



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Fourth periodic reports of States parties due in 2002

Addendum* **

ITALY

[4 May 2004]

* For the initial report of Italy, see CAT/C/9/Add.9; for its consideration, see CAT/C/SR.109 and 110/Add.1 and *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 44 (A/47/44)*, paras. 310-338.

For the second periodic report, see CAT/C/25/Add.4; for its consideration, see CAT/C/SR.210, 215 and 215/Add.1 and *Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44)*, paras. 146-158.

For the third periodic report, see CAT/C/44/Add.2; for its consideration, see CAT/C/SR.374, 377 and 381 and *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44 (A/54/44)*, paras. 163-169.

** Annexes can be consulted in the files of the Secretariat.

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Introduction

1. Italy presented its third periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998 (CAT/C/44/Add.2).
2. Following the examination of the report by the Committee expressly set up under the Convention on 3, 4 and 6 May 1999 (see CAT/C/SR.374, 377 and 381), Italy was invited to take part in the discussion that resulted in the adoption of the concluding observations formulated by that same Committee (A/54/44, paras. 163-169).
3. In drawing up its fourth report, the Government of Italy took the concerns and recommendations expressed by the Committee into due consideration. This led to the drafting of the text in which the progress achieved by Italy in safeguarding and promoting human rights by reinforcing its commitment against any form of torture or inhuman and degrading treatment was reviewed.
4. This commitment has been demonstrated at the international level through an acceleration in the ratification process for the Optional Protocol to the Convention by Italy and, within the European Union framework, by bringing our country into line with the provisions set forth in the Guidelines on the Prevention of Torture and other Inhuman and Degrading Treatment. In keeping with the provisions of the Convention, those cases where episodes have occurred that clearly violated human rights and the fundamental freedoms, have been notified and prosecuted under the procedures envisaged in our legislative system.
5. Domestically, Italy has been extremely active in promoting the adoption of appropriate legislative instruments to regulate the illegal aspects of migration and the situation in prisons, with particular reference to staff training. Our country is also equipping itself with a specific legislative instrument introducing the crime of torture to the Italian legal system.

The ratification process for the Optional Protocol to the Convention against Torture

6. As things stand at present Italy, as a signatory State to the Protocol, has opened the procedure for depositing the ratification instrument in order to transpose the Protocol to our domestic legal system.

“The Implementation of the EU Guidelines on Torture” during the Italian Presidency of the European Union (1 July-31 December 2003)

7. One of Italy’s priorities for its Presidency of the Council of the European Union (EU) was to drive forward the discussions to advance the implementation of the EU Guidelines on Torture, as approved by the European Union in 2001. On this basis, since December 2002 EU Heads of Mission have been invited to draw up reports on the question of torture and the state of affairs in this regard in their countries of accreditation.

8. The Italian Presidency undertook to accelerate the drafting and delivery of these reports in order to draw up in a short timescale a line of action for the implementation of the Guidelines. Even while the reports by Heads of Mission were still being sent in, the Government of Italy sought to promote a discussion at the EU level of proposals, including the finalization of an Action Plan, for the prompt implementation of the Guidelines on Torture.

9. After numerous meetings and exchanges of views, the Italian Presidency obtained approval from its EU partners for a “Global Plan of Action” drawn up in collaboration with the Secretariat of the EU Council and the European Commission. On the basis of this plan, the question of torture will, with effect from January 2004, be raised in all meetings with third countries in whose regard the problem of torture appears to be relevant, with the further prospect of introducing technical cooperation programmes, where possible, to eradicate the phenomenon.

10. The Plan of Action will also include information provided by the European Commission’s country desks (country strategy papers and European Initiative for Democracy and Human Rights (EIDHR) programmes), and by EU partners on the basis of bilateral cooperation or United Nations-funded programmes. The Plan of Action will therefore have a double objective: to mention any questions, issues and areas that are relevant to the issue of “torture” (and naturally of particular concern to the EU) and to pave the way for concrete cooperation proposals.

11. In accordance with this procedure, the EU Heads of Mission will be required to update their reports, while the Council’s Working Party on Human Rights (COHOM), which meets in Brussels on a monthly basis, will be required to follow the Union’s actions in this area and present an annual report to the Council, with the aim of drawing up a complete framework of the EU’s action in this field.

I. CHANGES IN THE ITALIAN LEGAL SYSTEM AND INSTITUTIONS FOR THE IMPLEMENTATION OF THE CONVENTION

A. The problem of the introduction of the crime of torture to the Italian penal system

12. The introduction of the prohibition of the crime of torture to the Italian penal system has been the subject of numerous complex debates in the Justice Committees of the Chamber and Senate. These resulted in the drafting and submission of a combined text (Bill No. A.C. 1483), which was discussed on 2 December 2003, the date of the most recent session of the Chamber Justice Committee acting in a reporting capacity, and is subject to further amendments.

13. In its most recent form, the bill starts with a wide-ranging definition of the crime of torture, as one inflicted by a “Public Official or person charged with public service”, who inflicts “physical or mental suffering on a person under his authority in order to obtain information or a confession from that person or from a third person with respect to an action that he or a third person has committed or is suspected of having committed, or in order to punish a person for actions he has carried out or is suspected of having carried out or for reasons of racial, political,

religious or sexual discrimination [...]”. The penalty is for imprisonment of from 1 to 10 years, or longer if the offence has resulted in serious or very serious injury, and double if it has caused the death of the victim (art. 1).

14. One aspect that was taken into consideration during the initial drafting stage of the bill was the correct “location” for this crime: its inclusion in the Criminal Code assumes a particular significance if related to the consequent sphere of application of the provision, which becomes even wider if the crime is interpreted so comprehensively as to include any form of pressure that is not just physical but also psychological, including actions carried out during legal proceedings or police investigations in order to obtain information or confessions.

15. In this respect, the inclusion of wording specifying the criminally liable action as including “serious and repeated violence or threats” was proposed. The range of potential perpetrators was also extended to include, alongside persons in the public service, “the defender, deputy, authorized private investigators or technical advisers indicated in article 391 bis of the Code of Criminal Procedure who inflict it”.

16. As regards the gravity of the crime, the aggravating circumstances in the committing of the offence of personal injury to the victim were deemed to be especially significant. The question of whether a distinction should be created between the penalties was also raised, leading only in the final part of the text to the application of the penalty also to persons who have committed an offence that can be equated to torture for reasons of racial, political, religious or sexual discrimination.

17. In the event that the person committing the offence is a foreign citizen who has been subjected to criminal proceedings or convicted in another country or by an international tribunal for this same offence, Italy will not grant diplomatic immunity and will extradite the citizen in question (art. 1, paras. 2 and 3).

18. It is envisaged that a fund should be set up to compensate the victims of torture, amounting to 5.2 million euros for the three years from 2002-2004 and managed by a committee for the rehabilitation of the victims of torture, based in the Ministry of Justice (art. 3). In the latest version of the consolidated text, this article was eliminated. It should be mentioned that the Budget Committee had pointed out the need to draw up a detailed technical report in order to evaluate the congruity of the expenditure for the fund for the victims of torture, in terms of ascertaining whether or not the estimated figure included further spending obligations (if it did, it would have been necessary to insert a safeguard clause in this respect) and in what distinct way this would have been used within the framework of the Fund and of the work of the Commission for the rehabilitation of the victims of torture.

B. New legislative provisions regarding foreigners

The problem of legal and illegal immigration in Italy

19. Although Italy has in effect been a country of inward migration since the second half of the 1970s, the phenomenon only began to be regulated in the 1980s. Since then, inward migration to the county increased progressively during the 1990s.

20. The experience of recent years confirms the theory that sees growing differences and imbalances in the rates of economic and demographic development, and the state of poverty and underdevelopment in which two thirds of the human race still live, as the factors fuelling migratory flows.

21. Drawing on its own experience as a country of emigration, Italy has understood that flows of migrants into the country are a structural phenomenon rather than an exceptional situation to be governed using emergency measures. At the same time, however, Italy considers free and uncontrolled immigration to be counterproductive: such an eventuality would not only be unsustainable for the socio-economic system, which would not be able to provide work, and the social guarantees of which all advanced nations are justly proud, for an infinite number of individuals, but is in any case precluded by agreements entered into with our European partners. Only effective cooperation and a development-aid policy for the countries most affected by emigration, coordinated at the international and European levels, can impact on the structural causes of underdevelopment and, albeit in the medium to long term, help stem forced migratory movements.

22. These considerations gave rise to an awareness that the country was in need of a new legislative instrument that would be able to systematically programme and regulate migratory flows, in the firm conviction of being able to govern a structured and programmed flow of foreign workers who could be integrated into Italian society. This need led to the new legislation on immigration, Law 40 of 6 March 1998, and the consolidated text on immigration approved through Legislative Decree 286 of 25 July 1998.

23. Italy, which in view of its geographical position in the centre of the Mediterranean is one of the main external borders of the Schengen area, has gradually become a destination country for a flow of migrants, attracted by the changes that have taken place in global economics. In recent years, the flow has progressively increased, not on the basis of a prudent programming of entries but largely following unofficial channels.

24. The Consolidated Text on immigration was subsequently amended by Law 189 of 30 July 2002, the better to tackle immigration-related problems. The key elements of this law concern innovations that will have a substantial impact on two aspects of the phenomenon:

- The need to adopt the firmest possible measures to combat illegal and clandestine immigration and associated criminal phenomena;
- The need to encourage the full acceptance of foreign citizens who intend to make an honest living in our country and become integrated into our society, in the context of a programmed flow of non-EU workers into Italy.

25. This law also envisaged the possibility of “legalizing” the position of those workers already employed in Italy whose employers have submitted legalization applications. As a result of this legislation and Law 122/2003, the legalization process has been initiated (and will be completed by 31 December 2003) for about 700,000 non-EU workers present in Italy, a considerably higher number than expected and far higher than in the previous “amnesties” for immigrants (244,000 non-EU immigrants were legalized in 1995, and 251,000 in 1998).

26. These periodic amnesties became necessary to legalize the position of foreigners who would otherwise be condemned to live in a state of perpetual illegality. Reducing this area of illegality as far as possible was a precondition for the introduction of an active quota-based inward migration policy.

The “flow-programming” decree

27. In the report on illegal immigration and the presence of aliens in Italy that was presented to Parliament in May 1998, the number of clandestine immigrants was estimated as being in the range of 200,000 to 300,000.

28. To enable legalization to take place, on the basis of the recommendations contained in the programming document, the Government issued a “flow-programming decree” that established an additional quota of 38,000 persons for 1998. Up to that ceiling, the issuing of residence permits for reasons of employment and self-employment was envisaged for non-EU citizens resident abroad or already present in Italy before the entry into force of Law 40/1998, provided that they had submitted their applications no later than 15 December 1998. Applications had to include the appropriate documentation, demonstrating the applicant’s presence in Italy before 27 March 1998, the existence of a contract for subordinate employment or contract (non-casual) work and evidence of suitable accommodation. The possibility of legalization for clandestine immigrants claiming entitlement on the basis of family reunification was also envisaged.

29. As of 28 December 1999, 243,233 applications for employment reasons (of which 36,339 for self-employment) had been submitted. Of these, 130,887 were accepted and 11,879 rejected; 7,337 applications for family reunification reasons were submitted, of which 5,368 were accepted and just 166 rejected.

30. For 2003, the entry of a further 79,500 aliens was authorized, 68,500 of which were for seasonal work. With respect to the procedures for the legalization of clandestine aliens envisaged by Law 189 of 30 July 2002 that were initiated on 12 November 2002 and are due for completion by the end of the year, by 30 June 2003 over 73 per cent of the applications had already been submitted to the Prefect’s offices and had been given the necessary authorization by the *questure* (offices responsible for the police force, public order and relative administrative services).

31. The fingerprint-identification procedure envisaged in the above-mentioned provision and implemented with effect from September enabled the notification up to 30 June 2004 of 635,612 aliens, of whom about 480,000 under the new legislation on immigration and political asylum. The system enables the *questure* to ascertain, in real time and with the utmost certainty, the details of applicants for residence permits or political asylum.

Border surveillance and control measures

32. The phenomenon of clandestine immigration in our country, which is distinguished by the transit of aliens heading for other European countries, has changed considerably over time. For example, while the flow of Romanian nationals over land borders has considerably

increased, flows from the Mediterranean area now mainly involve migrants from the poorer countries of sub-Saharan and Western and Central Africa. The latter subgroup mainly follows the principal Mediterranean Sea routes. However, from 2000 to 2002, there was a significant fall (of 11.5 per cent) in the numbers of clandestine immigrants landing on the southern coasts of Italy. This was particularly evident in the numbers landing in Puglia (18,990 in 2000 compared with 3,372 in 2002) and Calabria (5,045 in 2000 against 2,122 in 2002), with falls of 82.2 per cent and 57.9 per cent, respectively. This contrasts with an increase in the phenomenon in Sicily (from 2,782 in 2000 to 18,225 in 2002). This trend in illegal migration is confirmed by the data for the first quarter of 2003, with 7,888 aliens entering the country illegally (compared with 12,272 in the same period of 2002, giving a reduction of 35.7 per cent).

33. In this respect, two lines of action have been adopted that can be summed up as follows. From the legislative point of view, Law 189 of 30 July 2002 introduced substantive changes to the previous legislative framework, the main innovative aspects being based on the following principles:

- Reinforcement of monitoring and control criteria, including by fingerprinting;
- Definition of specific offences in the event of forgery of papers or documents needed to allow entry to Italian territory;
- Stiffening of penalties in cases involving the abetting of illegal immigration or emigration;
- Reinforcement of border controls and coordination of emergency assistance and actions to combat clandestine immigration in territorial waters or on the open sea;
- Greater efficacy for administrative expulsion provisions;
- Introduction of “residence contracts” for employment purposes;
- Consolidation of international cooperation to prevent illegal migratory flows and combat organized crime.

34. From the operational point of view, the need was noted for a particularly close assessment of the local network of police structures responsible for the security of Italy’s borders. As far as the Ministry of the Interior’s Department for Public Security is concerned, the most important new developments have concerned the merging of the frontier police and immigration services, a process that has now been completed with the creation of the Immigration and Frontier Police Service within the Central Directorate for Road, Railway, Frontier and Postal Police.

35. As regards the improvement of the technical support instruments for frontier posts, not least in view of possible checks that may be carried out by the Schengen borders commission on the basis of the Schengen Executive Committee’s decision of 16 September 1998 with the aim of verifying the correct application of the procedures envisaged in the Implementation Convention,

specific technical projects are being drawn up. These envisage the acquisition of adequate infrastructure and advanced technologies to monitor the external borders most exposed to immigration, such as those in the south of the country, and a reinforcement of the IT and transport resources of each border station.

36. From the operational point of view, particular impetus has been given to the activation of coordinated surveillance plans, especially in the two regions most exposed to migratory flows, Apulia and Friuli-Venezia Giulia. This stepping-up of the activity enabled a considerable increase in the first half of 1999 in the numbers of illegal aliens detected in the Italian-Slovenian border area compared with the same period of the previous year (2,212 against 1,156, an increase of 53 per cent).

37. In the case of Apulia, the flows have declined dramatically, from 28,458 in 1998 to 18,990 in 2000 (the figure of 46,481 for 1999 needs to be viewed in the light of the conflict in Kosovo). This was followed by a further fall in 2001, when “only” 8,546 clandestine immigrants were detected. The marked reduction was confirmed in 2002, for which the figure was 3,372, and in the first six months of 2003, which saw landings involving 81 clandestine aliens of Iraqi, Albanian and Pakistani nationality.

Temporary stay and assistance centres

38. Temporary stay and assistance centres, as envisaged by article 14 of Legislative Decree 286/1998, are the instrument selected to enable the provisions for the repatriation of aliens who have entered Italy illegally to be carried out more effectively. In view of these aims they are also one of the key means of ensuring the effective functioning of expulsion procedures which, on the basis of the system envisaged by the 1998 reform and subsequently through the implementation of Law 189/2002, which amended the legislation on immigration and asylum, is a precondition for the correct implementation of an immigration policy based on annual quotas.

39. In keeping with other legislative frameworks in other European countries, the aim of the new provisions is to designate specific facilities to accommodate aliens who are subject to expulsion or refusal-of-entry orders, under the control of the judicial authorities. This temporary detention (for a period of not more than 60 days) is used to overcome any obstacles to the proper execution of the order.

40. For the selection of the centres, the provision requires the adoption of a decree by the Minister of the Interior in conjunction with the Minister for Economic Affairs and Finance and the Minister for Employment and Social Policies.

41. In 1999-2002 the aim of the Government’s action programmes with respect to the temporary stay centres (TSCs) was to increase the functionality of existing facilities and bring them into line with improved habitability criteria (Caltanissetta, Ragusa, Trapani, Brindisi, Lecce, Catanzaro, Milan, Rome, Turin, Agrigento and Lampedusa). Fifteen centres have been authorized to date pursuant to Law 40/1998, of which 13 are operational, giving an overall capacity of 1,939 places.

Table 1

Temporary stay centres for migrants

	Province	Location	Name	Capacity
1	Agrigento	Agrigento	Contrada San Benedetto	110
2	Agrigento	Lampedusa	Airport zone	180
3	Bologna	Via E. Mattei	Ex Caserma Chiarini	95
4	Brindisi	Brindisi	Contrada Restingo	120
5	Caltanissetta	Loc. Pian del Lago	Contrada Niscima	90
6	Catanzaro	Lamezia Terme-Pian del Duca	Coop. "Malgrado Tutto"	100
7	Lecce	Melendugno-Loc. San Foca	"Regina Pacis"	230
8	Lecce	Otranto-Via Uggiano L. Chiesa	Centro Don Tonino Bello	200
9	Milan	Milan	Via Corelli	120
10	Modena	Modena-Loc. S. Anna	Viale Lamarmora	60
11	Ragusa	Ragusa Via Colajanni	Ex Somicem AGIP	60
12	Rome	Rome-Ponte Galeria	Ponte Galeria	300
13	Turin	Turin	Corso Brunelleschi	70
14	Trapani	Trapani, Via Segesta 3	Opera Pia Serraino Vulpitta	54
15	Crotone	Isola Capo Rizzato, ss 106	S. Anna	150

42. The main function of the centre at Agrigento-Lampedusa is to provide initial assistance and serve as a clearing station. Alteration work on the centres in Crotone and Ragusa has been completed and they are ready to be opened as soon as the necessary security services are available.

43. As a result of the changed legislative framework resulting from Law 189/2002, which envisages the doubling (from 30 to 60 days) of the detention period for aliens illegally present on Italian territory pending their expulsion orders, projects to increase the number of detention centres and the number of places available in them have been set up, including through restructuring and renovation work.

44. To achieve the above objectives, centres have been opened in Bologna and Modena and the capacity of the Rome-Ponte Galeria centre has been increased to 300 places. Funding has also been earmarked for the construction of the Bari-Palese TSC, for which the executive project has been approved by Puglia's Regional Superintendency for Public Works.

45. Alongside the commitment to increase the number of places available in the detention centres, on the basis of the needs actually noted by the police in the field for the proper application of the new legislative provisions, the Department for Civil Liberties and Immigration at the Ministry of the Interior has completely reorganized the management of the centres by drawing up guidelines for their management.

46. The organization of these structures is based on standardized, verifiable quality, cost-effectiveness and efficiency parameters, with a view to ensuring the greatest possible transparency in the management of the facilities and in the procedures for the selection of their management bodies.

47. The adoption of these guidelines makes it possible, on the one hand, to standardize and improve the level of the service and, on the other, to introduce objective criteria in the choice of management bodies, which are required to formulate transparent bids in terms of improvements in services and fees and to rationalize expenditure and eliminate waste.

48. There are also 10 identification centres (previously reception centres), of which 9 are already operational:

- Bari-Palese (reopened after the landings of 2 and 3 June 2003, with 560 places);
- Crotone-Sant'Anna (capacity 1,500 - at present about 1,200 places in use);
- Foggia-Ortanova (capacity 500);
- Lecce-Loc.La Badessa Centro Lorizzonte (closed since 30 March 2003);
- Trapani-Pantelleria-Caserma Barone (capacity 100);
- Trapani-Salinagrande (capacity 230).

49. The first section of the "Pian del Lago" Centre in Caltanissetta has been completed and has been operating since November 2003 (capacity 150).

50. These identification centres are flanked by other facilities which are set up on a case-by-case basis as required Ancona Benincasa (capacity 30); Como-Tavernola (capacity 200); Gorizia (ex scuola S. Giuseppe) (capacity 32). There is a reception centre at the border post in Imperia.

The expulsion of aliens

51. Chapter II of the Consolidated Act is entirely devoted to the question of border controls and the rejection and expulsion of aliens. Law 189/2002 introduced a number of important amendments concerning expulsions.

52. Article 10 governs the adoption of rejection measures both at the border and immediately after the entry to Italian territory of aliens who do not meet the envisaged entry requirements. These provisions do not apply to political asylum-seekers or those applying for refugee status or in cases involving the adoption of temporary protection measures for humanitarian reasons.

53. Article 13 governs administrative expulsion. This is adopted by the Minister of the Interior for reasons of public order and State security (para. 1). However, in cases where the alien has entered Italian territory by evading border controls; has not applied for the issue or renewal of his residence permit in the time envisaged, or does not possess such a permit; or represents a danger to public security under the parameters defined by Law 1423/1956 and Law 575/1965, it is adopted by the Prefect.

54. Law 189/2002 (amended paragraph 3 of article 10), establishes that the expulsion should be envisaged “in all cases by means of an immediately enforceable order (with grounds), even if subject to challenge or appeal by the interested party”. If the alien is subject to a criminal proceeding and is not in a state of preventive detention in prison, before carrying out the expulsion the *questore* (officer in charge of the police force and public order) applies for authorization from the judicial authority, who can refuse it only on the basis of mandatory procedural reasons. In such cases the execution of the expulsion order is suspended until the judicial authority provides notification that such reasons no longer apply. Authorization is also granted in cases where the judicial authority does not respond within 15 days of the application. Finally, while awaiting the decision on the request for authorization, the *questore* may arrange for the alien to be held at a temporary detention centre.

55. In cases of arrest in flagrante delicto, it is also envisaged that the judge should issue the authorization at the time of confirmation, except for those cases where preventive detention is applied, other specific cases envisaged by the Criminal Code, or in cases where one of the reasons for which the authorization cannot be granted under the terms of paragraph 3 applies. These provisions can also be applied to foreigners subject to criminal proceedings, after the preventive detention measure has been revoked or has expired.

56. When the provision revoking or extinguishing the preventive detention is issued, the judge also decides on the authorization for the expulsion. In some clearly defined cases, expulsion entails immediate escort to the border (expulsion ordered by the Minister of the Interior, expulsion ordered but not carried out within the timescale established in the injunction, etc.). Law 189/2002 envisages that in the case of aliens who “have stayed in Italian territory for more than 60 days after their residence permit has expired and have not applied for renewal”, the expulsion shall contain an injunction to leave Italian territory within 15 days. The *questore* shall arrange for the alien to be escorted immediately to the border if the Prefect perceives a real danger that the same alien might take action to evade the execution of the provision.

57. In other cases, notification is given to leave Italian territory within 15 days. As far as appeals against the expulsion order are concerned, Law 189/2002 establishes that “appeals against the expulsion order may only be submitted to the single judge court in the locality where the authority that issued the order is based. The single judge court shall accept or reject the appeal, making its decision through one single provision that shall be adopted within 20 days of the date the appeal is lodged. The appeal may be signed in person and may also be submitted through the Italian diplomatic or consular mission in the country of destination. The signing of the appeal by the interested party shall be authenticated by officials of the diplomatic or consular mission, who shall certify to its authenticity and forward it to the judicial authority. The alien shall be entitled to legal assistance by a lawyer of his choice holding a letter of attorney issued in the presence of the consular authority. The alien shall also be eligible for State-funded free legal aid and, if he does not have a defence counsel, shall be assisted by one appointed by the judge.” If the expulsion order envisages that the alien should be escorted immediately to the border, the appeal may be presented through the Italian diplomatic or consular mission in the expelled alien’s destination country. Only in cases where the expulsion has been decreed by the Minister of the Interior has the competency of the administrative judge been maintained, since such provisions are discretionary.

