

ITALY



MINISTRY FOR FOREIGN AFFAIRS
Interministerial Committee of Human Rights
Comitato Interministeriale dei Diritti Umani

Reply To
List of Issues (CCPR/C/84/L/ITA)
(Relating to CCPR/C/ITA/2004-5)

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INDEX OF ISSUES

GENERAL FRAMEWORK CONCERNING THE IMPLEMENTATION OF THE ICCPR (art. 2)

pag. 6

1. *Has the State party reconsidered its reservations to the Covenant with a view to determining whether their continuance is really necessary? (Previous Concluding Observations, § 11)* pag. 6
2. *Does the State party believe that the Covenant applies to persons under its jurisdiction in cases where Italian troops or police officers are stationed abroad?* pag. 6

COUNTER-TERRORISM MEASURES AND OBSERVANCE OF THE PROVISIONS OF THE COVENANT pag. 8

3. *How is terrorism defined in domestic law? Please supply information about the content of any derogations from ordinary law which are set forth in counter-terrorist legislation, especially rules on searches, telephone tapping and the interception of communications. Do any special rules also exist in criminal law and criminal procedure?* pag. 8

PRINCIPLES OF EQUALITY AND NON-DISCRIMINATION (Artt. 3, 20 and 26) pag. 12

4. *What results have been obtained by the equality counsellors tasked with referring cases of gender discrimination to the courts? What action has been taken on counsellors' requests that, before legal proceedings are initiated, plans be put in place to eliminate such discrimination? (Periodic report, para. 460)* pag. 12
5. *What has become of the proposals for the reformulation of articles 51, 55 and 56 of the Constitution? (Periodic report, para. 465)* pag. 13
6. *Exactly what powers do the authorities have to bring discriminatory conduct to an end and to eliminate the effects of such conduct? Are these powers used in practice, and to what extent? (Periodic report, para. 484)* pag. 13
7. *It is alleged that spokespersons of certain political parties frequently resort to racist and xenophobic propaganda, essentially targeting foreigners who are non-EU nationals. Exactly what means are employed to ensure respect for article 20 of the Covenant?* pag. 20
8. *Part of the Roma population is allegedly living in poor, unhygienic housing in camps on the margins of Italian society. What steps are the authorities taking to remedy this problem?* pag. 21

**RIGHT TO LIFE AND THE PROHIBITION OF TORTURE AND
INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT
(Arts. 6 and 7) pag. 22**

9. *Has the State party taken steps to amend its legislation and institute a crime of torture as defined in international law? (Previous conclusions, para. 19)* pag.22

10. *Has the State party made provision for sanctions against persons who perpetrate domestic violence? (Previous conclusions, para. 19)* pag. 23

11. *What, to date, has been the outcome of the inquiries and criminal proceedings against officers of the State Police and some persons who took part in the demonstrations in Naples on the fringes of the 3rd Global Forum and in Genoa during the G8 Summit? Please indicate the number of persons concerned. (Periodic report, paras. 24-66)* pag. 24

12. *Reports continue of maltreatment by State agents, for example of anti-war protesters who demonstrated in Turin in 2003. Please comment. What steps have been taken to address the failings noted in police training? (Periodic report, para. 50)* pag. 25

13. *There are reports of abuses committed by certain members of the law enforcement agencies against vulnerable groups, in particular Roma, foreigners and Italians of foreign origin. What specific measures have been adopted to combat these abuses?* pag. 27

14. *What steps have been taken to follow up complaints lodged against members of the Carabinieri and prison officers? (Previous conclusions, para. 13)* pag. 27

15. *Please provide further information about the outsourcing of airport security checks to private bodies. What control does the State party exercise over these activities and over the alleged discrimination against foreigners? (Periodic report, para. 294)* pag. 28

16. *Please comment on reports that the Italian authorities have intercepted boats heading for Italy and have expelled many people from the island of Lampedusa in circumstances precluding the examination of applications for asylum* pag. 29

PROHIBITION OF SLAVERY AND SERVITUDE (art. 8) pag. 31

17. *What have been the consequences of the authorities' decision to limit the voluntary repatriation programme only to those victims of trafficking in human beings who have cooperated with the police and judicial authorities in action against traffickers and exploiters? What happens to victims who do not cooperate? (Periodic report, para. 147)* pag.31

18. *What does the State party mean when it asserts that services have the task of "tracking down and expelling from Italy a large number of non-EU nationals illegally present in the country, who have been earmarked by criminal organizations for prostitution"? Does this refer to victims of trafficking in human beings? Are traffickers prosecuted, or are they expelled? (Periodic report, para. 165)* pag. 34

SECURITY OF THE PERSON AND PROTECTION FROM ARBITRARY ARREST

(Art. 9)

pag. 37

19. Please indicate under what regime 222 persons were detained at the Bolzaneto facility during the events in Genoa. Has a specific inquiry been launched into the alleged failure to respect these persons' rights to have speedy access to a lawyer and a doctor (and, in the case of foreigners, to make contact with their consulates) and to notify relatives of their detention? (Periodic report, para. 48) pag. 37

20. Has the State party reduced the maximum period during which a person may be held in police custody and amended its legislation so as to guarantee access to a lawyer from the moment of arrest? What measures have been adopted in response to the Committee's recommendations regarding preventive detention? (Previous conclusions, paras. 14 and 15) pag. 37

21. How are foreigners held in temporary stay and assistance centres informed of their rights, and to what extent do they have access to a lawyer? (Periodic report, paras. 263 ff.) In addition, please comment on reports that detention conditions in temporary stay and assistance centres for foreigners are unsatisfactory in terms of overcrowding, hygiene, food and medical care. Are independent inspections carried out in these centres, and do non-governmental organizations have access to the centres? (Periodic report, paras. 263 ff.) pag. 38

TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (art. 10)

pag. 40

22. What emergency measures have been adopted, in addition to those specifically concerning women, to significantly reduce prison overcrowding? Is general recourse to alternative sentences envisaged? (Periodic report, paras. 95 and 325-326; previous conclusions, para. 16) pag. 40

RIGHT TO A FAIR TRIAL (art. 14)

pag. 44

23. According to some sources, the President of the Republic has decided not to promulgate the reform of the judiciary and to send the bill back to Parliament. Please indicate whether a new bill is being drafted, and how far the comments of Italian judges and of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers on this question are taken into account pag. 44

24. Please indicate what action has been taken on the Committee's findings in the *Maleki v. Italy* case (communication No. 699/1996). Has the State party amended its legislation and practice to ensure that the courts, before embarking on a trial in absentia, make certain that the persons being prosecuted are duly informed of the proceedings against them and, if not, that these persons have a right to a retrial at which they are present? pag. 45

PRIVACY AND FAMILY LIFE (art. 17) pag. 46

25. To what extent is the right to privacy and family life taken into consideration by the judiciary when the criminal conviction of an alien is accompanied by an expulsion order from Italian territory? (Periodic report, para. 288) pag. 46

FREEDOM OF RELIGION (art. 18) pag. 47

26. What is the current status of the religious freedom bill? (Periodic report, paras. 344 ff.) pag. 47

FREEDOM OF EXPRESSION (art. 19) pag. 48

27. It is reported that defamation is punishable by imprisonment. Please indicate whether any journalists have been convicted of this offence and, if so, how many pag. 48

28. Please comment on reports that the political authorities exercise a strong influence over public television channels; please state what measures are envisaged or have been taken to ensure these channels' editorial independence pag. 49

RIGHTS OF PERSONS BELONGING TO MINORITIES (art. 27) pag. 51

29. Please provide more information about the actual implementation of the Law of 15 December 1999 on the protection of traditional linguistic minorities. What criteria were used to select the communities listed in the Law? (Periodic report, paras. 488 ff.) pag. 51

Introduction

In order to respond to the List of Issues under reference (CCPR/C/84/L/ITA) relating to Italy's report to ICCPR (CCPR/C/ITA/2004/5), an ad hoc Working Group was established early in the year within the Inter-ministerial Committee for Human Rights (CIDU- Ministry of Foreign Affairs), and composed of representatives from relevant Ministries.

This Working Group was set up in February 2005, and has to date been working for more than six months, during which meetings have taken place for the preparation of dossiers relating to the Report (CCPR/C/ITA/2004/5), as well for the preparation of the List of Issues (CCPR/C/84/L/ITA, April 2005).

Within this framework, it is worth mentioning that CIDU has held consultations with relevant non-governmental organizations (NGOs).

Over the last few years, Italy drafted and/or adopted, and submitted, in compliance with international commitments, the following documents: The National Plan of Action on Children and the Youngster; The National Plan on Social Exclusion (2003-2005); the National Plan on Health (2002-2004); the first Reports of Italy to Optional Protocols to CRC (CRC/C/OPSA/ITA/1 - CRC/C/OPAC/ITA/1); the second Report to CRC (CRC/C/70/Add.13), as well as the consolidated Report to CEDAW (CEDAW/C/ITA/4-5) and the Fourth Report to ICESCR (E/C.12/4/Add.13). It is also worth mentioning the current finalisation both of Italy's Plan of Action as a follow-up to the Durban Plan of Action, and of the periodic State's report to ICERD.

General framework concerning the implementation of the ICCPR (art. 2)

1. Has the State party reconsidered its reservations to the Covenant with a view to determining whether their continuance is really necessary? (Previous Concluding Observations, § 11)

After a preliminary consideration, since May 2005 Italy has started an in-depth review, involving all the Departments concerned, so as to assess the status of the reservations¹. Such exercise will be followed up, where feasible, by a Declaration on their withdrawal.

2. Does the State party believe that the Covenant applies to persons under its jurisdiction in cases where Italian troops or police officers are stationed abroad?

Following a proposal submitted by the Ministry of Defence, on 31 July 2003 the Council of Ministers adopted a governmental Bill (A.C. 5433 -A) in order to delegate to the Government the revision of military codes both in times of war and peace, in addition to the adjustment of the judiciary military system.

The Government Bill, entitled "Delegation to the Government in order to revise penal military laws both in times of war and peace, as well as to adjust the military judiciary system (App. 1)" was adopted on 18 November 2004 by the Senate (A.S. 2492), while the relevant Commission of the Chamber of Deputies commenced its consideration on 2 February 2005 (A.C. 5433 -A) (App.2).

The **adjustment to international humanitarian law** should be regarded as one of the central aspects of the reform and must be analysed by recalling the revision of the crimes “against laws and customs of war”, as contained in the Fourth Title (of the Third Book) of the Penal Military Code of War (C.P.M.G., the Italian acronym, hereinafter).

The development of international humanitarian law entails the adoption of provisions that allow a more specific indication of the areas of application concerning both international and non-international armed conflicts, including reference to the Statute of the International Criminal Court², as adopted in Rome on 17 July 1998 and ratified by Italy, by means of Act no. 232/99³.

The two Law Decrees on the “Enduring Freedom Mission” (as confirmed by Acts no. 6/02 and no. 15/02, respectively), while defining the military penal system within which Italian forces participate in the international mission to Afghanistan, include provisions implementing C.P.M.G. in order to better protect the Armed forces involved, and particularly vulnerable groups, such as disabled, invalids, wounded, prisoners, etc..

As a matter of fact, the Italian C.P.M.G. contains, unique case in the years in which it was adopted, important provisions (the Fourth Title of the Third Book) relating to “crimes against laws and customs of war”, currently referred to in international criminal law under the definition of “war crimes”.

Amendments to C.P.M.G. were deemed necessary after the decision to apply such legislation to the troops deployed to Afghanistan. Therefore, the Government introduced a specific Bill (A.S. 915), and the Parliament, accordingly, decided to include such proposals amending C.P.M.G. in the Act converting Law Decree no. 421/01. The adoption of Act no. 6/02 was the final step of this process. More specifically, the aforementioned Act also contains several amendments, relevant to the C.P.M.G.⁴, as follows:

Certain categories of crimes, such as illegitimate or arbitrary acts of hostility as envisaged under Art. 165 C.P.M.G., were punishable upon decision by the supreme commander⁵.

With a view to protect the Italian Armed forces, the previous wording of the provision under reference mentioned the following circumstances: 1. Italian soldiers are not punishable unless their conduct is envisaged by the criminal legislation of the enemy State (including the case when such acts are not committed by the enemy); 2. The Supreme commander is the only authority entitled to judge such acts, particularly the existence of the reciprocity clause (and whose judgement, if necessary, may be challenged at the judicial level).

The newly adopted Article 165 C.P.M.G was introduced by Art. 2.1.(D) of Act no. 6/02, which provides that “the provisions of this Title – on crimes against laws and customs of war – apply to any case of armed conflict, regardless of a declaration on state of war”. The new wording of Article 165 C.P.M.G. provides for the application of such provisions in any armed conflict. The terminology does not define “armed conflict” and entails that the criminal offences provided for in the Fourth Title of the C.P.M.G.’s Third Book are now applicable to any armed conflict, either international or internal ones (in parallel with the

broadening of the scope of individual penal responsibility when violations of international humanitarian law are committed during internal conflicts).

On a more specific note, the inclusion of such crimes in the ICC Statute underlines the progress made vis-à-vis relevant international legislation, which is advancing by taking into account both the international criminal tribunals' case-law and the relevant provisions adopted by States at the domestic level.

Some additional amendments were introduced by Act no.6/02 to complete the adjustment of the Italian legal system to current international humanitarian law. Art. 2. (lett.e) provides for the criminalisation of "hostage-taking (see Art. 184-bis)", while its Art.2. (lett.h) repeals Art. 183 C.P.M.G. that provided for a prison penalty, up to one year, for the commander who, "apart from the case of imminent danger for the security of armed forces or the military defence of the State, orders that the individual caught in the act of spying on or committing a crime against laws and customs of war be immediately executed (thus, without fair trial)". This case was in stark contrast with both treaty norms and Art. 5 of the Fourth Geneva Convention, which explicitly provide for the principle of a fair trial for those individuals who are charged with espionage.

In order to adjust the Italian legal system to international standards, Art. 185-bis C.P.M.G. introduced the detention penalty, of up to 5 years, for the following crimes: "torture, inhuman treatment, illegal transfers, biological experiments, groundless medical treatment (...)". By mentioning in particular "other acts prohibited under international conventions", Italy aimed at standardising criminal behaviour committed "against war prisoners, civilians or other persons protected under international conventions". In doing so, some of the *grave breaches*, such as "the prohibition of deportation or illegal internment of protected persons, the unjustified delay in repatriating war prisoners or civilians at the end of hostilities, the practice of apartheid and other inhuman or degrading treatment based on racial discrimination", are now punishable.

In brief, as far as missions abroad are concerned, the enforcement of the Code applicable in time of peace, which is the only one to be enforced when deploying training missions, caused a lack of protection vis-à-vis situations when the use of force emerged, such as charging the State with acts committed by Task Force members accomplishing their mission, the legal status of prisoners, etc.. No protection provision was envisaged vis-à-vis for vulnerable groups, such as the disabled, the wounded, and civilians⁶. Therefore, the legislative exercise started was deemed necessary, and remain pivotal.

At the operational level, it is also worth stressing that specific training activities, including humanitarian law courses, for the Armed Forces and Carabinieri, to be deployed in the field are organised (*for further information, please read below information under question no.12*).

Counter-terrorism measures and observance of the provisions of the Covenant

3. How is terrorism defined in domestic law? Please supply information about the content of any derogations from ordinary law which are set forth in counter-terrorist legislation,

especially rules on searches, telephone tapping and the interception of communications. Do any special rules also exist in criminal law and criminal procedure?

Within the EU framework, Italy fully recognises a bedrock list of rights and freedoms that cannot be derogated under any circumstances, such as the right to life, freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom of thought, expression, conscience and religion; right to strike; freedom of assembly, association.

Mention shall be made of the following relevant instruments: (at the regional level) the European Convention for the Repression of Terrorism, adopted in Strasbourg on January 27, 1977, which was ratified by Italy by means of Act no. 719/85⁷; (at the EU level) the Common Position of the European Union which was adopted on January 27, 1977; the Action Plan to Fight Terrorism, adopted in September 2001; the European Union Common List of Terrorist as a follow-up to Common Positions 930-931/PESC/2001 which translated UNSC Resolution 1373 (28th September 2001) into Community instruments⁸; and the Framework Decision on Combating Terrorism (providing for the first time a common definition of “terrorist offence” and of individuals and organisations responsible for relevant offences), adopted by the EU Council, on June 13, 2002 (2002/475/JHA).

On a more specific note, in the aftermath of 11 September 2001, the European Council, at its extraordinary meeting on 21 September 2001, put terrorism at the top of its agenda and approved the “*Action Plan to fight terrorism*”. For the first time, the EU developed a coordinated, coherent and cross-pillar approach to all its policies and measures to fight terrorism. The European Council stated that “*terrorism is a challenge to the world and to Europe*”, and that its combat will become “*more than ever, a priority of the European Union*”. However the commitment to fight terrorism should go hand in hand with “*the respect for fundamental freedoms that are the basic foundation of our civilisation*”. In particular, the “*Action Plan to fight terrorism*” envisaged the following priority areas: enhanced Police and judicial cooperation, to be developed through instruments such as the European Arrest Warrant, a Common List of Terrorists, and Europol; the development of international legal instruments against terrorism; fighting the financing of terrorism; reinforcing aviation security; and a coordinated global action by the European Union.

At the domestic level, in the aftermath of 11 September 2001 the Italian Government urgently adopted Law Decree no. 374/01, entitled “*Urgent Provisions in order to fight international terrorism*”, which was confirmed by Law no. 438/01. By this Decree, the Government introduced into the Italian legal system the crime of “*international terrorism*” (see Art. 270 *bis* of Penal Code).

Art. 1 of Act no. 438/01 stipulates that “*anyone, who promotes, sets up, organises, directs or finances associations that intend to commit violent acts with the aim of terrorism or subversion of the democratic order, is punished with a detention penalty of up to seven years. Whoever participates in such associations is punished with a detention penalty of up to ten years. The terrorist aim emerges even when violent acts are directed against a foreign country, an international institution or organisation*”.

As far as the convicted are concerned, the Law provides for the mandatory confiscation of the means and assets that are used or aim at committing the crime under reference.

With regard to substantial law, the most important change brought about by the amendment of Art. 270 bis of the Penal Code is the broadening of the scope of terrorism.

Under Article 270, para.3, of the Penal Code, the scope of terrorism has been extended by including, on one hand, violent acts committed against a foreign State, international institution or organisation, while the repression of the planning of violent acts with the aim of terrorism is also included.

Law Decree no. 374/01 (converted by Act no. 438/01) introduced an additional criminal offence concerning "assistance to associates". Art. 270 ter of the Penal Code provides for the detention penalty, up to four years to "whoever - excluding the case of participation in and abetting the crime - either shelters, or gives hospitality, or provides transport and communication means to those participating in the associations enlisted under Arts.270 - 270 bis".

Recently, by Act no. 34/03, the Parliament amended Art.280 bis concerning "acts of terrorism by use of explosive and deadly devices"⁹. In doing so, the list of offences concerning attacks with subversive and terrorist's aim directed to damage personal property and assets was broadened¹⁰.

With specific regard to the search system, it should be borne in mind that Art. 14 of the Constitution encapsulates the principle of the unviolability of the domicile, and refers to the rule of law when proceeding with searches and seizures (In this respect, Articles 247-250 of the Code of Penal Procedures sets out formalities within which judicial authorities order to make a search¹¹. Needless to say, when terrorism acts are committed, both confiscation and searches fall under judicial scrutiny¹²).

Art. 13 of Law Decree no. 152/91 relating to crimes committed with the aim of terrorism or subversion of the constitutional order provided for the detention penalty of up to 10 years, vis-à-vis crimes enlisted under Arts.270, para.3, 270 bis, para.2, and 306, para.2, of the Penal Code. In particular, this Article envisaged as a minimum requirement for the interception of communication, "sufficient evidence relating to the crime" and "the necessity of this search measure to further the investigation". Along this line, Law Decree no. 374/01¹³ (confirmed by Act no. 438/01) broadened the scope of legislation on interceptions and wire tapping,

With specific regard to victims of terrorism, Italian authorities adopted ad hoc legislation aimed at protecting all those who are victims, including their families, or are affected by terrorism or mafia-type criminal organisations, and suffer for the consequences of grave or deadly injuries by providing benefits, including financial ones. To this end, Act no. 466/80 provided for special grants to be allocated to those who are victims of terrorism during the course of their duties.

