EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX
CFR-CDF

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN **ITALY**

IN 2005

submitted to the Network by **Bruno NASCIMBENE***

on 15 December 2005

Reference: CFR-CDF/IT/2005

The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union

* This report was prepared by N. Bassi, P. Bonetti, G. Boni, M. Cartabia, M. Gennusa, E. Lamarque, C. Leone, L. Marin, C. Martinelli, C. Perini, E. Pomarè, B. Randazzo, S. Sciarra, M. Tanzarella, D. Tega, G. Tiberi, T. Vettor, G. Vigevani under the direction of M. Cartabia and B. Nascimbene

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Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Florence Benoît-Rohmer (France), Martin Buzinger (Rép. slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (suppléant Birgitte Kofod-Olsen) (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyse (Luxembourg), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. Tchèque), Edita Ziobiene (Lituanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice, Freedom and Security), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (substitute Birgitte Kofod-Olsen) (Denmark), Henri Labayle (France), Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moyse (Luxembourg), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ilvija Puce (Latvia), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Pavel Sturma (Czech Republic), and Edita Ziobiene (Lithuania). The Network is coordinated by O. De Schutter, with the assistance of V. Van Goethem.
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CHAPTER I . DIGNITY

Article 1. Human dignity

Legislative initiatives, national case law and practices of national authorities

During 2005 several laws were enacted relating to the implementation of human dignity: legge (2005, n. 74) "Concessione di un contributo volontario a favore del Fondo delle Nazioni Unite per le vittime della tortura" [Law (2005, no. 74) providing a voluntary annual contribution to the United Nation fund for victims of torture]; legge (2005, n. 148) "Misure urgenti di sostegno nelle aree metropolitane per i conduttori di immobili in condizione di particolare disagio abitativo conseguente a provvedimenti esecutivi di rilascio" [Law (2005, no. 148) providing urgent support to tenants in metropolitan areas who have been evicted from houses that they rented]. This legislation aims to provide support to people obliged to leave their rented houses. These people must fulfil the following conditions: belong to the low income bracket, be or have a) relatives with physical disabilities, b) be over 65 years old; legge (2005, n. 229) "Disposizioni in materia di indennizzo a favore dei soggetti danneggiati da complicanze di tipo irreversibile a causa di vaccinazioni obbligatorie" [Law (2005, no. 229) providing indemnity for people who have been irreversibly harmed due to mandatory vaccinations]. This legislation guarantees compensation to these persons, even in the case of the death of a relative; legge (2005, n. 123) "Norme per la protezione dei soggetti malati di celiachia", [Law (2005, no. 123) grants protection to subjects affected by celiac disease]. This legislation recognizes that celiac disease is a social disease and it aims to facilitate the normal insertion of people suffering from coeliac disease into social life, working and sporting activities (art. no. 2).
The Chamber of Deputies has approved a bill (A.C. no. 4129) that aims to extend the judiciary guarantees assured to people who are subject to discrimination in working fields because of disability in every sector of social life. That bill will be now examined by the Senate.

Article 2. Right to life

Euthanasia

Legislative initiatives, national case law and practices of national authorities

Notwithstanding the fact that the Italian Parliament has continued to examine, since 1984, bills about the "legalisation" of euthanasia, no legislation was enacted in 2005. Since May 2004 the Italian Parliament has also started to discuss a bill (A.S. no. 2943) regarding the so-called biological testament, approved by the Comitato nazionale di Bioetica [National Committee of Bioethics]. This bill recognises legal value in an individual's prior choice to undergo or not medical treatment in the case when a subsequent illness leads to incapacity to reason.

Reasons for concern

Also during the year 2005 cases of euthanasia (passive and, above all, active) have emerged, practised on elderly or terminal patients by medical staff, nurses, relatives. Recently public debate has been stirred up again by statements made by Umberto Veronesi, the former Health Minister, who openly supports the need for legislation regulating euthanasia.

Domestic violence

Positive aspects

The Ministry of Equal Opportunities has sponsored the creation of a toll-free hotline for women who are victims of domestic violence which will come into operation at the beginning of 2006.

Reasons for concern

No updated official data about domestic violence is available for 2005. One of the main reasons for concern remains the difficulty women have in revealing domestic violence. Italian NGOs like "Telefono rosa" [Pink Telephone], a voluntary association which provides a hotline through which abused women can obtain legal assistance, or Artemisia, affirm that domestic violence is a widespread phenomenon in the country: 35% of the calls received (more than 15,000 received only by Artemisia in recent years) involves physical violence at home, more than 41% of the calls reveals psychological violence. A national survey (from a sample of 20,000 women) has highlighted that 51.9% of women have been victims of sexual assaults, 27% of physical offences and 67% of psychological violence. In 77% of the cases the person responsible for these offences has been the victim's partner or a relative.

Other relevant developments: medically assisted procreation

Legislative initiatives, national case law and practices of national authorities

The legge "Norme in materia di procreazione medicalmente assistita" (2004, n. 40) [Law (2004, no. 40) about medically assisted reproduction] has been put to a referendum in order to repeal the legislation (12-13th June 2005). The referendum did not reach the necessary quorum and the law remains valid. In July 2005 Cagliari Civil Court challenged art. no 13 of law no. 40 (denying the possibility of embryo pre-implantation diagnosis) before the Constitutional Court.

Reasons for concern

Since the beginning of 2004 many Italian couples that do not fulfil the requirements requested by the aforementioned law or that prefer another kind of treatment of medically assisted reproduction have decided to go abroad, the so-called "reproductive tourism", especially to Spanish hospitals (eg. in Barcelona)

Article 3. Right to the integrity of the person

Breaches of the right to the integrity of the person

Legislative initiatives, national case law and practices of national authorities

The Parliament is still examining a bill (A.C. no. 414) about the prevention and prohibition of female genital mutilation. The Chamber of deputies is called at the final approval of the bill after the Senate voted the bill on 6th July 2005.
On 19th October 2005 Italy signed the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research. The Protocol is to cover the full range of biomedical research activities involving interventions on human beings. It is important to note that pharmaceutical research is not the only field of biomedical research to be addressed by the Protocol. New methods of treatment, diagnosis, and prevention may also require research on human beings. Research on embryos and foetuses in vivo, and pregnant women is to be covered by the Protocol. The fundamental principle for research involving human beings, as in the Convention itself, is the free, informed, express, specific, and documented consent of the person(s) participating. It is foreseen that the Protocol will address issues such as risks and benefits of research, consent, protection of persons not able to consent to research, the scientific quality, independent examination of research by an ethics committee, information to be

submitted to the ethics committee, information for research participants, confidentiality and the right to information, dependent persons, undue influence, safety, duty of care, and research in states not Party to the Protocol.

Reasons for concern

The Ministry for Equal Opportunities has recently urged for a quick transformation into law of the bill about the prevention and prohibition of female genital mutilation. Indeed in the country there are over 40,000 women that have suffered genital mutilation. Each year at least 6,000 children between 4 and 12 years old undergo that violence.

Rights of the patients

Legislative initiatives, national case law and practices of national authorities

The Parliament enacted the legge (2005, n. 219) "Nuova disciplina delle attività trasfusionali e della produzione nazionale degli emoderivati" [Law (2005, no. 219) providing a completely new regulation about blood transfusion and blood derivatives]. The new legislation aims to assure a more effective protection of citizens' health, uniforming conditions of blood transfusion all over the national territory and the development of transfusion medicine. On 9th November 2005 the supervisory authority the "Garante per la protezione dei dati personali" [Italian Data Protection Authority] adopted measures to be followed to assure the respect of individual privacy also inside all medical structures (e.g. at the emergency units patients have to be called by a number and not calling loudly the surname; it is only possible to give information about a patient's health to others on the basis of that specific patient's consent; medical staff cannot prescribe medicine or issue certificates without respecting the privacy of individual).

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

Conditions of detention and external supervision of the places of detention

Penal institutions and institutions for the detention of persons with a mental disability

Legislative initiatives, national case law and practices of national authorities

The Chamber of Deputies is still discussing a bill[1], last emended in June 2005, about the creation of a Committee called "Garante dei diritti delle persone detenute o private della libertà personale" (Rights inmates Authority), Committee aimed to promote the rights of inmates (e.g. verifying the respect of inmates' human dignity and fundamental rights also relating to the health and conditions of the penal institutions' building).

Good practices

Since 2004 Rome, Bologna, Florence, Milan and Turin's Town Councils have established a new authority that guarantees the rights of inmates, and it is called "Garante per i diritti dei detenuti".
In a few penal institutions inmates are involved in theatrical performances that may even take place outside the confines of the institution.

[1] Testo unificato delle proposte di legge A.C. 411, A.C. 3229, A.C. 3344, 26 febbraio 2004.

Reasons for concern

The situation of overcrowded penal institutions has not improved in 2005 (56,532 convicted people in a prison system designed to hold 42,100), characterized by the lack of staff members, the lack of health assistance (almost 17,000 inmates are drug addicts, 10,000 suffer from mental illness, 10,000 suffer from infectious diseases, scabies, syphilis and tuberculosis), and for the high level of self-harming (during the year 91 inmates died, and 51 committed suicide). During 2004 the juvenile population increased: last year there were 965 entries of foreign minors, 60.5% of the total. 31% of inmates are foreigners (17,783). 95.3% are men and only about 2,551 women. Almost 54% of the inmates population is between 25 and 39 years old. The average inmate is male, Italian and 30/35 years old.
27% of inmates (15,329) are drug addicts and 2.1% are alcoholics, one inmate out of three has addictions: 77% are Italian and 23% are foreign. On the basis of data from the Ministry of Justice 1,383 inmates are HIV positive (the test is on a voluntary basis, the number affected by HIV could indeed be underestimated).
During the year a large number of criminal trials against staff members in penal institutions charged with ill treatment (e.g. sexual, physical or psychological abuse) were discussed. At least six cases out of the total number were related to the death of inmates, which took place in controversial circumstances between 1997 and 2004.

Centres for the detention of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to Italy from 21 November to 3 December 2004. It was the Committee's fourth periodic visit to Italy. During the visit, the delegation examined the conditions of detention and the safeguards offered to foreign nationals held at the temporary holding centres in Sicily. Further, it examined for the first time, the practical implementation in Italy of the procedure for applying an “involuntary medical treatment” (TSO) to psychiatric patients. The delegation also reviewed the conditions of detention during police custody, as well as the safeguards offered to persons detained by law enforcement agencies. In addition, it followed up the CPT’s recommendations concerning prison overcrowding and prisoners subject to the so-called “Article 41-bis regime”. In the course of the visit, the delegation held consultations with the Italian authorities who announced the closure of the Temporary Holding Centre for Foreigners at Agrigento, following an immediate observation made by the delegation.

1) The UNHCR in March 2005 said it was deeply concerned about the chain of events leading up to Thursday's deportation of some 180 people aboard two flights from the Italian island of Lampedusa to Libya, with an Italian police escort. UNHCR also said it deeply regrets the lack of transparency which has surrounded these events. As a result, suspicions that there may have been breaches of international refugee law will be hard to put to rest. UNHCR, which had sent a senior staff member to Lampedusa, had requested access to the reception centre, in order to ensure that anyone who wished to make an asylum claim had the possibility to do so, and that any claims that were made are properly and fairly assessed. That request, which was made in accordance with UNHCR's mandate to protect refugees — including access to asylum-seekers and monitoring of asylum systems — has so far been refused by the Italian authorities. During a very similar episode last October, UNHCR was eventually permitted to enter the Lampedusa centre, after more than 1,000 people had been flown back to Libya. UNHCR believed that on that occasion the rushed methods used to sort out people by nationality meant that individuals who might have had a valid claim did not receive a proper assessment. UNHCR said it fears that the same concerns may apply to this week's developments in Lampedusa. Libya has not signed the 1951 UN Refugee Convention, and does not have a functioning national asylum system. There is a risk that refugees in need of international protection may be sent back from there to their homeland. Over the past 10 years, Italy has received an average of around 11,000 asylum claims per year — one of the lowest annual totals among the big EU countries. UNHCR stands ready to

work with the Italian and Libyan authorities on developing approaches that would better reconcile concerns over irregular migration with the right to seek asylum and the obligation to provide protection to refugees.

2) A delegation comprised of 12 members of European Parliament, members of the Committee for Public Freedom of the European Parliament, travelled to Lampedusa to visit the temporary holding centre on the island. Before the visit, the EP delegation questioned the local Italian authorities for more than two hours to obtain additional information relating to the centre. In October 2005, the report by the delegation expressed concern about the deportation of immigrants to Libya ordered by the Italian government; it stated that the living conditions in the centre were deplorable and totally inadequate to the considerable flow of people in Lampedusa; it declared that the Italian authorities have demonstrated a lack of transparency regarding access to the documents certifying the legal status of the individuals detained at the centre, and therefore, the delegation is waiting to receive additional information from the Italian Ministry of the Interior regarding the individuals present at the centre and the deportation orders; and finally, it asked, in the name of the Freedom Committee, that the European Commission prepare a report to the European Parliament on the mission that the Committee has undertaken in Libya to assess the conditions of the immigrant detention centres.

Legislative initiatives, national case law and practices of national authorities

In Italy there are 16 detention centres, Centri di Permanenza Temporanea e Assistenza (CPTA) or Centri di Identificazione for asylum seekers (CDI): CPTA Torino “Brunelleschi”, CPTA Milano “Via Corelli”, CPTA Modena “La Marmora”, Bologna “Enrico Mattei”, CPTA Roma “Ponte Galeria”, CPTA San Foca di Melendugno “Regina Pacis” (Lecce), CPTA Restinco (Brindisi), CPTA Lamezia Terme “Malgradotutto”, CPTA Caltanissetta “Pian del Lago”, CPTA Agrigento “Contrada S. Benedetto”, CPTA Trapani “Serraino Vulpitta”, CPTA Lampedusa, CPTA/CDI Borgo Mezzanone (Foggia), CDI Bar-Palese (Bari), CDI “Don Tonino Bello”, Otranto (Lecce) and CDI “S. Anna”, Crotone. Detention centres in Italy are always run by not for profit organizations, such as the Italian Red Cross or Misericordie or Fiamme D’Argento (which draw together retired Carabinieri, Italian policemen).
In 2005, the situation in the temporary detention and assistance centre set up on the island of Lampedusa approached crisis levels. In fact, according to the information that the Ministry of the Interior reported to the Chamber of Deputies on 10 November 2005, despite the fact that Centre has a total capacity to accommodate 156 individuals, in the first 11 months of 2005 it had to accommodate 11,000 illegal immigrants who landed on Italian shores from ships and boats or had to be rescued by Italian military vessels, most of whom were making the trip from Libya. This has precipitated to an inhuman and degrading situation in the treatment of the foreign nationals, has led to the risk of hasty trials without the requisite legal guarantees and the resulting deportation of foreigners from other nations to Libya.
On 7 October 2005, the weekly magazine L'Espresso published a report by Italian journalist Fabrizio Gatti, in which he wrote about the time that he spent in Lampedusa "reception centre" after jumping into the sea and pretending to be an 'illegal' Kurdish immigrant from northern Iraq named Bilal Ibrahim el Habib in order to be detained.

Gatti's account of the week (from 23 to 30 September 2005) that he spent inside the centre details the problems that migrants face during their stay.
In the report by the Ministry of the Interior to the Chamber of Deputies on 10 November 2005 and in subsequent parliamentary hearings held by the directors of the Ministry of the Interior, it was declared that legal and administrative investigations on the events reported by the journalist were underway and it also announced implementation of a comprehensive restructuring plan of the Lampedusa centre, which will be transformed into a first-aid and preliminary reception centre in which the foreigners stopped or rescued at sea will be temporarily housed for several hours while awaiting photographic record and clarification of the legal status of those applying for asylum or mere illegal immigrants. In addition, the Ministry has announced that it has decided to increase the accommodation capacity of the Sicilian centre by setting up a temporary structure in Porto Empedocle for first aid and preliminary reception activities. A second part of the plan includes restructuring and reopening the centre in Agrigento and expanding and streamlining the centre of Caltanissetta, which will become a modern, multifunctional structure for the

control of illegal immigration. Furthermore, the government has extended the state of emergency in Lampedusa and the Ministry of the Interior intends to propose the name of an extraordinary state commissioner to supervise this situation.

Fight against the impunity of persons guilty of acts of torture

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In recent years the Human Rights Committee and the Committee against Torture have often criticised Italy for not having enacted a complete legislation against torture.

Legislative initiatives, national case law and practices of national authorities

Since 2001 the Chamber of Deputies has started the discussion about eight bills relating to the crime of torture. A new text has been "frozen" for one year and a half at the Justice Commission of the Chamber (A.C. no. 1948) "Introduzione dell'articolo 593 bis del codice penale concernente il reato di tortura" [Bill no. 1948, introducing the crime of torture at article no. 593 bis of the penal code].
The Parliament in 2005 enacted the legge (2005, n. 74) "Concessione di un contributo volontario a favore del Fondo delle Nazioni Unite per le vittime della tortura" [Law (2005, no. 74) providing a voluntary annual contribution to the United Nation fund for victims of torture].
On 6th April 2005 the trial against 29 policemen began, including a number of senior officers charged with perjury, conspiracy, or assault in connection with a 2001 police raid on a building used by protesters at G-8 summit in Genoa.
On 9th March 2005 a trial began in the Court of Cassation against 31 policemen charged with unlawful imprisonment and assault based on evidence of their conduct during protests in Naples in 2001.

Reasons for concern

The Italian Parliament has not yet enacted a legislation against torture in spite of the ratification of the UN Convention against torture (1988); indeed Italy has not yet introduced in the penal system the crime of torture and it has not yet implemented the additional protocol of the aforementioned Convention

Protection of the child against ill-treatment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

UN Committee for children human rights has repeatedly expressed worries about presumed ill-treatment against non European children, e.g. Romany.

Legislative initiatives, national case law and practices of national authorities

In 1998 the Italian Parliament established a parliamentary Commission[2], consisting of members of the Chamber of Deputies and the Senate, to discuss the implementation of children's rights. In 2004 the Commission decided to propose the creation of Garante per l'Infanzia to the Italian Parliament. The bill (A.S. no. 2461) is still under the examiunation of the Senate. However legislation of several regions (e.g. Abruzzo, il Piemonte, l'Umbria, la Puglia, il Veneto, il Friuli Venezia Giulia, le Marche ed il Lazio) yet has provided this kind of Authority.

[2] Established by Legge 23 dicembre 1997, n. 451.

Positive aspects

In 2002 Italy established a Committee to evaluate juvenile problems ("questione minorile") in the European Union which aims to promote comparative studies about member states' legal systems and tools for the protection of children 's rights.

Good practices

Over the last 13 years since the tragedy of Chernobyl, Italy has given accommodation and support to almost 300,000 ill children from Belarus who need to spend some time receiving medical treatment and enjoying a healthy environment.

Reasons for concern

During the year the NGO Telefono azzurro (Blue Telephone), which provides two toll-free hot lines for reporting incidents of child abuse, received approximately 35,000 calls related to child abuse. About 6% of cases were related to sexual abuse, 16% to physical violence and 12% to psychological violence. In 58% of the cases the victims were female, 44% were 10 years old or even younger. In the first part of the year the judicial authorities registered 349 allegations of sexual abuse against minors and accused 392 persons of abuse.

Article 5. Prohibition of slavery and forced labour

Trafficking in human beings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children against Trans-national Organized Crime, adopted on 25th December 2003 has not yet been ratified by Italy.
The Committee on the elimination of discrimination against women (10-28 January 2005), considering Italy reports, has encouraged the Government to ratify a treaty which is not yet a party as the International Convention on the Protection of the rights of all migrant workers and members of their families. The Committee has urged Italy to take effective measures to accord priority attention to the adoption of comprehensive measures to address violence against not only women but in particular against vulnerable groups of women, including Romany and other migrant women.

Legislative initiatives

The legge (2003, n. 228) "Misure contro la tratta di persone" [Law (2003 no. 228), Measures against trafficking persons], following the UN's requests for harmonization, prohibits trafficking in persons. That legislation provides for sentences up to 20 years' imprisonment for trafficking in persons and for enslavement. For convictions in which the victims were minors destined for prostitution, sentences were increased by one-third to one half.
On 8th June 2005 Italy signed the Council of Europe Convention on action against trafficking in human beings.

Practices of national authorities

Several police operations, called "Quarantino- Martorano" (November 2004) in 26 different cities, "Salib"(January 2005) in Crotone, "Nuova era" (May 2005), "Balkan gate" (June 2005) in Catanzaro and "Rima" (July 2005) in Catanzaro, permitted the arrest of more than 300 persons trafficking in human beings for various purposes.

The Government is also cooperating with foreign governments, including Nigeria, Ukraine, Moldova and Romania in order to fight organisations against the recruitment of clandestine immigrants for sexual exploitation.

Positive aspects

The Government provides legal and medical assistance once a person is identified as having been trafficked. There are shelters and programs for job training and also assistance and incentive programs for those willing to return to their home country. Italian legislation creates a separate budgetary category for victim assistance programs and empowers magistrates to seize convicted traffickers' assets to finance legal assistance, vocational training and other social integration assistance to trafficking victims. The Department for Equal Opportunities financed, between 2000 and 2004, 296 social protection projects addressed to 6,781 victims. More than 10,637 victims have been helped by the social services.

Good practices

A toll free hotline, "Numero verde Antitratta" (hotline Anti-trafficking), has been created since 2003. It has received more than 25,949 calls.

Reasons for concern

Italy is an important destination and a transit point for trafficked persons mainly for sexual and working exploitation and child begging. Only in 2004 between 18,000 and 25,000 young women were victims of trafficking activities (International Organisation for migrations' data). Although official updated statistics are not available, estimated traffic persons are in the range of 2,000 per year. Almost 85-90% of the prostitutes are from Albania, Romania, and North Africa. Nearly 50% of persons charged with exploitation of prostitution are foreigners, from Albania, Former Yugoslavia, Nigeria and Eastern Europe. Chinese criminal organisations are focused on the exploitation persons of the same nationality, also minors.
NGOs have alleged that the Government often does not allow enough time between apprehension and deportation of illegal immigrants in order to screen for trafficking victims. The Shadow Report, an expression of several Italian women NGOs, alternative to the National Report on the implementation of the Beijing Platform of action in Italy, denounces the missing value of the guarantees model set by the legge (1998, n. 40) "Disciplina dell'immigrazione e norme sulla condizione dello straniero" [Law (1998 no. 40), Immigration's and foreigners conditions Act], from 2002 up to now by the policy changes on trafficking produced by the legge (2002, n. 189) "Modifica alla normativa in materia immigrazione e asilo" [Law (2002, no. 189), Amendments to Immigration's and foreigners conditions Act].

Protection of the child

Legislative initiatives, national case law and practices of national authorities

The Chamber of Deputies has approved a bill (A.C. no. 4599) regarding the fight against sexual exploitation and pedo-pornography, which was presented on 13th January 2004. Now the text is being examined by the Senate. The bill provides severe penal punishments. It must be considered quite satisfactory.

Reasons for concern

One of the main reasons of concern about child labour is the discrepancy between official data of the Labour Department, dating back to 2001, and Ires- Cgil (an Italian trade union) data of 2005. The 2001 data report 31,500 workers children, primarily within the family (between 7 and 14 years old), whereas 2005 data underline that there are 480,000- 500,000 working children.
Trafficking in children for sweatshop labour is a particular problem within the Chinese community who live in Tuscany where children are considered to be part of the family production unit. 4% of working minors declare to have left compulsory school before taking the secondary diploma, in spite of not having

reached 15 years old, the minimum age requested by Italian legislation to enter the working world. That percentage is particularly different from Ministry official data (0.1-0.5%).
One of the main reasons for concern about child pornography is that the Italian Parliament has not yet defined pedo-pornography. The most important international independent association for the promotion and protection of children's rights, Save The Children, affirms that the Italian bill is lacking in measures of prevention. The most important aim to be reached remains the more effective identification of victims. The Rainbow Telephone, a free-toll hotline, aiming to help children in difficulties, received up to 2952 calls in 2005 (the majority of calls were made by relatives, it is important to develop active calls by children). The data collected by Rainbow Telephone emphasised that 60% of children abused is between 2 and 8 years old and that the authors of abuses are often relatives (parents and uncles).
In Italy websites for child pornography and related crimes have quadrupled (423), Italy is in fifth place on the worldwide list.
In spite of the lack of updated official data, an independent survey conducted in 2003 estimated that there were between 1,800 and 3,000 minors working as street prostitutes, of whom 1,500 to 2,300 were trafficked into the country and forced into prostitution.

Exploitation of undocumented workers

Positive aspects

On the basis of Censis' (Centre for Social Studies and Policies) data during the first semester of 2005 189,836 contractors born outside the country work regularly in Italy. The migrants' crossing to self employment is emphasized by the constant growing of residence permits for self employment: a growth of 322.7%. In general concealed work (77% of home help, 59.2% of agricultural labour) since 2001 switched from 48% to 31%, on the basis of non official data. Official data instead affirms that only 15% of workers are involved in concealed work. The concealed firms diminishes to 9.7% of the total (the South of the country reduces the concealed firms almost of an half, switching from 34% to 17%).

Reasons for concern

On the basis of Ires (Institute for Economic and Social researches) data, 21.4% of minors, at least 1 minor in 5, between 11 and 14 years old, has experienced working activities. The percentage grows to 30-35% in the southern cities. 90% are Italians and 10% are from abroad (eg. China, Romania, Albania, former Jugoslavia, North Africa and Latin America). These percentages tally to 460,000- 500,000 minors. The working experiences are various, above all in restaurants, shops, agriculture, pedlars, and very exacting. Censis' data about concealed work affirms that if it is true that concealed firms are diminishing the number of regular firms that hire workers without contract are growing. But the most concerning datum is the growth of completely irregular occupation in concealed firms that goes from 12.9% in 2002 to 14.2% in 2005.
It is estimated that in the field of housework 37 workers out of 100 are working illegally

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention.

Legislative initiatives, national case law and practices of national authorities

With sentence no. 26798 of 28 June 2005, the Unified Penal Sections of the Court of Cassation declared that the failure to file the executive ordinance of a precautionary measure, of the request of the presiding judge and of the attached documents results in the invalidity - at intermediate regime - of the questioning of warranty of the accused due to violation of the right of defence and the resulting loss of efficacy of the measure (Articles 178 lett. c), 180, 182, 293 subsection 3, 294 and 302, Code of Criminal Procedure). The sentence upholds that this interpretation of Articles 293, 294 of the Code of Criminal Procedure is clearly indisputable, as, in consideration of all the characteristics of the context in which the documents governed by these regulations, it is the only one that can guarantee exercise of the right of defence pursuant to Article 24 of the Italian Constitution in one of its essential components, represented by the necessity for broad and consistent cognizance, a need recognized by the judgement of the laws and presently reiterated in Article 111 of the Italian Constitution.
Deprivation of liberty for foreigners

The First Criminal Section of the Court of Cassation, with the innovative sentence no. 22161 of 18 May 2005, established that the sentence against a foreigner deported from Italy by means of an administrative deportation order issued by the Prefect for irregularities of entry or stay can take the form of alternative measures to detention required by the penitentiary system. The Supreme Court reminds that the reformation objective of the penalty provided under Article 27 of the Italian Constitution does not allow introduction of discrimination among citizens and foreigners with residence permits, on the one hand, illegal immigrants on the other.
The regulations that concern the alternative measures "are prescribed to protect the dignity of the human person, who must be respected and protected regardless of the circumstances of legality or illegality of his or her stay in Italy". Any disparity of treatment would clearly fly in the face of the principles of equality and the precept of equanimity dictated by the Italian constitution.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

1) Law decree 62 of 17 August 2005, bearing additional measures to counteract episodes of violence during sports competitions, converted with amendments into Law 210 of 17 October 2005 (published in the *Official Gazette* no. 242 of 17 October 2005) envisages harsher penalties for individuals throwing blunt objects or invading the playing field when such actions result in injury to persons or when the sporting event must be suspended as a result of the vandalism. The new law also envisages use of nominative tickets and fines of Euro 2,500 to Euro 10,000 for unauthorized sale of tickets. The fine can be raised to Euro 15,000 if the tickets are scalped at prices higher than face value.

2) Law Decree no. 144 of 27 July 2005 bearing urgent measures to counteract international terrorism, converted with amendments into Law 155 of 31 July 2005 (published in the *Official Gazette* no. 177 of 1 August 2005) envisages a series of measures that aim to bolster security, by reducing personal freedoms where necessary.

Reasons for concern

The new provisions introduced by Law decree 144/2005 in the sphere of anti-terrorist measures conjure up doubts about the constitutional legitimacy and are defined as follows:

1) public safety authorities are entitled to order detainment of suspects for the purposes of checking identification without the need for a prior or subsequent order by the judiciary, breaching the due process guaranteed under Article 13 of the Constitution.

2) public safety authorities wield ample discretion in issuing residence permits for reasons of prevention of terrorism and in adopting deportation for reasons of prevention of terrorism, for which there is no possibility to file an appeal to stay or suspend the order.

Article 7. Respect for private and family life

Private life

Criminal investigations and the use of special or particular methods of inquiry or research

Publication of photographs of a person subject to criminal proceedings .
European Court of Human Rights, Judgment 11 January 2005, *Sciacca v. Italy (Application no. 50774/99),*
The case: The applicant, Carmela Sciacca, is an Italian national who was born in 1948 and lives in Syracuse (Italy). She was prosecuted for criminal conspiracy, tax evasion and forgery of public documents. A photograph which tax inspectors had taken of her and released to the press was published in two daily newspapers. The applicant submits that the dissemination of the photograph at a press conference organised by the public prosecutor's office and the tax inspectors infringed her right to respect for her private life, contrary to Article 8.
The judgement : The Court has held that there has been a violation of Article 8 of the European Convention Of Human Rights. The Court has already examined the question of the publication of photographs of public figures (see *Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004-VI) or politicians (see *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002). After concluding that the publication of photographs fell within the scope of private life, it examined the question of the respondent State's compliance with the positive obligations incumbent on it when the publication was not the result of action or co-operation on the part of State bodies. The present case differed from previous ones in that the applicant was not someone who featured in a public context (public figure or politician) but the subject of criminal proceedings. Furthermore, the published photograph, which had been taken for the purposes of an official file, had been given to the press by the Revenue Police.
Regarding whether there has been an interference, the Court reiterates that the concept of private life includes elements relating to a person's right to their picture and that the publication of a photograph falls within the scope of private life (see *Von Hannover*, §§ 50-53). It has also given guidelines regarding the scope of private life and found that there is "a zone of interaction of a person with others, even in a public context, which may fall within the scope of 'private life'" (ibid.). In the present case the applicant's status as an "ordinary person" enlarges the zone of interaction which may fall within the scope of private life, and the fact that the applicant was the subject of criminal proceedings cannot curtail the scope of such protection.
Accordingly, the Court has concluded that there has been interference. As regards compliance with the condition that the interference must be "in accordance with the law", the Court has noted that the applicant argued that this condition had not been complied with and that her submission was not disputed by the Government. According to the information available to it, the Court has considered that the subject-matter was not governed by a "law" that satisfied the criteria laid down by the Court's case-law, but rather by practice. The Court has also noted that the exception to the secrecy rule regarding measures taken during preliminary investigations, provided for in Article 329 § 2 Code of Criminal Proceedings,

concerns only cases where an investigative document is published for the purposes of continuing the investigation. That was not the case here, however.
The Court therefore has concluded that the interference has not been shown to have been in accordance with the law, thus affirming that there had been a breach of Article 8. Accordingly, the Court has considered not necessary to determine whether the interference in question pursued a "legitimate aim" or was "necessary in a democratic society" to achieve that aim (see *M. v. the Netherlands*, no. 39339/97, § 46, 8 April 2003).

European Court of Human Rights, Judgment 8 February 2005, L.M v. Italy (ric. n. 60033/00) - Violation of Article 8 Violation of Article 13

The case: The applicant is an Italian national who was born in 1956 and lives in Syracuse (Italy). In the morning of 11 September 1999 a search was carried out at her home pursuant to section 41 of the Codified Public Security Laws (Testo Unico Leggi di Pubblica Sicurezza) in connection with a suspected offence of unlawful possession of firearms. The suspected offender was in fact the applicant's son, who lived with her and had previously fallen foul of the law. No unlawful objects were found in the applicant's home. A police record of the search was sent to the public prosecutor's office on 13 September 1999 but was not validated by a member of that office. Relying on Article 8 (right to respect for private life) the applicant contended that the search was illegal. She further said that she had had no effective remedy available to complain of the authorities' conduct, contrary to Article 13 (right to an effective remedy).
The Judgement: The search constituted interference with the applicant's right to respect for her home and private life. The statutory basis for it was section 41 of the Codified Public Security Laws. The Court noted that under the Code of Criminal Procedure the public prosecutor's office was required to validate records of searches within 48 hours of transmission, thus enabling it to check whether the police had acted lawfully. The total failure to validate the record was unjustified and showed that the relevant authorities had not sought to make sure that the search complied with the procedures laid down by law. The Court held unanimously that there had been a violation of Article 8 of the Convention on account of the failure to follow the statutory procedures. Noting that the applicant had no effective remedy before a domestic court in Italian law to seek redress for her complaint under Article 8, the Court held unanimously that there had also been a violation of Article 13.

