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公民和政治权利，包括言论自由问题

见解和言论自由权问题特别报告员

阿姆贝伊·利加博提交的报告

增 编

对意大利的访问 *

* 内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文分发。

内 容 提 要

本报告载列了增进和保护见解和言论自由权问题特别报告员阿姆贝伊·利加博 2004 年 10 月 20 日至 29 日访问意大利后得出的结论。

特别报告员进行这次访问的目的是确定媒体集中与利益冲突是否对见解和言论自由权的享有产生了影响，并调查关于意大利新闻工作者工作环境恶化的指控。

报告讨论了以下问题：有关见解和言论自由权的法律和体制框架；主要关切的问题，特别是媒体集中和利益冲突的问题；以及一些较具体的问题，如移民与儿童的处境及其与特别报告员的任务授权的关系问题。

本报告最后提出了一系列建议。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION
AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION
AND EXPRESSION, AMBEYI LIGABO, ON HIS MISSION TO ITALY
(20 TO 29 OCTOBER 2004)**

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Introduction

1. The present report has been prepared in accordance with Commission on Human Rights resolution 2004/42. It presents an analysis of the information received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, during his visit to Italy.
2. By letter dated 8 December 2003 addressed to the Permanent Mission of Italy to the United Nations Office at Geneva, the Special Rapporteur expressed his interest in undertaking a fact-finding mission to Italy. On 30 December 2003, the Government of Italy officially invited the Special Rapporteur to carry out this visit.
3. The visit took place from 20 to 29 October 2004. The delegation comprised the Special Rapporteur, an official from the Office of the High Commissioner for Human Rights (OHCHR) and two interpreters.
4. In the preparation of his mission and of the present report, the Special Rapporteur used material from official sources, from the United Nations, in particular treaty monitoring bodies, as well as from regional organizations and civil society.
5. During the course of the mission, the Special Rapporteur met with senior officials from the executive, legislative and judicial branches of the Government, including the Secretary of State for Foreign Affairs, the Minister of Communications, the Chef de Cabinet and other members of the Office of the Prime Minister, the President of the Constitutional Court, the President of the Italian Communications Authority (Autorità per le Garanzie nelle Comunicazione, Agcom) and the President of the Antitrust Authority.
6. The Special Rapporteur thanks the Government of Italy, including its Permanent Mission in Geneva, for facilitating the mission and providing assistance and full cooperation.
7. The Special Rapporteur also held interesting discussions with representatives of non-governmental organizations working in human rights, including from the anti-globalization movement, academics, trade unionists, media professionals, representatives of civil society and other personalities of interest to his mandate. The Special Rapporteur would like to thank all the people he met for their willingness to share valuable information with him.
8. The Special Rapporteur also wishes to express his thanks to the Director of the Programme Support Unit of the United Nations Development Programme as well as his staff for their logistical support in the conduct of this mission.

I. BACKGROUND AND CONTEXT

9. The fall of the fascist dictatorship at the end of the Second World War marked the entrance of Italy into a new era. The country is now a multiparty parliamentary democracy and the executive authority is vested in the Council of Ministers, headed by the President of the Council. In the beginning of the 1990s the country went through a period of political turmoil linked in great part to corruption scandals which led to important reshaping of the political arena and, more generally, to the Second Republic.

10. The Special Rapporteur believes that in the area of his mandate, Italy has a strong tradition of freedom of opinion and expression. He received several reports stating the importance in Italian society of the principles of diversity and democracy. However, for the past two years, the Special Rapporteur has been informed of growing concerns regarding freedom of opinion and expression in Italy. In particular, the attention of the Special Rapporteur was drawn to the growing threat to freedom of opinion and expression constituted by media concentration, coupled with conflict of interest issues. The Special Rapporteur also noted that several international organizations, among them the Organization for Security and Cooperation in Europe (OSCE) and the European Parliament,¹ expressed their concerns regarding this matter.

11. The Special Rapporteur also received allegations of a number of media professionals being dismissed from their posts for their criticism of the Government.

12. Italy is also reviewing its legislation in the area of communications and the Special Rapporteur considers it important to accompany the authorities, by means of a constructive dialogue, through this process.