Following the amendments introduced by Act no. 720/81, the above-mentioned Law also included amongst the beneficiaries, foreign citizens, stateless persons and their surviving relatives who suffer from terrorist attacks within domestic borders. Subsequently, Act no. 407/90 increased the amount of the grant and extended it to victims of mafia-type criminal organisations. Act no.407/98 provided for a monthly life cheque to be allocated to the wounded with a minimum invalidity (25%).

Along these lines, amendments were also introduced by Act no. 206/04 on “New norms in favour of victims of terrorism and massacres of terrorist type”. This Act - providing for social security and health care services-related benefits - included Italian victims of terrorist acts occurring from January 1, 2003 onwards, abroad. Moreover, this increased the amount of the special grant to be provided, up to 200,000.00 Euros, in addition to the life cheque provided for by Act no. 407/98. As to the five-year term 2000-2004, benefits for a total amount of 36.080.879, 85 euro were allocated.

Italy fully applies the principle that “no person shall be removed, expelled or extradited to a State where there is a serious risk of being subjected to the **death penalty, torture** or other inhuman or degrading treatment or punishment”.

Further to the latest events occurred in London and in Sharm-el-Sheik, Italy urgently passed Law Decree no.144/05, entitled “Urgent measures to contrast international terrorism” which envisages *inter alia* the following measures:

1. The release of stay permits in case of collaboration with Authorities (Art.2);
2. The immediate expulsion in case of migrant linked with terrorism network (art.3). In this regard, the right to file a complaint before the administrative courts is envisaged (Art.3).
3. Counter-terrorism interforces units of Police will be established in order to assist the public prosecutors to detect terrorism networks (Art.5).
4. All data collected by email or by phone will not be deleted up to the year 2007 (Art.7).
5. Additional measures entail amendments to the relevant Codes, as well as the introduction of new crimes and proceedings, such as Art. 349 of c.p.c., para.2 bis, relating to new identification tools (in order to proceed with the identification of a suspect in accordance with para. 2 of Art. 349 of c.p.c., the Criminal Investigation Department can take a sample of his/her hair or saliva, by authority received from the public prosecutor, despite the lack of consent of such individual); Art. 497-bis of the p.c. relating to the possession or the forgery of IDs (whoever is found with forged IDs, valid to leave the country, is convicted to a detention penalty of up to four years. In case of act of forgery, this sanction may be increased, up to six years); Arts. 270-quarter, quinquies, include new offences relating to terrorism. In particular, Art.270-quarter envisages the recruitment aimed at terrorism, including international terrorism (“Apart from the cases envisaged under art. 270-bis p.c., anybody who recruits people in order to commit violent acts or sabotage of public utility services, even when directed against foreign countries, institutions or international organisations, is convicted to a detention penalty of up to 15 years”). Art. 270-quinquies mentions the training aimed at terrorism, including international terrorism (“Apart from the cases enlisted under Art.270 bis p.c., whoever trains or gives instructions in order to manufacture or to use explosives, weapons, harmful and dangerous, chemical and biological materials, including any other method, directed to commit violent acts or sabotage of public utility services, including against a foreign State, institutions and international organisations, is convicted to a detention penalty of up to 10 years”). (Arts. 10-15).

Principles of equality and non-discrimination (Artt. 3, 20 and 26)

4. What results have been obtained by the equality counsellors tasked with referring cases of gender discrimination to the courts? What action has been taken on counsellors' requests that, before legal proceedings are initiated, plans be put in place to eliminate such discrimination? (Periodic report, para. 460)

As stressed in the latest Italy's Report to CEDAW, the action of the Government, particularly of the Ministry for Equal Opportunities, has been based on a modern concept of equal opportunities that entails an accurate action of scrutiny and fight against, first and foremost, the inequalities between women and men, in addition to discrimination grounded on race, ethnic and social origin, linguistic and religious characteristics, personal convictions, political opinions, belonging to a national minority, property, birth, disability, age and sexual orientation¹⁴.

The **Delegated Law no. 196/00** outlines the new functional profile of the equality counsellors; in doing so, it has fully applied Act no. 125/91 on affirmative actions that introduced specific initiatives in the Italian legal system, with the aim of fostering employment of women and achieving substantial equality between women and men at the work-place.

The task of the equality counsellor concerns both the promotion of equal opportunities and the guarantee of the observance of law against discrimination. With regard to the new tasks, mention should be made of the following areas of intervention: backing labour policies; cooperation with Regional and Provincial Labour Directorates in order to monitor more effectively cases of violation of anti-discriminatory legislation; awareness raising campaigns of good practices; evaluation of the outcomes of the projects on affirmative actions carried out pursuant to Act no. 125/91.

Some remarkable amendments relating to bringing an action before a court in case of gender discrimination were introduced as follows: paragraph 8 of Article 8 of the Legislative Decree no. 196/00 provides that national equality counsellors, in addition to the regional ones, may bring an action in cases of collective discrimination of national relevance; the advisory service by the Office of the National Equality Committee relating to bringing a collective action is no longer mandatory; still, with reference to collective discrimination, a new judicial proceeding, to be started by both national and regional equality counsellors, was introduced in order to file urgently a complaint against discrimination. The latter procedure was inspired by the general decisions provided for in Article 28 of Act no. 300/70 on "the repression of anti-union acts and its outcomes" which include the cessation of the discriminatory act and the cancellation of the related effects¹⁵.

With specific regard to the projects referred to in the periodic report submitted by Italy, it should be mentioned that while Bill A.C. 6582, entitled "Measures against Discriminations in order to Promote Equal Opportunities", is currently under examination at the Chamber of Deputies, the draft Law A.C. 5865, entitled "Measures in order to promote and repress sexual orientation-motivated discrimination" is under examination, in the first reading,

before the Chamber of Deputies (in addition to another relevant Bill introduced some months ago).

5. What has become of the proposals for the reformulation of articles 51, 55 and 56 of the Constitution? (Periodic report, para. 465)

By taking stock and building on actions carried out in the previous period of office of the legislature, the Ministry for Equal Opportunities deemed necessary to amend Art. 51 of the Constitution in order to achieve a balance: it is an important step towards reaching equal opportunities between men and women as to elective positions and public offices.

By Constitutional Law no. 1/03, at the end of the first paragraph of Article 51 of the Constitution, the following sentence was added: "The Republic promotes equal opportunities between women and men through appropriate measures", thus asserting the right of every citizen of both sexes to access, in both de jure and de facto conditions, to public offices and elective positions.

In order to increase the percentage of women in elective assemblies and political offices, the Ministry for Equal Opportunities has launched some initiatives with the aim of enforcing this constitutional provision¹⁶. In line with this background, Art. 3 of Act no. 90/04 provides that in the next two elections for the European Parliament, following coming into force, the total of the constituency lists bearing the same mark, neither gender shall be represented by more than two thirds of the candidates. The violation of this provision will be punished by a reduction of the amount of the refund of election expenses up to the maximum of a half, in direct proportion to the number of candidates beyond the allowed maximum number.

The promising outcome realised through the new provision in the last election (fifteen women Members of Parliament compared to ten in the previous period of office) persuaded the Government to introduce a similar bill, currently under discussion before the Senate of Republic (A.S. 3051), for political and local elections; this was also encouraged by the new case-law trend of the Constitutional Court on the issue of the so-called "quotas".

As to Arts.55-56 of the Constitution, Constitutional Law no. 3/01 provided for the following amendment to the second paragraph of Article 56: "the number of Deputies is 630, of whom 12 shall be elected in the Constituency Abroad". The broadening of the scope of the Constitutional provision under reference follows up to the reform of Art.48 of the Constitution, as amended by Act no.1/00. The amendment aimed at allowing Italian residents abroad to vote at their place of residence. Constitutional Law no. 1/01 assigned 12 Deputies to such Constituency. For the upcoming legislature, 12 out of 155 deputies elected under the proportional representation system shall be selected in the Constituency Abroad. Along this line, Art. 57 of the Constitution provides that "The elective Senators are 315, of whom 6 shall be elected in the Constituency Abroad).

6. Exactly what powers do the authorities have to bring discriminatory conduct to an end and to eliminate the effects of such conduct? Are these powers used in practice, and to what extent? (Periodic report, para. 484).

By recalling Act no. 654/75 (by which the International Convention on the Elimination of All Forms of Racial Discrimination was ratified), and the so-called Mancino Law (Act no.

205/1993), the establishment of the National Anti-Racial Discrimination Office (UNAR in the Italian acronym, hereinafter) should be highlighted as one of the most recent and outstanding initiatives in the fight against discrimination.

With a view to effectively implementing integration policies and with the aim of ensuring the effective functioning of protection instruments (including inter alia practical assistance measures for the victims of discrimination), UNAR started its activities in September 2004.

The activities of UNAR are: preventing discriminatory acts; promoting equal treatment; cessation of discriminatory conducts; evaluating the application of the principle of equal treatment, and subsequent reporting to the Parliament¹⁷.

As to its **activities of prevention**, UNAR reaches out public opinion through awareness-raising campaigns and communication through mass-media, as well as educational activities within the school system and the work-place in order to prevent the beginning and development of discriminatory conducts. The awareness-raising activity for the public opinion started with the organisation of an international meeting on 16 November 2004 (Convention: *"All different, all equal: the launch of the new UNAR"*).

UNAR published a booklet and a brochure on the legislative changes brought in by Decree no. 215/2003 and on the tasks of UNAR. The booklets were widely distributed and are available on the Website of the Office (www.pariopportunita.gov.it).

The Ministry for Equal Opportunities has decided to devote the 21st March, date of the International Day for the Elimination of Racial Discrimination, and the following days to "the Week of Action against Racism" which included some initiatives in the fields of sport, school and university¹⁸. The week started on Sunday, 13 March with the Rome Marathon, when a thematic section under the slogan *"I run against racism"* was organised in tandem with the Campaign of the European Union *"For Diversity, against discrimination"*, and ended up with the distribution, on 19-20 March 2005, of relevant documentation at main Italian stadiums during the matches of the football championship. On that occasion, the football teams of the first division championship played under the slogan *"Score against Racism"*.

Mention should be made of the contribution by some football players of the more important championship teams that offered their image by participating in this initiative. The involvement of the university was remarkable and workshops and specialised seminars on the issue *"Equality in Diversity: new measures against racial discrimination"* were organised in several universities. Schools were also fully involved. In this regard, a DVD on the recent anti-discrimination legislation and on the newly established anti-discrimination Office "UNAR" was handed out, and a competition, open to primary and secondary schools, was launched with the aim of involving students on the issue of *"Interaction among cultures in the school"*.

Specific mention shall be made of the task of the UNAR to carry out nation-wide research, in coordination and with the help of specialised Institutes, particularly when gathering statistical data on discrimination cases both within the public and private sector, including the social, working, health-care and educational fields.

The other track of the UNAR activities concerns the **cessation of the effects of discriminatory conducts**. If the Office is apprised of cases regarding discriminatory acts or conducts, the aim of the Office is to contribute to correct the situation, by guaranteeing the cessation of the discriminatory conduct, the elimination of detrimental effects already suffered and compensation for damages.

With regard to this task, the UNAR and its highly professional and independent legal experts and collaborators, fully respecting the functions and the powers of the judiciary, are also engaged in:

- a) providing assistance and support in legal or administrative proceedings, assisting the person discriminated against – or the association that acts on his/her behalf – throughout all the judiciary proceedings;
- b) providing information, news and observations, both oral and written, before the court through one of its representatives;
- c) carrying out free and independent inquiries, by respecting the functions and the powers of the judiciary in order to ascertain the existence of discriminatory phenomena.

With regard to the cited primary objective, since the adoption of Legislative Decree no. 215/03 (in line with the relevant Community Directive), there has been a rising interest towards the establishment of a register of associations and bodies legally authorised to participate in legal proceedings (see below). By this Decree, associations and bodies, which must be enlisted in a special register approved by a Decree of the Ministry for Equal Opportunities and the Ministry of Labour and Social Policies, are in a position to file a complaint, on behalf of or in support of the individuals discriminated against. However, the Office (UNAR) also intends to bolster the resort to the informal conciliatory activity aimed at the elimination of discriminatory conduct.

Mention should be made of the support and help that the Office provides through its Contact Center. The activities of this service started on 10 December 2004, includes a toll free number 800.90.10.10, operating on a daily basis (from 10 a.m. to 8.00 p.m.) and is available in Italian, English, French, Spanish, Arabic, Russian, Chinese mandarin¹⁹.

During the first months of activities, UNAR collected information in order to assess the type and the dynamics of the discriminatory conducts. This also acknowledged that most cases are reported directly by the victims of discrimination, and that most requests concern a wide range of general and practical information. In particular, in the first seventy days since its opening, the Contact Center dealt with 2,683 requests, and transmitted to UNAR cases falling under the mandate of the latter.

A great number of calls concerned requests for information from foreign citizens on migration and stay permits related issues, cases of discrimination, not directly relevant to the Office mandate, and generic requests of aid made by Italians and foreigners (however many complaints were lodged after the broadcasting of the relevant TV and radio advertisements).

The Office staff exhaustively replied to all the requests, by suggesting *inter alia* services, focal points and local associations, to be contacted for follow-up activities and further support. However, cases of provocative measures against the service also occurred.

Despite these difficulties, analysis of cases submitted to the Office has been made and gives a clear picture of the areas where relevant complaints are filed. On the basis of cases reported to the Office, ten areas of concern have been considered and emerge: 1. Accommodation; 2. Employment; 3. School and education; 4. Health; 5. Public transport; 6. Law enforcement bodies; 7. Services provided by public bodies; 8. Services provided by public commercial concerns; 9. Provision of financial services; 10. Associations:

Accommodation: The reports registered under this category concern: lease or purchase of houses (including relationships with intermediaries such as estate agents), participation in public competition for the assignment of public accommodation, problems with co-owners and neighbours.

Work: This category focuses on reported discriminatory acts as occurred in the workplace or in other related places. In many cases, the issues under consideration should be brought to the attention of labour tribunals and relate to violations of contractual agreements or mobbing with the aggravating circumstance of discriminatory behaviour on racial grounds.

School and Education: The reports under this category concern: alleged discriminatory acts against foreign users (parents and children) or other users committed by the staff of school; cases related to particular obstacles concerning specific discrimination as to access to procedures of recognition of educational qualifications.

Health: This category includes reported cases of discrimination in relation to the fruition of private or public health-care services provided by hospitals, local health-care services (ASL) and medical specialists.

Public Transport: This category includes complaints of alleged discriminatory acts against foreign users committed by the staff of the public transport system, including the refusal to provide this service;

Law Enforcement Officials: This category includes reported complaints about discriminatory acts committed by State Police, Municipal Police and Carabinieri.

Services provided by public bodies: The complaints registered under this category concern discriminatory acts allegedly committed by staff of public bodies (municipalities, regions, etc.) when providing the relevant services (services concerning personal data, social services).

Services provided by public commercial concerns: This category focuses on cases relating to the refusal, by those who run public commercial concerns, to provide the relevant services;

Provision of financial services: This category concerns reported cases of discriminatory acts related to the granting of loans, mortgages, fundings, policies.

Associations: The complaints registered under this category concern discriminatory acts committed by associations and organisations that provide protection services²⁰.

Within the framework of the most recent UNAR activities, mention should be made of the **Registry of Associations Working against Discrimination**. With respect to the authorisation to file a complaint, Art. 29, para. 1., letters e) and f) of the relevant Community Law provides that, in cases of discrimination, the authorisation to lodge a complaint must be recognised and also extended to associations and bodies acting on behalf of the victims. To this end, Art. 5 of Legislative Decree no. 215/03 specifically enables associations and bodies working in the field of the fight against discrimination to proceed. This authorisation is granted to those associations and bodies, as inserted in ad hoc joint Decrees of the Ministry of Labour and Social Policies and the Ministry for Equal Opportunities. In practical terms, associations working in the field of social integration,

and included in the Registry of the Ministry of Labour and Social Policies provided for in Art. 52, para. 1. letter a) of the President of the Republic Decree no. 394/99, as well as those working in the field of the fight against discrimination, and included in the specific Registry at the Ministry for Equal Opportunities, are entitled to act.

In this context, mention should be made of the legal framework adopted in the year 2003, for the protection of workers in case of direct and indirect discrimination on religious grounds, personal convictions, etc.. The release of the aforementioned authorisation by the inter-ministerial decree is conditional upon the registration in one of the two registries, while certifying the reliability and transparency of the bodies working in the field of racial integration. These two Registries are also a database providing general information on functions, responsibilities, areas of intervention and location of such bodies. The minimum requirements for the insertion in the second Registry are as follows: the establishment of the association or the body by public or private deed, at least a year before its registration; its main or sole aim should be the fight against the phenomena of discrimination as well as the promotion of the non discrimination; the drawing up of a balance sheet specifying the dues paid by the members; the constant updating of the registry of the members; the performance of activities, on a continuous basis, in the year before the registration.

In order to avoid the risk of overlapping the systems of registration, the aim of the lawmaker was to create a list of non-profit-associations engaged in the fight against discrimination so as to enable UNAR to better carry out and develop policies with the aim of fighting racial discrimination nation-wide.

The action to be taken by associations and bodies may concern cases both of individual and collective discrimination. In the former case, the associations may institute legal proceedings on the basis of a written authorization as given by the person discriminated against; in the latter, the associations may take legal proceedings even without delegation, as victims are not immediately and directly identifiable²¹.

The establishment of the Registry at the Department for Equal Opportunities was decided inter alia with the aim of enabling relevant associations and bodies to act and to create synergies with the Office, including the launch of joint projects. In particular, at the operational level, an internal Commission of the Office is currently verifying that the requirements set forth in the above Legislative Decree are met by the associations applying for registration. At present, the Registry under reference is currently working, and 82 associations have been inserted, so far.

More specifically, the associations, the applications of which have been accepted, can represent victims of racial discrimination before a court, while trade unions are in a position to represent victims of discrimination when such cases focus on employment-related issues.²²

In July 2003, by Legislative Decree no. 216, it was recognized the right of the worker who alleges to have been discriminated on the grounds under reference, to request for the cessation of the conduct, as well as the compensation for the non-pecuniary damages suffered.

Since the summer 2003, Italy adopted two Law Decrees with a view to adjusting Italian legislation to the provisions of the two Directives of the European Union on racial equality and gender equality in matters relating to employment and work conditions, respectively.

Within the cited legal framework, the General Directorate for Immigration at the Ministry of Labour and Social Policies undertook some initiatives aimed at promoting the integration process of foreign migrants living in Italy and at fighting discrimination. In this regard, ad hoc agreements were signed with Regions, with the aim of promoting good practices and testing initiatives, such as projects on literacy-related issues, support programs for access to housing, and cultural mediation, to be extended in a later stage at the national level.

In order to support the integration process of the immigrants living in the national territory, to raise awareness of immigration phenomena, and to develop ad hoc reception services, some activities have been undertaken by means of the structural funds included in the Operative Security Programme for the Development of Southern Italy 2000-2006, which is led by the Ministry of the Interior.

Among these activities, mention should be made of the establishment of the Monitoring Centre on Immigration Flows in Bari, as well as of the Naples-based Centre against Discrimination. In particular, the Centre against discrimination is aimed at carrying out studies, and proposing policies and preventive actions against discrimination affecting migrants living in the southern regions. In this context, cultural mediators participate in the research activity of the Center; and more generally cultural mediation aims at promoting in depth knowledge of the immigration phenomenon and at narrowing the distance between the host country and the immigrant population. By hiring 60 mediators to be assigned at the health-care, education, working and social services sectors located in the Southern regions, the cultural mediation process is underway²³.

On a more specific note, with respect to cultural mediation, since the year 2001 several projects have been financed, including the project entitled "Cultural mediators in network" that provides for cultural mediation activities to be carried out by a group of 40 cultural mediators, and the establishment of workshops on inter-culture within the school system, and the service of cultural-linguistic mediation, at the Offices of the Public Security Administration.

