



Comitato per la promozione e protezione dei diritti umani

NGO SUPPLEMENTARY REPORT

**TO THE FOURTH ITALIAN GOVERNMENT PERIODIC REPORT ON THE
IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
submitted by Italy under articles 16 and 17 of the Covenant**

Roma, 14 October 2004

INDEX

	PAGES
INTRODUCTION	1
LIST OF THE SUPPLEMENTARY REPORT WORKING GROUP MEMBERS	3
LIST OF THE NGOS AND ASSOCIATIONS MEMBERS OF THE COMITATO PER LA PROMOZIONE E PROTEZIONE DEI DIRITTI UMANI	4

EXECUTIVE SUMMARY	7
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PART I GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

1. IMPLEMENTATION OF THE RECOMMENDATIONS SET FORTH IN THE VIENNA DECLARATION AND PROGRAMME OF ACTION OF 1993 (see list of issues, n.1, E/C.12/Q/ITA/2, 18 December 2003)	22
2. NATIONAL HUMAN RIGHTS INSTITUTION IN CONFORMITY WITH THE PARIS PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 48/134, ANNEX (see list of issues n.2, E/C.12/Q/ITA/2, 18 December 2003)	27
3. ENFORCEMENT OF THE COVENANT IN THE DOMESTIC LEGAL ORDER AND RELEVANT CASE LAW (see list of issues, n.3, E/C.12/Q/ITA/2, 18 December 2003).	32
4. POSITION OF ITALY ON THE DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT (see list of issues, n.4, E/C.12/Q/ITA/2, 18 December 2003).	36
5. LEGAL RESPONSABILITY OF ENTERPRISES IN THE FULFILMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS.	38
6. PARTECIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN THE PREPARATION OF THE REPORT (see list of issues, n.5, E/C.12/Q/ITA/2, 18 December 2003).	40

PART II ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (ARTS. 1-5)

1. RIGHT TO DEVELOPMENT AND INTERNATIONAL COOPERATION (see art. 2, par 1, 11, 15, 22 and 23 of the Covenant and list of issues, n.7, E/C.12/Q/ITA/2, 18 December 2003)	41
--	----

2. **NON-DISCRIMINATION (ART. 2, PARA. 2).** see list of issues, n.9, E/C.12/Q/ITA/2, 18 December 2003: **EXTENT TO WHICH MIGRANT WORKERS AND REFUGEES ARE ENJOYING THEIR ECONOMIC, SOCIAL AND CULTURAL RIGHTS; HOW APPLICANTS FOR REFUGEE STATUS ARE AFFORDED ECONOMIC, SOCIAL AND CULTURAL RIGHTS.** 43

**PART III
ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT
(ARTS. 6-15)**

1. **PROTECTION OF THE FAMILY, MOTHERS AND CHILDREN (ART. 10).** see list of issues, n.18, E/C.12/Q/ITA/2, 18 December 2003: **ON WHAT GROUNDS DIVORCE IS PERMITTED IN THE STATE PARTY.** 56
2. **PROTECTION OF THE FAMILY, MOTHERS AND CHILDREN (ART. 10).** see list of issues, n.19, E/C.12/Q/ITA/2, 18 December 2003: **FORMS OF DISCRIMINATION AGAINST CHILDREN BORN OUT OF WEDLOCK.** 58
3. **PROTECTION OF THE FAMILY, MOTHERS AND CHILDREN (ART. 10).** see list of issues, n.20, E/C.12/Q/ITA/2, 18 December 2003: **FAMILY VIOLENCE.** 60
4. **PROTECTION OF THE FAMILY, MOTHERS AND CHILDREN (ART. 10).** see list of issues, n.21, E/C.12/Q/ITA/2, 18 December 2003: **TRAFFICKING IN WOMEN AND CHILDREN, CHILD PROSTITUTION, CHILD PORNOGRAPHY.** 63
5. **PROTECTION OF THE FAMILY, MOTHERS AND CHILDREN (ART. 10).** see list of issues, n.22, E/C.12/Q/ITA/2, 18 December 2003: **ASYLUM-SEEKERS AND ENTITLEMENT TO FAMILY REUNIFICATION.** 67
6. **RIGHT TO PHYSICAL AND MENTAL HEALTH (ART. 12).** see list of issues, n.28, E/C.12/Q/ITA/2, 18 December 2003: **THERE IS VERY LITTLE INFORMATION IN THE STATE PARTY'S REPORT ON THE RIGHT TO HEALTH. HOW MEDICAL SECURITY AND HEALTH CARE ARE BEING PROVIDED TO ALL SECTORS OF THE ITALIAN SOCIETY, INCLUDING THE MOST VULNERABLE GROUPS OF PEOPLE, IN ACCORDANCE WITH THE COMMITTEE'S GENERAL COMMENT NO. 14 (2000) ON THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH** 69
7. **RIGHT TO EDUCATION (ARTS. 13 AND 14).** see list of issues, n.30, E/C.12/Q/ITA/2, 18 December 2003: **CHILDREN OF IMMIGRANTS, REFUGEES AND ASYLUM-SEEKERS EQUAL ACCESS TO FREE AND COMPULSORY EDUCATION.** 97
8. **RIGHT TO EDUCATION (ARTS. 13 AND 14): DISABLED CHILDREN** 100

9. **RIGHT TO EDUCATION (ARTS. 13 AND 14).** see list of issues, n.31, E/C.12/Q/ITA/2, 18 December 2003: PLEASE EXPLAIN WHY, DESPITE THE CONSIDERABLE BUDGETARY ALLOCATIONS TO EDUCATION, THERE IS A DECREASE IN THE NUMBER OF SCHOOL POPULATION, ESPECIALLY AT PRE-PRIMARY, PRIMARY AND LOWER SECONDARY SCHOOLS. IS THE DROP IN THE BIRTH RATE THE SOLE REASON FOR THIS DECREASE? PLEASE INDICATE WHETHER SCHOOL ATTENDANCE BY CHILDREN OF IMMIGRANTS HAS REVERSED THIS TREND. see list of issues n.32, E/C.12/Q/ITA/2, 18 December 2003: HOW SERIOUS IS THE PROBLEM OF DROPOUTS IN THE STATE PARTY, ESPECIALLY AT THE SECONDARY LEVEL OF EDUCATION, AND WHAT EFFECTIVE MEASURES HAVE BEEN TAKEN TO COMBAT IT 101
10. **CULTURAL RIGHTS (ART. 15).** see list of issues, n.34, E/C.12/Q/ITA/2, 18 December 2003: THE STATE PARTY'S REPORT STATES THAT THE RIGHTS OF LINGUISTIC AND RELIGIOUS MINORITY GROUPS ARE RESPECTED IN EDUCATION. HOW THESE MINORITY RIGHTS ARE ACTUALLY BEING IMPLEMENTED. 105

ANNEXES

- ANNEX 1. NATIONAL HUMAN RIGHTS INSTITUTION IN CONFORMITY WITH THE PARIS PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 48/134 (list of issues n.2, E/C.12/Q/ITA/2, 18 December 2003): DRAFT BILL ON HUMAN RIGHTS SAFEGUARDING COMMISSION.** 108
- ANNEX 2. RIGHT TO HEALTH (list of issues, n.28, E/C.12/Q/ITA/2, 18 December): NOTES, BIBLIOGRAPHY AND DEEPENINGS.** 114
- ANNEX 3. RIGHT TO HEALTH (list of issues, n.28, E/C.12/Q/ITA/2, 18 December 2003): HEALTH AND ENVIRONMENT. THE CASE OF SOLID GARBAGE.** 125
- ANNEX 4. RIGHT TO HEALTH (list of issues, n.28, E/C.12/Q/ITA/2, 18 December 2003): NATIONAL HEALTH SERVICE: A DIFFICULT LEGISLATIVE AND INSTITUTIONAL TRANSITION.** 127

INTRODUCTION

The working group for the preparation of this supplementary non-governmental report to the fourth periodic Report submitted by Italy under art. 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.13) was set up in February 2004, thanks to the initiative of VIS–Volontariato Internazionale per lo Sviluppo, one of the NGO members of the network Comitato per la Promozione e Protezione dei diritti umani.

