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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Reports submitted in accordance with Council resolution 1988 (LX) by States parties to the Covenant, concerning rights covered by articles 6-9

ITALY

[23 September 1981]

NOTE

Italy assigns special importance to the International Covenants on Human Rights and to the undertaking assumed by Member States to submit periodic reports to the United Nations on their implementation.

With a view to fulfilling this undertaking in the best possible way, the Ministry of Foreign Affairs established in 1978 an Ad Hoc Interministerial Committee on Human Rights. This Committee is presided over by an Under-Secretary of State for Foreign Affairs in co-operation with a Secretary-General who is an expert on the subject.

The permanent members of the Committee are representatives of the Ministries having competence in the sectors to which the Covenants apply (Foreign Affairs, Interior, Justice, Public Education, Health, Labour and Social Security). These members are joined by representatives of other Ministries when the subjects discussed so require.

Experts from the Italian UNESCO Commission, the Italian Association for International Organizations and the Advisory Committee on Human Rights and two jurists chosen from professors in the field of international law or of international organizations are also permanent members of the Committee.

This is the first Italian report on the economic rights laid down in the International Covenant on Economic, Social and Cultural Rights. It was prepared by a Working Group appointed by the Committee and made up of representatives of the Minstries mentioned above. The Committee subsequently discussed and approved the report during a plenary meeting.

The report was prepared in accordance with the directives laid down by the Secretariat of the United Nations for each article of the Covenant concerned with economic rights (arts. 6-9).

The basic conditions, the main programmes and the principal institutions involved with economic rights are described in the introductory section for each right.

The report begins with general information concerning the organization of the Italian State and the principles underlying the protection of all human rights. This will enable the reader to grasp the importance of the recognition of human rights, including economic rights, within the general context of the Italian democratic system.

Statistical information is either incorporated in the report or annexed to it.

GENERAL INFORMATION

A. The general organization of the Italian Republic

The political, economic and social organization of the Italian State is laid down in the Constitution of the Republic. This was promulgated shortly after the end of the Second World War after the fall of a dictatorial régime which had lasted more than 20 years and after the termination, following a referendum, of the monarchy, which in 1861 had unified the different States into which Italy was then divided.

On the entry into force of the Constitution, on 1 January 1948, Italy became a democratic republic in which the sovereignty belongs to the people (art. 1 of the Constitution). The people exercise this sovereignty in different ways: by election through universal and direct suffrage or indirect election of the different State organs - bicameral Parliament, President of the Republic, Government, regional organizations etc.; by participation in the introduction, suppression or modification of laws; and by participation in the administration of justice which takes place on behalf of the people (arts. 55-60; 71, second paragraph; 75; 83-85; 102, last paragraph).

The judiciary is an autonomous and independent organization and includes, besides judges, who are subject exclusively to the law and immovable, the organs of administrative justice (arts. 101, 103, 104).

Constitutional guarantees have been provided by the establishment of the Constitutional Court, whose decisions are not contestable, and by the laws for the revision of the Constitution and other constitutional laws which can be submitted to popular referendum (arts. 134-139).

The Republic is divided into regions, provinces and communes. The regions are autonomous entities possessing their own powers and legislative, administrative and judicial functions of the first degree, following the principles laid down in the Constitution. The provinces and communes are also autonomous entities in accordance with principles laid down by the general laws of the Republic. They are also decentralized State and regional circumscriptions (arts. 114-118; 125; 128; 129).

B. Principles and policies in the field of human rights

The recognition and protection of human rights find their place in the Republican organizational framework which we have described. This recognition and protection are of considerable importance because the Constitution lays down a number of basic principles of a general character as well as detailed or practical compulsory norms concerning each right. In addition, the enjoyment of these rights is favoured by two essential features of the Italian democratic system:

(a) The existence, guaranteed by the Constitution, of a political, economic and social pluralism which is reflected in the plurality of parties, trade unions and associations.

(b) The free exercise, also guaranteed by the Constitution, of all fundamental freedoms as a prerequisite for effective participation in the determination of economic, social and political policies.

Human rights as a whole are governed by two basic principles of the Constitution which recognize and guarantee such rights as inviolable (art. 2) and which assign to all citizens equal social dignity and equality before the law without any distinction (art. 3).

In accordance with these basic principles and with the more specific norms of the Constitution concerning each article on human rights, legislation in this field must contain no element which is contrary to these principles. The Constitution itself lays down that the Constitutional Court shall decide on disputes relating to the constitutional legality of laws and of acts having force of law (art. 134) and that, when the Court declares that they are illegal, they shall become invalid on the day following the publication of the Court's decision (art. 136).

Still within the framework of the Constitution, the protection of human rights involves two systems of direct democracy:

(a) The popular referendum designed to equate the legal organization with the popular will by eliminating legal institutions which are no longer appropriate and which therefore run counter to the most efficient protection of the citizen's rights; the referendum cannot be used for fiscal and budgetary laws, laws concerning amnesty or commutation of sentences, and the ratification of international treaties;

(b) The introduction of laws by popular initiative with the aim of allowing the people themselves to propose a bill to Parliament (art. 71).

The initial protection of human rights therefore precedes any specific judgement because it concerns the whole of the legal system and is designed to eliminate legal provisions which seem to be contrary to human rights or inadequate for their protection.

The protection of all human rights is ensured by the legal system operating either through the regular courts or through administrative courts in instances where they have exclusive competence.

The administrative courts include the Council of State, which is not only an advisory body in the administrative and legal sense but is also a body designed to safeguard justice in the administration; they also include the regional administrative courts. These courts have jurisdiction for the protection of the interests of the citizen as a member of the community vis-à-vis the public administration and in specific matters indicated by the law and also in the rights recognized to each person.

The Italian legal system is based on three stages of jurisdiction: first instance, appeal and cassation. During the first two stages cases are judged on the merits and on law while during the cassation stage cases are judged only on law.

C. Importance of international conventions for human rights in the domestic legal system

Among its basic principles, the Constitution states that: "The Italian legal system must conform to the generally recognized principles of international law" (art. 10). This general principle applies fully to the human rights which the international community has already defined and which it is continuing to define, not only as a practical expression of faith in the dignity and value of the human person but also as a prerequisite for peaceful coexistence between all peoples.

Under Law No. 881 of 25 October 1977, the two branches of the Italian Parliament unanimously ratified the International Covenants on Human Rights. As a result, the Covenants became part of Italian domestic law. Accordingly, they may be invoked by individual citizens in their dealings with the legal authorities. Ratification was preceded by a careful study of each article of the Covenants. Those dealing with economic rights proved to be in conformity with the principles of the Constitution and with existing legislation. As a result, Italy did not formulate any interpretative declaration or reservation on the International Covenant on Economic, Social and Cultural Rights.

Although there is a large measure of agreement between the principles and norms of this Covenant and those of the Constitution and of existing Italian legislation, we cannot exclude the possibility of a possible conflict between a provision of the Covenant and its corresponding domestic provision. We may assume that in dealing with a specific case the judge may be inclined to favour the provision of the Covenant, since this has already happened on a number of occasions with respect to other treaties ratified by Italy.

ARTICLE 6. RIGHT TO WORK

A. Constitutional provisions concerning the right to work

The Italian Constitution states in article 1 that: "Italy is a democratic Republic based on labour." The judgements of the Constitutional Court make it clear that this principle underlies the Italian economic and social system and is at the root of all legislation on labour protection.

Other articles of the Constitution translate this principle into specific legal provisions or policies whose substance is not only in conformity with, but wider in scope than, article 6 of the International Covenant on Economic, Social and Cultural Rights.

Article 4 of the Constitution states:

"The Republic recognizes that all citizens have the right to work and shall promote conditions making this right effective."

"Each citizen has the duty to exercise, according to his possibilities and choice, an activity or a function contributing to the material or spiritual progress of society."

As we read this article of the Constitution, side by side with the first paragraph of article 6 of the Covenant, we may easily notice that, under the Constitution, labour is considered not only as a right but also as a "duty", proportionate to the "possibilities" of each individual.

Article 3, second paragraph of the Constitution is also wider in scope than article 6, second paragraph of the Covenant. This constitutional provision states:

> "It is for the Republic to remove any economic or social obstacles which ... may prevent participation of all workers in the economic and social organization of the country."

Article 35, first paragraph is a necessary corollary of articles 1, 3 and 4 of the Constitution. This provision, while defining the elements which constitute the right of each individual to enjoy just and favourable conditions of work (dealt with under art. 7 of the Covenant) affirms in general terms that:

> "The Republic shall protect labour in all its forms and applications".

To sum up, according to the Italian Constitution, labour is explicitly conceived as a right and duty of the individual and as a means of participating in the organization of society; it is therefore safeguarded in the interests of the individual and of society.

The constitutional provision which affirms the right to work and the corresponding provision in the Covenant are in the form of guidelines. They require the State to achieve increasing levels of employment but do not guarantee each citizen the right to a job. The Constitutional Court took a decision along these lines; the provision in question requires the State "to direct the activities of all the public authorities and of the legislative powers themselves towards the establishment of economic, social and cultural conditions which allow the employment of all citizens capable of work" (Judgement No. 45, Year 1965).

The aim of full employment guides the action of the State in the economic field where private enterprise is unrestricted (art. 41, first paragraph, of the Constitution). However, the State itself can intervene through its own productive initiatives (public enterprises) and, in accordance with the third paragraph of article 41, through "programmes and controls necessary to ensure that economic activities, both public and private, can be directed and co-ordinated towards social goals".

Thus, as we shall see later, this desire to achieve the objective of full employment has encountered and still encounters important difficulties which are due mainly to the structure of the national economy. A feature of this economy is the existence of a large area in the process of development: the southern part of Italy. The policy of full employment coincides to a large extent with the policy aimed at developing this area. In spite of the efforts made and the progress achieved, the results so far do not yet indicate that this problem has been solved.

Moreover, during the 1970s, the internal imbalances of the economic structure of Italy were accompanied by other negative factors: a substantial decline in the rate of development and a growing inflation which increased the labour demand and subsequently complicated the problems of employment.

Guarantees against discrimination in access to work

The first and more general guarantee against any discrimination in access to work is derived from article 3, first paragraph of the Constitution which states that: "All citizens have the same social dignity and are equal before the law without distinction of sex, race, language, religion, political opinions or personal and social status."

Under Law No. 66 of 9 February 1963 the restrictions which previously existed upon the access of women to certain public offices were eliminated. This Law allowed women to pursue careers previously reserved for men, such as judgeships, diplomatic posts, prefectships etc. without any limitation on the functions involved or on career development. Special restrictions still exist, however, for jobs which are particularly onerous, such as the army and the police. However, in the police force women have access to administrative and executive posts.

Law No. 903 is of more general significance as regards the access of women to work in the private sector, which had previously been restricted over a long period. This Law eliminated all differentiation between working men and women and abrogated any provision contrary to the principle of equality without distinction of sex.

Just as it prohibits any discrimination against women in access to work, this Law also prohibits any such discrimination in the assignment of jobs and duties. It also lays down conditions for other aspects of female labour: equality of pay, retirement age, social welfare and so on.

This legal prohibition of any differentiation is absolute (it renders null and void all discriminatory agreements and acts). The rights deriving from this prohibition are safeguarded in law by the institution of rapid court proceedings and by the application of penalties for violations. Women who are victims of discrimination may appear before a judge of the first instance who, as a matter of urgency, may issue a temporary executive order. The employer may appeal against this order within a fixed time-limit. In such a case the judgement on the merits is conducted in accordance with the provisions governing "labour proceedings" dealt with subsequently under article 7 of the International Covenant. Failure to obey the decisions of the judge is penalized in accordance with article 650 of the Penal Code.

This important legislative progress has been achieved as a result of pressure exerted by nation-wide discussion, especially during the last decade, on the initiative of women's associations, political parties, trade union organizations and mass communication media. However, in practice, prejudice towards women and the resulting discrimination have not been entirely eliminated.

With regard to access to work by aliens, we must emphasize that the European Economic Community (EEC), of which Italy is a member, adopted several years ago a set of regulations establishing the free movement and equality of treatment of all workers of the Community. Thus, any discrimination based on nationality in the recruitment of workers, in their remuneration or in any other aspect of employment is prohibited in all member countries of the Community. These preferential regulations operate in the phase preceding the establishment of the working relationship by virtue of the principle of free movement; during the working relationship itself all workers from the countries of the Community enjoy the same rights guaranteed by the legal system of the country of immigration, including the right to join trade unions.

These are the EEC regulations to which all the countries of the Community are in the process of conforming.

For citizens of countries which do not belong to the Community, there is a different set of regulations which maintains the preference established for workers who are citizens of EEC countries. Citizens from non-EEC countries may obtain a residence permit for reasons of work and may have access to jobs offered by employers who are seeking foreign labour. In addition, special provisions are in force for the purpose of facilitating the employment of refugees who have been recognized as such on the basis of international provisions (Council Convention of 28 July 1951, ratified by Italy under Law No. 722 of 24 July 1954).

Nevertheless, many aliens travel to Italy ostensibly for reasons of tourism or study but in fact with the intention of obtaining paid employment without the necessary labour permit. This has led to a labour black market against which the competent authorities are conducting a vigorous campaign. Illegal workers, mostly from the developing countries, take on certain jobs in fields where there is a lack of Italian manpower and often accept conditions of payment different from those laid down in collective labour contracts. Moreover, employers consistently fail to pay the social welfare and social assistance contributions of such workers. For these reasons, and also because of the notable mobility of these immigrants, the evaluation of the number of foreign workers is extremely difficult. The estimates made by research institutes and trade unions are very conflicting. According to the most detailed estimate, there are some half a million foreign workers in Italy. A bill designed to remedy this situation is now being studied in Parliament.

Special regulations were introduced in 1979 under an adminstrative order of the Minister of Labour. They concerned foreign workers seeking employment in domestic service. Under this order it became compulsory to obtain a special authorization for their employment and for the payment of their social security contributions.

Under the Italian legal system the placement of workers in enterprises is a function exercised directly by the State and regulated by:

(a) Law No. 264 of 29 April 1949, which prohibits the intervention of private individuals in recruitment, even when their work is unpaid.

