the aim of the new legislative provisions is to designate specific facilities to accommodate, under the control of the judicial authorities, aliens subject to expulsion or refusal-of-entry orders. This temporary detention (for a period of not more than 30 days) is used to overcome any obstacles to the proper execution of the order.

265. For the selection of the centres the provision requires the adoption of a decree by the Minister of the Interior in conjunction with the Minister for the Treasury, Budget and Economic Programming, and the Minister for Social Solidarity.

*The planning and start-up phase – 1998*

266. The distinguishing features of the centres, as envisaged by law, are that the facilities should provide internal living conditions that are not detrimental to human dignity, and complete freedom of correspondence, including by phone, with the outside world.

267. The planning stage is divided into two phases: the first to create a network of facilities based on centres to be set up in large cities, at border areas and in areas most exposed to illegal immigration. A number of centres specifically dedicated to the transit and “processing” of aliens interested in other centres are also envisaged.

*Temporary stay and assistance centres – 1999-2002*

268. In 1999-2002 the aim of the government’s action programmes for Temporary Stay Centres (TSCs) was to increase the functionality of existing facilities and bring them more into line with improved habitability criteria (Caltanissetta, Ragusa, Trapani, Brindisi, Lecce, Catanzaro, Milan, Rome, Turin, Agrigento and Lampedusa).

269. Decrees establishing 14 centres have been issued to date pursuant to Law 40/1998, of which 12 are operational:

Agrigento – Asi B/9  
Agrigento – Lampedusa  
Bologna  
Brindisi “Restino”  
Caltanissetta “Pian del Lago”  
Catanzaro – Lamezia Terme  
Lecce – San Foca di Melendugno  
Milan  
Modena  
Rome – Ponte Galeria  
Turin  
Trapani “Serraino Vulpitta”.

270. The centres in Crotone and Ragusa are ready to be opened as soon as security service reinforcements are available.

271. As a result of the changed legislative framework resulting from law 189/2002, which envisages the doubling (from 30 to 60 days) of the detention period for aliens illegally present on Italian territory pending their expulsion orders, projects to increase the number of detention centres and the number of places available in them have been set up, including through restructuring and renovation work.

272. To achieve the above objectives the centres of Bologna and Modena have been opened and the capacity of the Rome-Ponte Galeria centre has been increased to 300 places. Funding has also been earmarked for the construction of the Bari-Palese TSC, for which the executive project was approved by the Regional Superintendency for Public Works in Puglia.

273. Alongside the commitment to increase the number of places available in the detention centres, on the basis of the needs actually noted by the police in the field for the proper application of the new legislative provisions, this Department has completely reorganised the management of the Centres by drawing up guidelines for their management.

274. The organisation of these structures is based on standardised, verifiable quality, cost-effectiveness and efficiency parameters, with a view to ensuring the greatest possible transparency in the management of the facilities and in the procedures for the selection of their management bodies.

275. The adoption of these guidelines makes it possible, on the one hand, to standardise and improve the level of the service and on the other to introduce objective criteria in the choice of management bodies, who are required to formulate transparent bids in terms of improvements in services and fees, by rationalising expenditure and eliminating waste.

276. In addition, there are 8 identification (previously reception) centres at present, of which 7 are operational:

Bari – Palese  
Como – Tavernola  
Crotone – Sant’Anna  
Foggia – Ortanova  
Lecce – Otranto  
Pantelleria – Caserma Barone  
Trapani – Salinagrande

For the “Pian del Lago” Centre in Caltanissetta the implementation procedures for the first section have been completed; it will begin operating as soon as the reinforcements for the security services are available. The procedure to award the work for the second section of the facility is under way.

277. These identification centres are flanked by other facilities which are set up on a case by case basis as required (Ancona Benincasa – Imperia – Varese – Gorizia).

### **Use of Temporary Stay and Assistance Centres**

278. Since July 1998, 5,007 aliens have been held in the centres, for an average of about 20 days each. Of these:

- (a) 2,858 (57.08%) were expelled or had their applications rejected;
- (b) 1,029 (20.55%) were released at the end of the maximum 30-day period envisaged;
- (c) 641 (12.80 %) applied for asylum;
- (d) 230 (4.59%) left the centres of their own accord by evading the surveillance systems;
- (e) 194 (3.87%) were arrested for various reasons;
- (f) 55 (1.1 0%) were released as a result of the detention provision not being validated by the competent judicial authority.

279. From the beginning of 1999 to 20 September, 5,864 aliens were held in the centres. Of these:

- (a) 2,559 (43.64%) were expelled or had their applications rejected;
- (b) 2,370 (40.42%) were released at the end of the maximum 30-day period envisaged;
- (c) 219 (3.73%) were released for various reasons (for example medical treatment, pregnancy, etc);
- (d) 257 (4.38 %) applied for asylum;
- (e) 275 (4.69%) left the centres of their own accord by evading the surveillance systems;
- (f) 31 (0.53%) were arrested for various reasons;
- (g) 153 (2.61 %) were released as a result of the detention provision not being validated by the competent judicial authority.

280. The data show that in the initial period of implementation (July 1998 to September 1999) of the system envisaged by Law 40/1998, over 50% of those passing through the detention centres were expelled.



## Article 13

### (Expulsion of aliens)

*An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with the law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.*

#### **The expulsion of aliens**

281. Chapter II of the Consolidated Act is entirely devoted to the question of border controls and the rejection and expulsion of aliens.

282. Art. 10 governs the adoption of rejection measures both at the border and immediately after the entry to Italian territory of aliens who do not meet the envisaged entry requirements. These provisions do not apply to political asylum seekers or those applying for refugee status or in cases involving the adoption of temporary protection measures for humanitarian reasons.

283. Art. 13 governs administrative expulsion. This is adopted by the Minister of the Interior for reasons of public order and state security (para. 1). However, in cases where the alien: has entered Italian territory by evading border controls, has not applied for the issue or renewal of his residence permit in the time envisaged or does not possess such a permit, or represents a danger to public security under the parameters defined by Law 1423/1956 and Law 575/1965, it is adopted by the Prefect.

284. In some clearly defined cases expelled aliens are escorted immediately to the border (expulsions ordered by the Minister of the Interior, expulsions already provided for but not implemented by the deadline set in the notification, etc).

285. In other cases, it is adopted through notification to leave Italian territory in no more than 15 days. It is possible to appeal to the civil judge against the expulsion order through a very rapid procedure designed to protect the respective legal positions of the parties.

286. If the expulsion order envisages that the alien should be escorted immediately to the border, the appeal may be presented through the Italian diplomatic or consular mission in the expelled alien's country of destination. Only in cases where the expulsion has been decreed by the Minister of the Interior has the competency of the administrative judge been maintained, since such provisions are discretionary.

287. In order to ensure that the provisions envisaging expulsion under escort to the border and ejection are actually carried out, the law provides for the alien to be held in Temporary Stay and Assistance Centres. These measures can only be applied in the cases specifically indicated by the law, i.e. when it is necessary to provide assistance for the alien or carry out checks to confirm his personal identity or nationality, or in other particular cases where it is not possible to carry out the expulsion with immediate effect. In deference to the provisions of Art. 13 of the

Constitution, detention in these centres must be validated by the judge within 48 hours and may not in any case be adopted for a period of more than 20 days, which may be extended to 30. If the procedures are not finalised by the end of this period, the alien is released.

288. Articles 15 and 16 of Legislative Decree 286/1998 govern expulsions ordered by the judicial authority as a security measure in the event of the conviction of the alien for one of the offences envisaged by Articles 380 and 381 of the penal code or, in the event of plea bargaining, of penalties other than detention for aliens who are already in a situation where the expulsion measure pursuant to Art. 13.2 is adopted, or conviction for a non-negligent offence attracting a penalty of up to two years is applicable. The ban on expulsion does not apply to minors under 18 years, pregnant women or aliens in possession of a residence permit, with the exception of the cases envisaged by Art. 9.5.

289. Finally, provisions of a humanitarian nature have been introduced to Chapter III (Articles 18, 19 and 20) for the protection of foreign nationals who are victims of exploitation by criminal organisations. Aliens in these circumstances are entitled to a special residence permit that enables them to escape from the violence and influence of the criminals in question and to take part in assistance and social integration programmes. The programme also enables them, where appropriate, to cooperate with the authorities in combating crime by helping with the identification and capture of those responsible for the crimes set out in Art. 3 of Law 75/1958 concerning measures to combat the exploitation of prostitution, or those envisaged by Art. 380 of the penal code.

### **Border surveillance and control provisions**

290. The application of the Schengen Agreement, and above all the exponential growth of clandestine immigration, have created the need for a close and careful assessment of the local network of police structures responsible for the security of Italy's borders.

291. As far as the Ministry of the Interior's Department for Public Security is concerned, the most important new developments have involved the merging of the frontier police and immigration services, a process that has already been completed with the creation of the Immigration and Frontier Police Service in the Central Directorate for Road, Railway, Frontier and Postal Police.

292. As regards the improvement of the technical support instruments for frontier posts, not least in view of possible checks that can be carried out by the Schengen Borders Commission on the basis of the Schengen Executive Committee's decision of 16 September 1998, with the aim of verifying the correct application of the procedures envisaged in the Convention, specific technical projects are being drawn up. These envisage the acquisition of adequate infrastructure and advanced technologies with the aim of monitoring the external borders most exposed to immigration, such as those in the south of the country, and a reinforcement of the IT and transport resources of each border station.

293. From the operational point of view, a particular impetus was provided by the activation of coordinated surveillance plans, especially in the two regions most exposed to migratory flows, Puglia and Friuli Venezia Giulia. This stepping-up of the activity made it possible in the

first half of 1999 to achieve a considerable increase in the detection of illegal aliens in the Italian Slovenian border area compared with the same period of the previous year (2,212 against 1,156, an increase of 53%).

294. Additional human resources to combat illegal immigration will soon be available following the application of Art. 5 of Law 217/1992, which envisages the possibility of delegating to private bodies or organisations airport security checks that do not involve the exercise of authority. The devolution of these services, which was made possible by the implementing regulations (Ministerial Decree 85 of 29 January 1999 concerning the concession of airport security services), will enable the redeployment of police personnel currently in service in border posts in functions that are in the process of being delegated.

### **Repatriation of illegal aliens to their country of origin**

295. At 31 October 1999 a total of 60,724 aliens had been repatriated through the implementation of expulsion provisions. This figure includes 31,079 individuals turned back at the border, 9,878 turned down by the Questore pursuant to Art. 10.2 of the Consolidated Act, 9,168 expulsions actually carried out, 463 expulsions through provisions by the judicial authority and 10,136 illegal aliens turned back or expelled and returned to their country of origin through re-admission agreements. This last figure has been considered separately in order to evaluate the role of re-admission agreements in facilitating the implementation of repatriation provisions, even though it is not covered by a separate provision since it in any case requires the adoption of the expulsion or rejection provision as a pre-condition.