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

In Italy a public debate is being going on at present as to whether amending the law on voluntary termination of pregnancy (law n. 194/1978). In particular, the Minister for Health considered that this law has non been fully applied in the sections where it provides for help and support to the women. The Minister considered that the family advice bureaus (Consultori familiari), entitled to give advice and psicological support to the women, are not suffieciently equipped for that. A proposal for the creation of a Parliament Commission of Inquiry on this topic has been set forth, but at present non decision has been taken.

Family life

Protection of family life

Legislative initiatives, national case law and practices of national authorities

The Italian Parliament is discussing a proposal of law aiming at granting custody of a child to both parents after their separation or divorce. The proposal has already been approved by the Chamber of Deputies on July 7, 2005 and it is at present under discussion by the Senate.

Private – and family life in the context of the expulsion of foreigners
(See article 6)

Article 8. Protection of personal data

Protection of personal data

Legislative initiatives, national case law and practices of national authorities

Schengen Information System (N.SIS) : The new mechanism to exercise citizens' rights under the personal data protection code
The Italian data protection authority (Garante per la protezione dei dati personali) is the body in charge of supervising the national section of the Schengen Information System (N.SIS) and checks processing of the personal data stored in the SIS by verifying, either of its own initiative or upon a data subject's request, that the data contained in the system are processed and used by respecting personal rights (see Article 114 of the Convention implementing the Schengen Agreement, and Section 11 of Act no. 388 of September 30, 1993, ratifying said Agreement).

Loyalty cards and safeguards for consumers: guidelines applying to Loyalty programmes (Opinion issued by the Italian data protection Authority on February 24, 2005)

The case: The Garante has received claims and reports on the processing operations carried out in connection with the growing use of loyalty cards that are aimed at establishing durable relationships with customers for purposes of shopping and/or the provision of services.
The Opinion of the Garante: The regulatory principles referred to in the Opinion with regard to chain retailers are of a general character and can already be applied to several industry sectors. The provisions set forth in the Opinion of the Garante apply generally to all types of loyalty card in the so-called chain retailing sector, irrespective of whether the cards are issued free of charge or not, on paper or electronic media, by POS or online, by using a person's particulars or else an ID code, and by adding up points or not in proportion to the relevant expenses and/or services.
The provisions are set forth by having regard to the distinction to be drawn as for three main purposes (i.e. loyalty programs as such, implemented by awarding the benefits mentioned heretofore; profiling based on the analysis of consumption habits and choices; and direct marketing), which makes it necessary to envisage different processing mechanisms with particular regard to data categories and retention. In general, sensitive data may not be processed, as a rule, for any of the purposes in question (see Section 4(1), letter d), of the Code), subject to exceptional circumstances whereby processing the data is actually indispensable in connection with the specific goods and/or services requested and it has been authorised by the Garante as well as consented to in writing by the data subject.
a) Implementing Loyalty Programs As Such - Exclusively such data as are necessary to award the benefits related to use of the card may be processed.
b) Profiling Customers - Individuals and groups can be profiled, in several situations, by only using anonymous and/or non-identifying data – e.g. a digital code – without establishing any relationship between the data allowing identification of data subjects and the analytical information related to their personal sphere – such as their tastes, preferences, habits, needs, and consumption choices. If the relevant purpose can be achieved in this manner – especially as regards profiling customers by homogenous categories –, it is unlawful to use, still less to retain, personal and/or identifying data.
c) Direct Marketing - Relevant, non-excessive data may be collected and used with a view to sending advertising materials – also via specialised literature –, commercial communications, and direct selling. In principle, this only applies to the data that are directly related to identification of either the cardholder or his/her family members, or else of individuals specified by the cardholder. Use of personal data, if any, resulting from profiling activities shall be the subject of a separate consent declaration by the entities concerned.

In telecommunications: Right of access to data referring to phone calls received guaranteed only in penal judgements (Provision of The Italian data protection authority, Garante per la protezione dei dati personali of November 3, 2005)
Any subscriber to mobile and traditional telephony services and users of pre-paid phone cards has a right of access to data referring to phone calls received (SMS and MMs included) if necessary in a penal judgement, only if he/she proves that this information is necessary to protect his/her own rights of defence in a penal trial. These data cannot be further processed for other purposes.

Electoral propaganda: a Decalogue by the Garante September 7, 2005 *(as published in Italy' s Official Journal no. 212 of September 12, 2005)* - In view of the forthcoming elections, the Garante considered it necessary to draw attention to the main cases in which personal data may be used by political parties and organizations, promoting and/or supporting committees, and individual candidates for propaganda purposes by respecting data subjects' rights and fundamental freedoms (as per Section 2 of the Code).

1. Data requiring no consent
a) Electoral Registers
The data contained in the electoral registers that are kept, continuously updated and provided in copy by municipalities, also on electronic media, may be used without the data subjects' prior consent.

b) Other Publicly Available Lists and Registers - In addition to electoral registers, other documentary sources held by public bodies may be used for propaganda purposes without the data subjects' consent if the sources in question can be accessed freely and with no limitations, as expressly provided for by a law and/or regulation.

c) Data Collected by Holders of Elective and/or Other Public Offices - The holder of an elective office is allowed to use the information collected within the framework of his/her personal relationships with citizens and electors. Some specific legal provisions also allow the holder of an elective office to request a public body to provide information that can be useful in discharging his/her office; such information may only be used for purposes that are relevant to the discharge of official duties. Hence, the information in question may be used for propaganda initiatives addressed to the data subjects concerned exclusively under specific circumstances whereby the said initiatives can be regarded in concrete as factually related to activities and tasks carried out in the course of the office.
It is unlawful to apply to an administrative agency/body for the communication of whole databases and/or the creation of ad-hoc "dedicated" lists to be used for propaganda purposes other than in the cases referred to above, which must be related to activities and tasks carried out in the course of the relevant office.
Nor may it be allowed that holders of other, non-elective public offices make use for propaganda purposes of the data acquired in view of discharging their institutional duties.

d) Members of parties, political bodies and committees - Personal data concerning members and adherents and/or other entities that are regularly contacted may be used lawfully within the framework of parties, political bodies, promoting and supporting committees, no ad-hoc consent statement being required (see Section 26(4), letter a), of the Code).

e) Members of other associations of a non-political character - Other not-for-profit bodies, associations and organisations such as trade unions, professional associations, sports associations, trade associations, and so on, may envisage that the respective purposes also include the propaganda purposes referred to herein; if the latter purposes are pursued directly by the said bodies, organisations and/or associations, no consent is required.

2. Documentary sources that may not be used for propaganda purposes
- Some documentary sources held by public bodies may not be used even by the holders of elective offices either because of specific legislation prohibiting their acquisition for propaganda purposes or because of official secrecy requirements, or else on account of their having been acquired pursuant to legislation that places some constraints on their use. This applies, for instance, to registers of births, marriages and deaths; Census Registers; Electoral registers etc.

- 3. Data that may be used on the basis of a prior consent
- Other documentary sources may be used for propaganda initiatives on the basis of the data subjects' prior consent.
a) Sympathisers and Contacted Individuals. Political parties and organisations, supporting and promoting committees, and individual candidates may lawfully use data concerning sympathisers and/or other individuals that either have already been contacted in connection with individual initiatives, or have occasionally taken part in such initiatives (petitions, bills, motions for referenda, signature collection, etc.).
In these cases, the data subjects' prior consent must be collected in writing as sensitive data are involved. The consent may also be given once and for all.

b) Telephone Directories - In the new telephone directories, both on paper and in electronic format, there appear two symbols beside the subscribers' names – pursuant to Community legislation, which is binding on the national lawmaker – to signify the subscriber's consent to receive mail at his/her home address or phone calls for purposes other than personal communication, respectively.
In these cases, the subscribers' data may also be used to send propaganda materials and/or make phone calls for propaganda purposes – depending on the symbols appearing in the directory.

c) Specific Communication Mechanisms - Pursuant to Community legislation, which is binding on the national lawmaker, some specific communication mechanisms require the specific consent by subscribers to public electronic communications services – including subscribers to mobile telephony services and users of pre-paid phone cards (e.g. as regards the sending of faxes, SMS and/or MMS messaging, pre-recorded phone calls, e-mail messages). Consent, which may also be obtained once and for all, must be obtained in any case prior to making the call and/or sending the message, and must be based on clear-cut wording that expressly refers to the purposes of political and/or electoral propaganda.

d) Data Collected and Made Available by Third Parties - The circumstance that the personal data have been acquired from a third party – who might have collected them on the basis of a consent statement rendered with regard to the most diverse purposes, including promotional and commercial ones – does not exempt a political party, organization, committee and/or candidate from the obligation to verify, also on a sample basis and by means of the election manager, that the third party in question has informed data subjects about the use of their data for propaganda purposes and obtained their express consent as appropriate. The consent must have been given freely as well as separately from the consent to the provision of goods and/or services.

4. Obligation to provide an information notice
- If the data are collected from the data subject, the latter must be informed in any case on the features of the processing, except for the information that is already known to him/her.

Positive aspects

The Opinions of the Garante give a high level protection to Italian citizens data protection controlling that data are processed lawfully and fairly, collected and recorded for specific, explicit and legitimate purposes and used in further processing operations in a way that is not inconsistent with said purposes; relevant, complete and not excessive in relation to the purposes for which they are collected or subsequently processed; processed according to the data minimisation principle.

Protection of the private life of workers

Legislative initiatives, national case law and practices of national authorities

Use of Fingerprints for Assiduity Control at the Workplace
– Provision of The Italian data protection authority (Garante per la protezione dei dati personali) of July 21, 2005

Processing of Personal Biometric Data in the Employment Context to Control Assiduity is to be regarded as unlawful, as declared by the Garante.
The case: A company with 300 employees lodged a request for prior checking with the Garante concerning the processing of biometric data related to its employees with a view to controlling their assiduity at work and thereby allocating standard and overtime pay. Operation of the above system would require the preliminary collection of biometric data (so-called "enrolment phase"), whereby the company would turn the image of part of the employee's fingerprint into a digital code using electronic devices equipped with both fingerprint readers and ad-hoc software; the said code would be assigned to each employee after being stored in the company's information system, without being encrypted or processed in any similar manner. The digital codes would be used as benchmarks for the digital codes obtained after reading (parts of) the employees' fingerprints whenever they leave and/or enter their workplace; such reading would be performed via readers located in several premises within the company, which would be connected with the company's information system. According to the allegations made by the company-data controller fingerprints would not be stored for longer than necessary to complete the enrolment phase. In the company's view, it would be impossible to trace the fingerprints back to the respective owners starting from the digital codes generated from them. The processing of biometric data was said to be justified by the need to prevent certain types of unlawful conduct by some employees, mainly consisting in the exchange of their respective badges, as well as loss of the magnetic cards that are currently used. The processing of biometric data was alleged to allow overcoming these problems and ensure a high degree of certainty in employee identification.
The judgement of the Garante: Employers are lawfully empowered to supervise performance at work (pursuant to Section 2094 of the Civil Code) by verifying employees' assiduity and compliance with working hours also in order to compute their wages (e.g. by means of personal badges); however, it has not been shown that the processing of biometric data in question is in line with data minimisation and proportionality principles with particular regard to the use of fingerprints. Using such data in the workplace may be justified in specific cases as related to the purposes and context of their processing – e.g. in connection with accessing certain premises in a company that require especially stringent security measures either because of specific circumstances or on account of the activities performed in those areas; alternatively, their use may be justified in order to ensure security of the processing of personal data (see Annex B) to the DP Code). Conversely, the blanket use of these data may not be considered lawful; as regards fingerprints, this is compounded by the need to prevent their misuse and/or inappropriate use. To verify compliance with working hours and simultaneously prevent unauthorised conduct by employees, the data controller can avail itself of other, less privacy-intrusive systems that do not impinge on personal freedom and do not involve an employee's body – which are both constituents of personal dignity, safeguarded by personal data protection provisions (see Section 2 of the DP Code).

Positive aspects

The Judgement of the Garante gives a high level protection to workers private life, against non proportional data collection systems used by the employers. Fingerprints – regardless of the fact that only part of them are collected and this is only aimed to complete the enrolment phase – as well as the numerical codes subsequently used for comparison purposes are personal data insofar as they can be related to individual employees. The judgemnent must be appreciated, moreover, as it stresses the need of less privacy-intrusive systems that do not impinge on personal freedom and do not involve an employee's body, which are both constituents of personal dignity

Article 9. Right to marry and right to found a family

Marriage and the control of marriages suspected of being simulated

Legislative initiatives, national case law and practices of national authorities

Regarding the control of marriages suspected of being simulated in order to circumvent the restrictions of immigration rules, an important decision has been made by the Court of Cassation (sez. I civ., 14 April – 18 June 2005, n. 13165). The decision rules that a transsexual who has had no operation, a viado from

South America, prostitute, male in the birth register, husband of an Italian woman who is much older than him and who does not live in the same town of the husband some days of the week, cannot be expelled from Italy. The Court of Cassation decided that no police report can demonstrate, in the specific case, that the marriage is simulated; the fact the man is a transsexual and a prostitute is not inconsistent with a regular marriage; in the Italian legal system the 'cohabitation', requested by the national immigration law must be interpreted in the same way as the duty of 'cohabitation' of a married couple under the Civil Code, and so it admits periods during which husband and wife do not live together in the same house.

The legal recognition of same-sex partnerships and the recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

During the year under scrutiny the Justice Committee of the Chamber of Deputies discussed some bills relating to de facto unions or to the civil pact of solidarity (C. 3296 Grillini and others, C. 795 Bellillo and others, C. 4442 Buemi, C. 4478 Bellillo and others, C. 4334 Rivolta and others, C. 4588 from Regional Council of Tuscany, and C. 4585 Moroni). All of them were introduced in the previous years with the aim to offer to same-sex couples (who are unable to marry), as well as to different-sex couples (who do not want to marry), a legal framework, including patrimonial and non patrimonial issues, which could give a certain stability to the relationship and provide inheritance rights and social benefits. The same Justice Committee decided to conduct a fact-finding survey on this matter in order to collect the opinions of some important legal experts about the constitutional implications and the technical aspects of the rules put by the bills under discussion. Between January and October 2005 there were six hearings. In the period under scrutiny we have also the first law case regarding the legal recognition in Italy of a same-sex marriage celebrated in a State of the European Union where same-sex marriages are permitted by the national law. The Tribunale di Latina, decreto 11 May – 10 June 2005, n. 3, refuses the registration in Italy of a marriage celebrated in Netherlands between an Italian citizen and an extracomunitarian citizen, both males, for the following reasons: in the Italian legal system there is not an explicit legal or constitutional definition of marriage, but implicitly, in the Italian cultural heritage and history, an essential requisite of marriage is diversity of sex. UE does not set the principle of automatic recognition of judgements in family law, but it sets the opposite principle of the refusal of recognition of every judgement which is "manifestly contrary to the public policy of the Member State in which recognition is sought" (Regulation CE 2201/03, articles 22 and 23); recognition of same-sex marriages is, at the moment, in contrast with the 'international public policy' of the Italian State, i.e. with the fundamental principles which characterize the ethical and juridical attitude of the Italian legal system.

Article 10. Freedom of thought, conscience and religion

Legislative initiatives, national case law and practices of national authorities

Crucifix in the State schools, court-rooms and polling stations

Since two regulations enacted in 1924 and 1928 provided that the Crucifix had to be exposed in all the State schools, a Regional Administrative Court (T.A.R.Veneto) has remitted the case to the Constitutional Court (court order n. 56, dated January, 14th 2004). Nonetheless, the Constitutional Court stated that the remitted question was not admissible for lack of jurisdiction because the provision is not included in a primary law (decision n. 389, December 13th-15th 2004).

After that pronouncement, other civil, criminal and administrative judges, and the same Regional Administrative Court of Veneto, rebutted petitions aimed at removing Crucifixes not only from State schools, but also from court-rooms and polling stations. The decisions have been based on the historical and cultural meaning of that symbol, which represents the overall Italian people's identity (Regional Administrative Court of Veneto, decision no. 1110 dated March 17th,2005; Civil Court of Bologna sitting in panel, first division, order dated March 24th, 2005; Civil Court of Naples sitting in panel, tenth division, order dated March 26th, 2005; Civil Court of L'Aquila, order dated May 26th, 2005).

The Region Lombardia has considered, on the same grounds, that the refusal given by the teaching staff to teach in the classrooms where the crucifixes are exposed is unlawful (administrative instruction no. 40424, dated October 17th, 2005).
The Italian Episcopal Conference (C.E.I.) has recognized that the Crucifix has become a symbol with a plurality of senses; it has also regarded that the Crucifix exposed in the public places has a particular importance not only for believers, but also for the entire civil society (memorial dated February 3rd, 2005).

State Contributions

Municipal Tax real estates
The financial law-decree connected to the 2006 Financial Act (no. 203, dated September 30th, 2005, converted by the law no. 248, dated December 2nd, 2005) has extended the Municipal tax on real estates exemption to the buildings, used for commercial activities, owned by the Catholic Church and the other Confessions recognized by the State.

Redistribution of an amount of taxes (8 $^{o}/_{oo}$) annually handed over by the State to religious Confessions
Two bills have been presented (on June 8th and June 24th respectively) in order to extend to the Waldensians (bill no. 5983) and the Adventists (bill no. 5085) the proportional participation to the redistribution of the further sums unassigned by taxpayers' choices in the 8 $^{o}/_{oo}$ reallocating mechanism.
It has also to be mentioned a bill, contrarily marked, aimed to reserve to the direct state administration the sums unassigned by taxpayers' choices; therefore these sums would not proportionally redistributed (on the basis of the expressed taxpayers' choices) among the religious Confessions (bill no. 3482, introduced to the Senate, on June 10th, 2005, aimed at modifying Section 47, third paragraph, of the Statute no. 222/1985).

Exclusion of the right to consult the joint eight per thousand Commission's documents
The Regional Administrative Court of Lazio has stated that a question concerning the right to consult the joint eight per thousand Commission's documents was not admissible because the acts of that body have a "political", more than an "administrative", nature (decision no. 6634, dated May 25th, 2005). The joint Commission, appointed by the Italian Government and the Italian Episcopal Conference, periodically has to review the amount of donations to the Catholic Church deducible from the income taxes and has to take into account the quota of the yield of the income taxation intended to the Catholic Church (eight per thousand).

Acknowledgment of the social function of "Oratori"
After other analogous regional interventions, the Region Umbria has recognized the social, educational and instructive function carried out by parishes and other religious institutions by oratories; therefore the Region has granted contributions to projects aimed to form the character of youth and teenagers (regional Statute no. 28, dated December 20th, 2004).

Religious tourism

The region Umbria has recognized, by the Statute no. 2, dated February 8th, 2005, the importance of the religious tourism, granting an extraordinary contribution to the Municipalities which promoted the initiative "Tourism through the religious, historical and cultural ways".

Marriage

Divorce allowances after a decision of an ecclesiatical Authority which annuls a marriage:

The divorced person obliged to pay an allowance to his or her consort cannot refuse to pay it even his or her marriage has been annulled by the ecclesiastical Authority with a decision that has been declared executory by a final judgement of a State Court (Court of Cassation, I Division, dec. no. 11793, dated June 7th, 2005).

Mass media

Radio and television

The legislative decree no. 177, dated July 31st, 2005, regarding radio and television, states that the media must be open to the different opinions and political, social, cultural and religious tendencies; that radio and television programs must respect the fundamental rights; that messages which instigate hate or racial, sexual, religious or national intolerance are forbidden; that advertisements and television sales must be fair, must respect human dignity, must not evoke racial, sexual or national discriminations, and must not offend religious or other ideal convictions (Section 4).

Television sales and protection of religious convictions

The new "Consumer Code" (Legislative Decree no. 206, dated September 6th, 2005) forbids, inter alia, television sales which offend human dignity or involve racial, sexual or national discriminations, or offend political or religious convictions

Conscientious objection

Related to Euthanasia:
A bill concerning the de-penalization of Euthanasia was presented to the Senate of the Republic on February 2005 (No. 2758) It provides for a conscientious objection in favour of the physicians who doesn't want to take part in these procedures.

Related to military service:
Since January 1st, 2005, according to section 1 of law no 226 of 2004 the call up for compulsory military service has been suspended. According to law by decree no 115, dated June 30th, 2005 (converted by the law no 168, dated August 17th, 2005) also those who were already serving in the army or in the substitutive civil service may ask to leave the service in advance since July 1st. Therefore since 2005 both military service and substitutive civil service are only voluntary.

Disciplinary proceeding inside a religious confession and fair trial

An Italian Court hold applicable to the disciplinary expulsion of a believer from the Congregation of Jehovah's Witnesses the fair trial and in particularly the right to contradict even if in the specific case this right had been respected (Court of Bari, IV Division, dated December 12th, 2004). The decision doesn't accept the allegation of the Congregation who affirmed the unobjectionableness of the expulsion by the Court of the State. Maybe in this case was relevant the jurisprudence of European Court of Human Rights and of the Italian Constitutional Court in order to the control on the decision of the ecclesiastical Courts which did not ensure this kind of guarantees (Const. Court, no 18 of 1982; ECHR, Pellegrini v. Italy, 20 July 2004; see also Cass., I Civil Division , decision no 12010, June 8th, 2005).

Relations with the Catholic Church

The Baccalaureate in Theology is not equalized to the University degree in Philosophy for public competitions:
In order to recognize the equalisation of the Baccalaureate in Theology to the University degree in Philosophy a provision by law or ministry decree is required (T.A.R. Campania, III Division, decision no 3687, April 11th, 2005).

Employees of the Holy See
In two cases were employees of ecclesiastical organs applied Italian Courts in order to obtain the application of Italian laws about work contract the Court of Cassation affirmed that these Courts can only recognize economical rights (not the reintegration in work) with regards to employees of the organs of the Holy See, while with regards to employees of other religious entities which run a commercial activity

all Italian laws on work contract had to be applied (Cass. Sezioni unite, decision no 7791, dated April 15th, 2005, and Cass., Civ. Division, decision no 7207, dated April 7th, 2005).

Approval of ecclesiastical Authority for professor in the Catholic University
The Italian Administrative Supreme Court, VI Division (decision no 1762, dated April 18th, 2005), deciding on the case regarding Luigi Lombardi Vallauri – former professor in Law Philosophy in the Catholic University of Milan - hold that State Courts cannot judge on the necessary approval of the ecclesiastical Authority in order to appoint Professor in a Catholic University. As stated by the Constitutional Court (decisions no 195 of 1973 and no 18 of 1982) the freedom of these ideologically qualified University would be violated if they couldn't choose their own professor taking into account their personality and their conformity to the ideological orientation of the Institution.

Funeral of John Paul II and election of Benedetto XVI:
With two measures adopted by the President of the Council of Ministers the Chief of the Civil Protection department was charged with the duty to coordinate the public activities during the funeral of the Pope and the election of the new one, which were qualified as "great events" (Decree dated April 3rd, 2005 and order no 3423, dated April 5th, 2005).

Relations with Islam

Institution of the Consulting body for Italian Islam:
The Consulting body for Italian Islam was established by ministry decree dated September 10th, 2005 aiming to favour the institutional dialogue with Muslim communities and better the knowledge of the integration problems. The main representatives of the major Islamic organizations in Italy like U.CO.I.I. (Union of Italian Islamic Communities); U.I.O. (Western Islamic Union, part of the World Islamic Call Society); CO.RE.IS (Islamic Religious Community) and World Muslim League are members of the body.

Terrorism and Jihad:
The Court of Cassation stated that organizing guerrilla actions on behalf of the Jihad is a crime of international terrorism. The Jihad is no defence war and those who take part in it, like the members of a "sleeping cell" ready to recrute volunteers for the "holy war" in Irak, accomplish terroristic actions (Cass., II Criminal Division, decision no 669, dated January 17th, 2005).

Rejoin of children to Islamic woman repudiated in her country
A woman from Morocco, with permission to stay in Italy, asked that her children, born from a previous wedding, could rejoin her in Italy. The Italian Embassy denied the permission on the ground that she had been repudiated from her previous husband, father of the children. The Court of Cassation stated that the right to rejoin to the children cannot be conditioned to any other requirement when the parent who asks the rejoining is the only one who provides for maintaining them (Cass., I Civ. Division, decision no 12169, dated June 9th, 2005).

Religious persons who have the responsibility of a Mosque:
On Jule 26th, 2005, a bill concerning the persons who have the responsibility of a Mosque was presented to the Chamber of deputies. It requires that those persons have a certificate issued from the police authority certifying that they have no connections with terrorist organizations (no 6028).

Not state school
A ministry decree dated July 28th, 2005 fixes the amount of the contribution to families for the registration fees in non state recognized schools. Many Regions provide for such contributions to families in order to guarantee the right to education, especially where there aren't state schools (see g.e. Regional Statute of Molise no 31, dated October 10th, 2005; Regional Statute of Campania no 4, dated February 1st, 2005).

Protection of cultural and religious properties

Catholic Church
With the Statute no 78, dated February 4th, 2005, was approved an agreement between Ministry of cultural properties and activities and Italian Episcopal Conference related to the protection of cultural properties pertaining to ecclesiastical institutions.

Protection of religion by criminal law

Projects of law:
In 2005, like in 2004, one bill (**no 5987**) was presented to the Chamber of Deputies to provide a new crime of moral slavery (plagio); a similar provision had been struck down in 1981 by the Constitutional Court (decision no 96). At the same time a bill concerning the exclusion of the punishability as offence to the religion of actions and words that are expression of local customs (**no 5986**).

Condanna per vilipendio della religione:
The Court of Padova (decision dated June 14th, 2005) sentenced for offence to the catholic religion a well known Muslim (Adel Smith) who had defined the Crucifix as a "small corpse".

Positive aspects

In 2005 national and regional legislators promoted the religious believes, especially through financial contributions and protecting from criminal offences.
In particular, the establishment of the Consultative body fro Italian Islam is a meaningful advancement towards the dialogue with Muslims in order to favour reciprocal knowledge, integration and dialogue.

Article 11. Freedom of expression and of information

Freedom of expression and of information

Legislative initiatives, national case law and practices of national authorities

The bill approved by the Chamber of deputies on 26 October 2004 to amend defamation rules and to abolish prison sentences for libel in any media, was not examined by the Senate in 2005. It is very likely that the Parliament will not manage to modify the law before the end of the legislature, although both majority and opposition declared they supported the reform.

The Tribunal of Rome, on 26 January 2005 stated that Michele Santoro, a popular journalist of the public broadcaster RAI elected member of European Parliament in 2004, must be re-instated with the same functions of producer, conductor of political talk shows and programme presenter, and was entitled to damages of €1.5 million.
Santoro was dismissed from Italian television two years ago after a clamorous declaration by Italian Prime Minister Berlusconi, who said that Santoro, Enzo Biagi, the dean of Italian journalism, and Daniele Luttazzi, a satirical entertainer, had made "criminal use" of public television and that it was the duty of the direction of the RAI never to allow this to happen again. At the end of 2005, Santoro had not been reinstated, although he resigned from his position as a Member of the European Parliament.

The case of Lino Jannuzzi, a 76-year-old journalist and Senator of Forza Italia placed under house arrest to serve a sentence of imprisonment for libel, was settled by the President of the Republic, who, in February, granted a pardon to Jannuzzi.

In the period under scrutiny, two national Courts decided two civil actions for damages brought by the Prime Minister against Marco Travaglio, an investigative journalist who, during the 2001 electoral campaign, narrated during the satirical show of the above mentioned Daniele Luttazzi, some events about the growth of the fortune of Mr. Berlusconi. Both the Tribunal of Rome, on January 2005, and the

Tribunal of Milan, on October 2005, rejected the actions and condemned the plaintiff to refund the expenses.

Media pluralism and fair treatment of the information by the media

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

As in recent years, so in the period under scrutiny several influential international organizations and advocacy groups expressed their concerns regarding the growing threat to freedom of opinion and expression constituted by media concentration and issued formal warnings and recommendations for Italy to solve the anomalies of its broadcasting system.
In particular, many international organisations analysed the compatibility of the 2004 Broadcasting Act ("Legge Gasparri") and of 2004 Conflict of Interest Law with the international standards in the field of freedom of expression.

On the 3 March 2005, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, presented to the **UN Commission on Human Rights**, the report on his mission to Italy from 20 to 29 October 2004.
The report underlines both the high level of media concentration and the deteriorating situation of media professionals. Mr. Ligabo notes that print media is liberal and offes a balanced view of the diversity of Italian society, but he also notes that the independence of the print media could be jeopardized by its economic disadvantage in comparison with television broadcasting. He also considers that the "lottizzazione" system in public television broadcasting, by directly linking the management of the three public television channels to the political parties, consequently putting pressure on journalists working in the public sector, does not allow for the full independence of the RAI.
Among the Recommendations submitted, the Special Rapporteur suggests that the Government review the legislation in order to ensure the participation of multiple actors in the television broadcasting sector; clarify the notion of "integrated system of communications" in order to define precisely the market covered by the law and to allow for real antitrust control; take the necessary measures to depoliticize the media sector, in particular regarding the management of public television and the allocation of subsidies to the print media.
The report strongly recommends that the issue of conflict of interest, in particular concerning the President of the Council of Ministers, be further analysed, in consultation with all players concerned, in order to find a suitable solution whereby influence from the political sector in the media would be significantly reduced.
The Special Rapporteur reminds the Government that the protection of the activity of journalism from any undue pressure is a key element in a democracy. He therefore recommends that government officials refrain from making statements that might affect the independence of journalists and other media professionals. He also urges the Government to take all necessary steps to prevent the dismissal and/or sidelining of journalists on the basis of the expression of critical opinions. In those cases that have already occurred, the Special Rapporteur requests that the Government take appropriate measures for the reinstatement or re-employment of the persons concerned.

The American advocacy group **Freedom House**, in the study "Freedom of the Press 2005: A Global Survey of Media Independence," stated that press freedom in Italy, which was downgraded from "Free" to "Partly Free" in 2003, remained conditioned by the dominant influence of Prime Minister Silvio Berlusconi's media holdings. Italy is the only EU member State classified by the survey as Partly Free.
The survey highlights that "questions continue to be raised about the political impact of Berlusconi's control of the media. The Osservatorio di Pavia, an independent media watchdog, reported that in the month of February, Berlusconi's presence on television accounted for 42 percent of the time dedicated to politicians."

The **Organization for Security and Co-operation in Europe (OSCE)**, organised a visit to Italy in March and April 2005, to assess the current situation in the television sector, one year after the adoption

in 2004 of the Gasparri Law, Italy's first comprehensive regulation of all broadcast media, and of the Frattini Law, on the conflicts between public duty and private interests of public officials.
In his Report of the visit, the OSCE Representative on Freedom of the Media Miklós Haraszti inter alios pointed out that: "Freedom of expression and press freedoms are in a healthy state in Italy. However, there is one media sector that is regularly referred to as the "Italian anomaly", the television broadcasting market. The enduring RAI-Mediaset duopoly, and especially the quasi-monopoly of Mediaset within the commercial television market, has deprived Italian audiences of an effective variety of sources of information, and has thereby weakened the guarantees of pluralism. Italy has an ongoing record of control over public-service television by political parties and governments. As the Prime Minister is also the country's main media entrepreneur, co-owning Mediaset, the 'traditional' fears of governmental control of RAI are aggravated by worries of a general governmental control of the nation's most important source of information, television".
OSCE formulated many recommendations for Italy in order to solve its anomalies, to address the present dominations, and to increase pluralism .

The Opinion of the **European Commission For Democracy Through Law (Venice Commission**) - requested by the Parliamentary Assembly of the Council of Europe - on the compatibility of the laws "Gasparri" and "Frattini" with the Council of Europe standards in the field of freedom of expression and pluralism of the media, adopted on June 2005, contains harsh judgements on the Italian media system and on the most distinctive provisions introduced by the two Laws.
As regards the pluralism of the media, the Venice Commission «agrees with the Italian authorities that digitalisation will lead to an increase in the number of channels, but stresses that many of the newly available channels are likely to have very small audience shares and finds therefore that the threshold protecting media pluralism, as measured by 20 percent of channels, is not in itself a clear indicator of market share. The Commission noted that «the combined effect of the new framework set out in the Gasparri Law has relaxed the previous anti-concentration rules whose maximum permissible levels had been exceeded by Mediaset and RAI» and considers therefore «that the SIC criterion should be replaced by the previously used "relevant market" criterion».
As regards the provisions on migration of radio and television broadcasters from analogue to digital frequencies, «the Commission has the impression that the Gasparri Law has taken the approach of attempting to hold back on finding a real solution to the problem of media concentration in the television market until some future point in time and it relies heavily on the point when digitalisation will come into full effect».
As regards the public service broadcasting and the privatisation of RAI, «which should lead to a lesser degree of politicisation of the public broadcaster, the Commission notes that change at RAI will allow for government control over the public broadcaster for an unforeseeable period of time. For as long as the present government stays in office, this will mean that, in addition to being in control of its own three national television channels, the Prime Minister will have some control of the three public national television channels. The Commission expresses concern over the risk that this atypical situation may even strengthen the threat of monopolisation, which might constitute, in terms of the case-law of the European Court of Human Rights, an unjustified interference with freedom of expression».
As regards conflict of interest, for the editors of the Opinion, «the Frattini Law is unlikely to have any meaningful impact on the present situation in Italy», mainly because it does not contain sufficient "preventive" measures for resolving a potential conflict of interest, it does not provide an incompatibility between ownership and public office, that «yet, in Italy this appears to be the most important aspect of conflict of interest» and it foresees sanctions not entirely adequate.