(b) Law No. 1369 of 23 October 1960, which nullifies all agreements designed to transform the bilateral relationship between worker and employer into a trilateral relationship in which a third person is involved for the purpose of evading the obligations laid down by the law for the actual employer. This law applies also to all enterprises concerned with public works. Thus, this prohibition may also be applied to public agencies (Judgement of the Court of Cassation No. 5019 of 1979).

The non-transferable nature of the placement of workers was confirmed by the Court of Cassation in Judgement No. 592 of 1976 and by a large number of decisions concerning the judgements of the Court itself, the other courts and the Appeals Courts. All these decisions confirm that existing legislation is designed to ensure that workers have a direct relationship with the enterprise as regards recruitment, remuneration and conditions of work.

The recruitment of personnel to government offices is the subject of an extensive and detailed set of regulations. Such recruitment is based on public competitive examinations. The Italian public administration is now being reorganized; one of the aims is to unify the qualifications for all administrative posts and to set standard examinations.

B. Measures to achieve the full realization of the right to work

Development policy and employment policy

As we have already mentioned, the internal imbalances in the country's economic structure have led, through several stages of indicative planning, to the identification of development policy with employment policy as inseparable components of national economic policy.

There has been no lack of programmes specifically aimed at alleviating unemployment in certain sectors and, at the same time, helping unskilled workers to receive vocational training; for example, responsibility has been assumed for the organization of "workshop-schools" in the building sector and of "afforestation workshops" in the agriculture and forestry sector. Similarly, there has been no shortage of major programmes aimed at solving different types of problems, such as developing the construction of low-cost housing, and these, albeit indirectly; have enabled some progress to be made in the fight against unemployment. These were, however, sectoral programmes which were not and are not aimed at significantly altering the imbalances in the country's economic structure.

More recently, as will be seen later, general legislative measures have been adopted aimed at helping young people find jobs. The results have, however, been modest, thus confirming the need for an over-all development policy capable of "creating" new jobs.

Without going into a more detailed analysis of the last 10 years, the situation in Italy may be outlined as follows: the development policy, a permanent goal, has been greatly affected not only by structural factors but also by shifts

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in the international balance resulting from the deterioration in the terms of trade with the oil-producing countries.

This phenomenon affected all the industrialized countries causing a general reduction in the rate of development aggravated by high inflation but in Italy its effect on the general economic situation was particularly widespread: the reduction in the rate of development manifested itself in a number of dramatic ways as a result of the existing permanent structural imbalances; the low level of productivity caused a currency devaluation, thus damaging the more advanced economic sectors which depend on technology and innovations from abroad; the trend among the population, especially among women, toward active work became more pronounced causing serious employment problems.

In the circumstances described above, the industrial sector found itself unable to absorb new manpower and was limited to natural turnover among its own work force keeping the level of employment in fact stable. Employment therefore increased, where possible, through the expansion of public and private service industries. This was not, however, enough to prevent a rise in the level of unemployment, especially among young people and women.

In this respect, the results of the sample survey on the labour force carried out by the Central Statistical Institute (INSTAT) are significant: from 1971 to 1979, the number of people employed rose from 20.06 million to 20.37 million; the number of people seeking work increased from 1.54 million to 1.70 million; among the latter group, those who were looking for their first job rose from 0.7 million to 0.86 million. In relative terms, the rate of employment increased slightly (from 38.9 to 39.4 per cent) and the unemployment rate rose from 7.2 to 7.7 per cent.

According to the same survey, women looking for work appeared to be even worse off: the employment rate remained practically unchanged throughout this period while unemployment rose from 12.5 to 13.3 per cent.

The above-mentioned increase in the number of people seeking employment is confirmed by surveys carried out by the Ministry of Labour and Social Welfare on the basis of those registered at employment offices: in 1979, an average of 1.73 million people were registered, including 0.74 million young people under 21 and other people seeking their first job. The Ministry figures regarding women in search of employment correspond to those of INSTAT: the number of those on the unemployment registers increased by 13 per cent from 1978 to 1979 compared to 7 per cent for all those in search of work.

The number of people registered at employment offices increased in all geographical areas of the country; however, the largest number registered continues to be found in the south: 0.85 million people out of a total of 1.3 million.

As far as occupational groups are concerned, the unemployment registers indicate that the greatest concentration of unemployed is in the industrial sector (0.55 million), non-manual workers (0.40 million) and manual workers in general.

As we have already mentioned, special measures have been taken to combat unemployment among young people seeking their first job. Law No. 285 of 1 June 1977 established "special placement registers" open to all young people aged 29 or under and Law No. 479 of 4 August 1978 established an exception to the usual rule that owners can only make numerical requests for people on the unemployment registers. In effect, it allowed owners employing up to 10 people to make requests by name for people on the placement registers.

The number of young people wishing to put their names on the "special placement registers" has been considerable, especially in the south. One year after the promulgation of the first law in 1977 some 725,000 people had registered, (including 447,000 in the south), a figure which increased to 841,000 (533,000 in the south) the following year. These figures are very close to the number of people looking for their first job as calculated by INSTAT in its survey of the labour force for 1979.

The results achieved by youth employment legislation appear to have been only modest. Only 75,000 young people have in fact found jobs, including 60,000 in the Civil Service.

Organization of employment services

The employment services are run by central and local bodies of the Ministry of Labour and Social Welfare. The central body is the "Central Commission for Job Placement and Assistance to the Unemployed"; local bodies are set up in every province and region and are called "Provincial and Regional Labour and Maximum Employment Offices". These offices are also split into district and municipal branches. They have the following responsibilities:

Registration and placement of manpower;

Settlement of individual and collective disputes arising within the region or province;

Gathering the information necessary to study the unemployment situation;

Recruitment of workers who are emigrating, providing them and their families with assistance and placing them with emigration centres;

Vocational guidance and training;

Management of labour and afforestation workshops as one way of providing vocational and economic assistance to the unemployed;

Creation of some welfare and assistance allowances such as unemployment benefit and special grants for workers who are involuntarily unemployed;

Allocation of housing built specifically for workers;

Initiatives aimed at full employment and any other responsibility required of them by the Ministry.

The principal tasks of the employment offices - unemployment registration and job placement - are carried out on the basis of strict rules so as to avoid any favouritism. Therefore:

(a) For each skill there is a grading system based on the length of time registered; all the grading systems are open; the employment office has no discretionary powers in placing those registered in jobs.

(b) The owner of an undertaking may only make "numerical inquiries concerning those registered; he may not specify by name any individual on the register and must accept the worker sent him by the employment office; he can reject him only if he himself has previously dismissed the person on fair grounds resulting from major failure to carry out contractual obligations within the meaning of Law No. 604 of 1966 which governs the dismissal of the individual workers and which will be dealt with later.

"Requests by name" (besides those allowed under the youth employment law) are also permitted for members of the owner's family, for staff exercising managerial functions, skilled workers, highly specialized workers, workers based at home, caretakers, staff appointed for the upkeep of a house and workers for businesses employing up to three people. There are also special rules governing the employment of staff when the work requires special physical characteristics or professional background.

Placement of applicants depends on the length of time they have been registered. However, workers made redundant following local or sectoral economic crises or because the undertaking is being restructured or reorganized are entitled to preference in job placement at undertakings which, in the same locality, are involved in the same sort of industrial activity as the undertakings where the redundant workers had been employed.

A similar right to preferential treatment is recognized, for a one-year period, for workers made redundant by an undertaking because of a reduction in manning levels; they are allowed to exercise that right if the same undertaking recommences recruitment along with workers who have obtained a professional qualification at vocational schools or institutes, workshops, schools for the unemployed, afforestation workshops, etc.

Currently, a plan for reorganizing employment services is being prepared, its aim being to promote labour mobility and a more balanced distribution of employment at the national level.

Furthermore, thought is being given to the advisability of experimenting locally with an "observation post" focused on labour problems, without bureaucratic restrictions, which would fulfil the task of linking the supply of labour with the demand, both materially and in terms of awareness, thus overcoming the lack of homogeneity in the available statistics on the subject.

Technical and vocational guidance

It has been and remains difficult to work out and implement an integrated technical and vocational guidance policy to direct young people towards fields which suit each individual and, at the same time, are areas where employment can really be increased. There are three main reasons for these difficulties: the imbalance existing between the demand for and the supply of labour; the process of reforming educational institutions, especially secondary institutions, the modernization of which in line with the current demands of science and technology has long been under study but has not yet been precisely worked out. Finally the so far unresolved question of whether technical and vocational guidance should take place within schools themselves or through connected but external services.

Several planned reforms concerning secondary education and universities, vocational training, apprenticeship and youth employment contain references to technical and vocational guidance but they propose to solve problems particular to each sector and do not contain plans for general remedial measures to guide the educational and vocational choices of young people. Similarly, various laws, decrees and regulations promulgated in the last 10 years refer, inter alia, to the problem of technical and vocational guidance but not in a systematic way and contain no guidelines which would make it possible to define the terms of reference for an over-all integrated policy.

Lacking an integrated policy and a clear definition of terms of reference, various ministries - Education, Labour, Health - up to 1972 directly carried out or promoted guidance activities which, however, were often associated with the final stages of vocational education and training. These included notably:

Ministry of Education vocational institutions with three-year courses in various subjects: industry and crafts, commerce, the hotel trade, agriculture, etc.;

Vocational training centres for apprentices, recognized by the Ministry of Labour;

Training schools for auxiliary health work, under the Ministry of Health.

As we will see below, in 1972 - in pursuance of articles 117 and 118 of the Constitution, which establish the principle of administrative decentralization and give the regions legislative and administrative responsibilities in a number of fields, including vocational training and the teaching of manual skills - all vocational training courses were allocated to the regions. Technical and vocational guidance was not however regulated in an integrated fashion.

To overcome the legislative short-comings in this area, the National Economic and Labour Council (a consultative body of the Parliament and Government under Instituting Law No. 33 of 5 January 1957 and Law No. 1246 of 4 November 1975) drew up and submitted to Parliament a draft law on "educational and vocational guidance" which also takes account of the need to find a just solution to the imbalance existing between the supply of and demand for labour by working not only on the "quantitative" aspect of demand but also on the "qualitative" aspect of supply.

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The draft law assumes that the "end purpose of educational and vocational guidance" is to permit each individual to become suitably aware of his inclinations and abilities by giving him the fullest possible guidance on where employment opportunities are appearing, in the light of the current situation in the labour market and its foreseeable development qualitively and quantitively speaking, as a component of economic planning.

Given that ultimate goal, the service, which the draft law considers to be "in the public interest", is aimed mainly at young people of school age, adults and civil pensioners and those disabled as a result of accidents at work. Those who wished to use the service would be provided, impartially and without discrimination, with information and advice entailing no obligation and being exclusively for guidance to help them make independent decisions and conscious choices. The service would be run by "guidance counsellors" who would have a specific professional qualification.

Responsibility for organizing the service would be given to the regions. They are to set up special "information and guidance centres" possessing all the information necessary on educational institutions, vocational training courses, grants, competitive examinations, job descriptions and the current situation and foreseeable movements in the supply of and demand for labour.

The draft law also sets forth ways of informing the public on the activities of the centres and the necessary links with the educational system, job protection bodies, employment offices, trade unions, etc.

Finally, a "National Committee for Educational and Vocational Guidance" would be established as an advisory body of the Office of the Council of Ministers, and a "National Institute for Information and Educational and Vocational Guidance" would be set up to provide technical assistance for study and research into the most efficient ways of collecting and disseminating information.

There can be no doubt about the exhaustive and systematic character of the draft law which, if adopted, would mark a decisive turning point in public action to improve, as far as possible, the State's response to the need for action which takes account of the "qualitative" aspect of the supply of labour. The debate on the Council proposal has already begun and there is no lack of alternative suggestions, such as the idea of preparing an outline law which would contain general criteria rather than very detailed rules. Whatever the outcome of this initiative, however, it has certainly opened a discussion on the establishment of a legislative system covering technical and vocational guidance.

Technical and vocational training

Article 35, second paragraph, of the Constitution stipulates that the State is responsible for the development and the professional advancement of workers.

This task was initially assigned to the Ministry of Labour and National Insurance (Law No. 456 of 1951), which carried it out through its local bodies.

As we have already indicated, jurisdiction was then transferred to the regions (Decree of the President of the Republic No. 10 of 15 January 1972) in accordance with the regional legal system established by the Constitution.

Under the Constitution, it is the duty of the State to define the fundamental principles on which national and vocational training policy should be based, and after seven years of discussion of the complicated organizational and functional problems which this involves, these principles were laid down in an Outline Law (Law No. 845 of 21 December 1978).

The purposes of this Outline Law are:

(a) To provide for the vocational training of citizens by establishing public facilities ("vocational training centres") open to the public free of charge throughout the national territory and by involving enterprises in such training in the form of agreements;

(b) To link vocational training to the school system through reciprocal use of vocational training centre facilities and established State vocational institutes (whose future linkage to the regions is also envisaged in the Outline Law) and through the option of readmission to secondary school;

(c) To link vocational training and employment policies with due regard for the guidelines set for programming and for economic development as well as those established by the European Economic Community;

(d) To conduct experiments and research to be co-ordinated by the Ministry of Labour.

The promulgation of the Outline Law immediately prompted the regions to prepare regional draft laws designed to mould vocational training in accordance with the principles embodied in it. A first glance at these drafts brought to light several trends: decentralization by delegating functions to communes, provinces and regional bodies, thereby establishing institutional pluralism in vocational training; codification of principles of democratic participation in the establishment and management of centres (advisory committees, management committees, etc.); the institution of social services for students (catering services, transport, etc.) while harmonizing curricula on the regional level.

Since the vocational training policy laid down in the Outline Law is relatively new and therefore still in its early stages of implementation, it is not yet possible to make an accurate assessment of work in progress, but an initial evaluation has yielded the following (provisional) results:

(a) More than 1,600 vocational training centres are in operation, approximately 750 of which are in southern Italy;

(b) The largest group consists of centres which specialize in a single type of training (monosectoral centres), predominantly in the form of industrial and commercial guidance;

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(c) The centres offer an average of 4 to 5 courses a year;

(d) They now have approximately 25,000 staff members, of whom some 18,000 are teachers usually on open-ended work contracts;

(e) The number of students rose to more than 200,000 of whom slightly less than half are in southern Italy; because most of them are young, they attend the centres on a full-time basis; a few have some kind of job, usually temporary or precarious.