II. LEGAL AND INSTITUTIONAL FRAMEWORK

A. Legal framework

1. International obligations

13. Italy, as a member of the United Nations, is bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights and in particular its article 19 regarding the right to freedom of opinion and expression. In the field of human rights, Italy has ratified a number of international conventions: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child as well as its two Optional Protocols, and the Rome Statute of the International Criminal Court.

14. The Special Rapporteur also notes with appreciation that the Italian authorities are cooperating with the special procedures of the Commission on Human Rights. In particular, the Special Rapporteur was informed of the recent visits of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the human rights of migrants to the country.

15. At the regional level, Italy has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2. National legislation

16. The Constitution of the Italian Republic of 27 December 1947 refers in several articles to the right to freedom of opinion and expression. In particular, article 17 affirms that, “Citizens have the right to assemble peaceably and unarmed”; article 18 states that, “Citizens have the right to form associations freely, without authorization, for ends which are not forbidden to individuals by criminal law”; article 19 refers to freedom of religion and article 21 states, *inter alia*, that, “All have the right to express freely their own thought by word, in writing and by all other means of communication. The press cannot be subjected to authorization or censorship.”

17. Law No. 112 of 3 May 2004 on television broadcasting, commonly known as the Gasparri Law, is the most recent legislation adopted in this matter.² According to the Minister of Communications, this law was adopted with two 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 privatization of the company in charge of public television. The law lays down the general principles for the organization of the national, regional and local broadcasting systems.

18. The law refers to the fundamental principles that shall underlie the organization of the broadcasting system, in particular freedom and diversity. In particular, the new law establishes new antitrust criteria whereby an operator may not hold licences to broadcast more than 20 per cent of all television programmes or more than 20 per cent of radio programmes that may be transmitted on terrestrial frequencies at a national level using the networks referred to in the plan (art. 15). However, the Special Rapporteur is concerned that in a digital environment, such a criterion does not provide a real restriction as the number of licences to be allocated is virtually unlimited.

19. Moreover, the Gasparri Law establishes the new concept of an “integrated system of communications”, which means the entire communications sector of the economy, including daily newspapers and periodicals; electronic and directory publishing, including Internet publishing; radio and television; the cinema; advertising; product and service announcements; and sponsorship.³

20. According to the authorities, this provision is intended to encourage newspaper editors to enter the broadcasting market. The Special Rapporteur takes note that article 15, paragraph 6, of the law prohibits until 31 December 2010 the acquisition or creation of newspaper publishing companies by persons involved in television activities at the national level through more than one network. But in a country where the economic power of broadcasters is far greater than that of newspaper editors and is continuing to increase, the Special Rapporteur is concerned that the effect of such a regulation will reinforce the dominant position of the already stronger actors who will, in the long term, be able to participate in and control the publishing and print media sector. Furthermore, the attention of the Special Rapporteur was drawn to the fact that the general definition of the “integrated system of communications” does not allow for precise predictions about its extent in economic terms, which might lead to the expansion of the share of advertising revenue of the major economic actors.

21. The Special Rapporteur also notes with appreciation that during his visit to Italy, new legislation was approved regarding the decriminalization of defamation. Although journalists have reportedly rarely been incarcerated for that crime, the Special Rapporteur considers that the new law constitutes a major step forward in the protection of the right to freedom of opinion and expression.

B. Institutional framework

22. Italy has a complex set of institutions carrying out activities related to the protection of the right to freedom of opinion and expression. Besides the executive branch, where the Ministry of Communications plays a major role, there are other institutions which control, monitor and implement the various regulations. Their activity is a key element in ensuring full respect for the rights of the various actors as well as those of the Italian citizen.