A comprehsive report on the degree of independence and freedom that television is enjoying in Italy was produced by the **Open Society Institute (OSI)**, a foundation with the aim to shape public policy to promote democratic governance and human rights chaired by George Soros.
The Italy country Report, included in the monitoring series of 20 reports "Television across Europe: regulation, policy and independence", highlights that the super-concentration that characterises Italy's broadcasting sector, the confusion created by the collusion between the media and the political establishment, and the excessive attention of the executive to the management of the public networks are not just "Italian anomalies" ; these problems represent potential threats to any democratic system, and especially to the transitional democracies of Central and Eastern Europe.

The OSI Report on Italy contains several recommendations targeted at decision-makers and regulators. Inter alia, it calls on the Italian Parliament to adopt legal changes aimed at making the Communications Guarantee Authority (AGCOM) a more independent regulator, with more sanction powers to enforce its decisions. It recommends stopping the process of privatisation of RAI, defined unrealistic from an economic point of view and unconstitutional from a juridical one, as it sets up a complete privatisation of a public service and rather proposes creating two companies out of RAI, one with public service obligations and the structure of a BBC-like foundation, and the second with a commercial profile, which should be sold on capital markets. For the authors of the Report, it is important to carry out a deep reform of RAI, to guarantee that the members of the RAI Board are politically independent from the influence and control of the Government and political parties and are appointed according to their professional expertise and qualifications.
At the same time, according to the Italian Report, the Government should enact "neutral" policies with respect to the different media, so that cable and satellite are not penalised by a preference for digital television; should take a series of steps that would ensure easier access for more competitors to the market, should put limits on the advertising revenues that a media company can control, and should establish clear provisions on the formation of dominant position.
Moreover, the report shows that it is crucial for the Italian Parliament to amend the Law on Conflict of Interests, to introduce explicit incompatibility provisions between elective and government positions and ownership of media outlets.

Legislative initiatives, national case law and practices of national authorities

As provided by the Gasparri Law, the Council of Ministers enacted the **"Testo unico della radiotelevisione"** ("Consolidated broadcasting act"), aimed at coordinating the legislation affecting broadcasting. The new text does not contain serious changes in the legislation.

In March 2005, in the last days of Enzo Cheli's presidency, the Communications Guarantee Authority took a series of important steps aimed at boosting competition. These steps included a decision calling for more competition in the digital television market and sanctions on RAI, RTI (Mediaset) and Publitalia '80, Fininvest Group's advertising subsidiary, for having violated the Maccanico Law, which addresses dominant positions. RAI, RTI and Publitalia '80 were fined two per cent of the revenues from advertising pulled in during 2003. These amounted to €20 million for RAI, and €45 million for Mediaset. However, these fines were nullified at the end of november by the Administrative Regional Court of Lazio.

On 19 July 2005, the State Council (Consiglio di Stato) referred some questions relating to the case of the network Centro Europa 7to the Court of Justice, ex article 234 of the EC Treaty. The network was unable to broadcast because unlicensed broadcasters were occupying the available frequencies and the transmission infrastructures.
The Administrative Court brought before the Court of Justice 10 questions the interpretation of the Treaty: in short, if the principle of pluralism as referred in article 10 of ECHR, obliges the Member States to guarantee effective pluralism and effective competition in the broadcasting sector; if the Italian law respects the principles providing for the licence of public frequencies, which are to be granted pursuant to objective, transparent, non-discriminatory and proportional criteria; and more generally if the Italian Law violates the EC Treaty rules on competition and the 2002 directives on electronic communications.

Good practices

On 2 March 2005, in an attempt to curb the Mediaset-RAI duopoly's future dominance of the digital market, the Communications Guarantee Authority took a decision stating the importance of pluralism in the television sector and in the field of financing sources related to the development of digital broadcasting. The Authority started an investigation in October 2004, and came to the conclusion that the broadcasting market is still characterised by the RAI-Mediaset duopoly, with three companies, RAI, Mediaset and Mediaset's advertising vehicle Publitalia '80, found to hold positions that violate the principle of pluralism. AGCOM's Decision obliged RAI and Mediaset to speed up the digitalisation process and to guarantee independent producers significant access to digital television. It also asked Publitalia '80 to keep separate accounts of revenues from analogue and digital television respectively.

Reasons for concern

The issue of pluralism and interconnection between politics and media power remains very serious, even after the new legislation of 2004. The "Gasparri Law" did not solve the Italian anomalies of the duopoly of Rai and Mediaset, which continue to control more than 90 per cent of the television audience and of all TV advertising revenue and of the imbalance between press and television.
The most innovative political lines of the Gasparri Law seem to be a failure.
As the same Minister declared, the Gasparri Law was adopted with two main objectives: to speed up the process of modernizing the television broadcasting system by organizing the switch from analog to digital terrestrial television, and to organize the complete privatization of the company in charge of public television (a decision that seemed to be unconstitutional).
Both the two major changes are far from being realized: the switch-over to digital broadcasting, scheduled to take place in 2006, was postponed by Government to 2008, and even this date seems to be unrealistic. Many experts predict that the switch will have to be delayed by at least three to four more years.
RAI's privatisation is likely to occur in the very distant future, and it seems it will be difficult to complete the process. The first steps have been very slow. In February 2005, the Minister of Economy declared that a minority stake could not be floated on the Stock Exchange before autumn 2005. Later, the new Minister of the Communications, Mario Landolfi, put off the beginning of the process after the general elections in 2006.

In the period under scrutiny, the pressure of the political forces to increase their control on the independent authorities and on the public broadcaster has become even stronger. The new members of AGCOM were appointed in spring 2005. These appointments showed a stronger involvement of the political parties in the selection of the members and a risk of a greater political control over the regulators.
The appointment of the new Board of RAI aroused the same concern. Up to May 2005, the Board of RAI was composed of four members, all very close to the centre-right coalition. In May 2005, the Parliamentary Commission for General Guidance and Supervision of Broadcasting Services elected seven new members, and two more were appointed few weeks later by the Government. Five out of the nine members are very close to the Government and four have links with the opposition, following the model of the distribution of posts according to political affiliation.

Article 12 Freedom of assembly and of association

Good practices

A positive fact is that despite a large number of demonstrations and public assemblies concerning political and economic issues, war and peace, environment etc., none of them caused problems for security and the public order. In particular the Minister of the Internal Affairs' Report on the Security for 20053 highlights that no incidents occurred in Rome during the funeral of the Pope John Paul II and the following election of the new Pope, although the number of the faithful and the authorities taking part to the ceremonies was overwhelming.
Among the good practices, a number of regional laws4 provide incentives and other forms of financial support for associations pursuing valuable objectives. This is in line with a trend started in the 1990s,

[3] Ministero dell'Interno, Rapporto annuale sullo stato della sicurezza in Italia – 2005, availeble at www.poliziadistato.it

[4] Legge regionale n31 del 03/12/2004 Regione Molise, "Norme in materia di promozione, riconoscimento e sviluppo delle associazioni di promozione sociale", published on *Official Bulletin* of Regione Molise n28 of 16/12/2004; Legge regionale nr30 del 24/12/2004 of Regione Liguria, "Disciplina delle associazioni di promozione sociale", published on *Official Bulletin* of Regione Liguria nr 12 of 29/12/2004; legge regionale nr22 del 26/11/2004 Regione Umbria, "Norme sull'associazionismo di promozione sociale", published on *Official Bulletin* of Regione Umbria nr50 of 24/11/2004.

when the Italian legislator issued a number of laws fostering civic associations committed to constitutional values.

Article 13. Freedom of the arts and sciences

Freedom of research and academic freedom

Legislative initiatives, national case law and practices of national authorities

Italy went to the polls on 12 and 13 June in an abrogative referendum for a partial repeal of the law 40/2004 on medically assisted reproduction which also impinges on the freedom of research. The referendum failed because only 25.9% of registered voters participated, far short of the 50% required to make a referendum's results valid. Therefore, the bans on stem cell research and practice in the field of reproductive medicine provided by the law remain in force.

Last October, the Italian Parliament gave final approval to a new law (Legge 4 novembre 2005, n. 230), that reorganizes the university career scheme and that, among others, eliminates permanent contracts for researchers and re-establishes a national exam in order to qualify as a professor. The new law was very criticised, because it makes young researchers more precarious and less free and because it does not introduce any serious evaluation criteria.

Article 14. Right to education

Access to education

Legislative initiatives, national case law and practices of national authorities

Right and duty to education and vocational training - A new Act has been enacted to provide general provisions on the right and duty to education and vocational training (Decreto Legislativo 15 aprile 2005, n. 76, "Definizione delle norme generali sul diritto-dovere all'istruzione e alla formazione, a norma dell'articolo 2, comma 1, lettera c), della legge 28 marzo 2003, n. 53"). This Act sets forth new provisions in order to give a higher protection of the Constitutional provision stating that “Elementary education, imparted for at least eight years, is compulsory and free” (Art. 34 of the Constitution). The new Act states that education and vocational training are compulsory for at least 12 years and, in any case, until the attainment of a qualification within 18 years old.

Reform of the second cycle of education (secondary schools)– A new Act reorganises, after 80 years, the system of the second cycle of education (secondary schools) for 13-18 years old students. The new Act (legislative decree, 17 October 2005, “Definizione delle norme generali e dei livelli essenziali delle prestazioni sul secondo ciclo del sistema educativo di istruzione e formazione ai sensi della legge 28 marzo 2003, n.53”) provides for a system of education and vocational training based on two different schools: the “licei” (8 different “licei”, based on different specialisation: classic studies, human sciences, art, technologies, science, economics, linguistic, musics), and schools for vocational training including also apprenticeship in companies. The new provisions also consider compulsory the study of technologies and the knowledge of English. The new provisions are aimed at providing students with qualifications that can be appreciated by companies, thus making easier to find a job.

Article 15. Freedom to choose an occupation and right to engage in work

The right to engage in work and the right for nationals from other member States to seek an employement, to establish themselves or to provide services

Legislative initiatives, national case law and practices of national authorities

Decreto del Presidente della Repubblica del 13.5.2005: Approvazione del documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato, nel triennio 2004-2006. [Republic's President Decree, of 13.5.2005: Approval of the planning document concerning immigration and foreigners' policies, in Italy for 2004-2006], in Official Journal, 2005, nr. 169 of 22.7.2005.
Within the main targets of policy planning we can find the general principles for migration flows' definition. The document deals also with migration of citizens coming from new EU member States, setting the following criteria.
At first, flows planning has to take into account national and European market situation; second, the work supply coming from newly acceded Member States; third, work supply coming from countries which have agreed for quotas with Italy, and last, work supply coming from other countries.
The national administration has to monitor the entry flows of migrants coming from the newly acceded member States for reasons of employed work, in compliance with the transitional regime adopted from Italy. The administration needs to verify the impact of that regime on the others freedom of circulation, ie freedom of establishment and to provide services.
Another leading principle in the migration policy is fostering job market access of citizens of new member States, also with multi-seasonal work permit. This is due to "preference principle", enshrined in the Accession Treaties, that requires old member States to "prefer" citizens of the new ones in the access to the job market, to balance the transitional regime that prohibits freedom of circulation of workers, for the same citizens.
In this context Italian Republic made use of the transitional regime as many other old member States. In order to make effective the preference principle, Italy adopted also for 2005, as previously done for 2004 [see Italian Report 2004, p 56], a Decreto del Presidente del Consiglio dei Ministri, 17.12.2005, Programmazione dei flussi di ingresso dei lavoratori cittadini dei nuovi Stati membri dell'Unione europea nel territorio dello Stato, per l'anno 2005 [Prime Minister's Decree, 17.12.2005, Planning of entry flows of workers citizens of the new member States of the European Union in the Italian territory, for 2005; in Official Journal, 2.2.2005] establishing the quota of 79.500 employed workers for the new member States [except for Cyprus and Malta, which are outside of the transitional regime].
Italy indeed implements the preference principle for citizens of new member States with the same policy of planning flows (quota system) used for other immigrants. The quota is calculated with reference to many factors, such as the migration potential, the demographic and economic growth.
During 2005 a few acts have been adopted in order to face the consequences of immigration on national labour market and to promote the access to employment for foreigners:

a) legge 14 maggio 2005, n. 80, Conversione in legge, con modificazioni, del decreto-legge 14 marzo 2005, n. 35, recante disposizioni urgenti nell'ambito del Piano di azione per lo sviluppo economico, sociale e territoriale. Deleghe al Governo per la modifica del codice di procedura civile in materia di processo di cassazione e di arbitrato nonché per la riforma organica della disciplina delle procedure concorsuali [Law (2005:80) on the Action Plan for Economic, Social and Territorial Development]. Law 2005:80 regulates, amongst other matters, the way to allow foreign workers to enter the Italian territory in order to exercise employed work. Under Article 1-ter of Law 2005:80, maximum quotas may be fixed in the agricultural and turistic sectors, even to higher quotas set during the last year;

b) progetto di legge C 5985, Modifiche al testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286 [Draft Law (2005:C 5985), Reform of Legislative Decree (1998:286), regulating Immigration and Dispositions concerning Foreign Citizens]. Draft Law C 5985, which has been submitted on 29 July 2005 to the I° Commission (Constitutional Affairs) of the Chambers of Deputies of the Italian Republic, aims to promote social, cultural and economic integration of immigrants by adopting positive actions. One of

the most important measures provided by the Draft Law C 5985 is the possibility to obtain residence permits for apprentice employment in the Italian territory for a period of six months, which may be prolonged only for further six months. The so called Training Contract may help foreign workers in order to obtain these permits if, at the end of the apprentice, they are engaged by the employer for a fixed-term contract employment or for a permanent contract employment.

Positive aspects

We observe that the emigration flow coming from new member States is regular and does not give reason for concern. The only country that has a high emigration flow is Poland, because of the national unemployment rate, still high. The general trend of new member States is economic growth, despite the global economy situation. Though, Polish migrants are usually employed, in many sectors, like domestic services, industry and agriculture.
In this context, and without any major unexpected circumstances, it is possible to foresee that Italy will remove the transitional regime at the end of the first derogation period (two years: 2004-2006), as suggested from the European Commission, and will so able to implement the full freedom of circulation also for national of new member States.

Reasons for concern

Though the general situation of migrants is marked by less stable jobs in comparison with the national situation, we have to observe that the highest ratio of permanent jobs in migrant population belongs to citizens from Eastern European countries, not necessarily the new member States (eg Romania, Albania). [Source: 2005 Report Caritas-Migrantes, though analysing older data]

With reference to citizens of new member States, we express concerns about the pattern of quota system, wondering if the national authorities could use other and more pro-active means to implement the transitional regime for new member States. In this extent Italy didn't go beyond a limited respect of the standstill clause.
The ground of concern is based on the complex and not effective information between different branches of administration's agencies, and with the private sector.

<u>The prohibition of any form of discrimination in access to employment</u>

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the Concluding Observations of the Committee on Economic, Social and Cultural Rights: Italy, 14.12.2004. (Consideration of reports submitted by States Parties under article 16 and 17 of the Covenant), the Committee expresses concern on Italy's implementation of the Pact, for the lack of regional and local bodies to monitor discriminations, as envisaged in article 44 of Legislative Decree 1998:286.
Furthermore, the Committee notes the effort of Italy to reduce unemployment, and welcomes the past regularization of the status of 700,000 migrant workers in the State party (years 2002/2003). Besides, the Committee is concerned about the strong link between the labour contract and the length of a residence permit, introduced by Law 2002:189 on Immigration, because it can hinder the enjoyment by migrant workers and their families of economic, social and cultural rights enshrined in the Covenant.
Moreover the excessive time taken by the Italian authorities to renew residence permits may restrict, inter alia, freedom of movement and access to social services by migrant workers and their families. That why the Committee also recommends Italy to undertake measures to expedite the process of renewing the residence permits of migrant workers so as to enable them to enjoy their economic, social and cultural rights, as well as ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
Furthermore the Committee notes with concern the explanation given by the State in connection with case law (No. 6030 of 25 May 1993 and No. 4570 of 17 May 1996) according to which the principle of equal pay for work of equal value cannot be fully implemented in the Italian legal order. Then the

Committee reaffirms that the principle of equal pay for work of equal value (article 7, paragraph 2 of the Covenant) must be implemented immediately and that Italy cannot derogate from this article without breaching its Covenant obligations.
The Committee expresses concern as well for the large informal economy persistent in the country, which infringes upon the enjoyment of economic social and cultural rights.

Legislative initiatives, national case law and practices of national authorities

Italy has implemented some years ago with legislative decrees (decreti legislativi nr. 2003:215 and 2003:216) two EC directives on protection against discrimination (2000/43/CE and 2000/78/CE: the last one establishing a general framework for equal treatment in employment and occupation).
However, in compliance with the accepted derogations of the said directives, Italy implemented also provisions admitting exceptions to equal treatment in favor to "oriented organizations" ("organizzazioni di tendenza"), ie churches, confessional institutions, in which the ethic is based on religion or other beliefs.
Though, in the implementation law, Legislative Decree 2003:216 there is no reference to the ethic of the organizations, which is an important limitation to the employer in favor of the employee. The ethic of the organization, indeed, asks for a balancing of the interests of the employee with those of the employer.
In this context there is a draft law which aims to correct this point of present legislation, taking into account the ethic of the organization.
The Draft Law AS 3413, Modifiche al decreto legislativo 9 luglio 2003, n. 216, in materia di tutela dei lavoratori ed aumento delle tutele in relazione alle discriminazioni sui luoghi di lavoro, of 10.5.2005 [AS 3413, Reform to the legislative decree (2003:216), on workers protection and increase of protections regarding discriminations in workplaces] is now allotted in the XI Senate Commission, but not yet on discussion. With the proviso that "oriented organizations", both private and public, have the same rights, an important amendment is provided to the enforcement scope, at section 3, subsection 5 of Legislative Decree (in article 2, subsection 1, letter e) draft law), that states:
"Differences of treatment based on the profession of a determined religion or of determined personal convictions practiced within religious agencies or other public or private organizations whose ethics is based on the religion or the personal convictions, do not constitute discriminations in the sense of section 2, (omissis). The differences treatment referred to in the present subsection cannot however justify a discrimination based on other grounds".
No predictions can me made about the future of the Draft Law, due to long parliamentary procedure, political issues, and mainly to the early stage of approval.

The Corte Costituzionale (Constitutional Court), sentenza 2 dicembre 2005, n. 432, declares the constitutional illegitimacy, having regard to Article 3 of the Italian Constitution, of Article 8, par. II, of the legge della Regione Lombardia 12 gennaio 2002, n. 1, Interventi per lo sviluppo del trasporto pubblico regionale e locale [Regional Law Lombardia (2001:1) regulating Development of Regional and local Public Transport System], because it doesn't extend its dispositions concerning the right to exercise free circulation by public transport services recognised to persons totally disabled on civil grounds to foreigners living in the Region Lombardia.

Good practices

Setting up, in November 2004, of UNAR - Ufficio Nazionale Antidiscriminazioni Razziali, [national office against racial discrimination] within the Equal Opportunities Department, Prime Minister Office.
The office seems performing more a political task, ie to foster the culture of promoting diversity, more than a real fight against discrimination, stressing on "symbolic" activities, like the marathon of Rome and collaboration with football agencies and teams, more than on the effectiveness of the intervention. The cultural impact can be good in the long term, but the means adopted appears very weak. Serious concerns can be expressed on the impact of the UNAR agency on fighting discrimination in the labour market. This can be explained also with the nature of the organ, which is a governmental office.
For more details see below, under art. 21

Reasons for concern

With reference to oriented organizations, see above, legislative initiatives to Legislative Decree nr. 2003:216
About the UNAR, see paragraph above.

The reasons for concern in the field of discrimination in workplace are still numerous and very high towards several target groups: women, immigrants, among them.
With regards to gender issues, we have to observe that, despite of a legislation quite progressive about the notion of discrimination, also thanks to the implementation of European legal instruments, the practical reality has not improved enough. The case law on gender discrimination is very low, nevertheless the labour market still reveals a huge gap between men and women in the salary and career perspectives as well. This can be explained with a low attention of labour legal experts to gender issues, due to a general lack of gender culture.
Another reason can be traced in a lack of knowledge of protection means, as well as a lack of trust in the agencies and institutions deputed to that purposes, those that should provide a solution.
Another target group is made up of immigrants [source: Third IRES-CGIL Report on Migration, 2005]. Within immigrants discrimination rate is still very high [60% on 7.000 interviews]. They have to perform more tiring tasks and with inconvenient time-schedules. Women are more discriminated, and to a very large extent the threat come from more sides, both from employers and from colleagues [51 %].

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

As of 20 October 2005, applicants for asylum also have the right to work.
In fact, on 21 July 2005, the Official Gazette published Legislative Decree 140 of 30 May 2005 regarding "Implementation of the EC Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers in Member States", whose regulations have become effective as of 20 October 2005.
Article 6 of that Legislative Decree sets forth that if a decision is not reached on the merits of an application for asylum six months after its presentation and the delay is not caused directly by the foreign national involved, the residence permit for the asylum seeker is extended for another six months and this new permit shall allow the foreign national to work until the procedure has been completed. This residence permit cannot be converted into a permit for employment purposes. The provision identifies several specific instances where the delay in affording refugee status is caused by the applicant, thereby making it impossible to issue the aforementioned residence permit for employment. In these cases, the Police headquarters must extend the validity of the residence permit for the "application of asylum" only and not for employment. The fact that the applicant works shall not disqualify him or her from taking advantage of accommodation at the centres of the local authorities.

Access to employment in public administrations

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European case-law:
Judgment of 12.5.2005, case C-278/03, Commission v. Italian Republic. Infringement proceeding. [Official Journal C 213, of 6.9.2003]
Competitions for hiring of teaching staff in public schools and freedom of circulation of workers
In Italy, the hiring of teachers follows three main ways: 50% with public competition (exams and qualifications), 50% with permanent classification list. Temporary vacancies are filled with classification lists for temporary substitute teachers.
Public authorities draw up such classification lists giving different scores to past professional experience with reference to the place of teaching, estimating less teaching experience given in a foreign country. In doing so, Italy infringes EC law. The justification based on diversity of educational programs is not a priori acceptable, but can legitimate only a concrete evaluation, case by case.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

With sentence no. 78 of 10 February 2005, the Constitutional Court declared the constitutional illegitimacy of Article 33, subsection 7 letter c) of Law 189/2002 and Article 1, subsection 8, letter c) of Law Decree no. 195/2002, converted with amendments into Law 222/2002, in the section in which these articles provide for the automatic rejection of the petition to legalize the non-European Community worker pursuant to presentation of an accusation of one of the crimes indicated in Articles 380 and 381 of the Code of Criminal Procedure, for which there is the obligation and the faculty to order arrest of an individual when caught in the act. The Court found a violation in the principle of equality provided for under Article 3 of the Constitution due to a conflict with the principle of "equanimity" because the illegitimate regulations unreasonably led from a mere accusation to the automatic and very serious consequences for the non-European national, namely, rejection of his or her application for legalization and issue of a deportation order. According to the Constitutional Court, it is important to take into consideration that, in the Italian legal system, an accusation to the police, however it is formulated, is not considered proof of the guilt or dangerousness of the individual accused as having carried out the acts that the accuser reports" and which obligates the competent authorities to investigation the truth of the facts exposed and their relevance to the case in point sanctioned in the criminal court. This means that it is vital for the police to verify the existence of the conditions for bringing criminal proceedings against such individual. Following the sentence, the Ministry of the Interior ordered a review of the decisions already taken to reject legalization, with the resulting revocation of any administrative deportation measures ordered against foreign workers who submitted an application in 2002.

Reasons for concern

As regards the general phenomenon of immigration, a general reason for concern is the persistent difficulty to monitor the work force, due to illegal work phenomenon. With specific reference to this problem, a positive initiative undertaken in the past (2002) have been the "provvedimenti di regolarizzazione" of 2002 [measures for the regularization of the status of illegal migrants]. Those initiatives contributed to regularization of the illegal work, involving 700.000 foreigners. [Source: Republic's President Decree, of 13.5.2005: Approval of the planning document concerning immigration and foreigners' policies, in Italy for 2004-2006], in Official Journal, 2005, nr. 169 of 22.7.2005.

Another element to underline concerns the difficult communication between different administrations. For the purpose of better evaluate the complex phenomenon of migration, it is then necessary that every branch of administration, involved at different levels of governance (central state and regions) strengthen the exchange of data. In this context, despite of the efforts made in the context of IT and public administration, the information system referring to the proposed "sportello unico" ["single office"] for immigration ex lege 189/2002 is still not in place. The implementation and the effective realization of this tool seem to be the only mean to provide a complete information.

Article 16. Freedom to conduct a business

Freedom to conduct a business

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

International case law. - During the period under scrutiny the European Court of Justice has adopted a few judgements on the compatibility of national measures with the provisions of the EC Treaty guaranteeing freedom of competition (Articles 81 to 89 EC). None of the statements of the Court seems to change the settled case-law. For what concerns State aid, attention has to be drawn on the following judgement.

In Case C-400/99 Italian Republic v. Commission of the European Communities (10 May 2005), the Court has to consider whether decisions taken by the Commission concerning State aid granted by the Italian Republic to undertakings in the Tirrenia di Navigazione group may be considered as legal under the provisions of the EC Treaty. Even if focused on procedural matters, this judgment seems to be noteworthy because of a number of reasons which may be summarized as follows.

Firstly, the Court helds that, in view of the legal consequences of a decision to initiate the procedure provided for in Article 88(2) EC, classifying the measures concerned as new aid even though the Member State concerned is unlikely to subscribe to that classification, the Commission must first broach the subject of the measures in question with the Member State concerned so that the latter has an opportunity to inform the Commission that, in its view, those measures do not constitute aid or else constitute existing aid. Secondly, the Court analyse the subsidies paid to the Tirrenia group undertakings in respect of their public service obligations, which, according to the Italian Government, although involving elements of aid, in any event constitute existing aid. At this stage of the judgment, the Court considers the statements of the Italian Government that all payments made to the Tirrenia group undertakings in return for their public service duties are covered by public service contracts concluded between the Ministry of Transport and those undertakings, that the Commission received notice of those contracts, that certain information on the subject was transmitted to it and that the Commission, having received notice of those contracts, explicitly or implicitly authorised that aid. In that connection, the Court states that, at this stage of the proceedings, in the absence of a possibility of verifying the extent to which the subsidies adequately reflected the extra costs resulting from the public service obligations, it was legitimate for the Commission to continue to entertain doubts as to the existence of elements of aid in those subsidies. Moreover, the Commission referred to the suspension of those subsidies only to the extent to which they exceeded the net additional cost of providing services in the general economic interest. Lastly, the Court helds that, contrary to the main thrust of the Italian Government's contention, any aid in excess of what is necessary to cover the public service obligations provided for in the contracts at issue is not necessary for the stability, and therefore the maintenance, of those contracts.

Concluding observations of expert committees. - On 27 April 2004, the European Economic and Social Committee decided to draw up an own-initiative opinion under Rule 29(2) of the Rules of Procedure, on The role of the EIB in public-private partnerships (PPPs) and their impact on growth. The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 February 2005 (rapporteur: Mr Levaux). The European Economic and Social Committee adopted its document on 10 March 2005 [ECO 143-EESC/255/2005]. Even if focused on the general evolution characterizing the situation in the EC Member States and on the drivers for PPP developments in Europe, this opinion contains guide-lines which may be understood as important to evaluate the Italian situation with regard to the discussed freedom. In this connection, it highlights, first of all, that provision of new investment in infrastructure in Europe is increasingly being carried out under a range of PPP structures based on the principle of private sector risk taking participation in the provision of public infrastructure through payment by the users or by raising a charge on public funds commensurate with the service provided or with the risk transferred to the private sector. Secondly, this opinion points out that the core objective for the public sector of a PPP programme, which is typically set up through public contracts and concessions, is to harness private sector skills in support of improved public sector services and that, alongside reforms to public procurement rules, this had enabled the private sector to respond positively to these new opportunities to become involved in the delivery and operation of public infrastructure across many EU countries. Finally, the EESC fixes, among other matters, the need to maintain healthy competition between public and private bodies. As regards the powers of the EIB, the Bank should rigorously ensure equal competition (legal and fiscal) between public and private bodies. State aid in particular should not hamper contract award procedures.
With regard to the Italian situation and its particular perspective, attention has to be drawn to the fact that, in the last years, PPPs are increasingly being used to build roads, bridges, tunnels, water treatment plants, schools and hospitals. PPP developments in Italy are due essentially to financial grounds, i.e. financial benefits on to the public sector. This evolution shows nevertheless that PPP programmes in Italy are frequently incompatible with EU procurement and competition law, particularly with EU legislation on public aid.

Legislative initiatives, national case law and practices of national authorities

Legislative initiatives. - During 2005 a few acts have been adopted in order to contribute to a development of competition, particularly to a reinforcement of the market with regard to its opening to all EU operators. The most significant legislative initiatives seem to be the following ones:

a) legge 14 maggio 2005, n. 80, Conversione in legge, con modificazioni, del decreto-legge 14 marzo 2005, n. 35, recante disposizioni urgenti nell'ambito del Piano di azione per lo sviluppo economico, sociale e territoriale. Deleghe al Governo per la modifica del codice di procedura civile in materia di processo di cassazione e di arbitrato nonché per la riforma organica della disciplina delle procedure concorsuali [Law (2005:80) concerning the Action plan for Economic, Social and Territorial Development]. The Law (2005:80) provides financial benefits for national undertakings which intend to invest in the Italian national territory. A serious opinion on the provisions of the Law (2005:80) with regard to EU competition law, particularly to legislation on public aid, can only be expressed after the enforcement of this national act;

b) disegno di legge C 3328, Disposizioni per la tutela del risparmio e la disciplina dei mercati finanziari [Draft Bill (2005:C 3328), on the Protection of the Saving and the Discipline of the Financial Markets], approved by the Chambers of Deputies of the Italian Republic on 3 March 2005, then approved with modifications by the Senate of the Italian Republic on 11 October 2005 and now on second lecture in the Chambers of Deputies. The Draft Bill (2005:C 3328) intends to promote competition and transparence in the economic sphere, by increasing the powers of certain national Authorities, particularly of the Commissione nazionale per le società e la borsa-Consob (Companies and Stock Exchange Authority), and to promote their cooperation.
Practices of national authorities. - The Italian Autorità garante per la concorrenza e il mercato (Antitrust Authority) continues to work actively with the Italian Parliament and Government and other national Authorities, by issuing opinions and commends. It is noteworthy that, on 13 September 2005, the Autorità garante per la concorrenza e il mercato has submitted to the Italian Parliament and Government an opinion regarding the selection of tenders in the local public services [Decision (2005:AS311) of 6 September 2005]. In this act, the Autorità garante per la concorrenza e il mercato points out that, from the analyse of the discipline regulating the field of the water services, it emerges that the selection criteria of the managers of such services are not compatible with EU competition law and with the provisions of the national law guaranteeing freedom of competition.

Reasons for concern

A number of recent analysis highlights the weakness of the powers of some national Authorities in the economic sphere and competition. Particularly the absence in the last version of the Draft Bill (2005:C 3328) of provisions on the transfer of certain powers from the Italian Banca d'Italia (The Central National Bank) to the Italian Autorità garante per la concorrenza e il mercato (Antitrust Authority) may reinforce the freedom to conduct a business, to the detriment of consumers' rights [more details on the Draft Bill (2005:C 3328) sub «Legislative initiatives»].

<u>Imposition of certain standards, for instance standards restricting the awardance of public contracts</u>

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding observations of expert committees. - The own-initiative opinion of the European Economic and Social Committee on The role of the EIB in public-private partnerships (PPPs) and their impact on growth of 10 March 2005 [ECO 143-EESC/255/2005, more details sub «Concluding observations of expert committees» with regard to the freedom to conduct a business] seems to be important to evaluate the Italian situation with regard to the imposition of standards restricting the awardance of public contracts. Even if focused on general standards involving all EC Member States, this opinion contains guide-lines which may entail effects on the Italian legislation on public contracts. In this light, it points out, firstly, that PPPs are often characterised by the public sector entering into contracts to acquire

services, rather than procuring an asset. Secondly, it emphasizes that the EIB requires that all PPP projects supported by it are financially robust, economically and technically viable, meet the Bank's environmental requirements and are competitively tendered in accordance with EU procurement rules. Third, the Committee suggests using all the available studies from all available sources for a comprehensive assessment, particularly as regards the experience of the social partners, particularly the trade unions, of trends in working conditions, and that of consumers with regard to the quality of services. Moreover, for what concerns sectoral priorities, the Committee observes that the initial focus of PPP procurement in most countries is on the transport sector and that Italy, among at least two other countries in Europe (Portugal, Spain), is now bringing forward substantial PPP programmes in the health sector. Finally, the EESC welcomes the EIB's significant contribution to PPP development and to supporting growth and the improvement of public services in the Member States by providing the funds necessary to carry out work in the following areas: trans-European networks and the modernisation of transport infrastructure; school and university education; primary and secondary healthcare; environmental improvement. However, the EESC fixes, among other matters, the need to maintain labour, health and accessibility standards for facilities set up through PPPs and to systematically evaluate PPP projects by using a set of criteria that reflect the financing costs of the various options available to deliver public services and the experience gained by all the players involved, including employees and consumers.