58. To ensure that the provisions envisaging expulsion under escort to the border and ejection are actually carried out, the law provides for the alien to be held in temporary stay and assistance centres. These measures can only be applied in the cases specifically indicated by the law, i.e. when it is necessary to provide assistance for the alien or carry out checks to confirm his personal identity or nationality, or in other specific cases where it is not possible to carry out the expulsion with immediate effect. In deference to the provisions of article 13 of the Constitution, detention in these centres must be validated by the judge within 48 hours and may not in any case be adopted for a period of more than 20 days, which may be extended to 30. If the procedures are not finalized by the end of this period, the alien is released.

59. Law 189/2002 amended a number of procedures regarding the execution of the expulsion order, envisaging the possibility of a longer period (maximum 60 days) of detention in the temporary stay centres: “Validation involves detention in the centre for an overall period of 30 days. If the identity and nationality checks or the obtaining of travel papers prove to be difficult then the judge, at the *questore*’s request, may extend this period by a further 30 days. Even before this deadline, the *questore* may enforce the expulsion or rejection and inform the judge of this without delay.”

60. Law 189/2002 also establishes that “when it has not been possible to detain the alien in a TSC, or else the maximum period of detention has expired without the expulsion or ejection being carried out, the *questore* shall order the alien to leave Italian territory within five days. This order shall be conveyed in written form and shall set out the penal consequences of failure to respect the order.” Any alien who, without justified cause, remains in Italian territory in breach of the order issued by the *questore*, shall be punished by arrest and detention of between six months and one year. Any expelled alien who is found on Italian territory shall be punished by imprisonment of one to four years.

61. Articles 15 and 16 of Legislative Decree 286/1998 govern expulsions ordered by the judicial authority as a security measure, in the event of the conviction of the alien for one of the offences envisaged by articles 380 and 381 of the Criminal Code or, in the event of plea bargaining, of penalties other than detention for aliens who are already in a situation where the expulsion measure pursuant to article 13.2 is adopted, or conviction for a non-negligent offence attracting a penalty of up to two years is applicable.

62. The expulsion measures do not apply to minors under 18 years of age, pregnant women or aliens in possession of a residence permit, with the exception of the cases envisaged by article 9.5. Finally, provisions of a humanitarian nature have been introduced to chapter III (arts. 18, 19 and 20) for the protection of foreign nationals who are victims of exploitation by criminal organizations. Aliens in these circumstances are entitled to a special residence permit that enables them to escape from the violence and influence of the criminals in question and to take part in assistance and social integration programmes. The programme also enables them, where appropriate, to cooperate with the authorities in combating crime by helping with the identification and capture of those responsible for the crimes set out in article 3 of Law 75/1958 concerning measures to combat the exploitation of prostitution, or those envisaged by article 380 of the Criminal Code.

63. From an operational point of view, at 31 October 1999, a total of 60,724 aliens had been repatriated through the implementation of expulsion provisions. This figure includes 31,079 individuals turned back at the border, 9,878 turned down by the *questore* pursuant to article 10.2 of the Consolidated Act, 9,168 expulsions actually carried out, 463 expulsions through provisions by the judicial authority and 10,136 illegal aliens turned back or expelled and returned to their country of origin through readmission agreements. This last figure has been considered separately in order to evaluate the role of readmission agreements in facilitating the implementation of repatriation provisions, even though it is not covered by a separate provision since it in any case requires the adoption of the expulsion or rejection provision as a precondition.

64. In the first six months of 2003, 28,671 aliens in receipt of expulsion orders were actually expelled from Italy. This is about 59.13 per cent of the total number of aliens who, in the same period, were found to be illegally present on Italian territory. This figure compares very well with those for the previous years, with a rise of 56 per cent on 2002 and of 53 per cent on 2001.

65. The positive trend in the expulsion of illegal aliens is further borne out by the increase recorded in 2002 compared with 2001 (13.9 per cent) and even more markedly compared with 2000 (up 27.8 per cent). To speed up and increase the effectiveness of the process of escorting aliens to their country of origin, in recent years more frequent use has been made of "dedicated" charter flights. Five such flights were carried out in 2000, for the repatriation of 433 clandestine immigrants; in 2001 there were 13 flights carrying 1,700 aliens; for 2002 the figures were 26 flights carrying 2,294 aliens; and in the first half of 2003 there were 10 flights carrying 712 aliens.

66. Also, in the first six months of 2003, 42 persons were arrested for the transportation of illegal immigrants, having been intercepted at the landings or identified after targeted investigations conducted, including at the international level, with the cooperation of foreign organizations; 76 boats used for illegal transportation were seized. In 2002 the number of arrests (277) was up 38.5 per cent on the previous year's figure of 200.

67. From this point of view, Italy has attributed particular importance to the readmission agreements that have been entered into with 27 countries: 4 EU member States (Austria, Greece, France and Spain), 17 European States (Albania, Bulgaria, Cyprus, Croatia, Estonia, The former Yugoslav Republic of Macedonia, Latvia, Lithuania, Malta, Moldova, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia, Switzerland and Hungary), 4 African States (Algeria, Morocco, Nigeria and Tunisia) and 2 from Asia (Georgia and Sri Lanka).

68. Targeted initiatives have also been put in place to reinforce cooperation with the main countries of origin and transit of illegal migratory flows, of which the following are worthy of note:

Libyan Arab Jamahiriya: Operational agreement with the Libyan security authorities and border police for a stronger effort to combat illegal migratory flows transiting through Libya and heading for Italy by sea;

<u>Albania:</u>	Technical assistance and staff training programmes and joint sea surveillance measures that also envisage the use of Italian boats in Albanian territorial waters;
<u>Slovenia:</u>	Activation, along the common border, of joint surveillance and control arrangements;
<u>Turkey:</u>	Exchange of strategic and investigative information for use in combating organizations abetting clandestine immigration;
<u>Malta:</u>	Intensification of cooperation in investigations to dismantle criminal groups responsible for the transportation by sea of clandestine immigrants from Malta to Sicily;
<u>Tunisia:</u>	Supply of free equipment and material to the police authorities engaged in combating clandestine immigration;
<u>Cyprus:</u>	Possibility for Italian marine units engaged in operations to combat illegal immigration to receive technical-logistics assistance from Cypriot port structures;
<u>Egypt:</u>	In the framework of the ongoing readmission negotiations, the organization in November and December 2002, in agreement with the Egyptian authorities, of two charter flights that enabled the repatriation to Colombo of over 300 Sri Lankan nationals who had been stopped by the Egyptian authorities when attempting to reach Italy illegally;
<u>Syrian Arab Republic and Lebanon:</u>	Proposals for border policing training programmes;
<u>China:</u>	Mission to Italy, for a two-month trial period, of members of the Chinese police to cooperate in nationality and identification checks on presumed Chinese citizens subject to expulsion measures, with a view to issuing travel papers.

69. Collaborative relations have also been established with the diplomatic-consular authorities of the main countries of origin of illegal migratory flows to Italy, to simplify the nationality checking procedures for the issuing of travel papers (permits) needed for repatriation. These include: Nigeria, Morocco, Tunisia, Sri Lanka, Bangladesh, Romania and Albania (in view of the well-established cooperation agreement, the Albanian authorities readmit their nationals even without papers).

Foreign nationals granted temporary protection

70. Foreign nationals granted temporary protection are persons who have fled their own country (displaced persons) as a result of war, civil war, external aggression, generalized violence or grave violations of democratic freedoms, or else to find refuge from natural disasters.

71. Article 20 of the Consolidated Act on immigration contains a key provision that makes it possible to deal with humanitarian emergencies caused by exceptional events such as conflicts, natural disasters or other particularly serious occurrences in countries that are not members of the European Union.

72. In such circumstances, it is therefore possible for the Government to decide, through an order issued by the Prime Minister, on temporary protection measures to accommodate any evacuees arriving in large numbers on Italian territory in a timely and appropriate manner.

Asylum-seekers and refugees

73. Law 189/2002 introduced substantial changes with respect to the previous legislation. The Central Commission for the Recognition of Refugee Status has now become the National Commission for the Right of Asylum.

74. This Commission, chaired by a Prefect, is appointed by decree of the Prime Minister following a joint proposal by the Ministers of the Interior and Foreign Affairs.

75. The Commission is made up of a senior official from the Prime Minister's Office, an official from the Prefects' service based in the Department for Civil Liberties and Immigration and a senior official from the Department for Public Security. A representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Italy also takes part in the meetings.

76. The Commission's tasks include the guidance and coordination of the Local Commissions and the training and updating of their members, the collection of statistical data and decision-making powers in matters concerning the withdrawal or cessation of the status granted.

77. The law has radically changed the previous procedure and decentralized the procedures for examining asylum applications by setting up local commissions appointed by decree of the Minister of the Interior. In order to discourage fraudulent applications, a fast-track procedure is envisaged in which applicants are held in identification centres and the procedure is carried out more quickly, with due respect for the necessary guarantees.

78. Persons applying for refugee status in Italy are required to submit an application setting out the reasons for their request, including the persecution they have been subjected to and any potential retaliation should they return to their own country. Where possible, applications should include back-up documentation.

79. The applicant may submit the application:

(a) To the frontier police, on arrival at the border. Before allowing the alien to enter Italian territory, the frontier police check that there are no obstacles to entry. If any such obstacles exist, entry is denied and the applicant is turned back; applicants may not, however, be turned back to a State where they are at risk of persecution. If there are no such obstacles, the

alien is invited to elect a place of domicile in Italian territory and to go to the *questura* (office responsible for police force, public order and relative administrative services) for the area in question to initiate the procedures required to obtain recognition of refugee status;

(b) At the *questura*, within eight days of entry to Italy, if the alien is already in the country. However, if there are justified reasons, the alien may submit an application even after this deadline. In accordance with article 1 of Law 39/1990, persons intending to apply for refugee status are turned back at the border in the following cases:

- When the interested party has already been granted refugee status in another country;
- When, after leaving their own country and before entering Italy, he has stayed in another country that has signed the 1951 Convention relating to the Status of Refugees;
- If he has committed war crimes or crimes against humanity;
- If he has been convicted in Italy for one of the crimes for which arrest in flagrante delicto is envisaged, or is a danger to State security, or belongs to the mafia or similar criminal organizations or organizations involved in drug trafficking or terrorism.

80. The procedure is for the *questura* to compile:

- The standard form for the determination of which State has competency to examine the asylum application; this is sent to the Dublin Unit in the Central Directorate for Immigration and Asylum Services. This unit ascertains, on the basis of the Dublin Convention, whether Italy is the competent State;
- The record of the statements made by the applicant, containing the answers to a series of standard questions: personal details, date and means of departure from the country of origin, periods of residence or transit in other countries, date and border of entry to Italy, membership of organizations (political, religious, social, etc.), address where applicant intends to receive correspondence and reasons that have led him to leave his country of origin and/or for which he does not intend to return there. The applicant's right to privacy is protected in accordance with Italian legislation and European standards. Humanitarian and human rights organizations play an important role in this context; any reports from them regarding specific cases are taken into due consideration. Public resources and those of the associations are integrated to facilitate solutions in cases requiring attention.

81. The alien is invited to declare in the report whether he wishes to attend an individual hearing with the Central Commission for the Recognition of Refugee Status to set out, if necessary with the help of an interpreter, his reasons for submitting the application. The report and application are sent to the Central Commission for the Recognition of Refugee Status.

82. The applicant is issued with a temporary permit of stay containing the following wording: “Dublin Convention 15.6.1990”, which authorizes him to stay in Italy for a period of one month. The permit may be extended until Italy’s competence to deal with the application has been ascertained.

83. When the application is submitted, the alien is required to hand in his passport, if he has one. Article 11 of the Consolidated Act envisages the establishment of special reception services at the main border posts for aliens seeking asylum or humanitarian protection or who intend to enter Italy for other reasons, for a period of over three months.

84. These reception services include all those activities in support of aliens to facilitate their stay in Italy (guidance, legal protection and information, interpretation, etc.). Nine reception centres are currently in operation: Ancona-Port, Gorizia-Casarossa, Rome-Fiumicino, Trapani-port, Varese-Malpensa, Venice-port, through an agreement with the Italian Refugees Centre; Como-Ponte Chiasso, through an agreement with the ACLI (Christian Associations of Italian Workers); and Imperia-Ventimiglia and Trieste-Farneti, through an agreement with Caritas.

85. As regards the pre-examination stage to ascertain responsibility for examining the application for recognition of refugee status, the standard form is examined by the Dublin Unit in the Ministry of the Interior’s Central Directorate for Immigration and Asylum Services in order to ascertain which State of the European Union is responsible for examining the application. Once this pre-examination has been carried out, the Dublin Unit:

- Asks another EU member State to take charge of the applicant, if competent to do so on the basis of the Dublin Convention;
- Sends the form to the Central Commission for the Recognition of Refugee Status for its decision, if Italy is competent to deal with the case.

86. Applications for which the Dublin Unit has given the go-ahead are evaluated by the Central Commission, which examines all the applications for which Italy is responsible (cf. summary data for 1990-2000) on their merits.

87. The Commission interviews applicants both at their own request (advanced when the report of their statement is drawn up at the *questura*), or if the Commission itself so decides in order to obtain more detailed information on their reasons for submitting the application. Applicants are required to meet their own travel and accommodation costs.

88. The decision on whether to grant or reject the application is taken by the Commission in the form of a ruling with grounds, which is notified to the applicant through the *questura* of their elected place of residence.

89. The right to a proper proceeding is guaranteed through legal advice from humanitarian associations and at the applicant’s request. On their arrival, applicants staying in reception centres are also provided with legal assistance: they are informed of their rights in submitting appeals, and of the spheres of responsibility of each institution concerned.

90. Temporary permits of stay (Convention Determining the State Responsible for Examining Applicants for Asylum Lodged in One of the Member States of the European Communities, or the Dublin Convention, of 15 June 1990) and provisional permits of stay for asylum applications entitle applicants without means of support or accommodation in Italy to obtain financial assistance from local authorities and an initial assistance allowance from the Central Directorate for Immigration and Asylum Services.

91. The initial assistance allowance amounts to 17.56 euros per day. The application, submitted to the police office with responsibility for the applicant's chosen place of stay, is sent to the Prefecture of the province in question along with certification that the applicant meets the requirements (i.e. that he has actually submitted the application for the recognition of refugee status and is destitute). If the Prefecture does not authorize the allowance, the applicant may appeal to the Regional Administrative Court within 60 days of notification or to the President of the Republic within 120 days.

92. If the Central Commission accepts the application, it sends the *questura* a certificate for the issue of a residence permit lasting two years and a special travel document entitling the applicant to travel abroad, except to his country of origin. The rules governing residence permits for asylum reasons are similar to those for other residence permits; however, in view of the refugee's special circumstances, the permit cannot normally be withdrawn and must be extended on expiry, except for cases of cessation of refugee status or expulsion.

93. In accordance with the Convention relating to the Status of Refugees, the refugee enjoys the same treatment as Italian citizens in matters concerning:

- Religious freedom and freedom of religious instruction;
- Primary education;
- Access to courts and legal assistance;
- Protection of industrial (trademarks, inventions, etc.), literary, artistic and scientific property;
- Health and financial assistance;
- Employment and social insurance;
- Taxes.

94. Refugees legally resident in Italy are also entitled to treatment no less favourable than that applied to other foreign nationals legally resident in Italy in matters such as:

- Purchase of movable and immovable property;
- Self-employment;

- Professional status;
- Education other than primary level;
- Freedom of movement.

95. Refugees also enjoy special treatment in the matter of military service, reunification for family reasons, and the acquisition of Italian citizenship as a result of naturalization. In certain circumstances refugees are entitled to financial benefits as part of the Programme of Support Actions agreed each year by the Central Commission for the Recognition of Refugee Status with the Office of the United Nations High Commissioner for Refugees.

96. The Programme of Support Actions envisages:

- Initiatives providing assistance for the support of individuals or families who, during the period immediately following the recognition of refugee status, have primary needs that cannot otherwise be met during the insertion phase;
- Initiatives for socially vulnerable persons (sick, disabled, elderly persons or families with dependent children still at school, students enrolled at universities or training courses) or exceptional cases of proven gravity or urgency;
- Initiatives to support employment integration with the aim of enhancing those aspects of the Programme promoting refugees' social and economic self-sufficiency;
- Primary assistance actions (90 days) for those refugees who, following recognition, have received or were entitled to receive the initial assistance allowance, even if they did not actually receive it.

97. Refugees are required to submit their application for the allowance to the Prefecture of their province of residence on the appropriate form, with the following documents:

- Copy of valid residence permit (head of household and members of household);
- Copy of certificate of recognition of refugee status.

98. The Prefecture deals with the preliminary procedures and sends the application, with the required documents, to the Central Commission for the Recognition of Refugee Status. The decision on the application is taken by a joint Commission made up of officials from the General Directorate and UNHCR.

99. The provision for turning down the application for refugee status is communicated to the alien through the *questura*. The alien is invited to leave Italy within 15 days of notification; if he does not comply he is escorted to the border. If it is not possible for the alien to be sent back to his country of origin, where he may be subjected to discrimination that puts his life or personal freedom in danger, the *questura* may, if so requested, send him to a third country.

100. However, the alien may, if the conditions are satisfied, obtain a residence permit for other reasons (for example, for family reunification and employment, pending emigration). Unsuccessful applicants may appeal to the civil court within 60 days of notification.

101. Aliens who have been granted refugee status may lose this status:

- When they apply for the return of their national passport, whether or not they declare when doing so that they renounce refugee status;
- When certain circumstances arise, notably:
 - (a) The refugee once more, and voluntarily, enjoys the protection of the country of which he is a citizen; or
 - (b) Having lost his citizenship, he reacquires it voluntarily; or
 - (c) He acquires a new citizenship and enjoys the protection of the country that has granted it; or
 - (d) He returns voluntarily to his country of origin, which he had left as a result of persecution or the fear of persecution; or
 - (e) In the country of origin the reasons for which refugee status was granted no longer exist (for example, following a change of regime).

102. In cases (a) to (e), cessation of refugee status is not automatic, but follows a specific ruling by the Commission for the Recognition of Refugee Status. Refugee status may also cease following repeal by the Commission if it should ascertain that the alien made false declarations regarding his identity and personal circumstances.

103. Refugees legally resident in Italy may be expelled only for reasons of public order and national security, by order of the Minister of the Interior (article 11.1 of Law 40/1998). The alien may appeal against this decree to the Regional Administrative Tribunal (TAR) of Lazio (article 11.11 of Law 40/1998).

104. The refugee may not, however, be expelled to a country where he may be subjected to persecution or risk being sent to another country in which he is not protected from persecution (article 17.1 of Law 40/1998).

The asylum bill

105. As regards the introduction of a systematic law on the right to asylum, a government bill (A.C. 5381) introducing substantive amendments to the procedure for the recognition of refugee status and implementing article 10 of the Italian Constitution is currently before the Constitutional Affairs Committee of the Chamber of Deputies.

The problem of foreign criminal organizations

106. Our country's geographical position favours the immigration and establishment of individuals from different cultures and countries that are experiencing a difficult, laborious and lengthy process of social, political and economic development. Unfortunately, some of these individuals are involved in criminal activities. Migration, with its related direct or induced criminal activity, which includes various forms of illegal trafficking, cannot easily be stemmed.

107. These forms of criminal activity pose serious problems for investigators for the following reasons: the fact that they are built on a strong base of intimidation against immigrants of the same ethnic origin, with the direct involvement of persons operating abroad; the difficult and laborious process of identifying clandestine immigrants; the not-infrequent mingling and formation of alliances with local criminal groups; and the low degree of cooperation provided by some non-EU countries in paving the way for the necessary synergies between the activities of the police forces and investigative bodies.

108. The overall picture of criminal conduct by the various foreign organizations remains unchanged. Still active in our country are a number of "new mafias" imported mainly from the Russian Federation and China. The Russian mafia is particularly active in the energy products and goods sector, and in import-export companies. Property investment and the purchase of shopping centres, tourism-hotel businesses and small and medium-sized clothing and white goods companies have recently been reported. The Chinese mafia, which tends to reflect the same organizational features as in the "homeland", has a strong presence in typical organized criminal activities: drug trafficking, extortion, gambling, prostitution and, above all, the clandestine immigration of fellow nationals. The dangerous nature and significance of the trafficking of clandestine immigrants means that we need to pay increasingly close attention to this phenomenon.

109. A complex and closely targeted investigation conducted in coordination with the public prosecutor's offices (in Trento, Trieste, Rome and Lecce) has led to the discovery of a vast international Turkish-Iranian criminal structure involved in the clandestine immigration of Kurdish aliens of Iraqi nationality. This made it possible to strike a blow against a criminal organization whose purpose is the exploitation of socially vulnerable non-EU immigrants seeking a new homeland, and the discovery of the existence in Turkey of a number of agencies specializing in the recruitment and transportation of clandestine Kurdish immigrants to Europe by sea or overland.

110. On this point, a positive change of attitude is taking place in the countries affected by clandestine immigration: timid steps forward which should not create any false illusions, but at the same time open up a new outlook for investigations.

111. In this respect the oft-lamented difficulties in identification will surely benefit from the new photo-fingerprinting identification techniques. Another noteworthy development is a project to feed the identification details contained in passports into an international IT network; this could play a part in curbing the circulation of false, lost or stolen passports by criminal organizations involved in illegal immigration.

112. The legislation in this respect has thus far proven to be largely ineffective in suppressing the phenomenon, although the possibility of granting residence permits for social protection reasons, which facilitates attempts to remove victims from the control of criminal organizations and makes it possible for beneficiaries of the provision to make statements for the purpose of cooperating in the investigations, have attracted considerable consensus.

113. It is not possible as things stand at present to formulate projections and evaluations of Law 189/2002 in view of the extreme complexity of the phenomenon under consideration and limited period of application of the law.

114. In conclusion, from a comparison with the data from the previous report (CAT/C/44/Add.2), we can say that a stronger and more effective action to contain and combat this form of crime is emerging. This is in part the result of the creation in many prosecutors' offices of specialized working groups, increased cooperation by Italian investigative offices and cooperation with the institutions of other European countries. The fact remains, unfortunately, that the form of criminality under consideration is one of the most significant sources of crime in our country.

115. The following "high impact" operations to combat crime under the overall coordination of EUROPOL are worthy of note:

- Operation "Girasole 2", originally an Italian initiative, which arose from an investigation into a criminal network dedicated to the trafficking for sexual exploitation purposes of young Eastern European women in connection with members of Mafia-type organizations. The investigations enabled the Italian judicial authorities to issue 89 arrest warrants that were applied in Italy and other European countries, including Germany and Ukraine, with the help of a coordination centre linking the various operational units in the different countries involved. The Centre was set up on EUROPOL premises to ensure coordinated, simultaneous action;
- Operation "Leda", which focused in particular on the prostitution of women from Eastern European countries and other areas. The Italian part of the operation involved the provinces of Turin and Caserta, where 55 people were arrested and a further 98 charged but released on bail, while 242 clandestine immigrants were escorted to the border and expelled. In terms of combating cross-border crime, the activity carried out by the liaison offices was of particular importance, especially with regard to those operating in Albania, Greece and Romania;
- Operation Puna, which was launched in August 2002 in Albania, and in particular the Valona area, is worthy of note in this respect. The operation, which was planned by the Italian liaison office in Tirana, involved all the Finance Corps marine units present in the territory and the entire Liaison Office contingent in Albania for the land-based operations. The action achieved the following important results:
 - Arrest in flagrante delicto of 14 persons running boatloads of immigrants;
 - Seizure of nine seagoing rubber dinghies;

- Report to the judicial authority of 10 persons at large, implicated in the criminal activities involved in the operation;
- Seizure of three machine shops;
- Operation Rio IV, which was completed in May 2003, and was intended to monitor and evaluate the risk of clandestine immigration over sea borders and involved eight EU member States (Finland, France, Germany, Italy, Netherlands, Portugal, Spain and the United Kingdom);
- The arrest in Lebanon in April 2002 of 21 people belonging to a criminal organization involved in abetting the clandestine emigration of Iraqi and Syrian refugees from the southern coasts of Lebanon to Italy and other European countries. The success of this investigation was the fruit of close cooperation, through Interpol, between Italy, Germany and Libya, on the basis of leads provided by our country;
- Operation “Watermelon”, launched at the beginning of 2003 by the *questura* in Brindisi and still ongoing, its aim being to dismantle a Europe-wide criminal network involved in the illegal immigration of Iraqis to Europe.

