

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## European Commission against Racism and Intolerance

### Third report on Italy

Adopted on 16 December 2005

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## Foreword

*The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

*The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.*

*ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.*

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 16 December 2005 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.***

### ***Executive summary***

Since the publication of ECRI's second report on Italy on 23 April 2002, progress has been made in a number of the fields highlighted in that report. As part of the changes introduced since then to antidiscrimination legislation, the Italian authorities have established a specialised body to combat racial discrimination, which assists victims and raise awareness of this phenomenon among the general public. Antidiscrimination legislation has been applied in some cases in the fields of employment and housing. Monitoring of school pupils' attainment broken down by nationality has been introduced to assess imbalances. School education on the Holocaust and against antisemitism as well as awareness-raising initiatives on these issues have been strengthened. Efforts to protect and assist victims of trafficking have continued and yielded positive results. Furthermore, a special procedure carried out in 2003 has resulted in approximately 650 000 non-EU workers acquiring legal status in Italy.

However, a number of recommendations made in ECRI's second report have not been implemented, or have only been partially implemented. The use of racist and xenophobic discourse in politics has intensified and targets in particular non-EU citizens, Roma, Sinti and Muslims. Members of these groups have continued to experience prejudice and discrimination across a wide range of areas. Immigration legislation has made the situation of many non-EU citizens more precarious, and its implementation, notably in respect of immigrants without legal status, has resulted in the exposure of these persons to a higher risk of human rights violations. In the absence of a national policy to improve the situation of Roma and Sinti and combat the prejudice and discrimination they face, many members of these groups continue to live in a situation of marginalization and practical segregation from the rest of Italian society. Members of Muslim communities have also experienced a deterioration in their situation, notably due to the generalisations and the associations made in public debate and the media between the members of these communities and terrorism. The vulnerability of the members of these and other groups to racism and racial discrimination has been increased by the lack of political support for protection of individuals against incitement to racial violence and discrimination.

In this report, ECRI recommends that the Italian authorities take further action in a number of areas. These areas include: the need to fine-tune the legal framework against racism and racial discrimination, including through ratification of Protocol No. 12 to the European Convention of Human Rights; the need to ensure the thorough implementation of the existing criminal and civil provisions against racism and racial discrimination, and notably penal legislation against incitement to racial hatred and racially-motivated offences; the need to ensure thorough respect for the human rights of immigrants, including those intercepted at sea or apprehended on entering Italy illegally. In this report, ECRI also recommends that the Italian authorities take measures against the use of racist and xenophobic discourse in politics. It recommends that they improve their systems for monitoring racist, xenophobic and antisemitic incidents. Furthermore, ECRI recommends specific measures to counter racial discrimination and promote equal opportunities for minority groups, notably non-EU citizens, Roma, Sinti and Muslims.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON ITALY

### International legal instruments

1. In its second report, ECRI recommended that Italy ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), the European Charter for Regional or Minority Languages and the European Convention on Nationality. It also recommended that Italy extend the application of the Convention on the Participation of Foreigners in Public Life at Local Level to Chapter C of this convention, which concerns the attribution of eligibility and voting rights to foreign residents. ECRI notes that Italy has not yet ratified Protocol No. 12 to the ECHR. It notes that a law concerning the ratification of the European Charter for Regional or Minority Languages is currently being examined by the Parliament. The application of the Convention on the Participation of Foreigners in Public Life at Local Level has not been extended to Chapter C of this convention, although a number of proposals for legislation in this sense have been introduced since ECRI's second report<sup>1</sup>.
2. ECRI notes that Italy has not yet ratified the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The Italian authorities have reported that work in view of the possible ratification of these two instruments is underway. There do not appear to be plans to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

#### **Recommendations :**

3. ECRI recommends that the Italian authorities ratify Protocol No. 12 to the ECHR without delay. It also recommends that they ratify the European Charter for Regional or Minority Languages, the European Convention on Nationality, the Additional Protocol to the Convention on Cybercrime and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI reiterates its call on the Italian authorities to extend the application of the Convention on the Participation of Foreigners in Public Life at Local Level to Chapter C of this convention.

### Constitutional provisions and other basic provisions

#### - **Citizenship legislation**

4. In its second report, ECRI considered that there was a need for Italian citizenship legislation to grant easier access to Italian citizenship both for children born or raised in Italy and for long-term residents. Since then, a number of proposals for legislation aimed essentially at extending the application of the principle of *jus soli* and reducing the length of residence required of applicants to obtain citizenship, have been introduced. However, none of these proposals has been adopted.
5. In its second report, ECRI recommended that the Italian authorities increase transparency and reduce the discretionary element in processing applications for naturalisation, including by standardizing and simplifying the relevant procedures. Since then, however, ECRI has continued to receive reports according to which decisions on applications for naturalisation, notably on the

<sup>1</sup> On eligibility and voting rights of non-EU residents, see below "Reception and status of non-citizens – Immigrants with legal status".

basis of residence, are excessively restrictive and discretionary and often characterised by a lack of transparency as to the reasons for rejection. In addition, although ECRI notes that the Italian authorities have taken measures to speed up the examination of applications and that the law fixes a maximum term of 730 days to this end, it still often takes considerably longer for applicants to receive a response. In this connection, ECRI notes in particular reports of applications concerning minors over 14 years of age, who have reached adulthood before their application has been processed and have therefore been required to re-apply according to more stringent naturalisation procedures.

#### **Recommendations :**

6. ECRI recommends that the Italian authorities grant easier access to Italian citizenship both for children born or raised in Italy and for long-term residents, including by introducing the necessary changes to citizenship legislation.
7. ECRI recommends that the Italian authorities ensure that the provisions on naturalisation are applied in all cases in a non-discriminatory manner. To this end, it recommends in particular that the Italian authorities enhance transparency in their naturalisation decisions. ECRI urges the Italian authorities to take steps to ensure that naturalisation decisions are taken within a reasonable time and that excessive delays not imputable to the applicant do not negatively affect the position of the latter.

#### **Criminal law provisions**

8. In its second report, ECRI recommended that the Italian authorities take steps to improve the implementation of the criminal law provisions in force against racism and racial discrimination<sup>2</sup>, particularly those that establish racial motivation as an aggravating circumstance for all offences and those concerning incitement to discrimination and violence for racial, ethnic, national or religious reasons.
9. Although comprehensive data on the implementation of these provisions that would cover all levels of the criminal justice system are not readily available<sup>3</sup>, there have been cases where these provisions have been applied since ECRI's second report. The Italian authorities report, for instance, that final sentences for racially-aggravated offences have been handed down in three cases in 2001, four cases in 2002, two cases in 2003 and that there have been no such sentences in 2004. As for incitement to racial discrimination and violence, the Italian authorities report that these provisions have been applied either in cases concerning racist graffiti, whose authors remained unknown, or with respect to

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<sup>2</sup> Section 3(1) a of Law N° 654/1975 as amended by Law N° 205/1993 prohibits the dissemination of ideas based on racial or ethnic superiority or hatred, and incitement to commit or the commission of discriminatory acts for racial, ethnic, national or religious reasons. Section 3(1) b of the same amended law punishes incitement to commit or the commission of violent acts on racial, ethnic, national or religious grounds. Section 3(2) of the same amended law prohibits the establishment of, the participation in or assistance to organisations, associations, movements or groups aiming to incite to racial discrimination or hatred. Section 2 of Law N° 205/1993 prohibits the display or manifestation of emblems or symbols of organisations, associations, movements inciting to discrimination or violence for racial, ethnic, national or religious reasons, notably when it takes place at public meeting or sport events. Section 3 of the Law N° 205/1993 provides for a general aggravating circumstance for all offences committed with a view to discrimination on racial, ethnic, national or religious ground or in order to help organisations with such purposes. This Law also provides that any racially-aggravated offence is prosecuted *ex officio*.

<sup>3</sup> See below "Monitoring the situation".



opinions expressed by journalists in newspapers, which were finally found, however, not to constitute an offence. ECRI has been made aware of only one case (which concerned six exponents of the Northern League<sup>4</sup>), where sentences have been handed down for incitement to racial discrimination and violence since its second report.

10. Non-governmental organisations report that these figures do not reflect the true extent of manifestations of racism and racial discrimination in Italy. This includes manifestations of racially-motivated violence, a phenomenon which is recognised as not being prevalent in Italy, but which civil society organisations also consider to be under-reported<sup>5</sup>.
11. ECRI notes that although the police, the prosecuting authorities and the judges have not, since ECRI's second report, received comprehensive training focusing specifically on the legal provisions in force against racism and racial discrimination, as recommended by ECRI in that report, judges have received training in human rights and multicultural issues.
12. In its second report, ECRI also recommended that the Italian authorities raise the awareness of all actors involved in the criminal justice system of the need to actively counter racially-motivated offences and incitement to racial discrimination and violence. However, ECRI notes with concern that since its second report, lack of support for protection against incitement to racial hatred – and sometimes outright hostility towards providing such protection - has publicly and repeatedly been expressed at high political level. In particular, ECRI notes that the decision resulting in the condemnation of exponents of the Northern League mentioned above has been publicly and strongly condemned by some politicians. Furthermore, ECRI notes with regret that, since that decision, legislation against incitement to racial discrimination and violence has been made more lenient<sup>6</sup>.

#### **Recommendations :**

13. ECRI recommends that the Italian authorities ensure that adequate criminal law provisions are in place to counter racism and racial discrimination. In particular, ECRI recommends that the Italian authorities review the provisions in force against incitement to racial violence and discrimination and bring them into line with ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination<sup>7</sup>, which prescribes that effective, proportionate and dissuasive sanctions should be provided for against such offences.
14. ECRI strongly encourages the Italian authorities to improve the implementation of existing criminal law provisions against racism and racial discrimination, with particular emphasis on the provisions against racially-motivated violence and incitement to racial discrimination and violence. To this end, ECRI recommends in particular that the Italian authorities provide all those involved in the criminal

<sup>4</sup> Section II, "Use of racist and xenophobic discourse in politics".

<sup>5</sup> See below, "Racist, xenophobic and antisemitic incidents"

<sup>6</sup> The maximum length of imprisonment for breach of the relevant provisions has been reduced from three years to eighteen months and the possibility for the judge to replace imprisonment with a fine has been introduced.

<sup>7</sup> CRI (2003) 8: ECRI General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination, European Commission against Racism and Intolerance, Council of Europe, February 2003. See, in particular, paragraph 23 (and paragraph 49 of the Explanatory Memorandum)

justice system, from lawyers to the police, prosecuting authorities and the courts, with thorough specific knowledge of these provisions. ECRI also recommends that the Italian authorities provide the political leadership necessary to make all those involved in the criminal justice system fully aware of the need to actively and thoroughly counter all manifestations of racism and racial discrimination.

### Civil and administrative law provisions

15. Although civil and administrative law provisions against discrimination had been introduced in Italy in 1998<sup>8</sup>, in its second report ECRI recommended that Italy adopt more comprehensive civil and administrative antidiscrimination provisions against discrimination on grounds such as race, colour, language, nationality and national or ethnic origin. ECRI is pleased to note that, in 2003, two legislative decrees were adopted in order to transpose the two European Council Directives 2000/43 and 2000/78<sup>9</sup>: legislative decree No. 215/2003<sup>10</sup> and legislative decree No. 216/2003<sup>11</sup>.
16. ECRI welcomes the fact that a number of elements included in its General Policy Recommendation No.7<sup>12</sup> are reflected in the legal framework against discrimination resulting from the combination of the 1998 and 2003 provisions. However, other aspects of this General Policy Recommendation have not been included, or are reflected less clearly in this legal framework due to a lack of co-ordination between the 1998 and 2003 provisions. For example, discrimination on grounds of nationality is covered by the 1998 legislation but not by that of 2003. Although provisions establishing a shared burden of proof between the alleged victim and discriminator were introduced in 2003 for cases of racial discrimination, this has been done in a way that considerably reduces their effectiveness<sup>13</sup>. Public authorities have not been placed under a statutory duty to promote equality and prevent discrimination in carrying out their functions, an element which ECRI believes could help to bring about positive changes in public administration in these fields. Finally, ECRI welcomes the newly-introduced possibility for associations to bring cases on behalf of identified or unidentified victims of discrimination. However, some civil society organisations have expressed concern that the obligation made to such associations to register with the Department for Equal Opportunities in order to use this possibility may restrict the effectiveness of this provision in practice.

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<sup>8</sup> Articles 43 and 44 of Legislative Decree No. 286/1998

<sup>9</sup> Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

<sup>10</sup> Legislative decree of No. 215 of 9th July 2003. – Transposition of EU Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Gazette Nr.186 of 12th August 2003.

<sup>11</sup> Legislative decree of No. 216 of 9th July 2003 – Transposition of EU Directive 2000/78/EC implementing the principle of equal treatment in employment and working conditions, Official Gazette Nr.187 of 13th August 2003

<sup>12</sup> See above “Criminal law provisions”

<sup>13</sup> According to legislative decree No. 215, if the person who considers him/herself wronged by discrimination presents elements of fact suitable to establish “serious, exact and consistent elements” about the existence of a direct or indirect discrimination, also on the basis of statistical data, the judge can evaluate such elements on the basis of the rule of the civil code allowing a “prudent appreciation” of presumptions.

17. As concerns implementation, in its second report ECRI noted that the 1998 antidiscrimination provisions had been very rarely applied. ECRI notes that, since then these provisions have been applied in a number of housing and employment cases<sup>14</sup>, some of which have had considerable public resonance. It has been pointed out, however, that most cases have concerned discriminatory regulations and formal policies and that discriminatory actions and practices by individuals have yet to be tried before the courts. As regards the 2003 antidiscrimination provisions, ECRI notes that there have been no court cases applying these provisions as yet. Although the National Office against Racial Discrimination (UNAR)<sup>15</sup> has received a number of complaints alleging breach of these provisions, such cases have so far been resolved informally through mediation and alleged victims have not sought the assistance of the UNAR to bring a civil suite. It has been pointed out that the absence of formal complaints may also be linked to lack of awareness among the general public of the legal framework in force against racial discrimination. In this respect, ECRI notes that legal awareness raising activities are among UNAR's priority fields of action.

#### **Recommendations :**

18. ECRI encourages the Italian authorities in their efforts to ensure that civil and administrative law provisions provide adequate protection against discrimination. It also recommends that the Italian authorities keep the existing provisions against racial discrimination under review. In this respect, it draws the attention of the Italian authorities to its General Policy Recommendation No.7, in particular as concerns: the need to protect individuals from discrimination on grounds such as "race", colour, language, religion, nationality and national and ethnic origin; the need for fair and effective burden of proof provisions in racial discrimination cases<sup>16</sup>; the need to place public authorities under a duty to promote equality and prevent discrimination in carrying out their functions<sup>17</sup>. ECRI also recommends that the Italian authorities ensure that all organisations active in the field of combating racism and racial discrimination are able to bring cases on behalf of alleged victims of these phenomena.
19. ECRI urges the Italian authorities to take steps to improve the implementation of the existing civil and administrative law provisions against racial discrimination. It recommends that such steps include strengthened efforts to raise awareness among the general public, groups vulnerable to racial discrimination and the legal community of the civil and administrative legal framework in force against discrimination.

#### **Administration of justice**

20. In its second report, ECRI recommended that the Italian authorities carry out research into the disproportionately high representation of non-citizens among the prison population of Italy. Official figures referring to the end of September 2005 indicated that approximately one third of all adult detainees were non-citizens, most of whom were detained for crimes against property or connected with drug trafficking and, to a lesser extent, for crimes connected with their

<sup>14</sup> See below "Access to public services – Housing" and "Employment".

<sup>15</sup> See below, "Specialised bodies and other institutions".

<sup>16</sup> ECRI General Policy Recommendation N°7, paragraph 11 (and paragraphs 29-30 of the Explanatory Memorandum).

<sup>17</sup> ECRI General Policy Recommendation N°7, paragraph 8 (and paragraph 27 of the Explanatory Memorandum).

irregular presence on Italian territory. The Italian authorities have stressed that poverty, marginalisation but also lack of awareness of the criminal law provisions in force play a role in determining this situation. They have also stressed that virtually all non-citizens in detention are persons who are in Italy without legal status. In this respect, however, it has been reported to ECRI that official communication to the media and the general public has not highlighted the virtual absence of non-citizens with legal status among the prison population.

- **Legal aid**

21. In its second report, ECRI recommended that the Italian authorities improve non-citizens' access to translation and interpretation services and legal counsel. Noting that in practice most non-citizens without legal status did not access the system of free legal aid, ECRI also recommended that the Italian authorities take measures to address this situation. Although the right to translation and interpretation for all persons in judicial proceedings is protected by the law, ECRI has continued to receive reports according to which these rights are not always guaranteed in practice and, notably, that professional interpretation is not always available to non-Italian speakers. As concerns free legal aid, the Italian authorities report that legislation introduced in 2001<sup>18</sup> grants non-citizens and stateless persons the same rights as Italian citizens in access to free legal aid in criminal and civil proceedings<sup>19</sup>. The Italian authorities also report that non-citizens account for 13% of all adults and 27% of all minors who are granted free legal aid.

**Recommendations :**

22. ECRI recommends that the Italian authorities keep the situation as concerns the disproportionate representation of non-citizens in Italian prisons under review and ensure that it is not the result of possible direct or indirect discrimination.
23. ECRI recommends that the Italian authorities ensure that all non-citizens, including those without legal status, access in practice the translation and interpretation services to which they are entitled. It recommends that the Italian authorities ensure that all non-citizens who do not have sufficient means, including from among persons without legal status, have access to good quality free legal aid in practice.

**Specialised bodies and other institutions**

24. In its second report, ECRI recommended that Italy establish a specialised body to effectively and independently monitor the situation of racism and racial discrimination and assist with the implementation of antidiscrimination legislation. ECRI notes that legislative decree No. 215/2003<sup>20</sup> provides for the establishment of a National Office against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali* or UNAR). Established as part of the Department for Equal Opportunities of the Presidency of the Council of

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<sup>18</sup> Law No. 134 of 29 March 2001.

<sup>19</sup> In particular, Article 9 of the Law establishes the right for the person granted free legal aid to appoint expert witnesses and private investigators for the purpose of exercising in an effective way his/her right to defence. Article 20 provides that each Bar Council must provide information relating to the costs of the judicial proceedings, the requirements and obligations that must be met to be entitled to free legal aid, as well as the modalities and obligations for the assignment of a defence counsel.

<sup>20</sup> See above, "Civil and administrative law provisions".

Ministers, UNAR has been entrusted with several functions, including: to provide assistance to victims of discrimination, including by investigating their complaints and assisting them in judicial and administrative proceedings; to raise general awareness of racism and racial discrimination, notably through training activities and research; and to report to Parliament and the Committee of Ministers on the implementation of the principle of equal treatment irrespective of racial or ethnic origin. ECRI welcomes the establishment of UNAR as an important step towards ensuring better protection of persons living in Italy against racial discrimination. However, as highlighted in its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level<sup>21</sup>, and General Policy Recommendation No. 7, ECRI stresses the need for these specialised bodies to be fully independent in order to guarantee their effectiveness.

25. ECRI is pleased to note that, as part of the efforts to provide assistance to victims, UNAR has established a multi-lingual Contact Centre, to which individuals can report cases of racial discrimination. ECRI notes that in the first nine months of operation, from December 2004 to September 2005, the Centre has received over 2500 calls, only 300 of which, however, fell within the ambit of UNAR's remit. The Italian authorities have indicated that most of these complaints concerned employment, housing, access to public services and relations with the police and that none of them has resulted in the opening of judicial or administrative proceedings so far<sup>22</sup>. While they welcome the establishment of the Contact Centre, civil society organisations have informed ECRI that effective remedial action against situations of discrimination reported to it seems to have so far been limited.
26. As already noted in ECRI's second report, legislative decree No. 286/1998<sup>23</sup> provides for the establishment of regional centres for monitoring racial discrimination and providing legal assistance and information to the victims of this phenomenon. In its second report, ECRI urged the Italian authorities to ensure that these centres are established in the regions. ECRI notes, however, that to date only a few regional observatories have been set up. Furthermore, no co-ordination has been established by legislative decree No. 215/2003 between UNAR and the regional centres. However, UNAR has reported to ECRI that it favours the establishment of these centres in the regions and that work is underway to ensure uniformity and standardization in their activities.

#### **Recommendations :**

27. ECRI invites the Italian authorities to keep the status, powers and duties of UNAR under review, in order to ensure that this Office provide victims of racial discrimination with the most effective protection possible. To this end, ECRI draws the attention of the Italian authorities to its General Policy Recommendations No. 2 and No. 7, which provide detailed guidelines on the establishment, functions and working methods of these bodies. In particular, ECRI draws the attention of the Italian authorities to the need for such a body to be independent and to the guidelines it formulated on how to guarantee such

<sup>21</sup> CRI (97) 36: ECRI General Policy Recommendation n° 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, European Commission against Racism and Intolerance, Council of Europe, June 1997.

<sup>22</sup> See above, "Civil and administrative law provisions".

<sup>23</sup> See above, "Civil and administrative law provisions".



independence<sup>24</sup>. ECRI also draws the attention of the Italian authorities to the guidelines it has provided on the powers that should be attributed to such a specialised body<sup>25</sup>.

28. ECRI urges the Italian authorities to ensure that the regional centres for monitoring racial discrimination provided for by law are set up in all regions without further delay. It recommends that the Italian authorities ensure thorough co-ordination between the work of these centres and that of UNAR.

### **Education and awareness-raising**

29. A number of initiatives have been taken at local and national level since ECRI's second report to raise the awareness of racism and racial discrimination among both the general public and specific groups. These activities have included events, research and training carried out under the auspices of UNAR or at the initiative of other public authorities. Useful research has also been developed in the framework of the three-year project "Security for the Development of Southern Italy", funded by the European Union. In addition to promoting cultural mediation services<sup>26</sup>, this project is aimed at monitoring the situation of immigrants and examining reception and integration processes regarding these persons in six regions in southern Italy. In general terms, however, it has been reported to ECRI that only rarely has existing research been used in practice to inform policy in areas where persons experience racial discrimination.
30. In its second report, ECRI recommended that the Italian authorities strengthen their efforts to train teachers to deliver intercultural education to their students. In this respect, the Italian authorities have reported that, in accordance with the education reform carried out in 2003<sup>27</sup>, primary school students must be equipped with competence in living together and that teachers are being trained to this end. In its second report, ECRI also recommended that the Italian authorities introduce compulsory teaching in human rights, notably in secondary education. ECRI notes that human rights are not taught as a separate subject, but form part of the civic education programme, a compulsory subject which students study at certain grades.

### **Recommendations :**

31. ECRI recommends that the Italian authorities pursue and strengthen their efforts to raise the awareness of issues of racism and racial discrimination among both the general public and specific groups. It recommends that the Italian authorities ensure that existing research be used in practice to inform policy in areas where persons experience racial discrimination.
32. ECRI recommends that the Italian authorities strengthen their efforts to provide teachers with thorough training in delivering intercultural education to students and that they do so for teachers at all levels of education. ECRI recommends that the Italian authorities strengthen the human rights dimension of civic education courses. In the long term, however, it recommends that the Italian authorities consider making human rights, including non-discrimination, a compulsory subject at both primary and secondary level.

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<sup>24</sup> ECRI General Policy Recommendation N°2, Principle 5.

<sup>25</sup> ECRI General Policy Recommendation N°7, paragraph 24 (and paragraphs 50-55 of the Explanatory Memorandum) and ECRI General Policy Recommendation N°2, Principle 3.