Within this framework, there have been 39,400 support interventions concerning identification, information, notification of relevant measures, recording of applications by asylum-seekers and escort to Centres of Assistance and Temporary Stay. Additionally, front-office activities, namely at the information desks, have taken place in order to promote access of foreigners to several local services²⁴.

ii. In Italy, racist behaviours are carefully monitored and trigger action to be taken by adopting integration policies, as well as appropriate sanctions. Racist and intolerant attitudes in Italy are mainly linked to anti-Semitism and Islamo-phobia and take the form of graffiti, murales, drawings of swastika, intolerance statements²⁵ (There are also notices that advertise rent opportunities reading "No extra-communitarians").

- By Decree of the Interior Ministry of 30 January 2004, the **Committee against Discrimination and Anti-Semitism** was established with the mandate to “carrying out a constant monitoring of risk indicators which could escalate into forms of intolerance, racism, xenophobia and anti-Semitism, and proposing educational and sanction measures in order to effectively tackle and fight any behaviour inspired by religious or racial hatred”, in conformity with Art. 1²⁶.

The Committee periodically convenes in order to examine the most important and urgent aspects of the discriminatory phenomena. In particular, the Committee can gather information and data which are directly sent by the *Prefettura* – Local Offices of the Home Affairs Ministry. This also receives support and cooperation by public and private bodies, including those operating abroad.

Some noteworthy decisions made by the Committee are: monitoring activities of the discrimination phenomena which has been recently started by *Prefetti* – Heads of the Local Offices of the Interior Ministry; the involvement of the School General Directors, through the Ministry of Education, University and Research, so as to create a climate of cooperation with the world of education in order to better tackle intolerance-related issues within the school system, and to raise awareness; the involvement of the call-center of the Ministry for Equal Opportunities in order to deal with reports of victims of discriminatory conducts; the creation of an ad hoc website focussed on the work of the Committee. The Committee decided also to start a dialogue with religious bodies, linguistic minorities and NGOs working throughout the country, particularly with the Italy-based Muslim associations (on 23 September 2004, the establishment of an advisory central body was proposed with a view to both “starting an institutional dialogue” with the cited associations, and “emphasizing the Italian Islam, respectful and consistent with domestic laws and values”). Therefore, the Union of Italian Jewish Communities, the Cultural Islamic Centre in Italy and the *Opera Nomadi* (an organisation promoting the rights of Roma people) were heard before the Committee, while arrangements to hold hearings in the future with the Islamic Religious Community (COREIS the acronym in Italian) and the Union of Islamic Communities and Organisations (UCOI) have been envisaged, in addition to all relevant NGOs which may request it.

With specific regard to phenomena of **discrimination and violence on racial grounds** during sporting events, and in particular football matches, it should be mentioned that such phenomenon is undoubtedly one of the themes of major concern of both public opinion and sports, national and international institutions. Against this background, it seems useful to outline the mandate of the National Monitoring Centre on Sports Events, based at the Ministry of Interior with the task to devise and implement the essential strategies of fight against phenomena of violence in the stadiums²⁷.

During the football season 2003-2004, important results were achieved: 5724 matches took place, of which 309 of the first-division championship, 526 of the second-division championship, 1584 of the third-division championship, 3154 of the fourth-division championship, over 81 matches of the Italy Cup, 15 of the Champions League, 13 of the UEFA Cup. Around 20 million people watched these matches and among them a million people followed their team away from home.

On the occasion of football matches, 931 law enforcement officials were reportedly wounded. This figure shows a decrease of 25% compared to the previous season when 1240 force members were wounded. Along this line, even the number of wounded among civilians diminished, as well: 282 compared to 473 during the season 2002-2003, with a fall of 40%. Moreover, the relevant authorities proceeded to arrest 335 individuals, while 1330 persons were indicted.

In this context, it should be borne in mind that Law Decree no. 28/03 (confirmed by Act no. 88/03) focused on the offences committed by violent acts against individuals or property on occasion of sporting events. This also provided for the arrest measure in the act of the crime, based *inter alia* upon photographic, video documentation or other objective elements from which the author of the offence appears clearly. Along these lines, on June 6, 2005 the Minister of the Interior adopted three Decrees in order to prevent further phenomena with racial and violent background in the stadiums:

1. Ministerial Decree on Video-surveillance. By introducing specific techniques for the video-surveillance in the stadiums, the Decree regulates *inter alia* the issue under reference .

2. Ministerial Decree on Admission Tickets

Provided that the system of issuance and distribution of tickets is considered, at international level, a cornerstone of the security related issues in the stadiums. This Decree focuses on activities and responsibilities of sport societies as “organisers of the event”. *Inter alia* sports societies have to put in place data processing systems that allow data registration, electronic verification system, anti-forgery measures, etc..

3. Ministerial Decree on Security in the Stadiums

By recalling the amended Ministerial Decree as of 18 March 1996, this Decree emphasizes the concept of multi-functional stadiums which entails *inter alia* the strengthening and the enhancement of the security areas for the pre-selection and selection of spectators.

With specific regard to the phenomenon of “skinheads”, since the beginning it has been reported that most people joining such groups are based in the Northern part of Italy, as well as in the capital city, the activity of which are carried out to align these groups with the international organisation named “Hammerskinheads” (that emphasizes *inter alia* the superiority of the white race and is directly linked to North American racist groups, close to the former Ku Klux Klan).

The growing attention paid by Italy to such phenomena, including anti-Semitism, has led to the Italian participation in the Task Force on the Shoah and the Inter-religious Councils²⁸, as well as to the establishment of the above-cited Committee against Discrimination and Anti-Semitism²⁹.

7. It is alleged that spokespersons of certain political parties frequently resort to racist and xenophobic propaganda, essentially targeting foreigners who are non-EU nationals. Exactly what means are employed to ensure respect for article 20 of the Covenant?

In Italy, there had been no cases of serious racial, xenophobic and anti-Semitic intolerance in the past. However, by the end of the 1980s there has been an increase in such episodes in parallel to the increase of immigrants.

On a more general note, it is worth mentioning that by Act no. 654/75 ratifying ICERD, conducts consisting in disseminating ideas based on racial hatred, incitement to commit

violence on racial grounds and participation in associations with the aim of inciting discrimination or violence on racial grounds, are punished with a detention penalty³⁰.

The so-called Mancino Law introduced a provision (Art. 1 of Act no. 205/93) to condemn “detention penalty of up to three years, whoever disseminates ideas based on superiority or racial and ethnic hatred; with detention penalty, up to 4 years, whoever incites to commit or commits violence or acts causing violence on racial, ethnic, religious and national grounds”. By this Act, a special aggravating circumstance (increasing the penalty up to its half), emerging when such acts are committed with the aim of discrimination or ethnic hatred, was introduced. In particular, it was envisaged to prosecute ex-officio those offences committed with the cited aggravating circumstance.

As a consequence, the Supreme Court (Corte di cassazione) ruled by verdicts no. 2304/01 and no 724/02 the extension of Law no. 654/75 inter alia to those cases where the victims are foreigners.

In civil cases, Art. 44 of the 1998 Consolidated Text on Immigration allows whoever alleges to have been victim of discrimination on racial and ethnic grounds committed by individuals or public authority to request the judge the cessation of the cited behaviour. The proceedings take place, on expeditiously basis, in chambers. In particular, para. 12 of Art.44 provides that the Regions, in cooperation with Provinces and Municipalities, associations of migrants and social volunteers, should establish centres of monitoring, information and legal aid for foreigners that are victims of discrimination on racial, ethnic, national and religious grounds.

8. Part of the Roma population is allegedly living in poor, unhygienic housing in camps on the margins of Italian society. What steps are the authorities taking to remedy this problem?

The interventions aimed at improving housing conditions of traveller communities, including Roma people, fall within the responsibility of local authorities, as provided for in Title V, the Third and Fourth Heads of the Consolidated Text on Immigration.

Local institutions have adopted, so far, several measures in order to improve the conditions in the traveller communities camps.

Mention should be made of the initiative planned by the Prefettura in Naples - local office of the Interior Ministry -, in tandem with the local authorities, in order to provide better living standards. In order to better meet the need of these communities to live in small social groups, the establishment of camps of smaller size (mini-campi) has been envisaged in lieu of the larger camps established so far.

Along these lines, some initiatives are currently underway at Milano and Rovereto municipalities. More specifically, with a view to deal with the social-related issues stemming from the situation under reference, a “Permanent Conference”, convened for the first time in June 2005, was established at the Rome Prefecture, in order to set up a dialogue between relevant stakeholders.

By taking into account the recent surge in traveller communities located in Rome which, at present, amount to 6,500 persons, it is however worth mentioning the deterioration of the

living conditions in the camps under reference, which entails inter alia serious problems of integration and coexistence among different traveller communities.

Right to life and the prohibition of torture and inhuman and degrading treatment and punishment (Arts. 6 and 7)

9. Has the State party taken steps to amend its legislation and institute a crime of torture as defined in international law? (Previous conclusions, para. 19)

By recalling the signature of the Optional Protocol to International Convention Against Torture which took place on August 20, 2003, its ratification is currently under consideration.

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

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

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

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

In this context, however, a step forward was made in early 2002 with the introduction of the crime of torture in the Military Penal Code in Time of War (Art. 185 bis of the aforementioned Code). It is worth reiterating that such provision may be applied to all “the task forces abroad for military armed interventions”, including “in time of peace”. Therefore, Art. 185 bis of the aforementioned Penal Code provides that “the forces

personnel that, on grounds pertaining to war, commit acts of torture or other inhuman treatment...harming prisoners of war or civilians or other protected persons..., is convicted detention penalty of up to 5 years”.

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

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

10. Has the State party made provision for sanctions against persons who perpetrate domestic violence? (Previous conclusions, para. 19)

Over the last ten years, by adopting and updating a wide range of measures and provisions to contrast abuse and violence, particularly sexual violence, the Italian Government has given priority and still attaches the utmost importance to the protection of women against any form of violence.

Violence against women in the form of rape, sexual, physical, and economic violence is a violation of women’s human rights, perceived by Italy’s women and by public opinion as a serious social and cultural plague, though too often underestimated and tangled in the meanders of politics and cultural traditions.

Initiatives at the international level, such as evaluation on the implementation of the Beijing Platform of Action and the many EU-backed actions have helped in raising awareness of this phenomenon in Italy, too.

At the operational level, while in the past measures for the protection of women, victims of violence, were taken, on a voluntary basis, by women’s associations, in 1996 the Government decided to establish an ad hoc Office, which was tasked with gender-related issues: the Ministry for Equal Opportunities. Since then, Italy has adopted and put in place a global strategy concerning such sensitive issues.

The Ministry for Equal Opportunities plays a primary role in the coordination of measures to contrast violence against women as envisaged in the latest and most important Acts, such as Act no. 66/96 On Sexual Violence, Act no. 269/98 On Childhood, Act no. 285/97 On the Promotion of the Rights of the Child, Regulation no. 286/98 On the Fight against Trafficking in Human Beings, Act no. 154/2001 On the Forced Expulsion of the Violent Spouse.

On a more specific note, the introduction of Act no.66/96 On Sexual Violence has produced positive results by raising awareness of such scourge, as emerged by the surge, between 1994 and 2002, in the complaints by women, victims of sexual violence and harassment. In this context, it is worth mentioning that Act no.149/2001 was adopted for the fight against household violence. In particular, this amended Arts. 330, 333, 336 of the Civil Code, by envisaging that the judicial authorities may adopt measures for the

disqualification of guardian, in tandem with the removal of children or the expulsion of the violent guardian from the family home.

Such mandatory legal framework strengthens the protection system of children, victims of abuse and ill-treatment, by envisaging *inter alia* the compulsory hearing of the charged adult, in accordance with Art.336 of the Civil Code.

At the system level, the Italian Government launched, in 1998, in 26 municipalities a pilot project, entitled “**Anti-violence Network of Urban towns in Italy**” which, in the year 2001, received an additional funding by the EU. With this project, adopted *inter alia* to detect the root-causes of violence against women, the purpose of the Italian Government is to assess and to take stock of such plague³¹.

The fight against trafficking in women and girls is one of the main priorities of the Italian Government. With the aim of combating such scourge, Italy has put in place several measures, the most effective of which is Art.18 of Act no. 286/98. This regulates the stay permits for social protection reasons. Thanks to the so-called “Article 18 approach”, the trafficked foreigner can escape the organised crime network and be included in an ad hoc programme of assistance and social integration (*With specific regard to such programme, please read information provided under question no.18*).

11. What, to date, has been the outcome of the inquiries and criminal proceedings against officers of the State Police and some persons who took part in the demonstrations in Naples on the fringes of the 3rd Global Forum and in Genoa during the G8 Summit? Please indicate the number of persons concerned. (Periodic report, paras. 24-66)

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

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

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

1. As to the events occurred in the police station in Bolzaneto, the opening of the relevant trial is scheduled for October 2005. The Genoa public prosecutor has therefore requested the committal for trial of members of the following forces: police, army, penitentiary police and health care providers, who have been charged of crimes as follows: battery (art. 581 c.p.); bodily injury (art. 582 c.p.); abuse of power against demonstrators under arrest (art. 608 c.p.); violence (art. 610 c.p.); abuse (art. 594 c.p.); assault (art. 612 c.p.); forgery (art. 479 c.p.); omission of medical report (365 c.p.), abetting (370 c.p.). All these crimes have been aggravated by taking into account the weak position of the victims, the violation of duties

and the abuse of power, in addition to the futile and vile motivation (art. 61, nn 1,5,9 c.p.) and the misconduct of officer (art. 323 c.p.);

2. As to the events occurred at the Genoa police headquarters, the pre-trial stage was recently concluded, and the trial will start promptly;

3. As to the events at primary school "Diaz", the pre-trial stage was also concluded, and the trial will start promptly.

12. Reports continue of maltreatment by State agents, for example of anti-war protesters who demonstrated in Turin in 2003. Please comment. What steps have been taken to address the failings noted in police training? (Periodic report, para. 50)

Separate police forces, reporting to different ministerial or local authorities, effectively enforce public law and order. The State Police and the Financial Police fall under the jurisdiction of the Interior and Finance Ministries, respectively. The Ministry of Defence controls the Carabinieri, a military security force, that however falls within the Ministry of Interior responsibility when performing public security and public order duties. Under exceptional circumstances, the Government may call on the army to provide security in the form of police duty in certain local areas. In this specific regard, when carrying out police activity, Carabinieri perform their duties under the supervision of the Interior Ministry.

In case of violation of duties, including mistreatment of persons under arrest or of protesters, the relevant authorities apply disciplinary and judicial proceedings. In this regard, it is worth recalling the double track followed by the Italian institutions, namely the disciplinary and judicial proceedings in case of violations of the domestic codes, as well as of the internal codes of conduct (please read information reported under question no.14).

Along these lines, it is worth noting the increasing acknowledgement of the importance of training activities, including HRE courses, for the entire category of law and order enforcement officers. All Italian forces pay the utmost attention to humanitarian and human rights law within the framework of the vocational training and educational activities performed at ad hoc Institutes. In particular, the Inter-forces Institute of Advanced Studies under the umbrella of the Interior Ministry was established to train all the Police forces. In this regard, in all relevant courses specific attention is paid to humanitarian and human rights law.

On a more specific note, as an example of best practices, Carabinieri work on a daily basis with and on behalf of citizens. Therefore, there is the clear necessity to provide them with an in-depth knowledge of human rights law. Very recently, a new subject was introduced in their training programs entitled "victimology (vittimologia)". In doing so, they have changed approach towards the phenomenon of criminality, which is tackled by taking into account the position both of the victims and the perpetrator. This subject is at the heart of the educational programs for the so-called "proximity-Police (*Carabiniere di quartiere*)".

In this context, specific guidelines were prepared *inter alia* by exchange of information with the academic world.

Human rights law is a specific subject which is included in the educational work-plan of those Carabinieri to be deployed with peace missions. Within this framework, the Italian

army corps encourages the attendance of humanitarian law courses which are organised in collaboration with ad hoc institutes, or, as an alternative, recognizes the courses taken by its personnel at the International Red Cross.

With the aim of enhancing relevant activities, the Head of Training and Regulation Division and the Head of the First Unit are members of the Inter-ministerial Committee for Human Rights, at the Italian MFA.

More in detail, it is worth mentioning the specific activities undertaken so far by Carabinieri:

1. general educational courses: a. In September 2000, the Institute for military-legal studies was established at the School for Carabinieri officers, which includes a specific programme on human rights law. With the aim at better performing military and criminal investigation police functions, such courses are focused on domestic and international law, in particular *ius in bellum*. Specific attention is also devoted to the International Bill of Human Rights and to the all relevant international standards.

With specific attention to the schools for cadet-officers, human rights law is taught by university professors and high-ranking officers, and includes the following subjects: history; racism; the phenomenon of the fundamentalism as threat to “life, security, freedom”; theory of law and proceedings; the ECHR and the ICC; EU counter-terrorism law while protecting human rights; the new international order; old and new emergencies – peace missions and conflicts; protection of civilians.

With specific attention to the schools for the so-called “auxiliary Carabinieri”, a specific programme run by officers with a specific expertise is in use at every school. This course is taught to soldiers under military service and is considered as an important measure to raise awareness of human rights law (the knowledge of which will be useful also at the expiry of the military service term).

2. Specific in-depth courses:

a. Higher Institute for the General Staff of combined forces for high-ranking officers. An ad hoc Inter-Forces Course on international humanitarian law was initiated to train “Legal Counsellors of the Armed Forces”. The programme on legal-related issues takes two working weeks, and includes lessons and conferences, which are held by scholars and officers with a specific expertise.

b. International Institute of International Humanitarian Law in San Remo. Several officers attend every year the relevant course at the aforementioned Institute. Specific attention is paid to subjects relevant to international peace missions.

c. The Italian Red Cross is in charge, by law, with the dissemination of information on international humanitarian law and awareness campaigns addressing Armed Forces and relevant organizations. The campaign addressing Armed Forces is implemented at the central and local levels: the former is realised, at the cited Institutes, by ad hoc courses on international humanitarian law in armed conflict, with the aim of training military personnel pursuant to Act no. 762/85; the latter is carried out at the Headquarters and includes brief introductory seminars on international humanitarian law in armed conflict.

d. Post-graduation Institute Sant’Anna in Pisa. The Major State of Carabinieri has signed an ad hoc MoU with the cited Institute to better train its personnel when

participating in international missions, such as peace-keeping operations, peace-building, human rights monitoring, humanitarian aid, electoral monitoring missions.

e. Rome University "Tor Vergata" and the Studies Center for Human Evolutions organize a specific upper level course for Carabinieri officers on "protection and promotion of human rights". This programme includes *inter alia*: theory and history of human rights law; philosophy and anthropology; conflict management and conflict resolution; protection of human rights.

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

3. awareness raising activities. Several publications on the protection of human rights continue to be edited and issued by Carabinieri such as the publications entitled "*La Rassegna*" and "*Il Carabiniere*", respectively, devoting several articles to the issue under reference.

Moreover, the General Regulation of Carabinieri, which is the basic normative framework for the performance of duties, is constantly updated and distributed, in tandem with the "Universal Declaration of Human Rights"; "European Convention on Human Rights"; "The European system of protection of human rights within the framework of the police activities"; "the EU, the police and the protection of human rights".

In this context, it is also worth mentioning that the Interior Ministry pays the utmost attention to educational, training and refresher courses to be attended by members of the Public Security Administration.

In order to emphasize the importance to be attached to professional deontology, integrity, and more generally to the legal relevant framework when serving the State, several educational initiatives are undertaken by the cited Ministry (*As to the relevant initiatives specifically adopted by and for the prison officers, please read below information under question no.14*).

13. *There are reports of abuses committed by certain members of the law enforcement agencies against vulnerable groups, in particular Roma, foreigners and Italians of foreign origin. What specific measures have been adopted to combat these abuses?*

On the occasion of recent visits and controls by representatives of international organisations, no evidence of violations has emerged. Law and order forces have proceeded to identify illegal migrants to be expelled, to control assets and properties, and to repress offences perpetrated. Apart from relevant measures to be enforced by the criminal investigation police upon order by the judiciary or when perpetrators are caught in the act of the crime, all activities carried out in the camps under reference by Forces are performed upon order from high-ranking Police officers (Questori).