23. **The Parliamentary Commission for the supervision of public radio and television.** The Special Rapporteur had a very fruitful meeting with members of this bicameral commission, which was established by Law No. 103/75. In particular, his interlocutors stressed the links between freedom of expression and the permanent struggle for democracy. The Commission is composed of 40 members appointed by the Presidents of both houses of parliament (Senate and Chamber of Deputies) to allow for the proportional representation of the various political parties. The main function of the Commission is to manage and control the implementation of the basic principles established by the law. It also provides general orientation regarding television and radio broadcasting in Italy. The Commission also appoints seven of the nine members of the Administrative Board of the public television RAI and the agreement of two thirds of its members is needed to appoint the President of the Board. During the meeting, the members of the Commission raised the issue of media concentration (which will be analysed later in this report) and the risk it could represent for the Italian democracy.

24. **The Italian Communications Authority (Agcom).** At the outset, the Special Rapporteur would like to thank the members of this institution and in particular its President, Mr. Cheli, for providing him with a comprehensive overview of the Italian system of communication. Agcom is an independent body established in 1997 by Law No. 249 with very wide competencies. First of all, Agcom has the responsibility to ensure equitable conditions for fair market competition and to protect the fundamental rights of citizens in that regard. It has competence over the publishing, radio and television broadcasting, and electronic communications sectors.

25. According to the information gathered by the Special Rapporteur, this body has full independence, which is further guaranteed by the system for nominating its members. It is composed of nine members, eight of whom are designated by parliament. The President of Agcom is appointed by the President of the Republic on the proposal of the President of the Council of Ministers in agreement with the Minister of Communications and with the agreement of the Parliamentary Commission supervising radio and television. In addition, members may not be associated with companies operating in the communications sector for four years after the end of their mandate.

26. Agcom carries out mainly the following functions:

- Implementation of liberalization in the telecommunication market through regulation and supervision activities, and through dispute resolution;
- Rationalization of resources in the audio-visual sector; application of antitrust rules in the field of communications; conducting inquiries on dominant positions;
- Organization of the registry of communications operators;
- Quality control and distribution of services and products, including advertising and protection of children;
- Resolution of disputes between operators and consumers;
- Fostering and safeguarding political, social and economic pluralism in broadcasting.

27. Since the recent adoption of the law on conflict of interests,⁴ specific responsibilities have been delegated to Agcom. In particular, the Authority should ensure that companies operating within the integrated system of communications and that belong to a holder of a government post, his/her spouse or relatives up to the second degree do not act in such a way as to provide privileged support to the holder of the government post concerned. In case of misconduct by a company, Agcom should order the company to stop the questionable conduct and, if possible, to take corrective measures. In case of non-compliance, the concerned company can be fined.

28. **The Antitrust Authority.** This independent body is composed of a Chairman and four members appointed jointly by the Presidents of the Senate and the Chamber of Deputies for a seven-year non-renewable term. The Secretary-General of the Antitrust Authority, who is responsible for overseeing the administration of the organization, is appointed by the Minister of Productive Activities acting on the proposal of the Chairman. This body is responsible for overseeing the application of Law No. 287 of 10 December 1990. In practice, the Antitrust Authority monitors agreements that impede competition, abuses of dominant position, and mergers and acquisitions that create or strengthen a dominant position. It has competence over the entire media sector.

29. The Antitrust Authority is also responsible for monitoring possible incompatibility between the functions of a member of the Government and his/her activities in the business sector, in accordance with the law on conflict of interest. In case of violation of the law, the Antitrust Authority can propose that the member of the Government be dismissed from his/her post, that the incompatibility be ended, or that the individual concerned be struck off the professional registers.

30. The Special Rapporteur would like to point to possible duplication in the work carried out by the Antitrust Authority and the activities of Agcom. For example, Agcom is entrusted with a large number of functions ranging from the distribution of frequencies to antitrust functions. Regarding the latter, Agcom periodically analyses the distribution of resources in

order to prevent dominant positions in the broadcasting sector from emerging. Should a situation of dominant position be ascertained, Agcom may apply sanctions of up to 5 per cent of the annual revenues of the operator concerned. The main function of the Antitrust Authority is also to determine the existence of a dominant position and its abuse.

31. In order to enhance the general supervision of the media sector, the Special Rapporteur would like to stress the need for the authorities to clarify the competencies of and division of work between each body acting in the media sector.