<sup>26</sup> See below, "Access to public services – Other services".

<sup>27</sup> Law No. 53 of 28 March 2003.

## Reception and status of non-citizens

33. Since ECRI's second report, the number of non-citizens legally residing in Italy has increased from 1 500 000 to approximately 2 200 000, or 4% of the total population<sup>28</sup>. In addition, according to estimates, around 500 000 persons currently live in Italy without legal status. Since ECRI's second report, significant changes have been introduced to immigration legislation, notably through Law No. 189/2001 (the so called Bossi-Fini Law), which deals with different aspects of asylum and immigration, including border control, residence permits and deportations. The Italian authorities have stressed that the new immigration legislation aims essentially at countering irregular immigration and favouring the integration of persons legally residing in Italy. **However, non-governmental organisations active in the field of combating racial discrimination and promoting the rights of immigrants have reported to ECRI that, since the entry into force of the Bossi-Fini Law, all categories of non-citizens in Italy have experienced a deterioration in their situation, including as concerns respect of human rights and the principle of non-discrimination.** ECRI addresses the situation of immigrants with legal status in this Section. The situation of asylum seekers, refugees and immigrants without legal status is addressed in Section II of this report.

### - *Immigrants with legal status*

34. Since ECRI's last report, **the possibility for non-citizens to obtain a residence permit enabling them to come to Italy to look for work** (the so called "sponsor" scheme) has been discontinued. The Bossi-Fini Law introduced the so called "stay-for-work" permit. Since then, immigrants can only obtain a permit to come to work in Italy if they have an employment contract. In addition, for a permit to be granted, employers must provide housing and make a deposit for the repatriation of the employee. In the case of unemployment, the time allowed for the worker to find new employment, and thereby avoid deportation, has been halved from one year to six months. The Italian authorities have stressed that these provisions are instrumental to ensuring that immigrants have work and accommodation. **However, non-governmental organisations claim that these provisions establish an excessively strong link between work and residence and have rendered the status of immigrants more precarious.** They also stress that the new obligations placed on the employers have acted as a disincentive to employing non-citizens and that only those employers who cannot find alternatives have continued to do so.

35. Since ECRI's second report, Italy has continued to apply a **quota system to regulate immigration into the country.** Thus, an overall quota of new work permits is established annually based on the needs of the labour market. Within this overall quota, the Italian authorities reserve specific quotas for nationals of those countries with whom Italy has signed co-operation agreements, notably in the field of immigration control. The Italian authorities have stressed that this system has proved an effective tool in favouring regular immigration and countering irregular immigration from certain countries. **Some civil society organisations have expressed the opinion that this system is discriminatory in that it excessively restricts, without reasonable justification, the possibility for nationals of certain countries to obtain work permits.** In this respect, the authorities have reported to ECRI that the national quotas reserved for

<sup>28</sup> For information on the process of legalisation of the status of irregular immigrants, see below, "Employment".

nationals of specific countries do not exceed 25% of the overall quota. However, ECRI also notes reports according to which, in recent years, it has been easier for persons from Eastern European countries to obtain work permits than for persons from other geographical areas, such as North Africa, from where immigrants had traditionally been arriving in considerable numbers.

36. ECRI notes that the Bossi-Fini law has generally shortened the duration of residence permits - which therefore now need to be renewed more frequently - and at the same time subjected the granting of such permits to stricter criteria. ECRI has received consistent reports according to which, in a context where procedures before the administration are generally long for everyone, these new conditions have resulted in particularly serious difficulties for non-citizens. For instance, it is reportedly not unusual for non-citizens to obtain their permits after expiration of their validity. The authorities have stressed that one of the implementing decrees of the Bossi-Fini Law has established single counters (*sportello unico*) specifically for non-citizens within the Prefectures, *inter alia* in order to speed up administrative procedures concerning them. However, non-citizens are still reported to be faced with unacceptably long delays, which in turn affect their access to certain services.
37. In its second report, ECRI recommended that the Italian authorities grant eligibility and voting rights to non-EU long-term residents in local elections. ECRI notes that, in the absence of national legislation providing for these rights, a number of municipalities and regions have changed their statutes so as to grant these rights to non-EU local residents. ECRI notes that the Italian authorities have opposed these initiatives arguing that a national law is necessary to this end.
38. More generally, ECRI expresses concern at the fact that, in spite of certain regional efforts, there is no comprehensive integration policy in Italy at the national level. Civil society organisations have underlined that there is currently no consistent or credible legal, policy or institutional framework at the central level that can provide coherence and sustainability to local efforts to promote integration between majority and minority communities, and notably citizen and non-citizen communities. They have stressed that such a legal and institutional framework only exists for aspects of immigration relating to security and control, as illustrated by the levels of priority given to these questions by the Bossi-Fini Law. However, ECRI also notes that the establishment of a coherent national integration policy is also hampered by the increasing devolution of competences to regional authorities which Italy has effected in recent years, and particularly since ECRI's last report. ECRI notes that, as a result of this situation, the differences in approaches and levels of attention devoted to integration in the different regions are widening to the detriment of the establishment of a genuinely integrated society in Italy. In this connection, ECRI notes with regret that the Commission for integration, a body which ECRI recommended be strengthened and supported in its second report, has since then been discontinued.

#### **Recommendations :**

39. ECRI recommends that the Italian authorities ensure that the provisions which regulate the granting of residence permits do not result in increasingly precarious situations for immigrants.
40. ECRI encourages the Italian authorities to keep the quota system and the practice of issuing work permits under review in order to avoid that such policies



and practices result in direct or indirect discrimination against individuals on grounds covered by ECRI's mandate.

41. ECRI urges the Italian authorities to take steps to ensure that non-citizens obtain residence permits in reasonable time and that access to services is not affected by any delays in the granting of such permits.
42. ECRI recommends that the Italian authorities ensure that non-EU long-term residents enjoy eligibility and voting rights in local elections.
43. ECRI strongly recommends that the Italian authorities establish a comprehensive legal, policy and institutional framework at the central level that can provide coherence and sustainability to local efforts to promote integration between majority and minority communities, and notably citizen and non-citizen communities.

### **Access to public services**

#### **- Education**

44. In its second report, ECRI noted that the number of non-Italian children in primary schools had sharply increased and recommended that the Italian authorities make further efforts to provide these children with adequate teaching of Italian as a second language. Since then, the number of non-Italian pupils in schools, both primary and secondary, has continued to increase. The Italian authorities have reported that they target additional resources to schools which have particular needs, including schools with a considerable percentage of non-Italian children, and that they provide children who are not fluent in Italian with specific linguistic support. However, non-governmental organisations have reported to ECRI that these efforts are far from meeting the actual needs and that there are still very few adequately trained teachers of Italian as a second language. These organisations also regret that, since ECRI's second report, they have been increasingly unable to provide support, including language services, to non-Italian children due to decreasing public funding for their activities.
45. ECRI welcomes the fact that, since ECRI's second report, the Italian authorities have introduced monitoring of educational achievement of pupils, broken down by nationality. Such monitoring indicates that the gap in achievement between Italian and non-Italian pupils, which exists at all levels of education, widens as pupils pursue further education and is very significant in upper secondary education, where more than 25% of non-Italian pupils fail their school year. This research also indicates that, in proportion, more (i.e. 40% of the total) non-Italian pupils enrol in technical and vocational schools than Italian children.
46. Education in the Catholic religion is part of the curriculum of primary and secondary schools. However, children whose parents do not wish them to attend these classes are exempted by means of a declaration made at the beginning of the school year. It is reported to ECRI, however, that children who do not participate in Catholic religion lessons sometimes experience stigmatisation and prejudice by their peers, teachers or pupils' parents. The Italian authorities report that the vast majority of pupils, including many non-Catholic pupils, follow Catholic religion lessons. For exempted children, alternative education may be organised on request. However, in practice, in most cases they do not attend school during Catholic religion classes.

**Recommendations :**

47. ECRI recommends that the Italian authorities increase their efforts to provide non-Italian school pupils with the additional support necessary for them to enjoy genuinely equal opportunities in education. In particular, it recommends that the provision of good quality teaching of Italian as a second language be improved. ECRI recommends that the Italian authorities target their efforts in these fields at all levels of education, including secondary education, and that they provide adequate financial support to civil society organisations active in the field of promoting equal opportunities for all students.
48. ECRI recommends that the Italian authorities take measures to address and prevent the stigmatisation of children who do not attend Catholic religion classes in the school environment and to provide these children with adequate possibilities for alternative education.

**- Housing**

49. In its second report, ECRI encouraged the Italian authorities to address problems of direct and indirect discrimination in housing affecting minority groups in Italy, through both a better implementation of the antidiscrimination provisions in force and awareness-raising measures. ECRI notes that, since its second report, antidiscrimination legislation has been applied in a number of cases of direct discrimination against non-citizens both in the public and in the private sector<sup>29</sup>. As concerns the public sector, it has been reported to ECRI, however, that policies at municipal and regional level have in many cases restricted immigrants' access to housing since ECRI's second report. The role of indirect discrimination in this context has also been stressed. As regards the private sector, discrimination notably against non-EU citizens is still reported to be widespread, as illustrated by the proliferation of advertisements for housing that is reserved for Italians only or that explicitly exclude persons of certain nationalities. The Italian authorities report that as part of an EU-funded project, research on local best practice in granting immigrants access to housing has been carried out and discussed at an international seminar and that best practice identified in this field will now be promoted throughout Italy.

**Recommendations :**

50. ECRI recommends that the Italian authorities pay greater attention to problems of direct and indirect discrimination in housing facing minority groups in Italy, both in the private and in the public sector. It recommends that they ensure that the antidiscrimination legislation in force is thoroughly applied to counter discrimination in housing and that best practice in the field of facilitating immigrants' access to housing identified at local level is extended and applied on a national scale.

**- Other services**

51. ECRI notes that, since its second report, responsibility for health care provision has been decentralised. Although the State determines the essential levels of health care provisions that must be attained and establishes the general health priorities in the National Health Plan, it has become more difficult for national policy to earmark resources for projects aimed at addressing minority groups' specific health needs. ECRI is pleased to note, however, that the National

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<sup>29</sup> See above, "Civil and administrative law provisions".

Health Plan 2003-2005 identifies some priority lines of action to improve immigrants' health, including measures to increase flexibility in health care provision and make it more suitable to and understanding of the specific needs of this part of the Italian population.

52. The Italian authorities have stressed that the role of cultural mediator services is crucial to efforts to improve immigrants' access to health care provision and that measures are in place to further extend these services. More generally, the Italian authorities have stressed that cultural mediation services have been promoted since ECRI's second report in order to improve access to all public services by minority groups, including through the programme "Security for the Development of Southern Italy"<sup>30</sup>.
53. ECRI has received reports according to which members of minority groups, and notably non-citizens, experience discrimination in accessing services from the private sector such as bank credit or car insurance.

#### **Recommendations :**

54. ECRI recommends that the Italian authorities pursue and strengthen their efforts to ensure better provision of health care and better access to health care for minority groups.
55. ECRI recommends that the Italian authorities investigate and address racial discrimination in access to financial or insurance services.

#### **Employment**

56. In its second report, ECRI noted that many non-citizens were employed in the underground economy. The Italian labour market, especially in the southern regions, is still reported to be characterised by a considerable incidence of irregular work. Non-citizens are particularly affected by this phenomenon and therefore comparatively more exposed to the risks of exploitation and discrimination it entails. However, ECRI notes that, since its second report, the Italian authorities have carried out a legalisation procedure, whereby those who irregularly employed non-EU citizens were required to regularise their employees' position. As a result of this procedure, some 650 000 persons - representing around 90% of the total number of applications - acquired legal status. ECRI welcomes these developments, although it notes reports according to which many employers opted to dismiss the employees instead of legalising their situation, while others made the employees pay for the penalties that accompanied the legalisation procedure.
57. In its second report, ECRI recommended that the Italian authorities address discrimination in employment through a number of measures, including a better implementation of existing antidiscrimination legislation. ECRI notes that there have been cases of the application of antidiscrimination legislation in employment. It understands, however, that, although the antidiscrimination provisions in force allow for cases of discrimination by private individuals to be brought before a tribunal, such cases have so far only concerned the position of non-citizens *vis-à-vis* public employment laws or regulations. ECRI notes that this situation may reflect the difficulties encountered in claiming protection against discriminatory actions and practices by individuals in the private sector, resulting from the absence of properly functioning burden of proof provisions in

<sup>30</sup> See above, "Education and awareness-raising".

racial discrimination cases<sup>31</sup>. ECRI also notes that discriminatory job advertisements excluding non-citizens have continued.

58. Other measures that ECRI recommended be taken in its second report included research to monitor the extent of racial discrimination in employment and awareness-raising activities. ECRI notes that, since then, research carried out in collaboration with the International Labour Office using testing standards and methodology has highlighted that discrimination both in access to and within the workplace remain a serious problem in Italy. ECRI also notes that UNAR is planning initiatives to raise awareness among trade unions and employers' associations of non-discrimination issues and the position of non-EU citizens in the labour market.

#### **Recommendations :**

59. ECRI recommends that the Italian authorities take further measures to reduce the disparity between citizens and non-citizens on the labour market. It recommends in particular that they pay greater attention to problems of discrimination in employment facing minority groups. In this respect, it recommends that they ensure that antidiscrimination legislation applicable in the field of employment is adequate and thoroughly applied.

#### **Racist, xenophobic and antisemitic incidents**

60. The Italian authorities have reported that racist, xenophobic and antisemitic incidents are relatively rare in Italy and have been characterised by a generally decreasing trend in recent years. Thus, for instance, data collected by the Ministry of Interior - and reported by the Committee against Discrimination and Antisemitism established within this Ministry in 2004 - indicate that 67 such incidents have occurred in 2002, 83 in 2003, 45 in 2004 and 23 in the first six months of 2005. The authorities stress that the vast majority of such incidents consist of petty criminal behaviour, such as threats and graffiti, and only very rarely in more serious misconduct, such as damage to property or physical violence. Most incidents are also reported to take place in the North and Centre of the country – respectively 53% and 40% of the total number of incidents in 2004, with the remaining 7% having taken place in the South. The Italian authorities also report that, in spite of these relatively small figures, a considerable number of persons have been arrested or reported to the police (21 persons arrested and 65 reported in 2003, 17 persons arrested and 19 reported in 2004) in connection with these incidents.
61. While civil society organisations generally agree that serious offences motivated by racism, xenophobia and antisemitism are not prevalent in Italy, they have also consistently highlighted that these offences, including violence motivated by racism or xenophobia, are under-reported. In particular, they stress that the racist or xenophobic dimension of offences is often neglected by the criminal justice system, and notably the police, and that such offences are therefore, as a rule, dealt with as ordinary offences. This appears to be the case particularly when racism or xenophobia are not the only identifiable motives for the offence.
62. In its second report, ECRI also noted that racist, xenophobic and antisemitic material was available on local websites. The Italian authorities have informed ECRI that since its last report they have closed down a number of such websites, notably with antisemitic content. However, they have also highlighted

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<sup>31</sup> See above, "Civil and administrative law provisions".

that most websites are located abroad and that they are therefore intensifying international co-operation to counter this phenomenon.

63. In its second report, ECRI expressed concern at manifestations of racism and antisemitism in football stadiums in Italy and urged the Italian authorities to react firmly against all such manifestations. ECRI notes that, since its second report, numerous and disturbing manifestations of racism and antisemitism have occurred in football stadiums. It notes that the Italian authorities have taken action to prevent such manifestations, for instance through awareness raising initiatives or the setting up of special units within the police who work with supporters' organisations to prevent criminal behaviour. ECRI also notes that some repressive measures have been taken by the Ministry of the Interior and the football authorities, including the possibility of suspending the matches or imposing fines on sports associations.

#### **Recommendations :**

64. ECRI strongly encourages the Italian authorities to pursue and intensify their efforts to monitor racist, xenophobic and antisemitic incidents in Italy. It recommends that they ensure that the racist, xenophobic or antisemitic dimension of all offences be dealt with as such by the criminal justice system. To this end, ECRI recommends in particular that the Italian authorities improve the systems in place for police recording of racist, xenophobic and antisemitic incidents.
65. ECRI recommends that the Italian authorities strengthen their efforts to counter the dissemination of racist, xenophobic and antisemitic propaganda on the Internet.
66. ECRI recommends that the Italian authorities pursue and strengthen their efforts to counter manifestations of racism and antisemitism in sport events, and particularly football matches. It stresses that the approach taken by the Italian authorities to these manifestations should clearly reflect the priority given to respect for human dignity.

#### **Vulnerable groups**

- ***Immigrants and asylum seekers***

67. See section II below

- ***Roma communities***

68. See section II below

- ***Muslim communities***

69. Since ECRI's second report, the members of Muslim communities in Italy are reported to have been increasingly exposed to prejudice and discrimination. In particular since the events of 11 September 2001, pre-existing prejudice concerning the members of these communities has been fuelled by the frequent generalisations and the associations made in public debate and the media between Muslims and fundamentalism or terrorism. As mentioned below<sup>32</sup>, since ECRI's second report, Muslims have become increasingly the targets of racist and xenophobic political discourse. Among the general population,

<sup>32</sup> Use of racist and xenophobic discourse in politics.

manifestations of anti-Muslim sentiment have often taken the form of verbal harassment, although racially-motivated damage to property and physical violence have also been reported. Muslims are also reported to be disproportionately subject to stop and search procedures by the police. ECRI also notes that a number of opinion polls seem to indicate that the perception of Islam and Muslims as a threat to security and to the preservation of culture and traditions is rather widespread among the Italian population. The Italian authorities have underlined the importance that, since ECRI's last report, has been given to initiatives to promote inter-religious dialogue and understanding at national and local level.

70. ECRI notes that the Italian authorities have entered into agreements (so-called *Intese*) with a number of minority religious denominations. Such agreements grant the members of these religious groups certain advantages, for instance as concerns the possibility to devote a portion of the taxes to that denomination, the organisation of religious teaching in schools, the provision of spiritual assistance in collective institutions or the recognition of religious festivities. The Italian authorities have stressed that, although attempts have been made at concluding such an agreement with representatives of Muslim communities, it has not yet been possible to do so.

#### **Recommendations :**

71. ECRI recommends that the Italian authorities take steps to counter manifestations of prejudice, discrimination and violence directed against members of Muslim communities. It recommends in particular that the Italian authorities take all opportunities to challenge associations between these communities and terrorism in public debate. To these ends, ECRI draws the attention of the Italian authorities to its General Policy Recommendations No. 5 on combating intolerance and discrimination against Muslims<sup>33</sup> and No. 8 on combating racism while fighting terrorism<sup>34</sup>.
72. ECRI encourages the Italian authorities to pursue dialogue with representatives of Muslim communities in order to ensure that the members of these communities are not disadvantaged in accessing opportunities that are available to the members of other religious denominations.

#### **- Victims of trafficking**

73. In its second report, ECRI encouraged the Italian authorities to pursue their efforts to protect victims of trafficking, including through the issuing of the special residence permits provided for by Article 18 of legislative decree No. 286/98 for these victims. ECRI is pleased to note that these efforts have continued. The Italian authorities have reported that, from 2000 to 2004, 4 287 women have been granted such permits, which give access to social and assistance services as well as enrolment in the national employment agency. Furthermore, ECRI notes that funds have been made available for social protection projects - 371 such projects have been funded from 1999 to 2005 - addressed to women and children who are victims of trafficking. ECRI also notes that, since its last report, conduct penalised under anti-trafficking

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<sup>33</sup> CRI (2000) 21: ECRI General Policy Recommendation n° 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance, Council of Europe, April 2000.

<sup>34</sup> CRI (2004) 26: ECRI General Policy Recommendation n° 8: Combating racism while fighting terrorism, European Commission against Racism and Intolerance, Council of Europe, March 2004.



legislation has been extended in accordance with international standards, and that penalties for breach of this legislation have been made more severe.

#### **Recommendations :**

74. ECRI encourages the Italian authorities to pursue their efforts to protect victims of trafficking, including by issuing special residence permits and funding social protection projects.

#### **Antisemitism**

75. Since ECRI's second report, most antisemitic incidents in Italy have reportedly continued to consist of verbal and written threats, verbal abuse and graffiti. Although a few cases of violence against Jewish persons or property have occurred, the Italian authorities and civil society organisations concur to say that antisemitic violence is not a prevalent phenomenon in Italy. According to the data collected by the Ministry of Interior<sup>35</sup>, antisemitic incidents decreased by two thirds from 2003 to 2004. However, these incidents are reported to register peaks in connection with events in the Middle East. ECRI also notes that opinion polls seem to indicate that antisemitic prejudice and stereotypes are still active in Italian society.
76. In its second report, ECRI encouraged the Italian authorities to pursue initiatives in the field of education about the Holocaust and against antisemitism. ECRI is pleased to note that, since then, the Italian authorities have taken a number of initiatives aimed at raising awareness among primary and secondary school students of the dangers of antisemitism. Some of these initiatives have taken place in the framework of the commemorations for the 27 January, which was instituted in 2000 as the Day of Memory.

#### **Recommendations :**

77. ECRI recommends that the Italian authorities monitor the situation as concerns manifestations of antisemitism in Italy. It recommends that they pursue and strengthen their efforts to educate students about the Holocaust and to raise awareness among students and the general public of the dangers of antisemitism.

#### **Media**

78. Since ECRI's second report, some sections of the media have continued to portray issues related to immigration in a stereotypical and sensational way. Especially since the events of 11 September 2001, some newspapers are also reported to have often associated Muslims and Islam as a whole with terrorist activities. Furthermore, since ECRI's second report, mainstream printed media has published anti-Muslim material whose conformity with legislation against incitement to racial discrimination and violence has been tried in Court<sup>36</sup>. The Italian authorities have reported, however, that both the electronic and printed media have shown keen interest and provided thorough co-operation in promoting public awareness campaigns on issues of relevance to ECRI's mandate.

<sup>35</sup> See above "Racist, xenophobic and antisemitic incidents".

<sup>36</sup> See above, "Criminal law provisions".

**Recommendations :**

79. ECRI encourages the Italian authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups, including non-EU citizens, Roma, Sinti and Muslims. ECRI recommends that the Italian authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved.

**Conduct of law enforcement officials**

80. In its second report, ECRI recommended that Italy establish an independent commission to investigate all allegations of human rights violations by the police, including acts of racism or racial discrimination. ECRI notes that no such body has been established.

**Recommendations :**

81. ECRI reiterates its call on the Italian authorities to establish an independent commission to investigate all allegations of human rights violations by the police, including acts of racism or racial discrimination.

**Monitoring the situation**

82. ECRI notes that, in order to monitor the situation of minority groups in different fields of life, including education, housing or employment, the Italian authorities at present collect essentially data broken down by nationality. The Italian authorities have pointed out that collection of data broken down by grounds such as ethnic origin or religion is subject to specific data protection safeguards and that the debate on the use of this type of data as a tool for combating racial discrimination is only just starting in Italy. ECRI understands that monitoring by nationality reflects a situation where most members of minority groups are non-citizens. It stresses however, that there are members of minority groups who are Italian citizens and that their number is bound to increase rapidly. There is therefore a need to consider ways of adapting the systems for monitoring the situation of minority groups to these changing circumstances.
83. The Italian authorities do not systematically collect data concerning the implementation of existing criminal, civil and administrative law provisions against racism and racial discrimination. ECRI has been informed, however, that the Ministry of Justice and UNAR are collaborating in order to improve collection of this type of data as concerns the criminal justice system.