Trafficking

116. Italy was the first country to equip itself with specific, systematic legislation concerning the trafficking of human beings.

117. Article 18 of the Consolidated Text on Immigration is a particularly innovative example of what can be done to prevent and combat trafficking and to promote, in humanitarian terms, the full rehabilitation of the victims. It envisages special permits of stay for social protection reasons, with a duration of six months (renewable) for persons seeking to escape exploitation and conditioning by criminal organizations operating in this sector. It also envisages measures to enable the victims to take part - during the period of validity of the permit in question - in special assistance and social integration schemes.

118. In order to provide the financial resources needed for the creation at the local level of services for the implementation of these assistance programmes, Decree 286/1998 establishes a special fund administered by the Department for Equal Opportunities (part of the Prime Minister’s Office).

119. The innovative action launched by the Government of Italy in 1998 with regard to the trafficking of human beings for the purposes of exploitation was given further impetus recently by the publication of Law 228 of 11 August 2003, which flanks and reinforces the provisions of article 18 of the Consolidated Act on immigration.

120. Implementing the recommendations contained in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, signed at the Palermo Conference of 10 December 2000, the new law describes more specifically and precisely the crime of reducing a person to, or keeping him in, a state of enslavement or

servitude and the crime of trafficking. More specifically, Law 228 reformulates article 601 of the Criminal Code, by defining more precisely the offence of “trafficking of people” and at the same time increasing the minimum penalty from five to eight years of imprisonment and introducing, together with a special assistance programme for the victims of the crimes envisaged by articles 600 and 601 of the Criminal Code (reducing to or maintaining in a state of slavery or servitude and trafficking of human beings), specific preventive actions that can be financed from a special fund for measures to combat trafficking.

121. If we focus on the transnational dimension of the phenomenon and the importance of international cooperation to achieve more effective preventive action, article 14 of the law commits the Department for Equal Opportunities and the Ministry of Foreign Affairs to promoting meetings and information campaigns, including in the countries of origin of the victims of trafficking. In the light of these objectives, the provision also envisages that the Department for Equal Opportunities, together with the Ministry of Justice and the Ministry of Employment and Social Policies, should organize training courses for operators engaged in combating trafficking. These initiatives will be inserted in the Ministry’s programme for the coming three years.

122. With a view to implementing measures aimed not just at providing real support for the repression of this criminal activity but also at carrying out preventive actions and providing assistance for the victims of trafficking, the Ministry of the Interior - which as far back as 1995, in considering the question of initiatives to undertake to incentivize, encourage and protect those seeking to escape from the cycle of “forced” prostitution and slavery, devised and promoted article 18 - has launched a number of innovative projects in recent years.

123. These are intended, firstly, to facilitate the voluntary return to their countries of origin of those victims of trafficking who, in the process of emerging from the state of exploitation to which they have been subjected, collaborate with the police to help with the identification and capture of their exploiters. And secondly, they are intended to contribute - in cooperation with the authorities of the countries of origin and with the particular objective of providing accurate and targeted information to prevent the risks connected with clandestine immigration - to the creation in these countries of the necessary conditions for the protection of potential victims. The legislative provisions designed to provide social protection and assistance for the victims of trafficking are therefore of particular importance. To enable them to truly free themselves from the condition of exploitation it is vital to provide them with alternative forms of support, information and guidance.

124. To this end, Law 228/2003 has set up a Fund for Anti-trafficking Measures in the Prime Minister’s Office. The fund brings together the sums allocated by article 18 of the Consolidated Act on Immigration and the proceeds of the seizures ordered in the wake of conviction or the enforcement of the sentence at the request of the parties and is intended for the funding of social integration and assistance programmes for the victims of trafficking, as well as the other protection purposes envisaged by article 18.

125. An Inter-Ministerial Commission set up in 1999 in the Department for Equal Opportunities has been tasked with directing, monitoring and programming the resources that have now converged in the new Fund for the implementation of the projects. Through an order issued on 23 December 1999, the Minister for Equal Opportunities has identified two types of programme that are eligible for financing:

- Social protection programmes to provide assistance and protection pathways for the victims of trafficking;
- “System actions” designed to support the protection programmes through awareness-raising initiatives, surveys and research on the progress of the phenomenon, training activities for operators, technical assistance activities and project monitoring.

126. The various system actions that have already received funding from the Department for Equal Opportunities include the project coordinated by the Ministry of Justice for the monitoring at the national level of the activities and results achieved by the Public Prosecutor’s Office in carrying out investigative activities.

Assisted repatriation project

127. The national project to provide assistance with voluntary assisted returns for the victims of the trafficking in human beings and reintegration into their home countries is currently in its second year. The first year of funding, which ended in September 2002, enabled the assisted repatriation of 80 victims. The second year of funding, which started last April, will end in April 2004. It will enable the return of another 80 victims, who will be repatriated following the same criteria as for the first year.

128. The project is being implemented using funding provided for by article 18 of the Consolidated Act on Immigration (Legislative Decree 286/1998) and subsequent implementing Regulations (article 25 of Presidential Decree 394 of 31 August 1999). These funds were allocated by the inter-ministerial commission for the implementation of article 18 established within the Department for Equal Opportunities in the Prime Minister’s Office.

129. The initiative is being carried out in cooperation with the IOM (International Organization for Migration) and its 70 focal points set up in the countries most affected by the trafficking in human beings. The procedure for taking the victims in hand and helping them return to their countries of origin is as follows:

- IOM receives notification of the names of the victims who have opted for voluntary assisted return to their home countries from the services operating locally (*Questure*, police, local government structures, non-profit associations). After ascertaining that the conditions for return are satisfied, it submits a “repatriation programme proposal” to the Project Leader at the Ministry of the Interior and applies for authorization;

- Once authorization has been granted, IOM starts the repatriation procedure. This consists of organizing the return journey, preparing the necessary papers, paying travel expenses, providing assistance at departure and arrival ports and, where necessary, escorting victims to their final destinations as well as paying them €516.00 as an “initial resettlement allowance”;
- Once the returnees have arrived in their countries of origin, the process of social, employment and family integration begins. When family reintegration is not possible, IOM identifies and arranges alternative forms of assistance. It pays the victims two employment grants of €516.00 each in two instalments over several months. These are intended to help the beneficiary take part in educational and/or occupational training courses or to enter the job market or self-employment.

130. Assistance to victims in their home countries for reintegration purposes is provided for a period of at least six months.

131. Through its local focal point, IOM submits a progress report to the Ministry of the Interior on the social, employment and family reintegration process, the objective of which is to demonstrate that the victim has escaped the criminal organizations involved in human trafficking. This is a precondition for granting the two employment grants.

132. Another precondition for a victim’s inclusion in the programme is his/her cooperation with the police and judicial authorities in combating traffickers/exploiters. This is done by lodging formal reports or providing information concerning the events and the traffickers/exploiters.

133. At the conclusion of the project a national conference will provide an opportunity to present the results achieved through the initiative.

134. Another initiative that has proved to be useful in bringing the victims of this terrible “market” into closer contact with the institutions is the activation of a free phone number - which will remain in operation for the next three years - made up of 1 national centre and 14 local centres. Together with the social protection projects, these centres, distributed over different regional and interregional macro-areas, create a unique coordinated network for action at the local level.

135. The various social protection projects currently in place create an effective network for action and provide the victims of trafficking with real opportunities to regain their freedom and achieve integration in Italian society. The services in question are diverse but integrated: “on-the-road” units; health, legal, social and psychological information and advice offices; and a range of reception services.

136. It should be underlined here that the issuing of residence permits and consequent enrolment in the programme is not conditional upon cooperation with the investigators or the lodging of a charge by the foreign victim; the attempt by the victim to escape from the power of the criminal organization is considered to be sufficient in itself.

137. The choice made by the legislators in this respect does not just provide the victims with real, comprehensive protection but also helps to combat organized crime since it is considered that individuals embarking on the social rehabilitation process can provide a useful framework of information for investigations.

138. In terms of its own specific activities, the Department for Equal Opportunities intends to continue along similar lines to those already followed by promoting other initiatives such as:

- Closer monitoring of programmes and “system” actions that are already under way;
- Creation of systematic opportunities for dialogue with the judiciary and police forces operating both in Italy and abroad;
- Examining possibilities for integration between national and European funding sources;
- Intensifying cooperation with the countries of origin, not just to promote information campaigns on the risks connected with uncontrolled immigration but also to promote local development initiatives that are able to impact on the causes of this form of criminal activity.

Project for the Prevention of Trafficking

139. The Project for the Prevention of Trafficking is an action financed pursuant to law No. 212 of 26 February 1992 promoting “Cooperation with the countries of Central and Eastern Europe”; €206,582 have been earmarked for this initiative.

140. At present, four countries in Central-Eastern Europe that are particularly affected by the trafficking of persons for the purposes of exploitation, are involved in the implementation of the Project. These countries are: Albania, Romania, Moldova and Ukraine.

141. Three organizations from the private social sector working in the specific field of immigration are working together to implement the project. These are: the International Organization for Migration for the implementation of the project in Albania and Romania; the Italian organization Caritas, for the Ukraine; and the Regina Pacis foundation, for Moldova. The project includes the following activities:

- The organization of meetings with the officials and staff of the diplomatic missions in the countries involved in the trial project, with government authorities and local institutions and with the NGOs working to fight the trafficking in persons and protect the victims. The aim of these meetings is to illustrate the project and its objectives and to request the institutions in question to cooperate in order to identify the most suitable measures that need to be implemented to provide assistance for the victims and foster their social integration. The meetings are also intended to provide information on the protection and social integration measures on behalf of the victims envisaged in Italy and in the countries of origin and to alert the local population to the issues involved in the trafficking of persons, with a view to prevention;

- The organization of conferences, seminars and local information campaigns aimed at preventing the trafficking of persons;
- The production and dissemination of information material, for example, a video showing victims who directly relate their experience; this video can be used as information and educational material for local radio or TV programmes identified as being suitable vehicles for the information and awareness-raising campaign.

142. On completion of the project, a closing conference will be held to set forth the results achieved in each of the four countries involved in the pilot scheme.

C. The situation in prisons

1. Training of members of the police forces

143. The training of members of the police forces (Polizia, Carabinieri) is one of the priority objectives in putting in place appropriate measures to prevent actions that can be classified as torture or the inhuman or degrading treatment of prisoners, especially foreign ones.

Police forces

144. The Department for Public Security has for some time been particularly alert to the problems connected with racism and xenophobic intolerance. From the mid-1990s these issues have been directly addressed during training courses for police officers in each area of the service, with particular reference to the protection and promotion of human rights, while a constant emphasis has been placed on the correct operational methods to be adopted in an increasingly multicultural society, while fully respecting the dignity of the individual, whether he be an Italian citizen, an alien or a member of an ethnic or religious minority.

145. To this end, refresher courses and seminars have been organized for management personnel with training responsibilities in the department's teaching institutes. This pool of trainers has then followed specialization courses in multicultural issues with a view to enhancing the action of the police force in this new and more variegated social context in accordance with the principles and values of respect for the individual, regardless of his origin and social and cultural "otherness".

146. More specifically, time has been set aside within the courses for management and executive personnel working in operational offices to deal with human rights and the prevention and management of situations of racial discrimination. These courses have also been attended by representatives of other European police forces, including the British, Austrian and German forces. For these last-named training initiatives the Department for Public Security worked with the COSPE (Cooperation for the Development of Emerging Countries), an NGO that has always been active in combating "racial, ethnic or religious" discrimination and which is a partner in a transnational project organized with the help of the European Union, the aim of which is to improve and adapt "policing" in Italian society, which is becoming rapidly, and increasingly, multicultural and multi-ethnic.

147. This initiative can be set within the framework of a wider awareness-raising effort targeted at police operators that was promoted by the Department for Public Security through seminars and conferences on the occasion of the fiftieth anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

148. It is in this context that, at the initiative of the Chief of Police and the President of the COSPE, it was decided to promote the translation and dissemination of the Rotterdam Charter, the great merit of which is that it sets forth both general principles and actual lines of action that can be adapted to each European country in matters concerning partnerships between the police, NGOs and local government bodies.

149. This project, entitled “Paving the Way for Art. 13 of the Amsterdam Treaty”, takes the form of a series of specific courses on racism for staff working in operational offices and teaching institutes. The issues in question are also kept constantly in view during the refresher programmes carried out in the workplace. More specifically:

- In 2001 the subject of “human rights and multiculturalism” was introduced;
- In 2002 an analysis of the European Union’s “Charter of Fundamental Rights” was included, with a particular focus on police activity.

150. The subjects covered in 2003 also included the question of an ethical code of conduct for police officers. To implement the guidelines and initiatives regarding the adaptation of police personnel’s skills to the cultural and operational needs of the service, the principal objectives have included the acquisition of new language skills and the improvement of existing ones.

151. Different approaches have been followed in this respect. Firstly, language training in French and German has continued for officers serving in officially bilingual regions. Additionally, all the basic training programmes, for example for career access and progression courses, now include English-language teaching at two levels, depending on the initial degree of proficiency, using assessment criteria recognized at the European level. The teaching of English is also envisaged as part of all courses that are long enough for this to be feasible or appropriate. At the local level, the *questure*, especially those in localities of the greatest interest in terms of cultural assets or tourism, have launched language courses in local “language labs” for personnel already possessing basic or advanced language skills.

152. For staff language training, the Department for Public Security uses the Milan-based Police Language Training Centre, which organizes residential courses. The Chinese and Arabic courses are particularly worthy of note. In the case of Arabic, three courses for beginners have been organized on an experimental basis starting from March 2001, with the aim of facilitating relations and communication with Arabic-speaking ethnic communities. An agreement has been drawn up with Bourghiba University in Tunis for this purpose. Overall, 45 police officers serving in 24 of the provinces most affected by migratory flows have been awarded a certificate for proficiency in Arabic.

153. As a result of the threat of international Islamic-inspired terrorism that has emerged since the tragic events of 11 September 2001, the objectives and language training processes have been remodulated, partly in relation to needs that have emerged in the context of informational and investigative activities. New training courses in the Arabic language and culture have therefore been drawn up, designed to provide progressive levels of proficiency in modern standard Arabic.

154. The current curriculum envisages about six months of intensive training at each level, with different schedules depending on whether they are intended for young students with limited experience of active service or for experienced officers with considerable expertise. Participants are selected on a voluntary basis on the basis of age, general education and aptitude for the study of the language in question.

155. Italian courses for police officers from other European countries are also held at the Language Training Centre. From 2 to 3 December 2002, for example, a short course was held for French police officers and, again in the framework of international cooperation, a number of officials from the Polizia di Stato have been sent on language courses in foreign police academies.

Carabinieri

156. In the light of the specific activities they are required to carry out, the Carabinieri have always devoted ample space to the study of human rights and humanitarian law in the teaching programmes followed in all their training institutes.

157. In carrying out their functions, Carabinieri officers are required to operate in close contact with citizens on a day-to-day basis and in certain cases to take decisions that affect them in both legal and personal terms. This means that they need to have a comprehensive knowledge of human rights issues. The focus on citizens is also evidenced by the recent introduction of the study of victimology in training institutes. This takes a new approach to crime, which is no longer considered solely from the point of view of the offender but also takes the needs of the victim into account.

158. In order to increase officers' knowledge of the issues under consideration, precise training and specialization pathways have been developed for all personnel. These also envisage interaction with universities.

159. The subject of human rights is also studied in greater depth in relation to the various peacekeeping missions in which the Carabinieri take part, independently or jointly with the other armed forces. In this respect the institute encourages the study of international humanitarian law, with the organization of special courses in cooperation with other bodies, and recognizes the courses organized by the Italian Red Cross (CRI) and attended privately by many members of the force.

General training activities

1. Scuola Ufficiali dei Carabinieri

160. The Institute for Professional and Judicial-Military Studies was set up on 1 September 2000 at the Scuola Ufficiali (officers' academy) and the subject of human rights is covered as part of the course in international military law. Teaching is designed to convey to participants a comprehensive knowledge of the provisions of international and Italian law as applicable in situations of armed conflict, so that they can recognize lawful and unlawful conduct with certainty at the practical level, and therefore be in a position to exercise their functions as military police and military judicial police.

161. The programmes also include the study of the Universal Declaration of Human Rights and of the principal conventions and agreements governing human rights, with a particular focus on the United Nations covenants, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

2. Scuola allievi Marescialli e Carabinieri effettivi

162. The study of human rights is also a key element in the training provided at the Scuola allievi marescialli e carabinieri effettivi (training institute for student warrant officers and carabinieri). This subject is taught by qualified lecturers, both civilians and officers, and covers the following programme:

- The development of human rights: historical aspects and cultural sources;
- Racism and fundamentalism as some of the principal threats to “life, security and liberty”;
- Legal, substantive and procedural perspectives: the European Court of Human Rights in Strasbourg and the International Criminal Court (ICC);
- EU legislation governing the international fight against terrorism with due respect for human rights (the functions of the Ministry of Foreign Affairs);
- The new world order: old and new emergencies. Conflicts and peace missions: safeguarding the dignity of the suffering.

3. Scuola allievi Carabinieri ausiliari

163. The training programme for carabinieri ausiliari (carabinieri auxiliaries doing their military service) has proved to be an excellent vehicle for conveying the fundamental principles underpinning the subject of human rights, with effects that will continue even after the end of the period of military service and benefits that will be felt at all levels of Italian society.

164. The subject is taught by qualified officers acting as “referents” for this subject and present in each school, following a similar but simplified version of the programme used for professional carabinieri.

Specific training activity

1. Istituto Superiore Stato Maggiore Interforze

165. At the Istituto Superiore Stato Maggiore Interforze (Staff Inter-Force Institute), which is attended by senior officers, an inter-force course has been introduced for “Legal Advisers to the Armed Forces in the Application of Humanitarian Law in Armed Conflicts”. The training programme lasts for two weeks and takes the form of a series of lessons and lectures given by university teachers and officers with expertise in this sector, on issues concerning Human Rights and Humanitarian Law. The course provides participants with the expertise to act as legal advisers to commanders in operations abroad.

2. Istituto Internazionale di Diritto Umanitario di Sanremo

166. A number of officers take part each year in a course on humanitarian law at the Istituto internazionale di diritto umanitario di Sanremo (Sanremo International Institute for Humanitarian Law). The subjects covered concern the application of humanitarian law or the law of war in terms of the organization and use of forces, including with reference to the engagement of personnel in missions abroad.

3. Ispettorato superiore del corpo militare della cri (Senior Inspectorate of the Italian Red Cross Military Corps)

167. The Italian Red Cross is legally responsible for the dissemination of the provisions of international humanitarian law within the Armed Forces and the government institutions and organizations concerned with this subject. In the case of the armed forces, this activity is carried out:

- At the central level, in the training institutes, through courses for armed forces personnel on the application of international humanitarian law in armed conflicts, pursuant to Law 762 of 11 December 1985;
- At the local level, in the main command headquarters, through short introductory seminars on international humanitarian law in armed conflicts.

4. Scuola superiore Sant’Anna di Pisa

168. The General Command of the Carabinieri has entered into an agreement with the Scuola Superiore Sant’Anna di Pisa with a view to reinforcing and increasing the effectiveness of mutual cooperation in the training of personnel assigned to international missions of various sorts (peacekeeping operations, peacebuilding, monitoring of human rights, humanitarian assistance, election monitoring).

169. The agreement, which lasts for two years and is renewable, also envisages the possibility for other members of the force to apply to take part through the usual channel open to all those potentially interested in attending (basic requirements: knowledge of English and specific experience on the subject of international missions).

5. *Personnel assigned to peacekeeping missions*

170. In addition to basic training on humanitarian law at the Training Institutes or attendance at one of the courses mentioned above, which provide specific qualifications for selection, all the military personnel selected for missions abroad attend a specific one-week training course which covers:

- Study of the mandate of the mission;
- Local situation and origins of the conflict;
- International humanitarian law.

171. The course, which is designed to illustrate the key elements of humanitarian law, is eminently practical in approach and aims to examine:

- The proceedings that need to be followed for the application of conventions that have been breached;
- The rules of conduct for national military forces engaged in international operations;
- The main publications on the subject, including the *Manuale di Diritto Umanitario*, published by the Defence Staff.

Information activity

172. The protection of human rights and respect for the individual is the subject of a number of publications published by the Institute. An entire chapter of the *Regolamento Generale dell'Arma*, which is the basic “rule book” for the Carabinieri, is dedicated to rules of conduct and in particular to the restraint that must be exercised in performing the service.

173. The provisions issued periodically by the General Command, whether specifically concerning this subject or more generally concerning “ethics and professionalism”, play an important part in keeping personnel up to date with developments in this sector. To complete the overall picture, the wide range of informational activity carried out through Carabinieri publications (*La Rassegna* and *Il Carabiniere*), which contain numerous articles on this subject, is also worthy of note. This activity also includes the distribution in the training institutes and local divisions of the following material:

- Universal Declaration of Human Rights;
- European Convention on Human Rights;

- The European System for the Protection of Human Rights in the Framework of Policing Activities.

Finance Police

174. The training activity carried out to date with regard to human rights takes the form of courses held in the Finance Corps Training Departments. In addition, as part of the professional, management and supervisory training activity carried out by the heads of subordinate commands, personnel are constantly alerted to the importance of absolute and unconditional respect for human rights and freedoms in the performance of their tasks and duties.

175. The General Command of the Finance Police has addressed recommendations drawn up by the Committee to the subordinate departments, referring to the need to respect the guidelines currently in force, which are designed to ensure respect for persons subject to measures restricting or depriving them of their personal freedom. This reminder underlined the need to:

- Indicate clearly to personnel that ill-treatment of detainees is not permissible and is subject to severe sanctions;
- Avoid recourse, at the moment of making an arrest, to an unjustified and/or disproportionate use of force.

176. The Finance Police Commands have all provided assurances that these provisions are being respected.

2. Training of medical personnel

177. Law No. 419 was promulgated on 30 November 1998: it concerns National Health System reorganization, and article 5 provides for prison health service reform. The transfer of competences to the Ministry of Health has a proper purpose: the assurance for applying the principle of equivalence about health cure in prisons and outside. Quality verification of health assistance in prisons will be assured at two levels: the local one, by Operative Units for quality verification of health assistance in Local Health Units; and regional, by the Health Penal Operative Unit, which is going to be instituted in all the regional inspectorates with competence for monitoring the absence of discrimination of detainees in the field of health assistance in respect of the population in general.

178. This approach has also been discussed recently at a political “table” that saw the participation of the Ministers of Justice and Health and representatives of the regional and local authorities. The aim of the discussions was to examine a number of important aspects of medical care in prisons (training of prison operators and local authority staff and volunteers; penal mediation guidelines for children and adults; review of the legislative instruments currently in force in this area and renewal of the protocol of understanding between the Ministry of Justice and the regional authorities).

179. About the declaration which affirms that penal medicine will not take part in the decision process concerning disciplinary punishment for detainees, in order to preserve the relation between doctor and patient, it must be pointed out that article 39 of penal regulation in force objects to this because it disposes that the doctor is a Disciplinary Council member (the body charged to impose the most important disciplinary sanctions).

180. The Government issued the most important measures aimed to bring about the Reform provided for by Legislative Decree No. 230/90, in particular:

- Decree of the President of the Republic of 20 April 2000 - “*Progetto obiettivo tutela della salute in ambito penitenziario*” (Target Project for the defence of penitentiary health), which establishes both the guidelines and priorities for penitentiary health system reorganization, the health objectives and services to implement and the draft of a new organizational model for penitentiary medicine; the Project/Objective was published on the *Official Bulletin* of 25 May 2000; it puts in evidence the priority fields of action: prevention, health assistance of general doctors, urgencies, psychiatric diseases, drug addiction, immigrant detainees’ problems, infectious diseases, children assistance, rehabilitation activities; the structural departmental model has been identified as the most suitable for obtaining determined purposes in terms of effectiveness, efficiency and economy;
- Ministerial Decree of 20 April 2000, which determines the following three regions - Tuscany, Latium and Puglia - where the managerial experimentation provided for the Legislative Decree above-mentioned is being carried out and who establishes the transfer of penitentiary health care to Regional Administrations.