III. PRINCIPAL CONSIDERATIONS AND CONCERNS

32. The Special Rapporteur would like to mention here a number of issues that were drawn to his attention and which he deems important to raise as they may have a strong impact on the full enjoyment of the right to freedom of opinion and expression.

A. The “*lottizzazione*” system in public television broadcasting

33. According to the information received by the Special Rapporteur, the public television network RAI has been strongly politicized since its creation in 1954. At the time, and until the major political changes of the end of the 1980s, Italian public television was controlled by the political party in power, the Christian Democrats.

34. At the beginning of the 1990s, the control of RAI shifted from the Christian Democrats to the so-called “*lottizzazione*” (sharing out) system by which each of the major political parties is given control of one of the three public television channels. In this context, management positions and news assignments at RAI were divided among the Christian Democrats (RAI 1), the Socialist Party (RAI 2) and the Communist Party (RAI 3). With the disappearance of the three traditional political parties, the situation has further evolved but several interlocutors stated that the tradition of sharing responsibilities and the direct involvement of political parties in the designation of senior managers within public television was still very much the rule.

35. Furthermore, the Administrative Board of the RAI, which at present is composed of five members appointed by the Presidents of the Chamber of Deputies and the Senate, also reflects this sharing of responsibilities among political actors. It seems that, according to the practice implemented since the establishment of the Administrative Board by Law No. 206/1993, three of its members belong to the majority and the two others to opposition parties.

36. The Special Rapporteur was informed that the “*lottizzazione*” system had been established in response to the hegemonic control of the Christian Democrats and as a tool to guarantee diversity in public television. However, the Special Rapporteur considers that such a system, 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. It should also be noted that such a system could lead to marginalization of those political groups that have no direct responsibility in the management of the RAI. The “*lottizzazione*” system therefore impacts greatly on the full enjoyment of the right to freedom of expression as well as on the right of citizens to be adequately informed.

37. In the print media, the Special Rapporteur was informed of another practice according to which allocation of subsidies to newspapers is contingent on their sponsorship by members of parliament. While such a system may permit the expression of different political views, the Special Rapporteur nevertheless considers that it may lead to the exclusion of some newspapers and may impede the development of a fully independent press, an essential element of a dynamic democracy. In this context, the Special Rapporteur, well aware of the importance of public subsidies in the media sector, would recommend that this system be revised in order to depoliticize the granting of financial assistance to print media companies.

B. Media concentration and conflict of interest

38. The issue of media concentration was described by most of the Special Rapporteur's interlocutors as their major concern in the protection of the full enjoyment of the right to freedom of opinion and expression. In Italy, the issue of media concentration has different characteristics in television broadcasting than in the print media.

39. According to the information gathered by the Special Rapporteur during his visit, the print media are very liberal and offer a balanced view of the diversity of Italian society. However, it should be noted that the independence of the print media could be jeopardized by the system of allocation of subsidies, as described earlier, but also by its economic disadvantage in comparison with television broadcasting. In particular, it was stated that about two thirds of the advertising resources are allocated to television broadcasting; the print media are therefore deprived of important financial resources.

40. Regarding the audio-visual market, everyone whom the Special Rapporteur met raised the fact that it was characterized by a high level of concentration. In Italy, the television market is dominated by the three State-owned television stations and three private stations, which belong to the financial group Mediaset S.p.A (Canale 5, Italia 1 and Rete 4). In addition, other analogue channels broadcast at the national level (La 7, Rete A Elefante Telemarket, Sport Italia and MTV). There are also a great number of local television stations. However, according to the figures gathered by the Special Rapporteur, two main operators - RAI and Mediaset - account for about 90 per cent of the total audience share and collect more than 90 per cent of advertising resources available in this sector.

41. Although the development of digital broadcasting in Italy, initiated by the newly adopted Gasparri Law, is intended to accelerate the proliferation of television stations, the Special Rapporteur is concerned that the economic weight of the two main operators will prevent a substantial increase in the number of operators in the television broadcasting market.