**Recommendations :**

84. ECRI recommends that the Italian authorities improve their systems for monitoring the situation of minority groups by collecting relevant information broken down according to categories such as ethnic origin, language, religion and nationality in different areas of policy and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.



85. ECRI recommends that the Italian authorities collect readily available and accurate data on the implementation of the criminal, civil and administrative law provisions in force against racism and racial discrimination. This data should cover the number and nature of the complaints filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded.

## II. SPECIFIC ISSUES

### Use of racist and xenophobic discourse in politics

86. In its second report, ECRI expressed concern at the widespread use made of racist and xenophobic discourse by the exponents of certain political parties in Italy. It noted that members of the Northern League (*Lega Nord*) had been particularly active in resorting to this type of discourse, although members of other parties had also sometimes made use of xenophobic or otherwise intolerant discourse. ECRI notes with regret that since then, some members of the Northern League have intensified the use of racist and xenophobic discourse in the political arena. Although locally-elected representatives of this party have been particularly vocal in this respect, representatives exercising important political functions at national level have also resorted to racist and xenophobic discourse. Such discourse has continued to target essentially non-EU immigrants, but also other members of minority groups, such as Roma and Sinti. In addition, since ECRI's second report, Muslims have increasingly been the target of political racist and xenophobic discourse. In some cases, this type of discourse has consisted in generalisations concerning these minority groups or in their humiliating and degrading characterisation, even taking the form of propaganda aimed at holding non-citizens, Roma, Sinti, Muslims and other minority groups collectively responsible for a deterioration in public security in Italy. Racist and xenophobic discourse has gone as far as presenting the members of these groups as a threat to public health and the preservation of national or local identity, resulting in some cases in incitement to discrimination, violence or hatred towards them.
87. In its second report, ECRI recommended that the Italian authorities ensure that the criminal law provisions in force against incitement to discrimination and violence on racial, ethnic, national or religious grounds are fully applied. ECRI notes that in December 2004, the first instance Court of Verona found six local members of the Northern League guilty of incitement to racial hatred in connection with a campaign organised in order to send a group of Sinti away from a local temporary settlement. These persons were sentenced to six month jail terms, the payment of 45 000 Euros for moral damages and a three-year suspended ban from participating in campaigns and running for national and local elections.
88. In its second report, ECRI recommended that, in addition to ensuring an effective implementation of the existing criminal law provisions against incitement to racial hatred, the Italian authorities adopt legal provisions targeting specifically the use of racist and xenophobic discourse by exponents of political parties. ECRI notes that no such provisions have been adopted since ECRI's second report.
89. In its second report, ECRI expressed concern that the influence exercised by the Northern League, a part of the government coalition, on the whole political arena may favour the adoption of policies and practices not always respectful of

human rights and of the principle of equal treatment, which ECRI stands to protect. As illustrated by other parts of this report, ECRI considers that, since then, these concerns have become more pressing.

#### **Recommendations :**

90. ECRI reiterates that political parties must resist the temptation to approach issues relating to non-EU citizens and members of other minority groups in a negative fashion and should instead emphasise the positive contribution made by different minority groups to Italian society, economy and culture. Political parties should also take a firm stand against any forms of racism, discrimination and xenophobia. ECRI reiterates its recommendation that an annual debate be instigated in Parliament on the subject of racism and intolerance faced by members of minority groups.
91. ECRI strongly recommends that the Italian authorities take steps to counter the use of racist and xenophobic discourse in politics. To this end it recalls, in this particular context, its recommendations formulated above concerning the need to ensure an effective implementation of the existing legislation against incitement to racial discrimination and violence<sup>37</sup>. In addition, ECRI calls on the Italian authorities to adopt *ad hoc* legal provisions targeting specifically the use of racist and xenophobic discourse by exponents of political parties, including, for instance, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts. In this respect, ECRI draws the attention of the Italian authorities to the relevant provisions contained in its General Policy Recommendation N°7<sup>38</sup>.

#### **The situation of the Roma and Sinti populations**

92. In its second report, ECRI dealt extensively with the situation of marginalisation, disadvantage and discrimination experienced by Roma and Sinti in Italy<sup>39</sup>. It made recommendations to the Italian authorities aimed at improving the situation of this part of the Italian population in vital fields such as housing, issuing of personal documents, education, employment, health, administration of justice and relations with the police. ECRI notes with regret, however, that no or very little progress has been achieved since then in virtually all the fields highlighted in that report.
93. In its second report, ECRI recommended that a comprehensive policy to improve the situation of the Italian and non-Italian Roma and Sinti populations across a wide range of areas and to counter discrimination against them, be elaborated at national level. ECRI notes that there has been no progress towards the establishment of such a policy and that there is no meaningful co-ordination of or support for the action taken by the regions in these fields at the national level. Civil society organisations have, however, consistently underlined that the situation of disadvantage, marginalisation and discrimination

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<sup>37</sup> See above, "Criminal law provisions".

<sup>38</sup> ECRI General Policy Recommendation N°7, paragraph 16 (and paragraph 36 of the Explanatory Memorandum).

<sup>39</sup> Although no precise data is available, generally agreed estimates indicate that there are between 120 000 and 150 000 Roma and Sinti in Italy. Approximately 60% of all Roma and Sinti are Italian citizens. Most of the remaining 40% are Roma coming from the Balkans and increasingly, since ECRI's second report, from Romania.

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of Roma and Sinti is such that without national co-ordination and leadership it cannot be addressed in a sustainable way.

94. In its second report, ECRI recommended that legislation in force to protect the right of historical and linguistic minorities be extended to cover Roma and Sinti. The Italian authorities have reiterated that extension of such protection is impeded by the fact that Roma and Sinti are not linked with a specific part of the Italian territory. However, they have also reported that they are considering legislation aimed at favouring the settlement of the non-sedentary Roma and Sinti populations on the Italian territory – ECRI is not aware of the details of this legislation – and that inclusion of Italian Roma and Sinti in the general legislation protecting historical and linguistic minorities could subsequently be effected.
95. In its second report, ECRI noted that the Italian authorities tended to approach all issues relating to Roma and Sinti from the assumption that the members of these groups live a nomadic lifestyle. ECRI considered that it was particularly urgent to change such an approach, since it had resulted, notably, in the forcible relegation of many Roma and Sinti into camps for nomads. Civil society organisations have reported to ECRI that Roma and Sinti are still considered as nomadic populations in official policy, especially at national level. However, ECRI also notes that some progress has been made in a few regions, where, in collaboration with the communities concerned, local authorities have started to partially eliminate camps, as suggested by ECRI in its second report. By and large, however, the situation remains the same as described in ECRI's second report, with approximately one third of Roma and Sinti, both citizens and non-citizens, living in conditions of practical segregation from the rest of society in camps for nomads, in many cases without access to the most basic facilities.
96. In its second report, ECRI urged the Italian authorities to address the Roma and Sinti's lack of documents, including Italian passports and residence permits. ECRI has continued to receive reports according to which many Roma and Sinti born in Italy or who have lived in Italy most of their lives, and their children, do not have Italian citizenship. In many cases, these persons only have short-term residence permits and in some cases no residence permits at all. ECRI has also received reports that a few hundred stateless Roma children currently live in Italy.
97. In its second report, ECRI recommended that the Italian authorities strengthen their efforts to ensure that all Roma and Sinti pupils benefit fully from compulsory schooling. The Italian authorities report that over 13 000 Roma and Sinti children are enrolled in school, although not all of them attend regularly. However, civil society organisations report that as many as 20 000 Roma children, virtually all non-citizens from the Balkans and Romania, are at present outside the compulsory school system. ECRI understands that a Protocol has been signed by the Ministry of Education with Opera Nomadi, a voluntary sector organisation, in order to address this problem. ECRI is pleased to note that the Italian authorities object to teaching Roma children in separate classes. However, it notes reports according to which decisions by non-Roma parents to move their children from schools attended by Roma children has resulted in classes in certain schools being left with Roma children only. In its second report, ECRI recommended that the Italian authorities take measures to facilitate the participation of Roma and Sinti students in further and higher education. However, it has been reported to ECRI that, in some cases, lack of

residence permits has prevented Roma children willing to pursue further education from doing so.

**Recommendations :**

98. ECRI strongly recommends that the Italian authorities establish a comprehensive policy at national level to address the situation of marginalisation, disadvantage and discrimination of the Roma and Sinti populations. To this end, it urges the Italian authorities to establish an effective co-ordinating mechanism at national level, with the participation of national and local authorities, Roma and Sinti representatives, civil society organisations and other relevant partners.
99. ECRI recommends that the Italian authorities find a suitable legal means to protect the Roma and Sinti along the lines of historical and linguistic minorities and to co-ordinate existing regional policies and efforts to overcome the barrier of non-territoriality.
100. ECRI reiterates that the Italian authorities should not base their policies concerning Roma and Sinti on the assumption that the members of these groups live a nomadic lifestyle. It strongly recommends that the Italian authorities address the housing situation of the Roma and Sinti populations in close collaboration with the communities concerned. ECRI recommends that the long-term objective of housing policies should be the elimination of camps for nomads.
101. ECRI urges the Italian authorities to take immediate steps to address Roma and Sinti's lack of passports and residence permits.
102. ECRI urges the Italian authorities to ensure that all Roma and Sinti children are enrolled in school and to strengthen their efforts, in collaboration with the communities concerned, to favour regular school attendance by these children. ECRI reiterates its call on the Italian authorities to facilitate participation of Roma and Sinti students in further and higher education.
103. ECRI reiterates that only a policy that would simultaneously tackle the different areas where Roma and Sinti experience disadvantage and discrimination can be successful in improving their situation in a sustainable way. Therefore, ECRI recommends that, in addition to the areas addressed above, the Italian authorities take urgent action to improve the position of Roma and Sinti in other fields, including employment, health, relations with the police, administration of justice and general prejudice in society.

**Immigrants and asylum seekers**

**- Asylum seekers**

104. Although precise statistics on asylum applications are not available, the Italian authorities report that between 2002 and 2004, the number of applications has dropped from approximately 16 900 to about 8 700. In its second report, ECRI recommended that Italy adopt a comprehensive law on asylum. It notes that such a law is not yet in force. However, provisions on asylum exist in different parts of the Italian domestic legal order, and notably in various laws dealing with immigration. Since ECRI's second report, the Bossi-Fini Law<sup>40</sup> has introduced

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<sup>40</sup> See above, Reception and status of non-citizens.

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important changes to the asylum procedures, some of which constitute an improvement. A number of the newly-introduced provisions, however, raise serious concerns for ECRI.

105. The Bossi-Fini Law established seven Asylum Territorial Commissions throughout the national territory, responsible for examining applications for international protection and granting asylum or humanitarian protection. ECRI is pleased to note that the United Nations High Commissioner for Refugees (UNHCR) is represented and has voting rights in these commissions. The Law introduces two distinct procedures. The first (ordinary procedure) applies to asylum seekers who entered Italian territory legally, while the second (simplified procedure) applies to asylum seekers who entered illegally or who filed their applications after being served with an expulsion order (i.e. the vast majority of asylum applicants). ECRI notes that in both procedures the time-frame for decisions is very short and concern has been expressed that, unless substantial financial and human resources are secured, this could have a seriously negative impact on the quality of decisions. Furthermore, ECRI notes that appeals against negative decisions do not have a suspensive effect on deportations.
106. Although good structures are reported to be in place at a number of airports and land border points to facilitate asylum seekers' access to the asylum procedure, ECRI is seriously concerned that potential candidates to asylum have been returned without being given a chance to apply for asylum, especially when intercepted at sea or apprehended on entering illegally in Southern Italy. ECRI addresses this particular aspect below<sup>41</sup>.
107. ECRI is furthermore concerned about the introduction of generalised detention for asylum seekers in Italy since ECRI's second report. The Bossi-Fini Law provides that asylum seekers should in principle not be detained. However, it also provides for a number of exceptions to this principle. In particular, it establishes that asylum seekers who entered Italy illegally (i.e. the same to whom the simplified procedure applies) are to be detained, for a maximum of 20 days, in Identification Centres. No judicial control over the decision to detain asylum seekers in these centres is provided for. It has been noted that these provisions, combined with the establishment of the simplified procedure mentioned above, have resulted in a system whereby practically all asylum seekers are automatically held in detention throughout the examination of their claims and, in case of negative decisions, deported before their appeals are finalised. In this connection, it has also been noted that, in many cases, Identification Centres are being established in close proximity or as separate parts of Temporary Stay and Assistance Centres, where non-citizens are detained in view of deportation<sup>42</sup>.
108. It has furthermore been reported to ECRI that reception conditions for asylum seekers are at present not adequate. After applying, asylum seekers receive financial assistance for 45 days. Following this time-period, however, they are left with no official support from the State and it is often the voluntary sector who takes care of destitute individuals. ECRI notes that a programme involving the Ministry of Interior, UNHCR, local authorities and non-governmental organisations has since 2001 provided adequate reception services, including housing, social and legal assistance, to a number of asylum seekers. It

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<sup>41</sup> Immigrants and asylum seekers – Immigrants without legal status.

<sup>42</sup> See Immigrants and asylum seekers – Immigrants without legal status



welcomes the fact that this programme has been given legal recognition by the Bossi-Fini Law. However, ECRI notes that, due to limited funding, this programme can at present cater for approximately 2250 persons at any one time, and that there are marked disparities in the availability of funding for this programme between the regions. ECRI notes that the introduction of the system of Identification Centres – which has only been operational since April 2005 and is in the process of being finalised – will obviously have a serious impact on reception of asylum seekers. In this respect, ECRI also notes that living conditions in some of these centres are reported to be sub-standard.

109. Finally, ECRI is concerned that the lack of a comprehensive integration policy at national level, which it addressed in other parts of this report<sup>43</sup>, is also reflected in the absence of a national integration programme for recognised refugees. Once again, local authorities or internationally-funded projects carried out by the voluntary sector may palliate the situation in this respect. However, failing these opportunities, recognised refugees are left alone facing the challenge of integrating into Italian society.

#### **Recommendations :**

110. ECRI reiterates its call on the Italian authorities to adopt a comprehensive law on asylum. It recommends that they provide all the necessary human and financial resources to the Asylum Territorial Commissions to ensure good quality decisions on asylum applications within a reasonable time. ECRI recommends that asylum seekers not be deported before a decision is rendered on their appeals.
111. ECRI recommends that the Italian authorities ensure that asylum seekers only be detained when it is absolutely necessary, for short periods of time, and following an examination of the circumstances of the individual case. It stresses that measures alternative to detention should be used in all other cases. ECRI urges the Italian authorities to ensure that, when detained, asylum seekers have access to adequate living conditions.
112. ECRI recommends that the Italian authorities ensure that asylum seekers are not left destitute pending the examination of their claims.
113. ECRI recommends that the Italian authorities establish a national integration programme for recognised refugees and make available adequate resources to this end.

#### **- Immigrants without legal status**

114. The Italian authorities have reported that most immigrants without legal status in Italy are persons who, after entering Italy legally, overstay their visas, or are persons who enter Italy using fraudulent means. They stress that only between 5 and 10% of the total number of immigrants without legal status reach Italy by sea. Within this group, arrivals from Albania have virtually ceased since ECRI's second report, and most people come instead on board boats from Libya and Tunisia. The Italian authorities also report that, in absolute numbers, arrivals by sea have been declining from 23 700 in 2002, to 13 600 in 2004 and to 5 340 from 1 January to 15 June 2005. Although in this section ECRI addresses issues that are relevant for all immigrants who are in Italy without legal status, it also focuses more specifically on the situation of those immigrants arriving by

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<sup>43</sup> Reception and status of non-citizens - Immigrants with legal status.

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sea, in respect of whom particularly serious human rights concerns have been expressed nationally and internationally since ECRI's second report.

115. ECRI is seriously concerned that, since its second report, the Italian authorities have not always respected the principle of *non-refoulement*, which prevents Italy from returning persons to countries where they would be at risk of serious human rights violations. In this respect, ECRI has received consistent reports that indicate that people, especially when intercepted at sea or apprehended on entering Southern Sicily and the island of Lampedusa illegally, have been effectively denied access to the asylum procedure. In particular, actual or supposed nationals of certain countries, notably Egyptians, but also Moroccans and Tunisians, are reported to be very often denied such access. In this connection, ECRI also notes reports according to which, particularly in Lampedusa, immigrants, including in some cases minors, have been summarily identified and rapidly returned. Concerning more particularly the situation in Lampedusa, ECRI is pleased to note that there are now plans to open a UNHCR Office there.
116. ECRI also notes reports according to which expulsions and returns have been in some cases carried out in violation of national and international norms, including without adequate notification of the relevant orders to the person concerned. In this respect, ECRI notes that, following a sentence rendered by the Constitutional Court in 2004<sup>44</sup>, automatic judicial supervision of expulsion orders has now been established. Finally, many have brought to ECRI's attention the fact that non-public bilateral agreements signed by Italy with Libya significantly increase the risk of *refoulement* of individuals reaching the Italian coasts from this country.
117. ECRI is also concerned at reports according to which the treatment of immigrants without legal status kept in detention has not always been respectful of their human rights. In its second report, ECRI already noted that immigrants without legal status can be detained in view of deportation in Temporary Stay and Assistance Centres (*Centri di Permanenza e Temporanea Assistenza*, CPTAs). ECRI notes that, since then, the Bossi-Fini Law has extended the maximum duration of detention in these centres from 30 to 60 days. ECRI notes that living conditions in CPTAs are reported to be not always adequate and that, in those CPTAs which are subject to receiving considerable periodic arrivals of immigrants, overcrowding and the consequent lack of hygiene can be particularly serious and degrading. In this respect, the Italian authorities have reported that steps are being taken to address the inadequacy of some CPTAs, including in Lampedusa.
118. ECRI notes that norms and guidelines to ensure that detainees in CPTAs are treated in conformity with human rights are in force and have been further strengthened since ECRI's second report. However, ECRI expresses concern at allegations of ill-treatment, humiliating treatment and denial of adequate medical assistance having taken place in these centres. In this respect, it has been stressed that people who are responsible for running the CPTAs and especially ensuring security, are not always adequately trained for this type of work, which requires good knowledge of human rights. ECRI notes that an

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<sup>44</sup> In its sentence No. 222 of 8-15 July 2004, the Constitutional Court declared unconstitutional the provision contained in Article 13, comma 5-bis of the Consolidated Text on Immigration (as introduced by Decree Law No. 51 of 2002, converted into Law No. 106 of 2002) inasmuch as it did not provide for validation of the deportation order to take place in due hearing, before the execution of the order and with the defence guarantees.

authorisation from the Prefect is necessary for organisations and individuals to access the CPTAs and that such authorisations have in many cases been denied to organisations concerned with the protection of the human rights of asylum seekers and immigrants since ECRI's second report.

**Recommendations :**

119. ECRI strongly recommends that the Italian authorities take urgent steps to ensure that respect for the principle of *non-refoulement* is guaranteed in all cases. To this end it recommends, in particular, that the Italian authorities ensure that the right of individuals to apply for asylum is thoroughly respected in all cases without discrimination, including when immigrants are intercepted at sea or have been apprehended on entering Italy illegally.
120. ECRI recommends that the Italian authorities ensure that living conditions in all CPTAs meet adequate standards. It urges the Italian authorities to investigate all allegations of ill-treatment in CPTAs and to punish those found responsible. ECRI recommends that the Italian authorities increase transparency by facilitating access to CPTAs, including by organisations concerned with the protection of the human rights of asylum seekers and immigrants.



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## APPENDIX

### **The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Italy**

ECRI wishes to point out that the analysis contained in its third report on Italy, is dated 16 December 2005, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Italy was subject to a confidential dialogue with the Italian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Italian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.



MINISTERO DEGLI AFFARI ESTERI  
Comitato Interministeriale dei Diritti Umani

“ITALIAN REMARKS ON  
THE DRAFT THIRD REPORT OF THE  
EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE ON ITALY  
(adopted on 16 December 2005)  
Rome, March 2006

INTRODUCTORY REMARKS

The **Italian Constitution of 1948** envisages the protection and promotion of all basic and fundamental rights, as recognised in relevant international and regional standards.

The Basic Law determines the **political framework for action and organisation of the State**. The fundamental elements or structural principles of the Constitutional law governing the organisation of the State are as follows: democracy, as laid down in Art. 1; the so-called personalistic principle, as laid down in Art. 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of labour, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Art. 2); the principle of equality, as laid down in Art. 3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Art. 5); and above all the principles of the social state and of the state based on the rule of law. These principles are also guaranteed at local level, provided that the Republic consists of municipalities, provinces, metropolitan cities, Regions and State, which are autonomous entities with their own statutes, powers, and functions, according to the principles defined in the Constitution (Arts. 5 and 114).

The protection and promotion of rights - be it civil and political, economic, social and cultural - constitute one of the fundamental pillars of both domestic and foreign Italian policies. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individuals, providing them with a wide range of protection means which have, as their core, the **principle of non-discrimination** set out at **Art. 3 of the Italian Constitution**: “All citizens possess an equal social status and are equal before the law, without distinction as to sex, race, language, religion, political opinions, and personal or social conditions”. This principle has been recognised by all the instruments of international law currently in force, such as the European Convention on Human Rights and Fundamental Freedoms, the United Nations Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, and the International Convention on the Elimination of all Forms of Racial Discrimination.

Furthermore the principle of equal treatment is an established feature of constitutional law in Europe: the right to formal and substantive equality is a universal right that is widely represented in the *acquis communautaire*. Art. 13 of the Treaty of Amsterdam - and now Arts. I-2 to I-4, II-81 to II-83 and Title II (Arts. III-123 to III-129) of the European Constitution - envisages that the Council of the European Union should decide unanimously, subject to consultation with the European Parliament, and adopt the appropriate provisions to combat all forms of discrimination within the Union, whether based on gender, race or ethnic origin, religion or personal beliefs, disability, age or sexual orientation. The commitment of the European institutions to combating discrimination is based on a recognition that

discrimination based on race or ethnic origin may undermine the achievement of a number of fundamental objectives of the EC Treaty/European Constitution, such as the raising of the standard of living and quality of life of European citizens, economic and social cohesion, and the attainment of a high level of employment and social protection. Following this approach, the intentions of the European legislators have been translated into an important provision: the European Council Directive 2000/43/EC, which enshrines the principle of equality of treatment of all people, regardless of their race or ethnic origin.

On the basis of the guidance criteria contained in Art. 29 of Act n. 39/2002 (the “Community Law”), the Italian Government acted promptly to transpose the Directive by adopting **Legislative Decree 215 of 9 July 2003** (Legislative Decree n. 215/2003). With respect to the general tone of the Directive, in addition to transposing its content in accordance with the provisions of the enabling act, Legislative Decree n. 215/2003 has an added value that strengthens its action at the national legislative level. This added value concerns different aspects: the affirmation of the principle of equal treatment of all persons in the public and private sectors, with respect to access to employment, occupation, guidance and vocational training, membership of workers’ or employers’ organisations, social protection, healthcare, social advantages, education and access to goods and services (Art. 3); the judicial protection consisting in the procedure which represents a particular form of streamlined, effective civil action against discrimination both for the evaluation of evidentiary arrangements, including the system of presumptive proof, the modalities of awarding compensation for damage and the aspect of active legitimation depending on individual and collective discrimination (Arts. 4 and 5); the institutional importance attributed in this area to the Department for Equal Opportunities in the Prime Minister’s Office, where an *ad hoc* office has been set up as a sort of frontline post in the fight against discrimination (Art. 7).