Legislative initiatives, national case law and practices of national authorities

Legislative initiatives. - During the period under scrutiny several legislative measures have been taken in order to protect consumers and ensure quality and safety of commercial products, by imposing obligation for producers and distributors i.e. restrictions on commercialization of products. The most significant measures seem to be the following ones:

a) decreto legislativo 6 settembre 2005, n. 206, Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229 [Legislative Decree (2005:206) dispositions for the protection of consumers];
b) decreto legislativo 2 novembre 2005, n. 242, Attuazione della direttiva 2004/6/CE, che deroga alla direttiva 2001/15/CE, sulla commercializzazione di taluni prodotti [Legislative Decree (2005:242) implementing directive 2004/6/CE on the commercialization of some products].
Practices of national authorities. - On 16 November 2004, the Italian Autorità garante per la concorrenza e il mercato (Antitrust Authority) has submitted to the Italian Minister of the Health a signalling on the criteria of selection of the enterprises interested to the cycle of production of the self-sticking stamps for the medicinal products [Decision (2004:AS285) of 11 November 2004]. In its act, the Autorità garante per la concorrenza e il mercato has expressed some considerations with respect to measures adopted by the Istituto Poligrafico e Zecca dello Stato-IPZS (State Polygraphic Institute and Mint) both in the selection of the subjects supplying special paper destined to the realization of self-sticking stamps for medicinal products and in the choice of the fiduciary enterprises mentioned in Article 5 of the Decreto Ministeriale 2 agosto 2001, Numerazione progressiva dei bollini apposti sulle confezioni dei medicinali erogabili dal Servizio Sanitario Nazionale [Ministerial Decree (2001) relating to progressive numeration of the stamps for the confection of medicinal products]. The Italian Antitrust firstly points out that, from the reading of the above-mentioned disposition, it emerges that reasons of security justify the participation of the IPZS both in the phase of supply of the special paper and in the successive ones of fabrication and printing of brand. However, the circumstance that the IPZS proceeds to direct confidences for the supply of that paper and resorts without contests the fiduciary enterprises for the production of the same ones stamps does not appear compatible with the Italian legislation governing contracts publics emanated in accordance with EC directives. Secondly, the Authority highlights that the absence of public evidence procedures has determined the crystallization of the supplies in head to the same enterprises from 1990 till today. In this connection, the Italian Authority considers, to the contrary, favorable that periodically the contracting out agency proceed to new selections of the fiduciary companies, in order to choice that one which guarantees the better service.

Article 17. Right to property

The right to property and the restrictions to this right

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

International case law. - During 2005 the European Court of Human Rights has adopted more than ten judgments relating to cases originated in applications against the Italian Republic lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Italian nationals or with the Court under Article 34 of the Convention by Italian nationals. In these judgments the Court examines cases raising similar issues. By its examination the Court founds pratically by each case a violation of the right to property and helds thus that there has been a violation of Article 1 of Protocol No. 1 to the ECHR.

The cases examined by the Court raise similar issues, i.e. the applicants are normally owners of flats in Italian towns, they complain of their prolonged inhability to recover possession of their flats and claim compensation for pecuniary damages as a just satisfaction for the interference in their rights.
The principles laid down in the case law of the Court may by summarised in the statements that an interference in the discussed freedom must strike a fair balance between the demands of the general interests and the requirements of the protection of the individual's fundamental right and that applicants must be awarded compensation for the pecuniary damage resulting from the loss of rent for the period of time related to the violations fund [see, for instance, Eu. Ct. H. R. (1° sect.), Capone v. Italy (Appl. n° 62592/00) judgment of 15 July 2005 adopted by a Chamber; Eu. Ct. H. R. (3° sect.), Cima v. Italy (Appl. n° 55161/00) judgment of 28 July 2005 adopted by a Chamber, Final 28 October 2005].
In a recent judgement, the Court emphasizes the respect of the principle of legality, which must be considered by examining the question of the above-mentioned fair balance [Eu. Ct. H. R. (4° sect.), Chirò and others v. Italy (Appl. n° 67197/01) judgment of 11 October 2005 adopted by a Chamber].

Legislative initiatives, national case law and practices of national authorities

Legislative initiatives. - During 2005 a few legislative acts have been adopted in order to promote the discussed right. The most important legislative initiatives seem to be the following ones, which concern intellectual property rights:

a) legge 14 maggio 2005, n. 80, Conversione in legge, con modificazioni, del decreto-legge 14 marzo 2005, n. 35, recante disposizioni urgenti nell'ambito del Piano di azione per lo sviluppo economico, sociale e territoriale. Deleghe al Governo per la modifica del codice di procedura civile in materia di processo di cassazione e di arbitrato nonché per la riforma organica della disciplina delle procedure concorsuali [Law (2005:80) on the Action Plan for Economic, Social and Territorial Development]. Article 1-quater of the Law (2005:80) intends to fight against counterfeit, by setting up a high Commissioner for counterfeit, whose primary duties include overseeing violations of industrial and intellectual property rights and coordinaring the operations of prevention and repression of counterfeits;

b) legge 25 giugno 2005, n. 109, Conversione in legge, con modificazioni, del decreto-legge 26 aprile 2005, n. 63, recante disposizioni urgenti per lo sviluppo e la coesione territoriale, nonché per la tutela del diritto d'autore. Disposizioni concernenti l'adozione di testi unici in materia di previdenza obbligatoria e di previdenza complementare [Law (2005:109) on the Development and the Territorial Cohesion, for the Protection of Copyright and for Obligatory Social Security and Complementary Social Security], which specifies, amongst others matters, the provisions which have been adopted in order to protect the copyright.

Article 18. Right to asylum

Asylum proceedings

Legislative initiatives, national case law and practices of national authorities

On 21 April 2005, the new "Regulation relating to the procedures for recognition of the refugee status" became operative for all effects, approved with Presidential Decree no. 303 of 16 September 2004.
The current procedure requires that seven Territorial Commissions, located across the country, examine the application. In addition, the procedure lays down that asylum seekers can be detained at Identification Centres (Article 5, et sequitur) and this detainment may be optional or mandatory, according to the case.
The optional detainment of the asylum seeker can be ordered in the following three cases:

a) to verify or determine the nationality or identity of the asylum seeker, if he does not have the travel or identification documents, or has presented documents considered to be false on his arrival to Italy (Article 1-bis, Law Decree 416 of 30 December 1989, converted with amendments by Law 39 of 28 February 1990, introduced by Law 189/2002)
b) to investigate - at the complete discretion of the border police - the elements on which the asylum application is based, if these elements are not immediately available.
c) conditional on the procedure concerning recognition of the right to be admitted to Italy.

Mandatory detainment of the asylum seeker must be ordered in the following two cases:
a) after presentation of the asylum application by the foreigner for having eluded or attempted to elude border controls, or immediately after, or if the applicant has an irregular resident status.
b) after presentation of an application for asylum by a foreigner already subject to a deportation or denial of entry order.
There are important and positive aspects of the new regulations, in particular, decentralization of the procedure for recognizing the refugee status (by creating seven Regional Commissions located across Italy); full and comprehensive participation of the UNHCR in these Commissions and granting humanitarian status to those who are not eligible for recognition of refugee status according to the Geneva Convention of 1951, which still require a supplementary form of international protection such as individuals fleeing situations of war, generalized situations of violence or serious human rights violations.
Nevertheless, other provisions of the new procedures raise concerns, since they do not sufficiently guarantee the rights of the asylum applicants:

1) if the Regional Commission denies the asylum seeker refugee status, the individual detained in identification centres can still have his or her application reviewed by the Regional Commission, supplemented by a member of the Central Commission.
2) the appeal against a denial of status issued by the Regional Commission cannot stay or suspend the deportation order. The asylum seeker can be deported or repatriated before a decision is reached in the judgement on appeal. The competent regional prefect is entitled to grant a permit to remain in Italy, while awaiting the results of the appeal; the UNHCR has also stated that these regulations are of concern when we consider that in some European Union nations, between 30 and 60% of the refugees are granted recognition of refugee status only after appeal.
3) optional and mandatory detainment of asylum seekers. In its assessment, the UNHCR stated that detainment should only be an exceptional measure and not extended to a relatively wide category as provided by Law 189/2002.

Positive aspects

Establishment of the Regional Commissions, before which the new members have attended special legal and practical training courses held by qualified legal experts, social workers and experts from the ONG, which deals with refugees and human rights, should reduce the amount of time necessary for the procedure to recognize refugee status to a maximum of 20/40 days after the individual submits an application for asylum to the first decision. Before comprehensive implementation of Law 189/2002, the procedure of recognizing refugee status often lasted longer than one year. During this waiting period, the

asylum seeker had the right to limited financial assistance for the first 45 days only, while he did not have the right to work.

Good practices

The Central Commission for the Rights of Asylum of the Ministry of the Interior published an informational booklet for individuals applying for refugee status, drawn up in accordance with Article 2, section 6 of the Presidential Decree 303 of 16 September 2004 and is available in Italian, French, Spanish and Arabic. Police headquarters must give individuals applying for refugee status a copy of the document in a language they can understand, which clearly explains the cases in which it is possible to obtain recognition of refugee in accordance with Law 189/2002 and the respective implementing regulation.

Reasons for concern

It is of concern that the identification centres in which asylum seekers can or must be detained are not physically separated - or at least it is not easy to distinguish them - from temporary detention and assistance centres in which deported or expelled foreigners must be detained if it is not possible to immediately escort them to the border. The assimilation of the asylum seekers with illegal immigrants is so clear that, from a practical and procedural point of view, it seems that we are gradually approaching a melding of the two categories.

Recognition of the status of refugee

Good practices

In April 2005, the Central Commission for the Rights of Asylum adopted guidelines to use in examining asylum applications. It is worth remembering that after Law 189/2002, the Regional Commissions for Recognition of Refugee Status can recommend issue of a one-year residence permit for humanitarian reasons (which may be extended) to the foreign national who, while not individually persecuted, may be unable to return to his country. The same guidelines remind the Regional Commissions of the need that in examining the decisions, recognition of refugee status or the request for issue of a residence permit for humanitarian reasons must be made based on the instructions contained in the European Council Directive 004/83/CE of 29 April 2004, which provides the minimum regulations for attributing the status of refugee or person in need of international protection to foreign nationals or stateless persons as well as minimum regulations on the content of the protection provided, even if the directive has not yet been implemented into Italian law by the legislature.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 21 July 2005, the Official Gazette published Legislative Decree 140 of 30 May 2005 regarding "Implementation of the EC Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers in member States", whose regulations have taken effect as of 20 October 2005.
The legislative decree lays down and disciplines the system of accepting applications for persons seeking refugee status, for which the "ordinary procedure" is applied pursuant to Article 2 of Presidential Decree 303/2004 and to whom a residence permit must be issued. It also governs applicants no longer being held. This provision is applied for applications filed as of 20 October 2005 and does not involve cases of asylum seekers for whom mandatory or optional detainment is ordered.

Article 5 of Legislative Decree 140/2005 establishes that asylum seekers who are detained are given shelter in the temporary detention and assistance centres or in identification centres.
Shelter will be discontinued as soon as the decision is reached on the application for asylum. Subsection 7 of Article 5 also sets forth that shelter and services will continue in the case that the immigrant files a legal appeal and judicial or other authorization adopted in accordance with Article 17 of the Presidential Decree 303/2004 to remain in Italy. In these cases, shelter and services will continue for the period of

time necessary to file an appeal and until the decision to deny authorization to remain in Italy is communicated and ends as soon as the applicant is allowed access to employment in accordance with Article 11 of the same legislative decree, namely six months after filing the application for recognition of refugee status.

Article 6 of Legislative Decree 140/2005 governs the methods of access to the shelter for asylum seekers who are issued a residence permit and their family members by sending them to one of the centres that make up the protection system for asylum seekers and refugees.
In the event that there is no place for the asylum seeker in the government centres (both identification centres and centres in accordance with Law 563/1995) the applicant is granted the economic allowance pursuant to Article 1 of Law 39/1990. To obtain shelter, the asylum seeker is obliged to appear in person at the centre identified and has the right to an allowance only in the case that a space in the centres is not available.

Article 7 of Legislative Decree 140/2005 establishes that the competent office to examine the application for asylum of applicants admitted to a shelter is the Regional Commission for Recognition of Refugee Status of the region where the applicant has applied.
Article 8 of Legislative Decree 140/2005 includes special methods of shelter for the more vulnerable categories, ordering the Director of the Identification Centres to implement specific services, where possible, in conjunction with the Local Health Authority.
Finally, if the National Fund for Asylum Policies and Services has the necessary resources available, the Ministry of the Interior is authorised to endorse special conventions with the International Organization of Migration or the Italian Red Cross to implement the services for tracing family members of unaccompanied minors.

Article 9 of Legislative Decree 140/2005 establishes that the structures must guarantee the asylum seekers hosted in the Identification Centres or the centres of the local authorities (i) protection of life and the family unit and (ii) communication with family members, attorneys, representatives of the United Nations Higher Commission for Refugees, and representatives of the authorities and the associations under Article 11 of the Presidential Decree 303/2004.
Article 11 of Legislative Decree 140/2005 brings new ideas with respect to the previous regulation regarding employment for asylum seekers: if a decision is not reached on the merits of an application for asylum six months after its presentation and the delay is not caused directly by the foreign national involved, the residence permit for the asylum seeker is extended for another six months and this new permit shall allow the foreign national to work until the procedure has been completed. This residence permit cannot be converted into a permit for employment purposes.
The provision identifies several specific instances (but not limiting) where the delay in affording refugee status is caused by the applicant, thereby making it impossible to issue the aforementioned residence permit for employment. In this case, for the applicant at fault in the cause of the delay, notification of the hearing must have been sent the shelter or the elected place of domicile and the applicant’s failure to appear at the hearing cannot be caused by force majeure (i.e. illness of the applicant). In these cases, the Police headquarters must extend the validity of the residence permit for the "application of asylum" only and not for employment.
Causes of revocation of the conditions of shelter are described under Article 12 of Legislative Decree 140/05.

Good practices

In 27 May 2005 UNHCR spokesman Ron Redmond in Geneva said that according to official 2004 statistics from the Italian Central Eligibility Commission (CEC), Italy examined 8,701 asylum applications during the year.
The CEC granted 1951 Convention Refugee Status to 780 applicants (8,96%), while 7,921 (91.04 %) were classified as "rejected" – so these are the figures on which the recent reports are based. But if you delve a little bit deeper into these figures you find a very different picture.
The figure of 7,921 "rejected cases" includes 2,352 people who were in fact granted subsidiary forms of international protection – in other words, people who were judged to be in a refugee-like situation,

including people fleeing war and widespread violence etc. So 27.03 percent of the total number of cases examined were granted subsidiary protection, in addition to the 8.96 percent granted 1951 Refugee Convention status.
Thus in total, in 2004, Italy granted some form of international protection to 3,132 people – or 36 percent of the people who lodged asylum claims. What's more, these are first instance decisions only – i.e. these figures do not include people recognized on appeal.

In addition, 2,627 (30.19%) of the total number of asylum seekers for one reason or another did not complete the first instance procedure. They are also classified as "rejected" – even though a certain proportion of them may well in fact be refugees or people who would qualify for subsidiary protection.
If this group is discounted (because we have no idea whether they are or are not refugees), the number of asylum applications which have been actually examined on their merits by the Commission in 2004 is 6,074. If we calculate the recognition rates on the basis of the number of cases that were actually examined, they would be as follows:
1951 Convention Refugee: 12.8%
Subsidiary form of international protection: 38.7%
Thus a total of 51.5% of the asylum applicants whose cases were actually examined on their merits in Italy in 2004 were judged to be in need of international protection.

Article 19. Protection in the event of removal, expulsion or extradition

Collective expulsions

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

At March 18 UNHCR has appealed to the Italian authorities for more access and transparency following yesterday's deportation of some 180 people from Italy's Lampedusa island to Libya. The group was deported on two flights, with an Italian police escort. Prior to that, they had been living at the reception centre on Lampedusa since arriving on boats over the past week or so. UNHCR, which sent a senior staff member to the island, has so far been denied access to the centre. The agency has repeatedly asked the Italian authorities for access to ensure that anyone who wishes to make an asylum claim can do so, and that the claims are properly and fairly assessed. During a very similar episode in October 2004, UNHCR was eventually permitted to enter the centre, after more than 1,000 people had been flown back to Libya. On that occasion, the agency believed that individuals who might have had a valid claim were not given proper assessment because of the rushed methods used to sort people by nationality. UNHCR spokesman Ron Redmond in Geneva said that it is far from clear that Italy has taken the necessary precautions to ensure that it is not sending back any bona fide refugees to Libya, which cannot be considered a safe country of asylum. He added that UNHCR deeply regrets the continued lack of transparency surrounding these events. As a result, suspicions that there may have been breaches of international refugee law will be hard to put to rest. He noted that UNHCR is also concerned by reports that Libyan officials were flown in to Lampedusa and given access to the people in the centre. In UNHCR's view, it is not appropriate to involve officials of third countries until it is clear who the people are, whether they have any links to such countries, and what their reasons for moving are.

Legislative initiatives, national case law and practices of national authorities

The First Civil Section of the Court of Cassation (sentence no. 16571/2005 - Presiding judge: Saggio; Rapporteur: Macioce), in interpreting the article of the Supplementary Protocol of the European Convention on Human Rights which prohibits "collective deportation", ruled that the provision intends to ban only deportations adopted against a group of foreigners without first performing a reasonable and objective examination of the reasons and defences of each individual before the competent authorities. In the view of the Court, "if a legal system prescribes - as obligatory for all countries in the European Union - that a foreigner must have a residence permit to remain in a country, providing that, if the individual does not have such authorization, deportation orders can be executed, and that this foreigner, although

lacking a permit, shall not be deported when protection, humanitarian or family unity reasons hinder this process, verification of the Authority having the power to deport the foreigner must hinge on the existence of such specific conditions and be controlled by a judge. If the administrative checks and the subsequent legal analyses find that the conditions for deportation exist and that there are no reasons for obstruction, the fact that many concurrent measures are issued against the individuals found to be in irregular situations pursuant to a police control is wholly irrelevant for the purposes of considering the prevision under Article 4, IV Supplementary Protocol CEDU realized." This is precisely where the Court of Milan erred when, with a summary and arbitrary equivalence, considered as mass deportation, and therefore prohibited, expulsion of foreigners of the same ethnic background and nationality ordered concurrently and with identical grounds, wholly neglecting the objective and relevant data:

1) the randomness (and indifference) of the discovery in the area to (legitimately) evacuate of a group of individuals of the same ethnic background and nationality, but also with an identical illegal situation in Italy;
2) the individual verification of the positions in the presence of the conditions authorizing the expulsion and in the absence of impediments (according to the precise regulations under Leg. Decree 286/98 in the text resulting after the amendments made to Law 189/02);
3) opposition to the deportations with a "collective" appeal before an independent and impartial judge and in proceedings assisted by every guarantee of defence.

The Italian Council for Refugees (CIR) has expressed great concern for this sentence, which could be interpreted in such a way as to allow a "legitimization" of mass deportations of individuals belonging to a specific ethnic group by taking "copy cat" measures. Article 4 of Protocol 4 of the European Convention on Human Rights, which sets forth a ban on collective deportation of foreigners, was adopted to counteract the mass or group deportations which have taken place in the past by reason of religion, ethnicity and nationality. The risk is that a basic precedent is established which cannot guarantee an adequate valuation of the individual instances and in which standardized measures are adopted, therefore prejudicing the basic human rights of the individuals subject to deportation orders, among which there may be people belonging to particularly vulnerable categories. This is not such a remote possibility when you consider the number of appeals already presented to the European Court on this issue. The CIR asks what would happen to the groups of asylum seekers, not yet qualified as such by the authorities, who are forced to group together and find shelter in places occupied illegally - due to the insufficient space in public shelters - and therefore are subject to "legitimate evacuation" after being "randomly" identified and then deported based on "copy-cat" measures. The CIR hopes that the sentence of the Court of Cassation does not set a precedent to deportation measures that fly in the face of the letter and the philosophy of the European Convention on Human Rights.

Since the beginning of 2005 to 1 August 2005, a total of 4,137 foreign nationals have been deported from Italy, due to absence of proper documents. These included 1,955 Egyptians, 1,920 Romanians, 219 Nigerians and 43 Chinese. Sixty-one charter flights were used to deport them. Protests have been raised against these expulsions. In 2004, 71 charter flights were used to deport 4,900 foreign nationals, including 1,576 Romanians, 354 Nigerians, 2,653 Egyptians, 84 Eritreans, 30 Ecuadorians, and 203 Sri Lankans. The Director General of the Immigration and Border Control of the Department of Public Safety of the Ministry of the Interior, Alessandro Pansa, explained that only 10% of immigrants come to Italy by sea, usually from North Africa or from sub-Saharan nations, but what is most worrying is the safety of illegal immigrants compelled to travel at their own risk and who fall prey more frequently than others to exploitation. In the most recent Report to Parliament, the information and security services have found that the risk of illegal immigration can become an avenue for terrorists to enter the country.

Subsidiary protection and prohibition of removals of foreigners to countries were they face a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

1) On 10 May 2005, the third section of the European Court on Human Rights stayed the deportation of eleven immigrants who disembarked on Lampedusa in March; it issued an emergency order based on Article 39 of the regulation in which it warned the Italian government that, "in the interest of the parties", "it must not deport" eleven of the immigrants landing on Lampedusa. The decision of the Court approved the urgent petition filed on 1 April 2005 in the name of 79 individuals in the sphere of a procedure to throw out the deportation orders issued by the Italian authorities against the foreigners who have illegally penetrated Italian waters (and then landed on Lampedusa where they intended to apply for asylum) which would have been executed with immediate escort to Libya.
2) 2) With a resolution approved on 14 April 2005, the European Parliament expressed serious concern for the fact that, despite the assurances made by the Commission, the repatriation of immigrants from Lampedusa to Libya was not conducted in compliance with the European regulations and international law, since Italy has repeatedly violated the principle of no denial of entry, practices mass deportation, and subjects immigrants seeking asylum to inhuman and degrading treatment.

Legal remedies and procedural guarantees regarding the removal of foreigners

Legislative initiatives, national case law and practices of national authorities

1) Published in the Official Gazette no. 38 of 16 February 2005, Legislative Decree no. 12 of 10 January 2005 implemented Directive 2001/40/EC relating to reciprocal recognition of the decision to expel citizens of third countries. Without prejudice to the matters under Articles 23 and 96 of the Convention applying the Schengen Agreement of 14 June 1985, ratified and made executive by Law 388 of 30 September 1993, the Legislative Decree states that decisions on expulsion adopted by the competent national authorities are orders to deny entry and deportation orders issued respectively by the Chief of Police, the Ministry of the Interior and the Prefect in accordance with Articles 10 and 13 of the Consolidated Immigration and Foreigners' Status Act, approved with Legislative Decree 286 of 25 July 1998 and subsequent amendments, as well as the corresponding expulsion orders adopted by the competent authorities of a member State of the European Union. The Prefect is the national authority competent to adopt an executive measure to implement a decision of expulsion adopted by a member State of the European Union, by issue of an administrative deportation ordered, emanated according to the procedure described under Article 13, section 3 of the Consolidated Law. Before issuing the order, the Prefect must obtain from the member State making the expulsion decision the documents necessary to prove the soundness of the decision, including by means of consultation provided under Article 3 of the Legislative Decree.

2) Law Decree 144 of 27 July 2005, converted with amendments into Law 155 of 31 July 2005, published in the Official Gazette 177 of 1 August 2005, extends several measures designed to fight organized crime to the actions to counteract terrorism. For the discipline relating to foreigners, the legislation offers the possibility of granting foreigners who collaborate a one-year residence permit that can be renewed; if their information proves vital to pursuing positive objectives, a special residence paper can be issued. Deportation is completed more quickly by the Ministry of the Interior and the Prefects against foreign nationals whose stay in Italy is considered a threat to public order and national security or is found to be promoting terrorist organizations or their actions. We should remember that Article 13 of the Consolidated Immigration and Foreigners' Status Act, approved with Legislative Decree 286 of 25 July 1998, lays down that the deportation order for reasons of protection of public order or national security can be adopted by the Ministry of the Interior, subject to communication to the President of the Council of Ministers and the Minister of Foreign Affairs and this order is executed by immediate escort to the border, although the foreigner is entitled to file a petition with the Regional Administrative Court of Lazio.

Today, Article 3 of Law Decree 144/2005 also allows a special administrative deportation order for reasons of prevention of terrorism. In this case, the deportation order is adopted by the Ministry of the Interior or delegation to the Prefect, against the foreign national who belongs to one of the categories identified by Article 18 of Law 152/75 or if there are serious reasons to believe that this person can in some way facilitate domestic or international terrorist organizations or activities. Also in this case, the measure is immediately executable, but the person involved is entitled to file an appeal with the competent Regional Administrative Court. The Chief of Police is responsible for executing the orders and in view of how the regulatory provisions for immediate execution of the order are formulated, it is not necessary to obtain the approval of the authorities nor the approval of the Justice of the Peace to escort the deported foreigner to the border, nor wait for the results of an appeal. Due to their exceptional nature and scope, these orders departing from the general system were limited in time and therefore applicable until 31 December 2007.

To protect the fundamental rights of the individual, deportation orders cannot be adopted if the foreigner, in his country of destination, can be subject to persecution due to race, gender, language, citizenship, religion, political beliefs, social or personal circumstances, or can risk being sent to another state where he is not protected from persecution (Article 19, subsection 1, of the Consolidated Law approved with Legislative Decree 286/1998). In the event of deportation based on Article 3 of Law Decree 144/05, the prohibition on expelling the individual extends to additional impedimental conditions (pursuant to subsection 2 of Article 19 of the Consolidated Law), namely when the foreign national is (a) under 18 years of age, unless he is following a deported parent or guardian, (b) holds a residence permit, (c) lives with a relative to the 4th degree or an Italian spouse, (d) is pregnant, or (e) is a mother who must care for her newborn child (an interpretational sentence issued by the Constitutional Court also extends this ban to the spouse).

Reasons for concern

Doubts on the constitutional legitimacy conjured up by the discipline of the special administrative deportation order for reasons of prevention of international or domestic terrorism, instituted by Law Decree 144/2005.
The first element to look at is the relationship between the objective of national security pursued through deportation and exercise of the right to justice in its possible manifestations of protection of the rights of the individual (in relation to the appeal made against the measure) and execution of the prosecution (cause of the proceedings underway). What's more, it is important to consider the relationship that involves the functions of the executive and judiciary authority in general. Remember that Article 1 of the Supplementary Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4 November 1950 (ECHR) allows member States to expel a foreigner in the interest of protecting public order or national security "before being able to exercise the rights listed under Paragraph 1"; essentially, before being able to: (a) "claim justification opposing the deportation"; (b) "have his case reviewed; or (c) "obtain representation for these purposes before the competent authorities or before one or more individuals indicated by this authority". The possibility to deny a stay of the deportation order while an appeal is pending and to not submit the expulsion order to jurisdictional control may comply with these international regulations, because Law Decree 144/2005 tends to temporarily shift the balance more on state security to protect against the actual and grave danger of terrorists attacks. Still, these regulations do not appear to comply with the reservation of jurisdiction regarding measures limiting person freedoms, under Article 13 of the Italian Constitution; in connection with this, it is important to note that the Constitutional Court issued sentence 222/2004 declaring the constitutional illegitimacy of an order that was regulated by Article 13, subsection 5-bis of the Consolidated Law since it conflicted with the principles held by the Court in sentence 105/2001, precisely because the measure to escort a foreigner to the border was executed prior to approval by the judicial authorities. The Court affirmed that it is always necessary for a judge to review a deportation order before a foreigner is actually escorted to the border, regardless of the urgency of the order made by the legislature.

CHAPTER III. EQUALITY

Article 20. Equality before the law

Equality before the law

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Justice, Case C-278/03 Commission of the European Communities v. Italian Republic [12 May 2005]: in the system of recruitment of teaching staff in Italian State schools, the Italian Republic, refusing to take into account experience acquired while teaching in other Member States or refusing to take it into account in the same way, depending on whether the teaching was carried out in Italy or in other Member States, has failed to fulfil its obligations under art. 39 EC and art. 3(1) of Regulation n. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers.

Legislative initiatives, national case law and practices of national authorities

Legge Regione Friuli Venezia Giulia 8 April 2005, n. 7 Interventi regionali per l'informazione, la prevenzione e la tutela delle lavoratrici e dei lavoratori dalle molestie morali e psicofisiche nell'ambiente di lavoro [Regional Law Friuli Venezia Giulia (2005:7), Regional measures on protection of employees against harassment in work places]: this law aims to protect employees against harassment and every form of discrimination through several measures. Among the others, can be remarked the establishment of hearing points ("Punti di ascolto") to help victims of harassment or discrimination and the provision of monitoring and information functions tasked to the Regional Commission for active labour policies ("Commissione regionale per le politiche attive del lavoro") and to the regional Observatory on labour market ("Osservatorio regionale sul mercato del lavoro").

Legge Regione Friuli Venezia Giulia 23 May 2005, n. 12 Norme in materia di diritto e opportunità allo studio universitario [Regional Law Friuli Venezia Giulia (2005:12) Norms on rights and opportunities in university education]: it aims to secure equal opportunities for all people in university studies through services and financial measures.
Corte Costituzionale (Constitutional Court), n. 281/2005: Seniority of women in public employment can be increased (at most 5 years) for reaching 20 years in office, necessary to accrue the right to retirement benefit, only if the women are married. The provision which excludes from this benefit women not married with children is an unconstitutional discrimination.
Corte Costituzionale (Constitutional Court), n. 385/2005: Only foster mothers, and not also foster fathers, if they are professional, can enjoy of the maternity benefit rights. This provision is unconstitutional in that it is a discrimination if compared with the situation of parent employee. In this case, in fact, both parents enjoy of maternity benefit rights.

Article 21. Non-discrimination

Protection against discrimination

Legislative initiatives, national case law and practices of national authorities

Corte di Cassazione, I sez. pen. (Supreme Court), n. 22161/05, 18 May – 8 June 2005. The re-educational character of penalty weights for immigrates without residence permit too: so they have equal rights in prison, can't be discriminated and can benefit by alternative punishment, as Italian citizens do.
Corte di Cassazione, V sez. pen. (Supreme Court), n. 19378/05, 5 April – 20 May 2005. To address an immigrant calling him "Moroccan" may be a crime – even if he is really a Moroccan citizen – if this term is used with depreciative value. It is, in fact, an abusive word, and a sign of racial discrimination.

Giudice di Pace di Torino, VI sez. civ. (Justice of the peace), 21 December 2004. A homosexual can't be expelled if in his country of origin homosexuality is a crime and if he can be object of discriminatory behaviour in reason of this.
Tribunale di Padova (Court of Padua), n. 1982-05, 19 May 2005. A cash business, which, aimed to banish non EU customers, applies higher prices to immigrants commits a discriminatory act and the victims of the discrimination are entitled to a compensation for a non pecuniary damage.

Positive aspects

Though the access for immigrants to consumer credit is still often difficult (because some loan companies request items of documentation to non-EU citizens which Italian citizens don't have to submit), the conditions to the access are in general improved, as the report of Caritas/Migrantes "Immigrazione. Dossier statistico 2005, XV Rapporto sull'immigrazione" (presented in Rome on 27 October 2005) [in http://www.db.caritas.glauco.it/caritastest/temi/Immigrazione/Dossier_2005/Presentazione/home.htm] shows.

Reasons for concern

Italy is one of the countries where access to the citizenship is more difficult for immigrants and their children: Italian legislation privileges the jus sanguinis principle. In alternative a long period of legal residence (10 years) is required. Now in Parliament a proposal which aims to shorten this period is discussed, but the political parties have not yet agreed upon this point. This difficulty in the access to the citizenship favours illegal organizations devoted to the traffic of false registrations in the register of births, aimed to give illegally Italian citizenship (see for example the racket of false birth certificates – paid 20.000 euros – found out by the police of Rome last November [source: AprileOnLine, info n. 50, 16/11/2005]).
Moreover, this difficulty causes discriminations in many fields of the life of immigrants: for example in the system of assignment of accommodation in public housing, where often points are given to the applicants if they are Italian citizens.
However on 20 April, the Minister of the Interior created an informational call centre for immigrants who required Italian citizenship.
Moreover migrant workers are often paid with a lower salary than Italian workers: see for example Report Ires-CGIL "Lavoratori immigrati nel settore edile" (July 2005), in http://www.filleacgil.it/stranieri_file/Rapporto_finale_ultimo_fillea_2005.pdf
At last, also the policy of annual entry quotas of immigrates presents some discriminatory features, in the system of division of the annual entry quotas: a preference is in fact given to seasonal workers (for the year 2005 almost 50.000 out of the total of 79.500), and the immigrants are selected on the basis of "influx decrees", depending on whether their country of origin has signed readmission agreements with Italy regarding the forced repatriation of expelled immigrants (see D.P.C.M. [Prime Minister Decree] 17 December 2004, on Official Gazette 2005, n. 26).