181. In conformity with the above-cited laws and without the decree for the transfer of resources and personnel, the Ministry of Justice, in concert with the Ministry of Health, has divulged Circular No. 578455/14 of 21 January 2000, which provides only for the transfer of functions of prevention, diagnostic and therapies of dependence from the Prison Administration Department (DAP) to competent Local Health Units (in other words a functional transfer of personnel from the Drug Addiction Unit to Ser.T. (Local Services for Drug Addicts), while DAP has maintained its financial competences.

182. With Circular No. 3510/5960 DAP has already disposed for giving instructions in order to put in practise the transfer to the National Health Service since 1 January 2000 both of health functions exercised by the Penal Administration for detainees’ and drug-addict detainees’ prevention and assistance, and of the system of authorization and access to prisons for National Health Service personnel.

183. Circular No. 591263/14 of 14 July 2000 has explained to all “Provveditorati” (Penal Administration Regional Directions) that only the results of experiences from the three regions interested, which are going to finish on 20 July 2002, will provide for the transfer of other health functions. Furthermore the “Provveditorati” have been invited to report all the problems verified within the first six months of application of Law Decree No. 230/99, with specific reference to the assistance for drug-addict detainees and to prevention.

184. It must be said that many prison directors have been very dubious about the results in terms of effectiveness, efficiency and economy of Ser.T. In fact in many cases nothing has changed in Ser.T. activity closed in the middle course. In general, Local Health Units have not increased their personnel and they employ the personnel of the previous Drug Addiction Unit: doctors, psychologists and nurses.

185. The use of methadone is much criticized: in effect Ser.T. personnel are the only ones authorized to administer this substance, but it is not present in prisons daily, especially on holidays and in case of justified absence; so it can guarantee a therapeutic continuity only by the cooperation with Drug Addiction Unit doctors and the Health Assistance Integrative Service, which is not authorized in its way to use methadone except in urgencies.

186. All the regions interested in experimentation have chosen to carry out a preliminary study about critical aspects on transfer of medical competences of this Administration to the National Health Service.

187. One first check has been about the application of legislation in the field of detainees' exemption of health functions: this aspect does not present problems in its application. On the contrary, the verification about persons and means has been more complex: it is preliminary to the transfer of these resources from the Ministry of Justice to the regions.

188. Circular No. 3516/5966 of 16 March 2000 addressed to prisons' directors has expressly provided that indications for the application of Circular No. 3476/5926 of 2 June 1998 must be applied even when the doctor verifies personal injuries during the visit of the detainee or prisoner in prison. In order to eliminate all the mistakes in the "Registry of visits, observations and doctors' propositions - Model 99", which is an actual problem outlined by the Committee, despite certain cases and indications applied until now, DAP has pointed out again to the attention of prisons' directors that it is necessary to verify that doctors who work in the same structure respect precisely and without exceptions the dispositions to draft correctly "Model 99", described in Circular No. 3476/5926 of 2 June 1998.

189. This circular has reminded above all that each time that the doctor visits for the first time a detainee or a prisoner and verifies personal injuries, he must write on the registry not only the results of the visit but also his declarations about the violence and the perpetrators - real or supposed, and he must evaluate and write in the registry proper spaces the compatibility or incompatibility between these personal injuries and causes declared by the detainee or prisoner. In this case it must be specified that doctors have the same obligation when, during a later visit, they verify personal injuries on the detainee or prisoner.

190. In Bologna and Naples/Poggioreale prisons, directors have given precise dispositions about the correct use and redaction of the registry by doctors. In relation to legislation in force and after Circular No. 3476/5926 of 2 June 1998 and related Circular No. 3516/5966 mentioned above, each time a doctor verifies signs of violence on a detainee or prisoner, which may have been caused by ill-treatment, the prison administration informs the competent judicial authority.

191. Circular No. 3526/5976 of 11 July 2000 provides specific dispositions addressed to prisons' directors for health service. It provides that:

(a) During a visit of a detainee or prisoner by a doctor, with the exception of a different and motivated request from the same doctor or if there are no security reasons, there must be present only medical or paramedical personnel and, also in the case in which medical or paramedical personnel are present for the above-mentioned reasons, all the possible measures must be adopted in order to guarantee the essential confidentiality;

(b) All the necessary measures must be adopted too in order to maintain health and clinical dossiers concerning detainees or prisoners so that the access to documentation is absolutely forbidden to other persons except to those ones who must examine it for official reasons.

The cited principles are applied to all detainees and prisoners, including those ones under article 41 bis regime.

192. With special reference to prisons visited, the General Direction of Bologna prisons, as well as those of Spoleto and Naples/Poggioreale, have confirmed that they precisely respect the above-mentioned circular.

Spread of illnesses/disease

193. The problem of the spread of transmissible disease in the Italian penal system is under specific attention of the actual administration which mobilized many resources in this field in the 1980s. Some guidelines have already been published with the purpose of a permanent training and up-to-date information for the personnel and the detainees in order to control the spread of tuberculosis in prisons and a system monitoring the process, besides the other one created in 1990 for HIV.

194. Circular No. 3513/5963 of 20 January 2000 has divulged specific guidelines in order to control viral hepatitis, with the diffusion of brochures in different languages addressed to detainees, in which there are useful indications for preventing parental transmission diseases.

HIV/AIDS

195. The Penal Administration did not ever isolate in a discriminatory way HIV-infected detainees. With specific reference to Naples/Poggioreale prison, the administration has outlined some elements. HIV-infected detainees reside both in Rome and Florence divisions. Rome division is not separated from others: it is next to other divisions where HIV-infected detainees reside in cells on the same floor and next to cells where drug addicts, transsexuals and homosexuals reside. HIV-infected detainees are not "marginalized". They are well integrated and can communicate and are in connection with all the others, and take part in all the activities for rehabilitation and re-socialization organized in this division for some years now (study groups, catechism, magazine writing, painting ateliers, music courses, etc.). Psychological care is guaranteed from six psychologists who take turns during the week, and all the personnel

provide for them regularly. There is one doctor who attends the service every day in the Rome division, two doctors who attend the service for drug addicts, one doctor specialized in infectious diseases, two nurses who attend the service for drug addicts. Beside them there is Ser.T. personnel (doctors and psychologists), who are there three days a week and work for the prevention and assistance to drug-addict detainees and HIV-infected detainees, together with the other personnel. They work also as trainers and intermediaries for those detainees who choose to go to a rehabilitation community.

196. In the Spoleto prison there is no discrimination either, including for HIV-infected detainees in common life or in treatment activities like work, education and professional training.

Drug addiction

197. After prison health service reform, the administration of the drug-addiction phenomenon in prison, which has a wide dimension - so big that drug-addict detainees are 30 per cent of the total of the detained population - and the determination of strategies of action, fell under the competence of Ser.T., which are part of A.S.L. (local health enterprises).

198. The Penal Administration Department is responsible for assuring that detainees have the same guarantee of effectiveness and efficiency by the Ser.T. as the population outside prison.

199. In general, the penal administration has always reserved a special attention to the problem of drug-addict detainees and it has never put in practice a pharmaceutical treatment but it has always tried to apply a global and psychotherapeutic action by creating in 1991 the so-called "Positions for drug addiction", composed of doctors, psychologists and nurses who work in support of Ser.T., substituting them in prisons where they are absent.

200. At the same time, the penal administration has tried to give them a broad range of treatment opportunities by including them in the activities organized by detainees and projecting different initiatives specifically addressed to this category of persons. Furthermore, it has tried to give a specific kind of training for personnel in direct contact with drug-addict detainees, within limits.

201. With proper reference to Naples/Poggioreale prison, it must be specified that drug-addict detainees are not grouped in only one structural unit: in December 2001 they were 385,152 residing in Rome division and in other divisions (Avellino, Naples, Florence, Genoa, Livorno). Furthermore, the programme of action in their respect is not only pharmaceutical, but essentially psychological. In other words, there is one psychologist for each division, whose work is exclusively directed to drug-addict and alcoholic detainees. He supplements the psychologist for other detainees who have no problems connected with drug addiction or alcohol. There are, further, 62 volunteers who constantly support the structure, 32 for drug-addict detainees only, together with an institutional careful and constant work from educators and employees. The strong sensitivity and attention of penal police personnel must also be outlined after years in regard of drug addicts and HIV-infectious persons, playing an active and intermediary role with other workers in order to respond to their problems.

202. Many policemen, but also educators and employees, have attended courses organized by DAP in recent years, to better qualify themselves for their work in contact with this kind of detainees. Penal police personnel have attended a course in the field for training and qualification about this, from December 1999 to December 2000, organized in this structure. Many hours of this course have been devoted to communication with this kind of detainees. Concrete activities have been offered to drug-addict detainees (pottery courses, courses for earth and satellite aerial repair, artistic screen printing, gardening courses, courses of foreign languages, especially French and English, painting ateliers, magazine writing, library work, catechism courses).

203. With reference to Spoleto prison, it must be specified that there is a place for permanent observation, information and coordination for all general or individual problems concerning drug-addict or alcoholic detainees. The detained population is really informed, above all, about the chance to accept the voluntary test: in fact all detainees submit themselves to periodic health controls. Specific activities like basic computer courses, photo composition and screening and debate about movies are addressed to drug-addict detainees, together with their chance to take part in treatment activities with other detainees. Finally, one specific training in this field is addressed to penal police personnel and to all professional figures who have responsibility for drug addiction in this structure.

204. Furthermore, it must be outlined that the Presidency of the Council of Ministries has recently approved funding for some projects presented by DAP, which burdens the National Funds of action against drugs.

205. The first project provides for the organization of specific training courses addressed to drug-addict detainees, with the purpose of introducing them to handicrafts ateliers, or professional training courses to introduce them to rural activities. The second project provides for the organization of cultural, recreational and sports activities as well as the development of initiatives of information about problems in the world of work and labour regulation.

206. The third project provides for cultural intermediation in the field of cultural, recreational and sports activities, in cooperation with associations, voluntary entities and/or individual cultural mediators and for the development of initiatives of information about problems in the world of work and labour regulation.

207. The fourth project, whose title is "Double diagnostic and concealed diagnostic: Reception and assumption in prisons", focuses on psychiatric suffering and drug addiction in prison, especially the development of pathological situations among biological, personal and social components of each person. Concerning this aspect, the specific conditions in prison allow any eventual emergency and/or evolution of psychiatric problems to be monitored, while interrupting drug use during this period.

208. The hope is to collect data on the incidence of psychiatric problems among the detained drug-addict population, under the form of a possible concealed diagnostic, in other words, a mask for drugs use. In relation to data collected, some hypothesis of mindful and competent reception in prison of persons who have these problems are proposed on an experimental level and with the active participation of penal personnel, in the perspective of an integrated mandate for giving territorial service of health protection in all its aspects.

209. Therefore, the main strategy of action is the opening of new prisons connected with the increase of global capacity of this system, and the adoption of measures for diminishing detained population. Rossano and Milan/Bollate prisons opened in 2000. Perugia, Caltagirone and Reggio Calabria prisons are under construction and Ancona and S. Angelo prisons are finished and are going to open.

210. It is clear that the global increase is not enough to solve the overcrowding problem with the opening of prisons mentioned above. There will be an increase of places when all the restorations in progress, reducing the places for detainees, will have been completed (for example Naples and San Vittore).

211. The Public Security Administration has recalled dispositions divulged by its departments, in particular:

- The duty to verify that places used as security rooms in the main buildings respect the characteristics fixed by the Committee for the Prevention of Torture of Council of Europe;
- The ban on using security rooms which do not have the minimum characteristics mentioned above;
- The necessity that the detention in security rooms respects human beings fundamental exigencies.

3. Treatment of prisoners

The condition of prison facilities

212. The Government has calculated the overall capacity of Italian prisons - if the regulations and rehabilitation objectives, as well as the requirements for security and full control of the situation by prison officers (penitentiary police), are to be respected - at 41,602. However, it has indicated the higher figure of 60,000 as the necessary ceiling on prison capacity, a figure linked to ad hoc contingency requirements.

213. This distinction gives cause for concern, since in general terms the rights of prisoners and the respect for their dignity cannot be “squeezed”, and it is difficult to accept such a wide gap between regulation and necessary capacity. However, it should be borne in mind that the former figure was calculated on the basis of the minimum surface-area-per-person requirement for civil housing.

214. Be that as it may be, the number of prisoners as at 30 June 2002 was 56,271 (of which 22,135, or 39.3 per cent, in preventive detention). This was an increase of about 900 on the figure for 30 June 2001 (in subsequent months there was a slight fall, to 56,032 at 14 November 2002). In any event, we are now nearing the “necessary capacity” level.

215. We also need to take into account the fact that overcrowding is not distributed evenly; there are situations like that of Massa, where the ratio of regulation capacity to actual prison numbers is 82 to 237; the situation in Naples, Palermo and Reggio Calabria is also serious. The prison population suffers particular problems as a result of drug addiction (which affects 28 per cent of detainees) and the high numbers of persons suffering from hepatitis, immunodeficiency or psychological disturbances. There is also a high proportion of foreign nationals (30 per cent of the total), many of whom are Muslims, with all that that entails in terms of dietary and religious customs.

216. The strategy for action has recently gained considerably in momentum. This can be seen from the establishment in July 2003 of a public company, Dike Aedifica SpA, which has the task of implementing the Ministry of Justice's prison-building programmes, and a review of the ordinary prison-building programme adopted through the Ministerial Order of 2 October 2003. The objective of this review is to carry out works on existing structures under the terms of Law 259 of 14 November 2002, which envisages the activation of leases to acquire new prison structures and procedures for the disposal of old prisons that are no longer in use or are structurally inadequate. The revenue from these disposals will be used for the quantitative and qualitative improvement of the prison-building stock. The funding for the programmes is provided through Law 289 of 27 December 2002.

217. Further initiatives for the upgrading of prison buildings include: the renovation project for the "Nuove" prison in Turin, for which the tender will be published in January 2004, with completion due by the end of 2006 at an estimated cost of 30-35 million euros, 20 million of which provided by the Justice Ministry. Or trials involving "social housing" for former prisoners or persons on "semi-custody" programmes or in the charge of the social services; these trials are taking place in Como and Busto Arsizio and involve renovation work on housing in the neighbourhood of prisons run by Lombardy region, with funding of about 350,000 euros from the region.

Assurances against ill-treatment

218. According to article 104 of the Penal Procedure Code, the accused person in preventive detention has the right to talk with his defender about the beginning of the application of this measure to this person, arrested in flagrante or seized, and has the right to talk with his defender immediately after his arrest or seizure.

219. There are some specific and exceptional reasons for which the judicial authority can delay the exercise of these rights within five days, by a motivated decree. According to this regulation, DAP has often reminded prison administrations by special circular:

(a) That they must guarantee to persons seized, arrested in flagrante or under preventive detention, to talk with their defenders since these persons are in prison, except when the competent judicial authority has established a postponement further mentioned;

(b) That there are no limits for the number of talks for the accused person in condition of preventive detention with his defender;

(c) That the confidentiality of talks between the defender and his client will be guaranteed absolutely in progress.

220. The ban on audio monitoring of detainees' talks, established in general in article 18.2 of the Penal Regulation, has a peculiar relevance when it refers to talks with the defender. In this situation, we have a violation of the ban which relates to the right not only in the confidential aspect but also in that one of defence. It is clear that visual monitoring by guard personnel must always be guaranteed.

221. All the persons arrested or seized by police forces can talk privately with a lawyer. Among the competencies of the Judicial Police, in the moment immediately after the application of measures depriving someone of personal freedom, the person arrested or seized must be informed of his right to appoint a defender of his choice. This person must be informed, after his appointment, that the person has been arrested or is under custody. If the person does not choose one, the Public Ministry appoints a lawyer. This one has the right to talk immediately with his client, except when, during preliminary inquiries, specific and exceptional reasons are invoked for the judge to be able to delay their talk, on request of Public Ministry and by motivated decree, within a period of five days (article 104 of the Penal Procedure Code).

222. In carabinieri stations, there are no places exclusively for discussions between detainees and their lawyers, because of the short time of their detention in the security room (24 hours maximum) and the little available space. However, this necessity can be satisfied by using other spaces considered suitable by the stations' chiefs.

223. The penal regulation in force establishes that detainees or prisoners must submit to a medical visit by a doctor when they enter the prison and, in every case, the day after. However, detainees and prisoners can also ask to be visited at any moment by paying their own doctor.

224. The director gives the authorization, except for persons accused and awaiting judgement in the first instance: here, the judicial authority has competence for this authorization. Even if there is no specific article in the Penal Procedure Code concerning the right to access to a cell for a doctor, it must be noticed that the Italian Constitution provides specific articles which protect personal freedom (art. 13) and health as a fundamental individual right and collective interest (art. 32).

225. The principle that health is always something to protect derives from article 177 of the Italian Penal Procedure Code ("protection of the rights of the person who is imprisoned"), which establishes that procedures concerning measures which restrain personal freedom must protect the rights of the person concerned. Moreover, it must be considered that, according to the Italian jurisdictional system, the police officials are responsible not only at a disciplinary level, but also at a penal level for damages caused to an imprisoned or examined person who needs medical care which has been refused or delayed.

226. For that reason, police officials must assure the required medical assistance to the imprisoned person who needs it. Medical assistance is assured also when a person detained or arrested needs medical treatment or expressly calls for it.

227. During interrogation or arrest, the judicial police must inform the person of his rights, according to the legislation in force. The detained person is informed about what the law allows him: the imprisoned person can choose without delay a lawyer; the imprisoned person can inform his/her relatives about his/her interrogation or arrest; the imprisoned person can decide not to answer during his/her interrogation, and must be informed that, even though he/she does not answer, the procedure goes on.

228. Article 64 of the Italian Penal Procedure Code establishes that the person, even though detained, should be interrogated without any physical compulsion; it is also prohibited, even if the person enquired has given his/her consent, to use methods which can affect his/her capacity of judgement or his/her capacity of evaluation. The Public Prosecutor can be supported by the Judicial Police in interrogation (article 370 of the Italian Penal Procedure Code) and can exercise careful control of this delegated duty.

229. The person being questioned is investigated by the Judicial Police in the presence of his/her lawyer (article 350, subsection 1, of the Italian Penal Procedure Code) if he/she is not detained by a police official. Then, only in cases of in flagrante or immediately after, is it possible to obtain information useful to the prosecution of the enquiry; this information cannot be used at trial in the proceedings, as it has been acquired in absence of a lawyer.

230. The Judicial Police, when arresting or controlling a person, must inform him/her about his/her rights, according to the legislation in force. In the police stations where persons imprisoned or being questioned are temporarily detained, the times of entering and leaving must be recorded in a file, as well as the names of the police officers and personal effects that are consigned and gathered by the said person. Instructions to be followed by the police officers must be specified in a special register.

231. Article 62 of the new rules establishes that, even after imprisonment and whether coming from a condition of freedom or simply transferred, the prison's officers must ask the person if he/she wants to be informed about a specially appointed relative or person. The police officers must also prepare a report concerning this statement.

232. The information is immediately transmitted by the police administration, at the party's expense, unless he/she is a person without property. In this case, the expenses will be sustained by the administration. If the party concerned is a foreigner, his/her imprisonment will be communicated to his/her competent diplomatic authorities according to international law.

233. There is no possibility of appealing against this measure, as the present legislation does not provide for such notification. This measure, moreover, is one of the measures that does not restrict personal freedom, against which, according to article 568, subsection 2, of the Italian Penal Procedure Code, it is possible to appeal to the Supreme Court (Corte di Cassazione).

234. The Judicial Police must, among other things, inform the family of the person imprisoned or being investigated without any delay, after taking the restrictive measures (article 387 of the Italian Penal Procedure Code) and only with the consent of the person involved. According to article 386 of the Italian Penal Code, the judicial authority is informed by the competent police officials about the arrest or the investigation it is carrying out.

235. Italian law containing the “Rules concerning immigration and the status of foreigners” provides for those foreigners who, waiting to be expelled, have to be housed according to principles of human dignity in special temporary assistance centres for a period of 20-30 days maximum.

236. The law also establishes that the Border Police Centres are able to expel foreigners who cannot enter Italian territory. Only when the person concerned is aggressive or violent is he/she submitted to severe controls, such as to be escorted to the airport, which is carried out in conditions of total security in order to avoid any trouble and to protect the safety of others.

Torture and other forms of inhuman and degrading treatment

237. Penitentiary personnel, having undergone vocational training, know perfectly that inhuman or degrading physical treatment or insults are not allowed in prison and that they can be prosecuted at penal and disciplinary level.

238. Besides, a document of the Ministry of Justice, dated 29 August 2000, confirms that any inhuman or degrading treatment must be avoided and that all penitentiary personnel must immediately and totally cooperate with investigations concerning inhuman or degrading treatment. On this subject, it is important to underline that the Ministry of Justice has always firmly pursued personnel responsible for inhuman or degrading treatment toward prisoners, considering that such behaviour, very rare in the Italian penitentiary system, is unacceptable.

Prison of Bologna

239. The increasingly significant presence of foreign prisoners in Italian prisons has raised new problems when dealing with new situations. Specifically, new rules and ways of living in common spaces must be conceived, in order to avoid conflicts and give to foreigners an equal possibility of enjoying equal rights.

240. At present, the penitentiary administration is involved in promoting language courses and training, opening specific information offices and stipulating specific agreements with NGOs specialized in this field. Moreover, the prison of Bologna, through a project financed by Emilia-Romagna Regional Government, benefits from a large number of cultural intermediaries, which deal with foreign prisoners.

241. The prison of Bologna has carried out many activities, such as:

- (a) Training for learning the Italian language;
- (b) Courses organized for 33 foreign prisoners concerning moral philosophy and comparative knowledge of Eastern and Western culture;
- (c) Musical workshops composed of 10 foreign prisoners.

242. No case of insult or violence towards foreign prisoners has been committed by penitentiary personnel in the said prison.

Prison of Naples (Poggioreale)

243. It must be pointed out that the prisoners' habit of walking in double file with hands behind their back does not depend on any police instruction, but is an old prisoners' attitude which is difficult to eliminate. On the contrary, the atmosphere is quiet and for a long time no cases of intolerance between penitentiary personnel and prisoners have been cited.

Prisoners under article 41 bis of the Italian Penitentiary Law

244. The presence in Italy of a dangerous element of organized crime, whose increasing importance constitutes a danger not only for Italian but also for European legal and security conditions, shows that it is necessary to establish a special penitentiary system, such as the one contained in article 41 bis of the Italian Penitentiary Law. This should have a structural character and should be in force until jurisdictional controls demonstrate that the danger has decreased. These considerations are derived from several years of experience and application of article 41 bis, which brought the Italian legislators to formulate Law No. 279 of 23 December 2002. This meant, on the one hand a more severe restriction of the most dangerous prisoners, and on the other, establishing minimum conditions of constitutional legitimacy.

245. At present there are 12 prisons which have "41 bis" sections: Cuneo, L'Aquila, Marino del Tronto (Ascoli Piceno), Novara, Parma, Rome Rebibbia (for women), Rome Rebibbia (for men), Secondigliano (Naples), Spoleto, Terni, Tolmezzo (Udine) and Viterbo. In the Pisa prison, in the Therapeutic Diagnostic Centre, a five-cell section has been set up to accommodate sick detainees assigned to a "hard prison".

246. Hard prison means that the prisoner may receive only one visit or, alternatively, one telephone call per month from family members. The visit takes place across a glass partition and, usually, with the use of a phone. Visits from third parties are prohibited as well as the receipt of outside sums of money in excess of a specific amount, which is established each year by the prison administration, as is the sending of money abroad, except for the payment of expenses in connection with the prisoner's legal defence.

247. In order to attend proceedings against them, prisoners under article 41 bis can use, as an exceptional and temporary measure, "participation at a distance", as introduced by Law No. 11 of 7 January 1998 and extended up to 31 December 2003. The trial at a distance has constituted a further step towards the creation of an autonomous and specific discipline for trials of certain offences, and has been also motivated by the need to avoid the tiring and costly judiciary movement of magistrates in order to interrogate the so-called "collaborators" with justice, without exposing them to the danger of direct or indirect vendettas by their criminal associations of "origin".