Facing problems such as **asylum or illegal immigration**, the respect for the fundamental rights of men, women and children is the primary criterion guiding the action of the Italian government. The countering of illegal immigration is not in fact marked by mere repressive intentions. Instead, above all, it tries to avoid further suffering and violations against these people. Illegal immigration is the first circle in Dante’s Hell as a consequence of trafficking in human beings, trade of organs, exploitation of prostitution, illegal work developing into new forms of slavery. The Italian legislative framework and the government policies have established appropriate procedural rules governing the granting of applications for the recognition of refugee status, the validation of the expulsion of aliens - taking on board the criticism raised by the Constitutional Court - the status of foreign citizens who entry and stay legally in Italy by assuring them the respect of the principle of integration in the national-social context, the recognition of their full right of access to housing, medical assistance and education, the possibility of implementing specific forms of civic participation, avoiding any discrimination based on nationality.

Furthermore the Italian Constitution gives a great importance to the **right of religious liberty** for all and prohibits all forms of discrimination on the basis of religion (Art. 8 and Art. 19). These Constitutional clauses are generally respected; individuals can profess their religion (or no religion at all) without suffering any disadvantage in the enjoyment of their civil and political rights. The relation between the State and each religious Denomination is largely based on bilateral agreements, which grant some privileges in accordance to those guaranteed by the Constitution. The Constitution grants fundamental rights and, among them, “equal liberty” of expression for all religious denominations: freedom of assembly, freedom



of organization of religious association, freedom of rites. In other words, freedom of religious expression is limited only when a certain practice is deemed a threat to public order or decency.

These considerations could be referred to all the aspects concerning the right to freedom that, in our view, must prevail on the rationality or the rigidity of the procedures. The latter should be instrumental to the protection of freedom and not be considered separately. We have to see the “rationale” behind the Italian legislation on fundamental rights. When an Italian legal provision apparently seems to affect the basic individual needs or expectations, in reality we are facing a “modus procedendi” aimed at protecting fundamental rights, such as the right to life, safety, personal freedom and security. This is somehow a method of “damage containing”; by which a higher requirement is protected while other simply legitimate requirements of the individual are temporarily compressed.

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

Finally we would like to thank the European Commission against Racism and Intolerance for the punctual exercise in the elaboration of the Draft Third Report on Italy, by formulating comments, questions and recommendations based on materials or documents and reports of different origin, which are always respectable but often characterised by a thematic dimension and relevance.

## SECTION I: FOLLOW-UP TO ECRI’S DRAFT THIRD REPORT ON ITALY

### 1. International Legal Instruments

#### § 3. Recommendation

*ECRI recommends that the Italian authorities ratify Protocol No. 12 to the ECHR without delay. It also recommends that they ratify the European Charter for Regional or Minority Languages, the European Convention on Nationality, the Additional Protocol to the Convention on Cybercrime and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI reiterates its call on the Italian authorities to extend the application of the Convention on the Participation of Foreigners in Public Life at Local Level to Chapter C of this convention.*

With reference to :

- Protocol n. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 2000 and entered into force on 1<sup>st</sup> April: Italy signed but did not ratify it.
- European Charter for Regional or Minority Languages, entered into force on 1<sup>st</sup> March 1998: Italy signed it on 27 June 2000; actually the ratification instrument has been approved by the Chamber of Deputies and we are awaiting the approval by the Senate.
- European Convention on Nationality, entered into force on 1<sup>st</sup> March 2000: Italy signed but did not ratify it.

- Additional Protocol to the Convention on Cybercrime of 28 January 2003: the Protocol will enter into force on 1<sup>st</sup> March 2006: it is to be pointed out that the Inter-ministerial technical drafting committee ended its work and sent the draft text to the legal offices at its ministries for the subsequent opinions and evaluations.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, entered into force on 1<sup>st</sup> July 2003: Italy did not sign it, in line with EU countries general position.
- Convention on the Participation of Foreigners in Public Life at Local Level, entered into force on 1<sup>st</sup> May 1997: Italy signed it on 5 February 1992 and ratified it on 26 May 1994, being not bound by Chapter "C" of the said Convention.

## 2. Constitutional provisions and other basic provisions

### - Citizenship legislation

#### § 6. Recommendation

*ECRI recommends that the Italian authorities grant easier access to Italian citizenship both for children born or raised in Italy and for long-term residents, including by introducing the necessary changes to citizenship legislation.*

#### § 7. Recommendation

*ECRI recommends that the Italian authorities ensure that the provisions on naturalisation are applied in all cases in a non-discriminatory manner. To this end, it recommends in particular that the Italian authorities enhance transparency in their naturalisation decisions. ECRI urges the Italian authorities to take steps to ensure that naturalisation decisions are taken within a reasonable time and that excessive delays not imputable to the applicant do not negatively affect the position of the latter.*

Over the last few years, Italy, previously an important source country of emigrants, has become the destination of substantial immigration flows, resulting in a steady increase of applications for the granting of Italian citizenship. In consideration of the substantial rise in the presence of aliens in this Country, it is deemed increasingly necessary to achieve full social integration on condition that mutual differences and cultures are respected.

With a view to favouring the preservation of ties with the country of origin and in order to adapt the granting of citizenship to the principle of the acknowledgement of **double citizenship** - as already envisaged for Italian citizens in Art. 11 of Act n. 91/1992 - a Decree of the Minister of the Interior dated 7 October 2004 repealed the obligation to submit the certificate showing that the alien gave up his/her citizenship of origin, which was previously necessary according to a Decree dated 22<sup>nd</sup> November 1994. The elimination of this procedure resulted, among others, in a greater rationalisation and streamlining of the procedure for the granting of citizenship based on the principle of residence. Higher rationalisation and streamlining will also be the result of new arrangements in the **management of the procedure** - which may last up to 730 days from the submission of the application, according to legislation in force - as a **computerised system** is being put in place and the phases of the administrative procedure are being simplified. Moreover, this Ministry is implementing new ways to improve the **communication** with users, in order to respond adequately and ever more speedily to the increasing number of



applications for the granting of Italian citizenship. The above initiatives will make it possible to improve the administrative management of the procedure, in keeping with the expectations of aliens.

Lastly, the relevant Parliamentary Committee is examining a number of bills modifying Act. n. 91, dated 5<sup>th</sup> February 1992, consolidated in a single coordinated text (Document of the Chamber of Deputies n. 204 and related documents). Significant changes are due to be introduced into the legislation in force and have to be attentively examined. The above bills aim, among others, at the introduction of an extension of the *ius soli* principle and at the reduction of the time spent as a resident of the State, necessary for the naturalisation of third country citizens.

### 3. Criminal law provisions

#### § 13. Recommendation

*ECRI recommends that the Italian authorities ensure that adequate criminal law provisions are in place to counter racism and racial discrimination. In particular,*

*ECRI recommends that the Italian authorities review the provisions in force against incitement to racial violence and discrimination and bring them into line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which prescribes that effective, proportionate and dissuasive sanctions should be provided for against such offences.*

#### § 14. Recommendation

*ECRI strongly encourages the Italian authorities to improve the implementation of existing criminal law provisions against racism and racial discrimination, with particular emphasis on the provisions against racially-motivated violence and incitement to racial discrimination and violence. To this end, ECRI recommends in particular that the Italian authorities provide all those involved in the criminal justice system, from lawyers to the police, prosecuting authorities and the courts, with thorough specific knowledge of these provisions. ECRI also recommends that the Italian authorities provide the political leadership necessary to make all those involved in the criminal justice system fully aware of the need to actively and thoroughly counter all manifestations of racism and racial discrimination.*

As it concerns adequate criminal law provisions are in place to counter racism and racial discrimination, criminal sanctions against inciting to discrimination or violence on racial grounds, are provided for in Act n. 654/1975, Art. 3, amended by Decree Law n. 122/1993, Art. 1, then Act n. 205/1993 (the so-called Mancino Law). In fact Act n. 205/1993 introduced a provision (Art. 1) aimed at prosecuting with imprisonment from 6 months to 4 years anybody who, in any manner, incites to commit or commits violence or acts causing violence on racial, ethnic, religious and national grounds, and anybody who takes part in organisations and associations having among their purposes the incitement to racial violence, while prosecuting promoters and organisers of such associations with imprisonment from 1 to 6 years. So crimes on racial grounds are sentenced on the basis of the criteria of wilfulness and the type of the offence, excluding the case of imprisonment up to eighteen months as a maximum and of a fine as an alternative measure. The same Art. 1 provides also for additional measures. These measures, like all of this kind, aim at affecting deeply the rights of the convicted person and their rationale is to more effectively prevent the commission of other similar crimes, as also supported by the foremost academic authorities (see Mantovani).

In this sense mention should also be made of offences sentenced according to Art. 1 of Act n. 205/1993 concerning the juridical status of those responsible for these criminal acts and aim to prevent the commitment of these *crimes of conduct*: anyone sentenced according to Art. 3 of Act n. 654/1975 is forbidden to take part in propaganda activities for political or administrative elections for not less than 3 years<sup>45</sup>; anyone sentenced according to Art. 2 of Act n. 654/1975 is forbidden to access to the stadium. These measures are in conformity with ECRI Recommendation n. 7.

To further support the above, it is worth recalling the Decision adopted by the Court of Bolzan of 2 December 2005 concerning eight persons responsible of conducts of incitement to discrimination or to commit violence on ethnic, nationalistic and racial grounds as aggravating circumstances, according to Arts. 351 and 353 of Act n. 654/1975, as well as the sentence of the first instance Court of Verona concerning six local members of the Northern League found guilty of incitement to racial hatred in connection with a campaign organised in order to send a group of Sinti away from a local temporary settlement (see **Section II. - SPECIFIC ISSUES; 16. Use of racist and xenophobic discourse in politics**). Therefore, every single time the judicial authorities have identified sufficient grounds for an action - in pursuance of the Constitutional principle of compulsoriness as to prosecution (Art. 112 of the Constitution) and of criminal prosecution provisions - they have started investigations in order not to leave crimes unpunished, including those regarding racial violence and instigation to racial violence.

Therefore the critical remarks expressed by ECRI regarding the review the provisions in force against incitement to racial violence and discrimination and bring them into line with ECRI's General Policy Recommendation No. 7 do not appear founded.

#### Monitoring of incidents of a racist, xenophobic and anti-Semitic nature by province (September - December 2005)

| Province   | Racism | Xenophobia | Anti-Semitism | Denounced | Arrested |
|------------|--------|------------|---------------|-----------|----------|
| Ascoli P.  | 1      |            |               | 4         |          |
| Belluno    | 1      |            |               |           |          |
| Biella     | 1      |            | 1             | 6         |          |
| Brescia    |        | 1          | 2             | 2         |          |
| Bolzano    |        |            |               |           | 8        |
| Cagliari   | 3      |            |               | 3         |          |
| Campobasso | 1      |            |               |           | 1        |
| Genova     | 1      |            | 1             | 5         |          |
| Gorizia    | 1      |            | 1             |           |          |
| Messina    | 1      |            |               | 4         |          |
| Modena     |        | 1          |               |           |          |
| Nuoro      | 1      |            |               |           |          |
| Oristano   | 1      |            |               |           |          |
| Padova     | 1      | 1          |               |           |          |
| Pistoia    |        | 1          |               |           |          |

<sup>45</sup> This Article has been amended by Decree Law n. 3538, adopted by the Italian Senate on 25<sup>th</sup> January 2006, which aims at guaranteeing freedom of thought, except when its manifestation consists of instigation to discrimination and violence on racial, ethnic, national or religious grounds. The first kind of offences (propaganda or instigation to commit or commitment of discriminatory acts and conducts are sentenced with imprisonment of one year and six months as a maximum or with a fine up to 6.000 euros).

| Province        | Racism | Xenophobia | Anti-Semitism | Denounced | Arrested |
|-----------------|--------|------------|---------------|-----------|----------|
| Ravenna         |        | 1          |               |           |          |
| Reggio Calabria |        |            | 1             |           |          |
| Roma            |        |            | 4             | 2         |          |
| Treviso         |        | 1          |               |           |          |
| Total           | 13     | 6          | 10            | 26        | 9        |

**Monitoring of incidents of a racist, xenophobic and anti-Semitic nature - by crimes (September - December 2005)**

| Crimes        | Bombs for incendiary attacks | Damages | Homicides | Bodily harm, assault and battery | Insults, Threats (By phone, via e-mail, letters) | Offences ex Art. 1 Act 205/93 | Other crimes | Graffiti | Persons reported to judicial authorities | Persons arrested |
|---------------|------------------------------|---------|-----------|----------------------------------|--|-------------------------------|--------------|----------|--|------------------|
| Anti-Semitic. | /                            | 1       | /         | /                                | 5  | 1                             | 1            | 13       | 2  | 8                |
| Racism        | 2                            | 1       | /         | 3                                | 1  | 2                             | /            | 3        | 22                                       | 1                |
| Xenophobia    | 2                            | /       | /         | /                                | /  | 1                             | 1            | 4        | 2  |                  |
| Total         | 4                            | 2       | /         | 3                                | 6  | 4                             | 2            | 20       | 26                                       | 9                |

[Source: Ministry of the Interior]

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 the 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 Ministry of the Interior.

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.

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 Interforces Institute of Advanced Studies under the umbrella of the Ministry of the Interior 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.

As regards the specific drilling and training of police bodies mention should be made of the increased time that - in the various training courses for all levels of

police officers -is devoted to the study of languages and cultures of the different foreign ethnic groups settled on the Italian territory. Mention should also be made of the teaching hours devoted to the basic knowledge of human rights, first of all of the following material drawn up by the Council of Europe:

- Policing in a Democratic Society - Is your Police Service a human rights Champion?
- A pamphlet for Police Human Rights and their protection under international law
- Discussion Tools. A police and human rights training manual
- The human rights challenge in police practice
- CPT - What's about

These hours serve to analyse the above listed documents and study the enforcement of the rules in daily police activities.

In this framework, a number of 'police trainers' attended post-degree specialisation courses in the field of human rights at Italian Universities. Likewise, police managers and officers who participate in peace-keeping operations abroad are encouraged to attend specialisation courses in International Humanitarian Law. Moreover, attendance of the numerous seminars on the subjects at issue should be considered. They are organised by the various Police Training Institutes both independently and in partnership with similar European institutes. Mention should also be made of attendance of *ad hoc* meetings promoted by international organisations such as the United Nations, OSCE and, mainly, the Council of Europe.

Last but not least, attention should be devoted to the participation of the Italian Police Forces - that are represented by an officer of the Public Security Department - in the "Network of Police and Human Rights Coordinators", within which various initiatives are promoted with a view to optimizing the efforts of security officers to adapt themselves to the changing conditions brought about a multi-ethnic society. The training on the discrimination issue is the object of some recent courses for Magistrates, held by the C.S.M. (*Consiglio Superiore della Magistratura*), devoted to: "Freedom of religion and multi-culture", "The protection of human rights and fundamental freedoms in the jurisprudence of the European Court of Human Rights", "Criminal proceedings - effectiveness and guarantees", "The right of globalisation and the role of jurisdiction", "Immigration and criminal law".

#### **4. Civil and administrative law provisions**

##### **§ 18. Recommendation**

*ECRI encourages the Italian authorities in their efforts to ensure that civil and administrative law provisions provide adequate protection against discrimination. It also recommends that the Italian authorities keep the existing provisions against racial discrimination under review. In this respect, it draws the attention of the Italian authorities to its General Policy Recommendation No.7, in particular as concerns: the need to protect individuals from discrimination on grounds such as "race", colour, language, religion, nationality and national and ethnic origin; the need for fair and effective burden of proof provisions in racial discrimination cases; the need to place public authorities under a duty to promote equality and prevent discrimination in carrying out their functions. ECRI also recommends that the Italian*

authorities ensure that all organisations active in the field of combating racism and racial discrimination are able to bring cases on behalf of alleged victims of these phenomena.

#### § 19. Recommendation

*ECRI urges the Italian authorities to take steps to improve the implementation of the existing civil and administrative law provisions against racial discrimination. It recommends that such steps include strengthened efforts to raise awareness among the general public, groups vulnerable to racial discrimination and the legal community of the civil and administrative legal framework in force against discrimination.*

In implementing EU Directive 2000/43, Legislative Decree n. 215 of 9 July 2003 forbids and introduces jurisdictional protection also for direct or indirect discriminating practices on grounds of race or ethnic origin. Just by reading the text, one can appreciate how such legislation enriches all domestic legal instruments in the fight against racial discrimination”, also according to Art. 44 of the Consolidated Text on Immigration.

Especially with regard to the implementation of Art. 44, it is worth of highlighting that the content of ECRI Recommendation (§ 17.) lacks of specific reference to concrete cases: in fact the high number of judgements by national courts shows that the judicial system satisfies claims for justice. From a careful reading of the contents of these judgements it emerges that the judicial authority, in many concrete cases, has guaranteed the implementation of the right not to be discriminated on grounds of nationality or ethnic origin, as in the case of the stipulation of rental agreements with non-EU nationals (Court of Milan, 30<sup>th</sup> March 2000), the access to public competitions by persons without the requirement of nationality (Court of Appeal of Florence, 2 July 2002), the participation of persons not belonging to the European Union in statutes of housing associations (Court of Monza, 27<sup>th</sup> March 2003), the grant of additional points to Italian nationals in the priority lists for the allocation of housing units (Court of Milan, 21 March 2002).

Therefore the critical remarks expressed by ECRI regarding keeping under review civil and administrative law provisions providing adequate protection against discrimination do not appear founded.

The reduction mitigation of the principle of the burden of the proof on the petitioner and the possibility of the taking of evidence *ex officio* has been confirmed according to Art. 4§3 of Legislative Decree n. 215/2003 in implementing EC Directive 2000/43.

In other terms, the petitioner may avail himself/herself of presumptive evidence and penetrating investigating powers, also supported by statistical data, are recognised to the judge. The burden of the proof is considered met on the basis of the simpler regime of presumptions. This means that, once factual elements suitable to find the presumption of discriminatory behaviours (or acts) are offered, the respondent must supply the proof of the inexistence of the discriminatory activity ascribed him/her.

Therefore the critical remark expressed by ECRI regarding the difficulty in furnishing evidence by the discriminated person does not appear founded.

In order to make the right to access to justice more and more easy and effective it has been envisaged that the person who considers that he/she has been discriminated may defend himself/herself personally, without being obliged to retain



a technical defender. The choice of the procedure of deliberation in Chambers, instead of the ordinary procedure, and the possibility that the law recognises to the judge to proceed personally on his initiative to investigating acts he deems indispensable, consent to obtain a pronouncement in a shorter time and with easier means of establishment of the law, because less formal also than those required for the establishment of rights in the proceedings according to the ordinary cognisance procedure.

The possibility for the judge to proceed personally to the indispensable investing acts, actually enables the judge to order *ex officio* the admission of evidence even in the event of gaps of the defensive burdens. This very wide competence in gathering relevant evidence - assigned to the judge by Art. 44 of the Consolidated Text on Immigration - exempts the Italian legislator from inserting *ad hoc* measures regarding the shifting of burden of proof. Indeed Art. 8§5 of EC Directive 2000/43 expressly provides that Member States are not obliged to implement the principle according to which it is the defendant's duty to prove that there has been a violation of the principle of equal treatment (Art. 8§1 of the EC Directive 2000/43) in case of *ex officio* crimes, namely those crimes to be investigated by the judge *ex officio* and not based upon complaint. Therefore we may conclude that the larger flexibility of the procedural rules envisaged for the establishment of the right of the person who believes himself/herself to be victim of discrimination, is certainly an element in favour of the petitioner, considering the peculiarity of the substantial and procedural situation.

There are some initiatives within the Ministries of Labour and Social Politics and for Equal Opportunities - UNAR - to raise awareness on behalf of alleged victims of discriminatory acts and behaviours, in order to promote judicial procedures.

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§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 n. 215/2003 specifically enables associations and bodies working in the field of social integration and fight against discrimination to proceed. This authorisation is granted to those associations and bodies, as inserted in an Inter-ministerial Decree jointly approved by the Minister of Labour and Social Policies and the Minister for Equal Opportunities on 16th December 2005 and published on the Official Bulletin of the Italian Republic on 12th January 2006. The above mentioned list includes to date 320 associations. 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§1, letter a) of the Presidential Decree n. 394/1999, 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.



At present (31.12.05), 393 associations and bodies are included in the Registry of the Ministry of Labour and Social Policies. The minimum requirements for the insertion in the above mentioned Registry are as follows: the establishment of the association or the body by public or private deed at least two years before its registration; biennial experience, on a continuous basis in the field of social integration of migrants and intercultural education; the drawing up of a biennial balance sheet.

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 authorisation 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 identifiable<sup>46</sup>.

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 100 associations have been inserted, so far.

## 5. Administration of justice

### - Legal aid

#### § 22. Recommendation

*ECRI recommends that the Italian authorities keep the situation as concerns the disproportionate representation of non-citizens in Italian prisons under review and ensure that it is not the result of possible direct or indirect discrimination.*

#### § 23. Recommendation

*ECRI recommends that the Italian authorities ensure that all non-citizens, including those without legal status, access in practice the translation and interpretation services to which they are entitled. It recommends that the Italian authorities*

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<sup>46</sup> 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.

*ensure that all non-citizens who do not have sufficient means, including from among persons without legal status, have access to good quality free legal aid in practice.*

In relation to the high number of foreign prisoners in Italian prisons, it is worth highlighting that on 31/12/2005, 19.811 foreign prisoners were present out of a total prison population of 59.542, equal to 33,27%. It has to be pointed out that a great number of foreign non-EU prisoners are irregular immigrants, that is, persons who entered Italy illegally or who are however without a residence permit in Italy. This condition of illegality is often accompanied by an economic precarious situation, affective deprivation, social exclusion which, together with a widespread condition of scarce or inexistent schooling, leads to have deviant behaviours; *the illegal immigrant* is therefore easily involved in criminal activities organised in low-cost unskilled labour.

The foreigner involved in criminal activities, if arrested, has access to less serious precautionary measures (house arrest) with more difficulty, because he is without a fixed domicile, without documents, and without means of support. In reality, these persons, owing to their condition of *illegal immigrants* who committed a crime, enter prison since it is the only place of stay until the judicial proceeding is completed. This situation prevents the Supervisory Court from granting foreign prisoners measures alternative to detention, after their conviction, since these prisoners do not have, in general, that family and social context representing the requirement of alternative measures.

With reference to the above mentioned situation, the first Criminal Division of the Supreme Court (*Corte di Cassazione*), by its judgement n. 30130 of 17 July 2003, provides that: “the assignment to the Probation Service and, in general, all measures alternative to detention, cannot be applied to the non-EU foreigner who is in Italy under illegal conditions, taking into consideration that this condition makes his stay on the Italian territory illegal and that, on the other side, it cannot be allowed that the execution of the sentence take place with modalities entailing the infringement and the elusion of the rules making said illegality possible”.

Notwithstanding the above mentioned difficulties for foreign prisoners to find out valid and verifiable living/working points of reference outside prisons, such as to allow the granting and putting into practice of an alternative measure to detention, it has to be outlined that the results of a monitoring, just completed, relating to foreign persons under alternative measures referred to the first six months of 2005, show the overall data (2015 foreign prisoners to whom measures alternative to detention have been granted) which are not at all negligible.