296. In the same period, 31,198 expulsions were merely notified.

## **Article 14**

### **(Trial guarantees)**

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

(a) *to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*

(b) *to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*

(c) *to be tried without undue delay;*

(d) *to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*

(e) *to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

(f) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court;*

(g) *not to be compelled to testify against himself or to confess guilt.*

4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*

5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*

6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*

7. *No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and criminal procedure of each country.*

### **New developments in the Italian legislation**

297. One fundamental reform introduced by Constitutional Law no. 2 of 23 November 1999, which introduced the instruments for the “fair trial” to Art. 111 of the Constitution, is worthy of mention. This provision which, as expressed in a number of rulings by the Supreme Court, is not self-executing, delegated to the legislator the requirement to ensure that trials have a reasonable duration and to guarantee the principle of due process in its double form: as the method for ascertaining the facts involved in an offence, and as the right of the accused to respond to his accuser. As a consequence, Law 89/2001 on the subject of fair compensation in the event of the unreasonable duration of a trial, and law 63/2001 specifically referring to criminal trials, were issued.

298. The latter provision also revised Art. 513 of the criminal code as regards the reading of the declarations made by the accused and co-accused during the pre-trial investigations or hearing.

299. Para. 1 establishes that the declarations made by the accused in his absence or default or by an accused availing himself of the right to silence may not be used in relation to others without their consent, unless it can be shown that the refusal arises from the fact that the person has been subjected to corruption or threats. Para 2 envisages that the judge may arrange for the presence of the declarant in the court-room, and carry out any other examination envisaged by law that guarantees full respect for the principle of due process. If not, the transcripts made previously may only be read out if the impossibility depends on facts or circumstances that could not be foreseen at the time the declarations were made. Para 2 of Art. 513 also governs the consequences should the persons indicated by Art. 210 exercise the right not to respond, and establishes that the transcripts may be read if the parties so agree.

300. Finally, the most recent reforms adopted include Decree Law 13 of 3 February 2003, which was confirmed as Law 56 of 2 April 2003 regarding urgent provisions on behalf of the victims of terrorism and organised crime, which envisages an increase of the special interim compensation payments from 20% to 90% of the sum envisaged and, in certain clear-cut cases, a lifelong allowance pursuant to Law 407/1998.

### **Some data on crime in Italy**

301. In 2002 the overall situation as regards crime did not differ greatly from the previous year, although nearly all observers have been pleased to note a reversal of the overall trend, as demonstrated by the statistics shown below.

302. The Italian government is actively committed to making further efforts to ensure the full respect of the Constitutional provision governing the reasonable duration of trials and the effectiveness of the penal system as a whole.

303. As regards the causes of overly long timescales, the complexity of the current trial system is widely held to be one of the main obstacles to attaining a system which, while respecting the rights of the accused, is able within a reasonable period to issue pronouncements acquitting or convicting the accused and act as an instrument for the defence of society against those posing a threat to civil co-existence, and as a means of protecting those harmed by the offence.

304. It is a source of satisfaction that, although serious difficulties still exist, a determination can clearly be seen to make a growing effort, inspired by a constructive spirit, to tackle and resolve these difficulties using the available instruments which, as far as the judiciary is concerned, can only involve the organisational side; this explains the growing focus on the rationalisation of tasks in an attempt to optimise results.

305. It emerges from the data provided by the National Statistics Institute (ISTAT) that in the period under review 2,821,624 offences (which also include offences committed by unknown persons) were recorded by the public prosecutors' offices, 112,782 less than in the previous

corresponding period (a fall of 4%). This gives cause for satisfaction and is confirmed by a widespread reduction in the most serious crimes or those that cause the greatest social alarm. The only exception to this is crimes involving drugs, which saw a worrying increase, as can be seen from the table below:

Attempted murder and murder	3,112 (- 9%)
Robberies	51,138 (- 8%)
Extortion	642 (- 5%)
Kidnapping for the purpose of extortion	207 (+ 2%)
Rape/sexual assault	5,161 (- 11%)
Abusive treatment in the family or against children	4,432 (- 5%)
Bankruptcy	5,509 (- 4%)
Drugs	41,762 (+ 54%)
Theft	1,459,205 (- 12%)

306. The satisfactory reversal of trend illustrated by these data should not, however, lead to easy optimism or, even worse, allow us to lower our guard in the fight against crime and in the protection of public security. As noted in the previous report, when the statistical data refer to a limited timescale, such as a year, it is not possible to draw definite conclusions unless these are confirmed by similar trends in subsequent periods.

307. The number of unsolved crimes remains very serious, and worrying, although one reason for optimism can be drawn from the confirmation of a tendency to a reduction, albeit slight, in their number: in the period under consideration they amounted to 2,289,363, which equates to 81% of all the crimes reported (in the previous period the figure was 2,434,367, or 83%). For 96% of thefts (1,399,807) the culprit is still unknown, a percentage that is essentially unchanged from the previous period. The figure falls to 65% if we take into account all offences excluding theft, compared with 66% for the previous period. It is a known fact that for some types of offence (such as vehicle theft) investigations are not even opened.

308. The overall situation as regards crime suggests that between 1 July 1998 and 30 June 1999, 2,642,611 crimes were reported, of which 1,631,299 were thefts. In this period 914 murders, 42,326 robberies and 4,044 cases of extortion were reported, while there were no reports of kidnappings. The culprits were identified in 25.61% of cases, with peaks of 74.11% for extortions and 53.72% for homicides. For robberies, the culprits were identified in 19.40% of cases, while for thefts the figure is 5.16%.

309. At the end of 1999, the overall picture for public security showed a considerable reduction in criminality compared with the previous year, with a decrease or no change in the numbers of crimes or, at most, a small rise for the forms of crime causing greatest social alarm.

310. The indicators confirming this evaluation include:

(a) the 2.16% fall in the total number of crimes committed or attempted (2,425,748 crimes in 1998, 2,373,380 in 1999);

(b) the fall in the number of murders (from 876 to 805, a drop of 8.11%);

(c) a more or less stable number of attempted homicides (down 0.85%) and thefts (up 0.15%). In the latter case the forms with the highest impact on public opinion, such as bag-snatching and pick-pocketing, thefts in homes and car theft, have also fallen.

(d) the small increase in robberies (up 4.26%).

311. The increase in the number of extortion cases reported (up 4.81%) is related in part to victims' increased confidence in the capacity of the police to take action. In 1999, the police identified the culprits in over 76% of the cases reported. The number of incidents that typically are indicators of extortion, such as arson (up 2.72%) and attacks using explosives (down 0.16%), remained more or less stable.

312. The unceasing work of the police forces produced, from 1998 to 1999, an increase of 1.22% in the number of persons reported (691,571 in 1998 and 700,004 in 1999) and a more marked increase in those arrested (from 116,938 in 1998 to 123,000 in 1999, a rise of 5.37%).

### **The problem of foreign criminal organisations**

313. Our country's geographical position favours the immigration and establishment of individuals from different cultures and countries that are experiencing a difficult, laborious and lengthy process of social, political and economic development. Unfortunately, some of these individuals are involved in criminal activities. Migration, with its related direct or induced criminal activity, which includes various forms of illegal trafficking, cannot easily be stemmed.

314. These forms of criminal activity pose serious problems for investigators for the following reasons: the fact that they are built on a strong base of intimidation against immigrants of the same ethnic origin, with the direct involvement of persons operating abroad; the difficult and laborious identification of clandestine immigrants; the not-infrequent mingling and formation of alliances with local criminal groups; and the low degree of cooperation provided by some non-EU countries in paving the way for the necessary synergies between the activities of the police forces and investigative bodies.

315. The overall picture of criminal conduct by the various foreign organisations remains unchanged.

316. Still active in our country are a number of "new mafias" imported mainly from Russia and China. The Russian mafia is particularly active in the energy products and goods sector, and in import-export companies. Property investment and the purchase of shopping centres, tourism-hotel businesses and small and medium-sized clothing and white goods companies have recently been reported. The Chinese mafia, which tends to reflect the same organisational features as in the "homeland", has a strong presence in typical organised criminal activities: drug trafficking, extortion, gambling, prostitution and, above all, the clandestine immigration of fellow nationals.

317. The danger and significance of the trafficking of clandestine immigrants means that we need to pay increasingly close attention to this phenomenon.

318. A complex and targeted investigation, conducted in coordination with the public prosecutor's offices (in Trento, Trieste, Rome and Lecce) has led to the discovery of a vast international Turkish-Iranian criminal structure involved in the clandestine immigration of aliens of Kurdish-Iraqi nationality. This made it possible to strike a blow against a criminal organisation whose purpose is the exploitation of socially vulnerable non-EU immigrants seeking a new homeland, and the discovery of the existence in Turkey of a number of agencies specialising in the recruitment and transportation of clandestine Kurdish immigrants to Europe by sea or overland.

319. On this point, a positive change of attitude is taking place in the countries affected by clandestine immigration: a timid step forwards which should not create any false illusions but at the same time opens up a new outlook for investigations.

320. In this respect the often-lamented difficulties in identification will surely benefit from the new photo-fingerprinting identification techniques.

321. Another noteworthy development is a project to feed the identification details contained in passports into an international IT network; this could play a part in curbing the circulation of false, lost or stolen passports by criminal organisations involved in illegal immigration.

322. The legislation in this respect has thus far proved to be largely ineffective in suppressing the phenomenon, although the possibility of granting residence permits for social protection reasons, which facilitates attempts to remove victims from the control of criminal organisations and makes it possible for beneficiaries of the provision to make statements for the purpose of cooperating in the investigations, have attracted considerable consensus.

323. It is not possible as things stand at present to formulate projections and evaluations of Law 189/2002 (amendment to the provisions governing immigration and asylum) in view of the extreme complexity of the phenomenon under consideration and limited period of application of the law.

324. In conclusion, from a comparison with the data from the previous report we can say that a stronger and more effective action to contain and combat this form of crime emerges. This is in part the result of the creation in many prosecutors' offices of specialised working groups, increased cooperation by Italian investigative offices and cooperation with the institutions of other European countries. The fact remains, unfortunately, that the form of criminality under consideration is one of the most significant sources of crime in our country.

### **Conditions in prisons**

325. The situation of prisons in Italy still appears to be serious. The government has calculated the overall capacity of Italian prisons – if the regulations and rehabilitation objectives, as well as the requirements for security and full control of the situation by the prison officers (penitentiary police), are to be respected – at 41,602. However, it has indicated the higher figure of 60,000 as the necessary ceiling on capacity, a figure linked to current contingency requirements. This distinction gives cause for concern, since in general terms the rights of prisoners and the respect for their dignity cannot be “squeezed” and it is difficult to accept such a wide gap between regulation and necessary capacity. However, it should be borne in mind that



the former figure was calculated on the basis of the minimum surface-area-per-person requirement for civil housing. Be that as it may be, the number of prisoners at 30 June 2002 was 56,271 (of which 22,135, or 39.3%, in preventive detention). This was an increase of about 900 on the figure for 30 June 2001 (in subsequent months there was a slight fall, to 56,032 at 14 November 2002). In any event, we are now nearing the “necessary capacity” level.

326. We also need to take into account the fact that over-crowding is not distributed evenly; there are situations like that of Massa, where the ratio of regulation capacity to actual prison numbers is 82 to 237; the situation in Naples, Palermo and Reggio Calabria is also serious. The prison population suffers particular problems as a result of drug addiction (which affects 28% of detainees) and persons suffering from hepatitis, immunodeficiency or psychological disturbances. There is also a high number of foreign nationals (30% of the total), many of whom are Muslims, with all that that entails in terms of dietary and religious customs.

### **Some considerations on drug use**

327. Drug addiction and the related serious problems have a strong impact not only on crime but also on prevention and rehabilitation measures for substance abusers.