Establishment of a guarantor for the rights of persons deprived of their personal freedom (Rome City Council, Florence City Council, Lazio region)

248. The recent establishment of a guarantor by the city councils of Rome and Florence and by Lazio region has made it possible to reinforce the instruments for the protection of the rights of persons deprived of their personal freedom (resolutions 90 of 14 May 2003

and 666 of 9 October 2003; regional law 31 of 6 October 2003). These initiatives, by councils and regions with relatively large prison populations, are of particular value in that they confirm the strong, positive focus on this subject by the local authorities, who are entrusted through Presidential Decree 616/1977 and Law 328/2000 with the planning and management of policies for the support and social rehabilitation of former prisoners and their families.

249. Since “persons fully or partly deprived of their personal freedom are undoubtedly, by reason of their objective condition, vulnerable and excluded from the full exercise of [the above] rights and from the opportunities for human and social advancement that the city council provides on an institutional basis to all those, citizens and otherwise, who are resident or merely domiciled in the municipality, including through various forms of participation in the life of the city and the delivery of services”, and since “coordination with the State, which is responsible for administrative functions concerning the security police and the enforcement of sentence is just one of the local authority’s institutional duties, in implementation of the constitutional principle of subsidiarity, is also essential for the best possible protection of public interests” to establish the figure of Guarantor of the rights of persons deprived of their personal freedom in the above-mentioned municipalities.

250. The Guarantor is appointed through an order by the mayor from among “persons of undisputed prestige and renown in the field of the law, human rights, or social initiatives in prisons and the social services”. The Guarantor has a five-year mandate which is renewable no more than once. The Guarantor’s principal tasks are the following:

“(a) To promote, with concurrent functions of observation and indirect supervision, the exercise of rights and opportunities for participation in civil life and the use of the municipal services by persons deprived for any reason of their personal freedom or restricted in their freedom of movement, who are domiciled, resident or living in the territory of the City Council [of Rome] [of Florence], with particular reference to the fundamental rights, to employment, training, culture, assistance, health care and sport, for all those aspects that fall within the scope and remit of the Council itself, and taking into account their restricted condition;

(b) To promote actions and public awareness initiatives concerning the human rights of persons deprived of their personal freedom and the ‘humanization’ of prison sentences;

(c) To promote joint or coordinated initiatives with other public actors and in particular with the city’s Civic Defender, who are competent in the sector for the tasks set forth at (a);

(d) With respect to any reports submitted, even informally, to the Guarantor regarding violations of the rights, guarantees and prerogatives of persons deprived of their personal freedom, to apply to the competent authorities for further information; report the lack of or inadequate respect of these rights and keep the authorities in question constantly informed of conditions in detention centres, with particular attention to the exercise of rights that are recognized but not adequately protected and respect for guarantees the application of which is in practical terms suspended, disputed or delayed;

(e) To promote protocols of understanding with the departments in question that might be useful in carrying out his functions, including through visits to prisons and other detention centres.”

251. The Guarantor also works in direct contact with all the bodies of the City Council (for the Guarantor for Rome City Council, the relevant bodies are the Committee for penitentiary issues, the Prisoners' Office and the prisons coordination table of the city's Social Regulatory Plan, with which he should meet on a monthly basis) and reports on his activities and calls for initiatives and actions to be undertaken. The Guarantor for the City of Rome also reports to the Committee for penitentiary issues and to prisoners' main representative associations. During the adoption stage of Rome City Council's budget for 2003-2005, an amendment was approved making available a special fund for the work of the Guarantor, under the Programme of Department 14 (Local Development, Training and Employment Policies). In this context, the department was charged with supporting the work of the Guarantor in the following ways:

- By helping him “to advance, with concurrent functions of observation and indirect supervision, the exercise of the rights and opportunities for participation in civil life and the use of the municipal services by persons deprived for any reason of their personal freedom or restricted in their freedom of movement”, who are domiciled, resident or living in the territory of the City Council of Rome, with particular reference to the fundamental rights, to employment, training, culture, assistance, health care and sport;
- By helping him to promote actions and public awareness-raising initiatives on the subject of the human rights of persons deprived of their personal freedom and the “humanization” of prison sentences and assisting him in taking the appropriate action with respect to any reports submitted, including informally, to the Guarantor regarding violations of the rights, guarantees and prerogatives of persons deprived of their personal freedom. In such cases, the Guarantor applies to the competent authorities for further information; reports the lack of or inadequate respect of these rights and keeps the authorities in question constantly informed of the conditions in the detention centres, with particular attention to the exercise of rights that are recognized but not adequately protected and respect for guarantees the application of which is in practical terms suspended, disputed or delayed.

252. By the Mayor's Order of 13 October 2003, Prof. Luigi Manconi was appointed Guarantor for the rights of persons deprived of their personal freedom for the City of Rome.

253. As regards Lazio region, regional law No. 31 of 6 October 2003 envisages first and foremost the composition of the Office of the Guarantor, which operates within the Regional Council: it is made up of a president and two members elected by the Regional Council by an absolute majority, who remain in office for five years and may be re-elected no more than once. The Office performs its functions in compliance with specific regulations, which it adopts, and presents an annual report on its work. Its principal functions include:

- Taking “any initiative involved in the delivery of services regarding the right to health, to the improvement of the quality of life, education and occupational training, and any other service addressing social rehabilitation or recovery and insertion in the world of work” of persons deprived of their personal freedom;
- The reporting to the competent regional bodies of any “factors of risk or damage to persons [deprived of their personal freedom], of which the Office is informed by the individuals concerned or by associations and NGOs operating in this field”;
- Action with the regional administrative structures concerned in the event of omissions or failings being found regarding the services that these structures are required to provide for persons deprived of their personal freedom;
- Specifically inviting the Council’s special commission for security and social integration and the fight against crime “to carry out a visit in accordance with article 67.1 (d) of Law 354 of 26 July 1975 (Provisions on the prison system and the enforcement of measures removing or restricting personal freedom) and subsequent amendments, in cases where [the Office] receives information on or considers that there has been a violation of the rights of persons subjected to measures restricting their personal freedom in penitentiary institutions”;
- Proposing to all regional bodies that they undertake legislative and administrative action, as well as information and cultural promotion initiatives on the issues of the rights and guarantees for persons deprived of their personal freedom.

254. To carry out the functions described above, the Office of the Guarantor for Lazio region has a funding allocation of 200,000 euros for each of the following years: 2003, 2004 and 2005. Regardless of the effectiveness and results of these local initiatives, there can be no doubting the emphasis placed on the creation of instruments for the protection of prisoners’ rights.

255. In this respect a study, promoted by the prison administrations, is already under way regarding the timeliness of setting up a guarantor at the national level. This study led to the presentation, in June 2001, of a bill for the creation of a national Civic Defender for persons deprived of their personal freedom, which is still being considered by the Constitutional Affairs Committee of the Chamber of Deputies.

256. In the bill, the Civic Defender is configured as a collective body made up of five members appointed by the Presidents of the Chamber and Senate and remaining in office for a four-year, non-renewable period (art. 2). The bill also proposes that it should operate in direct relation with the corresponding local guarantors for the protection of prisoners’ rights (art. 3) and that, taking as given access “even without notice to all penitentiary institutions, judicial psychiatric hospitals, correctional institutions for juveniles, temporary stay and assistance centres for aliens, Carabinieri and Finance Corps facilities, and police stations with detention facilities”, its principal functions should include:

- The unrestricted inspection of places of detention;

- Consultation, subject to the consent of the interested party, of his personal file or medical record without prior authorization by the judicial authority (even when the person concerned is awaiting trial);
- Requesting all useful information from the prison administration and, where this request is not met, access to all offices of the same administrative structure and the right to see and photocopy useful documents without any possibility of confidentiality being raised in opposition, and the subsequent convening of the director of any prison in which the right of a detainee has been violated (art. 4).

257. In the event of the Defender having ascertained a violation of this nature, its task would be to invite the official or competent body of the administration concerned to “(a) take the appropriate action as indicated by the Civic Defender; (b) notify his dissent, with reasons”. Moreover, “in the event of persistent failure to comply, the Civic Defender shall issue a public declaration of censure that may also be publicized through the media ... In more serious cases the Civic Defender may ask the competent authority to initiate a disciplinary proceeding. The outcome of the disciplinary proceeding must be reported to the Civic Defender” (art. 7).

258. The Civic Defender would be required to present an annual report on its work to Parliament (art. 8). The report would also be sent to all the government departments involved, to the Committee against Torture and to the Council of Europe’s Committee for the Prevention of Torture.

259. The road to the establishment of the prisoners’ Civic Defender was marked by important steps: the Constitutional Affairs Commission of the Chamber of Deputies adopted the basic text, at the end of January 2004.

260. The said Civic Defender or, “warrant of prisoners’ rights”, is an independent authority to whom prisoners can apply without restrictive formal obligations. According to the basic text, the authority should be composed of a board of four members (two elected by the Chamber of Deputies and two elected by the Senate; the said members should vote at an absolute majority and with restricted vote). The authority is also composed of a president, elected in accordance with the President of the Chamber of Deputies and the President of the Senate.

261. Its members should not have been convicted of criminal charges and should also have the following qualifications:

- (a) Long experience (at least 20 years) in the field of prisoners’ human rights;
- (b) Specific cultural training in the jurisdictional and human rights field.

262. For four years, the Civic Defender should oversee with the supervisory judge that prisoners’ custody is carried out according to the laws and principles established by Italian Constitution and to human rights laws and international covenants ratified by the Italian Government.

263. In the implementation of his task, the Civic Defender will be able to ask the competent administrations for all the information and documents considered necessary to his work. Should he not obtain within 30 days any answer, he will be able to obtain from the supervisory judge court an order to produce the required documents. He will also be able to visit without any authorization or forewarning the penal institutions, psychiatric hospitals and minor penal institutions, entering without any restriction in any part or talking to any person he would consider necessary.

264. On the contrary, with regard to the temporary residence centres and to police stations, the Civic Defender's visiting power, even without authorization, needs adequate notification. The warrant of prisoners' rights must produce a report to the competent jurisdictional authority when he is informed about facts that could be considered criminal offences and produce an annual report to the Italian Parliament about the work carried out.

265. The report should then be transmitted to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to the United Nations Committee against Torture, and transmitted to the President of the Italian Council of Ministers, to the Health Ministry, to the Ministry of Justice and to the Labour Ministry.

266. Moreover, the text has also provided for training programmes about the warrant of prisoners' rights in all the police schools.

The institutions' educational areas

267. About 10 years after Circular 3337/5787 of 7 February 1992, which set up a number of "areas" in prisons, including the education or treatment area, the need has now been felt to draw up a balance sheet of the existing facilities and to move on to an overall redefinition of their organization and operation.

268. Circular 3554/6004 in May 2001 gave an initial impetus to the reactivation or establishment of education areas, starting from the observation that in some prisons these areas had not yet been set up at all and/or were not operating according to criteria of efficacy and efficiency. Where the areas did exist, their activity was developing along lines that only rarely were governed by an overall planning perspective and were more often based on improvised initiatives and the personal professionalism of individual educators.

269. It should also be noted that the education areas have undergone a process of constant and progressive bureaucratization, with the codification of procedures and activities that sometimes have more to do with "ritual" than with any overall design. In practical terms, these severely undermine the emphasis on the key principle of the individualization of observation and treatment, by seeking to follow the letter rather than the spirit of the regulations.

270. The recent monitoring exercise conducted with the cooperation of the superintendencies reveals a range of highly diverse situations. Apart from some situations that can be considered as centres of excellence and others showing particularly serious shortcomings, educational areas in prisons are experiencing a general state of difficulty, from both the organizational and technical-professional points of view. There are many reasons for this state of affairs, all of them significant.

271. Firstly, it must be remembered that over the last decade radical changes have taken place in prisons, at a pace that has often not enabled the organizational systems to keep pace with the new requirements. The type of prisoner has changed and their numbers have increased to about 56,000. As we know, the percentage of prisoners from the most disadvantaged sections of the population has increased (the “new poor”), as has that of foreigners (about 30 per cent of the total), drug addicts, persons with psychological problems, and members of criminal organizations detained in special facilities (“41 bis”, A.S., police informants and “Z” unit detainees). These changes have gone hand in hand with a reduction in and/or lack of increase in the numbers of educators (563 at 31 December 2002) with respect to the level set forth in the Prime Minister’s Decree of October 2000 (which indicated 1,376 educators in operational area C, thus giving a shortfall of 813). And if we compare the number of educators actually present in the institutions today (474) with the 55,682 prisoners present at 10 September 2003, it seems clear that their numbers are altogether inadequate (annex 1).

272. The Prison Administration Department of the Ministry of Justice is well aware of the need to increase staff numbers in the educational area and - in spite of the fact that Law 289 of 27 December 2002, the Finance Law, does not allow government departments to recruit new staff - a medium-term solution has been found in the requalification procedures envisaged by article 15 (a) of the national employment contracts, which should make it possible to cover 300 C1 educator positions.

273. Any definition of the “education area” should mention in extremely positive terms the increase in the numbers of local authority operators and private actors present in prisons, and of institutions and public and private associations that are playing a part in re-educational activity in accordance with article 17 of the prisons code and article 68 of the implementation regulations, which reiterate the importance of the participation of the outside community in re-educational activities on the basis of the periodic programming of initiatives. As of 31 December 2002, 320 social solidarity associations and cooperatives were working in prisons.

274. The numbers of voluntary assistants pursuant to article 78 of the prisons code and article 120 of the implementation regulations are also becoming increasingly important. These operate in categories of activity specified in individual authorizations (in 2003, 1,459 volunteers were authorized, of whom 1,394 for access to prisons). Many of these belong to voluntary associations with which appropriate agreements have been drawn up.

275. The presence of the world of voluntary associations and public and private firms, as envisaged by article 47 of the implementation regulations, has further increased the number of actors who - in different capacities - cooperate with the administration for the positive outcome of treatment (for example, 41 firms and 69 cooperatives recruited “Law Smuraglia” detainees between 1 July 2000 and December 2002).

276. The very real difficulties experienced by the prisons, on the one hand, and the external resources cooperating with them on the other, are the two reference points which need to be taken realistically into consideration in the project for the relaunch of penitentiary treatment. This is particularly true if we bear in mind that, if prisons are to operate in full line with the

provisions of the law, the tasks involved in both treatment and security need to be carried out correctly. Both of these, after all, are key tasks for prisons and cannot for any reason be split; if the institution's objectives are to be achieved they should, rather, coexist in an integrated fashion. The areas, including education, are being revitalized by recovering operational potential, in line with the provisions of the penitentiary code, as confirmed by the new implementation regulations.

277. In this respect, a number of other considerations need to be made. Firstly, it should be explained that, in most cases, the many activities involved in the operational dimension of the educational area of the institutions are being narrowed down to just one, in the form of a formal meeting of the group (team) chaired by the director of the institution and made up of personnel from the administration and, as required, other professionals in accordance with article 80 (article 28 of the implementation regulations). Under the terms of article 29, the team compiles the "summary report" and draws up proposals for in-house or external educational provision.

278. In other words, we are tending to speak more and more of teams rather than "areas" and of one of the activities covered by the area, i.e. of the part for the whole. Now, if the institutional objective of the administration is the re-education of each individual prisoner, with a view to their social reintegration, we can only acknowledge the complexity of the institutional actions that need to be put in place before, during and after the observation and definition of an individualized treatment plan, actions that are not generally given a high degree of visibility. Another consideration is that the so-called "treatment activities" that take place within the institutions (employment, education, cultural, recreational and sports activities) are often not inserted in a systematic treatment programme, but rather tend to be disconnected and improvised and related more than anything else to the possibility of investment by individual institutional operators.

279. Moreover, these activities are in most cases taken forward with the help of the voluntary sector, or more generally of the external community. However, this help is often accepted without prior checks as to whether these project investments are really compatible and coordinated with other initiatives, and without fully integrating them with the activities of the institutional operators in accordance with articles 68 and 120 of the implementation regulations. In the absence of prior checks and effective coordination, any evaluation of the results of third parties' collaboration in the treatment, and of the results that have been or could be achieved by individual prisoners, remains even less probable or practicable.

280. In many cases, in the absence of an educational project specific to the institution in question, a sort of parallelism has been created between the activities carried out by the external community and the institutional activities of the educational area. In practical terms, this has often done no more than to make up the shortfall in staff and resources of these areas, rather than create a constructive synergy.

281. In this respect, a recent example of the promotion of treatment activities by civil society has been the formalization of the contribution of the voluntary sector, with the signing of a protocol of understanding between the Department of Prison Administration at the Ministry of Justice and the National Conference of the Voluntary Sector in the Justice Sphere in July 2003. The agreement is intended to foster the realization of local projects for the social integration of prisoners judged to be suitable for "alternative measures".

282. Essentially, the proposal is for “the planning and realization by the Regional Superintendencies, the Prison Administration and the Regional Conference of the Voluntary Sector, of joint training and refresher courses for operators of the Prison Administration, the local authorities, and voluntary associations; specific initiatives, sometimes at the national level, designed to capitalize on the existing experience in this sector and develop methodologies and models for the organization of the treatment of convicted offenders in the external penal area”. An initial project implementing the protocol was carried out in Bologna in December 2003.

283. A final consideration on this subject concerns the meaning of treatment, in the conviction that where attention is less focused on the principle of the individualization of re-educational activities, in many cases the emphasis is placed solely on a series of treatment activities addressed to the prison population as a whole, activities that often take on the sense of “entertainment”.

284. The difference between entertainment activities and individualized treatment is that the former - which are of undeniable value and relevance in the difficult task of managing the complex world of prisons - serve essentially to fill up periods of time that would otherwise be empty, to lessen tensions, to occupy “unoccupied” time and to provide spaces for socialization, and presumably therefore also have positive implications for individual prisoners.

285. Treatment, which was the cornerstone of the prison reform of 1975 and whose aim is the re-education and social reintegration of the offender, presumes on the other hand the design - subject to observation - of individualized pathways, the precondition of which must necessarily be the informed and responsible participation of the prisoner.

286. The re-education objective must include each individual prisoner acquiring a willingness to change, as well as a critical awareness of his previous unlawful conduct and of the consequences of his offence, including the damage to the victim.

287. To speak of a revitalization of the treatment dimension therefore means - in keeping with the law - restoring to each individual prisoner a subjective identity within the prison and, more generally, in the context of the enforcement of the sentence. This is done by “offering them treatment resources/actions” (article 1 of the implementation regulations) with respect to which they have and/or can find - by virtue of the skilled work of the prison operators and more specifically of operators in the educational area - a capacity for participation and consensus and a willingness to sign up to a “treatment pact” which should not be implicit, but rather informed and declared. Prisoners should be willing to espouse once more a necessary solidarity with socially acceptable values and reconstruct the pact of citizenship that was broken by committing the offence.

288. At the end of these preliminary considerations, which can be viewed as an as yet incomplete balance sheet of the educational areas to date, we feel it might be useful to redefine the structuring, organization and operation of the areas themselves. This may also serve to provide some initial methodological pointers, in the knowledge that many of these indications are already contained in the 1992 and 2001 circulars and that all that is really required is to implement the regulations in question.

289. More specifically, in setting out the guidelines, we feel we should refer - in a new planning perspective - to the following three levels:

- The planning level (institution management);
- The organizational and operational coordination level (management/educational and education area levels, respectively);
- The operational level for individualized treatment (Educator - Observation and Treatment Group (OTG) - team).

The planning level

290. The first level to implement is undoubtedly that of the planning of actions and activities, a task that falls within the remit of the prison directors who, as set forth in article 3 of the implementation regulations, exercise “powers regarding the organization, coordination and monitoring/control of the activities of the institution ..., decide on suitable initiatives to ensure that the institution’s programmes, as well as external initiatives, are carried out; issue instructions for prison operators, including those not belonging to the administration”, and ensure - using the prison personnel - the security of the institution, a necessary condition if the aims of the treatment are to be achieved.

291. With respect to the above, the directors draw up an annual “educational plan” for the institution, indicating the treatment activities to be developed within it and the programmes and projects to be taken forward with the external community, for which they act in a coordinated and integrated fashion with the director of the competent social service centre in accordance with article 4.2 of the implementation regulations.

292. The education project must include an indication of the resources of the institution (human and material) and of the public or private institutions and, more generally, of the external community that is collaborating in the pursuit of the set objectives. The national and regional laws and regulations that can be referred to in the planning of the project should also be seen as resources, with a particular focus on the inclusion and development of initiatives on behalf of prison “users”, in the context of the zone plans referred to in Law 328 of 8 November 2000.

293. The project should also indicate the initiatives, activities and projects that are to be consolidated or developed for the year in question in relation to each element of treatment, and in particular:

(a) Employment and the organization of the same and the activity of the employment commissions referred to in article 20.8 of the prisons code. The “tables of workers” should be updated on an annual basis for approval by the superintendency, as envisaged by article 47.10 of the implementation regulations. The current status and prospects for extension of the agreements with public and private firms or with the cooperatives running employment projects, which recruit prisoners within the institution or under the terms of article 21, and the initiatives to be put in place to alert the world of work to prison problems, whether in terms of generating greater

investment by firms and cooperatives in the institutions or with a view to increasing orders by public or private firms, will also be indicated. Mention should also be made of any forms of cooperation that have been introduced with the competent authorities to make it possible to assign prisoners to outside work, as envisaged by article 48.8 of the implementation regulations;

(b) Teaching courses, whether these refer to compulsory schooling - in which case, to the annual or multiannual education project drawn up by the education commissions in accordance with article 41.6 of the implementation regulations - or to the senior secondary courses referred to at article 43 of the regulations, or to occupational training courses, taking due care to promote operational models that create a network linking the various institutional and other actors with competency in this area. Due attention should also be taken to implement or consolidate agreements with the competent authorities to enable prisoners to engage in university studies;

(c) Cultural, recreational and sports activities planned by the Commission, as referred to at article 27 of the prisons code, with reference to the internal resources of the institution and with the cooperation of the external community, whether the events in question be occasions for the entertainment of the prison population as a whole, or specific initiatives in which the prisoner may take part in the context of his individualized treatment plan. A new emphasis should be placed on the function of the library, and on those initiatives and projects that encourage or facilitate - individually or in groups - the experience by prisoners of spaces for socialization, and the critical elaboration of their deviant life experience. Theatrical, musical and similar activities, which are already important aspects of prison life, are of particular importance as an objective goal of the re-education process;

(d) Prisoners' relations with their families, the fostering or recovery of which takes on a vital value with respect to re-education and social reintegration goals, and as such are always firmly in operators' minds as part of the observation and treatment of individual prisoners. To develop a new approach to projects concerning this area, the competent social service centre obviously has a vital part to play. In particular, its role includes drawing up projects designed to help the prisoner (or groups of prisoners) in the recovery of their role as parents as a key element of the project of change, through a critical reflection on the effects of their offence in the family sphere.

294. In addition to descriptive and organizational aspects, the educational project should also contain methodological pointers, a definition of the timescale envisaged to achieve the set objectives, and a breakdown of the funding needed under the various balance-sheet items. The timescale and arrangements for the evaluation of the results of the project should also be set out. The outline education project should be drawn up, under the supervision of the head of the educational area, by the end of November, and then submitted to the director who, subject to agreements - depending of course on competency - with the director of the Social Service Centres for Adults (CSSA). The director should convene a special service meeting before the end of December to illustrate the project to all area heads in the institution and to the director of the centre, or someone delegated by him, in order to ensure that it is feasible in terms of the remits of the other areas. This joint approach is an essential condition for the success of the educational project itself.

295. The final version of the educational project should be sent to the regional superintendent. The project should also be brought to the knowledge of all those actors who - as envisaged by law - work with the institution and whose initiatives and proposals should therefore be evaluated, in order to obtain the necessary authorizations. This is done in accordance with criteria of suitability and complementarity with a view to the effective integration of the various activities of the project itself.

296. The head of the educational area is responsible for the realization of the projects, and therefore carries out activities of organization, coordination and monitoring of the results. He reports regularly to the management officer on the progress of the project and on any problems or changes that may be needed to the "work in progress" and on the need for intermediate checks with the other areas, and draws up a final evaluation report.