The law provides that the foreign prisoners be informed, in a language they know, of the prison rules, of their duties and rights and of the possibility to be assisted by an interpreter. Besides that, the right to contact the consular authorities, in order to inform them of their state of detention and to request assistance shall be granted to them.

In compliance with the fundamental principles stated with solemnity by the Italian Constitution, and acknowledged by the Penitentiary Act, the fundamental rights of all the prisoners are protected, among which the freedom of religion. In particular, the Penitentiary Administration assures the prisoners who practice a faith other than the catholic one the right to meet, on their request, the ministers of their own religion as well as to attend relevant celebrations. Therefore, ministers of religion belonging to several creeds are allowed to enter prisons and to freely meet those prisoners who spontaneously state they want to benefit from that right.

Moreover, ministers of religion and prisoners are allowed to celebrate their rites, according to times and modalities provided for by their creed. The possibility is also foreseen to prepare and to eat meals, according to the modalities and the rules provided for by the religion they belong to. To this purpose, every year, on the occasion of the Muslim feast of the Ramadan, the Penitentiary Administration gives appropriate instructions in order to allow prisoners, where they require so, to enjoy hot meals in times different from the usual times, so that they can observe the religious rule of the day fast.

In the light of the above mentioned considerations, it can be affirmed that no discrimination results from the treatment of foreign prisoners in Italian prisons.

As already explained, Act n. 134/2001, in force since July, 1, 2002, has reformed the entire discipline of free legal aid to the poor, in criminal, civil, administrative, accounting and fiscal proceedings. As regards, in particular, the possibility of being granted free legal aid both in criminal and civil cases, the principle applied is that foreigners residing in the State and stateless persons are entitled to the same rights as the citizens of the State. Worth mentioning are Arts. 9 bis and 20, that have been the object of ECRI's remarks in the past. Art. 9 bis introduced the right for the person granted free legal aid, to appoint expert witnesses and private investigators for the purpose of exercising in an effective way his/her right to defence. Then, Art. 20 provided that each Bar Council institute and information and counselling service on free legal aid. In particular, the service provides people with information relating to (a) the costs of the judicial proceedings, and also the requirements, the modalities and the obligation required to be entitled to free legal aid, (b) the modalities and the obligations of the defence counsel assigned to a case.

As reported in the first report to Parliament by the Minister of Justice in July 2005, the "function attributed to the Bar Councils by the legislator is really important as, in order to make the jurisdiction protection of the poor more effective, it is not sufficient that the State provides the financial resources required, by taking on the costs of the defence, but it is also important to inform adequately the public on the existence of such instrument and the conditions required for having access to this kind of benefit... as well as on the opportunity to take a case to court. In conclusion the Bar Councils are required to carry out a service of real and proper 'pre-legal' advice".

As regards criminal proceedings: since the last report to Parliament, submitted by the Minister of Justice, relevant to the years 1995-2004, it emerges that the phenomenon relating to the number of persons seeking free legal aid is rapidly increasing, going from 16,500 persons granted free legal aid in 1995 up to 86,000 persons applying for it in 2004. The costs are also rapidly increasing, going from 5,000,000 Euros for 1995 up to over 60 million Euros in 2004. Foreigners admitted to free legal aid are 13% of the total. If we take into consideration the data referring to minors, it emerges instead that in 2004 27% of the persons admitted of free legal aid were non Italian citizens.

Moreover, it has to be recalled that as regards non EU citizens, free legal aid is automatic - and not upon request - in proceedings instituted against deportation orders and in proceedings relating to temporary stay and assistance centres for foreigners. In civil matters, in 2004 alone the State spent 3.310.118,35 Euros for free legal aid against 789.934,73 Euros spent in the second semester of 2003.

## 6. Specialised bodies and other institutions

### § 27. Recommendation

*ECRI invites the Italian authorities to keep the status, powers and duties of UNAR under review, in order to ensure that this Office provide victims of racial discrimination with the most effective protection possible. To this end, ECRI draws the attention of the Italian authorities to its General Policy Recommendations No. 2 and No. 7, which provide detailed guidelines on the establishment, functions and working methods of these bodies. In particular, ECRI draws the attention of the Italian authorities to the need for such a body to be independent and to the guidelines it formulated on how to guarantee such independence. ECRI also draws the attention of the Italian authorities to the guidelines it has provided on the powers that should be attributed to such a specialised body.*

### § 28. Recommendation

*ECRI urges the Italian authorities to ensure that the regional centres for monitoring racial discrimination provided for by law are set up in all regions without further delay. It recommends that the Italian authorities ensure thorough co-ordination between the work of these centres and that of UNAR.*

Some questions were raised as to the proper insertion of the Office in a government structure, such as the Prime Minister's Office, when it would perhaps have been preferable to set up a body endowed with greater independence from the political authorities (see EUMC, Migrants, minorities and legislation: Documenting legal measures and remedies against discrimination in 15 Member States of the European Union, 2004, p. 58). In this respect, some commentators have made the critical observation that: a) the repetition of the adjective "independent" contained in Art. 13§2 of the Directive called for the adoption of a different institutional model, one more respectful of the "Paris Principles" drawn up in 1991 by ECRI (European Commission against Racism and Intolerance) in the Council of Europe; b) the same provision referred explicitly to "bodies that are part of agencies charged at the national level with the defence of human rights or the protection of individual rights". However, it should be noted in this respect that this choice was not made by the Government in drawing up the enabling decree, but by the Parliament when approving the "Community Act" (see Art. 29§1 (i)).

Moreover, "independence" should not be interpreted only as implying a structural concept but also as a criterion informing the performance of the Office's role. It is for this reason that the Decree specifies that the Office must carry out its tasks in an "autonomous and impartial manner". It must also be considered, therefore, that the legislator's intention in this respect was not to repeat a typical rule of public office (Art. 97 of the Constitution) but rather, and above all, to place a particular emphasis on the delicate nature of the interests protected.

With reference to regional centres provided for by Legislative Decree n. 286/1998, Art. 44§12, UNAR started on July 2005 a national monitoring over all existing centres together with National Coordination Body for Social Integration Policies for Foreign Nationals (NCB), set up within the National Council for the Economy and Labour (CNEL). This action is devoted to create a national and permanent network among these centres in order to promote the dissemination of data and remedies concerning discriminatory offences. While using data from regional centres, which contribute to have a local dimension of the phenomena, UNAR can give a technical advice to victims of racial or ethnic discriminations. In

recent years - according to the monitoring - the number of regional centres has increased, particularly in the Centre and in the South of Italy.

## 7. Education and training/awareness-raising

### § 31. Recommendation

*ECRI recommends that the Italian authorities pursue and strengthen their efforts to raise the awareness of issues of racism and racial discrimination among both the general public and specific groups. It recommends that the Italian authorities ensure that existing research be used in practice to inform policy in areas where persons experience racial discrimination.*

### § 32. Recommendation

*ECRI recommends that the Italian authorities strengthen their efforts to provide teachers with thorough training in delivering intercultural education to students and that they do so for teachers at all levels of education. ECRI recommends that the Italian authorities strengthen the human rights dimension of civic education courses. In the long term, however, it recommends that the Italian authorities consider making human rights, including non-discrimination, a compulsory subject at both primary and secondary level.*

Concerning education, school is compulsory, also for illegal minors, and it is based on the so-called principle “right-obligation” of schooling. Moreover, different intercultural activities and Italian as a second language courses are organised in order to better integrate newcomers within the education system. Enrolment to University is granted to legal immigrants at the same condition as for Italian students.

The initiatives described below concern training in service activities, reserved to teachers and head teachers; they give to the human rights education a central role in the educational praxis, and concern present-day topics that are of the greatest social importance. They have been planned in the perspective of their link with wider educational interventions, to promote respectful behaviours in the face of cultural and individual variety. The main purpose is helping to oppose attitudes of social intolerance in order to develop a universal conscience that puts to the first place - among shared and shareable values - the human rights, the pluralistic democracy and the equality, in social dignity, of all human beings. Italian authorities have financed three relevant projects for the promotion of an intercultural education:

- ITALIAN 2: Language of contact, language of cultures: this project aims to implement teachers’ training on the topics of Italian ad L2, to address - in an effective way - the whole question of the linguistic insertion of the students of foreign mother tongue in the Italian school. It provides two different levels of training reserved to 1000 participant. The first course is assigned to teachers of all the subjects; the second, deeper, course is reserved to teachers of linguistic area.
- ACTIVE CITIZENSHIP AND HUMAN RIGHTS EDUCATION - National plan of training and search-action for teachers and head teachers of all levels of the educational and training system: The planning offer, for a one-year period, consists in a training intervention reserved to 100 head teachers and 100 teachers of all levels on the topics of active citizenship and solidarity-based education. It attempts to speed up schools’ networks to collaborate with



other institutions and educational agencies of the territory, with the aim to implement combined training actions. The search-action methodology has been considered as the most adequate in order to promote, through valid didactic actions, activities of participation in which students can be aware protagonists of models of active citizenship and of accomplished solidarity.

- ACTIVE EUROPEAN CITIZENSHIP EDUCATION - National plan of training and search-action for teachers and head teachers leaders of second cycles' schools of the educational and training system: The plan, for a three-year period, was promoted by the MIUR - Directorate General for the School Staff, by the Department for the Community Policies and by the Prime Minister's Office. The purpose is to enlarge the European dimension of teaching, by encouraging the use of education strategies and the realisation of didactical units conceived as interdisciplinary items. The deep knowledge of documents and political institutional topics will be able to contribute to develop in students the dimension of belonging, citizenship and supranationality. The plan constitutes a valid training model, addressed to 100 head teachers and 100 teachers of second cycle's schools of the educational and training system, on the topic of European citizenship education, inside the most articulated training offer plan.

## 8. Reception and status of non-citizens

### - Immigrants with legal status

#### § 39. Recommendation

*ECRI recommends that the Italian authorities ensure that the provisions which regulate the granting of residence permits do not result in increasingly precarious situations for immigrants.*

#### § 40. Recommendation

*ECRI encourages the Italian authorities to keep the quota system and the practice of issuing work permits under review in order to avoid that such policies and practices result in direct or indirect discrimination against individuals on grounds covered by ECRI's mandate.*

#### § 41. Recommendation

*ECRI urges the Italian authorities to take steps to ensure that non-citizens obtain residence permits in reasonable time and that access to services is not affected by any delays in the granting of such permits.*

#### § 42. Recommendation

*ECRI recommends that the Italian authorities ensure that non-EU long-term residents enjoy eligibility and voting rights in local elections.*

#### § 43. Recommendation

*ECRI strongly recommends that the Italian authorities establish a comprehensive legal, policy and institutional framework at the central level that can provide coherence and sustainability to local efforts to promote integration between majority and minority communities, and notably citizen and non-citizen communities.*



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

After the regularisation process, the foreign community accessing Italian Labour market changed significantly. If once, North Africa was the main area of origin, after 2002, Eastern Europeans became more and more present: Romania is the first country of origin of immigrants in Italy, followed by Albania Morocco, Ukraine, China, Poland, Philippines, Equador and Tunisia.

Actually, Eastern European nationals are preferred for short-term seasonal work because of the obvious geographical proximity to Italy. Furthermore, ad hoc quotas of Eastern European workers have been decided because of the new E.U. membership of a number of Countries in that area. Nevertheless, if one thoroughly analyses the immigrant workers' flow decrees of the past few years, it is to be acknowledged that it is manifest that also North African Countries have benefited from considerable privileged quotas. Besides, the latter represent a valid instrument for combating illegal immigration since they are part and parcel of the co-operation and aid programmes afforded to the Countries that co-operate with Italy.

Moreover, the 2006 Decree on migration flows (the first one envisaged by the so-called "Bossi-Fini Law" after the issue of the 2003-2006 Outline Document) has established the entry of 170,000 non-EU workers, i.e. almost the double amount of the number envisaged in the previous four Decrees on migration flows. In particular, it is to be specified that with the current Decree on migration flows, a new computer procedure will be applied, aimed at accelerating the path relating to the hiring of non-EU nationals.

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

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

Italy is now ratifying the European Union Long Term resident status Directive (2003/109/CE) which foresees a five years residence time in order to ask for the "carta di soggiorno", which is already a document which gives an undetermined residence permit status, and that has to be renewed each five years<sup>47</sup>.

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<sup>47</sup> Furthermore, with reference to delays in issuing/renewing residence permits, a project will be soon implemented for the simplification of procedures for issuing stay permits which will greatly reduce the current delays.

As already mentioned, between the years 2002 and 2003, eight Constitutional bills were presented on the recognition of the **right to vote to foreign citizens**, in parallel to many administrative initiatives which have taken place in order to promote the integration of foreign citizens by means of their progressive involvement in decision-making processes and in political life at the local level. Proposals have been advanced from some local authorities to amend their Statutes in order to extend the right to vote to foreign resident citizens in administrative and regional elections (see Regions like Tuscany, Umbria and Friuli-Venezia Giulia). These are clearly initiatives that need to be taken forward by drawing up and then presenting the appropriate legislative instruments. It is timely to consider them in this context to underline how the presence of non-EU immigrants in Italy is now considered a stable feature. To regulate this phenomenon, specific instruments need to be adopted, inspired by the principle of non-discrimination and designed to prevent the adoption of any conduct that can be defined in immigrants' regard as "distinction, exclusion, restriction or preference based on race, colour, ancestry or national or ethnic origin, or religious practices and beliefs and practices [...]" that might "destroy or [...] compromise the recognition, enjoyment or exercise, under conditions of equality, of human rights and the fundamental freedoms in the political, economic, social and cultural spheres and in any other sector of public life" in accordance with Act n. 189/2002.

Italy has concluded **bilateral agreements** on labour migration with countries of origin of the main inflows such as: Moldova, Egypt, Morocco and Romania. Negotiations are currently under way with a number of countries, among others with Tunisia.

In Italy, the central level has the task of promoting, monitoring and financing projects, while the local level (local administrations, associations and NGOs) is mainly responsible for the effective implementation. Since 2003, major changes have though occurred in the allocation of resources, as the 'Fund for immigration policies' has been included in a more general 'Fund for social policies' which is now almost entirely decentralised. It is now entirely up to the Regions to decide whether to address immigrants' needs or focus on other social categories. The action of the Local institutions, being closer to citizens needs, should be in this way more effective and direct.

Finally, in order to promote integration policies, in all *Prefettura* of the Italian territory there are **Territorial Councils for Immigration**, which perform the important function of encouraging and co-ordinating the different initiatives. Thanks to the activities carried on by these bodies, in co-operation with all the other administrations concerned and with the participation of migrants' associations, a series of important and capillary projects were developed, aimed at guaranteeing immigrants' social integration in every part of the national territory.

## 9. Access to public services

### - Education

#### § 47. Recommendation

*ECRI recommends that the Italian authorities increase their efforts to provide non-Italian school pupils with the additional support necessary for them to enjoy genuinely equal opportunities in education. In particular, it recommends that the provision of good quality teaching of Italian as a second language be improved. ECRI recommends that the Italian authorities target their efforts in these fields at all*

levels of education, including secondary education, and that they provide adequate financial support to civil society organisations active in the field of promoting equal opportunities for all students.

§ 48. Recommendation

ECRI recommends that the Italian authorities take measures to address and prevent the stigmatisation of children who do not attend Catholic religion classes in the school environment and to provide these children with adequate possibilities for alternative education.

See 7. Education and training/awareness-raising; with particular regard to religious education see § 5 “Constitutional provision and other basic provisions” of the Italian Reply to the Second report (September 2005).

Briefly, the new Concordat entered into by the Italian State and the Holy See on 8 February 1984 repealed Art. 1 of the Treaty (according to which the Catholic, Apostolic and Roman faith is the only religion of the State). At the same time, it established a commitment by the State to provide for the teaching of the Catholic religion in non-university public schools, while guaranteeing each individual the right to choose whether or not to attend these lessons, without their choice giving rise to any form of discrimination. Persons choosing not to attend can follow other classes proposed by the teaching staff; spend the time in individual study or else take that hour as being free (Constitutional Court ruling 2003 of 11-12 April 1989 is of fundamental importance in this respect).

Furthermore, according to *Intese* which have been implemented and approved by law with some Denominations, provisions concerning education have been included aiming at guaranteeing the right for students not to participate in religious classes, and the possibility for the schools to respond to eventual requests by students and families, introducing the teaching of one specific religion and explaining its implications; the recognition of diplomas issued by theological institutes and the right to freely set up schools of any order or degree, and educational institutes, according to the Italian educational system.

Moreover, in the absence of conventional relation between the State and Denominations, (Concordat, *Intesa*), Act n. 1159/1929 and the concerning enforcement regulation (Royal Decree of 28 February 1930, n. 289) apply, according to the supreme principles of the Constitution. It follows that the rule of Art. 23 of this regulation is always enforceable. It states, among other things, that “ When the number of students justifies it and when a temple cannot be equipped for founded reasons, their fathers devoted to a religion that is different from the official one can obtain some school buildings for the religious education of their children. The request is addressed to the local education director who, once he hears the school council, can act directly in a positive sense. Otherwise he can refer to the Minister of Education that decides with the Minister of Justice and of the Interior. In this measure they have to establish the days and hours of the teaching and the necessary “precautions”. A small number of students (at least three children) can justify religious education in schools outside of curriculum hours. It is pointed out that teachers must be chosen by the applicant fathers (that is by the ones who have the parental authority) and must have the necessary requirements evaluated by the school authority.

## - Housing

### § 50. Recommendation

*ECRI recommends that the Italian authorities pay greater attention to problems of direct and indirect discrimination in housing facing minority groups in Italy, both in the private and in the public sector. It recommends that they ensure that the antidiscrimination legislation in force is thoroughly applied to counter discrimination in housing and that best practice in the field of facilitating immigrants' access to housing identified at local level is extended and applied on a national scale.*

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

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

## - Other services

### § 54. Recommendation

*ECRI recommends that the Italian authorities pursue and strengthen their efforts to ensure better provision of health care and better access to health care for minority groups.*

### § 55. Recommendation

*ECRI recommends that the Italian authorities investigate and address racial discrimination in access to financial or insurance services.*

Access to **public services** need to be facilitated for newcomers who are unfamiliar with administrative structures of the new societies.

Legal immigrants also benefit from different Social integration and Social assistance measures. Immigrants who have a long-term residence permit (six years of legal staying) have the right to receive pregnancy and social allowances. Legal immigrants who legally reside in Italy for at least one year benefit of every other social service, at the same conditions as for Italian citizens.

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Concerning **health service**, all citizens are entitled to receive health care services included in the essential level at no cost at the point of access or upon payment of a small share for services that are not fully covered by the National Health System. The level of collective health care in life and working environments, including all prevention activities addressed to the population and to individuals, concerns: the protection from the effects of pollution and industrial-accident risk, veterinary public health, food hygiene control, prophylaxis for communicable diseases, vaccination, early diagnosis programs, forensic medicine. At the district health care level, including the health and social care services distributed throughout the country, are guaranteed: primary care, pharmaceutical assistance, local emergency, specialist day-hospital services, services for disabled and prostheses, home care services for the elderly and chronically ill people, mental health care services, semi-residential and residential structures for the elderly, disabled, terminal patients, substance abusers and alcoholics, HIV-positive person, hydrothermal treatments. The hospital care includes: first-aid & emergency response, ordinary hospitalisation, day hospital and day surgery, long term hospital stays, rehabilitation hospital as well as home based services provided by hospital staff, blood and transfusion services, tissue for grafts and transplants. The quality of health services can be measured through the high-level permanent training in medicine ECM, the implementation of clinical practice guidelines (evidence based medicine), the clinical performance measures (es. bypass, hip prosthesis) and reduction of the clinical risk, the Health Technology Assessment, the reduction of disparities in health status and access to care.

A relevant result lately achieved comes from the project "New instruments for the fight against discrimination. **Access to banking and credit services** by immigrant entrepreneurs" realised in the framework of the Community Action Programme for the fight against discrimination. It aims at further examining issues regarding the relationships between immigrants entrepreneurs and credit institutes, particularly the aspect of banking and credit services access, with the objective of spreading information concerning the use of suitable tools for those interested.

The project has set up 3 focus groups in which immigrant entrepreneurs, relative public administration representatives, non profit organisations of banks, Chambers of Commerce, category associations and syndicates participated. A research report has been published and a conference has been organised in order to verify the implementation of Community Directives acknowledging discrimination issues (n. 43 and 78 of 2000); results from research and work carried out by the 3 focus groups have been disseminated and Italian and European best practices have been singled out. The conference can be defined a success, since all relevant actors, such as Confartigianato and the Ethic Bank, representatives of the banking system, immigrant entrepreneurs and local institutions representatives, interested in this issue, intervened at the presence of the Minister of Labour and Social policies. The other goals that have been achieved are the enhancement of awareness, the improvement of networking around this subject and the increase of immigrants' knowledge of access to services with the idea of setting up new financial tools has been achieved.

Furthermore, as far as the international activities are concerned, it has to be mentioned the participation of a representative of the Ministry of Labour and Social Policies, as Government Liaison Contact, at the European Monitoring Centre on Racism and Xenophobia.



## 10. Employment

### § 59. Recommendation

*ECRI recommends that the Italian authorities take further measures to reduce the disparity between citizens and non-citizens on the labour market. It recommends in particular that they pay greater attention to problems of discrimination in employment facing minority groups. In this respect, it recommends that they ensure that antidiscrimination legislation applicable in the field of employment is adequate and thoroughly applied.*

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

Italy has concluded **bilateral agreements** on labour migration with countries of origin of the main inflows such as: Moldova, Egypt, Morocco and Romania. Negotiations are currently under way with a number of countries, among others with Tunisia. Italy considers this kind of bilateral agreements an effective way of managing migration and of strengthening legal channels of entry for work reasons. Our agreements aim at providing for the preconditions for the process of entry for work reasons, in particular they provide for: the exchange of information between the competent administrations concerning manpower availability, on the side of the country of origin, and the needs of the labour market as well as the professional profiles required in the country of destination, on the other; the visibility given on the Italian labour market to a list of nationals of the country of origin willing to migrate in Italy for work reasons; the development of cooperation with authorities of the country of origin concerning the pre-selection phase aimed, for example, to adjusting the databases of candidate migrants in compliance with Italian standards in order to make them “readable” and “usable” by Italian entrepreneurs; the guarantee to foreign workers of equal rights and protection with the nationals of the host country.

Furthermore, bilateral agreements can provide for language courses, vocational training courses and civic orientation programmes to be held in the country of origin. According to our Immigration Act, as amended in 2002, these training and education programmes have to be approved by the Italian Ministry of Labour and Social Affairs and are implemented in the country of origin by a number of different actors and organisations. These programmes can aim either at training workers to be placed in the Italian labour market or to develop productive and entrepreneurial activities in the country of origin. Most importantly foreign workers who have attended these programmes acquire a preferential title to enter Italy for work reasons within the annual quota system: preferential quotas are granted to countries that signed with Italy bilateral agreements, both readmission agreements and cooperation agreements in the field of labour migration. The names of foreign workers who have attended training programmes abroad will be inserted in lists divided on the basis of the country of origin and containing all the characteristics of the workers. These lists will be made available, through our provincial bodies, to Italian employers.