In Italy the institution of "apprenticeship", is fairly common: the entrepreneur, while using the apprentice's labour, gives him the practical training he needs to qualify him as a skilled worker.

Law No. 25 of 19 January 1955 laid down the procedures for apprenticeship (the granting by local offices of the Ministry of Labour of a special authorization to the entrepreneur who wishes to hire apprentices; the registration of the apprentice with the Communal Placement Office) and the conditions (15-year age minimum for apprentices, two-year maximum for apprenticeship, criteria for remuneration, payment of social security contributions, etc.).

Recent laws, in 1977, established new kinds of vocational training which are effected through "vocational training contracts" designed to enable young people to get the kind of vocational training which will facilitate their subsequent more rapid integration into the enterprise. Most of the entrepreneurs, however, preferred the apprenticeship system.

In fact there is still an urgent need for this traditional form of vocational training in those areas where school attendance after the compulsory years is very low. Furthermore, in some regions practical apprenticeship is supplemented by additional technical education courses.

Apprenticeship is quite common in small-scale enterprises, which employ some 470,000 apprentices a year, particularly in manufacturing ones. In other enterprises apprentices number approximately 270,000, including some 140,000 in manuacturing ones and 83,000 in trade, tourism and in public offices.

Protection against arbitrary dismissal

The open-ended work contract may be terminated unilaterally by the entrepreneur (dismissal) or by the worker (resignation) provided that the terminating party gives "notice" to the other in the terms and in the manner laid down in collective contracts or by custom or equity (Civil Code, art. 2118).

The employer's power to terminate a contract does not constitute a general principle in the Italian legal system because, as we shall see, the scope of this article of the Civil Code has been narrowed significantly, either by trade-union contracts or by several laws designed to provide the worker with maximum protection in the case of dismissal.

Dismissal without notice is unlawful and obliges the entrepreneur to pay the worker the compensation due him through a "subsitute compensation" proportional to his wages and any other continuing remuneration which should have been paid to the worker during the notice period. A dismissed worker must also be paid dismissal or retirement pension allowances (Civil Code, articles 2120 and 2121).

The following laws currently govern individual dismissals:

(a) Law No. 604 of 15 July 1960, which is extremely important because it excludes the completely discretionary termination of a work contract by the entrepreneur.

This Law applies to enterprises in all sectors if they have more than 35 employees. It is also valid for apprentices and introduces the following new features:

(i) The entrepreneur must inform the worker in writing of the reasons for his dismissal;

(ii) The reasons for dismissal given by the entrepreneur are investigated;

(iii) The entrepreneur must rehire a worker who has been dismissed unfairly.

The only reasons for dismissal recognized by law as legitimate are "just cause" or "justified grounds". The former refers to every situation relating either to the entrepreneur or to the worker which prevents a continued working relationship and collaboration between them, and the latter refers to the behaviour of the worker which, in the entrepreneur's opinion, is such that it has adverse and decisive effects on production.

The validity of the reasons may be checked by the trade union and by administrative channels in the manner to be outlined subsequently within the context of the right to organize, including article 8 of the International Covenant. When the parties do not agree, the worker may seek remedy in the courts, which are authorized to determine once and for all whether or not the dismissal was legitimate.

In any case, even in enterprises with fewer than 35 employees, dismissal is invalid if motivated by political or religious reasons or by participation in trade-union activities. These provisions are in accord with article 2 of the Constitution relating to inviolable individual rights and article 39 relating to freedom of association.

The obligation to rehire the worker remains intact where the dismissal was without just cause or on unjustified grounds and if the entrepreneur does not rehire the worker he must pay him compensation proportional to his remuneration, to the size of the enterprise and the length of his time of service.

(b) Law No. 300 of 20 May 1970, entitled "Workers' Statute"

This law has further limited the autonomy of entrepreneurs by barring, for industrial and commercial enterprises with more than 15 employees and agricultural

enterprises with more than five, the option of either rehiring the worker or paying the compensation stipulated in the preceding law of 1960. The entrepreneur is therefore obliged not only to compensate the worker but also to rehire him when the unlawfulness of a dismissal has been established by absence of just cause or valid grounds.

The laws described here do not apply to managerial personnel, to workers eligible for old-age pensions and, in the case of mass dismissals, to personnel reduction.

Furthermore, workers in the public sector enjoy a completely different legal status which inter alia guarantees security of tenure.

Other restrictions on dismissal have been laid down in the Civil Code, and in laws or decisions of the Constitutional Court concerning special subjective conditions applying to the worker:

(a) In case of illness or accident, the worker is entitled to keep his job (Civil Code, art. 2110) and if these conditions are confirmed during the period of notice of dismissal, the dismissal shall remain in suspension until the worker has recovered (Constitutional Court Judgement No. 2863 of 13 October 1961);

(b) Women may not be dismissed between the beginning of pregnancy and completion of the child's first year (Law No. 1204 of 30 December 1971);

(c) The dismissal of a woman who gets married is null and void until one year after the marriage (Law No. 7 of 9 January 1973);

(d) Hiring in direct proportion to the total number of employees is made obligatory for such categories as refugees and civilian, military or industrial invalids and their widows or orphans.

Law No. 604 of 1966 does not apply to mass dismissals owing to personnel reduction, which are regulated by the Presidential Decree No. 1019 of 24 June 1960 and by the Interconfederal Trade-Union Agreement for Industry of 1965.

These provisions stipulate that the entrepreneur must notify the trade-union organizations through his own association before dismissing anyone. Efforts at conciliation between the parties will then be made in order to avoid dismissals or to limit them while seeking new solutions to the enterprise's technical or economic problems. After conciliation efforts have been made, even if the outcome is negative, the entrepreneur may carry out the dismissals on grounds of reduction of personnel and taking into account certain preferential criteria for job protection (technical requirements, in-service seniority, dependants, etc.).

Failure on the part of the entrepreneur to observe the procedures we have just described does not invalidate the dismissal but entitles the dismissed worker to compensation for loss of income proportional to the period in which the conciliation procedure should have taken place.

Similarly, the dismissal of members of in-house committees and of delegates of enterprises, which will be dealt with in the section concerning the right to organize (art. 8 of the Covenant) is covered by another interconfederal agreement for industry of 1966. This agreement stipulates that such persons may not be dismissed or transferred without the authorization of the trade-union organizations to which they belong before the end of the year following the expiration of their term of office.

Article 22 of Law No. 300 of 1970 provides the same protection in the case of transfer of personnel.

Unemployment protection

In addition to protection against arbitrary dismissal, trade-union efforts have also encouraged the provision of legal safeguards and umemployment protection.

This problem is covered by many laws. The current system provides three major types of protection:

(a) Guarantee against involuntary unemployment resulting from termination of the work relationship;

(b) The system of wage compensation (i.e., earnings compensation fund) the purpose of which is to pay workers employed in industrial enterprises compensation in the event of reduction or suspension of work;

(c) Holding open of the job for the employee who has worked at least three months and has been called to military service, and prohibition of dismissal for at least three months after he has returned to work (arts. 2110 and 2111 of the Civil Code and Law No. 370 of 3 May 1955).

In the case of guarantee against involuntary unemployment, the insurer is an ad hoc public body, the National Social Insurance Institute (INPS), regulated by the Ministry of Labour. The entrepreneur is the contracting party under the law and the worker is assured that, when a working relationship is terminated, he shall receive a small daily compensation for periods varying according to the work sector, for a minimum of 120 days and a maximum of 360 (for workers in the building trades).

Higher payments are made to:

(a) Workers dismissed by industrial enterprises who have worked for at least 13 months on a fixed-term contract; their daily compensation is equal to two thirds of their daily salary for the last month of work and is paid for a period of 180 days (Law No. 1115 of 5 November 1968 and Law No. 464 of 8 August 1972);

(b) Building trade workers, who get compensation equal to two thirds of their regular salary for a maximum of 90 days when dismissed because either the enterprise has been closed down or work on the construction site has ended (Law No. 427 of 6 August 1975).

Obviously, in view of the nature of unemployment protection insurance, the payment of daily compensation is dependent upon the payment of a certain quota of contributions by the entrepreneur, which varies according to the category of workers or the size of insurance benefits.

The three kinds of insurance described do not apply to workers employed on year-round jobs for less than six months or workers whose remuneration consists exclusively of profit-sharing or product-sharing.

In the case of wage compensation for reduction of working hours or temporary suspension of work, workers' protection, originally established only for workers in the industrial sector, was extended in 1972 to workers in the agricultural sector (Law No. 457 of 8 August of the same year). The system of protection covered was reorganized by Law No. 164 of 20 May 1975; it is funded from the contributions of enterprises and from State aid.

It is administered by INPS through two ad hoc bodies, the National Fund for Wage Compensation for Industrial Workers and the Wage Compensation Fund for Workers in Agricultural Enterprises.

Industrial workers receive two types of wage compensation:

(a) The first, normal wage compensation, is due to workers who have been suspended or who work reduced hours because of a production slow-down resulting from a temporary situation not ascribable either to the enterprise or the workers. Wage compensation is paid in the amount of 80 per cent of the total wage to which the worker would be entitled for the work hours not assigned for three months and extendable to a maximum of 12 months.

A similar system is provided for workers in the building and related trades;

(b) The second, special wage compensation, paid like the normal one but for a longer period (in some cases up to two years) presupposes sectoral or local economic "crises" or the restructuring, reorganization or conversion of the enterprise, which have been declared by ministerial decree after consultation with the national trade union organizations (Law No. 675 of 12 August 1975).

For agricultural workers on open-ended contracts who work less than 180 days a year, a single type of wage compensation is provided which, in the event of suspension of work because of seasonal bad weather or for other reasons not ascribable to the worker or to the employer, guarantees compensation to the amount of 80 per cent of wages for a period of up to three months.

Under Law No. 155 of 23 April 1981, the special payment of wage compensation provided for industrial workers has been extended also to employees of service enterprises, catering establishments and commercial enterprises employing more than 1,000 persons.

ARTICLE 7. RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. Right to remuneration

Fair and adequate remuneration

The just and favourable conditions of work set forth in article 7 (a) of the International Covenant - fair and adequate remuneration for a decent living for workers and their families - are fully covered in the first paragraph of article 36 of the Italian Constitution which reads:

> "The worker is entitled to remuneration proportionate to the quantity and quality of his labour and in any case sufficient to ensure him and his family a free and a dignified existence."

According to the opinion of Italian jurists and Italian judicial precedents, the purpose of this constitutional norm is not to affirm the "parity of benefits" in fulfilling the labour contract, but the "intrinsic value" of labour. In this connexion, Judgement No. 75 of 1964 is particularly significant.

The criterion of fairness of remuneration referred to in the International Covenant is subsequently described in the constitutional norm as being "proportionate" to the quantity and quality of the work done, in order to take into account the different value which the work may have in terms of the competence and commitment of the worker. Consequently, too narrow a scale of remuneration, whether towards the top or towards the bottom, would be contrary to the Constitution.

The concept of adequate remuneration is also better described in the constitutional norm: it makes a specific reference not only to a dignified but also a "free" existence. Furthermore, Italian legal opinion has clearly stated that the criterion of adequate remuneration embodies and corrects that of proportionality in the sense that, regardless of the work done, remuneration cannot fall "below a minimum" which ensures the worker a free and dignified existence.

Over the years, the Court of Cassation has gradually defined as follows the nature of the constituional norm under consideration, by referring both to the provisions of the Civil Code and to the features of the right to remuneration.

(a) The norm is a question of perception and not merely of policy; consequently the contractual determination of the remuneration in the case of a sustained and main activity is void if it does not ensure respect for the two criteria laid down in the Constitution (Judgement No. 1412 of 1967);

(b) The norm confers on the worker a subjective right which he can claim through the judicial process (Judgement No. 4035 of 1954);

(c) Violation of article 86 of the Constitution may also be invoked against a collective rule if it fails to meet the criteria established by the constitutional norm (Judgements No. 2275 of 1979 and No. 467 of 1970);

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(d) The right to fair and adequate remuneration may be invoked by the worker when he believes that the established remuneration proves to be an inadequate return for the work done (Judgement No. 1145 of 1964);

(e) The right to remuneration may not be renounced under the terms of the first paragraph of article 2113 of the Civil Code, which lays down the general principle that any attempt to compromise the irreducible rights of workers is invalid (Judgement No. 2015 of 1966).

The right to remuneration, being irreducible, is also recognized for apprentices, dependent craftsmen and workers remunerated through profit-sharing.

The Court of Cassation has nevertheless ruled that the apprenticeship relationship is not fully comparable with regular work, because the output of apprentices is variable and above all, because their work is done not only in exchange for wages but also to acquire vocational qualification (Decision No. 66 of 1966).

The Court of Cassation also ruled that the workers remunerated through profit-sharing are entitled to part of the wages established by the contract if the entrepreneur's profits are so reduced that they do not materially cover the minimum adequate remuneration (Judgement No. 2928 of 1966).

Equal remuneration for equal work

The only case in which the principle of equal remuneration for equal work required, in Italy, additional legal provisions is that of remuneration for women workers.

The existence of a precise constitutional norm - article 37, paragraph 1 of the Constitution, under which women have the same rights and, for equal labour, receive the same remuneration as working men - was not sufficient to eliminate discrimination then existing (1948) in the private sector and to ensure equal remuneration.

Trade union activity gradually, but not completely, corrected that situation towards the 1960s and continued discrimination of various sorts against women led the legislature, in 1977, to adopt Law No. 903. This law eliminates from the Italian legal system any distinction between men and women in respect of work, establishes penalties for violators and explicitly abrogates any provision which is contrary to it.

With respect particularly to remuneration, the law provides that:

(a) The working woman has a right to the same remuneration as the working man when the performances required are equal or of equal value;

(b) The system of occupational classification designed to determine remuneration must have the same criteria for men and women.

Of special importance too are the norms which prohibit any discrimination between women and men in the assignment of job titles and responsibilities and in promotion opportunities during their careers and which give women the right to work until the same age as men.