14. *What steps have been taken to follow up complaints lodged against members of the Carabinieri and prison officers? (Previous conclusions, para. 13)*

Given the “repressive function of crimes (in accordance to which the judicial authorities, ex officio or upon complaint, must proceed with the evaluation of evidence; and once the evidence of the offence committed is detected (Arts.330 ss. c.p.p.), the public prosecutor applies Art. 112 of the Italian Constitution concerning “the compulsory exercise of the penal action”), all Italian forces are exposed to disciplinary and judicial proceedings.

With specific regard to Carabinieri, they are exposed to two parallel proceedings, as follows:

- Penal or military penal proceedings, when their conduct triggers the violation of relevant codes’ provisions; and
- The Carabinieri disciplinary proceedings (D.P.R. no. 545/86).

With regard to the correction system³², Art. 21 of Act no. 395/90 enabled the Government to adopt Law Decree no. 449/92 mentioning the cases to which disciplinary proceedings must be applied. Such measures range from censorship to pecuniary penalty, from deploration and suspension from the service to dismissal³³.

On a more general note, several measures aimed at disseminating human rights have been adopted by the Department of the Penitentiary Administration (DAP) at the Justice Ministry.

Provided that relevant legislation is based upon Art.27 of the Italian Constitution (“the punishment system aims at the rehabilitation/correction of the convicted”), this also translates several relevant international provisions, particularly the UN Minimum Standards’ Rules on the Treatment of Prisoners (1955). Subsequently, additional programs and measures were envisaged by Act no. 395/90, adopted by taking into account the Universal Declaration on Human Rights.

Human rights law is a specific subject included in all relevant training courses for the penitentiary personnel. In the year 2004, approximately 70 relevant courses took place, and all relevant participants, particularly those who work with detainees under the special detention regime, the so-called “41 bis”, have emphasized the importance of human rights law. Accordingly, the 2005 Annual Plan, envisages, among the strategic objectives, specific programmes on the deontology principles, to be applied in line with human rights law.

15. Please provide further information about the outsourcing of airport security checks to private bodies. What control does the State party exercise over these activities and over the alleged discrimination against foreigners? (Periodic report, para. 294)

Further to Act no. 217/92, in 1999, the Italian Government adopted Ministerial Decree no. 85, by which it was set out that the companies in charge with the management of airports would be tasked with the additional function of managing security services in the airports. In particular, it was set out that such companies would be in a position to perform activities, as envisaged in art.2 of the cited M.D., by means of security guards. The latter must be authorised, in accordance with art.134 of the Unified Text on Public Security Laws, and able to perform security services, as outlined in the National Programme on Security (NPS), when working at the check-in areas of the airports.

On a more general note, taking into account the constant and utmost attention paid at every level of the system to security-related issues, such service activities are performed under the strict supervision of police staff members and that one of the joint Inspection Unit of the concerned Ministries. This Unit was established, pursuant to art.7 of the above M.D., with the aim at supervising the activities carried out by both the cited stakeholders.

On a more specific note, the relevant Department of the Interior Ministry emphasizes that no discrimination episode has been denounced so far, by considering inter alia that foreigners are subjected to the same controls, set out for EU and Italian citizens.

Further to the latest events occurred in London and in Sharm-el-Sheik, the activities mentioned in the above texts have been strengthened by Law Decree no. 144/05, which envisages, to this end, the establishment, inter alia, of a Fund, amounting to 1.500.000,00 Euros, under the umbrella of the Interior Ministry (Art.18).

16. Please comment on reports that the Italian authorities have intercepted boats heading for Italy and have expelled many people from the island of Lampedusa in circumstances precluding the examination of applications for asylum.

With regard to the situation under reference, it is worth stressing that the Assistance Centre based in Lampedusa is mandated to provide rescue and first-aid services to the shipwrecked migrants who are subsequently moved, under the supervision of the Security and Public Order Department at the Interior Ministry, into specific Centres as mentioned below.

In this context, it is also worth mentioning the proposal put forward by the Interior Ministry in August 2005 to involve UNHCR, IOM and the Italian Red Cross, in the rescue activities, as well as in the repatriation activities of irregular migrants coming to Lampedusa island back to North Africa, in particular to Lybia. This proposal is aimed to establish on the Island focal points of the Organisations under reference.

Among the most recent relevant Acts adopted by Italy³⁴, the current Government has introduced amendments to Law Decree no. 416/89, entitled "Urgent provisions on right to asylum, admission and stay of non EU citizens and stateless individuals living in Italy". Such provisions were integrated by the Presidential Decree (D.P.R.) concerning the regulation relating to D.P.R. 31 August 1999, no. 394, as envisaged by Art. 34, para.1 of Act no. 189/02³⁵.

With specific regard to the **right of asylum**³⁶, it is worth recalling that by Law Decree no. 416/89, the Government withdrew the "declaration on geographic limitation and on the reservations to Arts.17 - 18 of the 1951 Geneva Convention, as ratified by Act no. 722/54. Such Articles restricted the application for the asylum proceedings to citizens from Eastern European countries. At present, the cited application can be submitted without any restrictions by all non EU citizens who are "under the UNHCR mandate".

By Act no. 189/02, apart from the specific cases envisaged in Arts.1-bis and 1-ter, the local police authority is in charge with the release, upon request, of a temporary stay permit which is valid until the conclusion of the asylum proceeding.

Articles 1-bis, 1-ter, 1-quater, 1-quinquies, 1-sexies, as introduced by Arts. 31-32 of Act no. 189/02, amended the procedures relating to asylum-seekers. More specifically, the cited Act refers to a regulation, to be enforced when resorting to the proceedings under reference. Art. 1-bis establishes *Identification Centres* which are provided for those who apply for asylum in accordance with the aforementioned Unified Text. Art. 1-quater, para. 1, envisages the establishment “At Prefectures, of the *Territory Commissions* tasked with the recognition of the refugee status”, while art. 1-quinquies refers to the above regulation for the terms of mandate of the relevant *National Commission*. In practical terms, the newly adopted legislation has introduced the *Territory Commissions*, changed name, role and functions of the Central Commission for the recognition of the refugee status, namely *National Commission*, in addition to a new procedure: “the stay, under given conditions and circumstances, of the asylum-seeker at ad hoc Centres”.

When drafting Regulation, DPR no. 303/04, the Government took into account the proposals put forward by relevant associations and agencies, particularly those from UNCHR, as well as the EU Directive (2003/9/CE), entitled “Basic provisions for the admission of asylum-seekers”, as adopted by the EU Council on 27 January 2003.

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

More specifically, the Law envisages two different procedures for the stay of the asylum-seekers: 1. the *simplified procedure* for asylum-seekers who stay on a compulsory basis in the Centres; 2. the *regular procedure* for those who are not sent in such Centres and get a stay permit valid until the conclusion of the refugee status proceeding³⁷.

On a more specific note, the *Identification Centres* must be distinguished from Centres which were set up by Unified Text no. 286/98 and concerning the foreigners to be expelled. The different structure and functions of the two types of Centres entails and triggers different “formalities for the stay” of the foreigners, as reiterated by Art. 1-bis, para. 4, of the Law Decree no. 416/89 (converted in Act no. 39/1990), and by Art. 14 of the Unified Text no. 286/98³⁸.

At present, while the National Commission (the composition of which is reported in the Presidential Decree adopted on 8 February 2005)³⁹ is based in Rome, the Territory Commissions are in the following municipalities: *Gorizia, Milano, Roma, Foggia, Siracusa, Crotone, Trapani*.

Within this framework, it is worth recalling the EU Council Decision adopted on June 8 2004, which was translated into the Italian system by the Presidential Decree, DPR no.242/2004. This Regulation aims at streamlining computerised and data processing systems to better deal with data on migration, migrants, and the status of refugees, with the Dublin and Geneva Conventions.

Moreover, Act no. 189/02 envisaged the creation of a “Protection System for Refugees and Asylum-Seekers”, which paved the way for the establishment of a **National Fund** on the policies and services relating to **asylum**.

As a consequence, the cited Fund resources are allocated to local authorities when providing assistance and protection services to asylum-seekers, refugees, and foreigners under humanitarian protection. By means of this Fund, 4265 foreigners were hosted between the years 2001-2003, of whom 2148 asylum-seekers, 728 refugees, and 534 foreigners under humanitarian protection. Most of the involved municipalities are in the North (20), a certain number is in the Centre of Italy (14), the remainder is in the Southern part (12) and in the Islands (4).

By Order of the President of the Council of Ministers, no. 3326/2003, “additional urgent measures were adopted in order to combat the illegal migration”. Its Art. 3, while derogating Act no.189/02, envisaged the adoption, by the Interior Ministry, of ad hoc Decrees to further the allocation of resources to the local authorities involved in the above assistance process. The Department on Civil Rights and Migration at the Ministry for Home Affairs issued a Memo, on June 2004, concerning the first Decree allocating resources, between January and April 2004, to the relevant municipalities, in accordance with art. 32 of Act no. 187/2002. The contributions amounted to 18,52,00 Euros, *per diem*, per person. This also reported the allocation of additional resources amounting to 5 million Euros between May and December 2004, in accordance with art. 80 of the 2003 Finance Law. Such additional funding gave the opportunity to make 200 more places available: the local authorities included in the Protection System provide protection to asylum-seekers applying for the refugee status. The admission in the ad hoc Centres is decided by the Central Service on the basis of the municipalities projects or upon indication by third bodies, such as Prefectures, State Police HQs., Associations, etc..

During the stay in the Centres under reference, foreigners have access to the national health-care system, to education and to a legal counsellor in order to be promptly informed on how to apply for the recognition of the refugee status⁴⁰.

Admissions to Rescue and Assistance Centres between the years 2003 and 2004

Years	M	F	MF	M	F	MF	M	F	MF
2003	1464	68	1532	1342	648	1990	2806	716	3522
2004	1517	70	1586	1476	803	2279	2993	873	3866

(For further information, please read below indications provided under question no.21).

Prohibition of slavery and servitude (art. 8)

17. What have been the consequences of the authorities' decision to limit the voluntary repatriation programme only to those victims of trafficking in human beings who have cooperated with the police and judicial authorities in action against traffickers and exploiters? What happens to victims who do not cooperate? (Periodic report, para. 147)

By recalling information on trafficking contained under questions n.4 -10, it is worth reiterating that trafficking in human beings is one of the most dreadful crimes. This is a

new form of slavery affecting thousands of people, particularly women and children from non EU countries, deceived or exposed to violence and threat. Fighting this trade is considered a top priority at both the national and international levels. New measures and international cooperation tools have been adopted to prosecute traffickers only; therefore some of the relevant domestic criminal law provisions have been amended.

So far, Italy is the only country that, in compliance with the directives of international bodies, faces **the issue of victim-support**, by introducing a clear-cut distinction between trafficked women and the traffickers.

In particular, Italy has established, by means of law provisions, assistance and protection programmes for **all people** reduced to slavery-like conditions (therefore without any distinction between trafficked people cooperating with authorities and those who are not in a position to cooperate), and paid particular attention to women forced into prostitution.

The Italian Government has readily and efficiently tackled the increasing emergency of trafficking in human beings, by issuing Legislative Decree no. 286/98, entitled “Unified Text of Provisions on Immigration and the Status of Foreign Citizens” and the Implementation Regulation, enacted by Decree of the President of the Republic DPR no. 394/99. Its Art. 18 sets out the requirements of special stay permit release which is provided to all victims of trafficking. In particular, this outlines two parallel ways of obtaining a stay permit, social protection and judicial collaboration, independent of one another. Indeed, the release of a stay permit out of social protection reasons does not lay down any obligation to report to the police on the victim’s side. The resulting social and psychological recovery might pave the way for the victim’s trust in justice and possible decision to collaborate.

The stay permit application can be filed not only by the “*Public prosecutor, in cases where legal action is underway*” but also by “*the social services of Local Entities or no-profit associations and other types of associations*” in charge with social protection projects.

Subsequently, the local Police authority issues the stay permit for humanitarian reasons. In further enactment of the above Article no. 18, the Ministry for Equal Opportunities set up the Interministerial Commission provided for by the Article itself, which, in turn, started in the Autumn of 1998 a national social protection programme specially targeted for sexually-exploited women confused among street immigrant prostitutes.

The Programme provides for two types of intervention: i. **Protection and Social Integration Projects**, jointly financed by Local Entities (providing 30% of funds). From 1999 to 2001 154 such projects on the whole national territory were jointly financed, with the field activity of some 200 organisations and 700 social care providers, offering trafficked women, social and psychological support, security shelters, basic Italian language courses, training and help in entering the labour market.

Such projects are targeted for women and minors victims of the sex trade and are articulated through different interlinked stages: - the first stage provides social assistance and protection, from first contact (road unit, toll-free phone service, police intervention, client identification, etc.) to welcoming the victim in a secret address shelter home, getting

her/him a stay permit, legal advice, psychological support to regain her/his autonomy and social-cultural identity; - the second stage's main goal is social integration through actions aimed at professional orientation and entering the workforce, by means of training and Italian language courses, workshops, etc.

At this stage, judicial collaboration can start with reporting to the relevant police authority, if the victim decides to do so. Social protection projects can be presented by regional, provincial and municipal administrations, as well as by private subject regularly enrolled in the Third Section of the Register of Associations, and by agencies active in supporting immigrants. Projects can last, up to twelve months; in some cases, the Interministerial Commission has also provided funding for so-called "continuity programmes".

A closer look at data collected by institutions and NGOs corroborates the fact that the "Article 18 approach" has made possible quite a number of stay permits and, especially, an effective support network for victims of this trade. A first-sight analysis of data reveals that during the first year of social protection projects (1999 to 2000) 833 victims of the trade obtained a stay permit under Article 18, whereas this number rose to 1,500 women in 2001.

No less interesting is the country of origin of trafficked women, with a strong prevalence of Nigerians (52% of whole), followed by Albanians (15%), Moldovans (7%) and Rumanians (5%);

Actions at the system level, i.e. action plans aimed at supporting projects such as the above, as well as granting not only the victims' security, but also the coordination of the state action against organised crime - a permanent network among the institutions involved in crime-fighting operations (with particular reference to law enforcers and the judiciary). Worth mentioning supporting action include: the Toll-Free Number (800-290 290) Project, providing for a national centre and 14 local centres (involving some 80 call centre workers as a whole, covering roughly a dozen of foreign languages); the specific information campaign, advertising the toll-free number by radio and TV ads, posters and stickers to inform immigrant women and raise the awareness of the Italian public opinion; studies and surveys on trafficking, as well as targeted training for service providers active in social protection programmes, technical support and project monitoring; the programme "Ensuring Assisted Voluntary Return and Reintegration in the Countries of Origin of Trafficked Victims" coordinated by the Minister of Interior with the collaboration of the International Organisation for Migration (IOM). A closer look at this programme reveals the goal of making voluntary assisted return an available and possible option **to all those providing protected social and work reintegration in relevant countries of origin of system-level actions' target subjects**. Since the programme has started (July 2001), to date some 80 cases have been dealt with victims from different areas of origin (Moldova, Ukraine, Rumania, Bulgaria, Hungary, Poland, the Czech Republic, the Slovak Republic, the federal Republic of Yugoslavia, Albania, Estonia, Bielarus); the research project presented by the Ministry of Justice "Trading in Persons for Exploitation Purposes and Trafficking in Immigrants " aimed at building up a judicial procedures knowledge by analysing the results of surveys taken by public prosecutor offices across the Nation.

To enhance contrasting actions, the Parliament adopted in 2003 the **Bill**, presented at the invitation of the Ministry for Equal Opportunities, on "Measures against the Trafficking in Persons", which transposes the provisions contained in the U.N. Protocol on preventing, combating and repressing the trafficking in persons, signed during the Palermo Conference on December 12, 2000, which defined trafficking in human beings as a specific crime in itself (**Act no.228/03**): its Art. 1 transposes Art. 600 of Italy's Penal Code, taking into account the difficulties in ascertaining the reduction to slavery – described in the Bill consistently with definitions as in the international agreements and EC provisions against trafficking in human beings – as the condition in which the victim of the crime, deprived of any dignity, becomes the object of powers corresponding to the property right or forced to render any services. Moreover, it sets forth that, along with reduction to *slavery*, also reduction to *servitude* can be indicted, defined as the behaviour by which, by means of violence, threats or abuse of power, the crime victim is reduced in a state of continual physical or psychological submission, with the aim of inducing him or her to begging or to rendering sexual or work services: "*anyone reducing or keeping a person to slavery is punished with imprisonment from eight to twenty years*"; "*anyone reducing or keeping a person to servitude is punished with imprisonment from five to fifteen years [...] these terms can be raised if the crimes as in this articles are committed against a child under eighteen years of age*". When a verdict is adopted, it is worth mentioning that traffickers are not expelled immediately, but go through the judicial proceeding, including a prison penalty.

As reported above, it is worth reiterating that Act no. 228/03 envisaged the establishment, at the Presidency of the Council of Ministers, of a specific Fund devoted to anti-trafficking measures. This includes the confiscation of assets belonging to criminal networks.

18. What does the State party mean when it asserts that services have the task of "tracking down and expelling from Italy a large number of non-EU nationals illegally present in the country, who have been earmarked by criminal organizations for prostitution"? Does this refer to victims of trafficking in human beings? Are traffickers prosecuted, or are they expelled? (Periodic report, para. 165)

By reiterating that trafficked people are victims of a crime, they must be clearly distinguished from the category of traffickers, which have highly increased over the last few years. The phenomenon is under due consideration by relevant authorities that also denounce the increase in prostitution.

As far as prostitution is concerned, the Government's commitment to the fight against discrimination is also borne out by a specific commitment recently endorsed by the Council of Ministers. The governmental Bill to fight prostitution presented to Parliament and which often represents the highest level of exploitation of women (Bill no. 3826, "Provisions concerning prostitution", introduced on March 26, 2003, assigned to the Justice Commission on April 2, 2003) must be highlighted.

In Italy, in fact, due to the increase in immigration and the involvement of organised crime in exploiting prostitution, there has not only been an increase in people who voluntarily take up prostitution, but especially in organised crime which exploits the prostitution of others. The Bill prohibits prostitution in public places or places open to the public, because this is where the worst cases of criminal sexual exploitation thrive.

Approximately 25,000 foreign prostitutes have been brought to Italy over the past few years, and forced to prostitution under threat of violence from their exploiters. Introducing the ban on prostitution in public places, or places open to the public, into our Criminal Code, with sanctions that will be applied to the prostitute as well as to the client, aims to disrupt the systematic meeting of supply and demand in the flourishing market of sex for payment. However, in consideration of the strong link between prostitution on the streets and the phenomenon of trafficking in human beings, in order to avoid criminalising people who have already been victims of serious violence, a specific case of immunity from punishment is provided, which excludes sanctions against those who can prove that they have been forced into prostitution against their will.

With respect to these cases the government has decided to increase the **funding of programs of social protection** for those who intend to leave the prostitution racket. The bill sets forth the annual budget for social protection programs, pursuant to the application of art. 18 of the so-called "code on immigration", approved with Law Decree no. 286/98, which has already enabled many victims of the slave trade to escape from the conditioning and violence of criminal organisations dedicated to the exploitation of prostitution, also with the voluntary collaboration of the law enforcement agencies. Ten million Euros per year for the years 2003, 2004 and 2005 have been allocated for the social rehabilitation of victims, which accounts for an increase of 5,580,000.00 Euros.

In a broader perspective, in order to stem-out prostitution, the Government has not opted for regulation because the newly introduced prohibition is confined - especially for those who voluntarily exercise prostitution - to the private sphere.

The illegal migration is a serious threat since it fuels transnational criminal networks, despite the humanitarian dimension of the phenomenon under reference must be taken into account. The introduction of illegal immigrants could alter the economic processes as to the informal labour and to the exploitation of trafficked people by criminal organisations which employ them in different areas. However, the recent measures for the State protection against such organisations show positive results as to conviction sentences and international/bilateral cooperation.