The Comitato per la Promozione e Protezione dei diritti umani (since now Comitato) is a network actually constituted by 48 Italian NGOs (see this report pp. 4-6), set up in 2001 with the aim of promoting the fulfilment, still un-attended by Italy, of the UN resolution 48/134 adopted by the UN General Assembly in 1993, that “invites States Parties to establish independent and pluralist National Institution to promote and protect human rights”.

Since 2003, the Comitato has been advocating and lobbying at national and international level for the implementation of economic, social and cultural rights as member of the NGOs International Coalition for the Optional Protocol to the Covenant.

In the light of the recommendation of the Committee to produce a single consolidated submission representing a broad consensus by a high number of NGOs (GE.00-43093 E, n.6), we decide to join our efforts using the networking experience of the Comitato per la Promozione e Protezione dei diritti umani and to invite some external particularly relevant and qualified NGOs to take part to the working group for the preparation of the supplementary report.

This report is worked out by the 18 NGOs which have joined the working group, each one giving a contribution based on its own specific expertise, and then discussed and approved by the Assembly of all the 48 Comitato members (30 September 2004).

This report does not aim to analyse exhaustively all the issues relating to the promotion and protection of economic, social and cultural rights, but to offer the Committee a different point of view on some fundamental issues on which we can boast of a long term and direct experience.

The same definition of our NGO report as “supplementary” that we prefer to others (alternative report, parallel report, shadow report) supports the idea of a team work focused on some specific issues.

This, of course, bearing in mind the relevance of all the issues not covered due to lack of time on which we already decide to work on in the next future: in particular, some fundamental ones as: right to work, poverty, elderly, disability, housing.

The issues concerning the promotion and protection of the rights of immigrants and asylum seekers and the right to health appear particularly extended. This is due to the aim of trying to cover a deep gap of the Government Report and of the written replies to the list of issues on these issues.

Let us underline that the present document is the first consolidated non-governmental report written by a network of Italian NGOs on the implementation of the economic, social and cultural rights.

Italian NGOs, so active in promoting and protecting civil and political rights and children rights, pay a cultural delay and never participated in a consolidated way to the Committee's examination of the periodic Reports submitted by Italy under articles 16 and 17 of the Covenant.

Bearing then in mind that the present report constitutes the first experience of a network of Italian NGOs on the implementation of economic, social and cultural rights and considering the time constraints which have affected the completeness of the report, the document constitutes the result of a deep process of research, discussion, aggregation and finally growth of the Italian NGOs as a whole.

The Committee uses to consider the NGOs report in order to identify the issues to which Governments have to reply by written. Our work started when the list of issues was already defined by the Committee and therefore in an advanced phase of the examination procedure of the Italian Government Report.

Nevertheless we hope our contribution may be usefully taken into account by the Committee.

Please note that, in order to facilitate the reading, we have structured the contents of the report on the articles of the Covenant, underlining also the references to the list of issues, the Italian Government Report and the written replies to the list of issues.

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EXECUTIVE SUMMARY

As said in the introduction, the purpose of this first consolidated report of 48 Italian NGOs is offering the UN Committee a supplementary point of view from the one expressed by the Italian Government Report and by the written replies to the list of issues on some specific fundamental economic, social and cultural rights implementation issues.

In this section we list all the questions and/or corresponding recommendations we would like to ask and raise the Italian Government on each of the issues we have covered exhaustively in the next pages of supplementary report.

General issues

Education to human rights

Concerning the regret for the unfulfilment of the Vienna Declaration recommendations on mainstreaming education to human rights as indivisible and interdependent fundamental rights,

Question 1: why in Italy human rights education still remains an optional subject both in primary and secondary schools and in University *curricula*?

Recommendation 2: The Comitato recommends the teaching of Human Rights as compulsory subject at least in all university courses and in the schools of specialization for legal professions and for the training of Public Administration officers and managers.

Justiciability and self-executing

Concerning the regret for the unfulfilment of the Vienna Declaration recommendations on justiciability and self-executing capability of economic, social and cultural rights, as also described by the Committee in the General Comment n. 9 and General Comment 3,

Q 3: why Italy still invokes non justiciability and non self-executiveness of economic, social and cultural rights in order not to address the fundamental issues of the Optional Protocol to the Covenant and of the legal responsibility of enterprises regarding all human rights?

Specifically on the *Optional Protocol* to the Covenant,

Q 4: which is Italian Government's really motivated position on the adoption of an Optional Protocol to the Covenant? And especially on the issue of justiciability of economic, social and cultural rights?

R 5: The *Comitato* asks the Government to support the adoption of an Optional Protocol to the Covenant and to promote it with the International Community and European Union.

Specifically on the *legal responsibility of enterprises* regarding all human rights,

Q 6: which is the Italian Government position on the *UN Human Rights Norms for business* (the *Norms*) approved on 13 August 2003 by the Sub-Commission of United Nations for the Promotion and Protection of Human Rights?

R 7: The Comitato wishes Italy to take a clear and definite position favourable to the *Norms*, to provide for their wider dissemination and consider them the reference point for the evaluation of the enterprises responsibility performance.

R 8: The Comitato asks the Italian Government to become as well supporter of the *Norms* to the International Community in order to convert as soon as possible its content in a legally binding International Law instrument.

R 9: The Comitato besides asks the Italian Government to apply them both to national or foreign enterprises with activity in our country and to the Italian ones with activities in foreign countries.

R 10: The *Comitato* recommends the Italian Government to ask the enterprises to produce for every new activity the evaluation of its impact on human rights, declaring also the precautions taken to avoid any violation.

Sustainable human development

Concerning the regret for the unfulfilment of the Vienna Declaration recommendations on the major importance of the fundamental human right to a sustainable human development, as established in the Declaration on the Right to Development,

Q 11: why Italy does not promote the recognition of the human right to development and the corresponding legal obligations in terms of international cooperation in a legally binding international instrument?

Q 12: What is the Italian Government position on the urgent necessity for Italy of cooperation to development structural reform?

R 13: Expressing strong concern for the contradiction between the statements publicly taken and the non corresponding economic supplies, the Comitato wishes United Nations to call Italian Government back to the exact observance of the commitments publicly taken up in terms of devolving 0.7% of the GDP to international co-operation programmes.