Means used to establish remuneration

The base remuneration established by collective bargaining and, in the public sector, by law has two major components:

(a) Cost-of-living allowance, which is based on a "sliding scale", designed to equate the nominal value of remuneration with the real value, in terms of purchasing power. This system was originally introduced in collective wage agreements and subsequently extended to the public sector (Law No. 324 of 27 May 1959). The computation of the cost-of-living allowance is carried out quarterly on the basis of the fluctuation in the cost of living determined by the Central Statistical Institute. Until 1975 - the year in which an inter-trade-union agreement was concluded - the cost-of-living allowance varied according to categories. Currently, there is a trend towards standardization of all sectors.

(b) Family allowances, which are paid to the working head of the family, including apprentices, in accordance with a fixed scale calculated according to the base remuneration and the number of dependants. These allowances supplement the base remuneration but nevertheless have a social welfare function. Under the above-mentioned law on equal labour for women, family allowances may be paid to working women also. More complete information will be provided in the report on the right to social security.

In addition to the major components of the base remuneration referred to above, there are other forms of allowances which depend on the nature of the work. These include post allowances, production bonuses for strenuous work, job rotation for hardship posts and special transfers or missions.

These allowances are paid to all workers under the conditions indicated above. With respect to allowances paid only to each worker, such as "ad personam" allowances, the "Workers' Statute", cited above, prohibits any wage differential for political, trade union and other such reasons. Following a Judgement of the Court of Cassation, all wage differentials must be objectively justified by, for example, the highly specialized nature of the job (Judgement No. 1676 of 11 June 1973).

Finally, remuneration includes different payments which, even if they are due in the course of the work, are paid subsequently. These include "thirteenth month" or "Christmas bonuses", seniority increments and separation payments.

Promotion opportunities

Promotion to a higher level with a corresponding increase in remuneration is based exclusively on seniority and competence - a principle laid down in article 7 (c) of the International Covenant. This principle is applied to the

private sector in an indirect way through legal provisions intended to avoid any discrimination against the worker.

The most recent and general norm is established by the "Workers' Statute" which prohibits and nullifies any discriminatory act of a trade-union-related, political or religious nature, throughout the entire period of the job, and therefore also in the case of promotion and the phases which precede it (recruitment) or follow it (end of the job).

The principle is laid down in a more explicit and direct manner, with respect to working women, by the already cited 1977 law which prohibits any form of discrimination based on sex, as well as in "opportunities for career advancement".

In the public sector, possibilities for promotion depend solely on the availability of jobs in higher grades and with greater responsibilities. In many cases refresher training courses and internal examinations are held for the promotion of employees recognized as the most competent.

Again in the public sector, a very recent 1980 law laid down recruitment procedures for young people employed under training contracts on the basis of the above-mentioned law on the employment of youth in the Civil Service. This law states that a proportion of jobs available in the different categories should be reserved for young people in accordance with special scales.

Legal disputes

The above analysis of the aims of worker protection, based on article 36 of the Constitution, and the frequent references to legal opinion and practice might lead to the belief that pay disputes are limited in Italy. In fact, they are frequent because they deal also with the various components of remuneration and with termination and pension allowances.

For this reason, and as another form of worker protection, a law was passed in 1973 on labour and welfare disputes which lays down special procedures to speed up the judicial process and reduce legal costs (Law No. 533 of 11 August 1973).

Before dealing with the norms established by this law, it might be useful to recall that in practice the courts tend to regard remuneration fixed by collective labour contracts as conforming to the requirements of proportionality and of adequacy established by the Constitution. The judge, in determining the remuneration, normally takes as the basic criterion the remuneration established by the collective labour contract of the trade union which represents the category to which the worker belongs, regardless of whether or not the worker is a member of that trade union.

The worker who wishes to contest the remuneration accorded him has three different approaches:

Through a trade union, by making use of the conciliation procedures provided for in the collective contract for the category of workers to which he belongs;

Through administrative procedures, by enlisting, also through a trade union, the conciliatory efforts of an ad hoc provincial body - the conciliation commission - comprising the Director of the Provincial Labour Office, who presides, and four representatives of the employers and four of the the workers (article 410 of the Civil Procedure Code);

Through the courts, by instituting first-degree proceedings regardless of the amount sought by the worker.

With regard to the third possibility, the above-mentioned 1973 law seeks to ensure the speediness of the proceedings, simplification of procedures and reduction of costs. Without going into detail, we give below an outline of the main innovations introduced by this law in ordinary civil proceedings.

(a) Speediness of the proceedings: the judge fixes the hearing of arguments between the parties, within five days following the worker's deposition, by issuing a warrant of which the employer must be notified. The employer must within 10 days deposit with the clerk of the court a detailed and documented defensive memorandum. If, at the hearing, the dispute is not settled, the judge fixes, for the submission of further evidence, another hearing for a later date within 10 days. The decision must be deposited with the clerk of the court within 15 days of its being handed down.

(b) Arrangements made in favour of the worker: the payment of non-contested sums may be authorized, any time during the proceedings, by a decision of the judge and on the request of the worker. The judge may also authorize the payment of sum, provisionally, when such payment is mandatory and within the prescribed limits. The transitory arrangements and the decision issued by the judge have executive force.

(c) Reduction of costs: the worker and the employer may represent themselves without the legal assistance of counsel when the cost of the proceedings does not exceed a specified amount. All documentation relative to individual labour disputes are exempt from all taxation and charges. Of importance also is the granting of free legal aid in estimating the state of economic necessity and in the procedure to be followed to obtain satisfaction.

In other words, under the "new labour procedure", the worker can obtain satisfaction within a reasonable time. However, the number of disputes dealt with has increased greatly as a result of the multiplication of job relationships and the greater means of protection made available to the worker by law. This situation has made it virtually impossible in the legal offices of the most densely populated centres to respect the deadlines set by law. Nevertheless, the delays previously encountered in this type of proceedings have been considerably reduced.

B. Industrial hygiene and safety

Reforms under way

Far-reaching innovations are at present being introduced into State practice

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regarding industrial safety and health as part of a comprehensive reform which, through the inauguration of the "National Health Service", embraces all aspects of health protection. The framework for this reform was promulgated in Law No. 833 of 23 December 1978, which entered into force on 1 January 1979 after lengthy and complex preparatory work on the necessary infrastructures. Provision is made for the issue of new regulations regarding industrial safety and health, and they are still being drafted.

A detailed description of the National Health Service, the purpose of which is to protect the health of "all" citizens at "all" levels of living and work, will be supplied as part of the information concerning social security (art. 9 of the International Covenant).

We will therefore confine ourselves to describing the chief innovations which the establishment of the National Health Service has brought about in the sector concerned:

(a) The function of organizing industrial health and medicine and the prevention of occupational accidents and diseases is assigned to "local health units" which are already operating throughout the country within zones delimited not by existing administrative boundaries but on the basis of specified groups of the population, varying in size from 50,000 to 200,000, depending on the population density and socio-economic characteristics of the individual zone;

(b) The services hitherto performed by the Ministry of Labour through the labour inspectorates are now administered by the regions;

(c) A technical-scientific body responsible to the Ministry of Health, called the Higher Institute of Labour Prevention and Safety has been established.

The Institute was established by Presidential Decree No. 619 of 31 July 1980; it will be made up of two committees (one administrative and one technical-scientific), and delegations of the trade union and employers' organizations and of the regions and local agencies will be members of these two committees. The technical-scientific committee will also perform consultation functions vis-à-vis the International Labour Organisation with regard to the protection of female and minor workers.

Principles and fundamental norms in force

It should be noted that Italy has ratified the Convention of the International Labour Organisation and has acceded to the European Social Charter.

In the national legal order the fundamental principle of industrial safety and health is part of a more comprehensive and general constitutional norm - article 41 - which states that private enterprise is free but "may not operate contrary to social utility or in such a way as to jeopardize human safety, freedom or dignity".

This constitutional norm is reflected in article 2087 of the Civil Code, which states that "the owner of an enterprise is required to adopt in the operation of his enterprise all measures which, depending on the particular nature of the work, experience and technology, are necessary to protect the physical integrity and moral welfare of the worker."

The scope of this rule is such that it makes all owners of enterprises responsible in the event of violations of the obligations laid down in special laws for different types of enterprise and of risk, and consequently also makes them liable for any injury which imprudent conduct on their part may cause to the workers. The Court of Cassation (Judgement No. 522 of 1965) has so ruled, and it has also laid down the obligation to pay damages exceeding the limits prescribed in compulsory industrial accidents insurance schemes, a subject to be dealt with in connexion with article 9 of the International Covenant (Judgement No. 1799 of 1970).

The legislation regarding industrial safety, which reflects the mandatory norms mentioned earlier for different types of enterprise, is very comprehensive and detailed. The very fact that the first enactment on the subject (now abrogated) dates back to 1899 demonstrates the constant interest of the legislature in protecting workers in the workplace and in gradually adapting legislation to the requirements arising out of progress in science and technology.

We shall confine ourselves to listing the principal existing laws, which will remain in force until the promulgation of the consolidated text already mentioned:

(a) Presidential Decrees of 27 April 1955 and 19 March 1956, which contain the general regulations on the prevention of accidents, and Presidential Decree No. 1124 of 30 June 1976, which approved the present Consolidated Law on Industrial Health;

(b) Law No. 628 of 22 July 1901, which governs the work of the Labour Inspectorates which were established in every province and region with the function of monitoring the application of all legislation on working conditions, including safety of the workplace. The future powers will be described in connexion with the duties of the local health units;

(c) Law No. 300 of 20 May 1970, which contains the Workers' Charter. This law provides, inter alia, that workers are entitled to monitor, through their delegates, the implementation of regulations on the prevention of accidents and occupational diseases and to promote the study, formulation and application of legislation to protect their health and physical integrity.

Legislation on industrial health is likewise very comprehensive and detailed and its provisions apply to all work of "employees", including the activities of the State and all public agencies and those of welfare institutions and co-operative societies. By "employees" is meant workers who, outside their homes, allot their labour to other persons, with or without reward, even if it is for the sole purpose of learning a trade, craft or occupation.

General regulations on the subject were issued early in 1927 and thereafter replaced and amplified by Presidential Decree No. 303 of 19 March 1956. That Decree was accompanied by other Presidential Decrees on industrial health in particular classes of enterprise (Decrees Nos. 320, 321 and 322 of 20 March 1956).

Moreover, in view of the difficulty of adapting the general regulations protecting employees to work done in the home, a more recent law prohibits the use of hazardous or toxic substances in this type of work in order to safeguard the health of the worker and his family (Law No. 877 of 18 September 1973).

Protective measures and monitoring of their application

The protective and health measures prescribed in the laws referred to above deal with working conditions, which must meet certain general standards and, in the case of specific jobs, other specific requirements: working equipment and its emplacement, materials employed and tools, the supply of clothing or accessories for the personal protection of workers when the work or working conditions so require, health assistance and medical inspections in the cases prescribed by law.

Failure to observe these measures results in the application of penalties to those responsible.

Generally speaking, monitoring is the function of the Labour Inspectorates, which may carry out examinations and inspections at any time; their instructions are immediately enforceable.

A number of other bodies having more general functions are involved in monitoring in their own special fields. They include: the commune administration which, through its own health units, performs the function of preventive inspection and monitoring of hygienic conditions in premises; the Ministry of Agriculture and Forestry, which supervises agricultural and forestry enterprises; the fire brigades, whose responsibilities include fire prevention in certain enterprises and dangerous work; the Vehicle Inspectorate which has been entrusted with supervising work on the railways; and the Mines Authority, which monitors mine safety and health.

Industrial accidents and occupational morbidity

The data available on the incidence of industrial accidents and occupational morbidity, particularly those concerning inspection services, indicate that in recent years, as far as the risks associated with individual types of work are concerned, the incidence has not increased in proportion to the health hazards of the working environment; particularly in industrial enterprises, in which the risk of toxic effects is high, and in agricultural enterprises where the use of chemicals is becoming widespread.

Accordingly, measures have been taken to intensify the preventive inspection work of all the competent bodies by the creation of "operational units" and the adoption of measures recommended in the "inspection reports" submitted. Measures have also been taken to intensify the system of monitoring the peaceful use of

nuclear energy established by a Presidential Decree of 1964. Moreover, measures to punish offences are very strictly applied, as evidenced by the frequency of court intervention.

More detailed discussion of accidents of this type and occupational morbidity and of the offences reported and measures adopted would require more space than the structure of this report provides.

We think it important to point out that preventive inspection is often asked for by the workers themselves and that during inspections, as a general rule, the principle of meeting the trade union delegations of the enterprise and informing them of any infringements found and of the measures taken is followed.

The case law on the subject is so extensive as to preclude the selection of particularly significant decisions. It should be noted, however, that the courts have always interpreted the legislation very strictly and that judges have in most cases decided on the seriousness of the industrial accident, the severity of occupational diseases and the operations which may cause them, and the identification of the persons responsible.

C. Hours of work, weekly rest day, paid holidays

Article 36 of the Constitution, the first paragraph of which concerning remuneration has been discussed, deals with the maximum length of the work day (second paragraph) and with the weekly rest day and paid holidays (third paragraph), thereby covering in a single article all aspects of article 7 of the International Covenant. It does not mention leisure, which is therefore a matter for the worker's choice, while not excluding the possibility of the employer's organizing and providing the workers with collective recreation facilities.

Maximum hours of work

Article 36, second paragraph, states that the maximum length of the work day shall be prescribed by law. The Constitutional Court, interpreting this provision, has ruled that the number of hours of work may differ, taking into account different types of work, whether or not there are breaks, and the conditions in which certain kinds of work are performed (Judgement No. 99 of 1977).

The legislative rules governing hours of work - which must be observed in all workplaces under the terms of article 1107 of the Civil Code - date back to 1929; they are different for industrial and commercial enterprises, for agricultural enterprises and for certain categories of workers (miners, apprentices, minors).

Maximum working hours, as laid down in the laws and regulations of 1923, may not exceed 8 hours a day and 48 hours a week. Collective employment contracts have, however, derogated from these legal provisions so as to favour the worker by providing for shorter daily and weekly working hours and fewer working days. On the other hand, the maximum length of working hours prescribed by law may be exceeded in order to meet technical and seasonal requirements, for preparatory or

additional operations, as compensation for stoppages resulting from unforeseen causes and in cases of unpredictable force majeure. Moreover, restrictions on maximum working hours do not apply to management personnel, supervisory personnel, commercial travellers and salesmen, persons working on non-continuous jobs, home-workers and domestic workers.