As for sexual orientation or gender identity discrimination, the Government claimed on 21 January 2005 before the Constitutional Court that the Regional Law Tuscany 2004:63 prohibiting sexual orientation or gender identity discrimination may be unconstitutional. According to Government opinion, the protection of human rights fall within governmental and not regional jurisdiction and the concept of "sexual orientation" is not legally material in the national legal system. The Constitutional Court has not yet declared.

Fight against incitement to racial, ethnic, national or religious discrimination

Reasons for concern

Italy has not an adequate framework of public official criminal justice data on racist violence. Unofficial data collection are to be found (from NGOs working in this field), but not so complete. This inadequacy of data collections reflects a more general inadequacy of the initiatives to combat the discrimination and to assist the victims.

Moreover, if racial discrimination can derive from the use of words and their introduction in everyday common language, Italian mass media offer many examples of discriminatory language and devote more space to cases in which immigrants are portrayed as perpetrators of crimes.
Another reason of concern is related to the manifestations of racism which occur at sporting events: truly UEFA and FARE – Football Against Racism in Europe – are taking many positive initiatives to combat racism, with the adhesion of some relevant sports society (in Italy, for example, of Inter, Milan, Juventus, Roma, Messina, Udinese, Napoli). In 2005, the International Day against Racism was organized on 21 March, and in coincidence of this, in Italy the Minister of Equal Opportunities and UNAR (the Office for the promotion of equal treatment and the removal of discrimination on grounds of race and ethnic origin) organized the "Week against Racism", opened with the Rome Marathon on 13 March and marked by various activities designed to deliver a clear message against racism: on 19 and 20 March, during every football match, banners displaying the slogan "Fai gol al razzismo" were shown, and some cultural initiatives were taken to promote a multicultural approach in the society. But notwithstanding this anti-racist campaign has continued to grow, the incidence of racism in various sporting events increases again (see recently the football match Messina-Inter on 27 November 2005).

Remedies available to the victims of discrimination

Legislative initiatives, national case law and practices of national authorities

Decreto legislativo 27 May 2005, n. 116, Attuazione della direttiva 2003/8/CE intesa a migliorare l'accesso alla giustizia nelle controversie transfrontaliere attraverso la definizione di norme minime comuni relative al patrocinio a spese dello Stato in tali controversie [Legislative Decree (2005:116) implementing directive 2003/8/CE on legal aid in transfrontal litigations]: art. 3 secures legal aid to regular immigrants too.
Paper del Ministro delle Pari opportunità "Un nuovo ufficio per dire stop alle discriminazioni razziali" [Minister of equal opportunities paper on UNAR, Office for the promotion of equal treatment and the removal of discrimination on grounds of race and ethnic origin], February 2005: this paper explains the UNAR area of intervention, such as in particular his monitoring, advisory and information-providing role, and his power to investigate alleged cases of discrimination and to assist victims in legal proceedings or administrative procedure.

Reasons for concern

Irregular immigrants are the weakest and most vulnerable victims of discriminatory behaviour, either by private people or public institutions (members of state bureaucracy, police forces, health workers...): their possibility to act legally in self defence is, in fact, very low, because their clandestine status is a guarantee of full impunity for those who commit acts of discrimination. But also for regular immigrants the situation is not so good: though art. 5 provides the legitimacy to act to associations in the case both of collective and individual discrimination, only associations registered in a special list approved by the Minister of Labour and Social Policies and the Minister of Equal Opportunities can take legal actions to report to the judiciary cases of racial discrimination. But the interministerial decree containing this list is not yet passed. So the courts often declare the voluntary intervention of associations not receivable.

Positive actions aiming at the professional integration of certain groups

Legislative initiatives, national case law and practices of national authorities

Notice of the Minister of Equal Opportunities 24 January 2005, n. 6 on Official Gazette 2005, n. 27 which empowers the presentation of projects aimed to social integration of immigrates, on the basis of art. 18 Testo Unico delle disposizioni concernenti la disciplina sull'immigrazione e norme sulla condizione dello straniero approvato con decreto legislativo 25 luglio 1998, n. 286 – Programmi di assistenza e integrazione sociale [Consolidation of Statutes on immigration and legal status of foreigners 1998:286].
Minister of Labour and Social Policies Report on Policies against Poverty and Social Exclusion, 3 June 2005: it examines some initiatives of labour policy introduced to oppose disadvantaged people exclusion,

to promote equal opportunities and to integrate immigrants in the social framework. As for the first group of policies, can be remarked: the introduction of a kind of "collateral job" ("lavoro accessorio") in favour of families or non profit associations, through aid services, taking care people with disability, subsidiary teaching, cooperation in cultural or sporting events or social work, and the introduction of "insertion contract" ("contratto di inserimento"), aimed to improve access to work of weak group of people (young or unemployed people, people with disability, women living in areas with high female unemployment). As for the second group of policies, relevant seem: the opportunity of immigrates to use the vocational training acquired in the country of origin to get a preferential position in the entry in Italy, the program which aims to make easier for migrant businessmen access to credit and financial and banking services, and the project called "Case alloggio" which organizes vocational training for disadvantaged and pregnant women.

Agreement between UNAR and Trade Unions CGIL, CISL, UIL, UGL, and employers organizations Confindustria, Confartigianato and Confapi of 18 October 2005, aimed to improve vocational training without discrimination on grounds of race and ethnic origin, to give assistance to victims of discrimination, and to implement multiculturalism in work places.
Circolare Ministero del Lavoro e delle Politiche sociali, 3 February 2005, n. 4, Lavoro intermittente [Minister of Labour and Social Politics Circular (2005:4) on intermittent work]: it foresees a new kind of labour contract (an employee is at disposal of an employer who can use his labour performance discontinuously) which secures more flexibility and an easier access to job for specific groups of people (for example long time unemployed).
Statuto Regione Emilia Romagna, legge regionale 31 March 2005, n. 13 [Statute of Emilia Romagna, Regional Law (2005:13)]: art. 2 foresees that the Region has to improve social and voting rights for immigrates.

Statuto Regione Umbria, legge regionale 16 April 2005, n. 21 [Statute of Umbria, Regional Law (2005:21)]: art. 8 recognise the human, social and cultural value of immigration and foresees that the Region has to improve a full integration of immigrants in the social framework.
Legge Regione Toscana 1 February 2005, n. 20, Modifiche alla legge regionale 26 luglio 2002, n. 32 (Testo unico della normativa della Regione Toscana in materia di educazione, istruzione, orientamento, formazione professionale e lavoro) in materia di occupazione e mercato del lavoro [Regional Law Tuscany (2005:20) amending Regional Law (2002:32) on occupation and employment]: art. 1-bis improves equal opportunities and better working conditions for immigrates.
Legge Regione Marche 25 January 2005, n. 2, Norme regionali per l'occupazione, la tutela e la qualità del lavoro [Regional Law Marche (2005:2) on occupation, and on protection and quality of work]: it improves employment of people in conditions of social exclusion.
Legge Regione Emilia Romagna 1 August 2005, n. 17, Norme per la promozione dell'occupazione, della qualità, sicurezza e regolarità del lavoro [Regional Law Emilia Romagna (2005:17) promoting occupation and working conditions, safety and lawfulness improvement of enployment]: it brings a new system of protection and social integration of foreign immigrates, establishing a regional network of services aimed to make easier their access to employment.
Corte Costituzionale (Constitutional Court), n. 300/2005. The Regional Law Emilia Romagna (2004:5), Norms for the social integration of the immigrates, brings a new system of protection and social improvement for not-EU citizens. It establishes a regional Council for social integration of foreign immigrates ("Consulta regionale per l'integrazione sociale") and an independent regional Centre against discrimination, tasked monitoring functions and legal assistance to victims of discrimination. The provision of this law touch on all the main issues concerning to immigrate condition of life: housing, social protection, healthcare, access to kindergarten, education, vocational training and improvement. The Government claimed before the Constitutional Court that these provisions might be unconstitutional because they touch on matters which fall within the governmental jurisdiction. The Constitutional Court rejected the Government reasoning.

Positive aspects

In the area of education, some schools have started to make use of "linguistic/cultural mediators", with ethnic minority backgrounds, who perform a bridging function between teachers and foreign families.

They are not employed directly by the schools but work on a freelance basis: there are some intercultural centres which schools can contact for obtaining their services. The mediators are involved in developing and planning intercultural teaching programmes in the form of film, theatre and other cultural performances. Moreover in recent years some intercultural training courses are created for Italian teachers and many schools develop and implement intercultural programmes.
Intercultural mediators are also involved in the workplace: in this case, their main objective is to intervene in conflicts between colleagues from different cultural backgrounds or between employees and clients. They are also engaged in preventive activities (for example they can implement training and awareness-raising campaigns) or in improving the working conditions.

Good practices

Some enterprises have set up integrations agreements under which special commissions on the integration of immigrant workers have been established. These commissions are made up of both Italian workers and immigrant employees and deal with the needs of immigrants. Besides the immigrants are paid for a language course in Italian and seminars for instructing managers in the language and culture of the countries of origin of the immigrants are organized. Immigrants can be given many days holidays on a block in the summer time, which they can collect by working overtime or in their free time (see for example enterprise Zanussi).
Another measure aimed to promote cultural diversity in the workplace through improving the working conditions for immigrants is the establishment of the so-called "Pacts for work" between employer associations, city council and trade unions. These pacts foresee that companies can employ immigrants at favourable conditions (their retribution lies at 10% below the minimum wage) and this has the effect to improve the employment of immigrants, who can consequently have access to medical insurance and social contributions.

Protection of Gypsies / Roms

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Committee of Social Rights, n. 27/2004, European Roma Rights Centre (ERRC) v. Italy. The complaint relates to Article 31 (right to housing) alone or in combination with Article E (non discrimination) of the Revised European Social Charter. The complaint alleges that the situation of Roma in Italy amounts to a violation of article 31 of the Revised European Social Charter. In addition it alleges that policies and practices in the field of housing constitute racial discrimination and racial segregation, both contrary to article 31 alone or read in conjunction with article E. The European Committee of Social Rights declared the complaint on 6 December 2004. The deliberation and adoption of a decision on the merits will be taken during the 212th Session, in December 2005.

Legislative initiatives, national case law and practices of national authorities

Corte di cassazione, I sez. civ. (Supreme Court), n. 16571/05, 5 August 2005: in the judicial construction of the Court, collective expulsions are not forbidden if the situation of every foreign of the group is specifically and individually examined.
Legge Regione Campania 1 February 2005, n. 4 Norme regionali per l'esercizio del diritto all'istruzione e alla formazione [Regional Law Campania (2005:4) on right of education and vocational training]: it aims to improve the exercise of these rights and a full educational integration of Roma through cultural mediators.

Good practices

Some city Councils established ad hoc offices aimed to give help to Roma, Sinti and Travellers group of population. These offices provide information and aid in bureaucracy questions, organize health screening, improve vocational training and take actions to make easier Roma access to employment.

Reasons for concern

The Gypsies/Roma group constitutes the most vulnerable group in education: their educational attainment is in general very low, they suffer high levels of illiteracy and are often victims of school segregation (see for example the case of the school of Villanova Marchesana (Rovigo) where last September Italian parents refused to enrol their children at school because of the large attendance of Roma) and even of exclusion from education.
Besides the difficult access to Italian citizenship (see above) particularly affects Roma and Sinti populations: many children, born in the camps where this population lives in Italy, neither obtain the citizenship of the countries of origin of their parents nor can easily obtain Italian citizenship.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Last year some initiatives aimed to attribute eligibility and voting rights in local elections to immigrants with legal status were passed (see for example Act of 27 July 2004 amending communal Statute of Genoa). In 2005 these initiatives were declared illegal by State Council Opinion 4 August 2005, because the matters involved (elections, immigration, legal status of foreigners) fall within the governmental jurisdiction. So the Act of the communal Council of Genoa was repealed by D.P.R. [President of the Republic Decree] 17 August 2005, Annullamento straordinario a tutela dell'unità dell'ordinamento, a norma dell'art. 2, c. 3, lett. p), della legge 23 agosto 1988, n. 400, della deliberazione del Consiglio comunale di Genova, n. 105 del 27 luglio 2004 , in materia di elettorato attivo e passivo per gli immigrati, on Official Gazette 2005, n. 205.

Decreto legislativo 15 April 2005, n. 76, Definizione delle norme generali sul diritto-dovere all'istruzione e alla formazione, a norma dell'art. 2, c. 1, lett. c) della legge 28 marzo 2003, n. 53 [Legislative Decree (2005:76) on education and vocational training]: art. 1, c. 6 ensures the right to have an adequate education also to foreign minors who live in Italy.
Legge Regione Campania 1 February 2005, n. 4 Norme regionali per l'esercizio del diritto all'istruzione e alla formazione [Regional Law Campania (2005:4) on right of education and vocational training]: it aims to improve the exercise of these rights and a full integration of immigrates through measures of financial aid and through cultural mediators.
Legge Regione Toscana 24 February 2005, n. 41, Sistema integrato di interventi e servizi per la tutela dei diritti di cittadinanza sociale [Regional Law Tuscany (2005:41) establishing an integrated system of interventions and services for protection of social citizenship rights]: this law is aimed to improve and protect social citizenship rights, living conditions, personal autonomy, equal opportunities, and to remove every kind of discrimination and social exclusion. In order to do that, it supplies monetary services and free measures.
Legge Regione Basilicata 19 January 2005, n. 3, Promozione della cittadinanza solidale [Regional Law Basilicata (2005:3) improving jointly citizenship]: it introduces several measures (free access to education and vocational training, monetary aids, formulation of integration programs and establishment of social networks) aimed to overcome difficulties and individual and family margination.

Legge Regione Friuli Venezia Giulia 4 March 2005, n. 5, Norme per l'accoglienza e l'integrazione sociale delle cittadine e dei cittadini stranieri immigrati [Regional Law Friuli Venezia Giulia (2005:5), Norms for welcoming and social integration of immigrates]: it introduces an annual regional plan for immigration, which is to passed upon opinion of the regional Council for immigration ("Consulta regionale per l'immigrazione") and can improve monitoring actions and legal aid for victims of discrimination, programs of protection for refugees or asylum seekers, housing politics, social policies actions, health services, intercultural forms of education, vocational training and support of free private enterprise. Besides it establishes an Observatory on immigration, aimed to analyse and value immigration policies.

Positive aspects

At local level bodies representative of immigrates have been established with the aim to integrate them in the social framework. Among these seems relevant the Council of foreigners which took office in the Province of Florence and is composed of 21 members. Its president can participate in all the sessions of the provincial council with the right to speak, can be heard by the commission and the council, but dos not have right to vote.
Relevant seems also the Council of immigrants established in Bolzano, with responsibilities of an advisory nature. Other similar bodies can be found in Modena, Palermo, Ravenna, Rimini, Rome and Milan.

Good practices

Some foundations (such as, for example, "La Casa – ONLUS" in Padua) or cooperatives ("La Casa per gli Extracomunitari" in Verona) provide migrant workers with houses, facilitate their housing integration through training and assist them in the participation in public life, when housing sector policies are discussed.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

Jewish:

Protection of Jewish cultural heritage
In August, a bill aimed to protect the Jewish cultural heritage – granting a state contribution equal to one million euro in 2005 and two millions euro in 2006 and 2007 – has been passed (Statute no. 175, August 17th, 2005).
A bill granting a contribution to the Shoah National Museum has been passed, too (Statute no. 208, October 10th, 2005).

Agreement between Sicily and the Italian Jewish Communities' Union
A protocol has been signed by Sicily and the Italian Jewish Communities' Union on June 8th. It is aimed to promote cultural and educational initiative concerning Judaism in the Region. It does not involve direct financial charges for the regional balance.

Jehovah's Witnesses: rebutment of a building permission that concerns religious buildings

The Italian Supreme Administrative Court has considered the rebutment of a building permission concerning a Jehovah's Witnesses' religious building to be lawful because that building rested on a residential and hotel area (decision no. 8026, dated December 14th, 2004, IV Division).
In fact the public administration has regulatory and ordinative powers over the use of territory in order to achieve a rational plan and indication of the areas intended for public and general activities; according to this principle, a private citizen is not permitted to build, without a specific building permission, a school, a church and sporting, social and religious facilities over a private owned area, even without direct or indirect third parties' contributions.

Criminal protection of religions

The Constitutional Court has stated that the penalties laid down by law for the vilification of people professing the Catholic religion and the vilification of Catholic ministers of religion, prosecuted under Section 403 of the Italian Criminal Code, were unconstitutional because these penalties were heavier than

the ones laid down for other religions, according to Section 406 of the Code (decision no. 168, dated April 18th, 2005). The different penalties violated the constitutional principle of citizens' equal protection before the law, without religious discrimination, and the principle of equal freedom of all religious confessions.

State contributions and the annual redistribution of taxes income to Confessions
See art. 10

Reasons for concern

Some religious minorities, such as Jehovah's Witnesses and Muslim, have complained about discriminatory behaviours and measures of public administrations at local level. For instance refusing to accept photos from Muslim women wearing Islamic foulard even if it lost people to be recognized; putting pressure on Muslim students in the schools; refusing the permission to use public premises for religious ceremonies.

Protection of linguistic minorities

Legislative initiatives, national case law and practices of national authorities

State fund to historical linguistic minorities

Decree of the President of the Cabinet, dated December 22nd, 2004, established the criteria to redistribute the fund among linguistic minorities in the years 2005-2007. The redistribution is based on the public administration elaborated and presented projects concerning a) the carrying out of linguistic counters for people using minority languages; b) the establishment of training courses to promote the knowledge and the written and oral use of the protected languages; c) the employment of interpreters in the activity of the counters and to assist the Municipal Council and other administrative boards (according to Section 7 of the Statute no. 482/1999).

Regional Promotional interventions

- One Italian Region (Campania) has promoted the protection of the historical, cultural and folkloristic legacy of the community, speaking the Albanian language, living in the municipality of "Greci", in the district of "Avellino". The intervention was aimed at promoting and financing libraries and record collections, historical documental archives, literary and artistic prizes, the publications of an Albanian dictionary and grammar, seminars and refresher courses concerning the Albanian language and literature, cultural exchanges and relationships with Albania and the other Albanian communities living in Italy (regional Statute no. 14, dated December 20th, 2004).

- The Region Valle d'Aosta, regulating the activities of coordination, promotion and support of the regional system of communication and information, aimed at setting off the linguistic peculiarities of the regional community; therefore, it stimulated the oral and written local information centres to produce programs, concerning the economic, social, cultural and institutional life of the district, by using the French, Provencal and Walser languages (according to section 1 of the regional Statute no. 32, dated December 23rd, 2004).

- The Region Veneto has founded, by the Statute no. 34, dated December 24th, 2004, the "Complico and Sappada Studies Centre ("Centro Studi transfrontaliero di Complico e Sappada"), in order to promote the strategic peculiarities of these areas, characterized by neighbourhood and ethnical and religious relations with Austria and the "Alta Pusteria" district. That foundation is aimed to create and improve cultural, commercial, economical and tourist exchanges; moreover it is aimed also to protect and increase the value of the mountain habitat.

- In January 2005, the representatives of the Region Friuli Venezia-Giulia and the town councillors for linguistic identities and migrant people have met the deputation of the Advisory Committee for national

minorities, set up in the European Council, in order to answer the deputation's questions about the Slovenian and the Croatian minorities. Moreover, that region has promoted a Conference on the minorities' role in the economic cooperation, in view of the Slovenian entrance in the E.U. Twelve projects concerning culture and sport have been arranged together with the Italian and Slovenian minorities' associations, too.

Article 23. Equality between man and women

Gender discrimination in work and employment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Court of Justice, Case C-207/04 Paolo Vergani v. Agenzia delle Entrate, Ufficio di Arona [21 July 2005]. In accordance of art. 9 of Law 1952:218 on the reform of compulsory insurance pensions for invalidity, old age and survivors, male workers reach retirement age at 60 years of age and female workers at 55 years, provided in both cases that they have paid the requisite contributions for the requisite amount of time. In respect of employees of undertakings declared to be in crisis, Law 1981:155 entitles such employees to take early retirement at the age of 55 years in the case of men and 50 years in the case of women. Art. 17 of Decree of the President of the Republic 1986:917 (as amended by Legislative Decree 1997:314) provides that, in the case of sums paid in relation to cessation of the employment relationship in order to encourage workers who have passed the age of 55 years in the case of men and 50 years in the case of women to take voluntary redundancy, the tax shall apply at a rate equal to one half of the rate for the taxation of severance pay and the other allowances and sums mentioned in the same Decree. In the construction of the Court, a difference of treatment resulting from the taxation, at a rate reduced by half, of sums paid on the cessation of the employment relationship, which applies to workers who have passed the age of 50 years in the case of women and 50 years in the case of men, constitutes unequal treatment on grounds of the workers' sex. So Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions must be interpreted as precluding a similar provision.

Legislative initiatives, national case law and practices of national authorities

Legislative Decree 30 May 2005, n. 145, Attuazione della direttiva 2002/73/CE in materia di parità di trattamento tra gli uomini e le donne, per quanto riguarda l'accesso al lavoro, alla formazione e alla promozione professionale e le condizioni di lavoro [Legislative Decree (2005:145) implementing Directive 2002/73/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions]. It enlarges the notion of direct and indirect discrimination, in accordance with the Directive 2002/78/CE: "Direct discrimination" is any act or pact or behaviour that produces a prejudicial effect due to their gender. It also occurs where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation. "Indirect discrimination" occurs where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with other person of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. Besides the Legislative Decree provides that harassment (when an unwanted conduct related to the sex takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment) and sexual harassment (when any form of unwanted verbal, non verbal or physical conduct of a sexual nature occurs with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment) are discriminatory.

Law 1999:380 gave female personnel access to the military system using a system of gradual quotas, that provided that each year the relative number of entries of women into the various roles of the Armed

Forces was established by a Decree of the Minister of Defence. The decision in favour of the quota system was taken for two concurrent needs: to ensure that women develop their professional potential in a traditionally male sector; and to ensure a balanced presence of both sexes in the Armed Forces. In 2005, the Minister of Defence Decree 27 May 2005 on Official Gazette 2005, n. 138 provides that the female recruitment in the various roles of the Armed Forces is now free, without number limits.
Statuto Regione Emilia Romagna, legge regionale 31 March 2005, n. 13 [Statute of Emilia Romagna, Regional Law (2005:13)]: it recognizes and improves the principle of equal opportunities between women and men in every sector, both in politics and in employment.
Statuto Regione Umbria, legge regionale 16 April 2005, n. 21 [Statute of Umbria, Regional Law (2005:21)]: the Region pursuits equal opportunities between women and men (art. 7).
Legge Regione Friuli Venezia Giulia 9 August 2005, n. 18, Norme regionali per l'occupazione, la tutela e la qualità del lavoro [Regional Law Friuli Venezia Giulia (2005:18), Norms on occupation and protection of working conditions]: it reorganizes regional system of Equality Councillors ("Consiglieri di parità") and improves the elimination of every forms of discrimination in employment, also aiming to a better reconciliation between work and family life (artt. 49 and 50).

Positive aspects

The goal of raising women's employment rate is pursued by means of some measures, among which can be remarked: actions aimed to improve employment services and targeting them for women (information, professional orientation and connection of the labour market demand with the human resources supply); policies focused on continuous training, professional qualification and lifelong learning; working time modulation schemes which let a better reconciliation between family and professional needs in the respect of every individual's will; improvement of childhood care services, within a broader framework encompassing various family-targeted measures.

Reasons for concern

Despite the rising female presence in the labour market, some categories of women such as married women and women re-entering the labour market after maternal leave or after forced absence periods are again strongly underrepresented.
An employment distribution map by macro sector of economic activity highlights that female participation is concentrated mainly in the services sector (public, social and personal services and education), and in general access to top jobs is extremely difficult for women, even in those sectors where female presence is higher than average.
Besides, women's part-time quota is far higher than men's. Whereas part-time schemes of various forms have contributed to increasing female representation on the labour market, favouring reconciliation of work and family commitments, they tend to bear negatively on the women's working conditions, qualifications and professional development. In fact, part-time is not applied to top level, or highly qualified, well-paid works. Moreover, part-time is often not an option, but rather the only chance for women of entering the labour market.

<u>Positive actions seeking to promote the professional integration of women</u>

Legislative initiatives, national case law and practices of national authorities

Legge Regione Emilia Romagna 1 August 2005, n. 17, Norme per la promozione dell'occupazione, della qualità, sicurezza e regolarità del lavoro [Regional Law Emilia Romagna (2005:17) promoting occupation and working conditions, safety and lawfulness improvement of employment]: it aims to counter discrimination between women and men in employment and to better reconcile time of work and care (through reorganization of working processes and introduction of a larger flexibility at work).
Legge Regione Marche 25 January 2005, n. 2, Norme regionali per l'occupazione, la tutela e la qualità del lavoro [Regional Law Marche (2005:2) on occupation, and on protection and quality of work]: it improves employment of people in conditions of social exclusion. In particular art. 22 gives tax incentives to businessmen who employ women.

Positive aspects

Some actions aimed to increase the entry and the continued presence of women in the labour market were taken: for example the creation of centres for female employment; the preparation of ways for entry/re-entry into the labour market in case of special disadvantage; the preparation of ways of desegregated working insertions; the identification of innovative models of organization aimed at favouring reconciliation; the preparation of measures aimed to favour the creation of self-employed entrepreneurial jobs for women.
Moreover, the female entrepreneurship is substantively increasing thanks also to some initiative at regional and local level. Among them can be remarked: a social fund ("Fund of rotation" – Fondo di rotazione) of six million Euros established by Regione Veneto to support female enterprises (and similar measures have been introduced by Tuscany); and a lot of concourses under Law 1991:125 and Law 1992:215, all aimed to support and improve female entrepreneurship and initiatives (see for example the ban of Province of Arezzo of 21 October 2005, which aims to finance marketing projects promoting the firm in the market).
The Observatory on female entrepreneurship of Unioncamere-Infocamere, monitoring statistical data of the first semester 2005, reveals that female enterprises increased by 2,4% and that they have now reached 23,8%. The most increase occurred in Calabria (+ 3,4%), Lazio (+3,4%), Lombardia (+3,2%) e Sicilia (+2,9%); the largest number of female enterprises can be found in trade, agriculture, manufacture and tourism, though they are increasing also in sectors with a traditionally strong male prevalence.

Good practices

We can find many examples of good practices in public as well as in private work places, all aimed to better reconcile work and family life.
Among them can be remarked:
Job rotation (project Arcidonna of Palermo): young unemployed are trained and placed to disposal of firms, which have to replace temporarily some of their employees. For more information see www.arcidonna.it/progeuro/adapt/982000.html
Job sharing (Formula Servizi of Forlì): two or more people share a full time work. For more information see www.regione.emilia-romagna.it/formazione/allapari/anno_1_numero_1/il_caso.htm
Flextime (undertaken mainly in civil service): it introduces more flexibility in working time (although the total daily working time is always the same).
Teleworking ("telelavoro") (Regions Tuscany and Emilia-Romagna; Districts of Biella and Venice): an employee can work at home or far from the work place. For more information see www.regione.toscana.it; www.regione.emilia-romagna.it; www.provincia.biella.it; www.provincia.venezia.it; www.buoniesempi.it/telelavoro.aspx
Time-banking ("Banca delle ore") (Zanussi): hours of overtime work can be set aside and then be changed with free leaves.
Term-Time: an employee can benefit of not-paid leaves during school holidays.
Care Vouchers: some pre-paid coupon can be used by an employee to get family care services.
Establishment of firm kindergarten.

Moreover, some female organizations supply several services, aimed to make easier the women access to work: see for example the activities of Bussola Donna (www.bussoladonna.it), among which counseling (aimed to vocational guidance), the so called "Bilancio di competenza" (competence budget), which helps women to get a better awareness of their professional competences, and other courses of vocational guidance.

More Regions are introducing gender budgeting analysis to a better understanding of the proportions of the budget that are used to benefit women and men respectively.

Gender discrimination in the access to goods and services

Legislative initiatives, national case law and practices of national authorities

Legge Regione Toscana 24 February 2005, n. 41, Sistema integrato di interventi e servizi per la tutela dei diritti di cittadinanza sociale [Regional Law Tuscany (2005:41) establishing an integrated system of interventions and services for protection of social citizenship rights]: this law is aimed to improve and protect social citizenship rights, living conditions, personal autonomy, equal opportunities, and to remove every kind of discrimination and social exclusion. In order to do that, it supplies monetary services and free measures. Besides it improves policies aimed to counter violence against women and minors through material, psychological and legal aid and through improvement of networks connecting public services, anti-violence centres and associations that combat violence.

Participation of women in political life

Legislative initiatives, national case law and practices of national authorities

Legge Regione Calabria, 7 February 2005, n. 1 Norme per l'elezione del Presidente della Giunta regionale e del Consiglio regionale [Regional Law Calabria (2005:1) Norms on the election of the Regional Governor and the Regional Council]: Lists of candidates which do not represent every sex candidates are invalid.
Legge Regione Sicilia, 3 June 2005, n. 7 Norme per l'elezione del Presidente della Regione siciliana a suffragio universale e diretto. Nuove norme per l'elezione dell'Assemblea regionale siciliana, Disposizioni concernenti l'elezione dei consigli comunali e provinciali [Regional Law Sicily (2005:7), Norms on the election of the Regional Governor and the Regional Council. Norms on the election of the municipal and provincial Councils]: it provides that party lists alternate women and men in the regional elections and that no sex can be represented on every list of candidates in a proportion higher than 2/3 in the local elections.

Reasons for concern

The Italian female representation remains one of the lowest in Europe. In the national parliament the percentage of women is only 11,5% in the Lower House (Chamber of deputies) and 8,1% in the Upper House (Senate). Although the underrepresentation of women in all political institution in Italy has become an issue of increasing number of debates, Deputies and Senators have recently rejected the part of the electoral reform which introduced the so-called "pink quotas", foreseeing that a certain proportion of women was required to be present among candidates.
Now the Council of Ministers proposed a similar bill, aimed to introduce the same system of quota in the political elections. It is the governmental bill 18 November 2005 "Schema di disegno di legge recante Disposizioni in materia di pari opportunità tra uomini e donne nell'accesso alle cariche elettive della Camera dei deputati e del Senato della Repubblica" [Norms on equal opportunities between men and women in the access to electoral offices], which foresees that no sex can be represented on every list of candidates in a proportion higher than 2/3 and that no sex can be represented on every list in a succession higher than three in the first election and higher than two in the second election. Political parties which do not comply with these provisions are subjected to financial penalties in the first election after their entry into force and to invalidation of the list in the second election.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Committee on the Elimination of Discrimination against Women – Convention on the Elimination of All Forms of Discrimination against Women: The periodic report submitted by Italy under art. 18 of CEDAW was discussed during the thirty-second session (10-28 January 2005) on 25 January 2005. In its concluding comments the Committee noted that high priority was being accorded to protecting women

from all forms of violence and that strict provisions had been enacted to this end, including laws and policies relating to sexual violence, domestic violence, and child abuse and that while not all expectations had been met, the Government remained committed to achieving them, and new strategies and policies were being developed to eliminate all forms of gender-based discrimination and promote effective equal opportunities policies. In particular, the Committee recommends that the State put in place an institutional structure which recognizes the specificity of women's discrimination and which is exclusive responsible for the advancement of women and the monitoring of the practical realization of the principle of substantive equality of women and men in enjoying human rights; that it promote uniformity of norms and results in the implementation of the Convention throughout the country through effective coordination and the establishment of mechanism to ensure the full implementation of the Convention by all regional and local authorities and institutions; that it adopt a large-scale, comprehensive and coordinated programme to combat the widespread acceptance of stereotypical roles of men and women, including awareness-raising and educational campaigns; that it take sustained measures to increase the representation of women in elected and appointed bodies, in the judiciary and at international level; that it ensure equal opportunities for women and men in the labour market, through temporary special measures in accordance with art. 4, par. 1 of the Convention and that it extends full social security benefits to part-time workers, the majority of them are women, and take measures to eliminate occupational segregation, in particular through education and training. At last, the Committee requests the State party to monitor the impact of its health-care policies on women.

Positive aspects

Some gender oriented projects are developed, aiming to emancipate women in difficulties. Among them can be remarked for example the project "Libera" by Province of Lecce, addressed to migrant women, victims of trafficking in Human beings and of forced prostitution.