328. In this respect, ample scope has been given to the rationalisation and simplification of the procedures for drug addicts envisaged by Presidential Decree 309 of 9 October 1990 and Law 45 of 18 February 1999 (containing provisions governing drugs). The Narcotics Operational Groups, which have been set up in the Prefectures with the task of informing interested parties, encouraging them to reflect on their condition and foster a sense of responsibility to encourage them to take part in rehabilitation and therapy programmes, have also been reorganised.

329. More specifically, in addition to increasingly focused training, work is also under way to create an organisational “network” of public and private sector operators working to prevent drug addiction, and to gain an understanding of the effectiveness of the rehabilitation pathways they promote.

### **Measures to protect the victims of extortion and usury**

330. Law 108 of 7 March 1996 was, in essence, fully implemented through the implementing regulations; however, amendments were introduced in 1999 through:

(a) Law 44 of 23 February 1999 (Provisions concerning the Solidarity Fund for the victims of extortion and usury), with the subsequent regulations approved through Presidential Decree 455 of 16 August 1999;

(b) Law 414 of 12 November 1999 (Urgent provisions to protect the victims of extortion and usury).

## **Article 15**

1. *No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was*

*applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.*

3. *Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.*

### **Decriminalisation of minor offences**

331. One of the most recent new legislative provisions relevant to this article is Law 205 of 25 June 1999, delegating the government to adopt, within six months of the entry into force of the enabling act, a legislative decree for the decriminalisation of minor offences and the reform of certain specific penalty systems.

332. After the timely implementation of the enabling act, Legislative Decree 507 of 30 December 1999 was issued on the “Decriminalisation of minor offences and reform of the penalty system pursuant to Art. 1 of Law 205 of 25 June 1999”.

333. In revising the rules governing a number of diverse offences envisaged by the penal code and by special laws, the new provision introduced a review of the system of penalties in matters concerning alimony, navigation, traffic, financial offences, and bank and postal cheques.

### **Article 17**

#### **(Right to confidentiality)**

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

2. *Everyone has the right to the protection of the law against such interference or attacks.*

### **The treatment of personal data**

334. Law 675 of 31 December 1996 concerning the “Protection of persons and other entities with respect to the treatment of personal data” set forth general provisions in this respect and envisaged clear obligations on the users of data and precise instruments for the protection of the interested parties.

335. Legislative decrees 123 of 9 May 1997 and 225 of 28 July 1997 introduced additions and amendments to the provisions of this law.

### **The supplemental rules for the protection of privacy**

336. With reference to the protection of the right to privacy, a number of interesting legislative initiatives drawn up since 1999 by the competent national bodies to complete and supplement Law 675/1996 should be mentioned.

337. Legislative Decree 51 of 26 February 1999 (containing provisions supplementing and amending Law 675/1996 concerning the staff of the office of the Guarantor for the protection of personal data) established the staffing structure of the Authority and gave the Guarantor the power to issue one or more sets of regulations to govern the grading of staff, their legal and economic status, staff recruitment and the organisation and functioning of the office, including from the points of view of accounts and expenditure.

338. Legislative Decree 135 of 11 May 1999 (containing provisions supplementing law 675/1996 on the treatment of sensitive data by public entities) supplemented the rules on the treatment of sensitive and judicial data by government and ended the transitional system envisaged by Art. 41.5 of the above-mentioned law (which had been extended), which had allowed public entities to continue to treat such data, subject to notification to the Guarantor, even in the absence of legislative provisions with the special characteristics required by Art. 2.3 of the same law. Decree 135 thus introduced a new general framework, setting forth a number of principles that are already being applied and identifying a number of objectives of significant public interest which are being included in supplemental provisions promoted by government departments.

339. Presidential Decree 318 of 28 July 1999 contained regulations for the identification of minimum security measures for the treatment of personal data in accordance with Art. 15.2 of Law 675/1996, which must be observed in criminal matters also (Art. 36.1) and which are graduated according to whether the data are treated only by instruments other than electronic or automatised ones or else for personal purposes pursuant to Art. 3 of the law or (for the treatment of data using electronic or automatised instruments) using computers accessible through networks open to the public. For the full implementation of the regulations, previously envisaged no later than 29 March 2000, a bill nearing final approval by the two Chambers envisaged a postponement to 31 December 2000 for public and private entities that intend to avail themselves of the possibility of complying gradually with the new rules.

340. Legislative Decree 281 of 30 July 1999 containing provisions concerning the treatment of personal data for historic, statistical and scientific research purposes introduced supplementary regulations in this respect, taking into account the principles set forth in the recommendations of the Council of Europe (no. R (83)10, adopted on 23 September 1983, and no. R (97) 18 adopted on 30 September 1997). In addition to a number of amendments to Law 675/1996 and other regulations applicable in this sector, the decree identified further guarantees for the respect of the rights and fundamental freedoms of the interested parties, and envisaged a special role for one or more codes of ethics and conduct promoted by the Guarantor in compliance with the provisions of Art. 31 of the same law.

341. Legislative Decree 282 of 20 July 1999 containing provisions to guarantee the confidentiality of personal data in the health sector introduced rules governing certain aspects of the treatment of health data by public health bodies, as well as by health bodies and professionals operating under agreements or through accreditation with the national health service, including with reference to the data handled in epidemiological studies.

342. In 1999, in addition to the above-mentioned provisions specifically concerning the treatment of personal data, other significant provisions in this area were approved. Particularly deserving of mention are:

(a) Law 422 of 19 October 1999 ratifying, on the basis of Art. K3 of the Treaty of the European Union, the convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters, together with a protocol on the interpretation of this convention by the Court of Justice of the European Communities, done at Brussels on 26 May 1997 (Art. 1);

(b) the Prime Minister's Decree of 18 February 1999 concerning the approval of the National Statistical Programme for the three-year period 1999-2001 which illustrates, in relation to the provisions of Art. 6-bis of Legislative Decree 322/1989, the objectives pursued and guarantees envisaged by Law 675/1996 and the above-mentioned Legislative Decree, which has recently been amended and supplemented by Legislative Decree 91/1999; on the "confidentiality of personal data" it envisages a new approach in official statistics to persons and the personal data referring to them;

(c) Legislative Decree 261 of 22 July 1999 implementing Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service (Art. 1 of the Decree establishes as one of the key requirements of the postal service the confidentiality of correspondence and the protection of data, including in this acceptance the protection of personal data, the confidentiality of the information conveyed or held, and the protection of private life);

(d) the Prime Minister's directive of 28 October 1999 on the electronic management of document flows in government, which safeguards the protection of personal data (Art. 6).

343. In 1999 the parliamentary scrutiny of a number of bills concerning data protection or the activity of the Guarantor was initiated or continued. The bill approved by the Justice Committee of the Senate and now before the Chamber (A/S no. 4178) sets the new deadline of 31 March 2001 for the implementation of the enabling act and envisages that within the following twelve months the Government, subject to the opinion of the competent parliamentary committees, should adopt a Consolidated Act on the protection of personal data, coordinating the provisions currently in force and supplementing and amending them as required to ensure they are implemented to best effect. The definitive approval of the provision would make it possible to complete the complex legislative initiatives envisaged by the original enabling act and ensure that in all the public and private sectors envisaged therein the principles of the protection of confidentiality are fully respected (examples of spheres of application include direct marketing, social security and employment, the circulation of information on electronic networks, and the treatment of data for use in the justice system or by the police, which at present is covered by only some of the provisions of Law 675/1996).

## Article 18

### (Freedom of thought, conscience and religion)

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

### Legislation on religious freedom

344. The government bill containing provisions on religious freedom and the repeal of the legislation on authorised religions is currently under discussion by the Constitutional Affairs Committee of the Chamber of Deputies acting in a reporting capacity (A.C. 2531).

345. The bill was drawn up by the Commission for Religious Freedom, which is part of the Prime Minister's Office and has been entrusted with the task of studying questions regarding the implementation of the principles of the Constitution and international conventions in matters concerning freedom of conscience, religion or beliefs.

346. The objective of the bill is essentially the protection of religious freedom, with reference to individuals and to religious associations and organisations. Another aim of the bill is the repeal, with a view to harmonising the framework of constitutional law, of the provisions on the exercise of religions other than Catholicism that are defined as "admitted" (Law 1159 of 24 June 1929 and related regulations). The bill also envisages the formal implementation of Art. 8.3 of the Constitution by giving substantive form to the declaration of freedom for religious denominations and establishing effective relations between them and the state. The bill consists of four chapters: the first regards freedom of conscience and religion, the second deals with religious denominations and their legal recognition, the third covers the procedure for drawing up the relative agreements, while the fourth contains final and transitional provisions.

347. Chapter I of the bill is intended to implement in full the Constitutional guarantees of individual and collective rights to religious freedom, linking these guarantees with the provisions contained in international conventions on human rights that have been signed and ratified by our country but not always fully incorporated in domestic legislative provisions.

348. Chapter II, which is dedicated to religious denominations and associations and their legal recognition, explicitly affirms the recognition of the rights to which all religious faiths are entitled – implementing the guarantees of freedom and equality sanctioned by the Constitution – such as the right to: celebrate their rites; open religious buildings; propagate their faith; freely train and appoint ministers; freely disseminate doctrine on spiritual matters; provide spiritual assistance for their members; communicate and correspond freely with their organisations or with other denominations; and promote their cultural values. The bill also provides for the necessary judicial instruments, starting from legal personality, in order to act in the various sectors of community life and proprietary relations. The bill also sets forth the procedure to be followed to obtain recognition of legal personality and for reasons of simplification keeps any checks and verification within strictly institutional limits.

349. Chapter III defines the procedure for drawing up agreements between the State and denominations other than Catholicism as envisaged by Art. 8.3 of the Constitution by transforming an established practice into legislative form. The bill envisages that a request to draw up an agreement may also be submitted by denominations that have not obtained legal personality, subject to more detailed investigation by the Ministry of the Interior.

350. In order to implement in full the Constitutional principles relating to religious freedom for denominations that have not entered into agreements with the state and do not intend to do so, a number of provisions contained in the various understandings already approved by law have been incorporated in the bill. These will be valid for all denominations, with only those aspects linked to features specific to their faith being left to negotiation with individual denominations.

351. The census of religious organisations present in Italy, which was carried out with the cooperation of the Prefectures, has been replaced by a publication entitled “*Confessioni religiose, movimenti e altre organizzazioni di culto in Italia*”, for which the religions featured have each contributed a section on their history and religious principles.

352. This publication, produced with the universities of Padua, Milan and Genoa, will probably be published and officially presented before the end of the year; it is currently being up-dated, in view of the changes that have taken place since the first edition was produced.

### **Agreements with religions other than Catholicism**

353. The Commission for Agreements with Religious Denominations was set up in 1985 under the chairmanship of Prof. Francesco Margiotta Broglio and is part of the Prime Minister’s Office. The Commission was initially made up of academics and by the Director General for Religious Affairs of the Ministry of the Interior. The Commission in its current form is headed by Prof. Francesco Pizzetti and includes members of the government departments most closely involved in the agreements, such as the Ministries of the Interior, the Economy and Finance, Defence, Justice, Education, Cultural Heritage and Health.

354. Before opening negotiations with a religious denomination, the Commission requests the opinion of the Advisory Commission for Religious Freedom, which was set up in 1997, again in the Prime Minister’s Office. This Commission, chaired by Prof. Margiotta Broglio, includes

academics with expert knowledge of these issues. Its tasks include the examination of problems related to the drawing up of agreements, general guidelines for the agreements, and other tasks attributed to it by decree.