42. Bearing in mind that in Italy, television is the most important means of disseminating information, the Special Rapporteur calls on the competent authorities to ensure that all actors have access to that means of communication and to the market, to ensure diversity and democracy. In the view of the Special Rapporteur, the Italian authorities should adopt legislative and regulatory measures to address the duopoly in the television broadcasting market. The Special Rapporteur considers that the adoption of such measures would greatly contribute to

lowering the tensions that he noted during his meetings, which relate to the fact that the issue of media concentration is coupled with the conflict of interest involving the President of the Council of Ministers.

43. The President of the Council of Ministers controls, via his holding company Fininvest, the Mediaset group, which in turn controls the three main private television channels as well as a major advertising franchise-holder company, Publitalia 80. His group also controls other companies in different sectors such as the distribution of television-related products, the Internet and publishing. On the other hand, the President of the Council of Ministers can also exercise control over State television and radio channels as the major political party, which he represents, appoints the top managers of public media enterprises. The Administrative Board of RAI is designated by the Parliamentary Commission for the supervision of radio and television, creating a system where political parties can potentially influence the decision-making process of the RAI. The President of the Council of Ministers is therefore perceived as controlling both the public as well as the major private television channels, which cannot be a healthy situation in a democratic State.

44. The attention of the Special Rapporteur was also drawn to the conflict of interest within the advertising sector. In Italy, it seems that more than 60 per cent of advertising resources are allocated to the television broadcasting sector. The President of the Council of Ministers, via his advertising company Publitalia 80, which is part of the Mediaset group, controls around two thirds of the television advertising resources. The Special Rapporteur was informed that a number of large Italian companies have in past years transferred much of their advertising from the print media to Mediaset and from the public television to Mediaset.

45. However, the Special Rapporteur noted with appreciation that the Italian authorities at the highest level are aware of the need to act on this sensitive matter in order to rectify what has been called “the Italian anomaly”. In particular, the Special Rapporteur was informed that during the electoral campaign of 2001, the President of the Council of Ministers explicitly pledged to resolve his conflict of interest in a timely manner.

46. The Special Rapporteur also notes that Law No. 215 on conflict of interest was adopted on 20 July 2004. According to this law, a member of the Government cannot exercise any activity or any management function in a company or any business-type enterprise; neither can he/she exercise any professional activity in the sectors linked to his/her government functions. Businesspeople assuming government responsibilities must designate an agent to be responsible for their company during their term of office. Nevertheless, it was argued that although, according to the law, the exercise of management activities must be transferred to a third person, the government office holder concerned may retain ownership of the company, which would also create a conflict of interest. In the specific case of the President of the Council of Ministers, it is possible that the decisions that the Government he heads may take concerning the broadcasting sector could have a specific and privileged impact on Mediaset.

47. In view of the above, the Special Rapporteur considers that the issue of conflict of interest in Italy, in particular when involving the President of the Council of Ministers, still needs to be adequately addressed by the Government.

C. The deteriorating situation of media professionals

48. During his visit, the Special Rapporteur was informed that a number of media professionals had been dismissed or removed from their public television posts because of their criticism of the Government.

49. According to information received by the Special Rapporteur, the concentration of media control in the hands of the President of the Council of Ministers has seriously affected freedom of opinion and expression in Italy, as shown by the several incidents in which media professionals were sacked or removed since the current Government took office. While the decisions to cancel programmes and sack media professionals were not taken directly by the President of the Council of Ministers but by his Government, the Special Rapporteur was informed that they were made as a result of direct pressure from him.

50. The Special Rapporteur was informed that in April 2002, immediately after the appointment of the new President of the RAI by the Presidents of the two houses of parliament, controlled by the Government coalition, the President of the Council of Ministers publicly stated, on the occasion of his visit to Sofia, that Michele Santoro, Enzo Biagi and Daniele Luttazzi had made “criminal use” of the public television and that it was the duty of the new direction of the RAI never to allow this to happen again. Shortly afterwards, Enzo Biagi, the widely respected dean of Italian journalism, was sacked along with his colleague, Michele Santoro, a seasoned journalist known for his hard-talk programmes. Daniele Luttazzi, a satirical entertainer, was also fired.