The annual decree will grant the foreign workers comprised in these lists with a specific quota for entries for work reasons. Furthermore the decree itself can provide that, in case of fulfilment of this specific quota, further entries of trained workers can be authorised on the basis of actual needs of the market. We tested this mechanism of training programmes held abroad with pilot projects in Tunisia, Sri Lanka and Moldavia, the last ones implemented with the technical assistance of IOM.

## 11. Racist, xenophobic and anti-Semitic incidents

### § 64. Recommendation

*ECRI strongly encourages the Italian authorities to pursue and intensify their efforts to monitor racist, xenophobic and antisemitic incidents in Italy. It recommends that they ensure that the racist, xenophobic or antisemitic dimension of all offences be dealt with as such by the criminal justice system. To this end, ECRI recommends in particular that the Italian authorities improve the systems in place for police recording of racist, xenophobic and antisemitic incidents.*

### § 65. Recommendation

*ECRI recommends that the Italian authorities strengthen their efforts to counter the dissemination of racist, xenophobic and antisemitic propaganda on the Internet.*

### § 66. Recommendation

*ECRI recommends that the Italian authorities pursue and strengthen their efforts to counter manifestations of racism and antisemitism in sport events, and particularly football matches. It stresses that the approach taken by the Italian authorities to these manifestations should clearly reflect the priority given to respect for human dignity.*

The current system to monitor incidents concerning racist crimes seems particularly effective, since it can rely on the capillary distribution of Police forces all over the territory, even with agencies specifically aimed at attaining such a target. Each incident and all the relating information are put into an inter-force data bank (SDI), which is accessible to all Police Forces.

As regards the dynamics of racist, xenophobic and anti-Semitic incidents, even if in 2005 an increase in the total number of episodes was recorded, it is to be stressed that they were - for the most part - incidents committed by single fanatics or hotheads or by non-organized small groups with minor ideological significance, which generally take place among young people often linked to the world of football supporters. Since we don't know the official sources from which NGOs get their information, it is not possible to make a comparison of the data relating to the incidents mentioned in the Report. Anyway, it is to be emphasised that all the data processed by Police Forces are exclusively based on objective checks within the context of judicial Police activities. Specialised Police Units carry on a regular monitoring over racist, anti-Semitic and/or xenophobic websites and pursue all illegal activities in compliance with the Italian Constitution.

As regards the occurrence of incidents referable to racist crimes during football matches, it is to be stressed that, on the basis of specific directives from the Minister of the Interior, traduced in circulars by the Police Chief, the following measures are envisaged: on the occasion of public shows - including football matches - when banners, placards, posters or other symbols punishable under Art. 2

of Decree Law n. 122/93, Police officials responsible for public order can decide either to delay the beginning of the event or to stop it.

Moreover, as regards football matches, the setting up is envisaged - inside every *Questura* - of a body composed of experts, called “*Football supporters Team*”, whose task is not only suppressing illegal behaviours, but also performing a precise preventive function, in co-ordination with football federal structures, clubs and organised supporters.

With specific respect to the above mentioned phenomena of discrimination and violence on racial grounds during sports events, and in particular football matches, a relevant co-ordination has been promoted also by UNAR with National Federation on Football to increase awareness-raising on racist behaviours among sport societies and football team supporters and to suggest adequate measures against discrimination among both the general public and football players themselves. An *ad hoc* Working Group has been created, composed by all the concerned institutions, to verify or to adopt directives and regulations relating to combat racist violence in stadiums and to raise the awareness of football teams supporters in preventing this phenomenon.

UNAR has supported some initiatives aiming at spreading legislative measures and sanctions for those ones who have racist behaviours (for example the duty of sport societies to alert the public before the game starts about eventual sanctions for slogans or banners of racist nature, or to give this message on the tickets) and at financing projects for the prevention of racist episodes. To this end a specific ‘Protocol of Agreement’ on the institution of a Fund for raising-awareness initiatives in this field by UNAR and the National Federation on Football is under study.

UNAR has a representative within the National Monitoring Centre on Sports Events based at the Ministry of the Interior.

## 12. Vulnerable groups

- Immigrants and asylum seekers (see Section II)
- Roma communities (see Section II)
- Muslim communities

### § 71. Recommendation

*ECRI recommends that the Italian authorities take steps to counter manifestations of prejudice, discrimination and violence directed against members of Muslim communities. It recommends in particular that the Italian authorities take all opportunities to challenge associations between these communities and terrorism in public debate. To these ends, ECRI draws the attention of the Italian authorities to its General Policy Recommendations No. 5 on combating intolerance and discrimination against Muslims and No. 8 on combating racism while fighting terrorism.*

### § 72. Recommendation

*ECRI encourages the Italian authorities to pursue dialogue with representatives of Muslim communities in order to ensure that the members of these communities are not disadvantaged in accessing opportunities that are available to the members of other religious denominations.*

The Ministry of the Interior has devoted particular attention to the question concerning the safeguard and integration of Muslim communities. Numerous initiatives have been started, with the aim of promoting and developing interfaith and intercultural dialogue. On the basis of a directive issued by the Minister of the Interior, in each Province the *Prefetto* have undertaken initiatives aimed at promoting interfaith dialogue, with particular reference to Muslim communities, through the organisation of round tables, fora and monitoring centres with the presence of representatives of the different faith communities, institutional personalities and representatives of the labour world and of the voluntary work organisations.

At the central level, on 10<sup>th</sup> September 2005 Minister Pisanu issued a Decree setting up the **Consulta per l'islam italiano** (Council for Italian Islam), made up of the different Islamic components, with the aim of promoting an institutional dialogue in order to improve the knowledge of the Islamic communities living in Italy, with particular attention to the problems of integration and to the exercise of civil rights. The first meeting of the Consulta, chaired by the Minister of the Interior, was held on 8<sup>th</sup> February 2006. On that occasion, they approved the work programme, based on six thematic areas: problems relating to integration (house, school, work etc.); safeguard of the peculiar features of Islamic religions and traditions (equal rights for men and women, use of the veil, observation of Islamic precepts and feasts, ritual butchery, burial places etc.); preaching in Italian inside mosques and training of Imams; religious seats and places; social condition and rights of immigrants (asylum, humanitarian protection, residence cards and permits, family reunion, citizenship etc.); access of Islamic religious representatives to prisons and hospitals.

Several initiatives have been started also at the international level, with the aim of promoting interfaith and intercultural dialogue. During the Semester of the Italian EU Presidency, the Ministry of the Interior organised a Conference of EU Ministers of the Interior on the theme "Interfaith dialogue as a factor of social cohesion in Europe and as a peace instrument in the Mediterranean region", which was held in Rome on 30<sup>th</sup> and 31<sup>st</sup> October 2003. On that occasion, EU Ministers of the Interior adopted a Statement recognising the positive contribution of interfaith dialogue inside European society. Such an initiative was subsequently approved by the Heads of State and Government during the European Council of 12<sup>th</sup> December 2003.

This issue is now regularly included in the agenda of the most important international and European fora (European Union, G8, OSCE, ASEM), in relation to the development of strategies aimed at social cohesion and integration of Muslim communities as well as to terrorism prevention.

#### **- Victims of trafficking**

##### **§ 74. Recommendation**

*ECRI encourages the Italian authorities to pursue their efforts to protect victims of trafficking, including by issuing special residence permits and funding social protection projects.*

In order to integrate the data included in the report, we underline that during the period 2000-2005 about 5,000 permits of stay were issued for reasons of social protection.

## - Antisemitism

### § 77. Recommendation

*ECRI recommends that the Italian authorities monitor the situation as concerns manifestations of antisemitism in Italy. It recommends that they pursue and strengthen their efforts to educate students about the Holocaust and to raise awareness among students and the general public of the dangers of antisemitism.*

Many examples can well show how Italy goes on strengthening its efforts against anti-Semitism. To ensure that the Holocaust will never be forgotten, the Italian Parliament stated in Act n. 211/2000 that the 27 of January of each year will be celebrated as “the Day of memory”. Since then - as shows in the Italian Reply to the Second report (September 2005), every year many initiatives have been organised all over the country, with the participation of institutions, schools, NGO, media and private citizens. On January 2006, a special mention was held by the President during the Council of Ministers on that recurrence inviting all the Ministers to promote initiatives on their own field.

Moreover, under the Primary Minister Cabinet, a special award was delivered by the Prime Minister itself, to the schools that, all over the last year, devoted with success part of their studies to this theme, preparing books with thoughtful texts and meaningful illustrations. In the evening a special concert was organised, in collaboration with the Jewish Community of Rome, opened to authorities and to the public, of songs written by Jewish musicians, victims of Shoa.

The Ministry of the Interior devoted particular attention to the fight against discrimination and anti-Semitism. By Ministerial Decree of 30 January 2004, the **Inter-ministerial Committee against discrimination and anti-Semitism** was created within the Ministry of the Interior, tasked with carrying out a constant monitoring of the risks of degeneration towards forms of intolerance, racism, xenophobia and anti-Semitism and identifying educational and sanctionatory means to fight against all kinds of conducts inspired by religious and racial hatred. A number of documents reflecting the intense activity undertaken by the Committee were presented on the occasion of the visit of the Commission. We will briefly dwell on the main aspects of this activity.

The Committee developed several initiatives, firstly carrying out a wide-ranging monitoring activity of possible discriminatory conducts, exploiting the capillary presence on the territory of the *Prefecture - UTG*. Such an activity identified a minimal number of offences inspired by racism. The Committee made all efforts to increase - within public administrations represented in its composition - the value of the training of teaching personnel, the specific knowledge of historical events by students, an adequate training for national police personnel and the promotion of the right awareness of information operators.

Furthermore, the Committee started particular relationship with Jewish, Muslim and Roma communities, consulting their representatives in order to know their opinions on possible problems. The Committee also operated to sustain and promote cultural initiatives aimed at countering intolerance, even attending national and international conferences. The Ministry of the Interior made all efforts to pay the maximum attention to the commemoration of the “Day of Holocaust Remembrance”.

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On 27 January 2006, on the occasion of the “Day of Holocaust Remembrance”, a special session of the Committee against discrimination and anti-Semitism was held at the presence of the Minister of the Interior and of the main representatives of the Italian Jewish community. This initiative follows the seminar organised at the *Scuola Superiore dell’Amministrazione dell’Interno* (College for Public Administration of the Italian Ministry of the Interior) in 2005 devoted to the remembrance of the “shoah”. The seminar was attended by the Minister of the Interior, the President of the Italian Jewish Community Union and several scholars.

Moreover, still on the occasion of the “Day of Holocaust Remembrance”, ceremonies for granting awards to institutions deserving honour for actions of heroism and solidarity towards Italian Jewish people in the WWII (golden medal to the Municipality of Nardò, silver medal to the Municipalities of Tora and Piccilli). We also recall the various initiatives aimed at giving value to the memory of Giovanni Palatucci, *Questore* of Fiume, who extremely sacrificed himself in order to save a number of human lives during the WWII.

Among these initiatives, we recall the joint Italian-Israeli initiative, which in 2005 - on the occasion of the anniversary of Palatucci’s death in Dachau on 10 February 1945 - celebrated the commemoration in Jerusalem, at the presence of the Minister of the Interior.

Also the **Italian Presidency of the ITF (Task Force for International Cooperation on Holocaust Education)** has given a strong impulse to Shoah education by promoting and realising training teaching activities, distributing publications in schools, involving schools in research and materials production on the topic and promoting awareness of good practices. For example, a monitoring action has been realised on the item “Shoah, intolerance, racism, xenophobia, Antisemitism in the perspective of a multicultural society”, through information collected by local school personnel involved - both teachers and experts - as members of a regional network.

After a first Workshop, which had place in Rome on 10th June 2004, about the work of Primo Levi the results of the above mentioned monitoring action were illustrated in the Workshop of Montecatini (28 February - 2 March 2005) on the topic “Teaching the Shoah in multicultural societies”, organised to face educational problems in all Europe deriving from an increasing internationalisation and the cultural complexity within societies. Beyond ITF Sub-committee, co-ordinators from Regional Offices, teachers appointed by Local Administrators, groups competent in historical items of XX° century took part to this Workshop. In particular 82 persons were involved, facing social and historical items, focusing the origin of prejudices, the characteristics of anti-Semitism and specific cases of several European realities. Each participant illustrated the situation, the policy and educational approaches of own country., at the term of the first ITF plenary assembly. Both these seminars have had an international breath, for the participation of expert relaters coming from many world countries.

The privileged relationship with Yad Vashem, the Shoah documentation and memory centre in Israel, promoted during the year of ITF Italian Presidency, has given to the Shoah education an added value, considering it as an advanced specific pedagogy. In September 2005, in the International School of Studies on Holocaust in Jerusalem another Workshop was organised by the Yad Vashem, together with the Italian delegation of the ITF, for 25 Italian teachers coming from several Italian Regions to strengthen the above cited network to intensify and disseminate the acknowledgement of the Shoah and to promote strategies to prevent and fight against every new form of racism and Antisemitism.



These interventions is a good example for other countries such as France, Great Britain and Germany, where a research on teaching practices of the Shoah is being promoted.

Finally other two initiatives can be mentioned: on 7 October 2005 the Regional School Office of Lombardy, with the Rozzano Municipality and ITF Italian delegation realised a daily Workshop for teachers and students on the topic “Shoah and multiculturalism in the school today: pedagogical strategies and proposals”; the annual prize launched from the Ministry of Education and the Italian Union of Jewish Communities for drawings, stories, fairy tales, posters, research projects and multimedia produced by primary and secondary school pupils, according to the spirit of the Council of Europe in this field, as demonstrated in the European Workshop in Cracovia (4-6 May 2005) to which ITF Italian Delegation took part with its Co-ordinator Hon. Valentina Aprea.

### **13. Media**

#### § 79. Recommendation

*ECRI encourages the Italian authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups, including non-EU citizens, Roma, Sinti and Muslims. ECRI recommends that the Italian authorities engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved.*

### **14. Conduct of law enforcement officials**

#### § 81. Recommendation

*ECRI reiterates its call on the Italian authorities to establish an independent commission to investigate all allegations of human rights violations by the police, including acts of racism or racial discrimination.*

The Italian legal system provides for an articulated safeguard of human rights both on a substantial basis and on a procedural one. It is worth mentioning, in particular, the provisions of Art. 606 and subsequent articles of the penal code, which protect all individuals from illegal conducts, such as: illegal arrest, unjustified limitation of personal freedom, abuse of authority against arrested or detained people, arbitrary personal inspections and body frisking. Moreover, substantial protection is envisaged in the provisions contained in Art. 581 p.c. (assault and battery), 582 p.c. (bodily harm), 610 p.c. (personal violence), 612 p.c. (menace) as well as in case of other serious crimes. **The judicial authority, while ascertaining these illegal actions, operates as third party in an independent position, ensuring the mandatory prosecution.**

### **15. Monitoring the situation**

#### § 84. Recommendation

*ECRI recommends that the Italian authorities improve their systems for monitoring the situation of minority groups by collecting relevant information broken down according to categories such as ethnic origin, language, religion and nationality in different areas of policy and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-*



identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

#### § 85. Recommendation

ECRI recommends that the Italian authorities collect readily available and accurate data on the implementation of the criminal, civil and administrative law provisions in force against racism and racial discrimination. This data should cover the number and nature of the complaints filed, the investigations carried out and their results, charges brought, as well as decisions rendered and/or redress or compensation awarded.

In Italy there is no evidence of a systematic study on scientific basis concerning discriminations against Italian and foreign citizens based on differences in skin colors, ethnic group, nationality and religion. The Ministry of the Interior has a database containing racial acts (violence, writings, publications) which cannot be released because their finding is not based on scientific criteria but organized simply on internal and administrative needs (see § 9. [13.]). Some research institutes have analyzed and closely examined this phenomenon, but they also have any systematic nature and they don't represent the whole national territory. The rather occasional studies limited to some local realities, don't allow a global representation of this phenomenon. Despite that, it's possible to say that awareness and studies on discriminations are constantly increasing, mainly due to the commitment of the institutions and the pressure of the social and civil organizations. The recent institution of UNAR is a concrete contribution to fill up this lack of systematic information.

## SECTION II: SPECIFIC ISSUES

### 16. Use of racist and xenophobic discourse in politics

#### § 90. Recommendation

ECRI reiterates that political parties must resist the temptation to approach issues relating to non-EU citizens and members of other minority groups in a negative fashion and should instead emphasise the positive contribution made by different minority groups to Italian society, economy and culture. Political parties should also take a firm stand against any forms of racism, discrimination and xenophobia. ECRI reiterates its recommendation that an annual debate be instigated in Parliament on the subject of racism and intolerance faced by members of minority groups.

#### § 91. Recommendation

ECRI strongly recommends that the Italian authorities take steps to counter the use of racist and xenophobic discourse in politics. To this end it recalls, in this particular context, its recommendations formulated above concerning the need to ensure an effective implementation of the existing legislation against incitement to racial discrimination and violence. In addition, ECRI calls on the Italian authorities to adopt ad hoc legal measures targeting specifically the use of racist and xenophobic discourse by exponents of political parties, including, for instance, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts. In this respect, ECRI draws the attention of the Italian authorities to the relevant provisions contained in its General Policy Recommendation N°7.

As a preliminary remark, it must be recalled that, in Italy, instigation to racial hatred is severely punished by the Criminal Code; nonetheless it is the judicial authority, in its full independence, to assess, on a case by case basis, to which extent a given manifestation either falls within the bounds of the freedom of thought and expression and of political orientation, or it is rather to be considered as a criminal act of instigation to racial hatred.

The Italian Government is fully concerned about the racist and xenophobic propaganda, which mainly targeted non EU-migrants and minority groups, such as Roma populations, and which compromises the difficult process of peaceful integration and coexistence. There is confidence that all the efforts made by the Government, local administrations, churches and NGO are a strong “screen against racism”. Racism is a real problem of global dimension affecting many countries, that our country is dealing with (also as a consequence of recent immigration) and we continue to combat it with all kind of tools: legislation, communication, education and social policies.

When a few political leaders or administrators made public speeches with racist tones in very particular and local contexts, this attitude has been strongly condemned by the Italian institutions, by media and by the majority of the political leaders from the government coalition as well as the opposition, and also by public opinion.

The few incidents that have occurred in the last years were mainly the expression of personal opinions and immediately condemned if they were beyond the limit of freedom of thought, granted by the Italian Constitution. However, since last ECRI report, many steps have been taken in order to prevent and contrast the exploitation of racism in politics. For example, according to the guarantees provided by the Italian legal system, the judiciary issued some severe sentences condemning also political representatives which did not respect the boundaries of the freedom of thought and speech. For example, in the case brought in front of the first instance Court of Verona concerning six local members of the “Lega Nord” found guilty of incitement to racial hatred in connection with a campaign organised in order to send a group of Sinti away from a local temporary settlement, these persons were sentenced to six month jail terms, the payment of 45 000 Euros for moral damages in favour of Opera Nomadi and individual victims - including costs for a sum of 4,000 Euros for each counsel - and a three-year suspended ban from participating in campaigns and running for national and local elections.

As already said, many initiatives have been undertaken in order to **prevent and contrast the exploitation of racism in politics:**

- according to the guarantees provided by the Italian legal system, the judiciary issued some severe verdicts condemning political representatives which did not respect the boundaries of freedom of thought and speech ;
- the **establishment of UNAR**, ad hoc National Office devoted to combat racial discrimination: its program of initiatives has been launched jointly by the Minister for Equal Opportunities and by the Undersecretary of State to the Presidency of the Council of Ministers in a conference held on November 2004 in Rome with a high participation of political representatives;
- many projects have been promoted, and a lot of money invested, at the regional and local level to foster mutual understanding, tolerance and **respect for**

**diversities**, but also to increase the quality of life of migrants and minority group, especially Roma populations;

- integration and **contrast of discrimination** are among the main goals of the last National three years Program for the Immigration Politics (2004-2006) approved by the Council of Ministers where an entire chapter (IV) is devoted to integration policies (Presidential Decree n. 128, 13 May 2005);
- growing interest for multicultural programs at school, where the number of **foreign students** has increased almost by 10 times in 10 years (280.000 were in the 2003/04 , 3,5% of total students). The Ministry of Education monitors each year ( now for the 7<sup>th</sup> ) the enrolment and the performance of foreign students in order to ensure full integration and success for all;
- awareness raising campaigns, in collaboration with associations, to increase the political attention on the importance to grant to all people fundamental rights in some crucial sectors such as **health and education for children**, whatever their legal status, because this is a fundamental key for economic and social development of the whole society.

With specific regard to recommendations 86-91 and assuming that it is not ECRI's intention to actively engage in the current domestic political debate of the States members of the Council of Europe, please note the following:

With regard to the general attitude of Italian political parties towards the phenomenon - relatively new for the country - of mass immigration, it is rather obvious that, on such a complex issue, a large range of different and opposite positions exist, which reflect the varied panorama of national public opinion, like in any European country. In Italy, in fact, this phenomenon is not so harsh as it is the case in other countries of Europe. Furthermore, within the bounds clearly established by Italian law - which indeed punishes acts of discrimination and instigation to violence - it is of the utmost importance to guarantee free confrontation of ideas and freedom of expression of both individuals and associations.

There are no cases, furthermore, of national representatives of the governmental coalition, who went beyond the above mentioned bounds, not even slightly.

Given this general overview, the fears expressed by ECRI - regarding the possibility that the influence of the "Lega Nord" may lead to "*policies and praxis not always respectful of human rights*" - seem fully unjustified. This party, indeed, has been member of the Governmental coalition for almost five years now, and ECRI's report itself does not contain elements which could provide evidence of the existence of such a threat. The "Bossi-Fini" Act, although criticised by ECRI under some respects, is praised under others and there is no mention, in the report, of any aspect of the cited Act which could infringe upon the respect of human rights. In other words, if at the beginning of the governmental activity of the "Lega Nord" the Committee could have had some perplexities regarding the outcomes of either the current governmental coalition or of one of its component, the experience and the evidence of the past years, show that there is no reason left for fear.

To further prove the above, it is worth recalling what ECRI report itself underlines, that is a trend towards a decreasing incidence of racist episodes in Italy, whose number, by the way, has never been high.

This is therefore an objective achievement, which must be taken into account while evaluating "policies and praxis" adopted in Italy during these years.

As a consequence of the above, it seems that the wording of paragraph 89 does not fully harmonise with the overall picture provided by ECRI itself.

Besides, as regards the sensitivity of the Italian public opinion and the commitment of the Government in the fight against any form of racial discrimination, it is worth recalling that the Italian Prime Minister, in September 2003, was awarded - by the prestigious American Association “Anti Defamation League” - an international prize as Statesman of the year, for the following reason: “for his courage and leadership in the effort to eradicate anti-Semitism and racism in Europe”.