355. To date, agreements have been completed and approved by law pursuant to Art. 8 of the Constitution with the following denominations and organisations: the Churches represented by the Tavola Valdese; the Assemblies of God in Italy; the Union of Seventh Day Adventist Christian Churches; the Union of Italian Jewish Communities; the Evangelical Baptist Christian Union of Italy; and the Lutheran Evangelical Church in Italy. Agreements with the Christian Congregation of Jehovah's Witnesses and the Italian Buddhist Union have been signed but not yet approved by law.

356. According to the practice followed to date, in drawing up the agreements the government has taken into consideration requests from denominations recognised as legal persons in accordance with Law 1159/1929, subject to the favourable opinion of the Council of State. This recognition assumes an evaluation by the Council of State to the effect that the statute complies with Italian law.

357. The agreements signed to date are similar in content, while in their respective preambles they contain declarations of a general nature designed to show the denomination's position on what it considers to be key questions. The main text of the agreements generally includes:

(a) provisions for spiritual assistance in communities such as the armed forces, hospitals and clinics, prisons;

(b) provisions concerning education, with the aim of guaranteeing the right not to take part in religious education and the possibility of responding to requests by pupils, families or school bodies by introducing instruction on the religion and its implications; the recognition of diplomas issued by theological institutes and the right to freely set up educational institutes and schools of every grade;

(c) provisions for the recognition of the civil effects of marriages celebrated in the presence of ministers of the respective denominations;

(d) provisions governing the recognition of bodies belonging to the denominations and the fiscal treatment of these; financial relations between the state and religious denominations along the lines of the system drawn up by Law 222/1985 on the basis of the 1984 Agreement with the Catholic Church. On the basis of these provisions non-Catholic religious denominations are entitled to a share of the 8/1000 of income tax revenue covenant and have a right to deduct offerings made by their congregations from their tax liability, up to a ceiling of 2 million lire;

(e) provisions for the protection of religious buildings and the enhancement of assets connected with the historic and cultural heritage of each denomination, to guarantee their cultural identities;

(f) provisions for the free exercise of their ministry by ministers appointed by the denomination in question;

(g) provisions for the recognition of religious feast days of each denomination, including, for some, the Sabbath day of rest, within a framework of flexible work organisation subject to a requirement to make up any working hours not worked.

358. The following bodies have been granted legal personality as (non-Catholic) religious bodies:

- Chiesa ortodossa russa in Roma	R.D. 14/11/29 n. 2368
- Comunità armena dei fedeli di rito armeno georgiano	D.P.R. 24/02/1956 n. 681
- Ente patrimoniale dell'Unione Cristiana Evangelica battista d'Italia	D.P.R. 20/01/61 n. 19
- Chiesa ortodossa russa a San Remo	D.P.R. 30/07/66 n. 895
- Fondazione dell'Assemblea spirituale nazionale dei Bahai d'Italia	D.P.R. 21/11/66 n. 1182
- Movimento evangelico internazionale Fiumi di Potenza	D.P.R. 10/09/71 n. 1182 D.P.R. 20/01/90 for transfer of premises and new Statute
- Centro islamico culturale d'Italia	D.P.R. 21/12/74 n. 712
- Congregazione Cristiana Evangelica Italiana	D.P.R. 26/10/76 n. 925
- Chiesa di Cristo di Milano	D.P.R. 13/06/77 n. 702
- Ente patrimoniale dell'Unione Italiana delle Chiese Cristiane Avventiste del 7° giorno	D.P.R. 13/04/79 n. 58
- Chiesa Cristiana Millenarista	D.P.R. 17/05/79 n. 279
- Assemblee di Dio in Italia	D.P.R. 23/06/81 n. 430
- Congregazione Cristiana dei Testimoni di Geova	D.P.R. 31/10/86 n. 783
- Chiesa del Regno di Dio	D.P.R. 16/12/88
- Chiesa Cristiana Evangelica Missionaria Pentecostale	D.P.R. 16/12/88
- Unione Buddhista Italiana	D.P.R. 03/01/91 D.P.R. 15/06/993 for transfer of premises and new Statute



- Ente patrimoniale della Chiesa di Gesù Cristo dei Santi degli Ultimi Giorni	D.P.R. 23/02/93
- Ente patrimoniale della Chiesa Apostolica in Italia denominato Fondazione Apostolica	D.P.R. 21/02/99
- Associazione “Santacittarama”	D.P.R. 10/07/95
- Ente Cristiano Evangelico dei Fratelli	D.P.R. 13/11/97
- Associazione cristiana ortodossa dei Santi Agapito Martire e Serafino di Sarov	D.P.R. 14/01/98
- Fondazione di culto Ente della Chiesa della Fratellanza nella realizzazione del sé (S.R.F.)	D.P.R. 03/07/98
- Sacra Arcidiocesi Ortodossa d'Italia ed Esarcato per l'Europa Meridionale	D.P.R. 16/07/98
- Istituto Italiano Zen Soto Shobozan Fudenji	D.P.R. 05/07/99
- Chiesa Ortodossa Russa di Roma	D.P.R. 20/07/99
- Fondazione religiosa buddista, denominata F.P.M.T. Italia - Fondazione per la preservazione della tradizione Mahayana	D.P.R. 20/07/99
- Consulta Evangelica	D.P.R. 13/09/99
- Chiesa Cristiana Evangelica indipendente di Berea	D.P.R. 25/10/99
- Istituto buddista italiana Soka Gakkai	D.P.R. 20/11/00
- Unione Induista Italiana	D.P.R. 29/12/00

### **Article 23**

#### **(Family)**

1. *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*

3. *No marriage shall be entered into without the free and full consent of the intending spouses.*

4. *States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.*

### **Measures in support of maternity and paternity**

359. Legislative Decree 151/2001 – Consolidated Act containing legislative provisions on the protection and support of maternity and paternity – has been issued in compliance with the provisions of Art. 15 of Law 53/2000. Legislative Decree 151/2001 coordinates all the provisions regarding employment-related measures for parents and harmonises the legislative framework, one aim being to make it easier to consult the legislation in support of family responsibilities.

360. The following are particularly worthy of note: measures to facilitate working life for parents and relatives of seriously disabled persons; the extension to fathers of entitlement to parental leave and leave to care for sick children, even if the mother is not in any form of paid employment; provisions for the support of parenthood in special forms of relationship.

361. With a view to encouraging more flexible working hours, Decree 15/2001 saw the approval of the arrangements for the payment of the incentives envisaged in Art. 9 of law 53/2000 to firms applying contractual agreements that include positive actions on flexible working hours.

362. On the basis of the provisions of Art. 28 of Law 53/2000, the decree on the distribution to the Regions of the resources of the “Fund for the harmonisation of city times” is currently being drawn up.

### **Changes to the Income tax rules for households – Art. 2 of Law 448/2001 (the Finance Law for 2002)**

363. This provision increased the tax allowance for dependent children, including adopted or foster children, for households with an income of less than 100 million lire (€516.46 for each dependent child). According to the first surveys carried out this measure has lifted more than 300,000 household above the poverty line.

### **Development of system of services for early childhood**

364. For the purpose of providing new couples with support to enable them to reconcile their decision to have children with social and employment requirements, and in view of the lack of early childhood services, Art. 70 of Law 448/2001 introduced a Fund for nursery schools, amounting to 300 million euros, of which 50 million for 2002, 100 million for 2003 and 150 million for 2004. The first tranche has already been distributed to the Regions, through a decree signed by the Minister of Welfare and by the Minister for the Economy on 11 October. Following the transfer of these financial resources the Regions have initiated procedures for the allocation of funding to the municipal authorities.

365. The resources allocated through Art. 70 are also intended for the creation of workplace crèches, with a view inter alia to encouraging all persons involved in economic activity to play a part in family responsibilities. The government has completed an agreement with the Regions that establishes the criteria for the creation of workplace crèches and with Art. 91 of the Finance Law for 2003 (Law 289/2002) has set up a revolving fund for the allocation of resources to firms for this purpose. In order to publicise the information and opportunities connected with these provisions more widely, the Ministry of Welfare is fine-tuning a communication and information plan on the creation of workplace crèches, in close cooperation with the Regional and Municipal authorities.

366. Finally, the government has contributed to the drafting of the bill currently nearing approval by Parliament concerning the system of services for early childhood. This clearly identifies not just the general criteria for the creation of crèches but also reinforces the direct participation of families in the creation and management of supplementary services for children to supplement and strengthen the traditional network of nursery schools.

### **Support for families**

367. The White Paper on Welfare includes a series of instruments and actions to achieve and reinforce social cohesion in Italy. From this point of view it is important to identify two key elements on which the operational framework of future policies should be based: the demographic transition, and its effects on inter-generational relations. This means, first and foremost, focusing new initiatives on the family, which has been relegated by the “ideology” to the bottom of the scale of modern social priorities.

368. The main factor behind the ageing of the country is not so much the longer lifespan of individuals, as the collapse in the fertility rate during the ten years from 1975-85. This period saw a decline from levels more or less of demographic balance (2.1) to nearly 1 percentage point less, from which level (1.25) it has hardly moved since. This fall in the birth rate is having serious effects on the labour market, since the flow of incoming workers is lower than in the last decade. The working age population is not just diminishing, it is becoming older at the same time.

### **Taxation**

369. Unlike the situation in most other European countries, in Italy the tax system does not yet take into account the cost of children within households. In Europe, if we consider income as being equal, there is usually a considerable difference between households with and those without dependent children, while in Italy this difference is still negligible.

370. For example, in 2001 the difference in direct taxation on a nominal income of 30,000 euros between a family with two children and one without children was over 3,000 euros in France, over 6,000 euros in Germany and just 500 euros in Italy.

371. The government is evaluating the possibility of introducing a fiscal model that is able to absorb a considerable part of the cost of rearing children. This would be particularly applicable to those low and medium income categories in which the combined effect of higher taxes and the

additional costs of dependent children risks becoming a real economic deterrent that is strong enough to discourage people from having children and as a result holds back the birth rate. The tax systems in other European countries hold a wealth of interesting examples, whether they apply quotients, deductions or allowances, or whether they focus on second or successive children. Fiscal reform – the general objective of which is for a progressive lessening of average fiscal pressure by modulating taxes to achieve a horizontal rebalancing of direct taxation – should therefore become an important instrument for the enhancement of family policies.

372. The government considers that a tax system that takes the costs of rearing and caring for children into account is a key factor in improving the demographic balance and re-establishing more favourable conditions for a recovery of the birth rate. It has undertaken, within the framework of an overall reduction in average fiscal pressure, to introduce incentives to re-establish this horizontal equity through a remodulation of taxes, including on the basis of family size.

373. In this respect the government intends to flank its local policies for direct action and service delivery with a new income policy which will enable, for example, the deduction of costs incurred for medical treatment, specific assistance and personal help, all for the benefit of families. The range of support instruments available needs to be sufficiently diverse so that each person and each household can independently work out their own best way of reconciling working time and the time required for family responsibilities. They should be able to exercise ample freedom of choice from a range of available services or arrange autonomously for these services to be provided on the basis of their specific needs, in which case they should be able to count on the costs involved being tax-deductible. This is even more urgent in the case of households that include people with serious disabilities, especially children and elderly people.