The migration flow towards Italy, as a country of destination, originates from different geographic areas, from Mediterranean countries to Eastern and Middle-European countries, from the Middle East and South India to China and Ecuador. More recently, increasing illegal immigration flows are from Sub-Saharan Africa, and reach via the sea the Sicily coasts, passing through Lybia.

In this context, an additional consideration is necessary: the enlargement process towards Eastern Europe will be conducive to a greater pressure of the illegal migration flow .

In this regard, in order to punish and stop transnational criminal organisations, the international cooperation, in particular with the concerned countries, will play a key role, in addition to measures, including the expulsion measure pursuant to Arts.12 ss., as envisaged by the so-called Act Bossi-Fini.

With regard to the measure of the expulsion, Constitutional Court has ruled by verdict no. 223/2004 the constitutional unlawfulness of art. 14, para 5-quinquies, of Law Decree

no. 286/98, entitled “Unified Text on the provisions concerning immigration and the status of the foreigners”, as integrated by art. 13, para. 1, of Act no. 189/02.

The Constitutional Court has ruled that the provision under reference (Art.14) was contrary to Arts. 3 and 13 of the Italian Basic Law, since it envisaged “the measure of the arrest in case of the offence enlisted in para 5-ter of the cited article (failure to comply with the police authority’s order to leave the domestic border, and subsequent arrest)”.

The Constitutional Court ruled that this provision was contrary to Art.3, which encapsulates the principle of non discrimination and to Art.13 of the Basic Law, which envisages the adoption by authorities of measures affecting the individual freedom, as a last resort, “only under exceptional circumstances of necessity and urgency”. The Constitutional Court also highlighted that the arrest measure envisaged by Act no. 189/02 “cannot have any criminal procedural effect” since the Law does not envisage the pre-trial detention if a mere contravention is committed, as was the case with Art. 14, para 5–quinquies of the so-called Bossi- Fini Act.

As a consequence, Act no. 189/02, was amended and integrated by Decree no. 241/04, and by Regulation (D.P.R.) no. 334/04, which entered into force on February 2005.

In particular, the newly adopted Law Decree (Art. 1) requires that only a magistrate (previously only a Ministry of Interior representative) can determine whether an immigrant should be expelled, or issue an order to depart, or be accepted for asylum procedure (More specifically, the proceeding will be carried out before a justice of the peace and with the legal advice of a lawyer in case of expulsion).

In this context, specific mention may be made of the following expulsion cases: Art. 235 penal code (p.c.), Art.86 of DPR no. 309/90, Art.15 of the Unified Text on Immigration, as amended by Art.14 of Act no. 189/00. The expulsion is defined as a **security measure**, the execution of which is determined by judicial authorities when the foreign convicted still represents a social danger. More specifically, the expulsion of the foreigner is decided when the detention penalty exceeds the 10-year term or in case of serious crimes, such as those against the State (i.e. Art. 312 c.p.).

On a more general note, as to all the aforementioned provisions, the Law guarantees ad hoc judicial protection, since it envisages to file a petition before the so-called Tribunal of Surveillance, the decisions of which can be challenged before the Supreme Court (Corte di Cassazione).

It is also worth mentioning that DPR no.394/99, containing the Regulation for the implementation of the Unified Text on Immigration (Law Decree no. 286/98), must apply to those foreigners affected by the expulsion measure. Arts. 18 - 19 of DPR no. 394/99, envisage “the prohibition of return for the expelled foreigners” and “the ad hoc authorization to return for the expelled foreigners”, respectively: 1. The former refers to the return proceeding to Italy, once the 10-year term has expired; 2. The latter considers the formalities concerning the special procedure for the authorization to return to Italy, prior to the expiration of the above term⁴¹.

Security of the person and protection from arbitrary arrest (Art. 9)

19. Please indicate under what regime 222 persons were detained at the Bolzaneto facility during the events in Genoa. Has a specific inquiry been launched into the alleged failure to respect these persons' rights to have speedy access to a lawyer and a doctor (and, in the case of foreigners, to make contact with their consulates) and to notify relatives of their detention? (Periodic report, para. 48)

By recalling information provided under question no. 11, it is worth mentioning that on May 16, 2005, the Genoa competent magistrate committed for trial 45 members from the correction system, including health-care providers, State Police, Carabinieri: the trial will start on October 12, 2005.

20. Has the State party reduced the maximum period during which a person may be held in police custody and amended its legislation so as to guarantee access to a lawyer from the moment of arrest? What measures have been adopted in response to the Committee's recommendations regarding preventive detention? (Previous conclusions, paras. 14 and 15)

Art. 27 of the Italian Basic Law lays down "the presumption of innocence until definitive verdict". Art.272 of the Criminal Proceeding Code (c.p.c.) sets forth the *ex lege* conditions to allow the adoption of preventive measures, such as pre-trial detention. The following articles (Arts.273 - 274 c.p.c.), which have been recently amended, fix the circumstances to issue the cited measures. The terms and the duration of the pre-trial detention are set by the recently amended Art.303 c.p.c..

As a general rule, the pre-trial detention may last for a maximum of 24 months. However, as to crimes to be punished with life sentence or with a 20-year prison penalty, this measure can be fixed, up to 6 years.

Besides, the general rule may not be applied if the pre-trial detention is decided for the circumstances enlisted in Art. 274 c.p.c., para. 1, lett.a. In this specific case, the duration of the detention cannot exceed 30 days, except in case of extension of the terms, up to the 90 days (para 2 ter of Art.301 c.p.c., as added by Art.14 of Act no.332/95).

On a more general note, **preventive detention** can be imposed only as a last resort if there is clear and convincing evidence of a serious offence (such as crimes involving the Mafia or those related to terrorism, drugs, arms, or subversion) with a maximum sentence of no less than 4 years or if there is a risk of an offence being repeated or of evidence being falsified. In these cases, a maximum of 2 years of preliminary investigation is permitted with the exception of extraordinary situations, preventive custody is not permitted for pregnant women, single parents of children under 3 years of age, persons over the age of 70, or those who are seriously ill.

Mention has to be made of the following provisions: Art. 657 c.p.c. envisages that when calculating the duration of the detention penalty term, the pre-trial detention must be included; Art.314 c.p.c. provides for restitution in cases of unjust detention.

On a more general note, the Constitution prohibits arbitrary arrest and detention. Warrants are required for arrests (Art. 386 c.p.c.) unless there is a specific and immediate

danger to which the police must respond without waiting for a warrant. Under the law, detainees are allowed prompt and regular access to lawyers of their choosing and to family members. The State provides a lawyer to indigents (Art. 97 c.p.c.).

Within 24 hours of a suspect's detention, the examining magistrate must decide whether there is enough evidence to proceed with an arrest. The investigating judge within 48 hours should confirm the arrest and recommend whether the case goes to trial. In exceptional circumstances--usually in cases of organized crime figures--where the danger exists that attorneys may attempt to tamper with evidence, the investigating judge may take by motivated decree up to 5 days to interrogate the accused before the accused is allowed to contact an attorney.

With specific regard to the right of legal defence, it is thus clear that the domestic system envisages the effective realization of such right in full compliance with Art.24 of the Constitution (which is devoted *inter alia* to secure the right of legal defence throughout the proceedings). Art.104 c.p.c. envisages that "the person who is under arrest in accordance with Art. 384 c.p.c., enjoys the right to refer to his/her lawyer on margin of the arrest". However, Art. 104 ,para. 4, c.p.c. envisages also the exceptional case of postponing the hearing with legal counsel, up to 5 days.

The case-law relating to Art.104 c.p.p. shows a specific attention by judges when applying such norm. If the rationale behind the cited decree is not sufficient, such measure can be readily ruled out and affected by making void the results of the examination, in accordance with Art.294 c.p.c., of the person under pre-trial detention. The provision contained in Art.104 c.p.c. has been under constant review by the Supreme Court that, in 1995, ruled its compliance with Art.6 of ECHR (Cass. no. 3651/95)⁴².

There is no provision for bail; however, judges may grant provisional liberty to suspects awaiting trial. As a safeguard against unjustified detention, panels of judges (liberty tribunals) review cases of persons awaiting trial on a regular basis upon request by the detainee and rule whether continued detention is warranted. Persons in detention included not only those awaiting trial but also individuals awaiting the outcome of a first or second appeal.

21. How are foreigners held in temporary stay and assistance centres informed of their rights, and to what extent do they have access to a lawyer? (Periodic report, paras. 263 ff.) In addition, please comment on reports that detention conditions in temporary stay and assistance centres for foreigners are unsatisfactory in terms of overcrowding, hygiene, food and medical care. Are independent inspections carried out in these centres, and do non-governmental organizations have access to the centres? (Periodic report, paras. 263 ff.)

As to the respect for human rights of migrants hosted in the Temporary Stay and Assistance Centres (CPTA), the Ministry of Interior (Department on Civil Rights and Immigration) drafted in the year 2002 "Guidelines" to better manage the Centres for immigrants. This text envisaged the supply of services, provided for adequate standards, and highlighted the need to ensure the highest standards of professionalism as to the managing bodies, all involved in the social sector.

The cited Department supervises the Prefectures involved and are in charge with Centres devoted to the immigrants stay. These Prefectures, on their own, must supervise the correct functioning of the Centres, particularly the respect for fundamental rights of immigrants, in line with the Directive of the *ad interim* Interior Ministry, Hon. E. Bianco, adopted on August 30, 2000.

Along these lines, Prefectures must also control that services to be provided by the managing bodies of these Centres are in compliance with the Guidelines: in particular, the entire management system aims at securing the respect for the various minorities and ethnies hosted in the Centres; an adequate health-care assistance, legal counselling (The State provides a lawyer to indigents (Art. 97 c.p.p.)), an interpreter and a cultural mediator, etc.).

Within this framework, it is worth noting therefore that the so-called Bianco Directive (The August 2000 Directive of the then Hon. E. Bianco), which was issued pursuant to Art. 22 DPR no. 394/99 and entitled "Regulation for the implementation of the Unified Text no. 286/98, envisaged that "the representatives of Italy-based UNHCR, under authorization of the Ministry of Interior, are entitled to access the Centres, whenever requested, except for prevailing security reasons and the regular functioning of the Centres..."

In this regard, it is worth recalling the recent visits to the Centres (CPTA) throughout the country, made by international organisations, such as the CoE - CPT (Art.3 ECHR), the FIDH and the CHR Special Rapporteur on the human rights of migrants, Ms. Pizarro: all the cited bodies and organisations' representatives have acknowledged the good management and functioning of the Centres.

In particular, by visiting several Centres, the CPT-CoE declared that such Centres were in line with the respect for human rights, except for Agrigento - ASI B9 CPTA, which was subsequently closed by the cited Department. The Agrigento Centre is under restructure. The Head of the Department on Civil Rights and Immigration at the Interior Ministry, on occasion of the last CoE-CPT visit to Italy, decided, on December 3, 2004, in accordance with the recommendation of the Committee, the immediate closing down of the Agrigento Centre. Along these lines, on 30.3.2005, at the expiry of the Memorandum with the managing body of the Centre, the CPTA "Regina Pacis", located in Meledugno - Lecce, was also closed.

Worth reiterating, once more, the difference between the **Temporary Stay and Assistance Centres (CPTA)**, when the foreigners are expected to be expelled, and the so-called **Identification Centres**, when asylum-seekers are being hosted and waiting for the examination of their application before the Territorial Commissions.

Comment: Centri di Permanenza Temporanei.

As to the CPTA, the provisions in force - Law Decree no. 451/95, converted by Act no.563/95 - authorize the Interior Ministry to provide for assistance measures and prompt action, inter alia, by means of adequate infra-structures, in order to ensure first-aid to the irregular foreigners, waiting for their identification, or eventually, for their expulsion. In particular, art.20 of the DPR no.394/99 concerning the stay in the CPTA, sets that the stay can be arranged in the closest Centre, provided its availability. Such integration to the previous system allows to arrange the accomodation in a better place, while in the past

there was no care for the availability: the rule was to arrange the accommodation in the closest Centre, even though overcrowded.

The cited Centres were arranged with the aim of providing rescue and assistance services to the irregular foreigners, and of considering their legal position within the Italian borders, including the expulsion or the asylum proceedings.

As to the so-called CPTA, it is worth mentioning that since early 2005, new structures have been envisaged in order to be able to host more people and to better respond to the increase in the disembarkations.

At present, restructuring measures have been envisaged and/or implemented vis-à-vis the following Centres: Lampedusa, Bologna, Brindisi, Caltanissetta, Lecce-Otranto, Milano, Modena, Roma, Torino, Trapani-Serraino Vulpitta.

As to the establishment of additional infra-structures, a Centre for 220 persons has been created in Foggia, and a new one for 200 units is about to be finalised in Bari. In the Northern-East part of Italy, a new Centre (CPTA) will be opened by the end of 2005 in Gradisca d'Isonzo (Gorizia), and able to host 252 units.

Along these lines, local authorities are carrying out a mapping exercise to find out feasible posts so as to establish new Centres. Nevertheless, such exercise has already faced some socio-economic difficulties.

Despite these problems the planning exercise keeps going. The relevant authorities are now focussed on the dismissed airport in Milo at the Trapani Municipality which could host 200 persons.

In addition to these areas, Prefectures have been engaged in building up and finding out relevant structures - namely UTG - by means of memoranda with associations, bodies, or private sector, namely Caritas Centre in Gorizia, 32 units; Como, Lo Tavernola, managed by the Red Cross, 200 units; Benincasa Centre in Ancona, 40 units.

This network can host, up to 3250 units, in order to expeditiously deal with emergencies. Moreover, the Interior Ministry has envisaged to supply the existing Centres with prefabricated structures⁴³.

Treatment of persons deprived of their liberty (art. 10)

22. What emergency measures have been adopted, in addition to those specifically concerning women, to significantly reduce prison overcrowding? Is general recourse to alternative sentences envisaged? (Periodic report, paras. 95 and 325-326; previous conclusions, para. 16)

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

As to the “alternative measures”, it is worth mentioning the following institutions: the probation; the semi-custody; the early release; the house detention. Additionally, it is also worth mentioning the so-called “replacing sanctions to the short-term detention penalties (which are decided by justice of peace, in accordance with Law Decree no. 274/00) as follows: the semi-detention; “freedom under supervision”; the pecuniary penalty as a replacing sanction.

In this context, it is worth mentioning, as a good practice, some measures undertaken over the last few years, such as “the social housing” for former detainees or for persons under a semi-freedom regime. In particular, the project entitled “Home for everybody (Un tetto per tutti)” was undertaken in Milan, in the year 2003. The purpose was to provide accommodation for those who were in need at the end of the detention term or under “alternative measure” service.

Along these lines, initiatives were undertaken to facilitate the access to labour market of detainees and former detainees. In the year 2004, relevant initiatives took place in Reggio Emilia in order to implement agreements and projects put forward by the Correction System Regional Authorities. In Calabria Region, alternative measures were adopted for 2.180 persons.

In the women’s correction Centre of Rebibbia in Rome vocational training courses, organised by the European Design Institute, through the Moda Lab School, are currently carried out with the aim of facilitating women’s access to the fashion sector. At the correction Centre in Mariano (Ascoli Piceno), a craftsman laboratory was created in 2004. The detainees can get money and support their families.

In 2004, an ad hoc Memorandum between the Regional Authorities of the Correction System in Tuscany and various municipalities was signed in Florence. In Latium, in March 2004 some detainees in the Velletri correction Centre funded a cooperative for wine production. Additionally, an ad hoc Memorandum between the Justice Ministry and “Unioncamere (network of Chambers of Commerce)” was signed in order to initiate a “dialogue” between employees and workers/detainees.

It seems clear that several efforts are made in order to develop and to enhance relevant projects.

With specific regard to women detainees, Art. 11, para.9, of Act no.354/75, entitled "Correction System" envisages that women detainees can keep with them in prison children under the age of 3.

As to assistance and care services to children of women detainees, the correction administration is in charge with the organisation of kindergartens, in accordance with Art. 19 of the relevant 2002 Regulation (DPR). In particular, its Art. 47 ter envisaged, among “the alternative measures to detention”, that mothers detainees can serve the sentence at home or in ad hoc assistance institutes, under given circumstances provided for by Law. Accordingly, Art.4 of Act no.165/98 extended the house detention measure to mother detainees of children under the age of ten, except for cases contained in Arts.90-94 of the Unified Text no.309/90.

More recently, the so-called Finocchiaro Act, Act no.40/01, entitled "Alternative Measures to detention with the aim of protecting the relationship between mother detainees and their children" amended the penal code relevant provision as follows: Art. 146 of the penal code envisages: "that the execution of the detention penalty can be postponed:

- 1) if affecting pregnant women;
- 2) if affecting mothers of children under the age of one;
- 3) if affecting person with clear AIDS or with any other serious disease when her health conditions do not permit the detention, or when depending on the disease the health-care service at the correction system cannot ensure adequate medical treatment, in accordance with Art.286-*bis*, para 2, c.p.c."

By considering Art. 31 of the Italian Constitution, devoted to the protection of motherhood as well as of childhood, new measures were envisaged and introduced, by Act.40/01, namely the "special house detention" and the "external assistance programme for children" (Art. 47 quinquies, sexies - Art. 21 bis of Act no.354/75).

As of February 2004, there were 2,551 women detainees, most from non EU countries. They are a small percentage of the entire detention population, and are convicted for minor social danger offences (crimes are basically linked to drug peddling, or to "crimes against the property"). More specifically, there were 52 mothers detainees at the following correction Institutes: Avellino (n.4); Bologna (n.1); Como (n.3); Firenze-Sollicciano (n.8); Lecce (n.1); Milano - San Vittore (n.4); Perugia (n.3); Roma-Rebibbia (n.12); Teramo (n.1); Torino (n.8); Venezia (n.7)⁴⁴.

With specific regard to kindergartens at correction institutes, since 1976 the correction administration has been paying specific attention to this issue. Kindergartens were established at correction Institutes for women detainees, located in Pozzuoli (Naples), Rome-Rebibbia, Trani, Perugia and Venice. The relevant authorities also envisaged the establishment of kindergartens at women divisions of men detainees correction Centres, upon request from the authorities concerned.

At present, the correction system authorities aim at establishing more and new kindergartens, throughout the country. As a good practice, it is worth mentioning "The Peter Pan project" undertaken to minimize the impact of the correction centres on children. By creating specific leisure areas and activities, this project aims at setting an appropriate environment for children and their parent detainees.

Kindergartens - relevant Statistics.

Department of the Correction System Administration - Division for the Development and the Management of the computer systems - statistics unit (data as of December 2004)

Kindergartens and mothers detainees with children under the age of 3.

The data below refer to: kindergartens in use (n.15); mothers detainees with children at correction centres (n.56); children under the age of 3 with their mothers detainees at correction centres (n.60); pregnant detainees (n.24).

ASILI NIDO FUNZIONANTI	15
DETENUTE MADRI CON FIGLI CONVIVENTI IN ISTITUTO	56
BAMBINI MINORI DI 3 ANNI IN ISTITUTO	60
DETENUTE IN STATO DI GRAVIDANZA	24

With regard to overcrowded correction Institutes, there were 56. 440 detainees, as of June 2004, of whom there were approximately 17.000 foreigners (despite the number of expulsion measures affecting the foreign detainees, namely 2.414, pursuant to the so-called Act Bossi-Fini).

With a view to effectively tackling the **overcrowded correction Centres**, the Government has taken some action, to build new correction centres. In doing so, the Government mandated the implementation process to a Company (Dike Aedifica S.p.A., established in July 2003), authorized to utilize dismissed estates belonging to the Ministry of Justice. In June 2004, Minister for the Infrastructures and Transports, Hon. Lunardi and Minister for Justice, Hon. Castelli, signed a Memorandum with Dike Aedifica S.p.A. that inter alia is in charge with the restoration of the old correction buildings.

At present, it is worth noting that correction centres, including the newly established Correction Centre in Sant'Angelo dei Lombardi and in Laureana di Borrello, respectively (a new prison in Perugia is also under construction), monitored by the Department for the Correction System Administration at Ministry of Justice, will contribute to ensure adequate standards of living.