Article 24. The rights of the child

The possibility for the child to be heard, to act and to be represented in judicial proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In the period under scrutiny we had the first judgment of the Court of Justice about the interpretation of the Council Framework Decision of 15 March 2001 (2001/220/JHA) on the standing of victims in criminal proceedings (case C-105/03, Maria Pupino). The question was referred by the Florence Criminal Court during criminal proceedings at the preliminary enquiries stage, where a nursery school teacher was chargerd with a number of offences of abusing disciplinary procedures against eight of her pupils, who, at the time of the facts, were under five years of age. She was accused of hitting them regularly, threatening to give them tranquillisers, putting sticking plasters over their mouths and preventing them from going to the toilet. The Public Prosecutor's Office asked the judge in charge of preliminary enquiries to take the testimony of the children, who were witnesses and victims, before the trial and in accordance with a special procedure, in order to protect their dignity, privacy and tranquillity. The prosecution argued that evidence could not be delayed until the trial by reason of the extreme youth of the victims, the inevitable changes in their psychological state and a possible process of psychological repression. The defendant argued that the application did not fall under any provision of the Italian Code of Criminal Procedure, and so the question of interpretation of the Council Framework Decision on this matter was referred to the Court of Justice. The Court ruled that: "articles 2, 3 and 8(4) of the Framework Decision must be interpreted as meaning that the national court must be able to authorise young children, who, as in this case, claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place. The national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision". It is important to notice that the Florence Criminal Court, before the Court of Justice, had asked the Italian Constitutional Court if the Code of Criminal Procedure was in contrast with

the Italian Costitution (alleging the violation of article 2, protection of minor's personality, dignity, privacy and tranquillity, and of article 3, principle of equality), but the Constitutional Court had declared the question partially unfounded and partially inadmissible (decision 18 December 2002, no. 529).

Legislative initiatives, national case law and practices of national authorities

The only legislative initiative which aims to improve the possibility for children to act and to be represented in judicial proceedings is a bill passed by the Chamber of Deputies in July 2004 and immediately forwarded to the Senate of the Italian Republic (AS 3048), "Disciplina della difesa di ufficio nei giudizi civili minorili e modifica degli articoli 336 e 337 del codice civile in materia di procedimenti davanti al tribunale per i minorenni" (Rules and regulations about civil juvenile judicial proceedings and amendment to articles 336 and 337 of the Civil Code in the matter of proceedings before Juvenile Courts). However, it has not been discussed by the Senate, and it is very unlikely that it will be put to the vote until the end of the legislature.

Reasons for concern

During the period under scrutiny a law by decree (see article 8 decree 2005:115, converted to law 168:2005) again deferred for the fifth time the coming into force of the procedural provisions provided by law 2001:149 to ensure legal aid to minors in judicial proceedings of adoptability and de potestate.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Regarding the article 8 ECHR (respect for family life), we had the case of Bove v. Italy (no. 30595/02). The Italian applicant complained of the refusal by the Naples Juvenile Court to grant him custody of his daughter and of the difficulties encountered in exercising his access rights. As to the Italian authorities' refusal to give the applicant custody of his daughter, the Court considered that their decisions had been taken in the child's interests and had been based on relevant reasons, and therefore held that there had been no violation of Article 8. As to the difficulties encountered in exercising his access rights, the Eur. Ct. H.R. held by six votes to one that there had been a violation of Article 8 of the Convention because of the failure to enforce the applicant's access rights since September 2002.

Positive aspects

The Constitutional Court made another little step regarding the equality of children born in and out of a legitimate wedlock, and ruled that the custodian parent of a minor born out of wedlock who has been awarded the family house by a judicial order (after living together), also has the right ot obtain the registration of that order in the property register, in the same way a custodian parent has in the case of judicial separation or divorce from her husband or his wife (Corte costituzionale, n° 394/05, 21 October 2005).

Good practices

The Supreme Court of Cassation, interpreting the Italian immigration law, ruled that the provision that enables the non EU parent, regularly living in Italy, to obtain the 'rejoining' with his or her children living abroad, in order to let them come to Italy, when they are 'dependent on' him or her ('a carico'), applies even if he or she does not have the parental authority according to the foreign law (Corte di Cassazione, sez. I, n° 12168/05, 9 June 2005). In that specific case, the applicant was a Moroccan citizen, mother of two children, who did not have the parental authority according to Islamic law, having been 'repudiated' by her former husband, father of her children.

Reasons for concern

There are still essentially two reasons for concern, which persist in the period under scrutiny.
The first one is that the Italian legal system still refuses to recognize kinship, in marked contrast to the well-established case law of the European Court of Human Rights.
The second reason for concern is related to the value of the DNA test in determining an application to have paternity established. In this matter the European Court of Human Rights states that the national courts are required to consider to the basic principle of the child's interests and requests that the procedure available strikes a fair balance between the right of the applicant to have his or her uncertainty regarding the personal identity eliminated without unnecessary delay and that of him or her supposed father not to undergo DNA tests (Eur. Ct. H.R., Mikulic v. Croatia judgment of 7 February 2002). In the Italian legal system the DNA test is not compulsory and the unjustified refusal of the defendant to do it can only be evaluated by the judge as one of the other pieces of evidence (see, e.g., Corte di Cassazione, sez. I, n° 13766/2001, 7 November 2001).

Article 25. The rights of the elderly

Participation of the elderly to the public, social and cultural life

Legislative initiatives, national case law and practices of national authorities

Recognizing the very important role carried out by grandparents in families and in general in the Italian society, law nr. 2005:159, "Istituzione della Festa nazionale dei nonni" (Official Gazette 2005, nr. 187), establishes the Grandparents' Public Holiday on the October 2nd of every year.

Positive aspects

According to the "First national research about the figure of the grandparent", ordered by Regione Lombardia to a private company (Lorien Consulting) and presented by the President of the Regione Lombardia on the occasion of the Grandparents' Public Holiday 2005, there are 14 millions grandparents in Italy, i.e. a third of the adult population. 50% of the grandparents are under 64 years old (23% are under 54) and working (17.3%). Above all, grandparents play a fundamental role in family life and in family relationships: the 70% of the grandparents look after their grandchildren, devoting to them on average 18.1 hours every week. 95.7% of the grandparents give their grandchildren a contribution ofmoney.

Reasons for concern

The Italian Statistic Yearbook 2005 (Annuario statistico italiano 2005, in ww.istat.it, p. 182) demonstrates that the greatest part of the population wuo do not frequent cultural entertainment and shows outside the home are elderly (l'81.4% over 75), above all if women (84%).
With regard to the use of personal computers and the Internet, the same source (p. 184) reports that the share of elderly users is very low (5.5% between 65 and 74 years; 1.5% over 75)

The possibility for the elderly to stay in their usual life environment

Legislative initiatives, national case law and practices of national authorities

The only new legislative measure concerning the possibility for the elderly to stay at home as long as possible instead of being placed in institutions is a bill introduced in December 2004 (AC 5465), "Disposizioni per favorire l'assistenza domiciliare ai cittadini anziani e disabili" (Dispositions to encourage domiciliary care of elderly citizens and of citizens with disabilities).
During the year under scrutiny we have the follow-up of law nr. 2004:6, "Introduzione nel libro primo, titolo XII; del codice civile del capo I, relativo all'istituzione dell'amministrazione di sostegno" (Introduction in the civil code of the 'support administrator'), and the first law cases about it. The

'support administrator' is a person, nominated by the tutelary judge, in charge of taking care of not self-sufficient persons – the recipients are persons who "due to an infirmity or a physical or mental disability, are unable, even partially or temporarily, to look after themselves" – helping them to promote their rights and manage their estate, avoiding the use of more drastic tools like judicial incapacitation or interdiction. The law cases clarified that this tool, even if the law does not explicitly consider the elderly among its recipients, applies even to this category of persons, and fits it very well indeed. But the Latin saying senectus ipsa morbus does not apply in this context, and old age cannot be the only reason for the judge to give an order: far from it, the judge can appoint a support administrator only when old age causes appreciable damage to the daily life functions (Tribunale di Modena, sez. II civ. – Ufficio del giudice tutelare, decreto 24.2.2005, which appoint a nephew support administrator of an aunt, 86, in order to assist her inacts like collecting and managing her old-age pension, paying rents and taxes etc.; in a similar way, the Tribunale di Ancona – sez. dist. Di Jesi – Ufficio del giudice tutelare, decreto 17.3.2005, specifies that the appointment of a support administrator is better than a judicial incapacitation or interdiction if the elderly person has a low income).The appointment of a support administrator – usually a relative – seems to be a very suitable tool for the elderly who suffer from Alzheimer's disease (Tribunale di Roma, sez. I civ. – Ufficio del giudice tutelare, decreto 10.2.2005). The support administrator can also be appointed when it's necessary to understand (and to give voice to) the elderly's will about being placed in an institution or returning home, to consider his or her sanitary needs, to verify the suitability of his or her house, to organize domiciliary care (Tribunale di Genova – Ufficio del giudice tutelare, decreto 1.3.2005).

Specific measures of protection for the elderly

Legislative initiatives, national case law and practices of national authorities

On June 27th the Ministry of Health issued an administrative measure (Official Gazette 2005, nr. 149) to prevent and monitor the damage caused by extreme heat of summer time. The Municipalities had to prepare a register of over 65 people and transmit it to the health autorities (Aziende Sanitarie Locali). The health autorities works alongside the Civil Defence (Protezione civile), while Municipalities offer social and welfare services, public transport, helplines, etc.. The Civil Defence Department also prepared an Summer Activity Plan 2005 ("Piano di attività estate 2005"), in order to realize, in the bigger cities of Italy, the Heat Health Watch Warning
Systems (HHWWS), which are specific city systems that, using the weather forecast, are able to forecast the arrival of the enviromental conditions dangerous to the health 72 hours early, and estimate their impact on elderly mortality, in order to reduce it as much as possible.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Parliament introduced a constitutional bill (AS 3219) which inserts in the text of the Italian Costitution a reference to the protection of the elderly. Now article 31 of the Italian Constitution provides that: "The Republic assists through economic measures and other provisions the formation of the family and the fulfilment of its duties, with particular consideration for large families. It protects maternity, infancy and youth, promoting the institutions necessary thereto". The second paragraph of that article would be modified as follows: "It protects maternity, infancy, youth and the elderly, promoting the institutions necessary thereto".

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiative and national case law

The adoption of the Italian law nr.6/2004 (Official Gazette, 2004, nr.14) about the "support administrator"[5](Amministratore di sostegno) constitutes a relevant change for the protection of persons with disabilities[6]. During the period under scrutiny this bill has been well accepted by both the medical operators – i.e. psychiatrists, psycologists – and juridical ones. Judges, in particular, prefer to nominate the support administrator instead of declaring the incapacitation of people affected by physical or psychological disabilities, reducing the measure of incapacitation to residual remedy[7].
According to this law some others legislative initiatives[8] are still pending in Parliament such as the draft bill about the judiciary protection of discriminated persons with disabilities[9]. Its goal is to extend all those specific protections applied to those people in working places[10] to other daily life contexts. In particular, on the basis of the two directives 2000/43/EC and 2000/78/EC, this law aims to protect disabled persons from direct and indirect discrimination because of their conditions.

Positive aspects

The figure of the support administrator has been very much appreciated. According to the data of Venice's civil court[11], from 19/03/2004 to 19/03/2005 on the total number of 206 proceedings of incapacitation in Venice, 118 have been transferred to the tutelary judge for the assignment of the support administrator. Furthermore, since the beginning of 2005 there has been a strong decrease of the prohibition appeals.

Good practices

The "support administration" law requires tools for its correct application. For this reason it is important to report some initiatives:
On 8 December of 2004 the region Emilia Romagna has approved a project[12] to spread information about this issue, trying to organize and coordinate new public departments to provide assistance through new technologies.

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[5] Published on the Official Gazette, 2004 nr.14. Introduzione nel libro I, titolo XII, del codice civile del capo I, relative all'istituzione dell'amministrazione di sostegno e modifica degli articoli 388, 414, 417, 418, 424, 426, 427 e 429 del codice civile in material di interdizione e inabilitazione, nonchè relative norme di attuazione, di coordinamento e finali.
[6] This law aims to minimize as much as possible the limits of juridical capacity of people who are not able to do ordinary activities.
[7] See, for example, the decision nr 649 of 08/03/2005 of the Bologna's Court, the decrees both of the Rome's Court of 28/01/2005 and the Modena's Court of 15/11/2004.
[8] XIV leg., Atto Camera nr. 5121, Disposizioni sulle associazioni di tutela delle persone disabili or XIV leg. Atto Camera nr. 5476, Disposizioni in favore delle associazioni di promozione sociale e dei progetti per l'integrazione dei soggetti disabili.
[9] XIV leg., Atto Camera nr. 4129, Misure per la tutela giudiziaria dei disabili vittime di discriminazioni.
[10] See the delegated law nr.216/2003 which implemented the directive 2000/78/EC.
[11] For further details see the article "Un anno di applicazione della legge sull'amministrazione di sostegno" of Sergio Trentanovi (the tutelary judge and the President of the 3rd section of the Venice's civil courts) available at www.altalex.com .
[12]"Progetto integrato di iniziativa della Regione Emilia Romagna di sensibilizzazione e formazione finalizzato alla promozione dell'Amministrazione di Sostegno secondo la nuova normativa (Legge n. 6/2004)" available at www.altalex.com .The project is divided into two different stages. The first one, at regional level, gives information about the law application; the second one involves the provinces and its goal is to specialize workers to become a support administrator.

An institutional commission has been established joining together public and private bodies, such as Courts, municipalities, districts, voluntary services etc. to improve the knowledge about the support administration[13].

Professional integration of persons with disabilities: positive actions and employment quotas

Practices of national authorities

The Welfare Ministry has elaborated the project LINCS[14] in order to give application to article 14 of the delegated law nr 276/2003[15], which gives the opportunity for the district services to stipulate agreements with employers associations and trade unions to support the integration of persons with disabilities at work. According to the guidelines of the project, until September 2006, the ministry and other organizations involved such as Italia lavoro, Confindustria, the associations of the disabled persons etc. - will test the framework convention in ten Italian regions. The results obtained will be the main subject of discussion to which the agreement could be applied for the rest of the country.

Evaluation

Statistical data about job opportunities for Italian persons with disabilities and, generally, about their conditions may be found on the web site www.disabilitaincifre.it [16], although it is not updated to 2005.

Reasonable accommodations

Legislative initiatives and national case law

In Italy, after the constitutional reform of 2001, the regions have the task to carry out promotional activities for persons with disabilities. This has been confirmed by the Italian Constitutional Court which held that the national law about the access to information technologies for persons with disabilities[17] is unconstitutional, because it has already been treated by the autonomous district of Trento[18].
In the period under scrutiny, the region Basilicata has approved a law which grants the right to professional guidance for citizens with physical and psychological disabilities to prevent and remove all of the obstacles that hinder their social and professional inclusion[19].

Other relevant developments

Practices of national authorities

The Welfare Ministry is still involved in the ICF project which began in 2003 and it will be finished in 2006[20]. The ICF classification is considered a good way to estimate and check the level of disability in order to give value to these people especially in working places. The project is determined to create value through some specific objectives:

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[13] "Tavolo comune istituzionale – Amministratore di sostegno" available at www.altalex.com
[14] "Sviluppo territoriale ed inclusione sociale". La sperimentazione dell'inserimento lavorativo con l'art.14 del DLgs. 276/2003 che dà attuazione alla direttiva comunitaria 2000/78.
[15] *"Attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30 – c.d. "Legge Biagi".*
[16] The website is part of the project "Information System on Handicap" promoted by the Ministry of Labour and Social Policy (Ministero del Lavoro e delle Politiche sociali) and implemented by Istat – Italy's National Statistical Institute.
[17] Legge nr 4 del 2004, published on the *Official Gazette* nr.13 del 2004, "Disposizioni per favorire l'accesso dei soggetti disabilitagli strumenti informatici".
[18] Decision nr 145 of 2005 of the italian Constitutional Court.
[19] Legge regionale n.20 del 17-11-2004, Regione Basilicata, "Attuazione del diritto alla formazione professionale dei cittadini diversamente abili", published on *Official Bullettin* of Regione Basilicata nr. 84 of 19/11/2004.
[20] The ICF is an International Classification of Functioning, Disability and Health of the World Health Organization.

organizing an educational team in order to develop social policies;
testing the Job services (Servizi per l'impiego);
communicating the results at national and international level,;
building up a virtual space to exchange practical experiences on the application of the ICF classification.

CHAPTER IV. SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

Workers' information on the economic and financial situation of the undertaking

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny, there has not been any legislative initiatives, national case law or practices of national authorities of particular interest in this field. Nonetheless, it has to be mentioned the fact that in view of the legislative process of transposition of the directive on 2nd March 2005 after many talks the three main Italian trade union confederations, the General Confederation of Italian Workers (Confederazione Generale Italiana del Lavoro, Cgil), the Italian Confederation of Workers' Unions (Confederazione Italiana Sindacato Lavoratori, Cisl), the Union of Italian Labour (Unione Italiana del Lavoro, Uil), together the Union of General Labour (Unione Generale del Lavoro, Ugl) and the main Italian employers' associations Confindustria, the Italian Banking Association (Associazione Bancari Italiani, Abi) , the National Association of Insurance Companies (Associazione Nazionale fra le Imprese Assicuratrici, Ania), Confcommercio and Confservizi signed a Common Avis for the transposition of the Directive 2001/86/CE supplementing the Statute for a European company with regard to the involvement of employees through the recognition of information and consultation rights and, under specific circumstances, of forms of participation. The signature of the common avis allowed the trade union confederations to overcome the previous divergences on the issue of participation, which had been dividing the confederations for a while. The Avis was in fact proceeded by the signature of a joint agreement on employees' participation rights among the trade unions organizations.
The Common avis, which has been presented to the Parliament and the Government, signed by all the social partners, reflects the importance and the efficacy of the "social concertation" (so called concertazione sociale, a process of continuous interaction between the social partners with the aim of reaching agreements on the control of certain economic and social variables, both at macro and at micro level) method in the negotiation of important agreement between the partners. Italy has finally transposed Directive 2001/86/EC, with legislative decree n. 188, issued on 19 august 2005. The social partners hope that the same method of concertation will be adopted by the government before issuing possible legislative measures in view of the transposition of the other two European directives, the one relative to employees' information and consultation rights (2002/14) and the one on the European cooperatives (2003/72).

Positive aspects

Transposition of the directive on EWCs was greatly delayed in Italy and was only achieved with Legislative Decree no. 74 of 2 April 2002, which was enacted just in time to avoid an appeal by the Commission to the European Court of Justice on grounds of non-fulfilment.
The process of implementing the directive was, however, rapidly activated by the social partners, with the stipulation of an inter-confederate agreement on 27 November 1996 between Confindustria, Assicredito and the CGIL, CISL and UIL union confederations, in the presence of the Minister for Labour and Social Security; the agreement transposed the directive via bargaining, thus paving the way for company-level agreements to set up EWCs long before the actual directive was transposed.
Until 2005 some forty agreements were signed in Italy, out of a total of about 750 in Europe as a whole.

As far as the Directive on the Statute for a European company, it is too early to evaluate its impact on Italian labour law system.

Reasons for concern

There are many multinationals in which it has not yet been possible to set up an EWC. The consultation of EWCs and the quality of the information they are provided with, follow the general trend. The operational difficulties experienced by EWCs are at times exacerbated by linguistic communication and

by management's criticism towards them. Sectors close to the unions demand modification of the EWC directive to impose and strengthen the rights it provides and require more active, direct involvement of EWCs in the social responsibility strategies pursued by companies.

It emerges from recent studies that in most cases works councils only succeed in obtaining limited, generic information which is often already in the public domain, and are held only once a year, without being followed by the consultative phase, which would after all prove to be useless. Although limited in number, there are companies which provide satisfactory previous information, but leave no room for consultation; only a very small number of EWCs are lucky enough to meet with a management providing adequate information and allowing delegates to express an opinion, which in many cases proves extremely useful to solve serious problems, especially regarding employment.

Article 28. Right of collective bargaining and action

Social dialogue

Good practices

Italian industrial relations system is undergoing a process of modification which should evolve towards a system more based on a local level of bargaining. All the three main Italian trade unions confederations are now, with some relevant discrepancies, interested at the local level of bargaining, albeit in coordination with the national level. The system remains, however, based on a national central level.

In July 2005, Cisl (Confederazione Italiana Sindacati Lavoratori), one of Italy's three main trade union confederations, held its 15th national congress in Rome. The main topic of debate was restructuring of the current collective bargaining system. Cisl has proposed a reform of the system and agreement on the issue will now be sought with the other two union confederations.
For more than a decade, Italy's "incomes policy" (so called politica dei redditi: Government action designed to control inflation by means of direct intervention targeted on prices and wages: in reality chiefly on wages through intervention in collective bargaining on pay - alleged to be the major cause of inflation) and collective bargaining system have been regulated by the national tripartite agreement of 23 July 1993. Experts, public institutions and the social partners still generally agree that the agreement has worked well, providing the basis for the management of bargaining and wage policies. However, changes in the general conditions that gave rise to the agreement have sparked debate on revision of the system established in 1993. In particular, the trade unions have for some time criticised the current centre-right government for abandoning 'social concertation' with the social partners on important economic and social issues and an acceptable "incomes policy". They maintain that the impoverishment of fixed income-earners (employees and pensioners) due to rising prices has not been remedied by increases in wages and pensions.

Although their analyses and appraisals are similar, the unions propose different solutions for a situation that they regard as critical. The CGIL does not regard changes to the 1993 agreement as being of priority importance; rather, its provisions should be applied with greater rigour. Both industrial relations and wage adjustments to inflation, Cgil claims, are being damaged by the long delays before many national sectoral collective agreements are renewed on their expiry - which is also the position of the Cisl and the Union of Italian Workers (Unione Italiana del Lavoro, Uil). However, Cisl believes that the best way to achieve an incomes policy that improves pay levels and the distribution of wealth is to modify the 1993 agreement, which it regards as no longer able to safeguard the purchasing power of wages and pensions. Uil has taken up a position closer to Cisl's than Cigl's by coming out in favour of revising the provisions introduced in 1993.

According to Cisl, reform of the bargaining system is an unavoidable necessity. It regards the July 1993 agreement as no longer able to safeguard the real purchasing power of the incomes from dependent work owing to the lack of application of decentralised bargaining. It should therefore be modified in order to

remedy the excess of 'bargaining centralism' that prevents consolidation of second-level (company and local) bargaining and the consequent improvement of pay levels and income distribution.
Cisl believes that both bargaining levels should be given priority, with a strengthening of the second - company or territorial - level.

Reasons for concern

Due to these differences of opinion among the unions indeed there has been talk of a split among the confederations, which do not only concern changes to the bargaining system, but also the impact and effects of the Legislative Decree n. 276/2003 (so called legge Biagi).
It has to be highlighted the fact that decentralised bargaining at territorial level (i.e. covering a particular district rather than a single company) has become more widespread in Italy over the 1996-2004 period, according to a report from the National Council for Economic Affairs and Labour (Cnel). It was previously almost entirely restricted to a few sectors, most notably agriculture and construction, but it is now spreading to areas such as crafts and services (commerce and tourism). Although still of minor importance compared with national/sectoral and company-level agreements, territorial bargaining is likely to continue to develop in future. As seen, opinions differ widely on the issue, but it seems very unlikely that the present Govern will put on next year's agenda an intervention on this extremely delicate sector, as in spring 2006 there will be the general election of the new Parliament.

The right of collective actions (right to strike) and the freedom of the enterprise or the right to property and the issue of the intervention of the judiciary into collective actions

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny, there has not been any relevant legislative initiative or national case law. As far as practices of national authorities are regarded, it has to be said that in Italy there is an independent authority, the so called Commissione di Garanzia (Guarantee Commission). This Commission was established by Law No. 146/1990, amended by law no. 83/2000, on the legal rules governing strikes in essential public services and has the function of assessing the adequacy of the minimum level of services to be maintained that has been defined by collective agreement, with a view to reconciling the right to strike with the enjoyment of certain constitutionally protected personal rights. It seeks to strike a balance between acquired rights (those of workers on strike) and constitutional rights (to life, education, mobility, security, health etc).
One of the Commission's recent report singles out air transport as the sector recording the highest level of industrial conflict in 2005.

In August 2005, Italy's Alitalia airline unilaterally suspended recognition of the trade union rights of "Sult TA", the largest union representing flight assistants. Alitalia justified its action on the grounds that Sult had refrained from participating in negotiations on renewal of the company's collective agreement. The airline's action sparked widespread debate on its legitimacy and provoked a 48-hour strike by Sult members. Mediation by the government failed to resolve the dispute, and the union announced a wave of industrial action, thereby threatening the viability of Alitalia's financial recovery plan. The dispute took place amid a climate of increasing unlawful conflict in Italian essential public services.
In this context, on 4 August 2005, Alitalia announced with immediate effect that it would no longer grant to the autonomous flight assistants trade union, the Unitary Union of Transport Workers - Air Transport (*Sindacato Unitario Lavoratori dei Trasporti Trasporto Aereo*, Sult TA), trade union rights under Title III of the Workers' Statute (name given to Law No. 300 of May 20, 1970, containing "rules on the protection of the freedom and dignity of workers and of trade union freedom and union activity in the workplace, and rules on the public employment service". To name but a few, it deals with the rights to organise employees' meetings in the workplace, or special time off for workers representatives.
According to an Alitalia press release, Sult's union rights had been suspended because of its refusal to participate in the process of renewal of collective agreements
Sult, to which 20.8% of unionised flight attendants belong (67.20% of the workforce is unionised), is the most representative union in the bargaining unit concerned. Sult considered Alitalia's action to be in

breach of Article 39 of the Italian Constitution, which guarantees freedom of association. An action is now pending in front of the Employment Tribunal.
Another area of the transport sector which has undergone some problems during the period under scrutiny is the rail one. Trade unions in the rail sector staged a 24-hour stoppage in February over safety issues, following a severe train crash in January. However, they are now embroiled in a dispute over the legality of the strike, as the Commissione di Garanzia had only authorised an eight-hours protest, but this decision was not followed by trade unions. Falling to comply with the Commission's order has resulted into a fine imposed on trade unions. However trade unions defended their action in a joint-statement and then brought an action against the Commission in front of the administrative tribunal ("TAR"), which has not been decided yet.

Reasons for concern

As for the Alitalia case, it could be argued that exclusion from bargaining violates freedom of association, as granted in art. 39.1 of the Italian Constitution. This case evokes the long lasting lacuna in Italian labour law, as for the lack of legislation recognising to trade unions criteria of representativity in view of signing collective agreements.
With reference to the rail strike, it's very worrying that the unions have decided to go on strike clearly violating a decision of an independent authority which derives its legitimacy directly from the Constitution. This could also be a sign of the difficult relationships between the present Government and the trade unions.

Other relevant developments

Reasons for concern

For its implications with the constitutional freedom of expression, and its extreme relevance with reference to journalism, it could be important to mention what follows.
The national collective agreement covering Italian journalists expired in February 2005. In the negotiations over the renewal of the agreement, the positions of the journalists' trade union and the employers' association have been far apart, especially on issues concerning the labour market and regulation of freelance journalism. After a two-day strike held by the union at the beginning of June 2005, negotiations - which seemed close to reaching a deal - were once again interrupted in mid-September when the union announced another two-day strike.
Another strike with similar characteristics was called in December 2005.
Journalists accused the newspapers' editors confederation (Fieg) of not keeping the promise to "freeze" the enforcement of the 2003 legislation reforming the labour market, as well as legislation on fixed-term contracts (legislative decree 368/2001), with particular regard to subcontracted work, transfers of undertakings and the posting of journalists. These are forms of employment which the union regards as undermining professional independence and hampering freedom of expression.

Article 29. Right of access to placement services

Article 30. Protection in the event of unjustified dismissal

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

At legislative level, mention should be made of Legislative Decree no 187 of 19 August 2005 implementing directive 2002/44/EC on minimum health and safety regulations regarding the exposure of

workers to risks deriving from mechanical vibrations, as well as art 29 of law no 62 of 18 April 2005 (called "2004 Community Law") in which - executing the ruling of the European Community Court of Justice of 10 April 2003, in case C-65/01 - significant additions were introduced in relation to provisions concerning working equipment under art 36 of Legislative Decree 66/94 and subsequent amendments.

At ministerial level data and/or information on the numeric incidence of infringements of regulations safeguarding health and safety on the job have not been found.

Lastly, no ministerial measures and/or decisions have been adopted to increase resources for inspection services.

Positive aspects

The development of Italian regulations, in line with EU standards on health and safety constitute an important factor in the trend that can be seen - also for 2005 - showing a decrease in accidents at work in Italy. Based on periodical statistical surveys performed by INAIL (National Institute of Industrial Accident Insurance), it is possible to assess an overall 1% - 2% reduction in accidents on the job, with a more marked drop (between 2% and 4%) in agriculture.

Reasons for concern

One of the main reasons for the critical situation is that it is difficult to understand the Italian regulatory system. This is a problem the Government attempted to solve by preparing a Consolidated Text on health and safety. Following an unfavourable opinion expressed in relation to this Text by the Unions, the Regions and the Council of State, in addition to numerous scientific associations, in August 2005 the Government renounced its definitive drafting. Therefore, instead of seeking mediation or merely conforming to pressure made by the various associations and bodies, the Executive preferred to give up a tool (planned by the legislator in 1978) useful to make the regulatory framework regarding this subject clear and organic.

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

At legislative level, Legislative Decree no 145 of 30 May 2005 is worthy of mention. This Legislative Decree implements Directive 2002/73/EC on equal treatment between men and women regarding access to work, professional training, promotion and working conditions, and includes the concept of "harassment", "sexual harassment" and the correlated sanctions system.

Positive aspects

Following the above Legislative Decree, Italian regulations finally include provisions to safeguard against sexual harassment in the workplace. Indeed, it should be stressed that, as before, a specific legal framework was absent; an answer had only been found to sexual harassment in the workplace at case-law level, with inevitable protection of an uncertain nature vis-à-vis the (numerous) victims of such behaviour.

Working time

Legislative initiatives, national case law and practices of national authorities

The discipline concerning working hours has undergone significant amendments, especially following the approval of Legislative Decree no 66/2003 and Legislative Decree no 213/2004.

In relation to the above situation, no significant new features at neither legislative nor case-law level can be reported.

Article 32. Prohibition of child labour and protection of young people at work

There are no significant changes in the pre-existent regulatory framework. There are also no significant changes regarding resources destined for inspection services.

Article 33. Family and professional life

Parental leave and initiatives to facilitate the conciliation of family and professional life

Legislative initiatives, national case law and practices of national authorities

Italian regulations base conciliation policies on a complex set of standards contained both in labour law - meaning that legislation is mainly connected with employment policies (Legislative Decree no 276/2003 and subsequent amendments); the time dimension of work (see Legislative Decree no 66/203 and subsequent amendments); the safeguarding of maternity and paternity (see Legislative Decree no 151/2001) and, more generally, the dimension of man-woman labour equality (see laws no 903/77 and no 125/91 and subsequent amendments); also the right to social security (see, in particular, basic laws on infancy and welfare).

While no significant amendments are recorded on the legislative front, on the case-law front, instead, two important decisions by the Constitutional Court should be indicated.
In the first ruling, no 385 of 14 October 2005, the Court not only intended conciliation to go beyond its traditional boundaries (indicated by subordinated employment), but also beyond the traditional one-way approach to the subject, namely the approach that views the problem of conciliation as a "women's" problem. More specifically, in the above ruling, the Court set out the combined provisions of articles 70 and 72 of Legislative Decree 151/2001, that expressly acknowledges maternity benefit to professional women workers only, and does not permit the extension of this right, as an alternative, to male self-employed professionals. According to the Constitutional Court, the acknowledgement of this benefit only to self-employed professional women "represents a vulnus both of the principle of equal treatment between parental figures and between self-employed and subordinate workers, and of the value of protection of the family and the safeguarding of minors". Based on these considerations, the Court consequently declared the illegitimacy of the two passages of the Legislative Decree mentioned, that deny enjoyment of the maternity benefit by the self-employed professional father, as an alternative to the mother.

On the other hand, in the second ruling no 233 of 8 June 2005, the Court made a statement on art 42, paragraph 5 of Legislative Decree 151/2001. This regulation permits brothers or sisters living with a seriously handicapped person to enjoy extraordinary paid leave only if the parents are dead, and not also in the case that the latter, although still alive, find it impossible to look after their handicapped son or daughter because they are totally unable to do so and possess the necessary requisites under art 1 of Law no 18/1980.
The Constitutional Court above all stated that the regulation that attributes "to the brothers and sisters of disabled persons the right to extraordinary leave only in the case of the death of the parents and does not permit the same right in the case of a totally incapable parent being unable to care for a handicapped son or daughter would seem unreasonable and detrimental to the principle of equality". Indeed, by using the term scomparsa (missing/dead), without taking into consideration the case whereby one of the parents, although living, is de facto objectively unable to care for the son or daughter, because this parent is, in turn, completely incapable, involves an "inadmissible impediment to the effective nature of welfare and integration". For the purposes of the protection that the regulation in question intends to pursue, according to the Court, therefore, the scomparsa of the parent must be considered "on the strength of the assessed impossibility of said parent to look after the handicapped person". By interpreting the regulation in a different manner, the measure taken to support extraordinary paid leave would, in fact, not be possible to effectively implement in those situations which require more incisive and adequate support. For these reasons, the Court has thus declared the constitutional illegitimacy of art 42, paragraph 5 "in the

part where it does not contemplate the right of one of the brothers or sisters living with the handicapped person in a serious situation to take the leave indicated above, in cases where the parents are unable to care for the seriously handicapped son or daughter because they are totally incapable".
In a circular dated 29 September 2005, the Istituto Nazionale di Previdenza Sociale (National Social Security Institute), already took steps to clarify the applicational aspects of the above ruling.