With specific reference to management personnel, the Constitutional Court has ruled that their hours of work must not be so long as to be liable to injure their health and their physical or mental integrity (Judgement No. 101 of 1975). Naturally, this principle must apply to all categories of workers to whom the limits on the maximum hours of work do not apply.

The law lays down shorter maximum hours of work for the following categories of workers:

(a) Young persons under age 15: 7 hours a day and 35 hours a week; adolescents aged 15-18: 8 hours a day and 44 hours a week (Law No. 3977 of 15 October 1967);

(b) Apprentices: 44 hours weekly, including those devoted to further education (Law No. 424 of 2 April 1968);

(c) Working students: workers who are attending non-university courses are entitled to work shifts that enable them to attend courses and prepare for their examinations and to paid days off in order to take examinations; the latter facility is also extended to university students who work (Law No. 300 of 20 May 1970);

(d) Working mothers are entitled to two rest periods in addition to a daily rest period during the child's first year (Law No. 1204 of 13 December 1971);

(e) Officers of trade union delegations ae entitled to paid leave in proportion to the size of the enterprise and also to not less than eight days unpaid leave a year to participate in trade union activities (Law No. 300 of 20 May 1970);

(f) Members of commune and provincial councils are entitled to paid leave for the performance of their functions; mayors and advisers of communes are entitled to unpaid leave of at least 30 hours a month (Law No. 300 of 20 May 1970).

Overtime, i.e., work in excess of the maximum hours of work prescribed by law and collective employment contracts, is compensated, under article No. 2108 of the Civil Code, by higher pay; generally it must not exceed the limit of two hours a day and 12 hours a week.

The performance of overtime is, however, subject to prior authorization of the employer and to observance of a maximum annual limit laid down by law and by collective employment contracts, which varies in degree and according to the sector of production or commerce concerned.

In the public sector, and especially in the case of State agencies, overtime may be worked up to a maximum annual limit, which has to be divided into months by reference to criteria established by each agency on the basis of the requirements of the service.

With a view to alleviating the problem of unemployment, the Law of 30 October 1955 (No. 1079) prohibited overtime in industrial enterprises in all but exceptional circumstances. Apprentices and female workers who are breast-feeding are in all cases precluded from doing overtime, whereas student workers are not required to do it.

Night work, under the same article of the Civil Code, must be remunerated at higher rates than day work.

Weekly rest days, non-working days, holidays

Article 36 of the Constitution states that "the worker has the right to a weekly rest day and to paid annual holidays and may not waive them". Moreover, article 2109 of the Civil Code, which is still in force, lays down that as a rule the weekly rest day must coincide with Sunday. The subject of the weekly rest day is also governed by Law No. 370 of 22 February 1932 and by special laws which authorize exceptions for specific activities of the enterprise, for the organization of work, for seasonal work and for work of public utility.

The Constitutional Court has laid down that the rule in article 36 of the Constitution does not require a fixed interval between weekly rest days when there are patent needs arising from the protection of general interests (Judgements Nos. 105 of 1972 and 65 of 1973).

A more recent judgement of the Constitutional Court is particularly important in that it establishes the relationship between the weekly rest day and the daily rest period in the case of workers who change shifts (Judgement No. 102 of 1976).

The weekly rest day in pursuance of the general rule and the arrangements described above is complemented by days off on public and religious holidays. Since the worker's entitlement to a weekly rest day is taken into account when work is performed on holidays because of the requirements of the sector, the worker is entitled to higher pay at a rate laid down in the collective contract of employment.

As provided in article 36 of the Constitution, holidays must be annual, paid and non-waivable, and, under the provisions of article 2109 of the Civil Code, they must be continuous and be granted during periods decided on by the employer by reference to the requirements of the enterprise and the interests of the worker.

The mandatory character of holidays was subsequently confirmed by the Court of Cassation, which declared null and void any clause relating to employment which provides for a compensatory payment instead of holidays (or the weekly rest day); Judgement No. 1169 of 11 April 1969. The Constitutional Court also declared that that part of article 2243 of the Civil Code in which the right to holidays of domestic workers is made conditional on their having at least one year of

continuous service was repugnant to the Constitution; it therefore established that the enjoyment of that right should proportional to the period of work performed.

With regard to the continuity of the holiday period, laid down in general terms in article 2109 of the Civil Code, the Court of Cassation recognized that holidays might be split but only to such an extent as to provide a rest period, long enough to restore the worker's strength (Judgements Nos. 1474 of 13 July 1965 and 1494 of 5 May 1969).

Finally, the subject of annual holidays is governed by collective employment contracts which take account of the regulations and judicial precedents outlined above.

ARTICLE 8. TRADE UNION RIGHTS

A. The right to form and join trade unions

Trade-union freedom under the Constitution

Trade-union freedom was one of the most important and significant victories achieved by the Italian people after the Second World War, when, in 1958, the Constitution of the Republic entered into force.

The Constitution upholds the right of every worker to form trade unions together with other workers and to join the trade union of his choice for the protection of his own economic and social interests; his right is affirmed in the Constitution for the first time in terms that admit of no restrictions. The first paragraph of article 39 of the Constitution says in fact that "the organization of trade unions shall be unrestricted", thereby affirming also the right of trade unions to function freely.

Considering further that article 18 of the Constitution recognizes in a general way the right of citizens to meet freely, the authors of the Constitution obviously wish to give particular importance to freedom of association for trade union purposes.

The same article 39 of the Constitution establishes that "no obligation may be imposed on a trade union except that of registering at local or central public offices, in accordance with the regulations established by law" (second paragraph); that "as a condition of registration, the statutes of the trade unions must prescribe an internal organization on democratic principles" (third paragraph); that "registered trade unions have legal personality. They may, when acting as units representing their proportionate membership, enter into collective labour contracts binding upon all those in the categories covered by the contract" (fourth paragraph).

After the Constitution entered into force, there were a number of moves in Parliament and the Government to set up a system of trade-union registration and to recognize the legal personality of unions, although no legal regulations to that effect were enacted.

That state of affairs was not, however, detrimental to the principle of freedom of association, since workers from different sectors did set up union organizations with different political tendencies or independent ones.

It should further be noted that these same union organizations did not actively seek the establishment of a system of registration for fear that it might involve some form of State interference which would restrict them.

Still today, therefore, the trade unions are organizations that are not legally recognized; they are thus de facto bodies and as such they are governed by the provisions of the Civil Code (arts. 36 to 38), although they differ from other non-recognized associations in that they have the power to enter into collective labour contracts (to be discussed below).

The particular legal situation of the trade unions that we have just described does not affect their ability to function freely, nor does it in any way diminish the importance of their function. Indeed, from the outset the trade-union organizations have worked intensively to conclude collective labour contracts, thus contributing to the elaboration of a system of trade union principles. The trade unions have in addition taken a more and more frequent part in defining the economic and social policies of the country through advisory roles determined in each instance by the Government.

The right to form trade unions under the "Workers' Statute"

The first law adopted by Parliament dealing exclusively with trade unions - the law of 1970 repeatedly cited and generally recognized under the name of "Workers' Statute" - translates into law the principles affirmed by the trade unions through collective bargaining and also stipulates that the State is to be responsible for a policy in support of unions.

The law, furthermore, does not regulate union activities - this would be contrary to the constitutional principle of union freedom; it merely establishes some essential guarantees with a view to eliminating obstacles that might stand in the way of action by the unions in the workplace. The functioning of unions is thus guaranteed from three points of view: in the sense of union freedom, in a more strictly organizational sense and in the sense of safeguarding workers' interests.

Before outlining the principles established by the "Workers' Statute", it should be said that it applies to employees in private enterprises, public enterprises in the economic field (State enterprises) and public enterprises in fields other than those governed by special laws.

The provisions of the Statute are concerned with the right to form trade unions and the right of trade unions to function freely. These two sets of provisions are interrelated and are not always easily distinguishable. None the less, since article 8 of the International Covenant enunciates the two kinds of right separately, we shall go on to indicate those provisions which more directly concern the freedom to form trade unions for the promotion and protection of the economic and social interests of their members.

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(a) The right to establish trade union organizations, to belong to them and to carry out union activities applicable to all workers in the workplace is recognized;

(b) There is a compulsory ban on the establishment or support of "company" unions, financially or otherwise, by employers and their associations, that is, of trade unions which automatically uphold the interests of the employer. In cases where this ban is violated, provision is made for recourse to the courts in order to halt such activity and disband such unions;

(c) There is a compulsory ban on discriminatory action by employers. Specifically:

(i) Any pact or act intended to make the worker's employment conditional on his joining or not joining an association or his agreement to join one is null (this provision incorporates a principle established by ILO Convention No. 98 and also establishes a penalty for violators);

(ii) Any act or deed causing a worker to be dismissed or discriminating against him in the assignment of job title or responsibilities, in transfers or in disciplinary procedures, or penalizing him for his membership in a trade union association or his engaging in a trade union activity, namely, for his participation in a strike, is null (this provision also incorporates a principle established by ILO Convention No. 98 which also establishes a penalty for violators);

(iii) Any pact or act which makes the employment of a worker conditional on his membership or non-membership in a political party or a particular religious faith, or on his participation or non-participation in political or religious activities, is likewise considered discriminatory and as such inadmissible;

(d) There is a formal ban on "collective" discriminatory actions by the employer, for example, giving bonuses to workers who did not participate in strikes.

There are no provisions in Italy limiting in any way the right of trade unions to establish federations and confederations and to affiliate among themselves and join international trade union organizations.

The three main trade union organizations - the Italian General Labour Confederation (CGIL), the Italian Confederation of Workers' Union (CISL) and the Italian Workers' Union (UIL) maintain operational links among themselves as provided by their statutes and together form an Amalgamated National Federation.

B. The right of trade unions to function freely

Collective bargaining

The first paragraph of article 39 of the Constitution recognizes that trade unions have the right to function freely.

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All trade unions commonly engage in an on-going prescriptive activity which is highly significant, and which consists in negotiating collective labour contracts, on a national scale for each professional category or within more limited ranges down to the individual firm.

The basic aspects of collective labour contracts are governed by the provisions of the Civil Code and the contracts are binding on the organizations which have concluded them as well as on their constituent associations which by the very fact of membership in an organization have conferred upon it the power to represent them.

Even if, however, one of the two parties to a dispute is not enrolled in one of the organizations which concluded the collective labour contract, the contract is in practice generally applied. Legal opinion has also on several occasions pronounced in favour of the wide application of collective labour contracts (Court of Cassation, Judgement No. 2670 of 1970 and 2222 of 1971).

Nevertheless, in a case where the clauses of the individual work contract prescribe more favourable conditions than those of the collective contract for the category to which the worker belongs, the former take precedence in case of a dispute.

Collective bargaining consists, from the legal point of view, in the interpretation and application of the contractual rules governing the worker and, from the economic point of view, in the determination and adjustment of wages and of the terms of staff-management relations. Such questions are, as a rule, submitted to direct bargaining between the parties concerned; yet it still lies within the competence of the judicial authorities to interpret the regulations.

The Italian system makes no provision for binding and compulsory government intervention as part of collective bargaining. Mediation by public authorities can be requested by one or both of the two parties involved in negotiations to reach or renew a contract. The request may be addressed to the appropriate labour office with jurisdiction within a province or region, or to the Ministry of Labour. Mediation by other public authorities, such as the prefects for the public service sector, or by other competent ministries for limited sectors such as maritime labour, railroads, etc., is not uncommon.

In any case, the request for mediation is voluntary and the proposals made during the mediation sessions are not binding.

Collective contracts deal with any questions that may arise in the operation of an enterprise, including the best possible application of the laws in force: questions, for instance, having to do with work safety and sanitary conditions; and the determination of leisure-time and welfare activities.

Collective contracts have a limited duration and their renewal is subject to new negotiations between the workers' organizations and the employers.

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The right of trade unions to function freely under the "Workers' Statute"

The "Workers' Statute" contains a series of norms regarding the conditions necessary for trade unions to function freely within an enterprise.

The most important of these provisions is the one which recognizes that workers have the right to form trade-union company delegations (DSE) within each enterprise. These bodies are permitted in all independent headquarters, factories, branches, offices or workshops of industrial or commercial enterprises employing more than 15 employees and in agricultural enterprises employing more than 5 employees. This right extends also to industrial and commercial enterprises employing more than 15 employees in the same town, (five in the case of agricultural enterprises) even if each productive unit does not reach that figure.

According to the Constitutional Court, the aim of these rights is to prevent individual workers or small isolated groups of workers from setting themselves up as trade unions without the necessary qualifications for effective representation within the enterprise, or from running for election for activities which interfere with the affairs of an enterprise, and jeopardize or are at least a hindrance to the normal course of the enterprise's activity and the collective interests of the workers themselves (Judgement No. 63 of 1974).

In order to permit the trade-union company delegations to carry out their functions, the law entitles their leaders to no less than eight hours per month of paid leave in units employing more than 200 persons and no less than one hour on those employing up to 200 persons.

The leaders are also entitled to no less than eight days of unpaid leave for the purpose of taking part in union negotiations or in congresses or meetings of a union nature.

In order to protect the leaders of the trade-union company organizations, the law provides for a special emergency procedure to obtain immediate restoration of a job in cases where such delegates have been unjustly dismissed; it further provides that the trade-union associations to which they belong must authorize any transfer to another productive unit.

To facilitate trade-union activities in the workplace, the law provides: (a) that the union delegations may utilize a room within the workplace and may post in designated places any publications, texts and communiqués of interest to the union; (b) that the workers may hold unit meetings in the same productive unit where they work outside working hours or, within a limit of 10 hours a year, also during working hours, in which case the usual wages must be paid; (c) that workers may make arrangements within the enterprise, but outside working hours, to hold referenda on matters concerning union activities; (d) that workers may collect contributions and openly recruit union members within the enterprise provided they do not disrupt the normal course of work.

To complete this review of the "Workers' Statute", it must be pointed out, even if only briefly, that there is a possibility that employers may adopt an

anti-union stance in the hope of blocking or reducing the freedom and functioning of trade unions as also their right to strike (which will be dealt with below). In cases where this occurs, the Workers' Statute provides for a curb on this sort of conduct by recognizing that trade-union organizations have the right to demand protection in the courts of the collective interests violated by such behaviour.