## **17. The situation of the Roma and Sinti populations**

### § 98. Recommendation

*ECRI strongly recommends that the Italian authorities establish a comprehensive policy at national level to address the situation of marginalisation, disadvantage and discrimination of the Roma and Sinti populations. To this end, it urges the Italian authorities to establish an effective co-ordinating mechanism at national level, with the participation of national and local authorities, Roma and Sinti representatives, civil society organisations and other relevant partners.*

### § 99. Recommendation

*ECRI recommends that the Italian authorities find a suitable legal means to protect the Roma and Sinti along the lines of historical and linguistic minorities and to co-ordinate existing regional policies and efforts to overcome the barrier of non-territoriality.*

### § 100. Recommendation

*ECRI reiterates that the Italian authorities should not base their policies concerning Roma and Sinti on the assumption that the members of these groups live a nomadic lifestyle. It strongly recommends that the Italian authorities address the housing situation of the Roma and Sinti populations in close collaboration with the communities concerned. ECRI recommends that the long-term objective of housing policies should be the elimination of camps for nomads.*

### § 101. Recommendation

*ECRI urges the Italian authorities to take immediate steps to address Roma and Sinti’s lack of passports and residence permits.*

### § 102. Recommendation

*ECRI urges the Italian authorities to ensure that all Roma and Sinti children are enrolled in school and to strengthen their efforts, in collaboration with the communities concerned, to favour regular school attendance by these children. ECRI reiterates its call on the Italian authorities to facilitate participation of Roma and Sinti students in further and higher education.*

### § 103. Recommendation

*ECRI reiterates that only a policy that would simultaneously tackle the different areas where Roma and Sinti experience disadvantage and discrimination can be successful in improving their situation in a sustainable way. Therefore, ECRI recommends that, in addition to the areas addressed above, the Italian authorities*

*take urgent action to improve the position of Roma and Sinti in other fields, including employment, health, relations with the police, administration of justice and general prejudice in society.*

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

It must also be mentioned the creation of a Table of coordination on the issue Roma/Sinti within the Ministry for Regional Affairs, to which representatives of all Ministers will take part with the purpose to prepare a bill to regulate the presence and the situation of Roma and Sinti populations in Italy.

The basic legislation on the protection of minorities, approved in the framework of the fundamental linguistic unity expressed by the Italian language has been adopted aiming at protecting the language and the culture of Albanian, Catalan, German, Greek, Slovenian and Croatian populations, as well as those ones of French -Provençal, Friulan, Ladino, Occitan, Sardinian - speaking communities. In practical terms, while enforcing Art. 6 of the Constitution which stipulates, “the Republic protects linguistic minorities by means of ad hoc legislation”, **an organic legislation for the protection of historical linguistic minorities has been adopted with the aim of fully implementing the general principles established by the European and the International Organisations to which Italy is a member**. During the debate at the Parliamentary level, the situation of Roma and Sinti populations was excluded from the cited legislation because of the opportunity of proposing and approving an *ad hoc* Act, in line with the specific aspects of this minority, if compared to the protection provided for the so-called “historical ethno-linguistic minorities”. **In fact the basic criteria for the label of “linguistic minority” depends on the stability and the duration of the settlement in a delimited area of the country, which is not the case for Roma and Sinti populations**. The formulation of an appropriate legislative measure would enable to equalise the status of half of the approx. 150.000 Roma and Sinti populations resident in Italy to that of the Italian citizens. As regards the remaining Roma and Sinti populations - characterised in all cases by nomadism, they already enjoy the right to freedom of movement and circulation, if composed from citizens of the European Union, while they are under rules regulating the stay of foreigners, if composed from non EU citizens.

With regard to **the improvement of living conditions** of the Roma and Sinti populations, as laid down in Title V, Chapter III and IV of the Consolidated Text - Legislative Decree n. 286/1998 (as amended and integrated by Act n. 189/2002), this competence is of Local Bodies. In this regard, local institutions are still proceeding with the adoption of all pertinent interventions, in particular those ones on the situation of the campsites. Within this framework, as good practice, mention shall be made of the initiative agreed upon between the Prefecture of Naples and the relevant local bodies, aiming at setting up small camps: this is a positive trend which proves to be more functional and more bearable from the point of view of the housing arrangement. Similar initiatives are going to be implemented in Milan and in Rovereto. It must be pointed out the situation of “Casilino 900 camp” which is not an authorised camp, and the outstanding efforts made by the Municipality of Rome to carry out rearrangement works of this area. The “Casilino 900 camp case” does not reflect all the integration initiatives, promoted by the Local Institutions, in tandem



with the civil society (and positively started in several camps where the relevant structure and organisation seem to meet the needs of the several communities). Within the framework of the “Permanent Conference”, as set up in the Territorial Government’s Office - Prefecture of Rome, several initiatives and projects have been planned, that have to be defined with the relevant Bodies and Agencies, and focus on integration measures for the Roma and Sinti populations who live in several campsites of the capital.

Those Roma and Sinti populations who do not have Italian citizenship face some difficulties when applying for the release of **stay permit** or for their *naturalisation*. That is why the relevant legislation includes the release of a working contract among conditions and pre-requisites. Therefore, some difficulties are due to getting a job. They may also entail some difficulties as to the access to health-care services and to education. In practical terms, in order to obtain a stay permit, it is necessary to get a job. Thus, when Roma and Sinti populations face difficulties when applying for the release of a stay permit, this is not a matter of discrimination but of lack of a basic condition, as envisaged by Act n.189/2002.

With regard to the circumstance that no stay permits are released for Roma and Sinti populations, mention shall be made of the necessary conditions for their release, which do not differ from the rules set out for aliens, apart from the country or ethnic, linguistic or religious group of origin. The basic principle is the evidence of the regular entry the territory, to have a regular work contract, or to have come for study and health reasons, or family reunification with a family member who is regularly resident in Italy. Moreover, domestic legislation provides for the possibility of challenging each decision regarding the release of stay permits, as well as the subsequent expulsion measures. The remark concerning the fact, that people of the Roma and Sinti populations scarcely use the opportunity to regularise their own position on the territory, doesn’t seem to show that there is a sort of discrimination against them. Employers have been the main actors of the recent regularisation too, which did not provide for any distinction among aliens. The fact, that a scarce percentage of Roma and Sinti populations would have enjoyed this procedure, can only lead to the assumption either of the lack of an effective contract of work or of existing previous convictions.

As to the issues regarding the Roma and Sinti children **access to education**, it has to be outlined that Roma and Sinti students have the right and the duty to fulfil their scholastic obligation as all other students, according to the Italian legislation which does not discriminate between Italian and foreign students, legal or illegal ones. It is worth stressing that with the Legislative Decree adopted on March 2005 the scholastic obligation has been extended to all the youth up to 18 years old. However, even though the school institutions are willing to take care of them, this population actually shows a scarce inclination towards integration (including the school community) and, consequently, the inborn tendency to refuse the regular attendance at school in the places, in which they settle temporarily. In order to promote a relevant attendance at school, the Ministry of Education has allocated specific financial resources for the schools affected by high percentage of immigrants, including Roma and Sinti students, in order to implement educational activities aiming at favouring their effective integration. To this end a specific ‘Protocol of Agreement’ on schooling of Roma children has been recently signed between ‘Opera Nomadi’ and the Minister of Education. Moreover, by means of cooperation measures with relevant Bodies, representatives of Associations, civil society at large, and schools organise all those extra-curricula activities with the aim at enhancing the attendance of Roma and Sinti students. The Ministry of Education



gives periodical instructions in order to finalise the use of the allocated funds. From data collected by the same Ministry, in the school years 2003-2004, a high number of Roma and Sinti students attended school nation-wide, as follows: 1456 in the kindergartens; 5175 in the primary school; 2591 in the middle school; 84 in the secondary school<sup>48</sup>.

Employers have been the main actors of recent regularisation procedures, which did not provide for any distinction among aliens. As to the issue of **employment**, Ministry of Labour and Social Policies concluded “Programme Agreements” with different Regions, with the main purpose of starting experimental projects and innovative methods to facilitate the integration of Non-EC immigrants, including the Roma and Sinti populations, who regularly stays in our country. In particular, some funds have been allocated for projects to be implemented at the relevant information desks concerning the access of aliens to territorial services. Funds were allocated for the implementation of the project entitled “Initiatives against Social Exclusion and for women’s empowerment”. This consists of activities of reception, accompany, and cultural mediation, labs in Italian language, a legal service, workshops and vocational training and work orientation services<sup>49</sup>.

As to the **health** issues, this is to point out, that the specific rules in force regarding the health care in favour of aliens, set out in the Consolidated Text on Immigration, provide for the obligation of registration in the National Health Service for those aliens having a regular permit to stay, as well as equal treatment and the same rights and obligations as the ones provided for with respect to the Italian citizens; these rules also ensure the urgent or, in any case necessary, even if continuative, ambulatory and hospital treatments, on the grounds of illness and accidents, in the public and recognised structures, in favour of foreign citizens who are not in compliance with the rules concerning the entry and the stay; moreover, they ensure the extension of the programmes of preventive medicine protecting the individual and collective health.

With this respect, the following aspects are ensured in particular:

- social protection of pregnancy and maternity, on equal treatment with Italian citizens;

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<sup>48</sup> See, for example, the project involving Roma children in education, promoted by the Municipality of Rome, which has provided for a shuttle service for minors who live in peripheral zones of the city insufficiently by from public transports. From scholastic year 1999-2000 to the 2003-2004 the number of Roma pupils enrolled has constantly increased, passing from 1161 to 2157, with an increment of beyond 50% (data from the Municipality Rome, Department XI, 2004). An element of particular interest is represented by the increase of registrations in pre-primary and primary schools: in the first place this kind of phenomenon could be favourable to the process of integration in all schools’ levels; in the second place it indicates the tendency of the adults to contain the habit to carry with themselves the minors during the day.

<sup>49</sup> See, for example, the projects for the employment of Roma and Sinti populations (spaces in all the markets for the junk dealers of the social cooperative ‘phralipe’; recycling of metals; ordinary and permanent maintenance of the cycle track by the social cooperative ‘phralipe’; involvement in cultural programs sponsored by the Municipality of all numerous Roma artistic groups; project for Roma and Sinti gardeners; course of knitting for rumria’ from Abruzzo and Camminanti from Sicily), the project involving some Roma associations for waste collecting in camps, the creation of a network of équipes - GIPSY 2000/2002 - between Therapeutic Communities operators and Roma and Sinti Mediators, who, two times a week, support Roma drug addicts, the training projects for cultural mediators in detention centres and for the constitution of a legal office within the Opera Nomadi - Lazio Section.

- protection of children’s health, in compliance to the Convention on the Rights of the Child of 20 November 1989;
- vaccinations according to regulations, to be carried out in the framework of interventions included in campaigns of mass preventive treatment authorised by the Regions;
- interventions of international prophylaxis;
- prophylaxis, diagnosis and care of infectious diseases and drainage of any relevant epidemic focuses.

Moreover, in the framework of the various interventions that are requested to overcome the marginalization of needy immigrants, the National Health Plan for the years 2003-2005 emphasises the crucial role played by the access of immigrant populations to the National Health Service. This can be achieved by adapting the public assistance supply so as to make it open, easily comprehensible, actively available and in line with the needs of these new population groups, in compliance with the provisions included in the above named single text on immigration. This regulation, as said before, extends to illegal immigrants the entitlement to urgent and essential care and to continuity of care. The National Health Plan 2003-2005 also stresses the need, in this field, for both information campaigns addressing immigrant users concerning the services offered by Local Health Bodies and the identification within each Local Health Body of staff members particularly skilled and fit for this sort of relations. The National Health Plan 2003-2005 also specifies some priority actions concerning the following aspects:

- improvement of the assistance to foreign women in pregnancy and reduction of the recourse to voluntary pregnancy interruption;
- reduction of the incidence of HIV, sexually transmitted diseases and tuberculosis by means of prevention campaigns addressing these population group;
- realisation of the same vaccine coverage of the child immigrant population as the one obtained for the Italian population;
- reduction of accidents at work among immigrant workers, by adopting the same interventions reserved to Italian workers for this purpose.

As regards interventions by **police forces** in nomad camps, no violations of law regulations by officers involved in controls and operations are reported since their interventions consisted in identification, tracing and expulsions of illegal immigrants, checks on the lawfulness of property or repression of ascertained crimes.

It should be pointed out, moreover, that all the services supplied in nomad camps, with the exception of judicial police interventions deriving from orders to be executed in cases of flagrancy or executed by the **Judicial Authority**, are always carried out in compliance to orders issued by the *Questori* according to activities planned in agreement with the local Government Territorial Offices and concerned Municipalities.

## 18. Immigrants and asylum seekers

During the last few years, due to the growth of the migration movement, a market of illegal people transport towards the European Countries has been developed. Due to this, it is now possible for foreign criminal organisation, mainly

composed by Albanian, Maghrebian, Nigerian, Chinese, Russian and Romanian citizens, to exert illegal activities also within the Italian territory and to establish relations with the national criminal organisations. Starting from this assumption, the main choices assumed by the international policy and approved by Italian policy reconcile the initiative related to prevention and repression of human traffic together with those related to the fight against illegal immigration.

Italy, due to its geographic position, is one of the main landing place for illegal emigrants. Since few years ago, the instability of countries of the Balkan peninsula produced an important clandestine migration movement which used our Country to enter the European Union. Nowadays the main clandestine migration movements towards Italy come from countries of the Mediterranean basin, from the Horn of Africa and the Western Africa, from the Eastern Europe, from the Middle and Far East, from the Indian Sub - Continent and from South America. These movements are made of people who decide to leave their own countries, first of all, for economics problems, but also forced with violence and fraud. Otherwise, in many cases, debts took over to enter Italy clandestinely, or difficulty faced to obtain regular positions in the Country they arrive, turn the emigrants into persons submitted to particular form of exploitation by the criminal organisation which organised the transport and, consequently, victims of the "trade" phenomenon.

Please note the following statistics related to persons denounced and stopped for aiding and abet clandestine migration and trade:

| Aiding and abet clandestine migration |       |       |       |       |                      |
|---------------------------------------|-------|-------|-------|-------|----------------------|
|                                       | 2001  | 2002  | 2003  | 2004  | 2005<br>(31/05/2005) |
| Denounced                             | 4.824 | 7.445 | 3.734 | 4.655 | 2.106                |
| Stopped                               | 865   | 1.174 | 1.171 | 832   | 309                  |
| Total                                 | 5.689 | 8.619 | 4.905 | 5.484 | 2.415                |

Source: Italian Police data processing centre.

|           | Data from 01/01/2001 to 10/08/2003 | Data from 11/08/2003 to 31/05/2005 |
|-----------|------------------------------------|------------------------------------|
| Denounced | 36                                 | 419                                |
| Stopped   | 4                                  | 143                                |
| Total     | 40                                 | 562                                |

Source: Italian Police data processing centre. The date 11/08/2003 is related to the Act n. 228 entitled "Measures against human trade" which modified the Arts. 600, 601 and 602 of the Italian Penal Code.

#### - Asylum seekers

##### § 110. Recommendation

*ECRI reiterates its call on the Italian authorities to adopt a comprehensive law on asylum. It recommends that they provide all the necessary human and financial resources to the Asylum Territorial Commissions to ensure good quality decisions on asylum applications within a reasonable time. ECRI recommends that asylum seekers not be deported before a decision is rendered on their appeals.*

§ 111. Recommendation

*ECRI recommends that the Italian authorities ensure that asylum seekers only be detained when it is absolutely necessary, for short periods of time, and following an examination of the circumstances of the individual case. It stresses that measures alternative to detention should be used in all other cases. ECRI urges the Italian authorities to ensure that, when detained, asylum seekers have access to adequate living conditions.*

§ 112. Recommendation

*ECRI recommends that the Italian authorities ensure that asylum seekers are not left destitute pending the examination of their claims.*

§ 113. Recommendation

*ECRI recommends that the Italian authorities establish a national integration programme for recognised refugees and make available adequate resources to this end.*

About the introduction of a **systematic set of rules** governing the right to asylum and humanitarian protection in Italy, the Constitutional Affairs Committee, acting in a reporting capacity, examined the six bills presented on this subject, put together the Consolidated Text which was submitted for consideration by the Chamber on 12 July 2004, its aim being to introduce a regulatory framework that respects the provisions contained in the international Conventions to which Italy has subscribed, with particular reference to the Geneva Convention of 28 July 1951, ratified in Italy by Act n. 722 of 24 July 1954, and to the Dublin Convention of 1990, made effective in Italy through Act n. 523 of 1992. The text presented in the Chamber was subjected to two questions. The first was based on the consideration that Bill 1238-A containing provisions concerning protection and the right to asylum essentially reproduces Government Bill n. 5381 from the previous Parliament, the objective of which was to complete the reform of the legislative framework governing immigration and the status of aliens in accordance with Act n. 40 of 6 March 1998 and Legislative Decree n. 286 of 25 July 1998 replacing the asylum-related elements of the previous Act of 28 February. The second arose from the observation that the definition of a common European Union policy in matters concerning immigration and asylum was already initiated by the European Council of Tampere in 1999.

In this framework, among the most recent relevant Acts adopted by Italy, the current Government has introduced amendments to Decree Law n. 416/1989, 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 concerning the regulation relating to Presidential Decree n. 394 of 31 August 1999, as envisaged by Art. 34§1 of Act n. 189/2002. When drafting Presidential Decree n. 303/2004, 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.

The implementation procedures of Act n. 189/2002, which have been applied since 21<sup>st</sup> April 2005, when the relevant regulations entered into force (Presidential Decree n. 303/2004) have made it possible to improve considerably the asylum procedures, in which decisions are made much more rapidly and in which, at the

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same time, the rights of refugees are duly respected. The make-up of Territorial Commissions for the Recognition of Refugee Status, including also a United Nations High Commissioner for Refugees representative ensures that applications are processed fairly and effectively. It should be stressed that the implementation of Act n. 189/2002 is showing the effectiveness of a system made up by territorial bodies which are linked to reception centres managed by the State (Identification Centres), which prevent applicants from scattering throughout the territory.

As far as deportations are concerned, according to the national legislation forced deportations have to be endorsed by the relevant judicial authority. Therefore, at that stage it will be possible to claim the possible illegitimacy of decisions taken by Territorial Commissions. Furthermore, in case the applicant appeals against the decision before the judicial authority, he or she can apply to the *Prefetto* to be authorised to remain on the national territory. This authorisation can also be applied for and granted by the judicial authority dealing with the appeal.

In connection with the possible proximity of reception facilities for immigrants, in a number of instances multiple facilities have been set up, including a Temporary Stay and Assistance Centre, an Identification Centre and an Emergency Reception Centre, envisaged by Act n. 563/1995. The reason for this circumstance was exploiting synergies in the logistical organisation of facilities, which however remain separate from one another as the different specific pieces of legislation governing each type of Centre are fully complied with.

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 n. 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.

As regards reception conditions of asylum seekers, Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers has been implemented by adopting Legislative Decree n. 140 of 30<sup>th</sup> May 2005, which harmonises the relevant Italian legal provisions with the European standards.

The Decree entered into force on 20<sup>th</sup> October 2005 and it finalises the reception system for asylum seekers initiated by Act n. 189/2002. The priority aim of Identification Centres is twofold- on the one hand they are designed for the reception of asylum seekers and on the other they are supposed to prevent them from scattering throughout the national and European territories. Legislative Decree n. 140 regulates the reception of asylum seekers not obliged to reside in State run facilities and who are entitled to receive their residence permits. This type of asylum seekers is hosted in local authorities run facilities, which are funded by the National Fund for Asylum Policies and Services, whose budget has been appropriately increased and is now totalling almost 23 million Euros. Furthermore, the harmonisation of Act n. 189/2002 with the above mentioned European Directive, made possible by the adoption of Legislative Decree n. 140, even improves conditions as compared to the Directive itself.

In connection with the possibility to carry out a job on behalf of asylum seekers, for example, Art. 11 of Legislative Decree n. 140 introduces a totally new aspect, providing that should the relevant Territorial Commission not adopt a decision on the asylum application within six months from submission and the delay does not fall under the responsibility of the applicant, the residence permit is renewed for a further **six month period** and **enables the applicant to work** until the

procedure for the recognition of refugee status is concluded. However the residence permit cannot be turned into a “stay-for-work” permit. Thus, the maximum time limit granted to the State to allow asylum seekers to work is lowered to six months according to Italian legislation, as against the 12 month limit envisaged by the European Directive.

Moreover, asylum seekers who have a job can still take advantage of the reception supplied by local authorities under the umbrella of the Protection System, provided they contribute to the relevant expenses, as envisaged by the above mentioned Legislative Decree n. 140.

In case of appeal before the judicial authority against the rejection of the application for the recognition of refugee status, the applicant, if authorised to remain on the national territory pending the conclusion of the case, has access to the reception facilities only as long as he is not permitted to work, according to Art. 11, or for all the necessary time in case he is unable to work owing to adverse physical conditions.

By Act n. 189/2002, 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. Arts. 1-bis, 1-ter, 1-quater, 1-quinquies, 1-sexies, as introduced by Arts. 31-32 of Act n. 189/2002, 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 **Temporary Stay and Assistance Centres** which are provided for those who apply for asylum in accordance with the aforementioned Act n. 189/2002.

#### TEMPORARY STAY AND ASSISTANCE CENTRES - as of 2004:

| Location                  | Number |
|---------------------------|--------|
| Agrigento                 | 110    |
| Brindisi                  | 180    |
| Catanzaro                 | 75     |
| Lecce -<br>“Regina Pacis” | 180    |
| Modena                    | 60     |
| Roma                      | 300    |
| Bologna                   | 96     |
| Caltanissetta             | 96     |
| Crotone                   | 129    |
| Milano                    | 140    |
| Ragusa                    | 60     |
| Torino                    | 78     |

#### *To be soon realised*

| Location | Number |
|----------|--------|
| Bari     | 200    |
| Foggia   | 220    |
| Trapani  | 220    |

#### *Rescue and assistance centres*

| Location      | Number |
|---------------|--------|
| Lampedusa     | 186    |
| Lecce-Otranto | 75     |



### 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 |

Art. 1-quater § 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”.

At present, while the **National Commission** (the composition of which is reported in the Presidential Decree adopted on 8 February 2005) is based in Rome, the **Territory Commissions** are in the following municipalities: *Gorizia, Milan, Rome, Foggia, Syracuse, Crotone, Trapani*. The creation of these bodies displaced all over the national territory and responsible for examining recognition applications according to territorial jurisdiction criteria- was actually the need to reduce this time-frame as a guarantee for the applicant. In fact, with a single Central Commission, the time-frame was considered too long and therefore caused some problems.

In relation to the request for precise information on the number of applications for the recognition of the refugee status lodged from the year 2002 to the year 2004, the following data are provided:

|           |                       |   |
|-----------|-----------------------|---|
| year 2002 | applications received | 17,000  |
| year 2003 | “                     | “ 13,900  |
| year 2004 | “                     | “ 9,700   |
| year 2005 | “                     | “ 9,400 (including the applications received by the Territorial Commissions from April to December) |

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 status<sup>50</sup>.

To finance this system Act n. 189/2002 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

<sup>50</sup> 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.

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 Ministries, n. 3326/2003, “additional urgent measures were adopted in order to combat the illegal migration”. Its Art. 3, while derogating Act n.189/2002, envisaged the adoption, by the Minister of the Interior, of *ad hoc* Decrees to further the allocation of resources to the local authorities involved in the above assistance process. The Department for Civil Liberties and Immigration within the Ministry of the Interior 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 n. 189/2002. 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 autonomies 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..

Thanks to the funding provided by Legislative Decree n. 140/2005, which transposed the European Directive 2003/9/EC into the Italian legislation, it will be possible to support considerably initiatives aimed at the integration of refugees. The programmes for the reception of asylum seekers prepared by local authorities and financed through the National Fund for Asylum Policies and Services include adequately financed integration measures.