### **Money transfers**

374. Articles 65 and 66 of Law 448/1998 (Finance Law) envisaged support for families with three children of minority age, for maternity, and for low-income households. The data elaborated by ISTAT show that in 1999, 10 households in every thousand received the low-income allowance; in 2000 the figure was 11 per thousand.

375. This allowance was paid mainly in southern Italy, at a rate of one household in forty. The maternity allowance, albeit less frequent, was also concentrated in central and southern Italy.

### **Housing policy**

376. Italy's housing stock has improved in the last two decades and the percentage of home-owners has increased. Some categories, however, still encounter difficulties in obtaining access to housing, since the schemes to facilitate first-time purchases by young couples are not yet being implemented in all parts of the country. Significant progress has been made in this direction, given that similar incentives could facilitate not just the formation of new households but also geographical mobility by young people, thus creating better conditions for the matching of labour market supply and demand.

377. As part of the social measures contained in the Finance Law for 2003, the government envisaged easier credit terms to encourage access to housing by young couples.

378. In this respect, a quota of the National Fund for Social Policies (€1,600,000.00, or 10% of the Fund) is earmarked for policies in support of new households, especially as regards the reimbursement of the costs incurred by first-time house-buyers and measures to encourage couples to have children. To define the criteria for access to financial benefits, a joint Commission has been set up to define the procedures and conditions for the use of the resources allocated for these ends.

### **Families and dependency**

379. The White Paper devotes special attention to the question of support for needy households, with financial support for maternity and for large families. Specific allowances are envisaged for families with dependent disabled persons; these include up to two years paid leave from work (up to a ceiling of 70 million old lire) and funding for protected housing projects managed by voluntary associations.

380. Dependency should not be considered in isolation as affecting only the household directly concerned, but should be recognised as a responsibility of the community as a whole, to be assumed – proportionately – by each and every member of society as a shared social duty. We should not forget that the data presented by ISTAT indicate that there are 2,500,000 households with at least one disabled person, about 12% of the total. 246,000 households have more than one disabled person. This means that about 6 million people (10% of the population) are directly affected by disability.

381. No adequate answers have yet been found for the problem of the dependency of the chronically ill, the elderly and the disabled. For these people the social-health system is not yet able to provide sufficient health and social services. For this reason, one of the key actions for 2003 is the National Plan for Dependency drawn up by the Ministry of Labour and Social Policies in coordination with the Ministry of Health. In 2002 the two ministries set up a research Commission which at the end of the year submitted proposals envisaging measures such as initiatives for communication and information, the promotion of prevention schemes, enhanced living conditions and an innovative model for the integrated organisation of social and health services.

382. The Plan will be launched in mid-2003 on a trial basis in a number of Regions that have agreed to take part, in terms both of co-funding and of organisation. The objectives include encouraging dependent persons to remain in their family and social environment, and the maintenance and as far as possible recovery of their personal autonomy. An extraordinary programme for the disabled based on a programme of action by the Ministry of Labour and Social Policies that draws on the results of a nearly-completed ISTAT study on disability in our country will be drawn up by the end of 2004. This will encompass the most serious forms of disability, and will draw on the Finance Law of 2004 for ad hoc funding. Work has already started on a Consolidated Act on matters concerning disability, the aim being to remove the inconsistencies, fragmentation, duplication and contradictions to be found in the existing provisions.

383. The government is particularly aware of the question of “after us”: the security that needs to be provided for dependent persons when they are left without family support. Residential structures and services, which are tending to develop “on a family scale”, should be another immediate response to this problem throughout the country. Rules also need to be laid down to protect the legal and property interests of disabled persons, for example through trusts.

### **Other family policy initiatives**

384. To set up a national local authority network to examine the information on family issues at the local level and promote initiatives in this respect, a national Family Observatory is being set up. 25 municipalities, one for each Region (except for the most densely populated Regions, Lombardy and Campania, which will have two), are being asked to take part. In this way, the various socio-economic situations to be found in the country will be represented. All the municipalities selected have already shown a strong interest in taking part in this new body, which will begin operating during the first half of this year.

## **Article 24**

### **(Protection of minors)**

1. *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*

2. *Every child shall be registered immediately after birth and shall have a name.*

3. *Every child has the right to acquire a nationality.*

### **Provisions for the promotion of the rights and opportunities of childhood and adolescence**

385. With respect to the protection of the rights of minors, the Italian government has promoted a number of legislative, administrative, cultural and political actions and adopted a policy of involving all branches of government, from the municipal authorities to Parliament, backed by sufficient funding.

386. The following paragraphs provide a brief illustration of some of the key legislative instruments in this sector.

387. In promoting rights and opportunities for children and adolescents, Law 285/1997 proposes and opens a comprehensive “re-thinking” of social policy. In keeping with Art. 2 of the Italian Constitution, the Law envisages a framework of conditions of “liveability” and development for children and adolescents that are closely related to the conditions that in actual fact need to be guaranteed for all citizens. It also calls for citizens themselves to take responsibility for constructing a social context characterised by relations inspired by participation, ownership, and reciprocity, and which by its very nature is able to curb the insurgence of possible cases of exclusion.

388. The community and citizens are not considered merely as the beneficiaries of initiatives, but also as responsible actors and essential resources that are complementary to the institutional services. Social organisations, voluntary associations and cooperatives are seen as privileged interlocutors and valuable collaborators.

389. A variety of public and private actors are called upon to interact in the implementation of Law 285/1997, including with a view to expressing and attaining the full citizenship espoused by the law.

390. The state of implementation of Law 285/1997 on juveniles was examined on 30 June 1999. A total of 2,959 executive projects are being carried out in 257 areas (cities or specific localities). These account for a considerable amount of resources and initiatives that are intended to give concrete form to the rights envisaged and sanctioned by the New York Convention on the Rights of the Child.

391. The law identifies four main areas for action:

- (a) services supporting the parent-child relationship, measures to combat poverty and violence, and alternatives to the admission of children to educational-assistance institutions;
- (b) innovation and experimentation of new social and educational services for early childhood (the new crèches and family centres);
- (c) recreational and educational services for leisure time;
- (d) positive actions for the promotion of the rights of children and adolescents and experiments on child-friendly cities.

392. Against this background the actions in the first sphere have been sketched out, with the creation or strengthening of:

- (a) centres to promote fostering and adoption, especially in Milan, Catanzaro, Florence, Rome, Catania, Reggio Calabria, Turin, Palermo and Naples;
- (b) centres for prevention and for the reception and recovery of children or mothers who have suffered ill treatment, sexual abuse or who are locked into the spiral of prostitution and exploitation;
- (c) meeting places for adolescents, to provide them with a place where their voices can be heard or with opportunities for socialisation. Significant examples of this type of service can be found in Piedmont, Sardinia, Lombardy, Veneto, Rome, Bari, Palermo and Venice;
- (d) services to support and promote parenthood, even in cases where the parents are separated. Significant examples of this type of service can be found in Rome, Naples, Milan, Genoa, Turin and Palermo;

(e) initiatives to embrace diversity as a value and encourage the integration of the disabled, foreign children and their families into the community, especially in the large metropolitan areas of Rome, Milan, Turin, Florence and Palermo and in the Provinces of Lecce, Foggia and Bari;

(f) activities for children suffering because their mothers are in prison or their parents are HIV-positive, or because they have been hospitalised for long periods; such initiatives can be found in Milan, Genoa, Rome, Trieste and Cagliari.

393. All this has been done taking into due consideration the facilities already existing at the local level, the aim being to provide responses to the new problems revealed by an analysis of demand.

394. In second place we find, as a percentage of the total projects and as an average for each sphere, initiatives that mainly involve the third area for action, or free time. In this case the relative positions of localities and cities is reversed, with localities, at 30.6%, taking a 7% lead over cities, at 23.8%.

395. In this case too, a few examples might aid understanding: actions to favour the habit and practice of play, participation and “doing” have been encouraged, with due attention to the development of equal opportunities between males and females and to integration and socialisation by different cultures. Another important factor was the need to use the considerable resources represented by schools “after-hours”.

396. These considerations have led to a flourishing provision of play zones, video-library-play buses (which are fairly widespread but are most commonly found in Lombardy, Liguria, Emilia-Romagna, Tuscany, Lazio, Puglia, Calabria and Sicily); mobile, residential, and open-air play zones; recreational and community centres for children and adolescents; workshops for IT, manual and creative activities and environmental education; and summer camps, seaside or mountain trips and summer activities for those staying in the cities.

397. The lowest percentages refer to the other two areas: for services for child-friendly cities and the promotion of rights we find 16.2% in cities and 16.6% in localities; for the experimentation of new services for young children and families we have 7.5% in cities and 11.8% in other localities.

398. The experiments described here are attempts to bring Italy even more into line with the principles sanctioned by the UN Convention on the Rights of the Child: it is recognised that children need to be consulted before taking decisions involving them, and that they can play and at the same time express their opinions. The projects referring to this sphere were therefore designed to promote the child as citizen, and to restore a focus on the city as a community of persons that can act as an educational project rather than merely a place in which children “exist” alongside adults.



399. This has led to initiatives to improve urban spaces in general and create new green spaces; to improve mobility through plans for the creation of safe home-school routes and the installation of special road signs for children; the promotion of “spot initiatives” to promote the use of bicycles or “no car” days. These are particularly widespread in the provinces of Central Italy, the Marches, Tuscany, Umbria and Emilia Romagna, but also in cities like Turin, Genoa and Milan.

400. All this has been done not just by adults or specialists in the field but with the active involvement of the interested parties: children, adolescents and families, following the new methodology of “participatory in planning”. Ad hoc workshops have been set up, children and youngsters have become “explorers” in their neighbourhoods, they have re-designed and created new signs and symbols for their cities and neighbourhoods and drawn up “alternative maps and guides” or “town planning documents” in conjunction with the local authority town planning departments. The participatory element of the projects merged in the end with the active citizenship dimension of the Children’s Municipal Council projects.

401. The last area includes projects creating alternative services to nursery schools. An attempt was made to address this structural shortfall in our country, as a result of which only about 6% of children aged 0-3 have access to early childhood services, by expanding provision and offering services based on criteria envisaging greater flexibility than nursery schools. Once again, there was a wide variety of initiatives, with crèches, part-time nurseries, baby parking, multi-ethnic nurseries and “at-home nurseries”, child-minders, and “family centres” providing children with opportunities to play and socialise in the presence of parents and carers. The family centres provide an opportunity for growth by adults too, since they allow them to take time to talk about their children and compare experiences of parenthood. The Regions and municipalities of Emilia Romagna, Umbria, Lombardy, Tuscany and big cities like Genoa, Florence, Bologna, and Rome are rightly proud of these projects.

402. These last two areas for action saw the most innovative experiments provided for by the law, on which most work will need to be done in future to enable them to grow in quantity and quality. A key element in these areas is the integration of a range of highly diverse sectors that include policies for culture, the environment, mobility and traffic, town planning, education and leisure.

403. Compared with the number of initiatives envisaged by the Executive Projects of the territorial plan, at 30 June 1999 over 55% of the localities had introduced up to 50% of the actions envisaged (of these, just under half had set up less than 25% of the initiatives). In more than one locality in four, between 75% and 100% of the actions have already been set up.

404. Over 64% of the projects used 50% of their total allocated funding, but 35% have not yet committed 25% of their total. The fact that 23% of the localities have already committed between 75% and 100% of their total allocation is an indication of their efficient spending capacity.