51. Enzo Biagi, who is 82 years old, has been a journalist since 1941. Since 1995 he has been the anchorman of a five-minute daily news programme, “*Il Fatto*”. On 13 May 2001, before the legislative elections, Mr. Biagi had invited the actor Roberto Benigni, who satirized the President of the Council of Ministers. A government-sponsored survey (ABACUS) in May 2004 reportedly showed that 83 per cent of viewers found Mr. Biagi’s programme useful in reflecting on everyday events. Nevertheless, the programme was cancelled in June 2002.

52. Michele Santoro was the anchorman of the news programme “*Sciuscià*” on RAI 2. He was suspended for four days as a disciplinary action for the special broadcasts of his programme on the “Biagi Affair” on 24 May 2004 and on a drought in Sicily. The justification given for the disciplinary action was that, according to the RAI Administrative Board, he had violated the principle of impartiality and objectivity of the public service. Since autumn 2002 the programme, which had an 18 per cent share of viewers, has been off the air. Mr. Santoro was also fined by the Italian Communications Authority.

53. More recently, top female Italian journalist Lilly Gruber quit after having been the target of strong criticism by government officials for her coverage of the conflict in Iraq. Hugely popular, Ms. Gruber has been the anchor of the prime-time news programme TG1 for several years. She was elected as a member of the European Parliament in the last round of European elections.

54. On 19 November 2003, the Administrative Board of RAI decided to cancel the RAI 3 satirical programme “*RaiOt*”, presented by Sabina Guzzanti. This decision came as a result of the broadcast on 16 November of an episode entitled “*Armi di Distrazione di Massa*” (“Weapons of Mass Distraction”), on the issue of information in Italy. During the programme Ms. Guzzanti referred to the attacks against freedom of opinion and multiple sources of information in Italy and stated that Mediaset was the only media group that had shown profits from advertising while all the other Italian media had registered losses. The Administrative Board stated that the cancellation of the programme was because of the possible penal consequences of the broadcast. Mediaset in fact sued the programme for defamation, claiming 20 million euros in damages from RAI, Sabina Guzzanti and Marco Travaglio, a journalist and co-author of the scripts of “*RaiOt*”.

55. The Special Rapporteur is concerned that the concentration of private media in the hands of the President of the Council of Ministers and his influence over the public media create an environment that is conducive to a climate of intimidation in which public administrators might exercise censorship, seriously limiting freedom of opinion and expression in the country. The Special Rapporteur also draws the attention of the Italian authorities to the fact that such a climate could lead to a situation of self-censorship where people, in particular journalists, refrain “voluntarily” from making statements that may be construed as critical of the authorities. It is therefore necessary to create an environment of professionalism and independence within the media sector where media professionals can work without undue influence of the State.

D. Other issues

The situation of migrants

56. The Special Rapporteur was informed that the Special Rapporteur on the human rights of migrants had recently visited Italy (see E/CN.4/2005/85/Add.3). The Special Rapporteur does not intend to duplicate her work but, as migration is a major issue in Italy, she deems it important to reflect on the right to freedom of opinion and expression of migrants. This issue was frequently raised and extensively discussed by the authorities, especially the officials of the Ministry of the Interior.

57. Italy today has to deal with significant migratory pressure as the country has become a major destination for migrants, especially from northern Africa and Albania. It is estimated that the migrant population constitutes about one quarter of the Italian population. According to the information received from the authorities, the Government has developed a comprehensive policy for fully informing the migrants arriving or already residing in Italy.

58. Regarding illegal migration, the Special Rapporteur was informed that the relevant regulation was in the process of revision and that a new constitutional decree would be promulgated soon on this issue. However, a system of information for illegal migrants is already in place. In particular, upon their arrival, the migrants are taken in charge by teams that include cultural mediators, interpreters and lawyers. A number of information leaflets in various languages are also at their disposal. The Special Rapporteur also noted that manuals have been developed which provide a glossary of medical terms to support the work of medical staff in the reception centres.

59. Regarding legal migration, the Italian authorities, in cooperation with the International Organization for Migration (IOM), have developed a system to provide information in the countries of origin. Once on Italian soil, the migrants have at their disposal a wide range of information materials. The attention of the Special Rapporteur was drawn to an interesting television programme, “*Civis*”, intended to provide general information to migrants. This programme is broadcast in different languages (Arabic, Chinese, Albanian, etc.) in cooperation with the public television.