R 14: The *Comitato* besides wishes the Italian Government to recognize the right to human and sustainable development stated by the Declaration on the Right to Development (adopted by the General Assembly in its Resolution 41/128 of 4 December 1986) as a fundamental human right in conformity with principles contained in the General Comment 3 (CESCR, 14/12/1990, par.8) and to promote its recognition with International Community in a legally binding International Law instrument.

National Independent Institution

Concerning the regret for the unfulfilment of the Vienna Declaration recommendations and of the Resolution n. 48/134 adopted by the UN General Assembly in 1993 on the National Independent Institutions to promote and protect all human rights,

Q 15: why Italy still disattends these obligations and has no National Independent Human Rights Institution?

Q 16: Specifically, why the Italian Government, considering the current Bill n.2666, first signatory Senator Enrico Pianetta, does not assume a commitment for a prompt discussion and approval of a Bill completely in conformity with the requirements indicated by U.N. Assembly and by the Paris Principles, particularly regarding the independence of the Institution?

R 17: The Comitato wishes the Italian Government to value and support the parliamentary iter of the Comitato Bill "Human Rights Safeguarding Commission", annex 1 p. 109

Unfulfilment of the Vienna Declaration

Concerning the regret for the unfulfilment of the Vienna Declaration recommendations as a whole,

Q 18: when and how Italy intends to programme a long term strategy and coherent plan of actions to promote and protect economic, social and cultural rights?

R 19: The *Comitato* wishes the elaboration of a long term, integrated and coherent national strategy able to promote and protect all human rights in their indivisibility and interdependence, beyond the frequency of turnovers which characterizes Italian political arena.

R 20: The *Comitato* urges Italian Government to elaborate a long term national strategy and plan of actions, which should actively contribute in the establishment of a common and advanced position of the European Union on each of the issues concerning human rights.

R 21: The *Comitato* regrets that the Italian Government has recently renounced to give a contribution to address important human rights issues, using the reference to a European position to be defined in order to avoid to assume publicly a political position. In particular, with regard to the fundamental issues of the Optional Protocol to the Covenant, the legal responsibility of enterprises, the human rights of immigrants and asylum seekers.

Q 22: Why the Government is not able to identify effective indicators in order to measure the results of the governmental actions in terms of human rights and to produce reliable statistics to evaluate the degree of fulfilment of the provisions of the Covenant, as well as the provisions of other international legal instruments?

R 23: The *Comitato* invites the Italian Government to identify and elaborate indicators and benchmarks concerning each of the rights enshrined by the Covenant. These indicators and benchmarks should allow a reliable and permanent statistics collection, able to show the progress in the fulfilment ratio of the Covenant provisions as well as other international legal instruments.

R 24: The *Comitato* suggests that every law or administrative decision is to be adopted with the evaluation of the impacts in terms of human rights.

Domestic legal order

Concerning the regret for the very weak reflection of the Covenant in the domestic legal order and the different value attributed to the Covenant on one hand and to the International Covenant on civil and political rights on the other,

R 25: the Comitato recommends the arrangement of free and easily available data base through public web site connected with the most important search engines for a quick and detailed identification of: International Law sources, of ratification and the entry into force of International Agreements in Human rights subjects.

R 26: The Comitato recommends greater attention in drawing up codes with special care to International sections, through the inclusion of the Covenant in full copy and in Italian language and of the fundamental instruments of International Law of Human Rights.

Non participation of Italian NGOs

Concerning the regret for the non participation of Italian NGOs in the preparation of the Italian Government Report submitted under articles 16 and 17 of the Covenant,

Q 27: according to which procedures did the Interministerial Committee for Human Rights consult with the NGOs and associations? And when did the Committee consult with them? Do the consultations records exist?

R 28: The *Comitato* asks the Government to adopt public procedures of periodical consultations with the NGOs and Associations in order to promote a constructive and permanent dialogue.

R 29: The *Comitato* recommends the Government to write a record of all the meetings in order to create a useful and profitable dialogue.

Specific issues

Rights of migrants, refugees and asylum seekers

Concerning the regret for the little extent to which migrants, refugees and asylum seekers are enjoying their economic, social and cultural rights, disregarded norms and growing discrimination,

Q 30: with what kind of financial resources the Government turns its attention to the question concerning racial discrimination and xenophobia?

Q 31: Which are the reasons why the Government keeps on in opposing an EU decision in the matter of racism?

Q 32: The administrative detention system, that shows aspects that deeply damage irregular migrant's economic, social and cultural rights and that has been created to arrange the identification for the repatriation of migrants addressed by expulsion measures, has acquired an evident punitive valence. How does the Government mean that this system could still satisfy the aim according to which it has been established?

Q 33: How does the Government think to assure the equality of treatment for migrants in prison and in temporary detention centres concerning the access to the legal aid and to alternative measures to penalty?

The Comitato recommends the Italian Government to:

R 34: ratify the UN Convention of 1990 on the rights of migrant workers and members of their families.

R 35: avoid modification to the Constitution (threatened after Constitutional Court sentences that declared unconstitutional several regulations of Bossi-Fini Law), that can harm the equality of treatment principle asserted not only in the Italian Constitution, but also in international Agreements, including the Geneva Agreement of 1951 on refugees and the UN Convention of 1990 on the rights of migrant workers and their families.

R 36: ascribe to Law, without using any regulations or guidelines of application that are often in opposition with the Law and the Italian Constitution, all the norms on juridical condition of migrants in Italy.

R 37: revise current regulations on sea dispute of clandestine immigration, regulations that are responsible of hundreds of deaths and of the criminalization of the NGOs that helps refugees.

R 38: establish in each region, with decentralized centres to a district level, discrimination-monitoring centres, already provided for by Turco-Napolitano Law in 1998 to a regional level and never brought into action.

R 39: convert the current governmental agency against racial discrimination depending on the Ministry of Welfare into an effective independent central agency, exclusively composed by parliamentary and humanitarian NGOs representatives.

Concerning specifically the rights of migrant workers:

Q 40: In matter of working discrimination, how does the Government think to conciliate the flexibility introduced by the Law 30/2003 (“Biagi Law”) with the strictness, provided for by Bossi-Fini Law, of resident permit and working contracts, from which foreign workers actually depend on?

Concerning specifically the rights of foreigner prisoners:

R 41: The *Comitato* wishes the speeding-up of the Execution Regulation on 2000 application, in particular for the articles connected to “foreign prisoners and internees”. In particular it asks for knowing if there is a specific training of health workers regarding the prisoners’ exigencies

Specifically concerning the regret for the tenth of thousands asylum seekers which do not enjoy economic, social and cultural rights (during the wait for the identification of the refugee status that lasts more than one year they are not enabled to work access, to a proper accommodation and to adequate cultural opportunities) and live in absolutely poverty conditions,

Q 42: what does the Italian Government suggest to do concerning this situation that shows a serious un-fulfilment of the legislation in that matter?

Q 43: Which are the initiatives that the Italian Government thinks to assume, even in EU and International level in order to definitely recognize to asylum seekers a status of dignity that reward them of all the pains felt?

Q 44: How the Italian Government would assure that, besides security exigencies, fundamental human rights are adequately granted?