405. The National Documentation and Analysis Centre monitors and evaluates individual projects deriving from the application of Law 285/1997.

**Laws against sexual abuse and the exploitation of prostitution, pornography, and sexual tourism involving children, as new forms of enslavement**

406. As part of the legislative review to reinforce the prevention and repression of crimes involving sexual abuse and the sexual exploitation of children, Law 66/1996 containing “Provisions against sexual abuse” and Law 269/1998 containing “Provisions against the exploitation of prostitution, pornography, and sexual tourism involving children, as new forms of enslavement” have been approved.

407. The objective of these laws, which were issued in compliance with the principles enshrined in the Convention on the Rights of the Child-adopted in New York on 20 November 1989 and implemented in Italy through Law 176 of 27 May 1991 – and with the commitments referred to in the Final Declaration of the World Conference in Stockholm in August 1996 against the sexual exploitation of children for commercial purposes, is to take better and more effective action against these forms of criminal conduct.

408. More specifically, Law 66 of 15 February 1996, in addition to increasing the minimum penalty envisaged for “sexual abuse”, has introduced certain aggravating circumstances that envisage an increase in both the minimum and the maximum penalties provided for in those cases where the victim is a minor.

409. An important form of protection for children has been introduced through the new formulation of the provisions on proceedings for these offences: sexual abuse of children under 14 years of age and sexual acts with children under ten have been added to the cases for which *ex officio* proceedings are envisaged.

410. The new provision on the protection of confidentiality, which punishes the divulgation, including through the mass media, of the personal details or picture of the injured party without his or her consent is particularly significant.

411. The child’s right to confidentiality is also guaranteed by the new trial rules introducing an obligation to carry out the proceedings *in camera* when the victim of a sexual crime is a minor and envisaging in such proceedings the non-admissibility of questions on the private life or sexuality of the injured party, except within limits strictly necessary to the reconstruction of the events.

412. A further guarantee is provided by the possibility of taking evidence from minors under 16 years of age in the pre-trial stage of the proceeding. This provision entrusts the judge with the task of establishing the place, time and circumstances for the taking of evidence, with due regard for the juvenile’s needs. The hearing may also take place in a location other than the court, as the judge may use specialised assistance facilities or, failing these, the home of the child.

## **Child prostitution**

413. With regard to child prostitution, Law 269/1998 (which amended the part of Law 66/1996 on sexual abuse that refers to sexual acts with minors and provided for special provisions, with respect to the Merlin Law of 1958, for trafficking and prostitution involving minors) envisaged a new form of criminal conduct and inserted a new article in the penal code (Art. 600 bis) which punishes autonomously the induction, abetting or exploitation of child prostitution and sanctions anyone who carries out sexual acts with children aged 14 to 16 through the exchange of money or other forms of economic gain, including the parties using the sexual services of the child.

414. As regards child pornography, which up to ten years ago was disseminated mainly through printed publications, a specific provision (Art. 600 ter) has been inserted in the penal code banning the exploitation of children for the purpose of pornographic display or the production of pornographic material and punishes the dissemination or distribution of such material, including through the use of IT channels or equipment.

415. The introduction of the concept whereby even the mere possession of such material is punishable is of considerable significance.

416. In consideration of the serious harm to the integrity of children that sexual tourism causes and its intrinsic ability to fuel the prostitution market, this form of conduct has for the first time been included as a criminal offence in its own right, with a consequent expansion of the scope for intervention by investigators.

417. Law 269/1998 has therefore enabled a considerable development of the actions taken by the forces of law and order to combat these crimes by providing them with special investigative instruments that consist of the possibility of carrying out simulated purchases of pornographic material involving children and taking part in intermediation activities in this respect, and of asking the judicial authority to delay the issue or execution of restrictive provisions or seizures when this is necessary to obtain important evidence or to capture the offenders.

418. Moreover, during the investigation on crimes committed using IT or telematic communication systems, the staff of the Ministry of the Interior's unit for the security and proper use of telecommunication services may use forms of cover, for example to set up sites in the networks or set up or manage chat rooms or other areas for communication on networks or telematic systems.

419. The same law also provides for the reorganisation of the special police structures in this sector with a view to strengthening their capacity to detect, analyse and combat this form of criminal conduct.

420. Through a decree issued by the Minister of the Interior, specialist Sections and Police Units have been set up in the Questure. These Police Units have taken over the remit of the former "Children's Offices", whose name they have maintained.

### **Further legislative initiatives**

421. Further legislative initiatives put in place by the Italian Government in order to provide greater protection for children include:

(a) the presentation by the Minister for Social Solidarity, in coordination with other ministries and voluntary associations, of guidelines to combat violence against and ill-treatment of children. These guidelines address the issues of awareness, monitoring, prevention, action and the training of operators in support of child victims of sexual assault or abuse, starting from the common elements to be found in violence by males against women and children;

(b) at the end of 1998, the ratification of the Hague Convention (signed by Italy in 1993) for the protection of children and cooperation in matters concerning international adoptions;

(c) the funding envisaged by the Finance Law of 2000 for the integration in schools of pupils with sensory disabilities (7.5 billion lire each year for 2000, 2001 and 2002);

(d) initiatives on behalf of the younger generations (12.5 billion lire in 2000, 36 billion in 2001 and 2002);

(e) educational services for children under three (20 billion in 2000, 50 billion in 2001 and 100 billion in 2002);

(f) the bill approved by the Council of Ministers on 23 March 1999 for the development and up-grading of a system of services for children under three and their families. The objective of the new system of nurseries and supplementary services is to respond, in particular, to the needs of single-parent families and those where both parents work. The system envisages the possibility of setting up crèches within condominiums for small numbers of children as part of these supplementary services. Projects of this nature are already under way in some municipalities (Bolzano, Turin, Genoa, Rome);

(g) the establishment, with Law 451/1997, of the Documentation and Analysis Centre, which collects statistical surveys, national and regional laws, international and European resolutions, and the most significant initiatives by ministries and local authorities; the National Observatory for Childhood, headed by the Minister for Social Solidarity and made up of experts, representatives of those ministries with competency in matters concerning children, the local authorities, associations, voluntary bodies, and social cooperatives; a parliamentary Commission for childhood with tasks of guidance and monitoring the implementation of international agreements and the Italian legislation on the rights and development of children; and the Italian Day for the Rights of Children and Adolescents, which will be celebrated each year on 20 November, the day when the UN Convention on the Rights of the Child was signed;

(h) the drafting of codes of conduct: the Code of Conduct on children and TV, through which public and private television companies have undertaken to improve and raise the quality of children's programmes; the Code of Conduct drawn up by ECPAT Italia (End Child Prostitution, Pornography And Trafficking) with travel industry associations to combat sexual tourism originating in Italy; and the Charter against the exploitation of child labour.

## Juveniles and crime

422. Juvenile crime is a complex phenomenon that is rooted in a diverse but interacting range of individual and social conditions: the break-down of family ties, the decline of moral values, poverty and cultural under-development, difficulties in entering employment, and drugs. Often the young people concerned have a very poor educational record and come from difficult family and environmental backgrounds.

423. The phenomenon in its current form in Italy enables us to identify four categories of deviant minors belonging to different social and cultural backgrounds:

- (a) minors involved in drug dealing;
- (b) minors used to commit property-related crimes;
- (c) minors addicted to substances such as cannabinoids and who, increasingly, use two or more substances indiscriminately. The most common offences in this case are those connected with drug-trafficking, followed by property-related offences;
- (d) minors involved in organised criminal activity.

424. An analysis of the indicators for the trend in offences committed by minors over the last decade shows an increase at the start of the period (from 21,055 cases in 1989 to 25,240 in 1992, with a peak of 26,783 in 1991), followed by six years with lower and essentially stable levels (from 22,914 cases in 1993 to 23,272 in 1998).

425. If we then consider the data for 1999 there is a reduction of 4.91% in crimes ascribed to children, from 23,273 to 22,130 incidents.

426. An analysis of the more serious types of offence committed by minors in recent years, i.e. starting from 1996, gives the following results.

427. The number of murder charges involving minors, as can be seen from the table below, increased – albeit remaining within “normal” limits – in 1997, while there was a considerable fall in absolute terms in 1998, followed by another rise in 1999.

	1996	1997	1998	1999	% Variation 1998/1999
Minors charged with homicide	11	16	6	14	+ 133.33

428. Again with respect to the more serious forms of violent crime, the number of children accused of attempted homicide did not change greatly from 1997 to 1998, remaining at 40 or thereabouts. The figure for 1999 was slightly down on the previous year.

	1996	1997	1998	1999	% Variation 1998/1999
Minors charged with attempted homicide	44	40	45	43	- 4.44

429. The most significant indicators in quantitative terms are those regarding theft, for which charges against minors fell over the period under consideration.

	1996	1997	1998	1999	% Variation 1998/1999
Minors charged with theft	9 500	8 988	9 005	8 560	- 4.94

430. If we break down this category of offence into its most common components, burglaries in homes are most frequent, followed by thefts from shops and then by bag-snatching/pickpocketing.

	1996	1997	1998	1999	% variation 1998/1999
Minors charged with burglaries in homes	3 755	3 646	3 101	2 772	- 10.61
Minors charged with theft from shops	1 018	1 285	1 397	1 407	+ 0.72
Minors charged with bag-snatching/ Pick-pocketing	690	485	786	933	+ 18.70

431. The trend is very different for robbery, in which the involvement of children increased throughout the period, culminating in 1999 with a rise of 10.77% over the previous year.

	1996	1997	1998	1999	% variation 1998/1999
Minors charged with robbery	583	621	752	833	+ 10.77

432. In the case of drug-related offences, charges against children increased continuously from 1996 to 1998, but fell slightly in 1999 over the previous year.

	1996	1997	1998	1999	% variation 1998/1999
Minors charged with drugs-related offences	1 503	1 795	1 980	1 930	- 2.53

433. The involvement of children in extortion remained more or less constant in 1996-98, while the figure for 1999 shows an increase of 19.42% over the previous year.

	1996	1997	1998	1999	% variation 1998/1999
Minors charged with extortion	135	135	139	166	+ 19.42

434. As regards the geographical distribution of juvenile crime, in central and northern regions the phenomenon tends to be concentrated in large conurbations, where the high population density is accompanied by social and cultural decline and a higher incidence of offences committed by non-EU or gypsy children. In the south of the country, on the other hand, the key feature of juvenile crime is the gravity of the offences committed and the danger presented by the children (mainly Italian) who are more inclined than their counterparts in the rest of the country to gravitate to organised criminal gangs.

435. It should, however, be noted that the traditional model of juvenile delinquency is changing; analyses covering most of the central and northern regions have identified forms of delinquency perpetrated by young people from well-to-do households. The offences in this case tend to be violent and lacking in motive, and sometimes contain elements of self-harm.

436. These are, however, isolated incidents. When initiated by groups, the groups in question are not structured – as they tend to be in France, Germany and the United States, where there is a high proportion of such gangs compared with the situation for adult crime – but are limited to occasional acts of vandalism and crimes against property.

437. Law 216 of 19 July 1991 contains provisions on the initial actions to be adopted on behalf of individuals at risk of involvement in criminal activity.

438. This Law, which was discussed in some detail in the previous report in 1992, received a further round of funding for 1994-1996 through Decree Law 318 of 27 May 1994, confirmed by Law 465 of 27 July 1994. 32 billion lire of this funding were allocated for 1995 and the same amount again for 1996.