60. The Special Rapporteur wishes to encourage the Italian authorities in strengthening their activities in the area of information for migrants. In this context, he would like to stress the need to work closely with migrants’ associations and other groups of civil society engaged in this field. The Special Rapporteur would also like to stress that an adequate integration policy should also focus on building bridges between the different groups of society and promoting mutual respect and non-discrimination.

Children

61. In light of the crucial importance of youth in developing a sustainable culture of human rights, and in particular promoting the right to freedom of opinion and expression, the Special Rapporteur wishes to emphasize the need to respect the right to freedom of opinion and expression of all children, as provided in article 12 of the Convention of the Rights of the Child, and to promote information of good quality for them which respects their level of development.

62. The Special Rapporteur noted that in the broadcasting sector, Agcom is responsible for ensuring full respect of the limits established by the self-regulation code on television and minors adopted in 2002, as well as the guidelines issued by the Parliamentary Committee for the public service broadcaster concerning contents that might impair the development of minors.

63. The Special Rapporteur would also like to draw to the attention of the authorities the need to better protect the freedom of thought of children. In particular, he wishes to recall that the educational system should be a privileged means of promoting respect for this right. He reiterates the recommendation of the Committee on the Rights of the Child that parents, especially those of foreign origin, be informed that religious instruction is not compulsory.

Ombudspersons

64. Italy has established a system of regional and municipal ombudspersons. They are appointed by local parliaments. They serve, according to Law No. 142/90, as the guarantors of the impartiality of the provincial and municipal public administrations and good governance through, inter alia, the monitoring of abuses, deficiencies and delays of the administration. The Special Rapporteur noted that while there is a large network of regional ombudspersons, an important number of cities have not established such an institution.

65. The Special Rapporteur had a very fruitful meeting with a number of local ombudspersons. While he acknowledges the necessity of the institutions being as close as possible to the population, the Special Rapporteur is concerned that the lack of a national ombudsperson can result in a large number of people not having access to an ombudsperson

where their region or city has not established such an institution. Furthermore, the need to better coordinate the actions and activities of the different ombudspersons was stressed by several interlocutors.

66. The Special Rapporteur strongly recommends that the Italian authorities consider the creation of a national ombuds institution in accordance with the Paris Principles, which will certainly be an important tool in protecting human rights. In particular, this institution can serve as an advisory body to the authorities in drafting new legislation that can impact on human rights. By reporting regularly, it would also highlight strong points and weaknesses in the legislation, which could then serve as important indicators to the authorities in developing policies.

IV. RECOMMENDATIONS

67. The Special Rapporteur wishes to emphasize that the protection of the right to freedom of opinion and expression is at the heart of the promotion and protection of human rights. In this respect, he recalls Commission on Human Rights resolution 2003/42, which states that “the effective promotion and protection of the human rights of persons who exercise the right to freedom of opinion and expression are of fundamental importance to the safeguarding of human dignity” and “that restrictions on the exercise of the right to freedom of opinion and expression could indicate a deterioration in the protection, respect for and enjoyment of other human rights and freedoms”.

68. The Special Rapporteur believes that Italy has a strong tradition of freedom of opinion and expression. However, he also notes a clear need for the Government of Italy to review certain aspects of its policy and to create an environment of professionalism and independence in the media sector. In this context, and wishing to pursue the constructive dialogue with the authorities begun during his visit, the Special Rapporteur would like to submit the following recommendations.

69. With a view to alleviating certain tensions perceived during his mission, the Special Rapporteur encourages the Government to clearly articulate its commitment to taking adequate measures to ensure the full enjoyment of the right to freedom of opinion and expression and to deploy the necessary efforts to work closely with civil society, in all its diversity, to address contentious issues.

70. The Special Rapporteur strongly recommends that the Government revisit its legislation in order to ensure the participation of multiple actors in the television broadcasting sector. In particular, he calls upon the authorities to clarify the notion of an “integrated system of communications” as contained in Law No. 112 (the Gasparri Law) on television broadcasting in order to define precisely the market covered by the law and to allow for real antitrust control.