The Comitato recommends the Italian Government to:

R 45: Assure asylum seekers a fair and dignified examination procedure, granting them and their relatives the possibility to work, study, to have access to health cares even during the proceeding.

R 46: Realize reception centres network, not detention ones, for asylum seekers waiting for an answer about the procedure and assure them a psychological support, the right to a linguistic comprehension, legal defence and the possibility of external communication.

R 47: Bring into action information services for asylum seekers in border place. Services already provided for the current law, but never effectively realized.

Rights of children and women

Concerning the regret for the un-fulfilment of all the rights of children and women,

Specifically regarding children rights violations

R 48: the *Comitato* recommends Italy the quickest passing of a Bill establishing an Independent National Children Rights Institution.

Divorce and separation

Q 49: why has the Italian Government limited the implementation of the European Convention on the exercise of children's rights just to the proceedings included in law n.77/2003, instead of extending it to more significant proceedings as divorce, separation and adoption cases?

Q 50: Why doesn't Italy promote the provision of mediation or of other means of alternative dispute resolution to resolve disputes or avoid them, especially when they affect children, as foreseen by article 13 of the European Convention on the exercise of children's rights?

R 51: The Comitato recommends the complete enforcement of the European Convention on the exercise of children's rights and the guarantee for children to be heard in civil, penal and administrative proceedings, in particular in divorce, separation and adoption cases.

R 52: The Comitato also exhorts Italy to put into effect article 13 of the European Convention, which affirms "in order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by parties".

Children born out of wedlock

Q 53: How is the Italian Government going to avoid the risk that the transfer of powers from the central government to the regions will insert in the legal

system discriminating norms towards children born out of wedlock (as in the example of the region of Lazio)?

R 54: The Comitato exhorts Italy to ratify the European Convention on the legal status of children born out of wedlock (Strasbourg, 1975), signed by Italy in 1981.

R 55: The Comitato recommends the removal of each residual form of discrimination between legitimate children and children born out of wedlock especially for inheritance legislation and regional norms for childhood.

Family violence (children and women)

Q 56: Why does the Italian law on family violence not assure the same protection to 14 and to 16 years old children, giving a different protection according to the relationship existing between the child and the person accused of the offence?

R 57: The *Comitato* exhorts Italy to remove each form of discrimination in the Italian law on family violence, to assure the same protection to every child victim of violence in the country.

R 58: The *Comitato* also exhorts Italy to launch awareness-building campaigns against domestic violence, involving the children themselves and a more exhaustive data collecting on maltreatments to children.

R 59: The Comitato wishes an awareness-building campaign about family violence against women. It should involve different subjects of National institutions and local authorities, health workers, schools, public opinion in a multidisciplinary way, to launch the aim of contents research and alternative solutions, concrete actions to face the phenomenon

Trafficking

Q 60: How will the Italian Government combine the protection offered by the provisions of article 18, confirmed by the recent Law 11 August 2003 "Measures against trafficking in persons" n° 286 article 13 (*Establishment of a special programme of assistance towards victims of crimes under article 600 and 601 of the criminal code*), and the restrictions created by Law 189/2002 "Bossi-Fini" on the issuing of residence permits, especially when the child is very close to 18 years old?

R 61: As strongly recommended by the Committee on the Rights of Children in its Concluding Observation in Italy (CRC/C/15/Add.198, 31/01/2003), the *Comitato* asks the Government to establish specific measures in favor of young victims of trafficking, even for different purposes from sexual exploitation.

R 62: The *Comitato* recommends the Government creates specific measures to help the victims of the trafficking for sexual exploitation.

R 63: The *Comitato* recommends Italy ratifies and implements the Optional Protocol to Prevent, Suppress and Punish People Trafficking, Especially Women and Children, as soon as possible, supplementing the United Nations Convention against Transnational Organized Crime, come internationally into force on 25th December 2003, in accordance with its article 17.

R 64: The *Comitato* wishes, as already recommended by the Committee on the Rights of Children in the Concluding Observations (E/C.12/1/Add.43, n.28), that Italy devises a comprehensive, coordinated and concerted

national strategy to fight trafficking in women and children, sexual abuse of minors and children pornography.

Child prostitution

Q 65: Which are the Government plans to promote inquiries and actions to fight child prostitution?

R 66: The *Comitato* recommends to promote information campaigns on the criminal offence of having sexual intercourse with subjects under 18 years of age, on the existence of child trafficking for sexual purposes and on the slave-like conditions in which victims are kept.

R 67: The *Comitato* recommends to stimulate inquiries and actions on hidden children prostitution and exploitation in apartments, night clubs and private clubs.

Child pornography

Q 68: Which are the activities and programmes carried out by the public institutions and the police services to identify the victims of child pornography so that it could be possible to stop the abuse and provide the victims with rehabilitation programmes?

R 69: The *Comitato* recommends to intensify controls on the telematic network in order to challenge the spread and the exchange of child pornographic materials.

Family reunification

Q 70: How does the Government think to balance family unity protection of asylum seekers with the norm provided for by "Bossi-Fini" Law (art.1 bis Law 02/28/90 n.39 as modified by law 189 of 07/30/2002) which establishes the forced permanence in centres unable to grant family unity because not equipped to receive families (single fellows are divided according to the sex) and regards most cases (i.e. foreigner without visa, or passport, or in lack of requirements for the asylum request)?

R 71: The *Comitato* urges the adoption of an organic legislation on asylum, which is at present been discussed in Parliament, and adequate procedures to assure family unity right for the asylum seekers.

Right to health for all

Concerning the regret for both health rights violations in our country and the difficulties of our National Health Service to face them, the *Comitato* recommends Italian Government to hold the following submitted items into due consideration, in order to carry out a health policy in line with principles, scope and means, unanimously accepted in developed countries

Principles, scopes and means

The *Comitato* recommends the Government to:

R 72: pursue the integration of the social and health services, adopting a common planning strategy for the promotion of health in the territorial context.

R 73: base the regional planning and the activity of health promotion on the possibility and ability, at the central level, to assess its effectiveness.

R 74: promote actions for reducing inequalities, as health depends from multiple social determinants, through a broad spectrum of social policies of which only a part are directly connected to the sphere of health.

R 75: allow the RHS, which is the direct responsible for the protection of the health of its population, to fulfil its duty and promote the development of policies of other sectors that can impact on determinants unrelated to health but important for the health status and to estimate their impact.

Health status of some vulnerable social groups:

Migrants:

The Comitato recommends the Italian Government to:

R 76: adequately explicit the sense of the art. 35, paragraph III and that to this purpose changes are made to the law 189/2002 during the legislative decree of realization. Foreigners suffering from serious pathologies not diagnosed, or not diagnosticable or that cannot be treated adequately and effectively in their country of origin:

R 77: must be consider as non-expellable category (as currently are pregnant wome);

R 78: must be able to obtain a residence permit allowing them to immediately demonstrate their particular status in the event of provisional arrest or control, considered moreover that the law today in force foresees the immediate accompanying to the border for all cases of expulsion;

R 79: will be able to have also the possibility to work in order to contribute to the public expense and therefore to pay for all health care received.