#### **- Immigrants without legal status**

##### § 119. Recommendation

*ECRI strongly recommends that the Italian authorities take urgent steps to ensure that respect for the principle of non-refoulement is guaranteed in all cases. To this end it recommends, in particular, that the Italian authorities ensure that the right of individuals to apply for asylum is thoroughly respected in all cases without discrimination, including when immigrants are intercepted at sea or have been apprehended on entering Italy illegally.*

##### § 120. Recommendation

*ECRI recommends that the Italian authorities ensure that living conditions in all CPTAs meet adequate standards. It urges the Italian authorities to investigate all allegations of ill-treatment in CPTAs and to punish those found responsible. ECRI recommends that the Italian authorities increase transparency by facilitating access to CPTAs, including by organisations concerned with the protection of the human rights of asylum seekers and immigrants.*

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

Without reiterating what has been just mentioned, when dealing with measures concerning illegal immigrants and particularly the so-called Lampedusa case, **the respect for the fundamental rights of men, women and children is the primary criterion guiding our action.**

The 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.

For a better understanding of the phenomenon of clandestine immigration, have been following reported the statistics related to the measures of precaution of leaving adopted and two recapitulate charts of the accords of readmission agreed upon by Italy.

| <b>Foreigners rejected to the frontier and moved away the national territory</b> |        |        |        |                      |
|--|--------|--------|--------|----------------------|
| Foreigners   | 2002   | 2003   | 2004   | 2005<br>(31.08.2005) |
| Rejected to the frontier   | 37.656 | 24.202 | 24.528 | 12.763               |
| Moved away the national territory  | 50.845 | 40.951 | 35.437 | 23.428               |

#### **ILLEGAL MIGRATION TO ITALIAN COASTS**

|                                  | 1999          | 2000          | 2001          | 2002          | 2003          | 2004          | 2005          |
|----------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Landed In Lampedusa              | 356           | 447           | 923           | 9,669         | 8,819         | 10,497        | 14,855        |
| Landed in other places of Sicily | 1,617         | 2,335         | 4,581         | 8,556         | 5,198         | 3,097         | 7,969         |
| Landed in Puglia                 | 46,481        | 18,990        | 8,546         | 3,372         | 137           | 18            | 19            |
| Landed in Calabria               | 1,545         | 5,045         | 6,093         | 2,122         | 177           | 23            | 88            |
| Landed in Sardinia               | 0             | 0             | 0             | 0             | 0             | 0             | 8             |
| <b>TOTAL</b>                     | <b>49,999</b> | <b>26,817</b> | <b>20,143</b> | <b>23,719</b> | <b>14,331</b> | <b>13,635</b> | <b>22,939</b> |

In territorial waters, like in the contiguous zone and the open sea, a police boat in service which locates a ship intended or implied in the illicit transport of migrants, can, under certain conditions, to carry out the inspection of this ship and "to confiscate it by accompanying it to a national port". Different modalities of intervention can be envisaged within the framework of collaboration with other States and in accordance with the international law in force. They do not consist simply of stopping the boat or repatriating the boat to the State of origin, as

indicated in the report, but rather of a system aiming at making a more effective collaboration in correct management of migratory flows via sea, at the national and international level.

Mention must be made of the **legal and administrative practices** adopted on the matter. Within the legal framework pursuant to Art. 10 and Art. 13 of the Consolidated Text on Immigration, Art. 10§1 Consolidated Text - Legislative Decree n. 286/1998 envisages that *“the border police sends back (respingimento) the foreigners crossing the borders without the necessary requirements for the entry into the State’s territory as provided for in the “Testo Unico”*. However, it is worth stressing that pursuant to § 4 of the same Article: *“The provisions of the paras. 1,2,3 as well as of paras. 3 and 6 of art. 4 do not apply in the cases provided for by the current legislation regulating political asylum, the recognition of the refugee status as well as the adoption of temporary protective measures for humanitarian reasons”*. Therefore, the term *“respingimento”* as above reported does not correspond to the internationally recognised term *“refoulement”*. The Consolidated Text on Immigration regulates a very diversified matter concerning *“respingimento”* (Art. 10) compared with the one concerning expulsion (Art. 13).

Apart from the difference in the provisions relating to the two cases (attempt or immediacy of illegal entry into the national territory in the first case and actual presence in the second case), the former is less afflictive if compared to the latter: while immigrants who are refused entry are allowed to legally enter into the national territory at a later moment (provided that they meet all the necessary requirements), expelled people are denied such an opportunity for a period of ten years as of the enforcement of the provision. Both provisions can be followed by the adoption of the measure of detaining migrants in temporary stay and assistance centres (Art. 14).

The precondition for detention resides in the impossibility for the *Questore* to carry out immediately an *Art-10 measure* for several established reasons. If the identity of the alien is certain, if there is no need for individual assistance and the carrier and travel documents are available, it is not necessary for the *Questore* to adopt a detention provision. In this case, the Police Authorities implement the so-called *“escorting police measure to the borders”* (which doesn’t require a judicial validation). Consequently, in case of illegal disembarkations, after offering assistance, excluding the cases when the adoption of migrants’ protection measures is envisaged - for example, in case of possible risk of persecution in the Country of origin or provenance - the applicable form of taking illegal aliens away is that of *“respingimento”* according to Art. 10 of the above-mentioned Consolidated Text. As to the non notification to the alien concerned of the *Art-10 measure*, it is worth mentioning that the Italian legislation envisages that this notification can be made also without resorting to a formal act, but simply through the delivery of a copy of said provision.

More recently, it is worth noting the following: 1. Act n. 271/2004 took into account the judgement of the Constitutional Court concerning the validation process for the expulsion of the foreigners. This Act has therefore amended the previous system regarding the foreigner’s stay within the domestic borders, without a clear motivation and regardless the local police order to leave the country; 2. The Presidential Decree n. 334/2004, which entered into force on February 2005, has better defined the functions of some bodies in charge of the procedure of release (Arts. 4 - 5) or denial (Art. 6) of the visas, as well as the formalities for the release of the stay permit (Art. 8), the requirements concerning the stay permit (Arts. 10, 11 e

13), while paying due regard to the conditions for social protection (Art. 21) or cases concerning the prohibition of expulsion and *Art-10 measure* (Art. 22), as well as the stay in the so-called CPTA (Art. 20).

This set of rules, apart from implicitly confirming the constitutional legitimacy of the detention measure with respect to persons to be expelled in Temporary Stay centres further strengthens the jurisdictional instruments of protection of asylum seekers. It provides, in fact, that the Justice of Peace shall give its opinion on the legitimacy of the expulsion only after cross-examination between the parties providing that an alien may avail himself, by law, of the assistance by a lawyer and/or an interpreter in the language he/she requires.

The information according to which Italy reportedly denied asylum right to immigrants landing on the Isle of **Lampedusa** is groundless. The Assistance Centre based in Lampedusa is mandated to providing 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 Ministry of the Interior, into other Centres. As for the carefulness of the access and exit registers of the foreign nationals who transit through Lampedusa Centre, it is important to underline that the Managing Body of the Centre records the newly arrived persons and the relating personal data, including judicial proceedings, and draws up a specific weekly report (including data such as the number of people hosted) to be subsequently sent to the Department for Civil Liberties and Immigration. The Managing Body is thus penally liable for the validity and the correctness of the data contained therein.

Concerning "the identification of foreigners expelled" it is necessary to note the following: in spite of the impressive illegal migration pressure, organised by criminal gangs, the administrative action as regards immigrants has always been based on the scrupulous compliance with the law and the careful examination of each single case. All the persons illegally landed on Lampedusa have been identified and have been given the possibility of filing a political asylum claim and to reveal their condition of being personally persecuted in the countries of origin or of residence. Families have been kept together and transferred as soon as possible to more adequate and well-equipped centres. Minors have been immediately transferred and committed to local bodies for the protection and assistance measures envisaged. Those who expressed their desire to claim political asylum were transferred in large numbers to national centres created for the reception of refugees. Through violent and organised actions, some escaped from these structures before the completion of procedures. All the irregular immigrants expelled to Libya or Egypt were repatriated to their countries of origin and did not suffer from ill treatment<sup>51</sup>.

An Inter-ministerial Decree (Interior, Labour, Social Policies, Economy and Finance) will be soon signed. This Decree will confer the actual Lampedusa Centre the specific nature of a first reception and rescue facility, under Decree Law n. 451 of 30th October 1995, converted in Act n. 563/1995 (the so-called Legge Puglia). The new legal status of this Centre entails that the immigrants should stay in the Centre for a strictly necessary period and should be then transferred to an Identification

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<sup>51</sup> The measures taken following the landings of huge flows of illegal immigrants in Lampedusa that took place in October 2004 and March 2005, respectively, and had been organised in the slightest details by powerful criminal groups located in Libya were the basis for strongly blaming the national Administration. Italy was accused of serious violations of the international (and domestic) legislation on the treatment of foreign nationals, mainly as regards "respingimento" to Libya according to Art. 10 of the Consolidated Text on Immigration.



Centre (for the potential asylum seekers) or to a Temporary Stay Centre (for the potential expelled people), avoiding to overcrowd the Centre and create dysfunctions in providing services. Thus, the juridical status of the Centre will be progressively adapted to the function it has carried out all along under the growing pressure of the migratory flow. In this framework, the system of transfer of illegal immigrants will be improved with the purpose not to exceed the maximum capacity of the Centre (300 persons).

Among other initiatives undertaken in order to improve the hosting conditions of immigrants, it is worth mentioning the renewal of the agreement with the organisation « Misericordia», as well as the decision to purchase a land bordering on the Centre of Lampedusa in view of the construction of new sanitary infrastructures. In this specific regard, as for the hygienic services of this Centre, renovation works have been recently approved (ten new showers were built). Moreover, works for the improvement and re-adaptation of the Centre have been also approved in line with the proposals by the *Prefetto* in Agrigento and based upon a preliminary planning presented by the Civil Engineer Service in Agrigento. Within this framework, by a DCPM (Order - Protezione Civile n. 3476/2005), a delegate Commissioner was appointed in Lampedusa in order to work out all the activities aimed at acquiring adequate reception structures for the illegal immigrants. His task is to co-ordinate and to facilitate the connection among all the administrations concerned. Besides, another area has been identified where a provisional camp will be set up in cases of emergency for those immigrants waiting to be relocated.

Along with these urgent measures, the construction of a new Centre will also take place on an area so far occupied by barracks of the Army. By overcoming some resistances, this project has been finally accepted by the local community. The aim is to put the new centre in place before next year. Besides, a new Temporary Stay Centre will be established in Trapani and settled in the State property of Milo; it will be able to receive 200 people and the preliminary planning activities are being implemented. Furthermore, the following three initiatives will be undertaken with the aim of improving the hosting capacity on the island of Sicily: i. The construction in Porto Empedocle of a tensostructure for first aid and hosting-related activities. ii. The restructuring and re-opening of the centre in Agrigento. iii. The enlargement and rationalisation of the centre of Caltanissetta which will become a modern multi-functional structure for the management of the migratory flows.

Further to the specific request to establish a unit accountable to the *Questura* of Agrigento at the CPTA of Lampedusa Island, the Ministry of the Interior has already ordered to increase the State Police personnel at Lampedusa Temporary Stay and Assistance Centre. With a view to streamlining the administrative procedures concerning the identification of foreign nationals and to ensuring that the foreign nationals present in the centres are correctly informed about their rights in compliance with the immigration and asylum legislation, it should be noted that the competent Administration has already ordered to increase the police personnel at Lampedusa Temporary Stay and Assistance Centre to perform the tasks connected with the arrival of illegal immigrants to the Island.

Along these lines, with specific regard to the activities carried out by Carabinieri forces, it is worth mentioning that the Carabinieri Division based on the Lampedusa Island has been deployed to perform only surveillance activities within and around the reception Centre. Their tasks focus on guaranteeing public order within the community; preventing possible escapes and episodes of violence among host residents who are not EU citizens, etc.. The administrative tasks (identification



and photo-cataloguing) and the investigative ones linked to the landing of people on the coasts are carried out by the State police.

Among the initiatives improving the stay conditions of immigrants in the Lampedusa Centre, with specific regard to the health and psychological assistance actually offered in the Lampedusa Centre, the convention for the management of the structure, in force for the year 2006, clearly sets forth the characteristics of the medical Centre, which in case of a number of 500 people hosted provide for a 24h/24 presence of a doctor and a medical service with professional personnel and ambulances. In case of particular pathologies, the medical personnel of the Centre shall get immediately in contact with the Lampedusa *Poliambulatorio* (health-care centre) and, if necessary, the patients will be transferred to the closest hospital by helicopters.

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

As already explained, in order to effectively apply the 1951 Geneva Convention concerning the recognition of the refugee status, Art. 32 of Act n. 189/2002, first and foremost, makes a distinction, as to the **Centres for the stay of the asylum-seekers, namely Identification Centres and the Temporary Stay and Assistance Centres (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.

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<sup>52</sup>. This network can host, up to 3250 units - calculated including also the reception capacity of the other governmental

<sup>52</sup> As a matter of fact, they are “Non-governmental Reception Centres” established in compliance to Art. 2 of Legislative Decree n. 451/1995 as turned into Act n. 563/1995 (the so-called “Legge Puglia”) in order to ensure a first aid to immigrants illegally arrived in Italy.

Reception Centres established in the Country, in order to expeditiously deal with emergencies. Moreover, the Ministry of the Interior has envisaged to supply the existing Centres with prefabricated structures<sup>53</sup>.

As to Reception Centres, the provisions in force - Decree Law n. 451/1995, converted by Act n. 563/1995 - authorise the Ministry of the Interior to provide for assistance measures and prompt action, *inter alia*, by means of adequate infrastructures, in order to ensure first-aid to the irregular foreigners, waiting for their identification, or eventually, for their expulsion. In particular, Art. 14, sub§1, of the Consolidated Text - Legislative Decree n. 286/1998 (as amended and integrated by Act n. 189/2002) sets that the stay can be arranged in the closest Centre, provided its availability. Such integration to the previous system allows to arrange the accommodation 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.

As to the respect for human rights of migrants hosted in the Temporary Stay and Assistance Centres (CPTA), the Ministry of the Interior (Department for Civil Liberties and Immigration) drafted in the year 2002 **“Guidelines” to better manage the Centres for immigrants**<sup>54</sup>. 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, monitoring: the respect for the different cultural, ethnic, religious and linguistic membership; adequate social and health assistance and psychological support<sup>55</sup>; legal counselling and orientation (including the entitlement to free legal aid - the State provides a lawyer to indigents - Art. 97 c.p.p., an interpreter and a cultural mediator, etc.)<sup>56</sup>; best standards in the provision of personal services (personal hygiene, food, laundry, etc.) in view of a decent daily stay. Moreover, during the SARS alert (2004/2005), the Ministry of the Interior has used *ad hoc* containers in order to hospitalise the suspected cases or those patients who suffered from potentially infectious pathologies. These Prefectures, on their own, must supervise the correct functioning of the Centres,

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<sup>53</sup> The CPTA for immigrants are aimed at the stay of Non-EU citizens, as envisaged by the “Testo Unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero” (Legislative Decree n. 286/1998) as amended and integrated by Act n.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; Crotona; Ragusa. As to the living standards and, more generally, to the respect for human rights at the Centres, they are set by the cited “Testo Unico” and by the Ministerial Decree, the latter renamed “the Bianco Directive (30/8/2002)”.

<sup>54</sup> In order to further improve the security level of CPTAs, on 15 May 2005 a Directive was issued by the Minister of the Interior, containing *ad hoc* “Guidelines concerning fire prevention and other risks in Multifunctional Centres for immigrants”. This Directive was published on the website of the Department ([www.mininterno.it](http://www.mininterno.it)).

<sup>55</sup> In this field, for example, steps were taken to provide CPTAs with container modules for the care of patients suspected to be suffering of transmissible diseases and a cooperation was started with the Agency “Medici Senza Frontiere” in order to assist medical and personnel of managing bodies in case of landings of illegal immigrant on the coasts of Lampedusa and Ragusa.

<sup>56</sup> The “Guidelines” obligate the Managing Bodies to ensure, in the framework of the **personal general care services** to be indicated by law in all Agreements, “information on the legislation concerning immigration and the rights and duties of aliens. This regulation assimilates the contents of Directive 30 August 2000 (the so-called “Direttiva Bianco”) providing, among the civil rights ensured to hosts in CPTAs, the right to information on the aliens’ legal and stay conditions, to avail him/herself of private or free legal aid, as well as general information on the character of the structure where a third-country citizen is detained and on the rules of civil living together applied in it.

particularly the respect for fundamental rights of immigrants, in line with the Directive of the *ad interim* Minister of the Interior, Hon. Bianco, adopted on August 30, 2000.

Within this framework, it is worth noting therefore that the above mentioned Bianco Directive envisaged that “the representatives of Italy-based UNHCR, under authorisation 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 sense all episodes of alleged ill-treatments denounced by hosts in CPTAs were the object of accurate and independent investigations by the Judicial Authority that were carried out according to the criteria of the existing legal system. This provides the granting of a permit of stay for “justice reasons” to third-country citizens pending resolution of the criminal trial that suspends the expulsion order up to the relevant judicial resolution. It ought to be stated in advance that the access to Temporary Stay and Assistance Centres for illegal immigrants is allowed to members of the Parliament in respect of the functions related to their institutional mandates.

The set of rules regulating other actors entitled to access these structures is contained in the Regulation implementing the Consolidated Text - Legislative Decree n. 286/1998 (as amended and integrated by Act n. 189/2002), Presidential Decree n. 394/1999, and its Art. 2157 in particular. This Article clearly indicates the typologies of the persons entitled to access these centres, namely: management staff members, police forces, competent judges, police authorities, cohabitant relatives, solicitors of detained and hosted persons, ministers of religions, staff members of diplomatic or consular missions, members of volunteer associations and social cooperatives entitled to carry out assistance activities under the terms of Art. 22 of Presidential Decree n. 394/1999 or on the basis of *ad hoc* Projects of cooperation agreed with the *Prefetto* of the Province where the Centre has been established. This provision is justified by the need for the protection of the fundamental rights and freedoms of detained persons including the respect for privacy.

With reference to the request of acceding to the *Lampedusa* Centre made by the UNHCR representatives, it is worth mentioning that this request was accepted. The authorisation for the request made on 4 October 2005 was granted two days later, on 6 October 2005, for the above mentioned reasons. It was deemed that the risks for the safety of the individuals (foreign nationals and personnel) was extremely high and the maintenance of law and order must be considered a priority vis-à-vis the two-day delayed access. Moreover, the Lampedusa Centre was often visited by members of Italian or foreign institutions. It was last visited by a Delegation of the European Parliament members on 15 and 16 October 2005. This visit follows that one made on 28 June by a delegation of European Parliament members belonging to the left-wing party. The Centre was also visited recently by the Council of Europe Commissioner on Human Rights, Mr. Gil Robles and by the UN Special Rapporteur on Human Rights of Migrants, Ms. Rodriguez Pizarro (visit in June 2005), as well as by Italian Parliament members.

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 for Civil Liberties and Immigration at the Ministry of the Interior, 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.

As it concerns the direct involvement of organisations such as UNHCR, IOM and the Red Cross in the CPTAs management, it must be outlined that, according to Commissioner Gil-Robles suggestions, the Minister of the Interior has proposed them to collaborate on migratory flows to Lampedusa. Through a permanent table within the same Ministry, a pilot model will be defined for Lampedusa and eventually implemented in other sites. *Ad hoc* bilateral Agreements between the Administration of the Interior and the three organisations (UNHCR, IOM, Italian Red Cross) are under definition, with a view to regulate the cooperation and information contributions offered to illegal immigrants just landed on the Italian coasts, by these NGOs. Moreover, in order to carry out information activities addressed to third-country citizens landed in Italy in the respect of the specific institutional competencies, the opportunity to start up local units of the three NGOs in the surrounding of the Centre of Lampedusa (AG) is under evaluation. Furthermore these actors have presented a project within EU Programme ARGO 2005 in order to manage migratory flows to Lampedusa in emergency conditions. They are elaborating other projects finalised to unaccompanied minors.

On 13<sup>th</sup> December 2000 the agreement between Italy and **Libya** on the fight against terrorism, organised crime, drug trafficking and illegal immigration was signed in Rome. The agreement is in force since 22<sup>nd</sup> December 2002 (Official Bulletin of the Italian Republic n. 111, 15<sup>th</sup> May 2003). On this basis, the two Ministers of the Interior started several consultations, especially in the second semester of the year 2003, with the aim of implementing a programme of technical cooperation for the Libyan authorities and various forms of collaboration to combat illegal immigration. The aim is to improve Libyan institutional capacities in the management of immigration and to provide the Libyan law enforcement officials with a more effective training in compliance with the European standards. The terms of this co-operation are well known.

The Ministry of the Interior website reports several press releases (among others, the following press releases from the Italian Minister of the Interior, Hon. Pisanu, dated 27<sup>th</sup> September 2004; 12<sup>th</sup> October 2004; 25<sup>th</sup> November 2005; and lastly 19<sup>th</sup> January 2006) on the co-operation with Libya in the field of migration ([www.interno.it](http://www.interno.it)). Moreover, the Minister of the Interior has provided detailed information on this bilateral collaboration before the Parliament (hearings of 8<sup>th</sup> October 2004 and of 29<sup>th</sup> June 2005). Again before the Parliament, and prior to the cited interventions of the Minister Pisanu, two Undersecretaries of State, Hon. Ventucci and Hon. Antonione, explained the terms of reference of such agreements (see resumés of the following Parliament sessions: on 19<sup>th</sup> June and 10<sup>th</sup> December 2003). In fact, initiatives were initiated in the following areas: i. Vocational training; ii. Assistance for returning illegal migrants to Third Countries; iii. Supply of goods and services; iv. Setting up of detention centres for illegal migrants according to European standards; v. Operational and investigative cooperation.

Moreover, it is worth mentioning that almost all foreigners returned to Libya - after “respingimento” according to Art. 10 of the Consolidated Text on Immigration - have Egyptian nationality. Every return to Libya has implied the planning and monitoring - by Italy - of the taking away of the people concerned to their Country of origin. All the operations were been carried out in due time. Egyptian Authorities confirmed the nationality of their citizens and granted them readmission in the State through Libyan borders. No cases of ill-treatment were reported, neither in Italy nor at our Embassy in Tripoli.

Actually, Italy has urged the European Union to pay more and more attention to the Libyan situation, since nowadays Libya represents the most important transit basin of migration flows towards Europe. On 3<sup>rd</sup> June 2005, JHA Council approved some Italian proposals and adopted a final document (ASIM 24 RELEX 291) with the aim of starting a dialogue and promoting co-operation between EU and Libya. Such a document reflects the action carried out by Italy and envisages a number of initiatives already undertaken at bilateral level.

For a long time Italy has been supporting the Libyan commitment aimed at intensifying cooperation in the field of migration, on the basis of a careful evaluation of the various policies concerning Arab and African Countries in relation to the treatment of foreign citizens. Arab-Libyan and African policy is based on the spirit of co-operation with those Countries and on the absolute absence of oppressive intentions towards illegal migrants. In the last years, the Libyan Government adopted a series of actions aimed at revitalizing the Organisation of the African Unity and at developing initiatives to sustain neighbouring Countries. In this context, it is worth mentioning, for example, the COMESSA Forum (community of Sahel and Saharan States), as well as the panhandle for humanitarian assistance to Darfur populations through Bengasi, Kufra Oasis and the paths of the desert connecting Sudan.

Recently, Italy - in co-operation with IOM (International Organisation for Migration) - is developing a project called “Through Sahara”, financed with AENEAS funds for developing regional co-operation as well as improving the institutional capacity of Libya and Niger in the field of border management and of the fight against illegal migration.”