By Act no. 689/81 the following objectives were pursued: the reiteration of the principle that the penal sanctions must be applied as a last resort, when minor offences are committed (so as to reduce the burden of the overloaded courts); to effectively apply the principle of the correctional function of the penalties, as enshrined in the Constitution; the decriminalisation of minor offences, by broadening the range of fines and contraventions. To this end, the Government decriminalised by means of Acts no. 205/99 and no. 507/99 some additional offences, such as the "duel", pursuant to former Art.394 c.p..

By the same Acts, the Parliament delegated the Government: to proceed with the review of some offences contained in specific legislation, to reform the sector of offences relating to taxes; to put in place a system of alternative measures concerning the crimes contained in the Third Book of the Penal Code. As a consequence, the areas under review were the

following ones: alimonies, navigation, road transport and circulation, finance legislation, taxes, and financial and estate markets.

Last but not least, as to the **decriminalisation** process, the establishment of a Commission to reform the Penal Code is worth noting. This Commission was entitled “Commissione Nordio”, to honor its Chair. Very recently, this Commission stated, by examining the offences to be decriminalised, that “the Sub-Commission for the decriminalisation has reviewed all the remaining contraventions included in the Code in force, as well as in the specific legislation. Therefore, this will continue this exercise in tandem with the analysis of the general relevant legislation (source: Inter-ministerial Decree, issued by the Justice Ministry, as of January 2005)”.

Right to a fair trial (art. 14)

23. According to some sources, the President of the Republic has decided not to promulgate the reform of the judiciary and to send the bill back to Parliament. Please indicate whether a new bill is being drafted, and how far the comments of Italian judges and of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers on this question are taken into account.

Bill (S.1296), entitled “Delegation to the Government to reform the judicial system, as envisaged in Royal Decree no.12/41, concerning the decentralisation of the Justice Ministry, and amendments to the legislation on the presidency Council of the administrative justice system”, was jointly introduced by the Justice and Economy Affairs Ministers on March 14, 2002, and approved by the Parliament on July 2005 (C4636-bis-D).

Bill (C4636-bis-D) took into account most of the considerations put forward by relevant domestic stakeholders, and included all the indications from the Head of State, C. Azeglio Ciampi as sent to the Parliament, by means of “motivated message”, in accordance with Art. 74 of the Constitution, on December 16, 2004.

This Bill (C4636-bis-D) envisages *inter alia* that: 1. (as to the access to the judiciary sector), both magistrates and public prosecutors must take the same public competition examination; however, those who wish to switch and opt between the two different positions, must apply for such change within the fifth year office since their access to the judiciary; 2. (as to the career), the promotion will depend on the attendance of refresher courses and specific exams (In this regard, the school of the judiciary will be soon established); 3. (as to the reform relating to the public prosecutor activities), only the Director of the Public Prosecution Office is entitled to exercise the penal action. Along this line, only the Director of the Public Prosecution Office can keep contact with media; 4. (as to the reform concerning disciplinary illicit acts committed by judges) all the illicit conducts, which could be committed by judges, will be enlisted and standardised⁴⁵.

Within this framework, it is worth mentioning some of the latest initiatives undertaken by the Government to effectively enforce the constitutional principles. Over the last few years, the principle of due process of law was fully translated into the Italian Constitution by means of Act no.2/99. This Act entered into force on January 7, 2000 and resulted in the

amendment of art.111 of the Italian Constitution in order to strengthen the accusatory model.

On a more specific note, over the last few years, due attention has been paid to: the reasonable duration of proceedings, to which the so-called Pinto Law is relating (hereinafter); the institution of legal aid, the system of which was amended by the relevant Legislative Decree no. 115/02 with the aim at ensuring adequate and effective legal defence. More specifically, this Decree simplifies and extends the access to legal aid in civil and administrative proceedings. Access to this institution is guaranteed to whoever has an income under 9.296,22 Euros per year (In particular, as to the criminal proceedings, Act no. 134/01 envisaged the self-certification of the income for the defendant, including the foreigners with income abroad. In this regard, ad hoc information desks have been established at Bar Associations); the right of the defendant to an interpreter and to the use of understandable language (as was the case with Ladin and German-linguistic minorities living in Italy - DPR no.574/88).

With specific regard to the so-called Pinto Law, Act no. 89/01, this introduced in the Italian legal system the right to just satisfaction in case of unreasonable duration of the proceedings, in contrast with art.6 of the ECHR⁴⁶. In addition to the Pinto Law, it is worth mentioning the draft Law (A.C. 5492) recently approved by the Justice Commission at the Chamber of Deputies. This draft Law, introduced on December 15, 2004, envisaged provisions for the promotion of "the extra-judicial conciliation", to be considered as an institution, when applicable, to deflate the pending files before the Italian Courts. Along these lines, the justice of peace was introduced in the judiciary framework, by means of Legislative Decree no. 274/00 and Act no.163/01, with the responsibility of civil and criminal proceedings relating to minor crimes. In particular, the latter Act, the so-called Carotti Law, broadened the responsibilities for the justice of peace as to the criminal law sector.

As to civil proceedings, by Act no. 276/97, the establishment of the so-called "*sezioni stralcio*", tribunals tasked with the last stages of old and long-standing trials, was envisaged.

In this context, it is also worth mentioning Law Decree no.35/05, entitled "Plan of action for the economic, social and territorial development", passed with the aim at further expediting civil proceedings. The objective is to recover resources so as to reduce the duration of the dispute and therefore the arrears. The new regulations have modified so far some key areas, such as family law and bankruptcy law.

24. Please indicate what action has been taken on the Committee's findings in the Maleki v. Italy case (communication No. 699/1996). Has the State party amended its legislation and practice to ensure that the courts, before embarking on a trial in absentia, make certain that the persons being prosecuted are duly informed of the proceedings against them and, if not, that these persons have a right to a retrial at which they are present?

By fully taking into account the indications put forward by the Committee, and with the aim of ensuring adequate follow-up, the Ministry of Justice provided information, by means of a Note Verbale, on the decision of the Head of State to grant pardon, on June 2000, to Mr. Maleki (CCPR/C/66/D/699/1996).

As to the proceedings *in absentia*, it is worth mentioning Law Decree no. 17/05, converted by Act no.60/05, concerning the terms to contest the conviction judgement by default. This text provides that, in case of judgement by default, the convicted has the possibility to reopen the terms to challenge the verdict, except in case of the effective and prompt information about the proceeding itself.

Therefore, Art. 175 c.p.p., as amended, sets forth that the judicial authority must verify that the convicted are in a position to be promptly informed about the proceedings underway, but unwilling to be heard before the Court. Therefore, Art. 175, para. 2, c.p.p., as modified, provides a longer term for the request to re-open the proceeding, a 30-day term in lieu of a 10-day term (by providing for a longer term, this will allow to better exercise the right of legal defence (Art.24 of the Constitution), especially vis-à-vis the foreign extradited to Italy).

Privacy and family life (art. 17)

25. To what extent is the right to privacy and family life taken into consideration by the judiciary when the criminal conviction of an alien is accompanied by an expulsion order from Italian territory? (Periodic report, para. 288)

The expulsion measure might be in contrast with the right to privacy and family life. However, it is necessary to highlight that the relevant provisions are clearly applied for specific serious cases⁴⁷. Moreover, with a view to balancing between different stances, it is worth mentioning that security and public order are considered prevailing, especially when combating illegal activities. In particular, Art.235 c.p.c. emphasizes that the expulsion measure must be adopted in tandem with a 10-year detention penalty verdict; Art.86 of DPR no. 309/90, as amended further to the Constitutional Court judgment no.58/95, envisages that when convicted in accordance with Arts.73,74, 79, 82 of the cited DPR, the expulsion measure must be adopted if the foreign is considered as a social danger. Art.15 of the Unified Text on Immigration, as amended by Art.14 of Act no.189/02, envisages the expulsion measure as an option. Art. 16, para.1, of the cited Text (as amended by Art. 15 of Act no.189/02), envisages that the judicial authorities may replace the penalty to be served with the expulsion measure, even though Art. 16, para. 5, envisages that in case of a 2-year prison penalty, the magistrate must adopt the expulsion measure, except for the cases contained in Art. 407 c.p.c..

In particular, the last paragraph of Art. 16, relating to Art.19 of the Unified Text on Immigration, envisages limits and prohibitions, including those relating to discriminatory grounds and/or to the family situation/status of the foreigner (para. 2 of Art. 19). In practical terms, with specific regard to the family status/situation of the concerned foreigner, the Constitutional Court ruled (by verdict no. 376/00) the constitutional unlawfulness of letter d) of Art. 19, since it did not extend the prohibition of expulsion to the spouse of pregnant women, or to the parent of a six-month child.

Freedom of religion (art. 18)

26. What is the current status of the religious freedom bill? (Periodic report, paras. 344 ff.)

At present, a Bill on “provisions on freedom of religion and the cancellation of the legislation on the admitted worships (A.C. 2531)” is under consideration at the Chamber of Deputies. On November 23, 2004, the Interior Minister stated before the Commission on Constitutional Affairs that the Bill under reference would set up principles and rules regulating collective and individual behaviours and religious beliefs, to be consistent with constitutional principles and international standards.

More specifically, this Bill will also enable the Interior Ministry to carry out an in-depth research to explore relevant ways to better integrate immigrants⁴⁸, in particular muslim immigrants”.

This Bill was drafted by the Commission on Religious Freedoms, which was set up at the Presidency of the Council of Ministers, and mandated to deal with the implementation and translation of international standards and the constitutional principles on freedom of conscience, religion and worship.

The aim of the Government is to protect freedom of religion vis-à-vis individuals, associations and religious organisations.

With a view to harmonising the legal framework and enforcing Art.8, para.3, of the Constitution (concerning the establishment of effective relationships between State and religious confessions), this Bill aims at abrogating Act no. 1159/29 and its regulation on the exercise of the right to freedom of the *admitted* worships.

The Bill includes four chapters: the first one focuses on the freedom of conscience and religion, the second one on the religious confessions and their eventual legal recognition, the third one is devoted to the signing of “*intese*”, the last one mentions final and transitional norms:

- The first chapter aims at implementing the constitutional guarantees of individuals and communities relating to the freedom of religion, with a view to international standards, as signed and ratified by Italy.
- The second chapter is devoted to the religious confessions and associations and to their eventual recognition, by acknowledging the rights to be exercised by all the religious confessions in compliance with the Constitution. This chapter also envisages the legal measures to enable such confessions to participate freely in different areas, from the economic to the social one.
- The third chapter envisages the procedure to sign “*intese* (agreements)” between State and religious confessions, in accordance with Art.8, para.3, of the Constitution, so as to translate a consolidated practice into a legal provision. The Bill also envisages the opportunity that “*intese*” can be signed with religious confessions without legal recognition (however, this event will entail a more specific examination of the application by the Interior Ministry).

Within this framework, it is also worth mentioning the exercise of freedom of religion in the correction system by recalling the so-called "Penitentiary Act (Arts. 1, 15, 26, Act no. 354/75)" and its relevant regulation of implementation (Arts. 17,18,19, of DPR no. 230/00). In particular, the Correction System authorities guarantee detainees to fully exercise the right to freedom of religion in prison.

Within the relevant legislative framework aimed at implementing the Constitution, it is worth mentioning the initiatives undertaken to exercise this freedom, even under constraints of the individual freedoms (Arts.13-19 Cost.), as is the case with the so-called Penitentiary Act. The exercise of the right to freedom of religion within the correction centres strengthens the rehabilitation/correctional function of the detention penalty (Art.27 of the Constitution). As a consequence, no distinction among religious confessions is made in the correction system, vis-à-vis food, religious services, etc.. Along this line, the prison director may also authorize, under the competent magistrate's supervision, the admission of NGOs members engaged in promoting contacts between the prison community and civil society (Art. 17 of Act no. 354/75).

Freedom of expression (art. 19)

27. It is reported that defamation is punishable by imprisonment. Please indicate whether any journalists have been convicted of this offence and, if so, how many.

At present, relevant authorities do not collect information for each specific offence relating to the right of expression. Nevertheless, according to an ISTAT (National Institute on Statistics) research, the "press" offences denounced in the year 2002 amounted to 1.197.

Provided that the relevant Penal Code provisions envisage measures ranging from pecuniary penalties to detention penalty (Art. 595, paras. 3-4, c.p.), in February 2005 Bill (A.S. 3176), entitled "Provisions on slander, slander by means of press or any other means of dissemination, insult and conviction of the plaintiff (Amendments to Act no. 47/48)", is currently under consideration by the Senate.

Once approved, this Bill will envisage that penalties to be served in case of defamation will be as follows: "In case of slander by means of press, the verdict will envisage a fine, up to 10.000 Euros (Art.13)", while its Art. 4 envisages on a transitional basis as follows: "As to the offences to be served by a detention penalty, while passing the Bill under reference, they must be changed into pecuniary penalties, in accordance with Art. 135 p.c."

More specifically, it is necessary to consider the aim and the rationale behind the relevant provisions of the Penal Code: As to the "honor", there is a common understanding to refer to "those conditions on the basis of which the social value of the individual is expressed"; as to "the dignity" there is a common understanding to refer to "the intellectual, physical and social features of individuals".

The offences provided for in the Penal Code are the insult and the defamation. The different offences emerge by considering under which circumstances they were

committed. In practical terms, the offence of insult emerges when it is committed before the victim, which is not the case with defamation.

The protection of the honor of individuals is often challenged by freedom of expression, including press, as enshrined by Art.21 of the Constitution.

The limits to the so-called "right to chronicle" are matter of concern. The Supreme Court often stated that such right is lawful when it is exercised under the following circumstances: 1. social value; 2. truth; 3. correct exposition of the episode under consideration (Cass. no.3999/05). Along this line, the so-called "right to criticism" must be exercised within specific borders: 1. correctness of the language; 2. respect for one's rights (Cass. no. 10135/02). However, as a matter of fact, freedom of press and expression relating to politics and trade union areas enjoy more extensive interpretations.

A very recent case to be mentioned was that of Senator Lino Jannuzzi, a Neapolitan journalist, who was convicted to detention penalty and subsequently granted pardon, on February 11, 2005, by the Head of State, C. Azeglio Ciampi. This journalist was supposed to serve a detention penalty of 2 years, 5 months and 10 days due to the offence of defamation by means of press (source: (FNSI) National Federation of the Italian Press)⁴⁹.

28. Please comment on reports that the political authorities exercise a strong influence over public television channels; please state what measures are envisaged or have been taken to ensure these channels' editorial independence.

1. On 3 May 2004, the so-called Gasparri-Frattini Law, Act no. 112/04, entitled "General provisions on the structure of the Radio-TV System and RAI - Italian RadioTelevision Ltd, as well as on the delegation to the Government of the adoption of the Consolidated Text on Television" was adopted.

This sets forth the "general principles on the structure of the national, regional and local radio and television system (Art.1)", as well as "the broadcasting of television, radio and data-programmes, also with conditional access, as well as the provision of associated interactive services and services on conditional access, on land, cable and satellite frequencies, fall within the provisions of the Act under reference."

Art.3 provides for "general principles" to be effectively implemented, such as "the guarantees of freedom and pluralism of radio and television as means of communication; the protection of the freedoms of expression and opinion, including the exchange of information and ideas without any borders; the principles of objectivity, exhaustiveness, fairness, and impartiality of information; protection of ethnic diversity and cultural, artistic, environmental heritage, at both national and local levels.

Specific attention is also paid to children and to their psychical and moral growth (art. 10 of the cited Act), in line with the Constitution, the EU legislative framework, and the international standards.

Arts.19, 20 and 21 stipulate that "the Communication Regulatory Authority is mandated to control the radio-television public general service in accordance with the EU Communication 2001/C-320/04, and the Act under reference (...)".

The radio-television public general service has been granted, for a twelve year-term, to RAI - Italian Radio Television Ltd Corporation, which has to comply with the general regulation on stock companies, including the organisation and management provisions. In particular, its Administrative Board must be composed of nine members, to be appointed by the Assembly. The Board is tasked with, *inter alia*, control activity on the correct fulfilment of the service under reference⁵⁰.

In this context, due attention is also paid to the general interest involved and to the principle of public order. Therefore, mention should be made of the clause on the limitation of share parcel with right to vote, as contained in art. 3, para. 1, of Law Decree no. 332/94.

As to the RAI management - the Italian public broadcasting corporation - the Italian authorities believe that its privatisation and the recently established procedures for electing the members of the Administrative Board and the Chairman will certainly help RAI gradually distance itself from politics, and strive for pluralism in the media, a value, as enshrined in our Constitution, and a guiding principle for the Government, especially when drafting Act no. 112/2002.

More in detail, mention should be made of the many provisions contained in Act no. 112/04. This sets forth well-defined limits in order to guarantee pluralism in the mass media: 1. Limit of 20% of radio and television programmes that can be broadcast on land frequencies at the national level, by means of the networks provided for in the national Plan for the allocation of radio and television frequencies, by using digital technology.

The number of networks provided for in the Plan, although noticeably higher than that of the plan on the allocation of frequencies in analogue technology faces some limits. The threshold is based on criteria of certainty and reasonableness of the antitrust limit allowing the entry of a certain number of new networks. It should be mentioned that the 20% limit of all the proceeds got in the Integrated System of Communications (SIC the acronym in Italian, hereinafter) concerns all major economic sectors in the field of mass media. This limit is the result of the phenomenon of media convergence (precedents are in both Art. 15, para. 5, of Act no. 223/90 and in Art. 2, para. 1, of Act no. 249/97 that provide for similar limits).

The SIC plays a meaningful role in the ongoing process for the advancement of relevant technologies relating to the media market. On a more specific note, as to the guarantees relating to this sector, including the issue of the competition, the prohibition affecting the national television networks, not to own more than one television network and not to acquire shares of newspaper-publishing companies until December 31, 2010, is a pro-competition measure. With the aim at reaffirming the prohibition of dominant position in the markets relating to SIC, this system goes far beyond that one laid down by Anti-trust Law (which sets the prohibition of abuse of dominant position and concentration, as well as of agreements limiting competition), because it considers the need to ensure the protection of pluralism.

With specific regard to Act no. 215/04 on “provisions for the settlement of clashes of interest”, it is worth noting that this Act deals with “property-related issues”. In this context, the issue of the protection against personal and private interests is dealt with in art. 1, “Government members (President of the Council of the Ministers, Ministers, Deputy-Ministers, Special Government Commissioners)”, while its art. 2 identifies “the incompatibilities” with such public offices. Needless to say that this article does not mention clearly the issue of the “property”, otherwise such provision would be in contrast with arts. 42 - 51 of the Italian Constitution, which protect the right to property and the free access to public offices, respectively.

Rights of persons belonging to minorities (art. 27)

29. Please provide more information about the actual implementation of the Law of 15 December 1999 on the protection of traditional linguistic minorities. What criteria were used to select the communities listed in the Law? (Periodic report, paras. 488 ff.)

Worthy of note is the process of “**territorial delimitation** to which the measures and the provisions for the protection of historical linguistic minorities apply, as laid down by Art.3 of the Act under reference”. This provision has been included with the aim of fully implementing the principle of subsidiarity, which entails specific authority to local bodies vis-à-vis the identification of the areas to which the relevant legislation applies, ensuring the effective involvement of the concerned minorities. Additionally, the abovementioned legislation provides for the introduction, as to the historical minorities, of provisions concerning the teaching and the use of the minority’s language before the Public Administration bodies.

As to the media sector, the service contract, agreed by the relevant Ministry (Ministero delle Comunicazioni) and RAI-Italian RadioTelevision Ltd and covering the period 2003-2005, was confirmed by Decree of the President of the Republic, on February 14, 2003. This Decree envisages the implementation of Act no. 482/99, while committing RAI to provide a programming respectful of linguistic minorities’ rights in the territories where they reside.

In particular, in order to broadcast programmes in the protected languages, within the framework of its regional radio and tv programming service, RAI is in a position to promote and sign agreements, at the regional, provincial or local levels, with the concerned authorities. The financial charges of these initiatives will be totally or partially apportioned to these authorities.

Along these lines, the legislation under reference envisaged also the **establishment of an ad hoc commission**, composed by the Ministry of Communications and RAI, in order to identify RAI local branches for the promotion of recognised minorities-related services.