Italian prisoners:

The Comitato recommends the Italian Government to:

R 80: create a collaborative space between the Health Institutions (Regions, municipalities, ASL and medical services) and the forces of voluntary and not profit services that operate in this context; starting from the assumption that, the activity of the Penitentiary Medicine, just for the peculiarities of the place and the security requirements, show and can continue to manifest a structural difficulty to guarantee a global and a unitarian system of preventive, curative and rehabilitative assistance to citizens in prison;

R 81: respect of the art. 5 of the Law 419/98 "*reorder of the Penitentiary Medicine*", fundamental stage in the procedure of reforms started by the Government, for the construction of a penitentiary system that knows how to conjugate security, rights, both of the individual and the community within the prison, and social rehabilitation of the prisoners and the ex convicts;

R 82: study, as the prisoner is generally not fully aware of his state of disorder, , strategies of intervention that exceed the limitation of the classic operativeness and aim at encouraging and amplifying in particular way the human valences of the medical action that must foresee besides empathy, also knowledge of problems connected with the detention of users which generally exacerbate and increase the disease.

Poor people:

The Comitato recommends the Italian Government to:

R 83: put into effect all those measures aiming at obtaining a complete social integration of citizens and, with regard to health, to guarantee their concrete access and use of services and treatments and to guarantee to all people who for several reasons are living at the borders of the system, in conditions of social, economic and cultural fragility, routes of protection;

R 84: speed up, in accordance with the Law 328/2000, that foresees, explicitly, the existence, the full functionality of the Governmental Commission on the social exclusion, named by law by the Ministry¹⁷⁰.

R 85: inform people who live in the territory in order to be able to make conscious choices regarding their health and the services offered. It is also requested to think about an adapted organization, an efficient communicative ability, cultural compatibility, and the specific training of the staff.

Elderly people:

R 86: The Comitato urges an health Government policy aimed to prevent not only premature mortality but also to improve conditions for the elderly and increase their quality of life, without, however, forgetting a common approach in the field of public health. Da spostare

The Comitato recommends the Italian Government to:

R 87: put into effect the necessary measures for the realization of the ADI as not just a mere simple service, but as a system that foresees the integration of resources finalized to the realization of the concept of "domiciliarity" (domiciliarità);

R 88: clear if domicile assistance must be shaped as an additional health service or rather as an alternative health service in comparison with other actions;

R 89: clear the specific meaning of the ADI (Assistenza domestica integrata) in comparison with the previous forms of domicile care.

Disabled people:

The Comitato recommends the Italian Government to:

R 90: put in practice the method identified for the realization of such objectives based on the consultation between LHAs and central bodies of the State, also through the use of corporate bodies, as the Unified Conference in accordance with ex-article 8 of the legislative decree n. 281 of 28 August 1997;

R 91: create a coordination effort in order to allow the different certification typologies to interact and obtain a co-ordinated system for the assessment of the disability that will also provide useful data.

Mental health:

The Comitato recommends the Italian Government to:

R 92: Prepare and implement a complete plan, that has been set up and is coherent with the various institutional levels (national, regional, and local), for patients of the ex-MHs, and for the "new chronic patients", with precise choices regarding the identification of services and intermediate structures to established, the necessary staff, both from the private and public social field,

with the problems connected to its training, the amount of needed funding, the means for control, financial penalizations and substitute powers.

R 93: Promote a survey on behalf of the Parliamentarian Committees for Social Affairs of the Chamber of Deputies and for Health of the Senate on the private structures, both operating within the national health service and unauthorized, operating on the national territory and to define, then, the national parameters for accreditation for mental health structures.

R 94: Equip, in order to satisfy the different psychiatric needs and at the same time to guarantee the necessary therapeutic continuity, the DSM with organizational and managerial autonomy, comprised the definition of its own budget and a multidisciplinary team with the task to program and coordinate the activities of the services and structures in which it is articulated: institutes of mental health for prevention, outpatient and domicile assistance, residential structures, day centres of rehabilitation, services of diagnosis and care. Within such activities relatives of the psychiatric patients must be actively involved and associated to personalize the therapeutic plan.

R 95: Promote the performance of what is foreseen by the art. 1 co.24 of Law for the Financial Institution of 1997: "The Regions within 31 January 1997 supply the adoption of suitable instruments of planning as to the protection of mental health, in performance with what foreseen by the Health Plan Objective "Safeguard of the Mental Health 1994-96".

Problems in the realization of the National Health Service (NHS)

Access to National Health Service

The Comitato recommends the Italian Government to:

R 96: promote the application of the DPCM 16 April 2002 (GU n. 122 of 27-5-2002) Guidelines on criteria for priority admittance to the diagnostic and therapeutic services and on the maximum waiting times;

R 97: characterize and experience various effective and feasible solutions with regard to the different problems that cause the creation and increase of waiting lists, in order to guarantee to all citizens defined times for admittance to health services and, above all, times coherent with their health and clinical problems;

R 98: activate incentive systems for MMG and other medical specialists to improve access to health care services;

R 99: increase the presence and effectiveness of the Unique Reservation Centers (CUPs), as an instrument for standardization and rationalization of the representation of the offered services, which answers to the principle of transparency and accessibility and facilitates the freedom of choice of the citizen.

Livelli essenziali di assistenza (LEA) / Livelli essenziali di assistenza sociale (LIVEAS)

The Comitato recommends the Italian Government to:

R 100: put into effect a careful and constant action of monitoring of the Decree regarding LEA in the health domain, and subsequently, widen the action of monitoring beyond the indications contained in the agreement State/Regions of November 2001, comprising not only aspects correlated

with the health expenditure and maintenance of the lists of services excluded from the LEA, but above all, promote actions of social monitoring on outcomes of the health level obtained;

R 101: create stable places of consultation, deepening and analysis of the social needs of the country; a coherent approach with the spirit and sense of the same Law 328/00 and the provisions put into effect up to now ratified (in first place, the National Social Plan).

Hospital care

R 102: The Comitato recommends the Italian Government to promote the development for the District, particularly meant under the profile of the improvement of its organization (in accordance with Program of the territorial activities shared with the Committee of the Mayors and the social parts) and of the putting to disposition of effective managerial instruments it represents, and complementary to the realization of the continuity and integration.

Cancer and palliative cares

The Comitato recommends the Italian Government to contemplate the following three proposals, considered of absolute priority:

R 103: to guarantee the assistance to pain, both cancer pain and severe chronic pain, inside of the essential assistance levels;

R 104: to render the survey and the measurement of the pain obligatory, and therefore also assure its treatment, inside of the medical record of every assisted patient;

R 105: to render the formation on the therapy of pain obligatory for the general practitioners, the specialists more directly interested and the nurses in the field of the ECM programs.

Rehabilitation

R 106: The Comitato recommends the Italian Government to actively put to the point and to finance, on all the national territory, a plan for the realization of at least one spinal unit per region.

Right to education

Equal access to the right to education

Concerning the regret for the limited equal access to free and compulsory education for children of immigrants, refugees and asylum-seekers and for foreign unaccompanied children, the *Comitato* would like to ask and address the Italian Government the following questions and recommendations

Q 107: what does the Government do to ease the reception and the integration of foreigners in schools?

Q 108: How does the Government currently use funds provided for this activity?