Legal opinion has also taken a lead in establishing guidelines for interpreting the principle of trade-union freedom. Specific examples of anti-union behaviour by employers, may thus be regularly identified, taking into account among other things ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 concerning the application of the Principles of the Right to Organize and to Bargain Collectively.

C. Right to strike

Article 40 of the Constitution states that "the right to strike shall be exercised in accordance with the laws which regulate it".

Up to now, however, no law has been enacted to regulate this right of the worker, since trade unions have always evinced a preference for self-regulation in the case of strikes, although they have never specifically set any limits on the right to strike. It is only recently that trade union organizations in some sectors have adopted codes of conduct which only member workers are bound to observe.

In the absence of laws making this article of the Constitution operative, there arose the legislative problem of determining whether the article was essentially a matter of policy or or prescription. An initial ruling by the Constitutional Court affirmed that the article was by nature directly prescriptive and that the right to strike could be exercised and could be protected in the courts (Judgement No. 46 of 1968). A subsequent ruling was even more specific; reflecting the intervening developments brought about by trade union actions, it affirmed that the right to strike should be recognized even when the motivation was not purely economic, the only exception being a case in which the strike aimed to subvert the constitutional order or impede the free exercise of the powers of the State (Judgement No. 290 of 1974).

Furthermore, legal opinion has also found that sympathy strikes are legitimate, as well as other different forms of strikes, such as intermittent strikes or staggered or selective strikes. These types of strike must not, however, violate the rights guaranteed by the Constitution, such as the right to work, the right to refrain from striking and so on.

It should, however, be noted that in the last few years there have been frequent strikes in the public services which have caused serious inconvenience to the public . As a result, the Government recently instituted a study commission to draft a law which, pursuant to the constitutional norm, would make it possible to regulate the right to strike.

The theoretical legality of strikes by certain categories of workers is under discussion, in particular:

(a) Strikes by sharecroppers, who in their position as workers are not subordinates but associates;

(b) Strikes by lawyers, who are independent professionals, so that non-attendance at hearings by way of protest cannot be qualified as a strike (Court of Cassation, Judgement No. 2009 of 1975);

(c) Strikes by sailors, since any strike on the high seas might be considered a crime of mutiny in the sense of article 1105 of the Naval Code;

(d) Strikes by port workers who are in an ambiguous situation similar to that of sailors.

D. Exercise of trade-union rights in the State Administration, the armed forces and the police force

The State administration

The Workers' Statute contains a provision totally excluding its applicability to employees of the State administration and partially excluding its applicability to employees of non-profit-making public agencies.

This provision has been objected to on grounds of unconstitutionality in the light of article 3 of the Constitution, which states that all citizens are equal before the law, and in the light of the ongoing process of partially equating the work relationship in the public and private sectors. Although the Constitutional Court has not upheld the constitutionality of the provision in question in view of the differences between the two types of labour, public and private, the Court has affirmed that, when identical or similar situations arise in the two sectors and are regulated in an unjustified and inappropriate manner, the question of unconstitutionality may arise. "As and example", it has indicated that the prevention of State trade unions from obtaining legal redress in the administrative courts for anti-trade union behaviour on the part of the public sector would be unconstitutional. Finally, with regard to non-profit-making agencies, the Court has stated that the provisions of the Workers' Statute are applicable when they form part of and supplement the existing regulations (Judgement No. 118, 1976).

A subsequent judgement of the Constitutional Court noted that legislation regulating the civil service had partially come to resemble legislation on private labour through collective bargaining which, even in formal terms, has become a necessary stage in the process of determining the remuneration of public sector employees in the major categories. It also noted that in future, the trade unions will assist the Government in establishing the rules for civil service labour relations, which will therefore no longer be purely unilateral. However, in examining the non-applicability of the "new work procedures" to Government employees, the Constitutional Court stated that, because of the special

disciplinary requirements for Government service employees, the principle of the equality of all citizens before the law cannot justify the simple extension of the safeguards established by the Workers' Statute to the private sector (Judgement No. 68, 1980).

The trade-union freedom of civil servants in government service is guaranteed by Laws No. 628 of 18 March 1968 and No. 775 of 28 October 1970. These laws state, inter alia, that State civil servants have the right to meet on the premises of the administrative body by which they are employed, or where public services are provided or industrial production carried out (State enterprises) during the work day for a maximum of 10 hours per year, for which normal remuneration will continue to be paid.

The meetings, which may involve all workers or groups of them, are convened individually or jointly with the trade union organizations represented in the governing body when there are subjects of trade union or labour interest on that body's agenda. After previous notice, leaders of the trade union organization may participate in the meetings even if they are not employed in government services.

Employees of government services, and also of autonomous agencies, who have elected duties within their own, more representative trade union organizations are excused from the obligation to work at the request of the trade union body to which they belong.

At the expense of the service which employs them, these individuals receive all payments to which they are entitled under existing regulations for the category or class to which they belong. Only payment for overtime is excluded.

The armed forces

New principles of military discipline have been laid down in Law No. 382 of 11 July 1979, which brings the armed forces into line with the democratic spirit of the Republic, as envisaged in article 52, paragraph 3 of the Constitution. This law states that:

(a) Members of the armed forces are entitled to all the prerogatives which the Constitution provides for all citizens, with the exception that limitations are imposed on the exercise of certain rights and the observance of certain duties for the purpose of ensuring the performance of the duties required of the armed forces;

(b) The State will use effective measures for the purpose of safeguarding and promoting the development of the personalities of members of the armed forces so as to ensure them the treatment that they deserve;

(c) Equal dignity must always be guaranteed in relations among all ranks of the armed forces;

(d) Orders must be limited to the sphere of discipline and service and must not exceed the duties required of the armed forces.

The limitations on the exercise of certain rights by members of the armed forces involve the right to strike and the right to form trade union associations and to join other trade union associations, which are prohibited. The latter prohibition is not absolute to the extent that persons recruited for military service and those who have been recalled to temporary duty can join or continue to be members of trade union organizations and engage in trade union activities when they are not in specific situations (while on duty, when wearing a uniform, etc.).

These limitations of trade union rights are tempered by the law through an important innovation: the establishment within the armed forces of a system of corporate and elected "military representation bodies" which operate alongside the traditional military hierarchy. This system allows a wide range of proposals, opinions and requests, starting at the lowest level, to reach the top echelon of the armed forces, the Ministry of the Defence and Parliament. These representative bodies are organized at three levels, as follows:

(a) A central, nation-wide body in which delegates from all the armed forces participate (interforce) and composed of commissions (likewise interforce) and sections for each armed force;

(b) Intermediate bodies attached to the staffs of each armed force;

(c) Primary bodies at the level of military units in each armed force.

Delegates are elected to the primary bodies on the basis of democratic principles (direct, nominative and secret votes). The elected delegates act on the basis of the same principles in electing delegates to the intermediate bodies. Finally, the latter elect delegates to the central body, using the same procedure.

The central representative body is responsible for the formulation of opinions, proposals and requests on all matters covered by legislation or regulations concerning the situation, remuneration and security of members of the armed forces in the legal, economic, social security, health, cultural and moral fields. The central body may be heard, upon its request, by the permanent commissions of the two Chambers.

These bodies also deal with matters of collective interest involving the following problems: retention of jobs during military service; professional qualifications; integration into the active sector of those leaving military service; measures in case of accidents or disability suffered during service and caused by it; aid, cultural, leisure and social activities for servicemen's families; organization of meeting halls and canteens; hygienic and health conditions; and housing.

In fact, this military delegation system is designed to promote, both in the interforce framework and within each armed force and service, a spirit of participation and collaboration and to maintain a high level of moral and material conditions for the military staff.

The regulations on the formation of the military delegation were issued through a decree by the President of the Republic on 4 December 1979. They were first applied too recently to allow the initial results to be announced. Nevertheless, we can state that since that date the Ministry of Defence expects positive results from the establishment of the military delegation, even in the short-term, particularly with respect to improved integration among the various ranks in the armed forces, while the principles of military discipline are maintained and enriched by the opportunities for dialogue and human relations.

Public security administration

Under a very recent law, Law No. 121 of 1 April 1981, a new type of public security administration was established; it is the result of many years of study and discussion, not only within Parliament, the Government and the public at large, but also among members of the public security administration. Already in 1970, under an administrative decree of the Ministry of the Interior, members were enabled to express freely and deliberately their judgements and opinions on the reform of the prevailing system and to meet in committees for the purpose of establishing trade union associations after the approval of the reform.

The demilitarization of the police and the recognition of trade union rights, together with a new personnel system, are the most important aspects of this reform which, in the matter of trade union rights, is based on the proposals of public security personnel but also on the provisions of international law. In the commentary accompanying the Government's draft law on the reform, which was adopted as the law mentioned above, the International Covenant on Economic, Social and Cultural Rights was quoted specifically, as were other treaties on human rights.

The trade-union rights of public security personnel are recognized for the first time within the limitations deriving from their employment in a civil service but in a special way, in view of the special nature of the functions devolving upon them and the need to guarantee the impartiality of these functions.

The extent of and limitations on trade union rights are as follows:

(a) Members of the police have the right to form trade unions within their own administration; they may not join other trade unions or represent other workers; they are denied the right to strike and take part in similar actions which, when carried out while they are on duty, could prejudice the need to safeguard public order and safety and law enforcement activities. They may meet during the working day for a total of 10 hours per year and, in their free time, they may hold meetings in uniform on the premises provided for their use or in places open to the public;

(b) The trade unions of public security personnel are formed and led by and made up of members of their administration. They safeguard its interests without interfering with the organization of services or organizational duties; they may not join, affiliate themselves with or have organizational relations with other trade union organizations;

(c) For the purpose of carrying out trade union activities, various trade unions are granted the use of premises in the central offices of the administration which may serve as trade union offices and the use of specific areas for notice boards in the central and local offices. The leaders of the most representative nation-wide trade unions are available for trade-union purposes and receive regular remuneration. Other members of corporate trade union bodies may absent themselves from their offices for the time required to participate in meetings of such bodies to ensure the normal progress of trade union activities. This authorization is granted in each province and for each organization to three employees and for an average period not to exceed three days per month;

(d) Three-year trade-union agreements are concluded in respect of wages (in accordance with regulations established under the new personnel system), working hours, vacations, absences, leave, availability of and earnings for overtime, missions and transfers and the establishment of criteria for professional training and readaptation. The agreements are concluded by a national delegation from the most representative trade unions. If a wage agreement is not reached within three months of the start of negotiations, the Minister of the Interior shall so inform Parliament.

Police staff also participate in decisions concerning their legal status, their social security system, the curricula of their instructional and professional training institutions and their examination procedures through representation on the National Police Council (a consultative body of the Minister of the Interior) which was established by the above-mentioned law and is composed of 60 members. Of those 60, 30 are appointed by the Minister (of those 30, at least 20 are chosen from the police staff as being representative members) and 30 more are elected from that staff from three electoral groups corresponding to the various ranks of the police and on the basis of national electoral lists.

The elected members serve for a period of three years.

The law on the reform of the police court was issued extremely recently and it is therefore not possible to provide information on the results of its application.

ARTICLE 9. RIGHT TO SOCIAL SECURITY

A. Constitutional provisions concerning social security

To appreciate the extent of the influence of the Republican Constitution of 1948 on the social security system then existing, a brief description of the state of the system at the end of the Second World War is necessary.

Over that period social security had been progressively extended from the first compulsory industrial accident insurance (dating from 1898), to encompass insurance against industrial accidents in the agricultural sector and other injurious circumstances creating need, such as invalidity, old age, unemployment and occupational and other illnesses.

Such forms of insurance, taken together, represented a system of "national insurance" which had been preordained by the State but which was primarily aimed at protecting low level employees. With few exceptions self-employed workers had no form of national insurance. Moreover the citizen as such, even if in need in similar circumstances to an employee, was excluded from the insurance system. He was helped by public assistance and charitable institutions, in addition to which there was a vast private assistance and charitable sector.

In the national insurance sector itself, in addition to enacting legislation the State intervened to establish insurance organs and machinery to ensure compliance with the law. It did not, however, make any financial contributions to national insurance organs, so that the benefits offered by such organs were in strict proportion to the contributions paid by participants.

This brief outline of the insurance system, as it developed haphazardly over the years, clearly reveals that it represented a major extention of State activity in the social sphere. Nevertheless it is clear that there were gaps and shortcomings.

At the end of the Second World War the need for reform of the national insurance system became acute due to a series of concomitant factors, in particular the end of the cultural and ideological isolation which the country had experienced during the entire inter-war period. Thus against a background of the lively debate on post-war problems emerged the idea, already put forward in many other countries, that "social security" represented the liberation of all citizens and that it was a task to be undertaken by the State. Secondly, a serious financial crisis affected the national insurance system due to the devaluation of the currency and a consequent decrease in the real value of benefits, particularly financial benefits. Finally, the presence of large numbers of disaster victims and refugees substantially increased the number of people in need, people who were not qualified for benefits.

Such a situation, even before the Republican Constitution was promulgated, made massive State financial assistance necessary. The Government also established a National Insurance Reform Commission. The Commission's findings were not embodied in subsequent legislation but aroused considerable public interest and influenced the drafting of the relevant constitutional norms. The Commission's proposals amounted to a radical reform of the national insurance system. For the first time the prospect arose of "social security" measures aimed at ensuring a minimum income and comprehensive medical care for all those in need.

Article 38 of the Constitution, based on this concept of social security, is worded as follows:

> "Every citizen unable to work and without a means of support has the right to maintenance and social assistance.
>
> Workers have the right to be provided with and assured an adequate livelihood in case of accident, sickness, infirmity, old age or involuntary unemployment.

Disabled and handicapped persons have the right to education and to vocational training.

The provisions of this article shall be implemented by organs and institutes established or organized by the State.

Private assistance is unrestricted."

The complexity and scope of the subjects dealt with in this article of the Constitution have given rise to differing interpretations with regard to other articles of the Constitution, and the principles inspiring legislation enacted after its entry into force.

We shall confine ourselves here to indicating the most appropriate interpretation of article 38 and of article 32, by which "the Republic protects health as a fundamental right of the individual". These are the basic elements in a system of social security which will be implemented gradually.