297. The superintendents take delivery of the education projects of the institutions within their area of responsibility and send them to the Directorate General for Prisoners and Treatment, with their evaluations, no later than January of each year.

The organization and operational coordination of the education area

298. The institution's education project is, therefore, the instrument through which the significance of each envisaged activity and project is defined with reference to the elements of the treatment. It also defines which actors, institutional and otherwise, are to be involved in achieving the objectives, the levels of agreement, coordination and operational integration that should be established between firms, cooperatives, associations, local authorities and prison operators belonging to the area. It defines which resources and opportunities for treatment are practicable in the individual institution with reference to the prison population as a whole and to each individual prisoner in the individualized pathway that is to be drawn up.

299. There are therefore two dimensions of operational engagement for each education area: the development of treatment activities and projects and of coordination with the resources of the external community; and observation and individualized treatment.

300. The project as a whole and the organization, management and professional supervision of both dimensions are the responsibility of the head of the area, who acts in full operational and decision-making autonomy, coordinating all the prison operators assigned to the area and all the external actors working with the institution for the treatment of prisoners.

Area personnel

301. The area head is a C3 educator whose job specification, as envisaged by the national employment contracts, includes: in-depth knowledge; consolidated experience and expertise; and management and control of staff units with the direct assumption of responsibility, including for results; and external relations (see sections of national contracts referring to areas). These characteristics are reiterated by article 24 of the Supplementary Ministry contract which, for the job profile of educator, a C3 grade, states that these employees "take on responsibility for the management of the service and cooperate directly with the director of the institution in drawing up and implementing treatment guidelines and objectives in the context of sentence enforcement".

302. Under the terms of the contract, the area head manages and coordinates sectors and structures at a non-management level, takes on management functions in the absence of the incumbent officer, and assumes the operational and decision-making autonomy that this implies.

303. In the eventuality of there being more than one C3 educator in an institution, it will be necessary to choose between them, using criteria that are utterly transparent.

304. There can be no question of officers taking turns in this position, a possibility envisaged by the circular of 1992, because whenever it has been implemented this has only led to a fragmentation of actions and lack of continuity in the work of the area.

305. It should be noted that one of the key selection criteria should be length of service at grade C3 level, rather than length of service in general in the functional area of educator. Qualities such as the professional credibility that the C3 enjoys with the staff of the area and the authoritativeness he is seen to possess, elements that are indispensable to the operation of the organizational unit, should also be taken into consideration.

306. In the event of there being a high number of C3 educators in the same area, each should be given the same opportunities to carry out appropriate functions. In such cases it will be the responsibility of the area head to entrust to his C3 colleagues, in addition to the observation and treatment of prisoners, a working sector (such as scholastic and occupational courses, or cultural, recreational and sports activities), a project team, or any other appropriate duty for which they will then have the power/duty to follow directly and take responsibility.

307. If, on the other hand, there is not even one C3, then the position of area head will be covered by a C2 educator selected in accordance with similar criteria to those described above. Regarding educators, it is of the utmost importance that a suitable number of C1, C2 and C3 educators be assigned to the education areas. The situation that emerges from the attached graphs is utterly inadequate: the ratio of educators to prisoners is about 1 to 252 in the Provveditorato Regionale dell'amministrazione penitenziaria (PRAP, Regional Superintendency for the Prisons Administration) for Milan and 1 to 77 in the PRAP for Perugia. We have to take note of the fact that the gap between prisoners and treatment operators has for many years been, and is still today, utterly unacceptable. In addition to this merely numerical ratio, further attention should also be devoted to an evaluation of the degree of complexity of the type of institution and the categories of prisoners in each, variables that have undoubted repercussions on the operational effectiveness of the area.

308. The experts (psychologists and criminologists) who carry out their professional activities further to article 80 of the prisons code are another key resource and contribute as necessary to the observation of prisoners (294 psychologists and 57 criminologists) or carry out tasks related to the "new arrivals" service (90 psychologists and 11 criminologists).

309. The number of these professionals is, however, low compared with actual requirements, as a result of the limited funding available under the relevant spending subhead. However, particular attention should be paid to the enhancement of their role, with due respect for the specific skills and expertise held by each. The aim here should be to capitalize on their specific

competencies and avoid any wholesale standardization of actions, as has sometimes happened in the past, or a “blanket” approach to their use, which would create the risk of dissipating valuable energies.

310. The recent recruitment of a number of psychologists makes it possible to consider whether it might be timely, in view of the greater complexity of the work of the educational areas with respect to particular user targets, to establish an ad hoc sector within the educational area, with particular reference to the disturbed psychological and psychiatric state of some prisoners, with the aim of reducing the risk of self-injury or harm to others.

311. As can be seen from the recent monitoring exercise, about 50 per cent of the institutions have allocated more support staff to the areas, as urged by the 2001 circular: a positive result, although not yet sufficient in numerical terms. In this case too, the superintendents are invited to urge the institutions to provide a suitable number of administrative staff.

312. It should be mentioned that in some institutions prison officers have been assigned to the education area, often to carry out administrative tasks. In some - infrequent - cases, the prison officers assigned to the area carry out tasks directly linked to individualized treatment, but they are more often involved in ensuring that the treatment activities in general are carried out, by accompanying prisoners to work, to educational courses in general, or to interviews with the various institutional operators.

313. However, in many prisons these officers are engaged in carrying out other services. In any case, prison officers - in performing their own tasks connected with the security and custody service - ensure that the conditions are in place to achieve the aims of the treatment. The superintendents are therefore invited to urge the directorates of the institutions to remove any obstacles standing in the way of the direct application of any treatment competencies that prison officers are recognized by law as holding, and to encourage their involvement in educational areas.

314. It is by no means superfluous to underline the importance of giving a new impetus and significance to the role of the prison officers in the management of penitentiary institutions in terms not only of order and discipline but also of observation and treatment, aspects that are an integral part of the life of the prison.

315. In this respect, some key elements of the legislation are:

- Article 5.2 of Law 395/1990, which includes in prison officers’ institutional duties their participation - including as part of working groups - in the observation and re-educational treatment of prisoners and detainees;
- Article 23.2 of Legislative Decree 443 of 30 October 1992, which states that “inspectors should take part in group meetings in accordance with articles 28 and 29 of Presidential Decree No. 431 of 29 April 1976” (now Presidential Decree 230/2000);

- Article 15.2 of Presidential Decree No. 82 of 15 February 1999, which states that “In performing their institutional duties, the personnel of the Prison Officers Corps should adopt the treatment and re-education principles that are established by the prisons code and by the relative implementation regulations, and should treat prisoners and detainees in an impartial manner and with due respect for their personal dignity”;
- Article 24.2.8 of the same Presidential Decree, which states that prison officers should “make a useful contribution to the [...] observation of prisoners and internees, including by taking part in group meetings in accordance with articles 28 and 29” of the implementation regulations, and which at point 9 states that these officers “must take into account in the performance of their duties the indications contained in the individualized re-educational treatment programmes”;
- Article 31.5 (d) of the same Presidential Decree, which envisages that the Division Commander “shall take part in meetings as referred to in articles 28 and 29 of Presidential Decree 431/1976 (now Presidential Decree 230/2000), including by using the observation notes collected by the personnel for the purposes referred to at points (8) and (9) of article 24.2”.

316. This is not, therefore, a question of defining new competencies, but of fully exploiting the scope of the above-mentioned legislation, bringing its provisions up to date, and, more specifically, encouraging and incentivizing the use of prison officers not just for treatment activities/initiatives, but also in developing a growing focus on the observation and treatment of individual detainees. In this way, the Observation and Treatment Group will be able to draw on the unique and vital knowledge that derives from prison officers’ daily professional contact/dialogue/observation with the prison population.

317. Starting from the initiatives already under way in this respect in some prisons, the real and substantive integration of prison officers in the activities and actions of the education areas should be pursued by fully applying the coordination role of the area head and adopting an integrated working method by all operators involved in the area, including through appropriate training and refresher courses.

The organization and operational coordination of the area

318. The area is structured along two key intersecting axes, and has a secretariat at its disposal for administrative-bureaucratic matters. The first axis concerns the definition, management, coordination and monitoring of the institution’s education project, as discussed above. Responsibility for these actions lies with the area head, who can call on other educators and all the other prison operators assigned to the area, with due attention to the enhancement of skills and respect for the autonomy of each position, for which he answers directly to the management officer.

319. Over and above the institutional figures as such, the area head also has the task of coordinating all those other actors (individuals or groups) involved in the treatment referred to in articles 17 and 19 of the prisons code, the external community in the widest sense. He will also

encourage the creation of networks and effective integration with the other institutional actors whose remits include the management of some treatment activities, such as teachers of educational courses or occupational training courses, and local health agency operators. In addition to dealing with meetings of the commissions envisaged by law (recreational, sports and cultural commission, education commissions, employment commissions) the area head should also hold regular meetings with other operators from the prison service and other organizations, with the aim of:

- Providing a constant flow of communication and knowledge among all operators, encouraging the integration and sharing of methods, techniques and operational strategies;
- Ascertaining the validity of the institution's different treatment activities;
- Monitoring the progress of projects launched with the cooperation of the external community, identifying any problem issues, and evaluating the suitability of actions put in place by area operators and by the external community, with respect to the management of treatment activities and individualized treatment programmes;
- Ascertaining the state of implementation of agreements drawn up with third parties (firms and cooperatives) in terms of establishing/reviewing a working method that enables the integration of the different operators and the achievement of significant results for the institution and for individual detainees;
- Setting up and coordinating project teams directly, or assigning other C3 colleagues - where available - to do so, for the more structured projects;
- Evaluating any new projects that are not included in the Education Project, including at the proposal of the external community, and putting together project proposals with reference to specific user targets (individuals or groups). The head will report regularly to the management officer on any problems identified and propose possible solutions, along with any changes that may be appropriate for certain projects (including suspension, if necessary). He will provide his own input to the Directorate in accordance with his own educational expertise, jointly with the heads of the health and security areas, for the management of episodes of particular relevance to the psychological and physical conditions of the detainees;
- Finally, after consulting all the other operators involved in the area, the area head draws up an annual report and the new Education Project.

320. The second axis concerns the organization and operational coordination of observation and individualized treatment activities, which under the terms of article 28 of the implementation regulations "are conducted under the responsibility of the director of the institution and coordinated by him". The area head is therefore delegated by the management officer to carry out organization and coordination tasks, and reports constantly to him.

321. In accordance with the above-mentioned regulations, personality observation is envisaged for all convicted offenders and/or internees from the beginning of their sentence. Observation should continue throughout the sentence and be a preliminary step to the definition, and any necessary updates to, the treatment programme to be implemented along individualized lines, in relation to the specific conditions of the individuals concerned. The area head will therefore allocate “definitive” cases to his educator colleagues, according to distribution criteria that take into account the type of institution and category of prisoners, so as to ensure that workloads are evenly balanced.

322. He will also deal with the allocation of cases involving accused persons and persons under investigation to enable actions in support of their human, cultural and employment interests. He will ensure that any requests by detainees for interviews/actions that fall within the remit of the social services are forwarded to CSSA. The area head will ensure that responses are provided within the proper timescale to requests from the supervisory judges regarding claims for benefits submitted by detainees.

Area secretariat

323. The area includes a secretariat that should have its own personnel, who will deal with all the bureaucratic-administrative procedures involved in the activity of the area itself. Staff will also manage the liaison between the secretariat and the registration office. In view of the excessive bureaucratization and the proliferation of procedures, it is felt that some administrative procedures should be simplified and standardized at the national level. For this purpose, a working group has recently been set up within this Directorate General with the task of analysing the different situations and drawing up a document as a preparatory step to establishing the necessary recommendations and provisions that will subsequently be sent out.

The operational level of individualized treatment

324. Treatment, which was the cornerstone of the prison reform of 1975, and whose aim is the re-education and social reintegration of the offender, presumes on the other hand the design - subject to observation - of individualized pathways, the precondition of which must necessarily be the informed and responsible participation of the prisoner.

325. A preliminary step of vital importance from the observation and treatment point of view is for each detainee to carry out - with the support of operators - a critical reflection “on the unlawful conduct, on the reasons for and negative consequences of this conduct for the offender himself and on possible actions to make amends for the consequences of the offence, including the compensation due to the victim”, a task that is defined by article 27 of the new implementation regulations and with respect to which opportunities for reflection and consideration should be provided in each prison.

326. Again in the light of restoring significance to the above-mentioned legislation for the evaluation of the proposals to be included in the individualized treatment plan, all those elements of the treatment and all the initiatives brought into play by the institution in the context of the education project should be taken into account, with the formally agreed participation of the detainee. The detainee will therefore be invited to sign a “treatment pact”.

327. The treatment plan will therefore not set out generic proposals but precise commitments and objectives, knowingly undertaken by the prisoner and with respect to which it will be possible to constantly evaluate the conduct of the same, his capacity to respect the “pact”, and any updates and amendments that need to be made.

328. The satisfactory outcome of the treatment plan for each individual detainee/internee can only contribute to the reduction of recidivism and an increased general climate of security. The educator is responsible for each individual case and has his own exclusive tasks linked to his specific skills and expertise, and is also the key figure for all the activities connected with observation and the realization of the individualized treatment projects. To this end, using professional techniques and methods, the educator establishes a dialogue with each detainee, with the intention of motivating him to take part in a treatment project and more in general in a resocialization process.

329. The importance of moving on from a perspective that sees the action of the educator as lying merely in the use of a single operational instrument (the interview) should be underlined, where the wealth of information and evaluations that this operator can gather on the prisoner also derives from capitalizing on other instruments such as:

- Participatory observation, i.e. attention to the prisoner’s behaviour in daily life, during time reserved for socialization, in his involvement in the various activities of the institution, and during talks with his family;
- Encounters with the detainee in less structured situations than interviews in the educators’ office;
- Meetings with groups of detainees.

330. The educator is not, must not be, and could not realistically be, the only source of knowledge on the detainee; indeed, it is by integrating the information provided by other institutional actors and comparing and integrating the evaluations made by each, that a true and complete result can be achieved from the observation and treatment of the individual concerned.

331. If therefore the educator - behaviour expert - is on the one hand the “owner” of the case and personally carries out a series of professional actions, on the other hand the significance of the legislative provision that entrusts the educator, together with the technical secretariat of the Observation and Treatment Group (OTG), for each individual case should be strongly reiterated. OTG means the wider group to which all those who interact with the detainee or collaborate in his treatment belong or which they may be required to join, and the educator’s task involves the coordination of the contributions of all its members, institutional and otherwise (prison officers, social workers appointed by the director of the Centre, experts, teachers of educational or occupational courses attended by detainees, voluntary workers, doctors, directors of firms working through contractual arrangements with the institution). This task was referred to in the circular of 1 August 1979 as “maintaining operational linkages between the members of the team”.

332. As part of his duties as technical secretary, the educator must therefore:

- Attend to the opening and updating of the file regarding the observation of the detainee/internee from a technical-professional point of view, and assume responsibility for ensuring that formal deadlines are met;
- Ensure that the opening of the observation is notified to operators belonging to the area, with particular reference to CSSA, for the performance of those tasks within the remit of the social service, and to the experts where necessary;
- Actively involve operators external to the administration with respect to positive collaboration and integration, while avoiding any duplication of actions or inconsistencies in the educational model;
- Encourage exchanges between all the prison operators and other actors as referred to at point 2, in order to obtain all available evaluations, plan within the wider group all the actions and/or types of approach required for each individual detainee at all times of his prison term, agree on which of the proposals can be implemented and assess their feasibility from the subjective (detainee) and objective (institution's resources) points of view;
- To this end, promote meetings prior to drawing up the formal summary report and treatment plan, and regular meetings for all necessary checks and updates.

333. The supervisory activity of the OTG working groups will be promoted, taking note of the results and evaluations of the trials already carried out or nearing completion as part of the PANDORA Project, and taking into account the education area model defined here.

334. To distinguish the OTG (wider group) from the smaller working group, chaired in accordance with article 29 of the implementation regulations by the director and composed of prison operators and the expert, the second group will be called the team. In this case, its remit refers solely to the formal occasion when - the preliminary work of OTG being taken as given - any document having external relevance, any summary/update of the observation, or any proposal for in-house or external treatment, is drawn up for submission to the competent supervisory judge for approval/ratification, or to the submission of reports containing information for the same supervisory judge regarding applications for benefits.

Recent initiatives

335. In the context of the educational areas, the following initiatives have recently been drawn up and implemented:

- The planning and launch of the “Argo” project, a trial scheme where some institutions will set up and run a kennels service, with the aim of providing new skills, and therefore new employment opportunities, for the prison population;

- A “Solidarity Pact” signed by the Prison Administration Department and UNICEF, to set up local initiatives that encourage the preservation and development of the parenting relationship between prisoners and their children. Again in cooperation with UNICEF, signatures have been collected - of both personnel and prisoners - for participation in the “*Infanzia rubata, infanzia violata*” (Childhood stolen, childhood violated) campaign promoted by the “Zapping” radio programme;
- An executive action programme to increase the number of special detention options for drug addicts. To implement the programme, a monitoring exercise was carried out on the institutions and “soft” custody sections currently operating for drug addicts. The plan also envisages the extension of the special custody system to some types of “common” offenders on an experimental basis.

Monitoring and information gathering from the local level

336. Work is under way to rationalize the collection of data and information from the local level through the preparation of IT applications that simplify and “guide” data collection and transmission by the directorates and regional superintendencies following criteria tailored to the direction, coordination and verification activity of this Central Office. Measures have therefore been adopted to:

- Collect data regarding the staffing situation of C1, C2 and C3 educators following retraining in terms of their distribution in individual institutions, in order to quantify staffing needs;
- Create software to keep track of the recruitment of detainees, pursuant to Law 193/2000, both to ascertain the efficacy of the legislative measure and in relation to the payments this administration is required to make to the Revenue Agency and INPS (the social security agency);
- Develop an application for the collection of information regarding educational, occupational and university courses set up within prison structures, as well as data regarding the characteristics of participants and the dropout rate;
- Develop a project model that takes into account the need for a qualitative evaluation of the actions and projects implemented;
- Put in place a joint structure, for matters falling within the remit of the office, for the drafting of the institutions’ annual reports and the regional superintendencies’ six-monthly reports.

Integrated educational and occupational training activity

337. With respect to the development of an integrated system of education and occupational training, this department has set up an ongoing collaboration with the Ministry of Education to identify an integrated model in which the competencies of the various institutional levels involved are clearly set out.

338. The aim of this model is to enable the planning of integrated teaching activity by the different systems involved to ensure that educational/training activities are consistent with the needs of the prison population and therefore of use in providing prisoners with a skills-set that will support them in their future social reinsertion process. Steps have therefore been taken to:

- Set up an initial action by issuing guidelines to enable the development of the educational commissions pursuant to article 41.6 of Presidential Decree 230/2000, which are a unique instrument for the promotion of coordinated educational planning with the other public/private systems involved in this sector;
- Open a working relation with the Education Ministry to coordinate the various actors involved in the educational/training system: regions, local authorities, public/private bodies working in the education/training field, the Ministry of Employment, the Juvenile Courts Department;
- Draw up an Executive Plan of Action for 2003, with the approval of the Minister, to ensure the effective functioning of the education commissions envisaged by article 41 of the implementation regulations and the promotion of integrated educational and occupational training pathways.

339. One early example of the implementation of this system was the creation in November 2003 of 27 guidance and occupational training courses in the detention institutions run by Lombardy region. The courses will have a duration of 6 to 36 months. The regional government has approved funding of over 1.7 million euros for the project, covering 75 per cent of the overall cost.

University education

340. In this sphere, Office 4 has encouraged the regional superintendencies of the Prison Administration to establish contacts with referents in the universities and regional bodies with a view to evaluating the possibility of drawing up protocols of understanding for the creation of university centres for the prison population, on the model of those already set up in Piedmont and Tuscany. The superintendencies in Triveneto, Sicily, Calabria and Campania have also established contacts for the creation of university centres of this nature.

Libraries

341. With the conviction that prison libraries should be used as places for free dialogue, meeting, and as a treatment instrument through which it is possible to convey the values, models, and opportunities that the treatment action is intended to transmit through the indispensable involvement of the external community, the office has promoted a new approach to the function of libraries in prisons by introducing a project that envisages:

- The “recentralization” of the role of the treatment area as the driver of the “political” treatment project within each prison institution;
- The progressive insertion of prison libraries in the integrated network of libraries in their locality, capitalizing also on the experiments already under way in this direction;

- The enhancement of the role and function of the library service within the institution;
- A reinforcement of the libraries' role of supporting integrated educational and training activities, not just through the use of books but also with the inclusion of multimedia products and distance learning packages;
- The implementation of targeted research on this specific sector in cooperation with the universities and the Ministry of Culture, a project that will have the aim not just of carrying out a survey of the existing provision, but also of identifying the best forms and arrangements for integration between the internal and external realities and for the organization of the library service within prisons.

Employment and prisons

342. With respect to employment and prisons, this office has placed a particular emphasis on the creation of a permanent network of relations and collaborative initiatives with institutional actors and private entrepreneurs in order to confirm and implement existing processes that ensure that work in prisons is in line with innovative criteria of entrepreneurship and feasibility, and increases the numbers of jobs for prisoners. In this respect, the following initiatives undertaken by this directorate in 2002 and 2003 are worthy of note:

- Relations with the Ministry of Employment: the directorate has recently established a close collaboration with the Ministry of Employment with a view to identifying synergies that might foster the social reinsertion of the prison population. The need emerged, and was recognized by both ministries, to take on extraordinary commitments in the matter of employment and occupational training policies, with the aim of developing employment opportunities for the prison population and matching detainees' demand for jobs with the supply of jobs on offer from firms and social cooperatives interested in recruiting them. A standing body was therefore set up, composed of managers and officials from the two ministries. To date, this table has dealt with the following issues;
- Updating and extending the existing protocol of understanding in the light of the changed economic and political situation; the revised draft has already been approved by the department head for subsequent forwarding to the Minister;
- Providing advice - for those aspects falling within its remit - to the Ministry of Employment and Social Policies for the drafting of the National Action Plan to Combat Poverty and Social Exclusion (2003-2005);
- Redefining and remodulating the following three projects launched and funded by the Ministry of Employment in areas of action falling within the remit of this department:
 - "Entrusting of services for the automation of procedures for the management of the database on the employment characteristics of detainees", funded under the Objective 3 National Operational Programme (NOP). The main aim of this

project is to computerize the CVs of detainees, and it will be launched on an experimental basis in two regions (Veneto and Lombardy) selected on the basis of their willingness to participate, as communicated by their employment and training counsellors to the Employment Ministry. The “construction” of the CVs will be handled by the pilot prisons’ employment commissions following recommendations that will be provided at a later date. The project will make it possible to obtain more reliable information (in both quantity and quality terms) on prisoners’ skills and employment experience than is currently available; since it will be drawn up in line with the current employment regulations, it will also be spendable in the “outside” world;

- “Entrusting of consultancy activities in support of the public employment services to foster the employment reinsertion of detainees”. This involves two projects, one funded under the Objective 1 NOP and the other under the Objective 3 NOP, which aim to encourage the employment of prisoners by promoting specific actions addressed both to individuals (reception, guidance, accompaniment, outplacement and mentoring for prisoners) and firms (information, advice, studies and research). In particular, a liaison activity will be established between the detainee, the prison administration and the world of work. For the envisaged pilot schemes, the regions of Puglia, Basilicata and Campania have been selected under Objective 1 (Cooperativa Centro Servizi di Matera) and the regions of Piedmont, Veneto and Tuscany under Objective 3 (Consorzio CGM);
- Monitoring, evaluation and promotion of Law 193/2000, the “Smuraglia law”. This office is carrying out an analysis of the problems that have emerged, many of which derive from a lack of knowledge of the opportunities opened up the law, with respect to which possible solutions are being identified, including in the revised version of the implementation provisions being drawn up with the Legal Affairs Office of the Justice Ministry.

343. The office has also launched, with the involvement of the regional superintendencies and the prison directorates, a local monitoring exercise - still in progress - with a view to gathering detailed information on firms and cooperatives that recruit detainees or individuals subject to article 21 of the prisons code and on the number of users of the prison services who have been inserted in employment or in occupational training programmes with reference to the benefits envisaged by Law 193/2000.