Positive aspects

Essentially, it should be pointed out that conciliation policies in Italy are starting to acquire dignity as independent objects of scientific and legal research, as a rule impervious to such recognition. This is, above all, starting from the approval of Legislative Decree 53/2000, later merged with the 2001 Consolidation Text, that made the term "conciliation" of common use.

Good practices

Of the most promising inputs for the development of conciliative policies, collective agreements at decentralized level are especially worthy of mention. This emerges from a preliminary identification of the implementation of measures planned for the conciliation of "living" and work time under Legislative Decree 151/2001, that acknowledges that it is due to collective independence that there is the development of measures to encourage conciliation between "living" and work time, such as part-time, but also other time-space flexibility measures able to sustain similar flexibility: telework, concentrated timetables, hour banks, flexible timetables for entering and leaving work (see Isfol, Contrattazione decentrata e conciliazione tempi divita e di lavoro (Decentralized bargaining and conciliation of "living" and work times), September 2005, under publication).

Reasons for concern

However, the positive aspects connected with the development of legislation, case-law and collective bargaining must not suppress some reasons for concern. Thus, considering the evolution of legislation relating to the time aspect of work (see above), and the measures ideally and politically connected to the White Book on the labour market and to the White Book on Welfare presented, respectively, by the Government in October 2001 and in February 2003 (see, in particular, Legislative Decree 276/03 and subsequent amendments), it can be seen how in Italian regulations the meaning of the term "conciliation", would appear to be considerably removed from the term coined in the community law area. What we do want to point out is that above all in Italy, in the name of "conciliation", the effect has been obtained of politically justifying provisions and institutions inspired by the mere logic of justification of the primacy of the interests of the enterprise.
Instead, as regards collective bargaining, we would point out the difficulty of finding data and/or materials on which to make a far-reaching and therefore effective evaluation of the degree of implementation achieved by the above policies and regulations.
As indicated by the authors of the Isfol Report (see above), the collection of contractual materials is hindered by a multiplicity of reasons. A first impediment is the difficulty in finding the materials because of the shortage of databanks available and their not always perfect updating, in addition to access difficulties for some of them. For example, this is the case of databanks at ministerial level, where the obtaining of data is increasingly hindered by a generic need to observe regulations protecting privacy.

<u>Protection against dismissal on grounds related to the exercise of family responsibilities</u>

Legislative initiatives, national case law and practices of national authorities

In order to reconcile family and professional life, Italian regulations ban the power of dismissal on the part of the employer vis-à-vis working mothers and, in special cases, working fathers (see Legislative Decree no 151/2001).

In relation to the above regulation, no amendments can be seen on the legislative plane and/or any particularly significant action to interpret the law.

Article 34. Social security and social assistance

Social assistance and fight against social exclusion

Legislative initiatives, national case law and practices of national authorities

At legislative level, reference should, above all, be made to Law no 311 of 31 December 2004 that gives "rules for the formation of the annual and multi-year state budget" (called the 2005 Budget) which, however, did not introduce any highly significant regulations pertaining to social security, and merely introduced a few small measures in this sector. Regarding, for example: special unemployment in the agricultural sector (see art 1, paragraph 147); sick pay for public transport workers (see art 1, paragraph 148); pensionable age for opera house employees (see art 1, paragraph 150); insurance and contributions system for participating associates (see art 1, paragraph 157); notional contributions for workers with an elective office (see art 1, paragraph 239 and 527); extension of working life over the pensionable age for public employees recognized as antifascist or race victims of political persecution (see art 1,paragraph 536); method of payment of family allowances (see art 1, paragraph 559).

Reference must also be made to Law no 80 of 14 May 2005 on the basis of which, for periods of payment from 1 April 2005 to 31 December 2006, the unemployment allowance has been raised from six to seven months for insured persons under the age of 50 and from nine to ten months for insured persons aged over 50. Among other things, the rate of unemployment pay has also been changed. It has risen from 40% of salary to 50% for the first six months, to 40% for the subsequent three months and to 30% for the remaining months. Instead, there has been no variation in the requisites for obtaining the ordinary unemployment allowance. When application for the allowance is made, the worker still has to have at least two years' insurance with INPS (National Social Security Institute) against unemployment, and there must be actual contribution for at least one of these two years. The Law also disciplines a new type of case where it is possible to claim unemployment allowance also for the suspension of work following particular company situations due to temporary events, not attributable to the entrepreneur or to the workers. However, it should be underlined that a decree is required in order to implement this latter case (to be enacted by the Ministry of Labour in conjunction with the Ministry of Finance) that, to date, has still not been prepared.

Reasons for concern

The evolution of legislation concerning social security in Italy presents a number of critical situations. In relation to Law no 80 of 14 May 2005, the Government has considerably scaled down its already modest intentions regarding reform agreed to some time ago with its social partners; see the 2002 "Patto per l'Italia" ("Pact for Italy") signed with CISL and UIL (Italian Trade Union Federations). More specifically, the Government appears to renounce any intentions to structurally reform social "shock absorbers" (but also the employment incentive system). As seen above, the measures envisaged by these rules appear to be limited both in substance and time-wise.

Social assistance for undocumented foreigners and asylum seekers

Legislative initiatives, national case law and practices of national authorities

As regards the above subject, we would merely indicate a ruling by the Constitutional Court, no 432 of 28 November 2005, according to which, also foreigners illegally present in the Italian State have the right to enjoy all undelayable and urgent services on the basis of the principles indicated in art 35, paragraph 3 of the Legislative Decree mentioned, this being a fundamental right of the person that must therefore be ensured" (see ruling no 438 of 28 November 2005). Indeed, within the meaning of this provision, the Italian State ensures that "Foreign citizens who do not comply with the regulations regarding entry and residence, (...) have urgent or in any case essential out-patient and hospital treatment even if continuative, for illnesses and accidents, with the extension of preventive medicine programs to safeguard individual and collective health". Specifically, under this provision the following are guaranteed: a) the social protection of pregnancy and maternity, with the same treatment as for Italian citizens under the internal

regulations in force; b) the protection of the health of minors in conformity with international rules the subject of ratification in Italian regulations; c) vaccinations according to regulations also in relation to measures forming part of collective prevention campaigns authorized by the Regions; d) international prophylaxis measures; c) the prophylaxis, diagnosis and treatment of infectious diseases and the possible removal of related focuses.

Reasons for concern

The main reasons for concern are suggested by the fact, documented by an authoritative source of statistical research (see 39th CENSIS Social Research Institute Report), that it is increasingly difficult for persons who are illegally resident in Italy to apply to public health facilities. According to the report, this phenomenon is principally due to the poor capacity of the public health system to adapt to immigrant users and also to a fear of expulsion (regulated at the end by Law no 271 of 12 November 2004 and by Legislative Decree no 12 of 10 January 2005, implementing Directive 2001/40/EC relating to reciprocal recognition of decisions to remove citizens from third-world countries) with inevitable public health risks.

Social security in favour of persons moving within the Union

Legislative initiatives, national case law and practices of national authorities

In Italian regulations, legislation on immigration, in principle, reserves safety and social welfare measures to foreigners legally resident in Italy and not, therefore, to illegal and clandestine immigrants (however, there are exceptions to this rule for given services involving measures and rights innate in the very essence of human beings, see art 35 of above Legislative Decree no 286 of 25 July 1998 and subsequent amendments). This is the case, in the social security field, in relation to pension treatment, accident prevention insurance, illness and maternity insurance, unemployment benefits, family allowance, welfare services, extension of aid society functions. And, similarly, in relation to education and housing (see art 2, paragraph 3 of Legislative Decree 286/98 and subsequent amendments that, in close connection with international regulations, indeed recognizes equal treatment and full equal rights to all foreigners legally resident and to their families compared with Italian workers with reference to the work and social security area).

As regards the above regulatory framework, no changes can be seen at legislative level. Mention should be made of an important decision of the Constitutional Court - no 432 of 28 November 2005 - that, in line with the framework of principles and regulations indicated, gave a ruling on the constitutional illegitimacy of art 8, paragraph 2 of Lombardy Region law no 1 of 12 January 2002 (with the title "Measures for the development of regional and local public transport), as modified by art 5,0 paragraph 7 of Lombardy Region law no 25 of 9 December 2003 (with the title "Measures regarding public and local transport and viability") in the part where it does not include totally invalid foreign residents for civil cases in the Lombardy Region among those having a right to free circulation on public transport services granted to Italian citizens who are totally invalid for the same reasons.

Reasons for concern

With the ruling referred to, the general impression of a restrictive effect of the legal statute of foreigners is lessened without, however being eliminated. This appears to be evident as regards the condition of foreigners legally resident in accordance with law no 189/2002, amending Legislative Decree no 286/98. As can be seen by previous cases, on the basis of 2002 legislation the Italian migratory policy not only took a decided turn towards a policy of non-integration and admittance but also legitimation for the development of discriminatory rules - both state and regional - by reason of the nationality of immigrants.

Article 35. Protection of health.

From a legislative point of view, in the period under review the first concern has been the implementation at a national level of a number of EU Directives in the area of health, using the now established technique of substantially reproducing the European regulations in the Italian legislative text without any particular changes: this was the case of the new directive on quality in operations having to do with human blood and its components (legislative decree no. 191 of 2005), the one dealing with the protection of workers exposed to risks from mechanical vibrations (legislative decree no. 187 of 2005), the one dealing with reduced use of dangerous substances in electrical and electronic devices (legislative decree no. 151 of 2005), the one dealing with health controls on products of human origin intended for human consumption (legislative decree no. 117 of 2005), etc.

Italy, too, has felt the repercussions of the recent epidemics of avian influenza and the fears of their possible extension to humankind. As things stand, besides numerous preventive measures adopted by European institutions substantially intended to limit the importation of the animal species at risk, the Italian Government adopted a specific decree-law (no. 202 of 2005, recently passed into law by Parliament), whereby on the one hand there is a strengthening of the administrative oversight structures and the setting aside of funds for the purchase of vaccines, and on the other hand measures were introduced for economic assistance to the sector involved (authorizing, in particular, purchases of frozen products by entities in the area of public administration).
There have also been specific legislative interventions relating to limited areas of interest, such as, for example, law no. 229 of 2005 (which renewed the system of State compensation for persons suffering irreversible complications resulting from obligatory vaccinations) and law no. 123 of 2005 (for the protection of sufferers from coeliac disease, including free supply of suitable foodstuffs).

Then there is the constitutional reform law approved by Parliament at the second reading, but not yet promulgated since it will probably be subject to a referendum. The reform is intended, inter alia, to strengthen, at least formally, the role of the Regions in healthcare, for which they would have exclusive responsibility. This innovation has already raised numerous worries that this may mean not guaranteeing uniform standards of protection for all citizens throughout the country. These fears may be understandable, even if unjustified from a purely legal point of view: one should not forget that, even under the reform, the State has the exclusive duty to specify minimum safeguard levels for social rights (including, naturally, the right to healthcare) which must be observed throughout the country.

On the case-law front, there is a sentence of the civil court judges recognizing that producers and sellers of tobacco products have a responsibility to pay compensation for damage to the health of a smoker who has not been adequately informed of the dangers connected with smoking (Rome Court of Appeals, Sentence no. 10157 of March 2005): as a precedent this looks questionable, since by now it should be common knowledge that smoking may seriously damage one's health.
There have been numerous sentences of the Corte di Cassazione [Court of Cassation, or Supreme Court] as to responsibility for damage to health. Two rulings deserve special mention, both notable for having correctly set the highest value on the right to health, such as to take precedence over any opposing interest and to be held sacrosanct even where there are no specific legislative regulations in a particular case: Corte di Cassazione, Workplace Division, Sentence no. 644 of 14 January 2005 established a company's responsibility for having exposed its employees, during the 1950s and 1960s, to the effects of asbestos; Corte di Cassazione, Criminal Section IV, Sentence no. 9739 of 11 March 2005, instead, established the personal responsibility of a hospital doctor who assigned a patient who had just been operated on to the care of nurses without the necessary qualifications to ensure proper care of his health, such that he subsequently died of sudden complications.

There are also many decisions by administrative judges concerning questions relating to power lines and mobile telephony installations with a potential for generating polluting electromagnetic emissions and, in line with what is now consolidated constitutional jurisprudence, local administrations were denied the power to impose, by way of their own regulations, tougher limits on those emissions than those established nationally (State Council, Section IV, decision no. 450 of 14 February 2005; TAR Lombardia [Regional Administrative Tribunal of Lombardy], Milan, Section II, sentence no. 1113 of 27 May 2005;

TAR Veneto, Section I, sentence no. 3200 of 19 August 2005; TAR Tuscany, Section I, sentence no. 4572 of 3 October 2005): the justification for this position is that those installations are needed for the provision of a public communications service which is deemed essential and that consequently such provision must be permitted under uniform conditions throughout the country; in itself, this is a plausible justification, but it is undeniable that in the end it runs counter to the opinion expressed in the above-mentioned civil court rulings that health is an absolute and not relative right to be set against other considerations.

Matters of administrative practice were very varied, the breadth of the subject making it impossible to do more here than quickly mention a few aspects.
First of all, by way of a direct administrative order of the Ministry of Health, the first national measures were taken to prepare for an epidemic of avian influenza: specifically, a number of ministerial ordinances introduced measures to increase checks on national poultry farmers (ordinances of 26 August 2005 and 10 October 2005): naturally it is too soon to express an opinion as to the efficacy of the measures, though there is a widely-held view that the gravest danger for Italian public health comes mainly from uncontrolled imports of infected animals.
Ministerial decrees were also used to implement numerous technical regulations originating in the EU and having to do with the quality requirements of various categories of food and non-food products: this is a system for gradually bringing our regulations into line with updates in European law which by now has been thoroughly tested and which calls for no particular comment.
A specifically Italian approach to the administration of healthcare, due to the subdivision of responsibilities between the State and the Regions, is demonstrated by the agreements reached by the various institutional representatives at the National–Regional Conference. Numerous agreements were stipulated, too, in the period under review, including the agreement of 16 December 2004 on the protection of the health of non-smokers (partly annulled, however, by the administrative judges), and the two agreements of 13 January 2005 dealing with laboratories involved in microbiological diagnostics and the management of controls on dangers in the meat industry.
Generally speaking, this model of accords between State and Regions is working out well, specially since the agreement on fundamental choices increases, or should increase, the level of shared responsibility of all the public entities in managing healthcare policies. The weakness in the accord mechanism lies elsewhere and in particular in the difficulty in giving it binding authority with respect to subsequent legislation particularly at a national level, as well as in the continued delay in implementing fiscal federalism, which means that the Regions are, on the one hand, dependent on the transfer of tax money from the State, and on the other, have little interest in serious attempts to contain costs.

Article 36. Access to services of general economic interest

Access to services of general economic interest in the economy of networks: transports, posts and telecommunications, water-gas-electricity

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

International case law. The European Court of Justice has adopted a few judgments on the compatibility of national measures with EU legislation related to the accessibility of the traditional services of general economic interest i.e. related to the network economy. Even if not of particular interest, the following case law seems to be noteworthy.
In Case C- 460/02 Commission of the European Communities v. Italian Republic (9 December 2004), the European Court of Justice has to consider whether, in so far as Directive 96/67/EC on access to the groundhandling market at Community airports wasn't properly implemented in national law by the decreto legislativo 13 January 1999, n. 18 [Legislative Decree (1999:18)], the Italian Republic has failed to fulfil its obligations under that directive. The circumstances of the case and the statements of the Court may be summarised as follows.

Directive 96/67, which provides for a system of progressive opening-up of the market for groundhandling services in Community airports, establishes that Member States are to take the necessary measures to ensure, in general terms, free access to the market for groundhandling services to third parties and the freedom for third parties to self-handle in Community airports.
The Commission considers that Legislative Decree (1999:18) is incompatible with Article 18 of Directive 96/67, since it obliges the suppliers of groundhandling services to ensure that, on each occasion of a 'transfer of activity' in one or more of the categories of groundhandling referred to in the annexes to the decree, the staff of the previous supplier are transferred to the subsequent supplier in proportion to the volume of traffic or the scale of the activities being taken over by the latter. The Commission argues that the measure adopted by the Italian Government truly entails the transfer of social costs borne by the State to the new undertakings providing the services, to the detriment of those undertakings and it prevents suppliers wishing to enter the market from selecting their own staff and, accordingly, the way in which the services they seek to provide are organised so that they can carry out their activities on the market. The objective of Directive 96/67 is precisely to encourage competition in markets that were previously closed and monopolistic, by reducing the operating costs of airlines and improving the quality of the services provided to airport users.

The Italian Government maintains that Directive 96/67 provides the Member States with a degree of discretion as regards the manner and timing of the adoption of the measures required for the implementation of the new system, in light of the specific circumstances in each State. As regards the argument that the transposition of Directive 96/67 into national law was liable to distort competition on the market for airport services in favour of established undertakings and to the detriment of potential competitors, the Italian Government observes that the principle of freedom of competition means that the undertakings concerned should enjoy true equality of opportunity under the rules laid down by the social legislation which applies, even if those rules are restrictive in their nature.
The European Court of Justice states finally that the interpretation of Directive 96/67 provided by the Italian Government, particularly as regards the taking into account of social considerations, would make the entry of new suppliers of services in the groundhandling market unduly difficult, as they would be obliged to take over the staff employed by the previous supplier. As a result, the rational use of airport infrastructures and the reduction of the costs of the services charged to users would be impaired. In the light of all of the above, the Court helds that the Italian Republic has failed to fulfil its obligations under the directive.

Legislative initiatives, national case law and practices of national authorities

Legislative initiatives. - As regards legislative measures taken in order to improve the accessibility of the traditional services of general economic interest, attention has to be drawn on the following act. Legge 18 aprile 2005, n. 62, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunita' europee. Legge comunitaria 2004 [Law (2005:62) dispositions for the Respect of Obligations dued to the Italian Membership to the European Communities (Communitarian Law 2004)]. Article 17 of Law (2005:62) delegates the Government to regulate, amongst other matters, natural gas supplying by adopting dispositions guaranteeing an adequate level of safety of civil costumers in case of partial interruption in the supplying.
Practices of national authorities. - The following deliberations of national regulatory Authorities seem to be particularly noteworthy:
a). Autorità per l'energia elettrica e il gas (Authority for electricity and gas), deliberation 31 May 2005, n. 99/05, Determinazione delle tariffe relative alle attività di distribuzione del gas naturale e di fornitura di gas diversi dal gas naturale per l'anno termico 2004-2005, estabilishing the rates for 2004-2005 relating to the activities of distribution of natural gas and supply of various gas different from the natural gas. This act highlights a particular practice of the Autorità per l'energia elettrica e il gas, i.e. the fact that by approving its decisions the Authority has hold account of tariff proposals introduced by a number of enterprises supplying natural gas and other kinds of gas. In particular, the act underlines that such tariff proposals, although introduced beyond the right terms, have been considered in the determination of the rates only for what concerns the cognitive elements brought in them.
b) Autorità per l'energia elettrica e il gas (Authority for electricity and gas), deliberation 7 October 2005, n. 212/05, Misure per la promozione della concorrenza nel mercato all'ingrosso dell'energia elettrica per

l'anno 2006, concerning Measures to promote the Competition in the Market of Electric Power for 2006. By considering the main object of the act, the Italian Authority states that it affects the structure of the electric power offer for year 2006 and the contractual conditions relating to the recess in contracts of sale to suitable costumers. By considering the main purpose of this act, the Italian Authority emphasizes the intention to promote the competition and the efficiency in the market of the electric power and to promote the protection of the interests of costumers and consumers

Good practices

The cooperation among Italian regulatory Authorities is taking on even more significance, above all the cooperation between the Italian Autorità garante per la concorrenza e il mercato (Antitrust Authority), Autorità per l'energia elettrica e il gas (Authority for electricity and gas) and Autorità per le garanzie nelle comunicazioni (Authority for the guarantees in the communications). National regulatory Authorities continue furthermore to cooperate actively with the Italian Government and Parliament.

Reasons for concern

There are some reasons for concern relating to the sector of the traditional services of general economic interest. Recent analyses show that the following matters seem to be particularly noteworthy:
a) a first reason for concern involves a matter connected with the accessibility both of the traditional services and of the new services of general economic interest. The aim of the discussed matter is to guarantee consumers an adequate level of protection. This matter seems to be directly connected with the questions of the powers of national regulatory Authorities, their independence from central Government and their relation with other powers. Regulatory Authorities seem to be influenced by sectoral ministries whose powers affect direct not only the Authority's set-up but also their sphere of duties. As a matter of fact, in almost all services the powers of sectoral ministries seem to be very invasive, besides being absolutely inadequate, to the detriment of consumers' rights and interests. Special attention should be given then to the fact that some important services are not affected by regulatory action i.e. regulatory Authorities are still lacking in certain sectors (for instance, water, post, telecommunication, airport sectors);
b) a second reason for concern seems to be the following one. During 2005 some Italian undertakings supplying services related to the network economy have consolidated in Turkish groups, whilst others have shown their intention of doing it. In this connection, particular attention should be given to the fact that the Italian Ente nazionale per l'energia elettrica-Enel (National Elettric Power Board) is planning to acquire six enterprises supplying electrical energy in Istanbul. Currently, the economic expansion of Italian undertakings, particularly of Enel, in Turkey raises the questions wheather economic interests will prevail in the relations between Italy and Turkey and wheather the matter of the respect of fundamental rights by Turkey will thus take a back seat in that relation.

Other services of general interest

Legislative initiatives, national case law and practices of national authorities

Legislative initiatives. - As regards financial services and insurances, attention has to be drawn on the followings legislative measures:
a) legge 18 aprile 2005, n. 62, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunita' europee. Legge comunitaria 2004 [Law (2005:62) dispositions for the implementation of obligation deriving from the belongings of Italy to the European Communities (communitarian Law 2004)]. Article 9 of the Law (2005:62) increases the cooperation between the Commissione nazionale per le società e la borsa-Consob (Companies and Stock Exchange Authority) and the Banca d'Italia (The Central National Bank) in order to prevent misuse of privileged information and market manipulation in connection with financial instruments;
b) disegno di legge C 3328, Disposizioni per la tutela del risparmio e la disciplina dei mercati finanziari [Draft Bill (2005:C 3328), on the Protection of the Saving and the Discipline of the Financial Markets], approved by the Chambers of Deputies of the Italian Republic on 3 March 2005, then approved with modifications by the Senate of the Italian Republic on 11 October 2005 and now on

second lecture in the Chambers of Deputies. The Draft Bill (2005:C 3328) intends to increase the powers of the Commissione nazionale per le società e la borsa-Consob (Companies and Stock Exchange Authority) and also the cooperation among national Autorities in order to guarantee the integrity of financial market.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding observations of expert committees. - On 27 April 2004, the European Economic and Social Committee decided to draw up an own-initiative opinion under Rule 29(2) of the Rules of Procedure, on The use of geothermal energy. The Section for Transport, Energy Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005 (rapporteur: Mr Wolf). The European Economic and Social Committee adopted its document on 10 February 2005 [TEN 199-CESE/122/2005 DE/MR/ss]. Even if focused on the general evolution characterizing the situation in the EC Member States, this opinion contains guide-lines which may be understood as important to evaluate the Italian situation with regard to the development of technologies for producing geothermal energy. In this connection, attention has to be drawn on the fact that the Committee recommends initial, tapered incentives and legislation in all Member States for commercial launches and private investment, in order to make the production and sale of temporarily subsidised energy more attractive and thus also to help test, enhance and evaluate the economic potential of this energy form.

Article 37. Protection of the Environment.

From a legislative point of view, in the period under review a number of EU directives in the environmental field have been implemented at the national level, using the now established technique of substantially reproducing the European regulations in the Italian legislative text without any particular changes: this was the case of the new directive on public access to information in the environmental field (legislative decree no. 195 of 2005), the one on industries at risk of serious accidents (legislative decree no. 238 of 2005), the one dealing with measurement and management of environmental noise (legislative decree no. 194 of 2005), and the one on the incineration of rubbish (legislative decree no. 133 of 2005).
In this context, decree no. 59 of 2005 is worthy of special note, since it has at last fully implemented in our legislation, after years of delay, the directive on integrated environmental authorization (initially, in Italy, this directive was applied only to already existing plant). Just as important, even if once again passed after long delays, is the national regulation (law no. 316 of 2004) which allowed the starting up at a national level of the transfer system for atmospheric pollution quotas introduced in the Kyoto Protocol.
There has also been much discussion about granting the Government a wide-ranging legislative brief to draft one or more unified texts to codify current provisions regarding environmental protection (law no. 308 of 2004): the brief not having yet been taken up, it is impossible as yet to express any opinion on the matter.
On the case-law front, the Constitutional Court has continued to intervene to clarify the criteria for assigning legislative and administrative responsibilities between the State and the Regions in environmental matters after the changes to Section V of the Constitution.

The Court has specifically repeated that environmental protection is not a subject apart, but rather a value that the whole Republic must safeguard in every respect. Consequently, on the one hand, the State has the power to set standards of protection valid for the whole country which local administrations must respect, but on the other, in carrying out their assigned tasks (specially in territorial management), the Regions too can introduce measures having repercussions for the protection of the ecosystem, above all if their aim is, within certain limits, to provide even greater safeguards than those imposed by the national legislation (Constitutional Court, sentence no. 214 of 31 May 2005; Constitutional Court, sentence no. 108 of 18 March 2005).

The Court's solution is probably correct on a formal level: but there is no escaping the difficulties inherent in applying such a criterion, since it is often almost impossible to be sure a priori whether

regulatory intervention by the State or the Regions is in line with their respective areas of responsibility; the resulting uncertainties, of course, do not help in the battle to protect the environment.

The Court also reiterated, on the subject of waste management, that the Regions may stop the arrival in their territory of non-toxic urban waste produced in other Regions, while such a refusal is not permissible in the case of special and dangerous waste (Constitutional Court, Sentence no. 62 of 29 January 2005, which refers to laws passed by numerous Regions aiming at prohibiting the arrival of radioactive waste in their territories).

This last judicial orientation needs to be seen in the context of the wide-ranging and often polemical debate which occurs every time a location has to be chosen for a work of public interest involving some degree of environmental impact; such debates often give rise to legal action.

On this point, it is worth noting the judicial tendency which is now being consolidated regarding installations for the generation of electricity using wind-power (so-called wind farms): such installations, without doubt, significantly impair the landscape; still, in the view of Italian administrative judges, that circumstance is not sufficient to completely prohibit their construction, because in their turn they are an instrument for satisfying a parallel requirement for environmental protection by way of an increase in the percentage of renewable sources used in the production of the country's energy needs (State Council, Section VI, decision no. 971 of 9 March 2005; State Council, Section VI, decision no. 680 of 24 February 2005; TAR Sicily, Palermo, Section II, sentence no. 150 of 4 February 2005).

This approach seems laudable because, while it does not deny the need to ensure an environmentally correct placement of all projects, even if they are public works, it nevertheless gives balanced emphasis to the requirement to evaluate the environmental benefits it is reasonable to expect from the installation over the medium-long term.

According to the jurisprudence built up over the period under review, in judging the relative environmental costs and benefits of any human intervention, it is indispensable to fully apply precautionary principles, which means that in the case of any reasonable doubt about the environmental risks of a project, the appropriate administration will give preference to the most cautious solution according to its discretional view of the acceptability of the public risks involved (TAR Lombardia, Brescia, sentence no. 304 of 11 April 2005): the position thus expressed is correct and laudable in se, but care must be taken to avoid attributing in this way too much decision-making latitude to the public authorities which it would then be impossible to judge before the courts.

As to matters of administrative practice, since it is impossible here to provide a complete panorama of all the initiatives in the environmental field by the competent administrative bodies, it seems to be more useful to record a few considerations as to the numerous environmental reclamation projects at contaminated sites of national interest that are being carried out under the supervision of the Ministry of the Environment and Territorial Protection: their importance resides in the fact that this is at last an attempt to remedy the most serious cases of environmental degradation caused in recent decades, when legislation for the safeguarding of environmental values had not yet reached its present level of development.

Many of these interventions, thanks to significant funding by the State, are progressively reaching the implementation stage, after a lengthy gestation period, often as a result of specific agreements made between the competent administrations and the businesses present in the areas to be restored (see, for example, the cases of Porto Marghera or Cengio-Saliceto).

Amongst the many legal problems arising on such occasions is that of cost-sharing with the owners of polluted sites who did not themselves contribute to the contamination. Public administrations tend to oblige such persons or businesses to perform the environmental cleanup at their own expense: case-law, instead, has tended to an opposite view, requiring that the public entity first demonstrate the personal responsibility of the owner (see, for example, amongst the most recent cases: State Council, Section VI, decision no. 4525 of 5 September 2005; TAR Veneto, Section III, sentence no. 2174 of 25 May 2005; TAR Lombardy, Milan, Section I, sentence no. 5681 of 8 November 2004).

Article 38. Consumer Protection

During 2005, there have been numerous interventions by the judges of the Corte di Cassazione, by the administrative authorities (Competition Authority) and by the legislature to protect the position of the consumer.

An examination of the sentences of the courts shows that the consumer is protected first of all by confirmation of the principle that the location of the court may not be switched. It was upheld

(*Cassazione Civile, Section III, no. 5007 of 08 March 2005*) that a clause establishing a place of jurisdiction under Articles 18 or 20 of the Code of Civil Procedure must be presumed vexatious if it is different from that of the consumer. This is because Article 1469 ter, paragraph 3 of the Civil Code, which states that clauses reproducing provisions of the law are not vexatious, cannot be interpreted in that way, otherwise the protection of the consumer would be surreptitiously undermined where the assigned place of jurisdiction coincided with the residence of the professional. In terms of guaranteeing the consumer's interests, another sentence of the *Cassazione Civile, Joint Sections, no. 2207 of 04 February 2005* must be viewed in a positive light. The Joint Sections granted the consumer the right to demand compensation for damages following a ruling of the administrative authority aimed at imposing sanctions on an arrangement. It is very interesting to note the reasoning on which the Corte di Cassazione based its acceptance of compensation for damages in the consumer's favour. The Court held that the antitrust law is not the law just of businessmen, but the law of all those affected by the market, i.e. anyone having a legally relevant interest in the conservation of the market's competitive character. The judges went so far as to recognize a specific prejudice if that character should be removed or diminished, thus extending the protection of the consumer. The Court based its reasoning on Article 4 of the antitrust law, which gives the Competition Authority discretionary power to authorize an arrangement having characteristics such as to justify a prohibition, indicating amongst the reasons for the discretionary powers the underlying "benefit to the consumer". The judges hold that the law, in matters relating to an arrangement, does not overlook the interest of the consumer; indeed, it foresees a hypothesis in which such interest, whose protection is the backdrop to antitrust thinking, may be protected for a "limited period" even by softening the prohibition on the most classic forms of anti-competitive behaviour.

Furthermore, the legislature has introduced an important innovation regarding misleading advertising, i.e. law no. 49/2005, which changes the regulation of misleading and comparative advertising (the so-called Giulietti law). The new law gives the Competition Authority greater powers both in conducting investigations and in the measures which may be adopted to combat the phenomenon of misleading advertising by increasing fines and other penalties. Until now, the Authority was able to prevent the further publishing of the misleading advertisement and order the advertiser to publish a correction including an extract of the Authority's decision as to the misleading character of a particular advertisement. Now that the new regulations are in force, the Authority also has the power to impose fines which may vary, according to the gravity and duration of the violation, from 1,000 to 100,000 euros. Where the misleading advertisements publicize products which are dangerous to the health and safety of consumers or threaten the safety of children or adolescents or take advantage of their natural credulity, the fine must not be less than 25,000 euros. From now on, the Authority may intervene directly against an advertiser who has not complied with the terms of the judgment against it, by imposing fines and, in the case of repeated non-compliance, ordering the closure of the business for a maximum period of 30 days. The Authority has also been given greater investigative powers. It may request a copy of the advertisement from the advertiser or from the owner of the medium in which it was published even if these object. It may also levy monetary fines in the case of non-compliance with requests for information or documentation necessary for carrying out the investigation, fines which would be increased where false information is furnished.