439. The recent legislation has also introduced a number of procedural innovations for the allocation of grants to bodies operating on behalf of minors, with a view to improving the quality of the projects being implemented; responsibility for monitoring the proper conduct of the projects funded and providing technical assistance for the success of the initiatives lies with provincial and metropolitan local authority committees supplemented by experts.

440. The Prefects have also been granted the right to hold the sums credited for a further financial year in a special account, in addition to the one envisaged by the government's general accounting rules, to avoid the situation arising there the success of projects already initiated is undermined.

441. The legislation in question was supplemented and amended by Law 465 of 27 July 1994 and received further funding, up to 1999, through subsequent legislative provisions. Legislative Decree 112 of 30 March 1998 provided for the transfer of responsibility for these matters to the Regions with effect from 1 January 2001.

442. While the above-mentioned law was in force (1991-1999), 16,415 applications for funding were received by the Directorate General for Civil Services at the Ministry of the Interior, of which 2,916 were granted. The sums requested amounted to 3,500 billion lire and, given the amount available in the National Fund, 331,477,484,000 lire were able to be disbursed in the period in question.

443. In the last year of funding (1999), 1,619 applications were received, of which 409 were successful, receiving a total of 29,700,000,000 lire.

### **International adoptions**

444. Law 476 of 31 December 1998 containing the “Ratification and implementation of the Convention on protection of children and cooperation in respect of inter-country adoption, done at The Hague on 29 May 1993. Amendments to Law 184 of 4 May 1983 concerning the adoption of foreign children” does not contain any new elements with respect to the existing legislation for the acquisition of Italian citizenship following adoption. However, the approval by the Council of Ministers of the Regulations for the implementation of Law 476 is worthy of note.

445. In the last 15 years about 90,000 children have been adopted, while 110,000 have been fostered. With the two sets of regulations envisaged by Law 40/1998 on immigration, it can be said that we are also entering a new phase in our policies regarding immigrant children. The Committee for the protection of foreign children is based in the Department for Social Affairs and is the most important instrument for the implementation of the recommendations formulated on several occasions by the United Nations as guidance for western countries. Other institutions working in this field are the National Centre for Documentation and Analysis and the National Observatory for Childhood and Adolescence, whose work has made it possible to draw up the National Action Plan for 2000-2001 in accordance with Law 471/1997.

446. The Plan envisages a list of provisions. These include incentives for municipalities with a view to increasing green spaces and the adoption of “brand labels” or “marks” to apply to commercial products that have not used child labour and provide guarantees against exploitation. Grants are also available for local authorities to provide free public transport for children and free entry to museums for pupils in compulsory education. The joint committee that drew up the plan has suggested to Parliament that it should develop forms of cooperation with other European countries in order to draw up an international legislative framework against paedophilia, focusing in particular on the Internet.

447. A Working Group on Social Quality that has been set up in the Department for Social Affairs has drawn up guidelines for the creation of socio-educational residential communities for children, one key objective of which is to provide a new framework of actions at the regional level in which the principle of the de-institutionalisation of children is affirmed.

### **The protection of disabled children**

448. As a result of the implementation of Law 289 of 11 October 1990 introducing a monthly allowance for disabled children subject to attendance in out-patients’ or day centres specialising in therapeutic or rehabilitative treatments, or in schools or training centres, the number of such children receiving assistance from the Ministry of the Interior was 6,996 at 31 December 1996, 7,400 at 31 December 1997 and 7,515 at 31 December 1998.

449. The attendance allowance for disabled persons, governed in general terms by Law 18 of 11 February 1980 and Law 508 of 21 November 1988, was paid to 35,212 child beneficiaries at 31 December 1996, 34,557 at 31 December 1997 and 33,588 at 31 December 1998.



450. The number of beneficiaries for the allowance for non-sighted children and the communication allowance for prelingually deaf children (Law 508 of 21 November 1998) was lower.

451. 1,317 totally blind children were in receipt of the attendance allowance at 31 December 1996, 1,331 at 31 December 1997 and 1,313 at 31 December 1998. In the case of visually impaired children with residual vision no higher than 1/20 in both eyes, the figures at the same dates were 513, 514 and 516.

452. At 31 December 1996 there were 3,501 children in receipt of the communication allowance for the prelingually deaf; at December 1997 and December 1998 the figures were 3,483 and 3,428 respectively.

453. At the end of this pilot project, the results were published by the Directorate General for Civil Services in four volumes which were distributed through the Prefectures, along with the teaching and instrumental aids produced, to operators in public and private sector institutions working in this field.

## **Article 25**

### **(Participation in the conduct of public affairs)**

*Every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*

(a) *to take part in the conduct of public affairs, directly or through freely chosen representatives;*

(b) *to vote and to be elected at genuine periodic elections which shall be universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of voters;*

(c) *to have access, on general terms of equality, to public service in his country.*

### **The participation of women**

454. With respect to active participation in public affairs, the equal opportunities dimension is particularly significant.

455. A number of important structures have been set up to promote the presence of women in decision-making structures and bodies. These include: the National Commission for Equality and Equal Opportunities; the appointment of a Minister for Equal Opportunities; and the creation of the Department for Equal Opportunities as the administrative structure supporting the work of this same Minister (Prime Minister's Decree 405/1997).

456. The National Commission for Equality and Equal Opportunities has been engaged in a complex activity of information and promotion of the political and cultural debate on cross-cutting issues such as health, government reform, development cooperation, human rights, measures to combat the trafficking in human beings, and welfare and representation problems.

The Commission has devoted close attention to the strengthening of the local institutions and regional commissions and has introduced regular consultation with the former, which meet every two months to create a common network linking the bodies operating in this sector. In March 1999 the Senate also set up its own Commission for equality and equal opportunities, made up of female senators and employees from all categories.

457. The first step in the new course of action followed by the Minister for Equal Opportunities was to approve a national Action Plan for the application of the Beijing Platform in Italy, the contents of which were reiterated in the Prime Minister's Directive in March 1997 designed to promote the attribution of powers and responsibilities to women, acknowledge and guarantee freedom of choice and social quality for men and women, identify a number of priorities and fields for action in the Italian context (promotion of the presence of women in decision-making positions, impact analysis, coordination and reform of institutional action, international cooperation, training, the promotion of women's entrepreneurship and employment, policies regarding time, working time and work organisation, health, and violence against women).

458. The principal functions of the Department for Equal Opportunities are: guidance, proposal and coordination of legislative and administrative initiatives in the equal opportunities policy area; promotion and coordination of information and monitoring activities, study and research initiatives and policies for action in equal opportunities areas; and guidance and coordination of central and local government departments to ensure the correct implementation and monitoring of government provisions and guidelines. To improve the coordination of initiatives in the various sectors concerned, the Department has set up inter-disciplinary bodies and interacts with a number of planning and programming entities and other government departments to ensure gender mainstreaming in all the policies they implement.

459. The objectives of full participation by women in decision-making structures and bodies have also been achieved at the local level: a number of municipal and provincial authorities have set up commissions and councils as well as Equal Opportunities departments or departments with wider remits that include, for example, social policies, and have delegated responsibility for equal opportunities.

460. The Finance Law for 2000 earmarked funding of 20 billion lire for the rationalisation and reinforcement of the functions of equality counsellors. The aim here was to draw up and issue provisions to re-define and enhance the functions, legal framework and instruments available to counsellors, with particular reference to issues such as employment disadvantage, re-skilling and occupational training and respect for anti-discrimination laws. Other funding measures envisaged for equality counsellors (Art. 47 of Law 144 of 17 May 1999 and the related implementation decree) include an increase in paid time off work for institutional duties and in reimbursement payments, a review of the criteria for appointments, and a fund for the operations of counsellors, with reference inter alia to expenditure for legal actions. Equality counsellors will have the option of lodging appeals with the courts (employment tribunals or regional administrative courts) in cases of gender discrimination and, before initiating legal action, of asking for plans to be put in place to eliminate such discrimination.

461. The presence of women in management positions in central government departments has gathered pace, rising from 18.1% in 1994 to 22.9% in recent years. These results compare favourably with those achieved in the private sector, where women occupy just 5% of management positions in medium-sized firms and just over 3% in large firms. However, the public sector performs less favourably with respect to the most senior positions, only 13% of which were occupied by women at the end of 1999.

462. The difficulties appear even more evident if we consider access by women to the various government-appointed bodies external to government as strictly defined: of 110 persons appointed by the Council of Ministers in 1999, only 7 were women, in positions generally less important in terms of responsibility and prestige than those occupied by men.

463. In politics, just 11% of members of Parliament, 6.4% of mayors, and 5.8% of Presidents of Provincial governments are women, while there are just 2 female presidents of regional governments. The low numbers of women in management roles in government, private firms, the media, and universities is also a cause for concern. In the judiciary, the 4.1% of female division presidents contrasts with the situation for new entrants to the profession, where young women have overtaken their male counterparts in recent entrance exams. Attempts to improve the situation have proved difficult. Provisions contained in a number of electoral laws (81/1993, 277/1993, 43/1995) and designed to maintain a balance, in different forms and proportions, between the two sexes in electoral rolls was declared by the Constitutional Court to be unconstitutional with respect to the principle of equality for all citizens as sanctioned by the Constitution.

464. In consideration of data such as these, appropriate reforms were deemed to be necessary.

465. In this respect, in April 1997 the National Commission delivered amendment proposals drawn up with the help of female constitutional lawyers to the Joint Committee for constitutional reform. The aim of the reforms was to reformulate Articles 55 and 56 of the Constitution in order to ensure full participation by women in decision-making bodies, as well as Art. 84 (on balance in the representation of the sexes). These proposals were incorporated in the text approved by the D'Alema government in its draft constitutional law, which should overcome the problem raised by the above-mentioned Constitutional Court ruling. A constitutional bill (A.C. 5758) has also been presented in Parliament, with the aim of amending the first paragraph of Art. 51 of the Constitution in order to provide a Constitutional basis for the positive actions that the law must promote to achieve equality in access by women and men to public positions, especially elected ones.

466. The National Commission for Equality and Equal Opportunities has representatives in the government Commission responsible for monitoring the reform of the public administration. In 1999 the Department for Equal Opportunities promoted the creation of a Working Group that includes a referent for each department, proposed by the respective ministers, with the task of monitoring the state of implementation of Objective 1 of the Prime Minister's Directive of March 1997, examining the framework of constraints and opportunities accompanying government reform, and putting forward suggestions to speed up empowerment processes.

467. Recent provisions on equal opportunities include Legislative Decree 80/1998 introducing general equal opportunities principles, including gender mainstreaming in government training programmes and the reconciliation of working and family life to encourage and enable access to training by female government employees. Training should provide all government employees, male and female, with a knowledge of gender policy issues and equal opportunities principles.

### **Participation by the elderly**

468. According to the Fondazione Italiana per il Volontariato (Italian Foundation for Voluntary Organisations), over 450,000 elderly people devote time to social solidarity activities: 160,000 of these are aged 60-65; 250,000 are 65-74; and 40,000 are over 75 years of age. Italy also has pensioners' "unions" (confederations) which have set up associations and groups throughout the country, are members of European networks, promote self-help groups, assist other elderly people, provide accommodation for university students through a "company for lodging" system, work on the restoration of cultural assets and parks, and are involved in international aid activities.