R 109: The Comitato recommends to ensure that the educational system actively promotes integration of foreign children by providing special resources and implementing appropriate programs.

R 110: The Comitato exhorts the Italian Authorities to adopt dispositions to permit to foreigner minors, daughters and sons of irregular parents, the enter into the professional training courses.

R 111: The Comitato recommends the Government to plan special support to help settling and integrating asylum seekers children.

Concerning the regret for the un-fulfilment of the right to equal access to education of the children with disabilities

R 112: The Comitato outlines the necessity to increase the number of support teachers in all the classes with disabled children, in particularly in secondary school where at present a disabled pupil can have a support teacher only for 4 hours per week.

School population decrease and drop-out

Concerning the regret for the supposed decreased of school population on which is based the relative decrease of teachers in Italian schools and the regret for the high rate of school dropout, which does not seem to be contrasted, the *Comitato* urges the Italian Government with the following recommendations:

R 113: The *Comitato* recommends to reinforce and coordinate the tasks and action to be carried out by the Labour Inspection Agencies and the sanctioning system, as well as School Inspection Services and to promote measures designed to ensure access to free and high-quality education for all children.

R 114: *Comitato* joins to the Committee on the Rights of the Child to recommend that: "Italy strengthen its efforts to curb the rate of dropout in upper secondary education and take all necessary measures to eliminate the inequalities in educational achievement between girls and boys and between children from different social, economic or cultural groups and to guarantee to all children quality education".

R 115: The *Comitato* recommends the presence of a sufficient number of cultural mediators aimed to help foreign children and young people to learn Italian in order to have a quick integration in Italian schools and society.

Gipsy children in Italian schools

Q 116: is there any plan of action at National or local level to ensure that gypsy children have the opportunity to participate fully and effectively in school?

Q 117: Is there any data on the dropouts disaggregated by nationality, and specifically by gipsy children?

R 118: The *Comitato* recommends to ensure gypsy children have the opportunity to participate fully and effectively in school by developing support and action plans which take account of their culture.

Cultural rights

Concerning the regret for the little respect in Italian schools to other religious and linguistic minorities, the Comitato wishes to ask the Italian Government some questions and address some recommendations

Religious minority groups

R 119: The Comitato wishes the course of Catholic religion be placed out of the compulsory school time.

R 120: In the light of articles 2, 14 and 29 of CRC, the UN Committee on the rights of children, in its concluding Observations, recommends the State Party to watch over the fact that parents, particularly foreign origin parents, while enrolling their children, be aware that attending Catholic religion teaching is not compulsory. We join the Committee's recommendation.

Linguistic minority groups

Q 121: How the Italian Government means to resolve the Rom population problem, excluding them from the linguistic minorities protections adopted in conformity with the European Charter of the Minority or Regional languages drawn up by European Council in 1992?

R 122: The Comitato exhorts the Italian Government to bring in the Parliament a Bill which amends Law 482/99 in force integrating, as the first bill has provided, the reference to Rom and Sinti Communities and their languages.

Q 123: How the Italian Government would resolve the problem about Rom young people, born and grown up in Italy, but whose parents are immigrants without regular residence permit and to whom the opportunity to attend a professional training course is refused?

R 124: The Comitato exhorts the Italian Authorities to adopt dispositions to permit foreign minors, son of irregular parents, to attend professional training courses.

PART I

GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

1. IMPLEMENTATION OF THE RECOMMENDATIONS SET FORTH IN THE VIENNA DECLARATION AND PROGRAMME OF ACTION OF 1993 (see list of issues, n.1, E/C.12/Q/ITA/2, 18 December 2003)

The *Comitato per la promozione e protezione dei diritti umani (Comitato)* notes with concern that over the last decade since the 1993 World Conference, too little has been done in Italy to further develop the promotion and protection of economic, social and cultural rights in a long term integrated and coherent strategy and approach. Such general evaluation easily emerges from the comprehensive reading of the Italian Report: in its pages no reference can be found to the Vienna Declaration (1993) nor to the subsequent General Comment n. 9 (1998).

Many recommendations of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights of 25 June 1993 (A/CONF.157/23, 12 July 1993), still remain not implemented by Italy.

In particular we regret the unfulfilment of the Vienna Declaration recommendations on four particularly important issues:

a) Mainstreaming education to human rights as indivisible and interdependent fundamental rights.

In the Vienna Declaration (A/CONF.157/23, 12 July 1993, par.33, 36, 78, 79, 80, 81, 82), the international community stated the major importance of human rights education in order to achieve a universal culture of human rights and, particularly, in order to prevent future violations of fundamental rights and freedoms.

In December 1994, proclaiming the UN Decade for human rights education (1995-2004), the UN General Assembly defined human rights education as: "a permanent process through which people, at whatever level of development, can learn respect and dignity for others, as well as methods and practical tools to guarantee those respect and dignity in every society".

The right to human rights education, as well known, grounds on the solid legal base of a number of human rights international legal instruments, among others: art.26.2 of the Universal Declaration, art.13 of the International Covenant on economic, social and cultural rights, art.7 of the Convention on the elimination of racial discrimination, art.10 of the Convention on the elimination of any form of discrimination against women, art. 29 and 42 of the Convention on the rights of children.

We note with concern that in Italy human rights education still remains an optional subject both in primary and secondary schools and in University *curricula*.

In fact in Italian Universities, even in the Faculties of Law, human rights are still an optional subject (see this report, pp. 32-35); as to primary and secondary Italian

schools human rights may sometime be taught by personally sensitive teachers within the teaching of history and civic education (see par. 268, E/C.12/4/Add.13), which is obviously too little. The *Comitato* considers also the steps for human rights education in these schools, illustrated in the paragraphs 265-270 of the State Party Report (E/C.12/4/Add.13), absolutely insufficient.

The *Comitato* remains concerned at the inconsistency of the human right education strategy with the Vienna recommendations and the legal obligations under the international instruments mentioned above, particularly in terms of: mainstreaming human rights at all levels of formal and informal education, non selectivity of the consideration of human rights issues, training of trainers, financial and human resources.

b) Justiciability and self-executing capability of economic, social and cultural rights, as described by the Committee in the General Comment n. 9 (E/C.12/1998/24, CESCR, particularly par. 9, 10 and 11) and General Comment 3 (CESCR, 14/12/1990).

In the Vienna Declaration (A/CONF.157/23, 12 July 1993, par. 5, 32, 75, 98), the international community stated the fundamental importance of universality, indivisibility and interdependence of all human rights and freedoms (“civil, cultural, economic, political and social rights and freedoms”) to promote and protect, particularly in the perspective of globalization, the entire dignity of the human being as a whole.

The Vienna Declaration also reaffirmed the major importance of ensuring the objectivity and non-selectivity of the consideration of human rights issues, especially in the aim of international human development of all the persons and all the peoples of the world. Nevertheless, while the justiciability of civil and political rights is generally taken for granted, regrettably too often violations of economic, social and cultural rights are not yet considered enjoying a corresponding right to effective legal remedies. And the silence of the Governmental Report on this crucial subject may well be a sign of this trend.