344. On this point, the following data are worthy of note: in the period from 1 July 2000 to 31 December 2002, 422 detainees were recruited using the benefits envisaged by Law 193/2000, while in the period from 1 January to 31 March 2003, the figure was already 290. On this subject, this administration is putting in place - in conjunction with the Ministry for Economic Affairs and Finance and INPS, as envisaged by article 6.2 of Inter-Ministerial Decree No. 87/2002 - the necessary procedures for the monitoring of the tax credits delivered, to ensure that the initiatives keep within the available economic resources.

345. A data-recording method has been selected that is able to keep track of the number of detainees hired by firms and/or cooperatives. At the same time, the necessary guidelines have been issued to the local offices so that they can submit a selection of information to this directorate on a quarterly basis regarding both detainees hired and employers, to enable an evaluation of the skills required by the business world, according to the provisions of article 5.3 of the above-mentioned law.

346. The superintendencies have also been invited to submit projects regarding work in prisons themselves, taking into account both the potential of the institutions in their districts and the local economy.

Executive action programmes

347. Actions designed to encourage the participation of the business community in the organization of work within the institutions are key elements of the two executive action programmes submitted by this Directorate General for 2003 and approved by the Ministry of Justice. The first, No. 14, "Entrusting the meal preparation service in penitentiary institutions to third parties", has already seen the funding and drawing up of agreements with three companies for the prisons of Trani, Ragusa and Roma Rebibbia Reclusione; while for another two institutions, Torino Le Vallette and Roma Rebibbia Circondariale, agreements are expected to be drawn up in the near future.

348. The second, No. 15, envisages the "Creation of a permanent communication network between decentralized structures of the Penitentiary Administration and the Chambers of Commerce, for the dissemination of information on the benefits envisaged by the Smuraglia Law and by Law 381/1991". In this case, the aim is to capitalize on existing work carried out within prisons and to encourage firms to hire prisoners. To this end a meeting with representatives of Unioncamere (the national chambers of commerce organization) to draw up an agreement that facilitates and simplifies relations between the decentralized structures of the administration and the local chambers of commerce has already taken place.

349. Alongside these programmes some recent examples designed to promote the employment of detainees are worthy of mention. The new call centre for Telecom Italia's "Info 12" directory enquiries service, the first prison teleworking project in Europe, has been operating in the San Vittore prison since 25 November 2003. The project involves 30 people (4 supervisors and 26 operators-detainees). In the prisons of Florence, San Gimignano, Massa and Porto Azzurro, 63 detainees have been taking part since November 2003 in the "Chance" project, a year-long trial with funding of 558,000 euros by Tuscany region within the framework of the European Social Fund, which aims to provide detainees with training suited to their abilities and aspirations and to their future reinsertion in the labour market in the "outside" world. Another, final example can be found in the "Le Vallette" prison in Turin, where the Piedmont region and the San Paolo banking foundation, in collaboration with the Gruppo Abele and the Arcobaleno Cooperative, have invested 650,000 euros for the activation of one of two plants for the treatment of hospital waste, with the involvement of 20 detainees.

Protocols of understanding

350. A protocol of understanding has been drawn up between the penitentiary administration and Cisco Systems Italia, to insert prisons in its occupational training programme for the design, realization and development of IT networks. This experimental project envisages the employment of those detainees taking part in the course who pass the final exams and obtain the relative certification.

Accounting issues

351. In the current financial year, a strategy of advance allocation of the available budget has been adopted with a view to optimizing the economic resources and incentivizing management control activities by the regional superintendencies, and capitalizing on particularly innovative initiatives. Following this approach, an initial budget allocation was made to the superintendencies, with curtailments in those institutions where part of the funds for prison employment were not used in the last financial year, with resulting economies for items where there is a position of indebtedness.

II. INFORMATION ON SITUATIONS AND INDIVIDUAL CASES OF ALLEGED ILL-TREATMENT

A. Prevention and investigation of behaviour contrary to the principles of the Convention

352. Some cases of ill-treatment of prisoners, on both a collective and an individual basis, became known to national and international public opinion through a report by the principal bodies and associations operating in the framework of the protection of rights and fundamental freedoms at the global level.

353. The following sections analyse some of these episodes, with reference to the prisons in which they took place. It should be borne in mind that, as things stand at present, not all the necessary information can be made available since the proceedings involving the police and the prison population are still pending.

Secondigliano

354. Criminal proceedings opened in 1993 into the alleged ill-treatment of inmates of Secondigliano prison, Naples, and ended in the acquittal of some 60 prison officers. Separate proceedings opened in 1993 against six other officers accused of various offences, including falsifying records and instigating other officers to commit offences, and were apparently still under way. In 1997 lawyers in Catania had complained that inmates of Bicocca prison were regularly subjected to ill-treatment by prison officers and expressed concern that those involved included officers transferred from Secondigliano where they were already under investigation for alleged ill-treatment. In October, following a criminal investigation into further alleged ill-treatment of Secondigliano prisoners between June 1995 and February 1999, 20 prison officers were ordered to stand trial in 2000.

Bolzano

355. Following complaints made to the judicial authorities by Bolzano prison inmates, 25 prison officers and a doctor were put in 2001 under investigation in connection with allegations that between 1994 and 1999 prisoners were regularly taken to an isolation cell and severely beaten. The investigation is still under way.

Sassari

356. At the end of March 2000, the prisoners detained in the Regional Penitentiary of Sassari organized a protest over the lack of food during a strike by penitentiary management. Following that incident, some of the prisoners provoked disorders and some prisoners rebelled; as a result, many of them, also considering the overpopulation of the prison, were transferred to other regional prisons.

357. During this operation and, according to the decree which punished the preventive detention of the penitentiary management, some of their behaviours appeared in conflict with common sense and prison's special code of conduct. For that reason, it was decided not to transfer any more prisoners to the prison of Sassari as, according to the declarations of some prisoners, measures undertaken would be considered as acts of retaliation. The bare adequacy of Sardinian prisons would compel the authorities to send prisoners out of the region.

358. For that reason, two parallel investigations, penal and administrative were set up. Following the inspections the authorities decided some days after the said events to carry out the measures adopted to remove the highest officials of the prison and start disciplinary and jurisdictional investigations. Once the investigations came to an end, it must be mentioned that the officials who regained their former positions were assigned new posts, to avoid contacts with the prisoners involved in the events.

Pistoia

359. In March 2002, five youths, three of them Albanian, lodged a criminal complaint against Pistoia police officers and a discotheque "bouncer". They alleged that, following a verbal argument with the bouncer, they were detained by police officers outside the discotheque and taken to a police station, where they were assaulted by at least five officers and the bouncer. One detainee needed hospital treatment for a broken nose, a burst eardrum and a damaged testicle. The police officers had lodged a complaint accusing the youths of insulting them and causing them bodily harm. The officers claimed that they had detained the youths inside the discotheque and had intervened to stop a brawl between them and the bouncer inside the police station. Five officers were subsequently charged with causing bodily harm, falsifying evidence and libel; one was additionally charged with verbal abuse and unlawful detention. In December, after plea bargaining, three officers received sentences ranging between 11 and 14 months' imprisonment, while two were committed for trial.

B. Collective cases

The “events of Naples”

360. On 15, 16 and 17 March 2001 the “Third Global Forum” organized by the Government of Italy in cooperation with the United Nations, the Organization for Cooperation and Development (OECD), the European Union and various Italian and international foundations and university centres, took place in the city of Naples. On 17 March, the concluding, national-level demonstration took place. This included a procession in which about 7,000 people took part.

361. From the very beginning of the event, a number of incidents of intolerance were seen. The most serious occurred in Piazza Municipio, where there was a substantial police barricade and where a group of rioters started a heavy barrage of stones and various types of blunt objects. To keep the demonstrators under control, the police charged demonstrators, which enabled the situation to return slowly to normal.

362. The police detained a number of demonstrators and arranged for charges and arrests to be made. To date, a number of criminal proceedings are still pending in the Naples Public Prosecutor’s Office. These include proceedings involving members of the Polizia di Stato (the State Police) for alleged ill-treatment of the demonstrators. On 26 May 2003, the Naples Prosecutor’s Office issued a request for the indicted persons to be committed for trial.

363. It should also be noted that, following the warrant for house arrest issued by the examining magistrate of the Naples Court, those police officers involved in the case were suspended as a precautionary measure with effect from 26 April 2002, in accordance with article 9.1 of Presidential Decree 737/1981. Through a provision of 11 May 2002 resulting from the cancellation of the arrest warrant on that same date by the review section of the court, these same officers were readmitted to service in accordance with article 9.3 of Presidential Decree 737/1981, with effect from the day following their release.

364. The results of the criminal proceedings are still pending with the Prosecutor’s Office of the Court of Naples, with the preliminary hearing set by the examining magistrates for 18 November 2003.

The “events of Genoa”

365. On 19, 20 and 21 July 2001 the G8 Summit took place in Genoa. Particularly serious events occurred during the demonstrations organized to coincide with the Summit. The following excerpts from the final report of the investigation carried out by the Joint Committee (whose proceedings were held in the first standing committee of the Senate), to which the results of the administrative investigation arranged by the Minister were reported, provide a comprehensive overview of these events.

366. The preliminary investigations to ascertain whether any members of the police force were criminally responsible for alleged violence against the demonstrators are still under way in the Public Prosecutor’s Office in Genoa. On 12 September 2003 the same Court submitted notification of the close of the preliminary investigations.

19 July

367. From the point of view of public order, no significant incidents occurred on 19 July: the march of "Migrantes" organized by the Genoa Social Forum (GSF) went off peacefully and without incident. This event attracted a large number of demonstrators and took place in a relaxed atmosphere and according to plan, at the same time as the demonstration by Iranian women. Some violent incidents took place from the evening on, when the Forte San Giuliano provincial carabinieri headquarters was subjected to stone-throwing and acts of vandalism.

20 July

368. On 20 and 21 July the intention of taking a "soft" approach to public order ran up against mass provocation that was the result of the mingling - unimpeded by the organizers - of a crowd of about 10,000 violent demonstrators with the peaceful marchers. This made it impossible to separate the violent from the non-violent demonstrators. The violent incidents were also caused by forays by "Black Block" groups into the peaceful demonstrations. These took place, according to statements by police representatives, both during the demonstration, which in part degenerated into street clashes, and in the form of an attempt by some demonstrators to break through the barriers erected to protect the "red zone".

369. The police charges against the procession began when it was crossing a non-prohibited zone (the intersection of Via Tolemaide and Corso Torino), although the area was very close to Piazza Verdi, which the order issued by the *questore* on 19 July had indicated as being the end-limit for the march.

370. From the duty report by the police officer responsible for that area and the submission made by the *questore*, Mr. Colucci, at the hearing, it emerged that the police units who arrived in Via Tolemaide following a report by the radio room informing them of clashes taking place there even before the arrival of the demonstration, were subjected to a heavy barrage of Molotov cocktails and stones and that the first rows of demonstrators, mainly interlopers equipped with various forms of protection, were setting fire to tyres and vehicles. The demonstration was already in progress even before the procession reached Piazza Verdi, with the clear intention of crossing over the established boundaries. During his hearing, the Minister Scajola informed the Committee of an administrative investigation carried out by the ministry itself to clarify the precise course followed by the events described above.

371. The dramatic events of Piazza Alimonda, which ended with the death of Carlo Giuliani, unfolded against this background of clashes between groups of violent demonstrators and the police during the afternoon of 20 July.

372. A contingent of about 100 carabinieri, which had intervened in Via Caffa to help other units already engaged in that area, found itself encircled by groups of demonstrators and forced to retreat in disarray towards Piazza Alimonda. In the Square, two carabinieri jeeps used for logistical support functions for the units were cut off by the group of demonstrators and attacked. One managed to get away, while the other was blocked and subjected to a violent attack. One of the carabinieri inside the van, which was besieged by dozens of demonstrators, fired a pistol-shot

which killed the demonstrator Carlo Giuliani. Giuliani had been about to throw a fire extinguisher at the carabinieri, who had been hit a violent blow on the head with a metal bar wielded by another demonstrator. In relation to this specific episode, and in consideration of the case still pending before the tribunal which will be required to pronounce on the individual responsibilities of the persons involved, the Joint Committee focused on the overall circumstances leading up to this tragic event.

21 July

373. On 21 July clashes again occurred between demonstrators and the police, as well as damage to private buildings, shops, vehicles and street furniture. The periods of greatest tension occurred when the head of the procession came up against a group of about 100 people confronting the police, provoking incidents, the throwing of tear gas and police charges. During the demonstration, the police searched some vans considered to contain objects that could be used as weapons, and in some cases confiscated material and made arrests.

374. Once the final procession of GSF was over, as a consequence of the violent clashes that had taken place, the *questore* of Genoa arranged for patrols to be carried out in the area.

375. On the basis of the information coming in, it was agreed that the Pertini (formerly Diaz) school building in Via Battisti should be searched by the DIGOS (Divisione Investigazioni Generali e Operazioni Speciali, or general investigative and special operations division) and the mobile "Flying Squad", with the help of a unit with responsibility for security in the premises involved in the operation. The operation began at about 11.30 p.m. to 12 midnight. Different reconstructions of the raid have been given in terms of the sequence of events and the premises actually searched. At the same time, members of the State Police raided the premises of the Pascoli-Diaz school, where the press centre and the legal offices of GSF were based, as well as the first-aid room for people injured in the demonstrations, which was located opposite the building being searched. The fact that equipment in these premises was tampered with and damaged was also reported by the chairman of the Italian National Press Federation, Serventi Longhi.

376. Following the search, weapons, objects that could be used as weapons, and material that according to the inspection report could be traced to the most violent fringe groups responsible for the violent incidents in Genoa during the G8 Summit, were seized.

377. At the end of the operation, 93 people were arrested, including 3 journalists. During the operation in the Pertini-Diaz School, many of those present in the building, and 17 police officers, including 15 from the flying squad, were injured; 62 people were arrested. This episode is perhaps the most telling example of the organizational failings and operational shortcomings that emerged during an international event of this importance.

378. During a meeting of the Provincial Committee for Public Order and Security on 12 June 2001 for the organization of police operations to accommodate individuals arrested during any disorder taking place during the Summit, it was decided to set up separate registration and medical centres in premises in Genoa at some distance from the places where the demonstrations were to take place, for the subsequent transfer of detainees to prisons outside the city.

379. This decision was based on the need to avoid using the prisons of Genoa, since they are located in the centre of the city, where some of the demonstrations were scheduled to take place. It was also decided to set up another two centres, one in the carabinieri facility in Forte San Giuliano, for individuals arrested by the carabinieri, and the other in the Bolzaneto facility of the State Police mobile squad, for individuals arrested by the other police forces. Both were defined, in an order issued by the Minister of Justice on 12 July 2001, as “sites used for detention purposes as annexes of the medical and registration centres of the *case circondariali* (short-term prisons for persons awaiting trial or with short sentences) of Pavia, Voghera, Vercelli and Alessandria, and the prison of Alessandria”. This order clarifies that “the administrative management of the activities falling within the remit of the prison service in the above-mentioned structures is the responsibility of the Management of the Genoa-Pontedecimo prison, as provided for by the Director of the Prison Service Administration’s G8 Coordination Office”.

380. During the period when it was in use, a total of 222 persons were registered at the Bolzaneto facility. Teams from the mobile squad were also used as backup for the prison officers, but only outside the buildings used to accommodate the detainees and for support tasks for the transfer of the detainees to the prisons. After 24 July this structure was no longer used for detention purposes as an annex to the medical and registration centres. From 26 July, the daily newspapers started to publish first-hand accounts and reports of violence and incidents against the detainees in the facility. Consequently, both the Justice Minister and the Chief of Police gave instructions for an investigation to be opened. On 30 July and 4 September two reports were submitted to the Chief of Police and the Minister of Justice, respectively. The second report was drawn up by the inspection committee set up on 2 August to investigate “episodes of physical and psychological violence allegedly committed by members of the prison administration against individuals registered in the Genoa-Bolzaneto prison”. The first draft of this report contains a comprehensive reconstruction of the operational arrangements of the facility and discusses 11 cases reported in the press or by the detainees, as well as other cases of violence witnessed by a nurse on duty at Bolzaneto.

Conclusions

381. The report on the investigation, of which some excerpts have been reproduced here, concludes with a series of evaluations by the Joint Committee. In general terms, the committee underlined the success of the G8 Summit in Genoa. The Summit achieved all of its objectives from the points of view of content, the administrative and logistical aspects, and security and public order, notwithstanding some failings in the organizational phase that could be traced back to the previous Government (training of police personnel and relations with the anti-globalization associations).

382. This outcome was the result of the Government of Silvio Berlusconi’s decision to keep to the agenda drawn up by the Government of Giorgio Amato, while at the same time developing and supplementing this agenda and at all times following the recommendations of the President of the Republic, and involving the poor countries of the world in the initiatives designed for their support and for the protection of human rights and the defence of the environment. The countries taking part in the Summit agreed with this choice of issues, which started as a working proposal of the Italian agenda and developed into the political conclusions of the Summit itself.

383. It should be noted that, for the first time, the issues considered to be deserving of attention by a G8 Summit were not far removed from those inspiring the truly peaceful elements of the anti-global groups, a fact which gives rise to hopes for a constructive dialogue in the future. In the light of the various hearings and information and data it collected, the joint committee underlined that the Genoa Social Forum is a composite movement that encompasses the following:

- A pacifist, non-violent wing, formed mainly by movements inspired by Christian ideals and whose objective is to provide a voice for the poor of the world in the face of economic globalization processes;
- A “politicized” wing, which adopts positions that range from disturbances intended as symbolic violation, to sabotaging decision-making processes (in the case of Genoa the key words were “breach the red zone”);
- A violent wing, in which significant segments of the politicized wing (for example the “white overalls” and the social centre groups) engage in seriously aggressive actions against the representatives of the institutions and seek to justify this conduct through an instrumental and distorted application of the concept of civil disobedience.

384. To these should be added other groups inspired by guerrilla tactics, whose sabotage-based approach translates into attacks designed to cause very real damage, seek direct confrontation and cause insurrection in the streets (for example, the Black Blocks). In a situation of this sort the line chosen by the Berlusconi Government and the action taken by the police - according to the joint committee - were, in terms of public order, undoubtedly positive.

385. The Berlusconi Government had set itself the objective of engaging in dialogue with GSF to enable the G8 Summit to proceed smoothly, and to safeguard in full the right to express and demonstrate dissent in a peaceful manner. In this light, funds were also allocated to provide facilities for GSF and the police were given precise instructions to ensure that they handled public order issues in a moderate and firm manner. This also led to the commitment to defend the “red zone” as effectively as possible by putting in place large numbers of police and controlling the conduct of the demonstrations which, when held peacefully, followed their natural course.

386. The police made every possible effort in their task and paid a heavy price in doing so, including in terms of their physical safety. It cannot be denied that there were some shortcomings and confusion on the coordination side. However, it must be remembered that the police had to deal with 6,000 to 9,000 violent individuals (out of a total of 200,000 persons (according to the Ministry of the Interior) or 300,000 (according to GSF)). The police found themselves facing an outbreak of fully-fledged urban guerrilla warfare that unfolded in a variety of ways and, in view of its radical nature and the fact that it developed within large demonstrations, could have led to a much more serious final balance sheet than was actually the case.

387. Indeed, throughout the G8 Summit, the violent and subversive wing of the demonstrators took advantage of the tolerance shown by their peaceful counterparts. The latter did not take any action to report, isolate or expel violent and subversive elements, who were allowed to move around with the processions or march at their head or, more often than not, to hide within the body of the procession.

388. This made it impossible for the forces of law and order to use their tried and tested techniques to control the marches, prevent disorder, isolate violent elements and protect the peaceful demonstrators, and exposed them to treacherous attacks and often thwarted their efforts. The instrumental and distorted use of the concept of civil disobedience by violent elements ended up by drawing many of the non-violent demonstrators into conduct that provoked a response by the police, with the result that the peaceful, profound and sincere spirit of the truly non-violent members of the movement, who account for a considerable part of the area under contention, was contaminated. The need that emerged during the investigation to ensure a greater degree of coordination by the police forces in future and to work for more effective cooperation by institutions with information and prevention responsibilities in other countries, including through initiatives to harmonize the international legislative framework, should also be underlined. The Joint Committee then analysed and highlighted the factors that emerged from their enquiries with respect to three of the most hotly debated incidents.

389. As regards the disorder in Via Tolemaide, it was observed that two different versions had been drawn up. One asserted that the march was turned back since it turned into a violent demonstration after it had almost come into contact with the police barricades at the end of the non-prohibited route, with marchers attacking the police and trying to break through the barriers. The other version asserts that the march was charged by the police, without any violent provocation.

390. As time went on, the situation that arose following the actions by the demonstrators generated a further series of violent and disorderly clashes throughout the area, leading inter alia to the attacks in Piazza Alimonda and Via Caffa. It is against this background that, after being cut off, the Land Rover was attacked and the three carabinieri in it found their lives at risk. Placanica took out his regulation revolver and fired the shot that killed Carlo Giuliani just as he (Giuliani) was throwing a fire extinguisher at the officer. This is how an event that should never have happened - the loss of a human life - occurred. The fundamental cause was the blind violence of groups of extremists who endanger the lives of the young people who become entangled in their criminal initiatives. In this negative framework, the only positive element to emerge was the role played by Giuliani's father who, showing a great sense of responsibility and civic spirit, addressed an appeal to the demonstrators to act reasonably and made every effort to restore a peaceful climate.

391. As regards the episode in the Pertini-Diaz school, the Joint Committee noted the legitimacy of the decision to carry out the search, even if the document officially demonstrating this legitimacy was not among those in its possession. A number of shortcomings were noted in coordination at the decision-making and operational levels (especially as regards the line of command and the way it worked in practice). From the hearings and material obtained by the

Committee, it seemed clear that the decision to carry out the search had been based on the sound conviction that weapons were hidden in the school. It also emerged clearly that the decision to deploy an operational force that was adequate to tackle strong resistance to the search was the right one.

392. This determined resistance to the police is clearly documented and was such as to require a considerable degree of force to counter and overcome the conduct of the occupiers, in order to ensure the safety of the personnel and achieve the objectives of the police action. It must be said that information regarding some excesses carried out by individual members of the police force also emerged. The task of ascertaining the facts is now in the hands of the competent judicial authority, in whose activity the Joint Committee was not able, and does not intend, to interfere.

393. As regards the events in the Bolzaneto facility, the Committee noted a number of separate points. Firstly, it observed that the necessity and legitimacy of creating this structure (and the similar one in the San Giuliano facility) are not in question; nor is the clear legitimacy, including in administrative terms, of the management of events by prison officers (penitentiary police). More specifically, from the administrative and management point of view, there is no question as to the full respect for the rules and procedures in the matter of medical examinations, searches and body searches of the detainees and their treatment pending their transfer to prison, the objective at all times being to maintain order among the detainees given the difficult relations both between the detainees themselves and between them and the personnel.

394. The complaints regarding the long periods of time spent in the facility can be attributed to the high numbers arrested, the fact that large groups arrived at the same time and the unexpected decision to reduce the number of reception centres from seven to two. As regards the alleged acts of violence, on the actual perpetration of which a judicial enquiry is under way, it is felt that, as in the case of the Diaz-Pertini school, the findings of the judicial authority should be awaited. The fact remains that the incidents referred to, if true, are very serious in nature. The reports by the *questura* (office responsible for police force, public order and relative administrative services) of Genoa, which apparently obtained evidence, through "eavesdropping", that some of the arrested persons had arranged previously to formulate unfounded accusations against the operators, were also noted, although during his hearing the *questore* did not specify which facility he was referring to. Another crucial point appears to be the investigation arranged by the Prison Administration Department, since an individual who could potentially be subject to examination under that same investigation was himself appointed to the Committee set up for this purpose.