As provided for in Law no. 103/75, RAI broadcasts, on behalf of the Presidency of the Council of Ministers and under ad hoc agreements, radio and television transmissions in German and Ladin for the Autonomous Province of Bolzano, in French for the French-

speaking community of Valle d'Aosta Region and in Slovenian for the Slovenian speaking community located in Friuli Venezia Giulia.

At present, by adopting the cited Act, 171 projects were undertaken in the year 2001, while 294 in the year 2002. These projects mainly aimed at establishing linguistic information desks equipped with information systems, and staffed with interpreters and translators were launched in several municipalities. The aims and the outcome of these projects were included in the Second Ad Hoc Report, drawn up by the Ministry of the Interior in line the Framework Convention for the Protection of National Minorities.

With specific regard to the protection of the Slovenian-speaking minority, art. 8, para. 3, of Act no. 38/2001 provides that in the areas of residence of the Slovenian minority that are included in the list drawn by the Institutional Joint Committee on the Problems of the Slovenian Minority, any acts and decisions, for public use on pre-printed forms, including documents such as identity cards and certificates on personal data, are issued, upon request of the citizens concerned, both in Italian and Slovenian language or only in Italian⁵¹.

Mention may be made of Act no. 129/98, entitled "Ratification and implementation of the treaty between the Italian Republic and the Republic of Croatia on minority rights, as signed in Zagreb, on 5 November 1996" and Act no. 38/01 "Norms on the protection of the Slovenian linguistic minority in Friuli - Venezia Giulia". The latter envisages measures for the protection of the Slovenian minority, and was inspired by the Framework Convention for the Protection of National Minorities (done at Strasbourg on 1 February 1995 and ratified by Italy by means of Act no. 302/97) and the principles laid down in the European Charter for Regional or Minority Languages (done at Strasbourg on 5 November 1992).

The cited Act, inter alia, provided for the establishment of the Joint Committee concerning the issue of the Slovenian minority (Art. 3) traditionally living in those municipalities that were included in the list drawn up by the aforementioned Committee (Art. 4, "Territorial areas of application of Act no. 38"). Additionally, this recognises the right of the minority under reference to use the Slovenian language in its relationships with local administrative and judicial authorities⁵², including collective bodies and elective assemblies (Art.9).

¹ Article 9, paragraph 5 : The Italian Republic, considering that the expression "unlawful arrest or detention" contained in article 9, paragraph 5, could give rise to differences of interpretation, declares that it interprets the aforementioned expression as referring exclusively to cases of arrest or detention contrary to the provisions of article 9, paragraph 1. Article 12, paragraph 4, shall be without prejudice to the application of transitional provision XIII of the Italian Constitution, respecting prohibition of the entry into and sojourn in the national territory of certain members of the House of Savoy. The provisions of article 14, paragraph 3 (d), are deemed to be compatible with existing Italian provisions governing trial of the accused in his presence and determining the cases in which the accused may present his own defence and those in which legal assistance is required. Article 14, paragraph 5 shall be without prejudice to the application of existing Italian provisions which, in accordance with the Constitution of the Italian Republic, govern the conduct, at one level only, of proceedings instituted before the Constitutional Court in respect of charges brought against the President of the Republic and its Ministers. With reference to article 15, paragraph 1, last sentence: "If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby", the Italian Republic deems this provision to apply exclusively to cases in progress. Consequently, a person who has already been convicted by a final decision shall not benefit from any provision made by law, subsequent to that decision, for the imposition of a lighter penalty. The provisions of article 19, paragraph 3, are interpreted as being

compatible with the existing licensing system for national radio and television and with the restrictions laid down by law for local radio and television companies and for stations relaying foreign programmes.

² Between July and August 2005, a new Bill has been submitted to the Parliament in order to adjust the Italian legal system to the ICC Statute. This Bill envisages *inter alia* the introduction of the crime of torture.

³ With regard to crimes provided for in Art. 5 of the Statute of the International Criminal Court, the aforementioned reform Bill deals only with war crimes (along the lines put forward by the “Commission for the adjustment of Italian legislation to the Statute of the International Criminal Court “, set up within the Ministry of Justice). Within this framework, mention of war crimes (as provided for in Article 8 of the Statute of the Court) has been made among the principles and criteria of the legislative delegation. In line with Article 28 of the Statute, the delegation to provide for “*in vigilando* responsibility of Army’s high-ranking officers” was also included. While recalling the principle of individual responsibility (Art. 25 of the Statute), the organisational characteristics of the Armed Forces entail strict controls and repressive measures by Army’s commanders and high-ranking officers, as set out in Article 86, para. 2, and in Article 87 of the First Additional Protocol, adopted in Geneva in 1977. This is a complete reform that goes beyond the amendments already made to the Military Penal Code of War (in this respect, specific mention should be made of the laws to finance the international missions entitled “Enduring Freedom” and “Old Babilonia” to Afghanistan and Iraq, respectively), to be inserted in the complete adjustment process of the military penal legislation to international humanitarian law.

⁴ Art. 2, para. 1, letter B, replaces the concept of allied State by introducing the concept of the State participating in relevant missions. In doing so, under reciprocity condition, the repression of crimes committed by Italian personnel *vis-à-vis* foreign personnel from the multinational mission was envisaged. In particular, Art. 2, para. 1, letter C, broadens the category of military crimes provided for in Art. 47 C.P.M.G., which however was thoroughly discussed at the Parliamentary level. Under the new provision, some specific crimes, such as those against State, public order, the property, etc., are now included, under certain circumstance, in the category under reference. Specific mention shall be made of the provision whereby violations of penal law - committed by a member of Armed Forces in a military place or because of the military service, offending the military service or the military administration or other members of Armed Forces or civilians that are in territories abroad where military operations take place – are considered military crimes. By such provision, the category of military crime is remarkably extended and, as a result, the jurisdiction of military tribunals is broadened; this possibility is fully provided for in Art.103 of the Constitution. Finally, certain provisions of the C.P.M.G. raising doubts about their constitutional legitimacy, such as that one relating to the power of the supreme commander to convict of deserting a member of the Armed Forces after 24 hours from his/her absence (Art. 155), and that on the crime of “denigration of war” (Art. 87 of the C.P.M.G.), were repealed by Art.2, letter H.

⁵ In order to adjust the Italian legal system to international humanitarian law, the provision contained in Art. 165 of C.P.M.G. was abrogated (see Art.2 .I.D of Act 6/02).

⁶ It is worth reiterating that the ICC Statute, ratified by Italy by means of Act no. 232/99, deals *inter alia* with war crimes.

⁷ Art. 1 of the above-mentioned Convention provides for State obligation to repress a specific list of crimes with terrorist aims, while Art. 2 allows States not to enlist as political crimes those violent acts (not included in Article 1) which are committed against life, personal well-being or individual freedom, as well as grave acts against property that may be dangerous for public security.

⁸ Within this framework, it is worth mentioning the Framework Decision on the European Arrest Warrant (13th June 2002) replacing the formal extradition proceeding with a simplified and swift one *vis-à-vis* a certain number of offences, i.e. terrorism.

⁹ Which supplements Art. 280 of the Penal Code.

¹⁰ Art. 696 of the Criminal Proceeding Code envisaged the supremacy of customs and international conventions *vis-à-vis* rogatory letters and extradition proceedings. In this regard, the Italian authorities recall the Schengen Agreement adopted on 14 June 1985 and the European Convention on Judicial Assistance adopted in 1959 (Act no. 367/01).

¹¹ As for the searching proceedings by the criminal investigation police on its own initiative, Art. 352 of the Criminal Proceedings Code provides for the conditions (“in the act of the crime or in case of escape”) and grounds of particular urgency (as provided for in Art. 352, paras. 1-3) that warrant the execution of the searching without the preventive judicial authorisation. Last paragraph of Art.352 of the Criminal Proceedings Code provides that, in the cases listed in the previous paragraphs, the criminal investigation police shall inform the public prosecutor about the place of the searching and draft a report on the activities carried out no later than 48 hours, so that the public prosecutor be in a position to evaluate the situation and confirm the searching. In particular, further to the searching, when a confiscation measure is adopted, the investigated or charged person or third parties may challenge this decision before the so-called Re-exam Tribunal, as provided for in Art. 354 of the Criminal Proceedings Code (Art.325 of the Criminal Proceedings Code).

¹² Along these lines, as far as searching-related measures, including wire-tapping, are concerned, Art. 15 of the Constitution, while emphasizing the protection of the freedom and secrecy of correspondence and of any other communication means, envisages that restrictions to the cited rights may be decided, in accordance with Law, only by judicial authorities.

¹³ Art. 3 of the Act under reference recalls relevant provisions of Act no.203/91.

¹⁴ In particular, the Government tasked the Ministry for Equal Opportunities with: promoting and co-ordinating national policies in some sensitive fields, such as childhood, immigration, the adoption of foreign minors; protecting and fighting against any form, both direct and indirect of discrimination.

¹⁵ The New Functional Profile of Equality Advisors. Delegated Law no. 196/2000. The most significant equality policy has been established by Law 125/91 on positive actions, introducing in the Italian legislation specific actions aimed at promoting female employment and achieving substantial gender equality in the workplace. The above implies enhancing the role and functions of equality advisors, laid down by Delegated Law no. 196/2000, that in turns integrates the framework of positive actions in terms of goals

and tools, instruments and financial means. Furthermore, the thorough implementation of Law 125 is not only connected to the activity of equality advisors, but rather to a broader reference framework determined by the administrative decentralisation of active labour, training and education policies. The devolution to Regions and Local Entities will strengthen equality positive actions for labour policies and employment services, as well as for the decision making on local development issues. The Decree lays down that equality advisors collaborate with Labour Councillors of the Local Entities and with locally active equality organisations and that they be members of local equality commissions. Equality advisors play a key role in reaching the goals set forth by the Law, thanks to their field activities. In fact, at the national, regional and provincial level, their task is to promote equal opportunities in their area of competence, as well as to monitor the compliance with anti-discrimination rules; duties and functions are more clearly defined in article 3 of the Legislative Decree 196/2000. With reference to their functional profile, equality advisors carry out the tasks set forth by law by detecting gender imbalances, promoting positive actions, also by means of EU, national and local resources allocated for the purpose. They are also in charge of granting continuity between local development policies and relevant directions from the EU, the national government and local entities. Their extended list of tasks also comprises supporting active labour policies, including those specifically related to training; promoting equal opportunities on the public and private side of the labour market; supporting Regional and Provincial Labour Offices to most effectively detect any discrimination, banned in all forms by the existing legislation; being familiar with and disseminating the sector's best practices; assessing any results of positive actions under Law no. 125/91. By the same token, judicial action in case of ascertained gender discrimination (already laid down by article 4 of Law no. 125/91) has been thoroughly redefined. The most significant changes are the possibility of using the Fund provided for by article 9 of Delegated Law 196/2000 to support said actions, as well as the judicial procedures related thereto. One more tool, provided by law to strengthen the functions of equality advisors and make their actions more effective, encouraging the exchange of information, experiences and best practices, is the National Network of Equality Advisors (men and women), coordinated by the National Equality Advisor. The inaugural meeting of the Network produced a draft programme of activities to be carried out in the second semester of 2002. Most noteworthy initiatives include the establishment of an electronic network among all equality advisors; the creation of study groups to deal in depth with topics relevant to the institutional activities of equality advisors; the launch of a specific website and an all-media information campaign. The innovations on positive actions are the most significant among all those introduced by the Delegated Law hereto. Such innovations are aimed at streamlining and improving the effectiveness of positive actions funded under Law no. 125/91, in particular by enlarging the target group and simplifying access procedures to the funds. As regards actions, more generally, article 7 of the Delegated Law no. 196/2000 has strengthened the existing obligation for public administrations to set up three-year positive actions plans to ensure, in their respective area of application, the removal of obstacles hindering the full achievement of equal opportunities between men and women in the workplace (see paragraph 4 of chapter 1, on initiatives taken for further amendments to the existing legislation).

¹⁶ The Ministry for Equal Opportunities, in cooperation with the university, has organised some training courses for women in certain Italian universities in order to facilitate their access to political assemblies and elective offices. In July 2004, approximately 5000 applications for the cited course at the Universities concerned were submitted, whilst the available posts were 1700 (100 for each University).

¹⁷ The meeting was planned to coincide with the arrival in Italy (Rome) of the "Truck Tour" – travelling across the European Union since the 2004 summer in relation to the European campaign "For diversity, against discrimination" – in order to effectively involve public opinion and relevant stakeholders. Many associations and bodies that work in this field participated in this meeting, which was widely reported by the mass-media, in order to raise awareness of the issue of fight against racial discrimination (inter alia famous testimonials from the world of journalism, sport and show business were invited too).

¹⁸ Further initiatives concerned the show business and the television. As to awareness-raising and information campaigns linked to the Contact Center initiative, mention should be made of the planning, production and broadcasting on national television channels of a 'Progress Advertisement' message aimed at informing public opinion about the establishment of the cited Center (Such information campaign is currently under way throughout the country by disseminating inter alia relevant posters and leaflets). With regard to gender equalities-related activities, the Office promotes projects and affirmative actions aimed at eliminating the root-causes of inequalities due to race and ethnic origin, as well those aimed at supporting studies, research activities, training courses concerning the cessation of discriminatory behaviours. To this end, strategies for the effective social integration of the most 'vulnerable' groups are about to be finalised: for instance, specific attention will be paid to the primary education sector where the discomfort is felt but not properly addressed. The aim is to help people marginalised and discriminated due to race to have access, on equal footing, to private and public services, as well as to ensure the effective exercise of their civil and social rights. Besides, the Office intends to encourage joint studies, training courses and exchange of relevant information with other EU countries, with the aim of promoting international projects to effectively tackle the common scourge of racial discrimination. To this aim, the contribution from relevant stakeholders, civil society and bodies working in this field, is of the utmost importance. Therefore, periodic relevant hearings will take place, to address cases of discrimination, and overall to carry out monitoring and assessment exercises on the set objectives to be achieved. In addition to such hearings, contacts and dialogue with social actors and local bodies may be particularly useful in order to draw up guidelines or memoranda of understanding, to be used by field operators, particularly social services providers, as codes of conduct at the public and private workplace, where the non-discrimination principle must be fully applied.

¹⁹ The task of the Contact Center is to collect reports, complaints and testimonies concerning facts, situations, procedures and actions that hamper, because of race or ethnic origin, equality of treatment among people, by offering immediate assistance to victims of discrimination and providing information, guidance and psychological support. This is an illustration of practical assistance to victims, since this deals with the complaints, and offers a first-aid service to whoever alleges to have been discriminated against on the grounds of race or ethnic origin.

The Contact Center provides immediate and professionally qualified assistance and, in cooperation with the UNAR and under the supervision of the Office staff, strives, as much as possible, for the solution of the cases submitted, or assists the victims of discrimination throughout the legal proceedings: The service is structured at two levels. At the first level, reports are collected and examined and, where feasible, useful information and practical solutions for the cases under examination are found out. If the case, reported by phone, entails a prompt solution, the Contact Center of first level immediately settles the situation. If the problem reported cannot immediately be solved by the staff of the Call Center or when the problem is not reported by phone, the first level transmits the case to the second level that registers the complaint and proceeds, under the supervision of the Office staff, towards its settlement. However, any request submitted either to the first or the second level triggers a final communication on the state of play to the person concerned.

²⁰ As to its monitoring and verification activities, UNAR draws up a yearly report, to be addressed to the Parliament, on the effective implementation of the principle of gender equality and the effectiveness of the protection mechanisms, as well as a report on the activities carried out by the Presidency of the Council of Ministers. These annual reports are an opportunity for taking stock of the activities carried out and for informing political bodies and public opinion on the progress made and the problems faced while fighting racial discrimination.

²¹ It is worthy of mention that in recent months the Office organised about 40 meetings with associations working in this field in order to expound on reasons and objectives that lie behind the establishment of the Registry. The Office also sent to over 300 associations working nation-wide a letter explaining the project, as well as the requirements to apply for the registration.

²² In addition to this, on occasion of the International Day for the Elimination of Racial Discrimination (celebrated every year on 21 March), the Week of Action against Racism (from 13 to 21 March) was launched by the Ministry for Equal Opportunities, with some initiatives relating to the world of sport, school and University systems. In the schools, beyond the distribution of a DVD on the issue of racism, a prize on "Interaction among Cultures in School – in agreement with the Ministry of Education – open to the middle- and high schools" was called. In several Italian universities workshops and ad hoc seminars on the issue of "Equality in Diversity" were organised. The second report published by the European Commission against Racism and Intolerance (ECRI) in 2002 acknowledged the numerous steps forward taken by Italy when fighting racial discrimination.

On 18 March 2004 the ECRI celebrated its tenth anniversary organising a conference aimed at taking stock of its contribution to fight against racism, xenophobia, anti-Semitism and intolerance in Europe in the last decade and bringing new ideas for its present and future work. Over the last ten years, there has been significant progress in relation to European Law, as far as protection against racism and social discrimination are concerned. With respect to the Council of Europe, mention should be made of the Protocol n. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms that contains a general prohibition of discrimination, as well as the adoption of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

²³ With respect to cultural mediation, the Directorate General for Immigration at the Ministry of Labour and Social Policies since 2002 has started thoroughly considering the professional role of linguistic-cultural mediators. In June 2002 a seminar was organised in Padua, within which a common inter-ministerial document (Ministry of the Interior, Ministry of Justice, Ministry of Health and Ministry of Education, University and Research) analysing the need of the activity of cultural mediation and the definition of this professional profile, was discussed by taking into account the work of the Commission for the definition of professional profiles in the context of social services system (established under Art. 12 of Framework Law 328/2000). The latter decided to include linguistic-cultural mediators among the social operators whose specific professional profile is recognised.

²⁴ In particular, the project entitled "Paths against social exclusion and for women autonomy", consisting of several activities ranging from reception, assistance and cultural mediation to workshops on Italian language, from the establishment of a legal advisory bureau to workshops and courses on professional training and job orientation, was financed. 636 women applied during the second year since the establishment of the Centre (March 2001-March 2002). Approximately 20 women a day apply. 30 information desks for regular migrants have been established, on an experimental basis, in order to disseminate information and raise awareness of regular migrants' rights and duties, and on how to access to public services. The aim is the promotion of the integration process of migrants into the social and labour market, as well as in to the educational and health systems by effectively involving relevant institutions. The information desks will be established at the Provincial Directorates of Labour. Information activities will be carried out inter alia through 30 cultural mediators. Finally, by bilateral labour agreements, it was possible to promote access to the regular job market, envisaging training and vocational courses for migrant workers.

As to the implementation of the Community Action Programme to combat Discrimination (Decision of the Council of the European Union 2000/750/CE of 27 November 2000), the Ministry of Labour and Social Policies promotes and finances measures to prevent and fight phenomena of discrimination on grounds of race, ethnic origin, religion, disability, personal convictions, age and sexual orientation. In this regard, this promoted three national seminars on the cited issue, involving different bodies, such as local bodies, non-governmental organisations, universities and research institutions. The first seminar took place in Arezzo on 31 May 2002; the second in Como, on 27 June 2002 and the last one in Rome on 26 September 2002. On 22 July 2003 the third European Conference on discrimination "Fighting Discrimination: from theory to practice" took place in Milan was an important debate, at the European level, on the development and implementation of normative instruments and good practices concerning fight against discrimination in all its aspects (in line with Directives no. 2000/43/CE and no. 2000/78/CE on gender equality and prohibition of discrimination). Some problems relating to discriminatory phenomena at the workplace were also dealt with by the CNEL, in particular by the National Body of Coordination of the policies on social integration (ONC-CNEL the acronym in Italian). The mandate of ONC, provided for in Art. 42, para. 3, of the Consolidated Text and Art. 56 of its Rules of Implementation, includes: assisting in the development of the local process of reception and integration of foreign citizens, their participation in public life; to this end, promoting the debate among institutions and social stakeholders at the local level, as well as with relevant local bodies from other European countries in order to share best practices and exchange information on methods of intervention.

²⁵ According to the Report on Anti-Semitism published by the European Monitoring Centre on Racism and Xenophobia (EUMC) and presented in the year 2004, in Italy, "it seems to be no serious problems of violence due to anti-semitism grounds". However, "anti-Semitic attitudes are common in broad sectors of public opinion as a heritage from the past and reflect somehow the polarisation caused by international conflicts, particularly the situation in the Middle East".