We do believe that the justiciability of economic, social and cultural rights is absolutely necessary to ensure the real fulfilment of these rights and to guarantee the universality, indivisibility and interdependence of all human rights and freedoms. This, especially in the present era of globalization and in the deepening of inequalities between rich and poor Countries and between rich and poor people within the same country (as all annual reports on Human Development edited by UNDP since 1990 have been pointing out).

The *Comitato* remains concerned on the inconsistency of the Italian Government Report with the Vienna recommendations and legal obligations under the international legal instruments, particularly on two of the key-issues in terms of justiciability and self-executiveness of economic, social and cultural rights: the Optional Protocol to the Covenant and the legal responsibility of enterprises regarding all human rights.

On the issue of the draft Optional Protocol to the Covenant, please see this report on pp. 36-37; while on the issue of legal responsibility of enterprises, please see this report on pp. 38-39.

c) Effective recognition and fulfilment of the right to development.

As enshrined in art.55 and 56 of the UN Charter, peace and well being in the world community are based on the respect for the principle of equal human rights and fundamental freedoms and self-determination of peoples. In the Declaration on the Right to Development, the General Assembly, in its resolution 41/128 of 4 December 1986, recognised the right to sustainable human development as a universal and inalienable right and an integral part of fundamental human rights.

The Vienna Declaration strongly reaffirmed the major importance of the fundamental human right to a sustainable human development, as established in the Declaration on the Right to Development, and called for an effective international co-operation, for the realization of the right and the elimination of the obstacles to the human development of all peoples (A/CONF.157/23, 12 July 1993, par. 10, 11, 72, but also 4, 8, 9, 13, 14, 25, 66). In the Italian Government Report however no hint can be found on such issue nor any concern.

After Vienna and over all the last decade, international organizations, NGOs, individuals have done a lot to narrow the traditional gap between development policies and actions and human rights policies and actions.

Development and human rights have had for a long time distinct traditions and strategies, but now we all know that human rights can add value to the political agenda for development and that human rights and human development, united in a broader alliance, each can bring new energy and strength to the other.

The weakness of an effective human rights education in Italy, as well as the misunderstood question of justiciability and self-executeness of economic, social and cultural rights and the lack of an Italian Independent National Institution to promote and protect all human rights for all constitute obstacles in the pursuing of coherent, integrated and long term strategy and actions of international co-operation for human development.

As to the weaknesses of Italian international co-operation and its position on the recognition of the right to development in a legally binding international instrument, please see this report on pp.41-42.

d) Need for a National Human Rights Independent Institution.

After the recommendations set forth in the Vienna Declaration (A/CONF.157/23, 12 July 1993, par.34, 36, 74, 85, 86, 69), as solemnly affirmed in the Resolution n. 48/134 adopted by the UN General Assembly in 1993, with the vote of Italian delegates, many countries in the world have established National Independent Institutions to promote and protect all human rights. But also here there is a heavy silence in the Italian Government Report.

Italy lacks an independent human rights institution and still remains inconsistent with the legal obligations mentioned above and also with the recommendation of the General Comment n. 10: "The role of national human rights institutions in the protection of economic, social and cultural rights" (E/C.12/1998/25, CESCR).

On the need of an Italian National Independent Institution to promote and protect all human rights please see this report on pp. 27-31 and annex p. 109. In such

context, the *Comitato* wants to remember that the lack of an Italian National Independent Institution to promote and protect all human rights constitutes an obstacle to mainstream human rights education, to undertake justiciability and self executiveness of economic, social and cultural rights and to pursue the mutually reinforcing interrelationship between development, democracy and human rights in a long term international cooperation strategy.

At this regard we want to point out another reason for the need of a National Human Rights Independent Institution: the chronic un-fulfilment of International obligations taken up at international level and their non-enforced at national and local level.

The authorization to ratification is the juridical act by which the Italian Parliament allows the enter into force of the legally binding obligations undertaken at the international level into the national juridical system.

Usually the authorization to ratification law provides for the full implementation (“*piena ed intera esecuzione*”) of the international treaty and in this aim often contains specific provisions in order to eliminate obstacles to full implementation or to introduce not existing provisions at the national level.

In the specific case of the *Covenant*, the authorization to ratification law (law 25 October 1977, n. 881, which also ratified the International Covenant and the Optional Protocol on civil and political rights), the Italian Parliament did not introduced any specific provision. The provisions of the Covenant, since their entry into force, (15 October 1978), are then legally binding for Italy.

Probably the provisions of the Covenant would have been legally binding in any case, considering that article 10 of the Italian Constitution states that the national juridical system conforms to the provisions of the international law generally recognized.

The provisions set forth in the Covenant, as well as the ones set forth in the International Covenant on civil and political rights, since they are a direct development of the Universal Declaration, have the value of constitutional provisions in the Italian juridical system.

In spite of this and of the long period of time (30 years) passed since its entry into force, the Comitato notes with concern the lack of knowledge of the Covenant by Italian judges and lawyers.

Only very few juridical decisions in the case law refer to the relevant provisions of the Covenant (see pp. 32-35).

Further more, in Italy there are not available statistical data to measure the fulfilment of the Covenant and to give detailed and documented answers to the list of issues formulated by the *Committee*, in particular we regret the weakness of the Italian Government Report paragraphs: 1-5, 28, 48.4, 251, 279.

Q: When and how the Government intends to programme a long term strategy and coherent plan of actions to promote and protect economic, social and cultural rights, as foreseen by the Vienna Declaration (A/CONF. 157/23, 12 July 1993, par.71)?

R: The Comitato wishes for the elaboration of a long term, integrated and coherent national strategy able to promote and protect all human rights in their indivisibility and interdependence, beyond the frequency of turnovers which characterizes Italian political arena.

R: The Comitato urges the Italian Government to elaborate a long term national strategy and plan of actions, actively contributing in the establishment of a common and advanced position of the European Union on each of the issues concerning human rights.

R: The Comitato regrets that the Italian Government has recently renounced to give a contribution to address important human rights issues, using the reference to a European position to be defined, in order to avoid to assume publicly a political position. In particular this happened with regard to some fundamental issues as: the Optional Protocol to the Covenant, the legal responsibility of enterprises, the human rights of immigrants and asylum seekers.

Q: Why the Government is not able to identify effective indicators in order to measure the results of the governmental actions in terms of human rights and to produce reliable statistics to evaluate the degree of fulfilment of the provisions of the Covenant, as well as the provisions of other international legal instruments?

R: The Comitato invites the Italian Government to identify and elaborate indicators and benchmarks concerning each of the rights enshrined by the Covenant. These indicators and benchmarks should allow a reliable and permanent statistics collection, able to show the progress in the fulfilment ratio of the Covenant provisions as well as of other international legal instruments.

R: The Comitato wishes every law or administrative decision to be adopted with the evaluation of the impacts in terms of human rights.

2. NATIONAL HUMAN RIGHTS INSTITUTION IN CONFORMITY WITH THE PARIS PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 48/134, ANNEX (see list of issue n.2, E/C.12/Q/ITA/2, 18 December 2003)

Italy still lacks a National Independent Institution for the Promotion and Protection of Human Rights, in conformity with the so-called Paris Principles, General Assembly Resolution 48/134 of 1993, and as wished by this Committee in the General Comment 10: "The role of national human institutions in the protection of economic, social and cultural rights" (E/C.12/1998/25, CESCR).