(a) The repetition in of the term "right" in article 38 (of citizens in specific need, workers, the disabled and handicapped) and in article 32 (which affirms the "right" to health of the citizen as such) indicates that the earlier system of national insurance, based strictly on the insurance method has been superseded by a more comprehensive system of social security which obliges the State to ensure respect for the rights recognized in the Constitution. This means that the State is called upon to meet part or all of the cost of the social benefits provided for under the Constitution, to the extent necessary to ensure observance of such rights within the limits imposed by the State's financial capacity, and, in the case of social security benefits, within the limits imposed by the contributions from those concerned.

(b) The State's responsibility to ensure observance of the rights recognized by articles 32 and 38 of the Constitution is not merely in the interests of the beneficiaries of such rights but rather in the "public" interest, and is thus a "primary" duty. The different degrees of protection provided for each class of beneficiary do not reflect a varying degree of importance attached to them by the State, nor any change in the basis of the duties of the State, but rather different needs.

(c) The supersedure of the earlier system of national insurance is also related to the fact that article 38 of the Constitution makes no distinction between employees and self-employed workers, both of whom are also protected without distinction by article 35, by which "The Republic protects labour in all its forms and applications".

In the light of the interpretations which we have just offered of article 38 of the Constitution and of articles 32 and 35, the question arises whether the benefits granted, considered as a whole, comprise in the spirit and letter of the relevant constitutional norms an established system of social security reflecting the most enlightened interpretation of the "liberation of the individual from need".

There is some divergence of opinion on the matter, as we shall see subsequently when considering each social security benefit. The need for a general reform of the national insurance system remains an open question and is still under debate. Nevertheless, the consensus seems to be that current social security regulations could be substantially improved.

The most important laws enacted since the entry into force of the Constitution seemed to have been inspired by that end. The following, in chronological order, are the main innovations by comparison with the earlier system of national insurance:

(a) In 1965 the various forms of State contributions to invalidity and old age pensions were unified in a single contribution to a single fund into which, since 1979, all contributions obtained from the taxation of social entities have been paid. This fund is known as the Social Fund.

(b) In 1969 sickness benefits were extended to provide invalidity and old age benefits for self-employed workers.

(c) In 1969 a "national pension" was instituted for all citizens aged 65 or more having no income.

(d) In 1978 the "national health service" was instituted (the main features of the service were referred to in paragraph 39 of the report and will now be dealt with in greater length).

B. Health care

In the description of the right to health and hygienic working conditions brief information was given on the reform of the health system currently being carried out through the establishment of the "national health service" by Law No. 833 of 28 December 1978.

There follows a more comprehensive description of this reform of the social security system, particular attention being paid to those parts of the reform which have already been implemented.

Law No. 833 did not represent a comprehensive reform of the earlier system of national insurance, but established the essential conditions for gradual implementation of such a reform.

Reasons for the reform

Article 32, paragraph 1 of the Constitution states that "The Republic protects health as a fundamental right of the individual and as a community interest and assures free treatment for the indigent."

This constitutional norm, although concise, is both comprehensive and precise. It does not allow of any ambiguity, for health care is a duty of the

State and is conceived in terms not only of curing illness but also of prevention and rehabilitation. All citizens as such have the right to health care. It is in the interests of the community that such a right be fully implemented. Citizens with no income have the right to be cared for at State expense.

It was not possible to give effect to this generous interpretation of the right to health without major changes in the Italian health system, which until 1970 - the year in which the regional structure provided for by the Constitution was established, together with the resultant administrative decentralization - was based on a centralized, mutualist and sectoral system. Centralized since it was only in 1970 that the regions were authorized, as provided for in article 117 of the Constitution, to enact medical care and hospital legislation. Mutualist since benefits were assured by a number of unrelated "national" organs which operated by following mutualist and individual insurance systems. Sectoral since each national organ was responsible for medical care for a clearly defined occupational group.

The gaps in this medical system were obvious: it had developed over the years with no preconceived general view of health problems and with the primary aim of "treating illness" at the expense of effective, detailed prevention and rehabilitation. Medical benefits varied according to the contributions paid by each occupational group.

It was thus necessary to eliminate these gaps and inequalities through a fundamental reform of the medical system, organized in accordance with the principles established by the Constitution and implemented in stages given the complexity of the problems raised.

The preparatory phase of the reform

The first phase, which may be viewed as the groundwork for the reform, took place between 1974 and 1977, by which time the regions had already been established. This major innovation in the organization of the State prepared the way for the enacting of the following medical reform preparatory laws:

(a) Law No. 386 of 1974 which transferred responsibility for hospitals, formerly vested in the Ministry of Health, to the regions;

(b) Law No. 349 of 1977, which led to the dissolution of the national mutualist organs and the adoption of single conventions for general medical and paediatric care, specialized care and the distribution of pharmaceutical products;

(c) Presidential Decree No. 606 of 1977, which transferred the State's administrative responsibity for medical care to the communes.

These three provisions combined constituted a transitional phase which ended in December 1978 with the adoption of Law No. 833, which established the national health service.

National health service principles and objectives

The principles governing the national health service are defined in the first article of the Law which echoes and expands article 32 of the Constitution:

"The Republic protects health as a fundamental right of the individual and in the interests of the community through the national health service.

"The maintenance of physical and mental health must be in accordance with respect for human dignity and freedom.

"The national health service comprises all the functions, structures, services and activities for the promotion, maintenance and rehabilitation of the physical and mental health of the entire population without any distinction on individual or social grounds and in such a way as to ensure that all citizens receive equal treatment from the service.

"Responsibility for establishing the health service lies with the State, the regions and local territorial organs, which guarantee participation by all citizens.

"The national health service shall maintain links and co-ordination with all activities and actions by all other organs, centres, institutions and services which perform in the social sector activities having any bearing on the state of health of individuals or of the community.

"Volunteer associations may assist the official objectives of the national health service in the manner prescribed by this Law."

This article of the Law is so detailed that no further analysis is necessary. It seems more important to note that this Law fully recognizes the fundamental principles of human dignity and freedom and the equality of all individuals without any distinction, principles which have been upheld by the Charter of the United Nations and the Universal Declaration of Human Rights. In addition, as we shall see, these principles are reflected in the egalitarian manner in which the expanded benefits offered by the national health service are made available.

Another important principle affirmed by the first article of the Law is that of comprehensive health care, in the sense that the aim of the service is not only to meet the demands of citizens in need of care, but also the citizens right to maintain or recover physical and mental well-being through general preventive measures.

The objectives of the national health service are specified in this way by the second article of the Law:

(a) Territorial inequalities in social and medical conditions in the country shall be eliminated;

(b) Industrial safety through the modernization and elimination of conditions which might harm the health of workers;

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(c) Responsible and rational choice of procreation and protection of motherhood and children, including a reduction in pathology and infant mortality rates;

(d) Medical care during puberty through school medical services in all public and private schools and the integration of handicapped children;

(e) Medical care for sports activities;

(f) Medical care for the aged, also aimed at avoiding their exclusion from society;

(g) Mental health care, particularly through preventative services and the inclusion of psychiatric care in general medical care;

(h) Identification and elimination of atmospheric, water and soil pollutants.

Here, too, the law is so detailed that no further commentary is required. It should, however, be noted that the objectives established encompass every age - from infancy to adolescence, to adulthood, to old age - and in the case of psychiatric care, the law fully reflects the trends which had become apparent during earlier years for psychiatric and neuro-psychiatric hospitals to be gradually superseded.

The second article of the Law also specifies the means whereby the objectives of the national health service are to be pursued:

(a) The prevention of illness and accidents at home and at work;

(b) Diagnosis and treatment of contageous diseases;

(c) Rehabilitation of somatic and psychological invalids and disabled persons;

(d) Promotion and protection of good health and hygiene at work and in society at large;

(e) Food hygiene, medical care in stock-raising;

(f) Control of experiments in and production of pharmaceuticals with regard to the therapeutic effectiveness, safety and cheapness of the product;

(g) Continuing vocational training and scientific and cultural retraining for staff in the national health service.

The organization of the national health service has been conceived and carried out in accordance with one fundamental principle: the service has been organized on a territorial basis ensuring a single management structure for medical care through a comprehensive network of "local health units".

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Each region has been subdivided, by regional laws, into socio-health areas and local health units, delimited in accordance with the demographic structure of each area. In general the territorial boundaries of each health unit are delimited on the basis of population groups of between 50,000 and 200,000 inhabitants. In areas which are particularly densely or sparsely populated, higher or lower limits are used. The entire country is subdivided into approximately 650 socio-health areas.

The local health unit comprises all the existing services and offices within its area, rather than being a single entity responsible for all benefits.

Local health units are organized on a democratic basis. They comprise a general assembly and a management committee, elected by the general assembly, which in turn elects a director.

Local health units are responsible for preventive activities and health care, rehabilitation and legal medical service, while providing the population with a standard level of benefits, the level to be established during the three-year trial period of the "national health plan". In particular, in addition to preventive activities which are detailed by the Law, care, rehabilitation and pharmaceuticals are provided as follows:

(a) Health care includes general medical, paediatric, specialized, nursing, hospital and pharmaceutical services.

General medical and pediatric care is provided by staff of the national medical service or by licensed private doctors. Citizens have a free choice of doctors and are registered with each licensed doctor on lists which are periodically brought up to date. Services are provided free of charge.

Specialized medical and hospital care is generally provided at dispensaries of the local medical units to which the citizen belongs or at licensed dispensaries. Services are provided free of charge.

Hospital type care is generally provided at public hospitals or in licensed hospitals and clinics in the district. Services are provided free of charge.

(b) Rehabilitation services are directed towards the functional and social rehabilitation of persons suffering from physical, mental or sensory handicaps, regardless of cause. Services are provided by the local medical units through their own services or through licensed services in the district or elsewhere. Prosthetic devices are also built in these units.

(c) Pharmaceutical services are provided by the pharmacies in public institutions or private pharmacies, all of which are licensed. Persons under medical care can obtain medical supplies at any pharmacy upon presentation of a prescription from the licensed attending doctor. The purchase of medical supplies is generally waived in favour of payment of a proportion of the price of each item.

All citizens resident in Italy are entitled to the services indicated above. Emigrants returning temporarily to the country and their families, likewise.

For citizens who are out of the country permanently, for long periods, frequently or occasionally and do not receive other forms of assistance, the Italian State secures - through agreements, conventions and by other means - services under the conditions laid down for all citizens on the national medical plan.

Foreigners resident in Italy can obtain any medical services on request by fulfilling all the obligations as regards participation in the costs. Foreigners in the country temporarily may receive emergency hospital care for sickness, accidents and childbirth under the pre-established rules on hospitalization costs.

In addition to the provisions discussed in the preceding paragraphs, which have been in force in Italy since 1 January 1979, the legislation setting up the National Medical Service specifies how authority is to be apportioned among the different levels (Ministry of Health, regions, provinces, communes); it establishes the National Medical Council (which is already functioning and is intended to assist the Government in selecting the course that health policy should take) and the Higher Institute of Labour Protection and Safety; it calls for the service to be financed by a special national medical fund drawn on the State budget; it establishes programming procedures for health protection, which have to be carried out in harmony with national programming through national medical plans of three years' duration.

The scope of this subject is such as to rule out even a summary description of these sections of legislation, which will form no part of this report but are being put gradually into effect.

C. Disability, old age and life insurance

General features

The insuring body is public, and is known as the National Social Insurance Institute (INPS).

Those subject to coverage are hired workers who have reached the age of 14 and perform work under someone else's supervision (Royal Decree Law No. 639 of 14 April 1939); the self-employed; agriculturalists, sharecroppers, smallholders, craftsmen, small tradesmen and the families of these categories.

Excluded from this insurance scheme are employees of the State, regions, provinces and communes who are entitled to a retirement pension and insurance coverage at the expense of the State, as well as public service staff, who are catered for by a special insurance fund.

Contributions are paid for hired workers by the enterpreneur, but when an already insured worker has no job contributions are credited at State expense. In the case of the self-employed, the insurer and insuree are, evidently, one and the same person.

Types of insurance and benefits

(a) Disability: "disability conferring pension entitlement" means a reduction in earning capacity to below one third, and to be entitled to a disability pension five years must have elapsed since coverage began. If, however, disability is job-related and no recourse is available, owing to objective or individual circumstances affecting the benefits available under industrial accident insurance, the worker is entitled to a concessionary pension allowance provided that at least one year has elapsed since the inception of coverage and a minimum contribution has been made as prescribed by the law.

(b) Old age: for hired workers to receive old age pensions a minimum period of one year's insurance coverage and contributions and a minimum age of sixty years are necessary; for women, the age may be reduced to fifty-five.

(c) Long service: this is an entitlement, irrespective of workers' age and state of health, if they have thirty-five years' worth of contributions to their credit.

(d) Death: if the insured worker dies, his survivors - wife or children aged 13 or under - are entitled to a pension if at the time of death all the requirements as regards coverage and payment of the contributions stipulated for entitlement to a disability pension are met; in other cases survivors are entitled to a lump-sum payment. If death is caused by the worker's occupation and does not confer entitlement to an income under accident insurance, survivors are entitled to a concessionary pension.

For some categories of hired workers special insurance schemes have been established under the law. For example, mine, quarry and peatery workers can get a pension upon reaching their fifty-fifth instead of sixtieth year, if they are giving up this type of work completely; otherwise a supplementary pension is added to their normal one. Special schemes have also been set up for seamen, public service and transport employees, employees of gas companies and for professionals, journalists, those employed in the performing arts, etc.

Optional insurance schemes are provided for the following classes of workers: hired workers who are already insured but wish to augment the contributions paid by their employers so as to earn greater benefits; hired workers who have lost their insured status and wish to continue it on a voluntary basis; some categories of the self-employed (tradesmen, industrial workers and independent professionals); and jobless housewives between 15 and 50 years of age.

Contributions are paid in full by the workers and housewives registered under these schemes, and pension payments also include a donation from the State. Benefits take the form of disability and old age pensions.

When a working relationship is interrupted or terminated, the worker is allowed to make voluntary contributions in order to keep his entitlements under the insurance arrangements; any such continuation must be authorized by the insuring body (INPS) and the State also helps to finance it.