²⁶ By a further Decree as of 20 May 2004, it was set forth that the Committee would be chaired by the Head of the Department for Civil Freedoms and Immigration of the Ministry of the Interior and composed of two representatives of each of the following departments: Presidency of the Council of Ministers (Decree of 20 March 2004), Ministry of the Interior, Ministry of Foreign Affairs (besides the two representatives, the President of the Interministerial Committee of Human Rights was included), Ministry of Justice, Ministry of Economy and Finance, Ministry of Labour and Social Policies, Ministry of Education, University and Research, Ministry of Community Policies and Ministry for Equal Opportunities.

²⁷ The Centre, chaired by the Director of the Office on Public Order of the Department of Public Security, meets on a weekly basis and is composed of a representative from the Office on Public Order and four officers from the Central Direction of the Police of Prevention, the Traffic Police Service, the Railway Police Service and the Special Divisions Service of the aforementioned Department, respectively. Other members of the Centre are: an official from the *Carabinieri* forces, a representative of the Ministry for Arts and Culture, in addition to qualified representatives from CONI, the Inquiry Office of the Italian Federation on the Football, the National Professional League, the National League of Football Players of the third division championship and the sports societies concerned. Moreover, additional bodies are involved in the assessment and the ensuing decisions made by the Monitoring Centre, such as the State Railways and the *Autogrill* Company that run the transport of the fans and the refreshment shops en route, respectively. The activities of the Centre are three-pronged: 1. Analysis – Monitoring of phenomena of violence and intolerance in the field of sports and promotion of research on these issues in Italy and abroad; studies on the problems relevant to football matches and to assess, also on the basis of information gathered, the levels of risk. On the basis of these outlooks, the following activities are carried out: weekly issuance of Directives to the Provincial Authorities of Public Security in order to adopt the necessary measures to guarantee the normal course of the sports events; monitoring the sports stadiums in order to verify their conformity with the requirements provided for by the norms in force; constant updating and analysis of data on

phenomena of violence in order to modify accordingly the intervention strategies and to promote research both in Italy and abroad. 2. Activity of proposal – analysis of current legislation in order to harmonise implementation among the bodies and the institutions represented; integration and modification of directives and regulations on matters relating to prevention of violence in the stadiums; adoption of initiatives aiming at spreading the values of legality and fair sports competition, promoting meetings in schools, conventions and debates on “education to legality” in order to raising awareness of the above-mentioned issues, in particular among the youngsters; exchange of information at both national and international levels; and harmonisation of the directives with the Authorities of Public Security and the local bodies of the other Departments. 3. Documentation activity – drawing up of the minutes of the weekly meetings of the Centre; drafting of the yearly report of the Centre. The necessity of running and managing sports events through a complex organisational model in order to attain the shared objective of the smooth course of the sport events has shown the importance of the experience of the Centre both in the planning and the implementation processes of relevant measures.

²⁸ **The International Task Force on the Shoah and the inter-religious councils.** Since March 2004 Italy has been chairing the International Task Force on the Shoah (ITF, Task Force for International Cooperation on Holocaust Education) established in Stockholm in 1998 on Swedish initiative with the main aim of promoting through common projects, in Member and partner States, cultural, and educational initiatives aimed at raising awareness of the Shoah. The ITF is composed by Government’s representatives, and non-governmental organisations. At present, there are 20 Member States. Every country can join the ITF by signing the historic “Declaration of the International Forum of Stockholm on the Holocaust” (January 2000) and committing itself to implementing national policies and programs aimed at education and research activities on the Holocaust.

The Chairmanship is held by Member States and rotates annually, from February to February. Italy was given the Chairmanship for the 2004-2005 period. The ITF structure is based upon working groups, such as the Working Group on Education, the Memorial Working Group, the Funding Working Group, and the Information Working Group, which are coordinated by the Strategic and Implementation Working Group. In December 2004 a new working group was also established.

²⁹ In order to prevent anti-Semitism, several initiatives have been undertaken by the Italian Government in tandem with local administrations and when possible with the Jewish Community. By Law, it was decided to devote the 27th January, date of the opening of the gates of the Auschwitz camp, to the commemoration of that event and of similar episodes occurred during the history of human kind.

³⁰ More severe penalties are provided for vis-à-vis promoters and organisers of the cited associations.

³¹ **Violence against Women.** Many actions at different levels have been taken by local and national public institutions as well as by women’s associations and NGOs. The passing of Law no. 66 of 15th February 1996 accounts for a most significant innovation in sexual violence legislation. The cited Law qualifies violence against women as a crime against personal liberty – a significant step ahead from previously existing provisions, which would classify rape under crimes against public morality. The new Law has drawn the public opinion’s attention on this topic and made possible court decisions that better match the problem’s nature and seriousness. Moreover, the above Law has provided an invaluable tool to many women’s association, which for years have been trying to tackle the problem of violence against women and playing a key role in supporting victims against violent husbands, partners and fathers, by welcoming them in special centres. Worth mentioning in this field are the achievements of Region Emilia Romagna, which has opened an anti-violence centre in each Province, has provided regional co-ordination to the whole network, and has carried out in-depth analyses on particular aspects of this phenomenon. To date, more than 100 associations have organised counselling centres, toll-free crisis support phone lines, and provided legal and psychological support to women in difficult situations. Along with specific law provisions, with the support of funds provided to Regions and Local entities under Law 285/97 on Children Rights, more than 300 facilities have been activated by initiative of the Ministry for Equal Opportunities, with the continuous field activity of social and health care service providers and NGOs, especially those dealing with child violence and abuse within the household. Besides, a network has been established, connecting public services, anti-violence centres and associations that combat violence against women. Over time, it appears increasingly evident that facing this thorny issue requires a set of extremely complex measures: awareness raising, training, prevention; damage reduction, repression prosecution of perpetrators, each step calling for the commitment of the relevant institutions. As a matter of fact, actions lag behind intentions, as the issue of violence against women is somewhat new to institutions, at times hitting the headlines, still not yet becoming a social priority. In fact, apart from statements on black chronicle episodes, measures taken by policy makers over the last few years, if steadily increasing in number, have been developing with discontinuity. The most significant innovations in the political and institutional scenario are much tougher court decisions in defence of the dignity of violence victims. Decision no. 1636 of 10th February 1999 remains a single case – the Court sentenced that charges of rape could not be sustained, as the victim was wearing a pair of jeans trousers. Law enforcers and health care service providers are finally turning to research and considering proposals of innovative actions. As for training and welcoming methods, positive elements come from the national and especially the international scenario. The World Conference on Women, inaugurated back in 1975 with the Mexico City Conference, with regular follow-ups every five years, has opened a world-wide debate on violence against women, setting concrete goals to be achieved in all Countries, committing the institutions to continuously tackling this plague. In Italy, the Beijing Platform of Action has been adopted as a benchmark for initiatives. With the Directive of the *pro-tempore* President of the Council of Ministers, passed on 7th March 1997, the Italian Government and all Institutions commit to preventing and tackling all forms of physical, sexual and psychological violence against women, ranging from household abuse to trafficking of women and minors for sex slavery purposes. The Directive highlights the importance of steadily monitoring the phenomenon by statistical surveys at the national level. In 1998, the first national statistical survey on violence and harassment was completed by at the invitation of the Ministry for Equal Opportunities. This survey yielded a Report covering all forms of violence in various sorts of environments – from workplace to household. Since then, the data collection activity of the hot lines at anti-violence centres and women’s shelter homes has increased, as have regional surveys, like the abovementioned survey taken by Region Emilia Romagna. Consistently with the objectives of the above Directive, the Government has acted on the legislative side, establishing Law no. 154 of 5th April 2001 that lays down removing the violent family member from the household by means of civil or criminal court decision, as well as enacting social protection measures in favour of trafficked women independently of their offering collaboration to the relevant judicial authorities. The Government has also adopted a special plan on household violence against minors, with financing priority to actions indicated by Municipalities, local health care units (hereinafter, ASLs), Schools and/or private social care providers. Under Law no. 451 of 23rd December 1997 a special National Commission was established that drafted the “Guidelines against child violence and abuse”, with particular attention to violence against young girls. This picture is strongly influenced by both the new forms of child violence and projects and witnesses by local women in collaboration with municipalities, provinces, regions, that have faced the problem of administrative and financial support to such initiatives even before the central institutions have. Much of the research activity on particular aspects of the phenomenon, as well

as action and awareness raising plans, have been made possible by funds provided to female associations and universities under the EU financing of the DAFNE Programme. There is a positive side to it; over the last few years from 1997 to 2000, Italy's initiatives in this field have tripled in number. This increase proves that all professionally and culturally involved subjects are strongly determined to participate actively and efficiently in the solution of this problem, provided that they receive adequate funding. In 1998, a new Pilot Project, the "Anti-Violence Network of URBAN Towns of Italy" was launched, establishing a network of anti-violence centres in URBAN towns. This Research Project, providing for the analysis of the phenomenon in particularly degraded areas, has turned out very useful for assessing the skills and know-how of social care providers and local administrators in their prevention and assistance activities. To date, Italy sits at all Roundtables of EU and UN Bodies on violence against women, adding the value of the experience on the national territory and exchanging it with all involved women's associations and Ministries, in particular with the Ministry of Interior, that organises special Police Academy courses and police station task forces on violence against women and minors, and the Ministry of Public Health. The 1998 National Health Care Plan has been the first to list home accidents under the events disguising household violence. Among the Ministry for Equal Opportunities' worth mentioning initiatives is the National Conference "Zero Tolerance" (1998) dealing with violence against women, organised with the collaboration of the Municipal administration of Bologna, the local entity that has pursued the most consistent policy in that field, fully committed to urban security and easy living. In 2000, the Ministry for Equal Opportunities, together with the Superior Institute of Health, organised an International Conference on "Health Consequences of Violence against Women" and on "Health Care and Prevention Strategies" adopted in different EU and non-EU countries, and on the need for specific university training or equivalent to medical and paramedical health care providers. Last but not least, in 2001 Laws no. 134 and no. 60 set forth free legal advice to indigent rape and abuse victims, an invaluable tool to defend themselves and safeguard their rights, most often resorted to in collaboration with anti-violence centres and courts. In spite of the innumerable steps ahead, the way to go is still very long, in terms of knowledge, research and training - though the problem is unescapable for the community as a whole and accounts for a great cultural and political challenge.

³² This force - a civil force included among the State Police forces - was established by Act no. 395/1990.

³³ In particular, the authorities in charge with the relevant proceedings range in parallel with the seriousness of the offence, from the Director of the Penitentiary Institute, when minor offences are committed, to the Regional Commissions and to the Head of the Department of the Penitentiary Administration (DAP) when most serious cases occur (as envisaged by Art. 13 of the Law Decree under reference).

³⁴ The 1998 Unified Text on Immigration (D.L. 286/98) introduced a system to program the migratory flow, on the basis of which the Government action was taken with the aim of fighting against discrimination. The linkage between labour contract and stay permit was strengthened by the entry into force of the following texts: 1. Act no. 189/02, entitled "Amendment to the provisions on migration and asylum" (as recently renamed Unified Text on the provisions concerning the provisional system on migration and on the status of the foreign), which envisaged the so-called "stay contract for working reasons"; 2. Law Decree no. 195/02, converted by Act no.222/02, entitled "Urgent provisions to legalise the informal labour of the non-EU citizens".

³⁵ More recently, it is worth noting that: 1. Act no. 272/2004 took into account the judgment of the Constitutional Court concerning the validation process for the expulsion of the foreigners. This Act has therefore amended the previous system concerning the foreign who stays within the domestic borders, without a clear motivation and regardless of the local police authority's order to leave the country; 2. The DPR no. 334/2004, which entered into force on February 2005, has better defined the functions of some bodies in charge with the relevant procedures of release (arts. 4 - 5) or denial (art. 6) of the visas, as well as the formalities for the release of the stay contract (art. 8), the requirements concerning the residence permits (arts. 10, 11 e 13), while paying due regard to the conditions for the social protection (art. 21) or the cases concerning the prohibition of the expulsion and the non refoulement (art. 22), as well as the stay in the so-called CPTA (art. 20).

³⁶ The Constitution provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution. The Government grants refugee status or asylum. The Government fully cooperates with the Office of U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees, and providing temporary protection to refugees fleeing hostilities or natural disasters. Such refugees are granted temporary residence permits, which must be renewed periodically and do not ensure future permanent residence. In 2003, the Ministry of Interior approved approximately 725 asylum requests; experts estimated there were 500,000 illegal aliens resident in the country, and large numbers of immigrants continued to arrive from Africa, Eastern Europe, the Middle East, and China. Most illegal immigrants are denied entry at the border. Those who do enter, usually via the sea, are sent to Temporary Stay and Assistance Centres (CPTA) for processing.

³⁷ Art. 1-bis of the Law Decree no. 416/89, converted in Act no. 39/90, set two different stay procedures in such Centres: the former is compulsory, while the latter is optional (Art. 1-bis, comma 1). This Article envisages also those cases when the stay is compulsory (Art. 1-bis, comma 2).

³⁸ Art.1-ter, para. 4, of Law Decree no. 416/89 envisages the effects of the case when the foreign leaves without authorization the Identification Centre.

³⁹ **IDENTIFICATION CENTRES - as of 2004:**

Location	Number
Agrigento	110
Brindisi	180
Catanzaro	75
Lecce	180
Modena	60
Roma	300
Bologna	95
Caltanissetta	96
Crotone	129

Milano	140
Ragusa	60
Torino	78

To be soon realised

Location	Number
Bari	300
Foggia	300
Perugia	300
Trapani	220

RESCUE AND ASSISTANCE CENTRES:

Location	Number
Lampedusa	190
Lecce-Otranto	75

⁴⁰ The local bodies provide for services aiming at the full and effective integration into the social system of refugees and people with stay permit for humanitarian reasons or temporary protection. Several initiatives aim at favouring the vocational training courses to promote access to labour market. Moreover, there is a network involving stakeholders of the real estate sector (estate agencies, municipalities, and relevant associations) to support “the housing search” and solve the housing problem.

⁴¹ Verdict of the Turin Tribunal magistrate (on 3.2.05): the magistrate ruled not to expel an irregular migrant from Senegal due to his homosexuality which would have exposed him to a 5-year term prison penalty if sent back home, in accordance with Art.19 Law Decree no. 286/98.

⁴² There is no provision for bail; however, judges may grant provisional liberty to suspects awaiting trial. As a safeguard against unjustified detention, panels of judges (liberty tribunals) review cases of persons awaiting trial on a regular basis per a detainee's request and rule whether continued detention is warranted. Persons in detention included not only those awaiting trial but also individuals awaiting the outcome of a first or second appeal.

⁴³ The CPTA for immigrants are aimed at the stay of Non-EU citizens, as envisaged by the amended Unified Text on Immigration no. 286/98 (Art.14). The Unified Text, in fact, was modified by Act no.189/2002 (art.12), so as to contrast the irregular migration within the domestic borders, by proceeding with the enforcement of the expulsion measures. At present, there are in use the following Centres: 1. Agrigento- Lampedusa; 2. Bologna; 3. Brindisi; 4. Caltanissetta; 5. Catanzaro; 6. Lecce; 7. Milano; 8. Modena; 9. Roma; 10. Torino; 11. Trapani; Crotone; Ragusa. As to the living standards and, more generally, to the respect for human rights at the Centres, they are set by the cited Unified Text and by the Ministry Decree, the latter renamed “the Bianco Directive (30/8/2002)”.

⁴⁴ Such data are not fixed due to the time necessary to the release of alternative measures.

⁴⁵ As a matter of clarity, the Bill under reference does not amend the current system, since the reform envisaged will be carried out and enter into force by means of the so-called “delegated decrees” to be adopted in the near future in order to supplement Bill (C4636-bis-D).

⁴⁶ Early in the year 2004, there were 4.882 pending proceedings based upon such normative framework.

⁴⁷ Some specific provisions relating to the expulsion measure are as follows: Art.235 c.p., Art. 86 DPR no.309/90 and Art.15 of the Unified Text on Immigration (as amended by Art.14 of Act no.189/02). The expulsion envisaged in the cited provisions represents a **security** measure. Therefore, the enforcement of this measure, decided by judicial authorities when estimating that the foreign convicted is still a social danger, follows up to the execution of the conviction verdict.

On a more specific note, by recalling that Arts.14 and 15 (T.U. no. 286/98) deal with this issue and focus on the expulsion measures (as described under question no. 18), the Law guarantees: 1. As to all the cases reported in the aforementioned provisions ad hoc judicial protection. This allows to file a petition before the so-called “Tribunal of Surveillance (Tribunale di Sorveglianza)”, the decisions of which can be challenged before the Supreme Court; 2. By Decree no. 241/04 and D.P.R. no. 334/04 (which entered into force on February 2005), it is now required a magistrate (previously only a Ministry of Interior representative) to determine if an immigrant will be expelled (for those whose identity can be determined), to issue an order to depart (for those whose identity has not been determined), or to accept for asylum processing.

⁴⁸ The Constitution provides for freedom of religion, and the Government respects and promotes this right. The Government at all levels strives to protect this right in full and does not tolerate its abuse, either by governmental or private actors. Prior to the Constitution's adoption in 1947, the country's relations with the Catholic Church were governed by a 1929 Concordat, which resolved longstanding disputes stemming from the dissolution of the Papal States and established Catholicism as the country's state religion. A 1984 revision of the Concordat formalized the principle of a secular state but maintained the practice of state support for religion--support that also could be extended, if requested, to non-Catholic confessions. In such cases, state support is to be governed by legislation implementing the provisions of an accord (“intesa”) between the Government and the religious confession. An intesa grants ministers of religion automatic access to state hospitals, prisons, and military barracks; allows for civil registry of religious marriages; facilitates special religious practices regarding funerals; and exempts students from school attendance on religious holidays. If a religious community so requests, an intesa may provide for state routing of funds, through a voluntary check-off on taxpayer returns, to that community, a privilege that some communities initially declined but later requested. The absence of an intesa does not affect a religious group's ability to worship freely; however, the privileges granted by an intesa are not always granted automatically, and a religious community without an intesa does not benefit financially from the voluntary check-off on taxpayer returns. In 1984 the first such accord granted specific benefits to the Waldensian Church. Similar accords, which are negotiated by the Interior Ministry and require parliamentary approval, extended similar benefits to the Adventists and Assembly of God (1988), Jews (1989), and Baptists and Lutherans (1995). In 2000 the Government signed accords with the Buddhist Union and Jehovah's Witnesses; however, these intese did not receive parliamentary ratification before that Government left office in 2001.

The Government initiated negotiations with the Mormons (2000), the Orthodox Church of the Constantinople Patriarchate (2000), the Apostolic Church (2001), Hindus (2001), and Soka Gakkai (Japanese Buddhists)(2001).

⁴⁹ A survey carried out by the Order of Journalists covering the period between 1997-2003 shows that 670 civil cases and 562 criminal cases relating to defamation by means of press were filed.

⁵⁰ The requirements to be appointed for a 3-year term mandate are reported under Art.135, para. 2, of the Constitution (which envisages the requirements for the election of the judges to the Constitutional Court), or when selecting candidates attention must be paid to those individuals, whose prestige, professional competence, impartiality, fairness, are recognized (...).
Along this line, the appointment of the President of this Board is decided by the Council, among the members of which s/he is chosen. S/he takes up this position with the positive vote by a two-third majority of the members of this Board and the positive advice of the Parliamentary Commission for the general policy and surveillance of radio and television services.

⁵¹ The mapping exercise of the areas in which historical linguistic minorities reside is now completed.

⁵² As far as the protection of Slovenian minority is concerned, it should be noted, once more, that Art. 8, para. 3, of Act no. 38/2001 provides that, in the communes or parts of them, where the Slovenian minority has been traditionally living and that are included in the list drawn up by the Joint Committee for the problems of the Slovenian minority, any acts or decisions for public use on pre-printed forms, including documents of personal nature such as identity card and certificates on personal data, are issued, on request of citizens concerned, both in Italian and Slovenian language or in Italian language only (...).