469. The development of the University for the Third Age by local authorities and the educational system is also making an important contribution to lifelong learning.

470. The Ministry for Social Solidarity has drafted a bill drawing on existing cultural and training activities at the local level entitled "Provisions concerning voluntary service by elderly persons and the promotion of their participation in civic life". This bill promotes a new dimension of citizenship inspired by participation, responsibility and solidarity, and the enhancement of the human, emotional and knowledge resources of elderly people. It envisages forms of support for elderly people, such as an act enabling the Government to issue legislative decrees introducing special tax arrangements for pensioners active in Third Sector organisations. The bill envisages the use of elderly persons in cultural, social and recreational activities and their participation in activities on behalf of society and older people themselves, who would receive tax relief in return.

471. 1,000 billion lire were earmarked for policies for elderly people in the Finance Law for 2000, to which should be added European funding. The "social allowance" and tax deductions for people on the lowest pension have also been raised through the rent top-up fund for low-income individuals and households.

472. The Minister for Social Solidarity has issued a decree setting up 3 working groups coordinated by the Service for the Elderly, whose task is to study rest homes and social centres; in-home protection; lifelong learning and universities for the third age, etc.

473. Finally, an advertising campaign highlighting active participation by the elderly has been shown on the national TV networks.

### **Participation by the young**

474. The main legislative provision on policies for the young is the bill entitled "Framework Law for the participation and representation of the younger generations".

475. The use of the European Social Fund (ESF) and the experience of EU-funded programmes such as the European Voluntary Service and Youth for Europe, which involve groups of young people in exchanges and projects outside Italy, are also worthy of note. These programmes envisage the development of young people's ability to plan personal pathways for solidarity and skills development, and include an intensive activity of exchanges, study visits and inter-cultural initiatives managed by youth organisations.

476. In 1998-99, using ESF resources, the Department for Social Affairs promoted a national programme for "socialisation and creativity in young people" which envisaged training pathways designed, managed and implemented at the local level. 800 young people in situations of social exclusion took part in training projects under the initiative (involving music, the cultural and artistic heritage, the environment, etc).

477. Extensive communication campaigns and a large number of conferences, seminars etc have been organised with the direct involvement of young people.

## **Article 26**

### **(Equality and non-discrimination)**

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

478. The creation of a multi-racial, multi-ethnic society also requires initiatives to combat forms of racial intolerance and xenophobia which, with the arrival of growing numbers of non-EU immigrants, are tending to become more frequent.

479. In this respect initiatives have been put in place using EU funding designed not only to ensure that new arrivals are provided with information about all aspects of Italy in order to facilitate their social integration and prevent them from ending up in ghettos, but also to sensitise Italian public opinion to accept them in a positive light as providing new lifeblood for the society of the third millennium.

480. A survey has also been carried out in four large cities (Rome, Turin, Milan and Bari) to better understand and evaluate "institutional racism".

481. On 4 February 2000 the Ministry of the Interior issued a directive establishing that, as part of the services for the protection of public order and security in public entertainment venues and in stadiums during football matches, public security officials or, in their absence, other public security bodies will take steps to ensure that the show or match is not allowed to start or else is suspended, if it is already under way, when:

(a) banners, placards or other emblems or symbols are displayed, or any other public displays punishable under the terms of Art. 2 of Decree Law 122 of 26 April 1993 as confirmed, with amendments, by Law 205 of 25 June 1993;

(b) such action is necessary and is the only way possible to remove the wording, displays etc in question.

482. Law 40/1998 radically revised the previous legislative framework and introduced a number of provisions to the Italian legal system envisaging specific and effective protection against acts of discrimination committed in a whole range of civil activities.

483. After giving a full and precise definition of discriminatory act, understood as conduct producing any form of exclusion, distinction, restriction or preference in exercising human rights and fundamental freedoms in all sectors of society, whether public or private, the first of these provisions sets out a series of actions that can be defined as discriminatory acts.

484. If it is demonstrated that offences of this nature have been committed, the judicial authority, at the request of the discriminated party, has a range of particularly incisive powers at its disposal designed not just to bring the discriminatory conduct to an immediate end but also to remove the effects of such conduct. To this end, fast-track procedures are envisaged for the proceedings in question.

485. To provide further protection for persons suffering discrimination, failure to observe the obligations imposed by the judicial authority's rulings shall be punished by imprisonment of up to three years (Art. 388 of the penal code).

486. A number of specific provisions that have been put in place to prevent discrimination in the employment sphere envisage sanctions for the heads of companies responsible for such conduct. These include the loss of any economic benefits provided by the state or temporary exclusion from public tenders. To combat discrimination even more effectively and lessen the existing economic imbalance between entrepreneurs and individual workers, the local branches of the trade unions most representative at the national level are recognised as being legitimately entitled to take legal action against collective forms of discriminatory conduct by employers, even where such conduct does not immediately or directly prejudice the rights of individual workers.

487. The creation by the regional authorities, in collaboration with other local bodies, of monitoring, information and legal assistance centres is also envisaged, with the aim of preventing discriminatory conduct against foreigners.

## **Article 27**

### **(Protection of minorities)**

*In those States where ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

488. As regards the basic legislation for the protection of minorities, the Italian Parliament recently approved Law 482 of 15 December 1999 containing "Provisions for the protection of traditional linguistic minorities". Within the unified linguistic framework represented by the Italian language, which is re-affirmed by Art. 1 of this law as the official language of the

Republic, Law 482/1999 is intended to protect and enhance the languages and cultures of the Albanian, Catalan, Germanic, Greek, Slovenian and Croatian communities and of those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian.

489. This new law is a key instrument in this area in view of the many provisions it contains to protect minority languages and cultures, in which respect it specifically implements Art. 27 of the Covenant.

490. The law is intended to implement Art. 6 of the Constitution – which establishes that “the Republic shall protect linguistic minorities by means of special provisions” – by setting forth a systematic framework of rules to protect the linguistic minorities historically present in our country, in harmony also with the general principles laid down by European and international bodies of which Italy is a member.

491. The main points of the law are:

(a) the identification of the minorities present in Italy, taking into due account the general configuration of those linguistic minorities that have become established over time; to this end, Art. 2 lists the Albanian, Catalan, Germanic, Greek, Slovenian and Croatian communities and those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian;

(b) the involvement of the provincial and municipal authorities in delineating the geographical area in which the protective provisions are to be applied, and the enhancement of their role in the protection of minorities;

(c) the adoption by the regional authorities of measures to bring their legislation into line with the principles laid down by the legislation, without prejudice to existing regional laws that envisage more favourable conditions;

(d) wide-ranging and precise rules for the teaching of the protected languages and related cultural and traditional subjects in state schools, with initiatives by the universities to facilitate research and cultural and training activities in support of the objectives of the law;

(e) the possibility of using the protected languages in the activity of municipal councils and other collective structures in those municipalities where the provisions apply; this also extends to councillors in mountain communities and in provinces and regions whose territory encompasses these municipalities, where they account for at least 15% of the population concerned;

(f) in these municipalities, the option for the oral and written use of the protected language in government offices and the possibility of using the minority language in hearings before the Justice of the Peace;

(g) agreements for broadcasts of news and other programmes in the protected languages by the public radio and television channels, and agreements with local broadcasters;

- (h) the option for the regions, provinces and municipalities concerned to establish provisions for private publishers, the press and radio and TV broadcasters using the protected language;
- (i) the option for the councils of municipalities whose territories contain minority communities to decide on the adoption of place names in keeping with local traditions and customs, in addition to the official place names;
- (j) agreements with other countries for the development of protected languages and cultures used abroad and for cross-border and inter-regional cooperation;
- (k) the right to reinstate names and surnames in the original language;
- (l) funding allocations in the state budget for the application of the law, with the creation in the Department for Regional Affairs, part of the Prime Minister's Office, of a national fund for the protection of linguistic minorities.

492. From a more general point of view, the following features of the law 482/1999 are particularly significant:

- (a) the identification of the linguistic minorities entitled to protection, as listed in Art. 2, which implies the official recognition of the same as legally recognised minorities;
- (b) the attribution of a key role to the regional and local authorities. Of particular significance in this respect is the procedure for the delineation of the geographical and sub-municipal context in which the provisions for the protection of historic linguistic minorities are applied, as defined by Art. 3. This provision fully implements the principle of subsidiarity by attributing to local authorities the vitally important task within the context of this law of identifying the sphere of application of the protection and envisages the involvement of the communities concerned;
- (c) the introduction, including for long-established minorities, of provisions regarding the teaching of the minority language and its use in relations with government offices;
- (d) the special value attributed to international relations and cross-border cooperation for the purpose of protecting minorities.

493. The law also envisages the allocation of funding amounting to lire 20,500,000,000 per year from 1999 for the costs incurred in its application. More specifically, 2,000,000,000 per year have been earmarked for the promotion and realisation of local and national projects for the study of the languages and cultural traditions of members of recognised linguistic minorities; 8,700,000,000 lire per year have been allocated from the state budget for the costs incurred by local authorities in meeting the obligations envisaged by the law; and 9,800,000,000 lire per year have been earmarked to set up a national fund for linguistic minorities in the Department for Regional Affairs in the Prime Minister's Office.



494. As regards the protection of minority groups, where responsibility does not lie only with the state, the commitment of the regions to protecting minorities in their territory is particularly deserving of mention, especially in those sectors envisaged by the Covenant, since this commitment generally takes the form of protecting and enhancing the cultural and linguistic heritage of local communities.

495. In some cases this protection is provided through statutory provisions, as in the case of Piedmont, the Veneto, Molise, Basilicata and Calabria.

496. But even within the wider framework of their remits, especially as regards the cultural heritage and cultural and educational promotion activities, some regions have passed laws for the protection of the cultural and linguistic heritage of their linguistic minorities.

497. In this respect, a list of the principal regional laws concerning the protection of linguistic minorities is attached.

498. A number of provisions have also been introduced in recent years implementing the special Statute of the Trentino-Alto Adige Region. These contain regulations for the protection of the Ladin, Mochena and Cimbrian minorities as listed below:

(a) Legislative Decree 321 of 2 September 1997 containing “Provisions for the implementation of the special Statute of the Trentino-Alto Adige Region amending and supplementing Legislative Decree 592 of 16 December 1993 concerning the protection of linguistic minorities in the Province of Trento”;

(b) Legislative Decree 344 of 8 September 1999 containing “Provisions for the implementation of the special Statute of the Trentino-Alto Adige Region amending Legislative Decree 592 of 16 December 1993 concerning schools located in Ladin areas”.

499. The above mentioned implementing provisions establish rules for the protection and promotion of the ethnic and cultural characteristics of the Ladin, Mochena and Cimbrian communities in the Province of Trento and also envisage the use of the Ladin language alongside Italian as a teaching language in kindergartens located in Ladin areas. The provisions also recognise absolute priority in the recruitment, placement and transfer of staff in these schools for teachers who are able to demonstrate their knowledge of the Ladin language and culture.

500. Legislative Decree 487 of 15 December 1998, containing “Provisions for the implementation of the special Statute of the Trentino-Alto Adige Region amending Presidential Decree 691 of 1 November 1973 concerning initiatives for the reception of radio and television programmes in the Ladin language and the languages of other European cultural areas”, which lays down rules to enable reception of audio and video broadcasts in Ladin in the territory of the Provinces of Trento and Bolzano, is also worthy of note.

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