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Where benefits are concerned, the principle in force is that they are to be paid automatically by virtue of Law No. 153 of 1969 and Decree-Law No. 267 of 1972. According to this principle, entitlement to benefits exists even when contributions have not actually been paid, but contributions are payable within the prescribed 10-year period; these contribution periods are also used in determining the amount of the pension.

The amount of the pension, which until 1908 was calculated according to the extremely rigid criterion of contributions paid, has been based since then on the worker's earnings over the five immediately preceding years up to a maximum of 80 per cent for 40 years of work.

In the event of the death of an insured worker, the spouse is entitled to 60 per cent of the pension, and each child aged under 18 or unfit for work is entitled to 80 per cent.

The beneficiaries of disability and old age pensions have the same entitlement to family allowances as employed workers.

D. Occupational injury insurance

General features

An earlier section, on the right to work safety and hygiene, provided brief information on reforms in progress in the sphere of health protection, the principal changes which they entail as regards industrial accidents, and the legislation still in effect. In this section we will therefore be content to describe the insurance scheme which still provides the basis for protections against industrial accidents.

The insuring body is a public agency: the National Industrial Accident Insurance Institute (INAIT), operating according to the regulations established by Presidential Decree No. 1124 of 30 June 1965, which endorsed the consolidated text of the work safety laws.

The applicability of the scheme is subject to individual and objective criteria.

As far as individual criteria are concerned, it should be stated at the outset that industrial accident protection does not apply to all workers but only those most exposed to risk. This description is held to apply only to hired workers in industry and agriculture who "on a permanent or occasional basis furnish paid manual labour under another's supervision or instructions, irrespective of the form of remuneration".

The first, basic criterion is therefore the nature of the work - hired labour; the second is that the labour must be manual. In general, therefore, white-collar workers are excluded except where "although not participating manually in the work," they "supervise the work of others".

For reasons of equity the following categories of workers and individuals are also included: co-operative members; craftsmen working with their hands; teachers and students at all levels while carrying out scientific, technical and practical experiments; instructors and trainees on vocational courses in apprentice workshops; members of religious orders if they work for other people under the conditions just mentioned - nursing homes, hospitals; and prisoners if employed in certain activities calling for insurance.

In the agricultural sector all regular and casual workers, supervisors, landowners, sharecroppers and farmers, together with their wives and children performing manual labour in their own businesses, are included.

The "dangerousness" of a job, which the law defines differently for the industrial and the agricultural sectors, is the principal objective criterion.

In the industrial sector two standards apply: all jobs involving the use of non-manually-operated machinery, high-pressure equipment and electrical and technical apparatus and systems are considered dangerous; the rating of other dangerous activities, regardless of the machinery used, is established by reference to a definitive list (construction work; land improvement, work associated with the use of railways and other modes of transport ...).

For agriculture the law does not specify dangerous activities (all activities in this sector thus being considered dangerous), but confines itself to defining the nature of agricultural and forestry enterprises.

An insurance contract is established ipso jure when the individual and objective criteria mentioned in the preceding paragraph are met. Those insured are the workers. The law regards as such individuals and public or private bodies, the State and local agencies included, as well as co-operative associations and all other kinds of association, harbour companies, shipowners, landowners, farmers or farm workers.

The landowner may make use of the contributions paid in respect of farmers or farm workers when farmland is rented.

Entitlement to benefits becomes effective in "all cases where an accident resulting from a violent occurrence during the performance of the job causes the death of the worker or permanent - total or partial - disability or temporary total disability necessitating abstention from work for a period of more than three days". The principle of automatic payments, already described in connexion with disability and old age insurance, also applies in the case of accident insurance.

Benefits are both medical and economic:

The medical benefits consist of medical and surgical care provided or paid for by INAIT, which must defray the costs of emergency services and prosthetic devices.

Economic benefits vary according to the results of the accident. The following special cases are admitted:

(a) Permanent total disability: in this case the worker is entitled to an "income" which in the industrial sector is proportional to his annual earnings, while in the agricultural sector this income is calculated on the basis of notional annual earnings; additionally, if the worker has dependants, the amount is increased by one twentieth for the wife and each child. Another supplement may be paid, finally, if the worker needs personal nursing care following permanent total disability. For apprentices and workers under the age of 18 the income is calculated on the basis of their potential work capacity.

(b) Permanent partial disability: in this case the amount is established according to the degree of disability, calculated on the basis of percentages established by law. If the disability does not exceed 10 per cent in industry, or 15 per cent in agriculture, no relief is paid. Payments may be revised if changes in the degree of work disability are proven.

(c) Temporary disability: the worker is entitled to daily "relief"; payment is made as of the fourth day following the accident or the onset of the illness and extends from day to day for the duration of the temporary disability. In the industrial sector the relief equals 60 per cent of the daily wage for the first 90 days and 75 per cent for the remaining period. In the agricultural sector relief is paid independently of wages.

(d) Death of the worker: in this case the income becomes the entitlement of the spouse and each legitimate, acknowledged or acknolwedgeable natural or adopted child. Failing these survivors, it is payable to progenitors or adoptive parents if they live under the same roof and were dependent upon the deceased or, under the same conditions, to brothers and sisters. It is set at the level of the worker's earnings, and is payable to the widow at 50 per cent of that rate and to each other beneficiary at 20 per cent of the rate. In addition to this, a single relief payment is made for immediate and exceptional needs.

In the event of partial disability the industrial accident insurance scheme also allows benefits to be taken as a lump-sum 10 years after payments begin, when it is definitively established that the degree of disability does not exceed 16 per cent in the industrial sector and 20 per cent in the agricultural sector. In this case, in the industrial sector, INAIT pays a sum equivalent to the capital value of all subsequent payments, thereby exhausting the entitlements.

In the agricultural sector, on the other hand, a more general benefit consolidation system is in operation: it is sufficient for the worker to be no older than 55, less than 50 per cent disabled, married and/or with children, and for two years to have elapsed since payments began. Additionally, the effects of his injuries must not be liable to change. Such consolidation of benefits, moreover, is permitted only for specific and worthwhile causes as established by the law (investment in or improvement of land, acquisition of agricultural machinery to work the land).

E. Social pension

Pursuant to article 38, paragraph 1 of the Constitution, quoted in section A, Law No. 153 of 1969 introduced a "social pension" for every citizen above 65 with no income in excess of fixed limits.

The introduction of this pension is one of the fundamental elements in the Italian social security system, since even if the pension is small in value and cannot provide a living for a retiree without income, the level of payments is not pre-set: as far as the public body is concerned the payments are discretionary and constitute a genuine individual entitlement.

The only criterion upon which entitlement depends is the economic status of the pensioner. The social pension is payable solely to citizens who do not receive either from the State, public authorities or foreign States any regular maintenance or assistance; an exception is made for the annual disbursements to Italian ex-combatants, and the two can therefore be compounded.

The economic status of a person unfit for work is assessed with potential income in mind; a pension will therefore be granted only if potential income does not exceed a predetermined threshold, below which the citizen is exempt from personal income tax.

The social pension is subject to any increments arising from the automatic adjustment of all pensions.

The pension is paid for entirely by the State and is distributed, by the National Social Insurance Institute (INPS), through a different administering branch from the insurance schemes for which INPS is responsible.

F. Other benefits: compensation for involuntary unemployment, family allowances

In the section concerning the right to work (art. 6 of the International Covenant) general information has been given on the protection of unemployed workers in the event of a cessation of worker-management relations and of workers who are temporarily suspended or whose hours of work have been reduced as the result of the suspension or contraction of the employer's activities.

As in the case of family allowances, insurance schemes providing economic protection for workers are separate branches of the Italian social security system.

The information already given will therefore be complemented by further details with a view to providing a more comprehensive picture of the right to social security.

Insurance against involuntary unemployment

The insuring authority is the National Social Insurance Institute (INPS), the insurer is the employer and the insured is the worker.

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Insurance comes into play only when a worker-management relationship ends. Unemployed persons seeking their first job and public sector workers who have job security are therefore excluded. Other exclusions are prescribed by law for the following categories: workers whose remuneration is in the form of a share in profits, who are working temporarily for another person, who are employed exclusively on work performed at specific annual periods lasting less than six months or who are engaged normally or predominantly in an agricultural occupation, whether as a partner or independently. The exclusion of insurance is not a general rule for the agricultural sector, since protection is extended to persons on fixed wages, farm workers, day labourers, etc.

The employer's contributions are computed on the basis of a fixed percentage of remuneration. An unemployed worker receives a daily compensation payment provided that he has been insured for at least two years and has registered with the Employment Exchange. Compensation is payable from the eighth day after the last day of work and continues for up to 180 days. Other criteria for computing the payment period are applied in the agricultural sector because of the seasonal nature of the work.

Wage replacement

The insuring authority is the National Social Insurance Institute (INPS), the insurer is the employer and the insured is the worker.

Unlike the system of insurance against involuntary unemployment, under which benefits are automatically provided on verification of the "cessation" of the worker-management relationship, the system of wage replacement is conditional on the "suspension" of employment or the "reduction of hours of work" as a result of the suspension or contraction of the productive activity owing to unfavourable circumstances affecting the employer which, in turn are caused by transitory events outside the control of both employers and workers or by temporary market situations.

Wage replacement is of two types: ordinary and special. The ordinary type is payable, without an application by the employer, by the INPS after consultation with a special Committee; the special type is, however, subject to "verification" of the specific causes of the suspension or contraction of work by the Ministerial Committee for the Co-ordination of Industrial Policy (CIPI) on the proposal of the Minstry of Labour and after consultation with the national trade union organizations.

The system of wage replacement is funded by contributions from employers and the State.

Family allowances

In the section concerning the worker's right to fair and adequate remuneration (art. 7 of the International Covenant), we provided a general outline of family allowances as components of remuneration. Under article 36 of the Constitution, the worker is entitled to remuneration which satisfies two inseparable requirements: it must be proportionate to the quantity and quality of the work performed but it must also be sufficient to enable the worker and his family to live in freedom and dignity.

Undoubtedly, however, family allowances also constitute, from the legal point of view, a component of the Italian social security system inasmuch as their purpose is to enforce a form of distributive justice in favour of those workers who because of heavier family burdens, have larger subsistence requirements than those who have to provide only for themselves.

A description will therefore be given of the insurance system through which the necessary funds for family allowances are secured and distributed.

The system of family allowances is governed mainly by the Presidential Decree of 30 May 1955, approving a consolidated text of earlier laws, to which other legislation was subsequently added in 1967, 1969 and 1974.

On the basis of present legislation, family allowances are paid to employees who are heads of family and have dependants. In this context, "employees" means workers in the private sector who provide their labour to other persons in the territory of the State, including members of co-operative associations and bodies who perform work for those associations and bodies.

Consequently, this insurance system excludes persons employed by the State and government agencies who are already entitled to family payments under legislation, regulations or an administrative provision. Family allowances, on the other hand, have been extended to owner-farmers, share-croppers and tenant farmers.

Members of the family deemed to be "dependants" are the spouse, children, parents and other persons treated as such, these being specified in detail in the legislation, which covers a wide range of cases. Moreover, the law presumes that the mere fact of living under the same roof as the head of the family is equivalent to having the status of a dependant.

In principle, the allowance is payable for children and other persons until they reach the age of 18, but may be extended up to the age of 21 if the persons concerned are attending a secondary or vocational school and, if they are attending university, for the duration of their studies, but not after the age of 26.

Lastly, family allowances are payable in the event of interruption or suspension of work for causes provided for under law and to unemployed workers who have unemployment insurance.

Family allowances are administered by the National Social Insurance Institute (INPS) which pays them from a fund administered separately from other insurance funds.

Insurance contributions are payable by employers at the rate of 6.5 per cent of the worker's gross remuneration. A smaller contribution is payable for handicraft workers, merchants and the owners of agricultural enterprises, and for co-operatives and associations.

The administrative costs associated with family allowances are met from the employers' contributions and through financial help from the State.

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STATISTICAL DATA

A. General data: territory and population by major geographical and administrative area

Territories, administrative divisions, population	North	South	Total
Territory (in km^2)	178 218	123 045	301 263
Regions (no.)	12	8	20
Provinces (no.)	61	34	95
Communes (no.)	5 545	2 537	8 082
Population (1971 census)	35 262 281	18 874 266	54 136 547
Population density (per km^2)	198	153	180
Population (1979 estimate)	36 752 766	20 246 281	56 999 047

B. Population by status, sector of economic activity and major geographical area

(Thousands)

Status Sector of economic activity	North	South	Total
Employees:			
Agriculture	1 412	1 600	3 012
Industry	5 976	1 670	7 646
Other activities	6 713	3 006	9 719
Persons seeking employment	934	764	1 698
Persons outside the labour force	21 199	12 741	33 940
TOTAL	36 235	19 781	56 016

C. Labour force, 1979

(Thousands)

Status	M	F	T
Employed	14 081	6 296	20 377
Persons seeking employment	730	968	1 698
Seeking first job	413	453	866
Persons outside the labour force	12 507	21 434	33 940
TOTAL	27 318	28 697	56 016

D. Labour disputes, 1979

Type and cause of dispute	No. of disputes	No. of participants (thousands)
Disputes arising out of worker-management relations	1 979	10 521
Renewal of contract	456	6 659
Wage-related and economic	892	1 195
Dismissals and suspension of work	223	773
Solidarity	63	58
Other causes	345	1 836
Disputes not involving worker-management relations	21	5 717
TOTAL	2 000	16 238

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E. Social welfare benefits, 1979

(Thousands of lire)

Types	Social benefits	Social service benefits	TOTALS Lire	
Sickness	5 624 172	7 331 811	12 955 983	4.8
Disablement and disability	10 316 366	715 894	11 032 260	4.1
Accidents at work and occupational diseases	1 283 046	56 946	1 339 992	0.5
Maternity	429 229	-	429 229	0.2
Family	3 596 523	338 106	3 934 629	1.5
Old age	19 266 665	229 673	19 496 338	7.3
Survivor's	5 611 796	-	5 611 796	2.1
Unemployment	1 238 171	48 491	1 286 662	0.5
Training placement and occupational mobility	-	50 645	50 645	...
Other benefits	77 995	160 828	238 823	0.1
TOTAL	47 443 963	8 932 394	56 376 357	21.0

Source of data: Central Statistical Institute, Italian Statistical Yearbook, 1980 Issue.