395. In conclusion, the Joint Committee reiterated that violence is not and must not be used as an instrument of political action and that, in a democratic country, legality is a fundamental value. It underlined the inviolability of the constitutional principles of freedom of expression and respect for the individual even, and perhaps above all, when deprived of his or her freedom as a result of arrest, as well as the need to protect the safety of citizens and public order. The Committee expressed the hope that, where criminally significant facts or breaches of discipline emerge, the judicial authorities and administrative bodies should identify those responsible and ensure that the appropriate penalties are applied.

C. Individual cases of alleged ill-treatment

396. After reports concerning complaints of crimes and ill-treatment committed by penitentiary police officials against prisoners, 52 and 138 penal proceedings were started in 1999 and 2000, respectively, 145 of which still pending; with regard to cases that have been settled by acquittal or no further follow-up, the authorities referred to the regional inspector for cases of alleged violations of a disciplinary nature.

Acquaviva

397. Luigi Acquaviva died in the Sardinian prison of Bad'e Carros in January 2000, within 24 hours of taking a prison officer hostage for some four hours and placing a noose around his neck. Administrative and criminal investigations, involving six prison officers and the prison director, were opened into his death following claims that his death was not the result of suicide as the prison administration maintained. Autopsy and forensic tests found that his body, found hanging in a cell, had suffered extensive traumatic injuries before death as well as neck injuries consistent with suicide. In December 2003, the trial of the prison guards accused of Acquaviva's death was opened.

Ahdiddou

398. In September 2001 the Salerno Public Prosecutor's Office requested that a carabinieri corporal be charged with the murder of Mohammed Ahdiddou, a 24-year-old unarmed Moroccan shot in January, and that six other carabinieri be charged with perjury for lying about the circumstances of the shooting. The investigations are still under way.

Akpan

399. In October 2000, almost three years after two police officers were committed for trial, a court in Catanzaro found them guilty of abusing their powers and causing Grace Patrick Akpan injuries in February 1996. The officers were put on probation for two months and charged with the expenses of the legal proceedings. The charges against Grace Patrick Akpan, who had been accused of refusing to identify herself to the officers and of insulting, resisting and injuring them, were dismissed.

C.A.

400. The case of C.A. concerns a person caught by the carabinieri in the act of selling drugs and sent to the prison by the Court of Bari on 17 September 1999. After visiting the prisoner, as required by the prison's regulations, the doctor in charge prescribed an X-ray to his jaw which he suspected had been injured. As the X-ray confirmed his suspicions the prisoner was at once sent to the University Hospital of Bari while the jurisdictional authorities were informed about the fact.

401. After three days, he was sent back to the prison and the magistracy ordered an inquiry, as in the hospital the prisoner had declared that the carabinieri had hit him. To the charge of heavy personal injuries made against the carabinieri were added deeper investigations, which demonstrated that the injuries could have been older than when certified, and certainly prompted by the strong ill-feeling caused by the several reports made by the carabinieri “to not have committed” the injury in question.

Koadjo

402. In 2001 the Palermo Chief of Police apologized to Leontine Koadjo, from Côte d’Ivoire, for her treatment inside the Aliens Bureau attached to Palermo police headquarters in April. Criminal and disciplinary proceedings were opened against an officer who apparently subjected her to an unprovoked physical assault after she asked for information. She required hospital treatment for a facial fracture.

Labita

403. In April 2001, the European Court of Human Rights found Italy guilty of failing to carry out a “thorough and effective investigation into the credible allegations” of ill-treatment by Pianosa prison officers made by Benedetto Labita in October 1993. Benedetto Labita alleged that he and other prisoners had suffered systematic physical and mental ill-treatment, mainly between July and September 1992.

Romeo

404. In 2001 the Public Prosecutor asked for 12 prison officers to be charged with murder and another 12 charged with aiding and abetting in connection with the death of Francesco Romeo in Reggio Calabria prison in 1997. Autopsy and forensic tests concluded that his extensive injuries were not consistent with a fall from a perimeter wall during an escape attempt, as claimed by the prison administration, but that he died as a result of a fractured skull caused by blows with batons or truncheons. The prison’s duty records for the time of the incidents apparently displayed clear signs of tampering.

Bouabid

405. In April 2002, three carabinieri officers were placed under criminal investigation on suspicion of murder. Inhabitants of Ladispoli reported seeing Tunisian national and illegal immigrant Edine Imed Bouabid getting into a carabinieri vehicle in March, some 30 minutes before his corpse was discovered near a motorway. Autopsy and forensic examinations apparently established that he had died after receiving three blows from a heavy object, fracturing his skull.

Tbina Ama

406. In February 2002, 10 people, including prison officers and medical personnel employed at Potenza prison, were put under criminal investigation in connection with possible charges of actual and grievous bodily harm and falsification of medical certificates. A criminal

investigation had opened in August 2000, after Tbina Ama, a Tunisian prisoner, had climbed onto the prison roof to protest against a beating he alleged prison staff had inflicted on him the previous day. A forensic examination carried out at the Public Prosecutor's request concluded that the injuries he displayed were consistent with his allegations. Tbina Ama committed suicide in May 2001.

Sa'id al-Sakhri

407. Muhammad Sa'id al-Sakhri and his family arrived in Italy at Milan airport on 23 November 2002, having travelled from Baghdad via Amman. The family had lived in exile in Baghdad for more than 11 years. Upon arrival in Italy, the family applied for political asylum. According to their lawyer, who was refused access to them, the family were denied an asylum interview by the Italian authorities, who refused to consider their application. The family was then deported to the Syrian Arab Republic on 28 November.

408. Muhammad Sa'id al-Sakhri is reportedly being held in incommunicado detention at a branch of the military intelligence in Aleppo in northern Syria. Muhammad Sa'id al-Sakhri may be tortured or ill-treated, given his opposition to the Government of Syria. In 1982, he was reportedly charged by the Syrian authorities with membership of the unauthorized Muslim Brotherhood Organization, whose armed faction was involved in violent confrontations with the Syrian security forces in the late 1970s and 1980s. Syrian opposition figures returning home voluntarily or after being forcibly returned by other Governments are especially in danger of arrest, torture or ill-treatment.

409. Muhammad Sa'id al-Sakhri was released from prison on 13 October and is now with his family.

South America

410. Seven former members of the armed forces of Argentina were committed for trial in absentia, in connection with the abduction and murder of seven Italian citizens and the kidnapping of the child of one of them during the years of military rule in Argentina. The trial, scheduled to open in Rome in October, was postponed until December when, after one day, it was postponed until March 2000. The trial was the result of investigations opened by the Italian judiciary in 1983, following complaints lodged by relatives of "disappeared" Italian citizens.

411. In July 2000 the Minister of Justice gave authorization for a criminal prosecution to be pursued against five more Argentine officers accused of the murder of three Italian citizens in a secret detention centre in Argentina. Several other criminal proceedings, in the early stages of investigation, were under way into complaints of further human rights violations committed against Italian citizens by members of the Argentine security forces and as a result of past collaboration between the security forces of several South American countries.

412. In December 2000, Rome Court of Assizes sentenced two Argentine generals to life imprisonment and five other former members of the Argentine armed forces to 24 years' imprisonment, following their trial in absentia in connection with the abduction and murder of seven Italian citizens and the kidnapping of the child of one them during the years of military rule in Argentina (1976-1983). The trial was the result of investigations opened by the Italian judiciary in 1983, following complaints lodged by relatives of "disappeared" Italian citizens.

413. In August 2001, former Argentine military officer Jorge Olivera was arrested in Rome on an international warrant issued by France for the abduction and torture of a French citizen in Argentina in 1976. However, in September, while full examination of a French extradition request was still pending, the Rome Appeal Court ordered his release, on the grounds that the crimes of which he was accused were subject to a statute of limitations. He immediately returned to Argentina. The Procurator General appealed against the court's decision, the Minister of Justice announced an internal disciplinary investigation into the conduct of the Appeal Court judges and the Public Prosecutor opened an investigation into apparently false information presented to the Court by Jorge Olivera.

414. In February 2002 the Supreme Court of Appeal annulled a Rome Appeal Court ruling of September 2000 which had ordered the release of former Argentine military officer Jorge Olivera. He had been arrested in Rome in August 2000, on an international warrant issued by France, for the abduction and torture of a French citizen in Argentina in 1976, during the period of military rule. Full examination of a French extradition request was still pending when the appeal court ordered his release on the grounds that the crimes of which he was accused were subject to a statute of limitations. Jorge Olivera immediately returned to Argentina.

415. Five more Argentine officers were under criminal investigation for the abduction and murder of three Italian citizens in a secret detention centre in Argentina during the years of military rule. The Italian judiciary made an unsuccessful request for the extradition from Argentina of one of the officers. Further criminal investigations were under way.

D. Somalia incidents

416. In January 2001, in response to an Amnesty International request of March 1999, the Ministry of Justice provided information about developments in criminal proceedings opened in connection with alleged human rights violations committed by members of the armed forces participating in a multinational peacekeeping operation in Somalia in 1993 and 1994. The Ministry stated that a request by the Milan Public Prosecutor for investigations concerning the alleged rape and murder of a Somali boy in March 1994 to be closed without further action was awaiting decision by a judge of preliminary investigation.

417. The Ministry also indicated that, although a judicial investigation had established that a Somali woman had been gang-raped at the Demonio checkpoint in Mogadishu, it had not been possible to identify the perpetrators or the victim and thus the Livorno judge of preliminary investigation had ordered the closure of those proceedings. Proceedings against an officer accused of raping a Somali woman inside the former Italian embassy in Mogadishu and

proceedings regarding allegations that in June 1993 soldiers had unlawfully shot and killed three Somali citizens on board a vehicle were also closed owing to lack of concrete evidence. The Ministry said that the outcome of three further proceedings, including those concerning Aden Abukar Ali, photographed while Italian soldiers were attaching electrodes to his body, were still awaited. In April, Livorno Tribunal tried and sentenced a former paratrooper to 18 months' suspended imprisonment for abusing his authority and, pending the outcome of connected civil proceedings, made him provisionally liable to the payment of 30 million lire (US\$ 14,000) to Aden Abukar Ali. A second officer apparently received a lower sentence after plea-bargaining.

418. As regards these events, Italy has revised its military criminal legislation in order to bring into line peacekeeping operations with international humanitarian law.

Measures to bring military criminal legislation into line with international humanitarian law

419. The decree laws on the Enduring Freedom mission (Decree Law 421 of 1 December 2001, as confirmed with amendments by Law 6 of 31 January 2002, and Decree Law 451 of 20 December 2001 as confirmed with amendments by Law 15 of 27 February 2002), which established the military criminal framework for the multinational operation in Afghanistan, contain provisions - as set forth in the confirming laws - for the application of the wartime military criminal code (WMCC), that are considered to be necessary to ensure not just the objectives of protecting the military instrument involved, but also and above all the defence of the vulnerable categories affected (the sick, the wounded, the refugee population, prisoners, etc.). The Italian wartime military criminal code, the only such code to do so at the time it was drawn up, contains important provisions regarding "crimes against the laws and practices of war" (Book III, Title IV), including those that are referred to today as "war crimes" in international proceedings.

420. The need emerged for amendments to the wartime military criminal code in the wake of the decision to apply this legislation to the contingent engaged in Afghanistan. Therefore, after the Government presented a specific bill (A.S. 915) in Parliament, it was decided to include these proposed amendments to the WMCC in the law confirming Decree Law 421/2001 (given the urgency arising from the mission in Afghanistan, in the Senate sitting of 22 January 2002 it was decided to incorporate bill A.S. 915 in bill A.S. 914, consequently amending the title of the bill). The final step in this process was the adoption of Law 6 of 31 January 2002. It should be noted that this law contains other significant amendments to the WMCC, in addition to the amendments to bring the Italian legislation into line with international humanitarian law.

421. If we analyse the changes made to the WMCC, we can underline that article 2.1 (b) of the law affects article 15 (WMCC) by replacing the concept of "Allied State" understood as "associate State in the war" with that of "associate State in the war operations or State taking part in the same expedition or campaign". In this way, any crimes committed by Italian military personnel against personnel taking part in the same multinational operation can be punished on the basis of the provisions of the wartime military criminal code, on condition of reciprocity.

Before the advent of Law 6/2002, the need for an amendment of this nature was underlined by Military Procurator General Bonagura, according to whom, “in order not to leave unprotected the interests involved in the proper conduct of disciplinary relations that are established in these cases, it would seem opportune to envisage the applicability to Italian military personnel of the rules concerning crimes against military discipline, even when the passive actors are military personnel of another nationality” (see report cited, page 9).

422. The provision referred to in article 2.1 (c), in which the concept of “military offence” envisaged at article 47 (WMCC) is extended, was hotly debated in Parliament. Through the new measure, under certain conditions a number of specific criminal offences (e.g. crimes against the personality of the Government, against public order, property, the person, etc.) are brought into this category. Noteworthy among these is the provision whereby violations of the criminal law committed by members of the armed forces in military situations or because of military service, against the military service or the military administration or another member of the military or member of the civilian population who finds himself in the territory of operations abroad, should be considered as military offences. This provision considerably extends the concept of military offence and, consequently, the competency of the military tribunals, an eventuality fully envisaged by article 103 of the Constitution. Finally, with article 2 (h), the aim was to repeal certain provisions of the WMCC of doubtful Constitutional legitimacy, such as those regarding the power of the Supreme Commander to issue notices abroad (arts. 17-20), to declare an individual to be a deserter after 24 hours of absence (art. 155), and at the same time to eliminate the offence of “denigration of war” envisaged in article 87 (WMCC).

423. One initial adaptation to the current international humanitarian law was the repeal in toto of article 165 (WMCC) (see article 2.1 (d) of Law 6/2002). Under article 165 (WMCC), some categories of offence (unlawful or arbitrary acts of hostility; abuse of means to harm the enemy; arbitrary charges, considerations or requisitions) were punishable following instructions by the Supreme Commander, “and only insofar as the enemy State guarantees equal penal protection to the Italian State and its citizens”. The provision therefore included two clauses expressly intended to safeguard Italian military personnel in too broad a manner.

424. In the first place, the provision envisaged non-criminal liability for some unlawful acts of war committed by our troops, even in the absence of similar breaches by the enemy, as long as it could be determined that this conduct was not sanctioned in the penal system of the other State (according to legal opinion, for the reciprocity clause to be deemed to be satisfied, this provision also required that, in addition to similar provisions being envisaged in the other legal order, an adequate repressive apparatus had to have been put in place, without which there were considered to be no grounds to prosecute the Italian military personnel responsible for the conduct in question). Moreover, a further procedural limitation was the fact that liability was envisaged for offences *de quo* only following instructions by the Supreme Commander, who was responsible for evaluating whether the condition of reciprocity had been satisfied, a judgement subsequently open to challenge by the judge.

425. The new version of article 165 (WMCC), introduced by article 2.1 (d) of Law 6/2002, envisages that: “The provisions of the title ‘of offences against the laws and practices of war’ shall apply in all cases of armed conflict, regardless of whether the state of war has been

declared.” The rationale for this provision is clear, since it tends to extend the conditions that determine the application of the incriminatory circumstances set forth in Title IV, Book III. Indeed, in the original version of the WMCC, without prejudice to those cases where these regulations are applied in time of peace, as in the case of article 9 (WMCC), the temporal condition to bring the provisions into effect was “the declaration of the state of war” (art. 3 WMCC).

426. However, starting from article 2, which is common to the four Geneva Conventions of 12 August 1949 (“In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”), to the recognition of the “state of war” by the belligerent States, understood as the circumstance that sanctions the applicability of humanitarian law, has been added the concept of “armed conflict” in order to fully safeguard the values and property protected by this set of regulations, over and above any formal constraint.

427. The new article 165 of the WMCC sanctions the application of these provisions “in all cases of armed conflict”. As the terminology used in the text does not envisage any qualification of the term “armed conflict”, this suggests that the incriminatory circumstances envisaged in Book III, Title II, of the WMCC are now applicable to any situation of armed conflict, including, in addition to international conflicts, cases of internal armed conflict.

428. The scope of this amendment is significant, since we must remember that, until the new formulation of article 165, the WMCC made no mention whatsoever of the possible penal repression of breaches of the provisions of international humanitarian law committed during internal conflicts, a gap that can be traced back to the era in which the WMCC was drawn up. In recent years, on the other hand, we have seen a widening of the scope of individual penal repression also in those cases where the breaches of international humanitarian law were committed during an internal conflict (to understand the innovative impact of this change, it should be remembered that neither article 3 common to the four Geneva Conventions of 1949 nor the Additional Protocol of 1977 classify breaches of humanitarian law committed during non-international armed conflicts as war crimes).

429. It is sufficient to note here that this development of the law at the international level has drawn on recent particularly advanced national legislative frameworks, and on the work of the ad hoc international criminal tribunals (with regard to the competency *ratione materiae* of the International Criminal Tribunal for Rwanda, article 4 of the Statute attributes to the Court the competence to repress serious breaches of article 3 common to the Geneva Conventions of 1949 and Protocol II. In the context of the International Criminal Tribunal for the Former Yugoslavia, see the *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction* for the Tadic case, in which it is established that the breach of any fundamental provisions of international humanitarian law imply the criminal liability of the accused, regardless of the nature of the conflict within which they develop).

430. Other amendments introduced through Law 6/2002 complete the process of bringing Italy’s domestic law into line with current international humanitarian law. For example, article 2 (h) abolished article 183 (WMCC), which allowed the conviction for up to one year of

any Commander who “apart from cases involving imminent danger to the security of the armed forces or the military defence of the State, orders without prior regular trial that any person caught in the act of espionage or a crime against the laws and practices of war should immediately be executed”. The elements in which article 183 was in contrast to the international law are clear to see.

431. Quite apart from the modest penalty envisaged, it should be underlined that this would not have been applicable in the event that the justifications indicated in article 183 had been in place. This eventuality was in marked contrast both to the provisions of the conventions, which sanction the right of each accused to obtain the respect of the basic legal guarantees (for the Geneva Conventions and Protocol I) depriving an individual protected by the treaties “of the right of fair and regular trial” is considered to be a “grave breach” (see articles 130 Convention III, 147 Convention IV, and article 85 of Protocol I), and to article 5 of Convention IV, which expressly grants individuals accused of spying the right to a fair trial.

432. Article 2 (e) envisages a new provision (art. 184 bis) designed to criminalize the taking of hostages (art. 184 bis (Taking of hostages)): “Any member of the armed forces who violates the ban on the taking of hostages envisaged by the provisions on international armed conflicts shall be punished by detention in a military prison for 2 to 10 years. The same penalty shall be applied to any member of the armed forces who threatens to injure or kill an unarmed person or a person, one who is not hostile in attitude, who has been captured or arrested for causes not extraneous to the war, in order to force the handing over of persons or things.”

433. The introduction of a specific provision was deemed to be necessary since the original text of the WMCC implicitly authorized this practice. Indeed, article 219 (WMCC) envisaged that “for the purposes of military penal law, hostages shall be equated to prisoners of war” (a similar expression was also contained in article 99.4 of the law of war, approved by Royal Decree 141 S of 8 July 1938), thus recognizing this form of conduct.

434. Although in international law this practice is expressly forbidden (article 34, Convention V, article 75 Protocol I) and a violation of this ban can be classified as a “grave breach” (article 147, Convention IV), the absence of a corresponding penal sanction prevented these provisions from taking effect in our legal system (to prevent this practice not even Law 718 of 26 November 1985, implementing the International Convention against the Taking of Hostages, signed in New York on 18 December 1979, could be invoked. In fact, although article 3 of Law 718/1995 envisages imprisonment of from 25 to 30 years for anyone kidnapping a person “in order to force ... a State ... to take or abstain from any action”, article 12 of the Convention explicitly excludes from its sphere of application the taking of hostages during an armed conflict. For article 12, “insofar as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, ... the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts”).

435. Therefore, although Law 6/2001 does not explicitly envisage the suppression of the domestic legislation that runs counter to these international commitments, these provisions should be considered as repealed in view of the incompatibility that now exists with the ban

introduced at article 184 bis. Finally, a further provision, article 185 bis, introduces new offences into our legislation to bring it into line with the bans imposed by the international conventions ratified after it was issued. As we have mentioned, the principal shortcomings in the provisions of the WMCC in relation to international conflicts included the fact that some grave breaches of humanitarian law (as defined by the Geneva Conventions and Protocol I) did not have any corresponding penal sanction, since they had to be deemed as non-applicable in view of their non-self-executing nature.

436. The new article makes up for this shortcoming by explicitly envisaging the punishment, by up to five years' imprisonment, of any person responsible for the crimes of torture, inhuman treatment, illegal transfer, biological experiments, or unjustified medical treatment, and by creating, through the laudable technique of referring to "other forms of conduct banned by the international conventions", a constant openness in our legislation to the penal repression of offences "against prisoners of war or civilians or other persons protected by the international conventions". By means of this last provision, some of the grave breaches for which sanctions were not previously envisaged under our legal system are now punishable, such as the ban on deportation or illegitimate confinement of a protected person, the unjustified delay in returning prisoners of war or civilians to their home country at the end of hostilities, or the practices of apartheid and other inhuman or degrading treatments based on racial discrimination (it should be recalled that article 3 of Law 15 of 27 February 2002 increased the minimum sentence for such offences from one to two years, amending the text introduced by article 2 (g) of Law 6/2002).

437. On 31 July 2003 the Council of Ministers, at the proposal of the Defence Minister, Prof. Antonio Martino, approved a bill giving enabling authority to the Government for a review of the military wartime and peacetime codes, and for the subsequent adaptation of the military legal framework. The initiative, which follows a precise commitment undertaken by the Government in Parliament, confirms the intention to bring military criminal legislation into line with international humanitarian law, by completing the legislative initiatives implemented through the first two decree laws concerning the Enduring Freedom operation. The international missions highlighted the need to accelerate the reform of the military codes and to avoid recourse to article 9 of the WMCC, which could have created gaps, inconsistencies and uncertainties as a result of its non-application, which was the result of various decree laws hurriedly introduced since the first actions in the Gulf (1990) and the subject of repeated criticism by legal opinion in view of its serious shortcomings.

438. In the context of missions abroad, express recourse solely to the peacetime code - which is appropriate to general training situations rather than to an operational engagement that can reach a remarkable degree of intensity - resulted in the failure to provide cover for certain situations and legal principles of primary importance in contexts involving the use of force: the imputation to the State of actions by members of the contingent engaged in the undertaking, the necessary cohesion within the contingent and the legal status of captured persons. More seriously, those vulnerable persons involved (the sick, the injured, the civilian population, prisoners, etc.) were left without any specific penal protection.

439. In the light of the needs set out above, which are all the more evident where peace missions are most necessary, it appeared entirely appropriate not to derogate further from the application of that code, but only from the obsolete provisions of the "justice of war". As regards content, in addition to the above considerations, it should be borne in mind that the matter of war crimes is also covered by the Rome Statute of the International Criminal Court, ratified and implemented through Law 232 of 12 July 1999.

440. As Italy, by signing the Rome Statute, has undertaken to implement it - which means, according to international legal theory, that any gaps in the domestic legislation regarding the repression of offences corresponding to the international crimes envisaged by the Statute should be closed - the above-mentioned provisions of Book III, Title IV, of the WMCC regarding crimes against the laws and practices of war will be further supplemented through the reform in order to achieve the complete and final compliance of article 8 (on war crimes) with the Statute and with the other conventions in the field of humanitarian law.

III. COMPLIANCE WITH THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

441. In relation to the recommendations expressed by the Committee and notified to our country after the discussion of the second report by the Government of Italy on the application of the Convention, please refer to paragraphs I.A (The problem of the introduction of the crime of torture to the Italian penal system), II.C (Individual cases of alleged ill-treatment), and II.D (Collective cases, with specific reference to the incidents in Somalia) of the present report.

Annexes*

1. Ministry of Justice statistics:
 - Situation of Italian prisons at 30 June 2003
 - Entrance (January-July 2003)
 - Juridical status in prisons at June 2003
 - Number of sentenced in prisons at 30 June 2003 by term of sentence
 - Crimes most frequently attributed to prisoners at 30 June 2003:
 - (i) By country of origin of prisoners
 - Foreign prisoners by nationality at 30 June
 - Foreign prisoners by region and by country-geographical area of origin at 30 June 2003.

2. Survey carried out by the Corps of Carabinieri of cases of ill-treatment complaints (1994-2002).

* Annexes can be consulted in the files of the Secretariat.