The Competition Authority, on 3 November 2005, for the first time used its power under the Giulietti law to levy fines for misleading advertising by imposing a fine of 10,000 euros on the Associazione Italiana per lo Sviluppo del Digitale Televisivo Terrestre (DGTV). DGTV was punished for not complying with a ruling by the Authority on 14 October 2004 which forbade the further display of an advertisement shown on its site lauding the benefits and potential of digital TV. The advertising message was deemed misleading because its information content was "deficient in clarity and completeness, especially considering the absence of any indication that the television service offered is still only experimental".
The Authority, which previously in a case of non-compliance could only forward the complaint to the judicial authorities, has now applied the Giulietti law (recently made part of the Consumer Code), which came into force in April 2005 and allows it to act directly against advertisers by imposing fines ranging from a m

CHAPTER V. CITIZENS' RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

Article 40. Right to vote and to stand as a candidate at municipal elections

Participation of foreigners in public life at local level

Legislative initiatives

A constitutional reform proposals standing in Italian Parliament to grant the right to vote for the foreigners (third nations citizens and European Union citizens, besides, obviously for Italian citizen) which have more than sixteen years in Regional, Provincial and Municipality elections[21].

Positive aspects

This proposal could be an interesting instruments to support the integration of all the foreigners and to increase the electoral attendance of the young people.

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Good practices

In the period under scrutiny (spring 2005), municipal elections had taken place, and about 3.500.000 persons had the right to vote.
In this occasion as regard the right to vote and to stand as a candidate at municipal elections the Ministry of Interior does not produce any statistics.

Positive aspects

There are not any particularly obstacles regarding non national residents participation: it is enough that European citizens registered in a special list standing in the same municipality. Then, they will receive an electoral card like the Italian citizens.
For this registration is enough to fill in a simple form. A lot of Municipality put on line their form[22].
According to these previous notices, it is to underline that Italian Republic grants in a very easy way the exercises of the right to vote to the European Union citizens non residence in Italy.

Right to vote and to stand as a candidate to municipal elections for third country nationals

Legislative initiatives

Some constitutional reform proposals to grant the right to vote for third nations citizens in the Municipality elections standing in Italian Parliament[23].

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[21] See this constitutional reform proposal in XIV legislature, Camera dei Deputati, N. 2540.
[22] See, for example:
Municipality of Milan:
http://www.comune.milano.it/webcity/modulistica.nsf/d38e0f65f96d36fc0125690e00465e37/f1ed57f47ca6710dc1256e4c00556708/$FILE/domanda_comunali.pdf
Municipality of Prato: http://www.po-net.prato.it/elezioni/stranieri/htm/comune.htm
Municipality of Florence: http://www.comune.firenze.it/servizi_pubblici/anagrafe/citteuro.htm

[23] See, for example, XIV legislature, Camera dei Deputati, N. 4397.

A decision of the Municipality of Genoa extended the right to vote for third nations citizens in the Municipality and sub – Municipality elections. On 17 August of 2005, a D.P.R.[24], based on an advice of the State Council[25], revoked some articles of the Charter of Municipality of Genoa because this extension was illegitimate. Actually, only a legal act of the State could extend this right of vote and not an act of a local power.

Article 45. Freedom of movement and of residence

Right to social assistance for the persons who have exercised their freedom of movement

Legislative initiatives, national case law and practices of national authorities

TEAM - Tessera europea di assicurazione malattia [European Card of Medical Insurance] for persons enrolled in the National Health System
The implementation of the TEAM is going on, with the cooperation between Ministry of Health and Ministry of Economics and Finances. The last one is delivering the TEAM to persons enrolled into the National Health System (SSN), following a regional order.
The TEAM is aimed to substitute the previously employed European forms E110, E111, E119, E128, to receive sanitary treatment in temporary stay abroad.
The T.E.A.M. cannot be used for the transfer abroad for high-specialization cares (scheduled treatment), which still requires the old form E112.

Positive aspects

Evaluating the situation of European citizens temporarily staying in the territory, we observe that this group of people indeed can enjoy the right of sanitary treatment at the same conditions than Italian nationals, though by a partially different procedure.
Indeed people in temporary stay in the Italian territory for reasons other than work will receive, upon presentation of a European health form (like the E 111), a document called "carnet della salute" ("healthbook") from the Local Health Agency or Unit (A.S.L., A.U.S.L. or U.S.L.).
This healthbook has to be exhibited at the doctor, pharmacy, etc.., in order to receive treatments, medicines and check-up. The same treatments will be noted in the healthbook. The document contains as well indications and explanations to obtain such treatments. The fee to be paid for each treatments or service can depend on the care, and can vary from region to region.
In case of urgent treatment (like emergencies), the person in temporary stay in the territory can enjoy the public health service, but he can be asked to pay a "ticket" (fee) to contribute to the costs of the treatment received, depending from the region.
In general citizens of other member States dwelling in the territory have the right (or can, with payment of a contribution) to be enrolled to the National Health Service (S.S.N.) at the same conditions of Italian nationals.

Reasons for concern

If we consider, under this article, also the group of illegal migrants, being foreigners which do not dwell legally in the country, the situation presents several reasons for concern.
Indeed this group of people is allowed to receive some minimal health treatment, namely emergencies, and treatments related to pregnancy, child health and infective diseases.
For the last mentioned treatments the foreigner should pay the fees, but if he doesn't have sufficient economic resources, the same fees will be paid from Ministry of Internal Affairs, or Ministry of Health, depending on cares received.

[24] Published on the Official Gazette of Italian Republic 2005, n. 205.

[25] See this advice in: http://www.interno.it/stampa.php?sezione=1&id=21260

Still the main reason of concern is that being illegal in the country, they do not enjoy rights in general, they do not have right to social security, and any activity of prevention is very difficult among that group, because of their status of social outcasting, and other cultural problems related to a different perspective of health issues and prevention culture.

Indeed statistics demonstrate that the illegal workers have a very high rate of work accidents, a general trend confirmed also from legally working migrants, proving that immigrants are often employed in fields in which the difficulty to find national manpower is increasing.
Furthermore if we consider the status of illegal women staying in the country, which very often are exploited in prostitution activities, their general situation makes almost impossible to make prevention within this target group, which are persons that do not enjoy any right, except for critical circumstances (emergencies, pregnancy, infective diseases).

Prohibition to enter certain zones or portions of the national territory during particular events

Positive aspects

No evaluation can be made of prohibition to enter national territory according to art. 2(2) of the Convention of 19 June 1990 implementing the Schengen Agreement.
No communication reported from Internal Affairs Ministry.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Eur. Ct. H. R. (3rd Section), Goffi v. Italy (Appl. N. 55984/00) judgment of 24 March 2005.
In the period under consideration, the case-law of the European Court of Human Rights about the violation of right of movement within the territory decreased significantly [see Italian Report, 2004, on the same article].
The European Court of Human Rights (Third Section) indeed delivered just one judgment against Italy for violation of the right of liberty of movement and freedom to choose the residence within the territory.
The facts of the case can be summarized as follows: in 1989 the Brescia Tribunal declared the bankruptcy of the applicant, Mr. Goffi, as partner of the company G.
The bankruptcy procedure was definitively closed just in 2002 (18.12.2002), lasting more the 13 years.
During this period (1989-2002) his electoral rights were suspended, according to art. 2 of Decree of the President of the Republic 1967:223, and he could not leave his dwelling place without authorization of the judge ("giudice delegato"), according to art. 49 of the Royal Decree 1942:267, "law on bankruptcy".
Moreover his correspondence was first checked from the official receiver ("curatore fallimentare") appointed in the bankruptcy procedure.
The applicant complained of several violations of European Convention on Human Rights, namely the right to private property (Article 1 of Protocol No. 1), the right to respect for correspondence (Article 8).
He also complained about the violation of his freedom of movement, protected in article 2 of Protocol nr. 4, because he has been prevented from leaving his dwelling place, without judicial authorization ("giudice delegato").
The Court held unanimously violations of article 1 of Protocol No. 1, article 8 and article 2 of Protocol No. 4, in breach of applicant's individual rights, estimating that the liquidation procedure had upset the fair balance between the general interest in ensuring the company's creditors and applicant's rights, recognizing 29.000 euros and interest as moral damage.
The jurisprudence is following the trend of precedents Neroni v. Italy (1st sect.), Appl. n° 7503/02, judgment of 22 April 2004; and Luordo v. Italy (1st sect.), Appl. n° 32190/96, judgment of 13 July 2003.

Article 46. Diplomatic and consular protection

Legislative initiatives

Neither Directive 95/553/EC nor Decision 96/409/CFSP have been the subject of a formal transposition.

CHAPTER VI. JUSTICE

Article 47. Right to an effective remedy and to a fair trial

Access to a court and, in particular, the right to legal aid / judicial assistance

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

With regard to the international case law registered in the period under scrutiny, there are some judgments of the European Court of Human Rights, which held that the Italian Republic broke Article 6 § 1 and Article 13 of the European Convention of Human Rights.
Italy violated art. 13 in relation to art. 8 ECHR in a case where an Italian citizen suffered an unlawful search in her house, which has never been validated by the prosecutor. The day after the woman went to hospital denouncing assault and battery. The pre-trial investigation judge decided the dismissal of both cases without any further control [Eur. Ct. H. R. (4th sect.), L. M. v. Italy (Appl. n° 60033/00) judgment of 8 February 2005 (final)].

Moreover Italy violated art. 6 § 1 ECHR in some cases related to the right of access to a court, because the defendant couldn't take part in the proceeding without declaring expressly (or, anyway, in a non-equivocal manner) such an intention [Eur. Ct. H. R. (3rd sect.), R. R. v. Italy (Appl. n° 42191/02) judgment of 9 June 2005; Eur. Ct. H. R. (4th sect.), Hermi v. Italy (Appl. n° 18114/02) judgment of 28 June 2005].

With special regard to the proceeding of enforcement of penalties, the Eur. Ct. H. R. held that Italy violated art. 6 § 1 ECHR, because it did not guarantee the prisoner's right of access to a court. The competent judge was always late in the examination of prisoner's petitions against the so called "art. 41-bis regime", so that everytime the judge took a decision, he rejected the petition because of lack of interest. In fact, the decree delivered by the Department of Justice, against which the prisoner protested, was not valid any more at the time of the decision, but at its place another decree had been delivered by the authority [Eur. Ct. H. R. (4th sect.), Gallico v. Italy (Appl. n° 53723/00) judgment of 28 June 2005 (final); Eur. Ct. H. R. (2nd sect.), Bifulco v. Italy (Appl. n° 60915/00) judgment of 8 February 2005 (final)].
Another violation of art. 6 § 1 ECHR has been committed in a case, where the access to the supreme court of Italy (the Court of Cassation) has been denied, because the party did not respect the judicial times for notification; but liable for that was not the party, but the public authorities themselves [Eur. Ct. H. R. (3rd sect.), Kaufmann v. Italy (Appl. n° 14021/02) judgment of 19 May 2005 (final)].
Another censure is related to the lack of remedies suitable for reopening a criminal proceeding, which has been celebrated without any warranty of the defendant's right to examine witnesses for the prosecution. In particular the Commitee of Ministers of the Council of Europe [Provisional resolution n° 85 of 2005, Dorigo v. Italy (Appl. n° 33286/96), 12 October 2005] verified that, although Italy had been condemned for violation of art. 6 § 1 ECHR, it did not reopen the proceeding Dorigo.

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny many legislative initiatives intervened with regard to the right to access to a court.
The decreto legislativo 10 gennaio 2005 n° 12, Attuazione della direttiva 2001/40/CE relativa al riconoscimento reciproco delle decisioni di allontanamento dei cittadini di Paesi terzi (Legislative decree 10 January 2005 n° 12 about mutual acknowledgment of foreigners' expulsions adopted by other Countries) (in *Gazzetta Ufficiale* 16 February 2005 n° 38), has given the police authority the task to enforce the expulsions, against which the foreigner has access to the Justice of the Peace, as it happens in the field of immigration according to decreto legislativo 25 luglio 1998 n° 286, Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero [Legislative decree 25 July 1998 n° 286 about immigration and the status of the foreigner].

The legge 22 aprile 2005 n° 60, Conversione in legge, con modificazioni, del decreto-legge 21 febbraio 2005 n 17, recante disposizioni urgenti in materia di impugnazione delle sentenze contumaciali e dei decreti di condanna (Law 22 April 2005 n° 60, Confirmation by law of decree-law n° 17 of 2005 about appeal against sentences in absentia) (in *Gazzetta Ufficiale* 23 April 2005 n° 94), provided that the defendant has a new judicial time in order to appeal against sentences passed in absentia, without giving any evidence about its ignorance condition.

With regard to the right to obtain legal assistance, the legge 22 aprile 2005 n° 69, Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri (Law 22 Aprile 2005 n° 69 about the so called European warrant of arrest) (in *Gazzetta Ufficiale* 29 April 2005 n° 98), provided that the person, who has been arrested, must always be assisted by a lawyer in front of the Italian judge before being handed over to the foreign judicial authority.
With special regard to the admission to the defence of indigents, the decreto legislativo 27 maggio 2005 n° 116, Attuazione della direttiva 2003/8/CE intesa a migliorare l'accesso alla giustizia nelle controversie transfrontaliere attraverso la definizione di norme minime comuni relative al patrocinio a spese dello Stato in tali controversie (Legislative decree 27 May 2005 n° 116 about the improvement of justice in frontier trials by means of common rules regarding the defence of indigents) (in *Gazzetta Ufficiale* 1 July 2005 n° 151), assures the defence of indigents in border civil trials also.

Positive aspects

The mentioned legge 22 aprile 2005 n° 60 rids the convict of the probatio diabolica related to the causes of his ignorance condition about the existence of the proceeding against him.

Reasons for concern

The mentioned decreto legislativo 10 gennaio 2005 n° 12 confirmed the jurisdiction of the justice of the peace in the field of immigration and foreigners' expulsion. This is a reason of concern because of the non professional nature of that judicial authority (see also Procuratore generale della Repubblica presso la Corte Suprema di Cassazione, Report about the Administration of Justice in the year 2004 during the 2005 judicial year inauguration).

Interim judicial protection

Legislative initiatives, national case law and practices of national authorities

The mentioned legge 22 aprile 2005 n° 69 (European warrant of arrest) provides the right of appeal in front of the Court of Cassation against the decree, which establishes the defendant's handing over to the foreign judicial authority. During the appeal, the decree can't be enforced, when it concerns a final sentence.
The legge 31 luglio 2005 n° 155, Conversione in legge, con modificazioni, del decreto-legge 27 luglio 2005, n. 144, recante misure urgenti per il contrasto del terrorismo internazionale (Law 31 July 2005 n° 155, Confirmation by law of the decree-law about urgent measures against international terrorism) (in *Gazzetta Ufficiale* 1 August 2005 n° 177) provided that expulsion decrees related to terrorism can be appealed in front of the administrative court, but no stop in the enforcing procedure is allowed.
With regard to pretrial custody, the Constitutional Court (judgment n° 299 of 2005) held that art. 303 Italian criminal proceeding code was unlawful, because it did not allow to include pretrial custody suffered in different moments of the proceeding in order to determine the maximum custody term.
The guarantee related to the maximum custody term, according to the Constitutional Court (judgment n° 408 of 2005), embraces the so called prohibition of "chain charges", which protracts artfully the time of custody.

Reasons for concern

Because of the flop of annulling referendum of legge 19 febbraio 2004 n° 40, Norme in materia di procreazione medicalmente assistita [Law 19 February 2004 n° 40, Norms about medically supported procreation] there are still some problems with regard to interim judicial protection in the field of medically supported procreation, as already remarked in the past in relation to the case of a married couple, affected by a genetic transmissible illness, which asked the judge to adopt an urgent relief in order to assert its right to transfer just healthy embryos and to preserve meanwhile unhealthy embrios.

Independence and impartiality

Legislative initiatives, national case law and practices of national authorities

In the period under scrutiny many legislative initiatives refer to the structure of the national jurisdiction itself.
First of all, the legge 27 dicembre 2004 n° 306, Conversione in legge, con modificazioni, del decreto-legge 9 novembre 2004, n. 266, recante proroga o differimento di termini previsti da disposizioni legislative. Disposizioni di proroga di termini per l'esercizio di deleghe legislative (Law 27 December 2004 n° 306 about delay of terms) (in Gazzetta Ufficiale 27 December 2004 n° 302) extended assignment of lay judges close to the expiry for another year.
The legge 25 luglio 2005 n° 150, Delega al Governo per la riforma dell'ordinamento giudiziario di cui al regio decreto 30 gennaio 1941, n. 12, per il decentramento del Ministero della giustizia, per la modifica della disciplina concernente il Consiglio di presidenza, della Corte dei conti e il Consiglio di presidenza della giustizia amministrativa, nonché per l'emanazione di un testo unico (Law 25 July 2005 n° 150, Enabling act to the Government in order to reform the judicial machinery) (in *Gazzetta Ufficiale* 29 July 2005 n° 175, Supplemento Ordinario n° 134), provided some principles in order to reform the judicial machinery. With regard to indipendence of judges, two news are relevant: the hierarchical organization of judicial offices and the creation of a directive council by the Court of Cassation, which oversees the judges' conduct.
The legge 14 maggio 2005 n° 80, Conversione in legge, con modificazioni, del decreto-legge 14 marzo 2005, n. 35, recante disposizioni urgenti nell'ambito del Piano di azione per lo sviluppo economico, sociale e territoriale. Deleghe al Governo per la modifica del codice di procedura civile in materia di processo di cassazione e di arbitrato nonché per la riforma organica della disciplina delle procedure concorsuali (Law 14 May 2005 n° 80, Confirmation by law of decree-law n. 35 of 2005 about civil proceeding and arbitrators) (in *Gazzetta Ufficiale* 14 May 2005 n° 111, Supplemento ordinario n° 91), provides an enabling act in order to reform the statute of arbitrators. These ones must be impartial and independent because the arbitration is like a sentence, although not confirmed by a court.

Positive aspects

Thanks to the mentioned legge 31 luglio 2005 n° 155, in the proceeding in front of the justice of the peace the prosecution is now a prosecutor's prerogative, while in the past also the police authority could promote the criminal action. This change makes the proceeding generally more professional than it used to be.

Reasons for concern

In the period under scrutiny the lawgiver extended assignment of lay judges close to the expiry for another year. This makes the presence of lay judges a relevant structure in the Italian juridical system.
Another reason for concern is that judges made a strong protest against the reform of judicial machinery provided by the already cited legge n° 150 of 2005. During the period under scrutiny, judges were several times on strike and the Associazione Nazionale Magistrati (ANM) [Judges National Association] sent out critical papers.

Publicity of the hearings and of the pronouncement of the decision

Legislative initiatives, national case law and practices of national authorities

In the period under scrutiny, the Court of Cassation (Ufficio del massimario, Report 5 luglio 2005) examined the relationship between publicity of the pronouncement of decisions and privacy defence with special regard to the anonymous making process of sensible data.

Positive aspects

Sentences spreading by data-bases with guarantee of privacy by means of anonymous making process of sensible data.

Reasonable delay in judical proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Italy violated art. 6 § 1 ECHR in some cases, where the owner of a flat or house waited many years before recovering his good possession after the expiry of the lease [Eur. Ct. H. R. (3rd sect.), Mascolo v. Italy (Appl. n° 68792/01) judgment of 16 December 2004 (final); Eur. Ct. H. R. (1st sect.), Lo Tufo v. Italy (Appl. n° 64663/01) judgment of 21 April 2005 (final); Eur. Ct. H. R. (3rd sect.), Stornelli and Sacchi v. Italy (Appl. n° 68706/01) judgment of 28 July 2005; Eur. Ct. H. R. (3rd sect.), Gamberini Mongenet v. Italy (Appl. n° 68707/01) judgment of 28 July 2005; Eur. Ct. H. R. (3rd sect.), Sciortino v. Italy (Appl. n° 69834/01) judgment of 28 July 2005].

Right to the enforcement of judicial decisions

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

With regard to the already mentioned directive n° 2001/40/CE about mutual acknowledgment of foreigners' expulsions adopted by other Countries, the CJEC [CGCE, 4th sect., judgment 8 September 2005, (C-462/04)] held that Italy violated the EU-law because it did not provide necessary rules in order to enforce those measures.

Legislative initiatives, national case law and practices of national authorities

The mentioned legge 22 aprile 2005 n° 69 (European warrant of arrest) provided rules about enforcement of juridical decisions passed by the EU-countries' jurisdiction in order to arrest and hand prisoners over to the foreign authorities.

Positive aspects

Law n° 69 of 2005 established guarantees for the enforcement proceeding of EU-countries' juridical decisions of arrest in Italy: the decree must be signed by a judge; the decree must explain the reasons on the basis of which the arrest was disposed; in case of conviction, the sentence must be final; the principles affirmed by the ECHR (with special regard to the right to a due process) must be respected.

Reasons for concern

A reason for concern with regard to the right to the enforcement of judicial decisions is still represented by the unreasonable delay in judicial proceedings.

Article 48. Presumption of innocence and right of defence

Presumption of innocence

Legislative initiatives, national case law and practices of national authorities

Presumption of innocence is a fundamental principle of the Constitution of the Italian Republic (Article 27 § 2). It has not been interested by significant changes in the period under scrutiny with the regard both to legislative initiatives and national case law.
Anyhow with judgment n° 265 of 2005 the Constitutional Court held that the crime provided by art. 707 Italian Penal Code, Possesso ingiustificato di chiavi alterate o di grimaldelli (unjustified possession of forged keys or picklocks), respect the presumption of innocence, because it punishes an autonomous conduct (the possession of forged keys or picklocks without any reason).

The rules governing the evidence in criminal matters

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

With regard to the rules governing the evidence in criminal matters, in the period under scrutiny the Eur. Ct. H. R. held that its task is not to establish if evidences have been correctly admitted during the proceeding according to the juridical system of each country; on the contrary its task is to establish if the proceeding has generally observed the due process principle.
There was not a violation of art. 6 § 1 e § 3 d) ECHR in a case where, during the proceeding, a member of the court was transferred to other functions and replaced by another judge and the results of testimonies, which had been borne before, were used after the change, without any renewal of the admission of evidences. Generally speaking, evidences must be admitted in front of the indicted person during a public hearing, so that controverting can be made on them. Another fundamental element of the due process is the possibility for the charged person to confront himself with the witness in front of the judge, who later on will decide on the case. So, normally, if the court composition changes after the admission of a testimony, this must be renewed. But, in the specific case, a renewal was not necessary, because the charged person had never specified if new elements were supposed to come out of it; just one between eight judges didn't take part in admitting the original evidences; the substitute judge could anyway inquire about the testimonies reading the trial transcripts [Eur. Ct. H. R. (3rd sect.), Graviano v. Italy (Appl. n° 10075/02) judgment of 10 February 2005 (final)].
On the contrary there was a violation of art. 6 § 1 ECHR in a case where rape and theft were committed, in two different occasions, against two prostitutes, who became not to be found later on. The court decided to use what the two victims had declared against the defendant, when they talked with the police before the proceeding started. The sentence was affirmed on appeal and by the Court of Cassation also without any renewal of victims' testimonies and without any DNA identification. Sometimes judges must necessarily use statements made during pre-trial investigations. This is not a violation of art. 6 ECHR, if the charged person has had the possibility to contradict these statements, when they were made or afterwards. On the contrary there is a violation of art. 6 ECHR when the sentence is based just or in a determinant way on statements made by a person which the defendant could not examine neither during police investigations nor during the trial. That's exactly what happened in the case with regard to crimes of rape and theft committed against one of the prostitutes mentioned above [Eur. Ct. H. R. (3rd sect.), Bracci v. Italy (Appl. n° 36822/02) judgment of 13 October 2005; in the same direction, see also Eur. Ct. H. R. (4th sect.), Jerino v. Italy (Appl. n° 27549/02) judgment of 7 June 2005].

Legislative initiatives, national case law and practices of national authorities

In the Italian criminal proceeding the registration of the indicted person in the prosecutor's register is very important with regard to the right of defence. The Constitutional Court (order n° 307 of 2005) held that this registration plays just an acknowledgement function and does not create by itself the status of "indicted person". So the guarantees for the right of defence (first of all the invalidity of evidences

adimitted without respecting the right of defence) which the law connects to the registration are fully operating also when the registration has not been made yet.
The Constitutional Court declared the constitutional illegality of art. 398 § 5-bis Italian Criminal Proceeding Code, because it did not provide that, in trials concerning sexual crimes, the admission of evidences could be made in particular ways, when a person affected by mental disorder and with a very fragile personality was involved. In the past the rule referred just to juveniles.

The right to freely choose one's defence counsel and the right to an interpreter

Legislative initiatives, national case law and practices of national authorities

With legge 24 febbraio 2005 n° 25, Modifiche al testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia, di cui al decreto del Presidente della Repubblica 30 maggio 2002, n. 115 (Modifications to the discipline of fees of justice) (in *Gazzetta Ufficiale* 2 March 2005 n° 50), rules related to the defenders' appointment in the field of the defence of indigents have been changed. Now defenders can be chosen also beyond the district of the Court of Appeal, where the proceedings is going on.
With regard to the right to an interpreter, the already mentioned decreto legislativo 27 maggio 2005 n° 116, Attuazione della direttiva 2003/8/CE intesa a migliorare l'accesso alla giustizia nelle controversie transfrontaliere attraverso la definizione di norme minime comuni relative al patrocinio a spese dello Stato in tali controversie (Enforcement of EU directive n° 2003/8/CE concerning the improvement of access to justice in frontier trials through the establishment of lowest common rules concerning the defence of indigents), decided that, in those trials, the defence of indigents embraces documents' translation costs also.
In the national case law, the Constitutional Court (order n° 387 of 2004) confirmed that, in the field of the defence of indigents, the defendant has the possibility to appoint one of the lawyers enrolled in specific professional lists, who have the qualifications provided by the law in terms of fitness, experience, absence of disciplinary measures. Such a law purposes to guarantee the best quality and dignity of the service in proportion with the nature of the defence of indigents: on one hand, it involves public resources spending; on the other hand, it is necessitated by one's economic weakness condition. This mechanism does not impose any limitation to the right of defence with special regard to the right to freely choose one's defence counsel.

Reasons for concern

Quality check of services done by court appointed defenders is not very deep.
Particularly when the client becomes untraceable, for these defenders is extremely difficult to get reward for their services.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The already mentioned legge 22 aprile 2005 n° 69, concerning the so called "European warrant of arrest", establishes that warrants of arrest passed by the judicial authority of an EU-country against a person who lives in Italy must specify time and place, where crime has been committed, and the related means of evidence.
In the field of notification, according to the Constitutional Court's case law, the service of process must be considered successful, when the document has been given to the process server (order n° 118 of 2005).
The United Sections of the Court of Cassation case law goes in the same direction (judgment 27 September 2005 – 11 October 2005 n° 36634/05): when a document has been served on the porter and not directly on the party, the process server must inform the party about the notification through registered mail also.
With regard to defendant's impediment to be present at the hearing, according to the United Sections of the Court of Cassation case law (judgment 27 September 2005 – 11 October 2005 n° 36634/05), the

judge can consider a medical certificate not valid in order to declare the defendant's absentia, but must strictly explain the grounds of the decision referring to the unimportant nature of the pathology.

Positive aspects

Thanks to the Constitutional Court's case law, if the service of process is late for reasons depending on the process server's activity, this can't be considered as a mistake of the party.

Reasons for concern

The Constitutional Court (order n° 85 of 2005) held that, in the proceeding of the justice of the peace, the notice about the conclusion of pre-trial investigations is not provided by law, but this circumstance does not conflict against the right of defence. The proceeding of the justice of the peace gives shape to a special model of justice, which can't be compared with ordinary proceeding and is distinguished by reasons of agility, simplification and speed. We can agree with the Constitutional Court, when the justice of the peace makes decisions about "bagatelle-crimes", but, at least in the immigration field, the justice of the peace gives judgment in sectors, where fundamental human rights are involved.

Article 49. Principles of legality and proportionality of criminal offences and penalties

Legality of criminal offences and penalties

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Court of Justice of the European Communities considered if Italian false accounting law were in compliance with European directives [CJEC, judgment 3 May 2005, proceedings C-387/02, C-391/02 e C-403/02]. The Court did not examine the merits of the case, but underlined that each EU country can freely choose penalties, but at the same time it must control that violations of European rules are punished likewise violations of national rules and, in any case, by means of effective, proportional and dissuasive sanctions. However the Court has constantly affirmed that European directives can't create by themselves conditions for citizens' liability and aren't directly actionable against them. With special regard to criminal proceedings, European directives can't make citizens' liability worse, leaving related national laws of enforcement out of consideration.

Legislative initiatives, national case law and practices of national authorities

The already mentioned legge 31 luglio 2005, n. 155, Conversione in legge, con modificazioni, del decreto-legge 27 luglio 2005, n. 144, recante misure urgenti per il contrasto del terrorismo internazionale (Confirmation by law, with modifications, of decree-law 27 July 2005 n° 144, concerning urgent measures against international terrorism), brought into force new crimes related to terroristic phenomenon.
In the past Italian Penal Code provided just two crimes related to terrorism: the crime of association with terroristic purposes (art. 270-bis) and the crime of help to members of an association with terroristic purposes (art. 270-ter). Now the catalogue of offences of terroristic nature embraces also: a) the crime of recruitment with terroristic purposes, which is punished with detention from seven to fifteen years (art. 270-quater); b) the crime of drilling in activities with terroristic purposes, which is punished with detention from five to ten years both for the trainer and for the trained person (art. 270-quinquies). By definition (art. 270-sexies), "terroristic conducts" consist in activities, which are likely to deeply damage a country or an international organization and are carried out in order to intimidate the people and to oblige public authorities or the international organization to make or to abstain from doing any act or in order to overthrow or destroy fundamental political institutions of a country or international organization. New offences of terroristic nature can create parallel liability for the corporations according to art. 25-quater of decreto legislativo n° 231 of 2001.

With regard to the national case law, a sentence passed by the Tribunal of Milan (judgment 24 January 2005), affirmed in appeal also, in a case related to the crime of association with terroristic purposes (art. 270-bis), distinguished between terroristic activities and guerrilla activities. The second ones are not included in the prevision of art. 270-bis and, when committed in war situations, can be punished according to international law only if they violated human rights international law.
The Court of Cassation (2nd sect., judgment 21 December 2004 – 17 January 2005 n° 669/05) held that the already mentioned crime of association with terroristic purposes (art. 270-bis) requires very frequent and systematic organizing connections between members. Such an association can coexist with relationships based on cultural groups, which are linked to the so called islamic religious integrism. In fact religious and ideologic exchanges, when added to an association with terroristic purposes, make it even more dangerous.

Reasons for concern

A reason for concern is represented by the interpretation of the concept of "terroristic" by the national case law: there is not yet an univocal reading of the word; the relationship between islamic terrorism and islamic culture and religion is still unclear in sentences passed by juridical authorities.

Proportionality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court (order n° 113 of 2005) declared its lack of jurisdiction with regard to fines provided against public notaries ("ammende notarili"). Just the Parliament, using its discretionary powers, can provide rules, kinds of sanctions and entity of these.
Similarly the Constitutional Court (judgment n° 325 of 2005) held that, thanks to its discretionary powers, the lawgiver can provide a specific mitigating circumstance for the case of less gravity with regard to the crime of rape (art. 609-bis Italian Penal Code) and not with regard to the crime of rape committed by a group of people. From a qualitative point of view, the last one differs from the crime of 'simple' rape because of the participation of many people, which presumably causes worse damages to the victim. This fact justifies the difference of sanctions (in a similar way, with regard to traffic, see also order n° 401 of 2005; in the field of irregular employment, judgment n° 144 of 2005).

Positive aspects

Sentences of the Constitutional Court confirm that the principle of reasonableness plays a significant role in the juridical system and that judges restrain from adopting any position regarding criminal politics

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Right not to be tried or punished twice

Legislative initiatives, national case law and practices of national authorities

The already mentioned legge 22 aprile 2005 n° 69, concerning the so called "European warrant of arrest", established conditions in order to enforce warrants of arrest or sentences passed by the judicial authority of an EU-country against a person who lives in Italy. The warrant of arrest can't be executed, when according to Italian laws it refers to a crime totally or partially committed in Italy.
With regard to the national case law, the Court of Cassation (1st sect., judgment 2 February 2005 – 16 March 2005 n° 10425/05), referring to the international "ne bis in idem", held that the dismissal of charge adopted by a foreign country, which is party of the Schengen Agreement, can't be considered as the final trial judgment. So it doesn't represent an obstacle to institute proceedings in Italy for the same charge and it doesn't annul the sentence eventually passed by the Italian judge.

The United Sections of the Court of Cassation (judgment 28 June 2005 – 28 September 2005 n° 34655) declared that, in order to make the "ne bis in idem" preclusion operating, the identity of the fact embraces the historical and naturalistic accordance in the crime configuration, which must be considered with regard to all its constituent elements (conduct, causation and consequence of crime) and the peculiar circumstances of time, place and person.

Reasons for concern

Italy is party to the 1990 Convention implementing the Schengen Agreement and has made the reservation embodied in Article 55 (1)(a) of this Convention for the cases where the offences would have been committed partly on its territory, but no information is available with regard to the use of this reservation during the period under scrutiny.