71. The Special Rapporteur also hopes that in organizing the transfer from analog to digital television, as initiated by the Gasparri law, all measures will be taken to ensure that the assigning of frequencies is made on the basis of criteria that are objective, transparent and non-discriminatory, with the ultimate goal of promoting diversity in this sector.

72. In view of the multiplicity of organs monitoring activities in the media sector, the Special Rapporteur encourages the authorities to enhance cooperation and coordination among these bodies.

73. The Special Rapporteur encourages the authorities to take the necessary measures to depoliticize the media sector, in particular regarding the management of the public television and the allocation of subsidies to the print media.

74. The Special Rapporteur 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 concerned actors, in order to find a sustainable solution whereby influence by the political sector in the media would be significantly reduced.

75. The Special Rapporteur wishes to remind 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 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 the Government to take appropriate measures for the reinstatement or re-employment of the persons concerned.

76. The Special Rapporteur, while welcoming the adoption of the new legislation on the decriminalization of defamation, wishes to draw the attention of media personalities to article 19 of the International Covenant on Civil and Political Rights which states that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, in particular regarding the respect of the rights and reputations of others.

77. The Special Rapporteur encourages the authorities to pursue and strengthen their policy regarding access to comprehensive information for the migrant populations. The authorities should also ensure that migrants have the possibility to express themselves freely and that they are able to participate in public life. Such policies should be developed in close cooperation with civil society and with a view to promoting the full integration of the groups concerned, based on the principles of mutual respect and non-discrimination.

78. The Special Rapporteur encourages the Government to consider establishing a national institution for the protection of human rights, possibly an ombudsperson, in accordance with the Paris Principles, as such an institution can play an important advisory role, benefiting the authorities and assisting the population in the protection of their human rights, notably the right to freedom of opinion and expression, in particular through an individual complaint mechanism.

79. The Special Rapporteur reiterates his wish to pursue the dialogue with the Government of Italy and to assist the authorities in their efforts to improve the protection and promotion of the right to freedom of opinion and expression.

Notes

¹ See, in particular, report on the risks of violation, in the EU and especially in Italy, of freedom of expression and information, Committee on Citizen's Freedoms and Rights, Justice and Home Affairs, European Parliament, 5 April 2004, A5-0230/2004.

² Law No. 112 of 3 May 2004, "Principles governing the organization of the broadcasting system and RAI-Radiotelevisione italiana S.p.a., and grant of enabling authority to the Government to issue a consolidated broadcasting act", published in the *Gazzetta Ufficiale* No. 104 of 5 May 2004 (*Supplemento Ordinario no. 82*).

³ Ibid., art. 2, para. 1g.

⁴ Law No. 215 of 20 July 2004.

Appendix

LIST OF PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET

Government officials

Office of the Prime Minister

Mr. Paolo Bonaiuti - Under-Secretary of State

Mr. Mauro Masi - Head of the Department for Information and the Press

Ministry for Foreign Affairs

Ms. Margherita Boniver - Under-Secretary of State

Ministry of Justice

Mr. Settembrino Nebbioso - Chef de Cabinet

Mr. Gianfranco Tanozzi - Head of the Department for the Administration of Justice

Ministry of Communications

Mr. Maurizio Gasparri - Minister of Communications

Mr. Giancarlo Innocenzi - Under-Secretary of State

Ministry of the Interior

Senator Antonio D'Alì - Under-Secretary of State

Ms. Anna Maria d'Ascenzo - Head of the Department for Immigration and Civil Freedoms

Parliamentary Commission for the supervision of radio and television

Senator Petruccioli Claudio - Chair

Parliamentary Commission of Inquiry into the killings of Illaria Alpi and Miran Hrovatin

Senator Carlo Taormina - Chair

Commission of Human Rights of the Senate

Senator Enrico Pianetta

The Supreme Court

Mr. Valerio Onida - President

High Chamber of Magistrates

Mr. Virginio Rognoni - Vice-Chairman

Italian Communication Authority

Mr. Enzo Cheli - President