This is all the more serious considering that no reference is made to establishment of such an Institution in the Governmental Report.

This Institution, if existing, should have among others the task to "protect and assure the harmonization and implementation of national legislation, of practices and regulation mechanisms in accordance with the international human rights instruments to which Italy is part" (principle 3b).

Moreover, this Institution, as stated in principles 3f) and 3g), should play the remarkable, decisive role of "supporting the elaboration of teaching programmes and research on human rights and taking part in their implementation in schools, universities and professional circles" and "disseminating human rights in order to increase the collective awareness through information and education..."

The lack of such a National Institution (already remarked, in a similar context, by the UN Committee for Children's Rights)¹ further highlights the difficulties in order to promote and protect in Italy all fundamental human rights in a coherent and integrated approach.

The establishment of institutions safeguarding individuals, as demonstrated by the high number of intervention requests from citizens in the recent experience of the Personal Data Protection Authority, which was established in 1997, meets people's expectations to be provided with an entity to be applied to in a direct and effective manner.

To all this it should be added that the space of guarantees allowed to non-nationals, either legally resident or not, is not completely cleared up. (see pp. 43-55).

Language and economic difficulties make a full access to justice even more difficult, in particular for non-Italians.

On the administrative level, there are no other institutions entrusted with an independent control on the respect of human rights, with the exception of the abovementioned Personal Data Protection Authority, which is in charge under the

¹ The Committee on the Rights of the Child, in its Concluding Observations on Italy (CRC/C/15/Add.198, 31/01/2003), expressed its concern for the fact that "there is no central independent mechanism to monitor the implementation of the Convention which is empowered to receive and address individual complaints of children at the regional and national levels". Therefore the Committee recommends that "the State party complete its efforts to establish a national independent ombudsman for children -if possible part of a National Independent Human Rights Institution (See General Comment No.2 on the role on independent human rights institutions), and established in accordance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134) to monitor and evaluate progress in the implementation of the Convention. It should be accessible to children, empowered to receive and investigate complaints of violations of child rights in a child-sensitive manner, and equipped with the means to address them effectively. The Committee further recommends that appropriate linkage between the national and regional institutions be developed".

Law of promoting and protecting the fundamental right to dignity and privacy, in an independent way.

During the present legislature several bills have been brought in concerning the establishment of a national Children's Protection Authority, not to mention the twenty-year attempt of establishing the national Ombudsman (Difensore Civico); however, up to now they have not produced any effects.²

Exactly by having regard to the lack of such a National Independent Institution for the Promotion and Protection of Human Rights in conformity with the Paris principles and the UN General Assembly Resolution 48/134 of 1993, the Comitato drafted and presented the Bill (in annex 1) in December 2002, sending a copy to the competent Parliamentary Committees as well. It then started a very difficult lobbying exercise to get the proposal to be discussed and approved by Parliament. The Bill is modelled after the principles of Resolution 48/134 and the Paris Principles, of which it also accepts the optional part, concerning the possibility of receiving claims and notifications and deciding about submitted cases.

The Bill envisages an authoritative, independent, and effective institution entrusted with the role of providing education and information as well as co-ordinating, supervising and encouraging the enactment of legislation in the complex area of human rights; rights which are, first and foremost, universal, indivisible, and mutually related; which ever involve new sectors - from civil and political rights to the economic, social and cultural and the environmental ones.

Pluralism and representativity are the guiding principles in setting up and selecting the members of this institution, which is competent over both domestic and foreign policy matters, since the Italian State, as well as any other State, is liable for human rights violations occurring either in its own territory or abroad either in respect of its citizens or of aliens.

The articles of the Bill set out and regulate the composition, tasks, and powers entrusted to the Italian Commission for the Protection and Promotion of Human Rights.

The Commission, set up as an autonomous and independent body with the task of fostering/promoting and protecting fundamental human rights as stated in the Constitutional Charter and generally recognised by the International Law, "acts in full autonomy and according to independent judgments and evaluations".

As an independent body, it is also granted accounting, organisational, patrimonial, financial and management autonomy.

The Commission is composed by 11 members, elected by Decree of the President of Italian Republic, in such way as to comply with the requirements laid down in the UN Resolution of 1993, namely to "assure the plurality representation of civil

² During the present legislature several bills have been brought in for the establishment of a National Children's "Garante". Here are the references of the bills (with just the first signers): n. 315 del 31/5/2001 dell'on. Mazzuca, n. 3667 del 10/2/2003 dell'on. Buontempo, n.4242 del 30/7/2003 dell'on. Burani Procaccini, n. 2461 del 31/7/2003 del Sen.Gubert, n.2469 del 1/8/2003 del Sen. Rollandin); or "Difensore civico del minore" or "dell'infanzia": n. 695 del 12/6/2001 dell'on. Turco; n. 818 del 13/6/2001 dell'on. Molinari; n. 1228 del 5/7/2001 dell'on. Pecoraro Scanio, n.1916 del 10/1/2003 del Sen. Ripamonti; o "Pubblico tutore" n. 1999 del 20/11/2001 dell'on. Pisicchio. These several definitions are used to define the same national institution in defence and promotion of children's rights.

society forces involved in the promotion and protection of human rights, in particular with powers that make the cooperation effective.

The designation will be carried out in accordance with mechanisms to be set out shortly, by associations and representative bodies of categories identified in the Paris Principles (Presidents of Chambers, major national and international NGOs involved in the protection of human rights and in the protection against discrimination, trade unions, Higher Judicature Council, National Bar Council, National Board of Medical Doctors, National Board of Journalists, and National University Order).

The members (holding office for 5 years) elect a President and a Vice-President from their own number.

Another guarantee of independence results from a provision on incompatibility with any other kind of task and the impossibility of discharging President and/or members. In fact, for the whole term of their office, President and members of the Commission may not, under penalty of losing office, either practice professional and consultancy activities, or act as managers or public and private employees. If public employees, they are temporarily discharged from their duties. Termination of office only results from expiry of the relevant term and the member's decease, as well as from resignation or subsequent certified lack of requirements and qualifications needed for appointment.

The Commission's tasks shall include:

- 1) Fostering human rights culture, using all suitable instruments;
- 2) Setting up a permanent public confrontation forum in the sector of human rights defence;
- 3) Setting up an observatory to monitor respect for human rights in Italy and abroad;
- 4) Putting forward, even of its own initiative, proposals to Government and Parliament on this subject.
- 5) Fostering the ratification of international conventions and agreements in the field of human rights;
- 6) Co-operating with both international organisations and institutions working to foster and protect human rights in other European and non-European countries;
- 7) Receiving reports concerning specific violations of and/or limitations on human rights by either the individuals concerned or the associations representing them, and adopting consistent measures.
- 8) Encouraging the adoption of codes of conduct by professional categories;
- 9) Drawing up an annual report on the activity performed and the situation concerning implementation of and respect for human rights in Italy and abroad.

The powers granted to the Commission can be distinguished into powers of verification, of inspection and of hearing claims.

First of all, the general power of the Commission to request public and private entities to give information and produce documents is provided for, except for cases of professional secrecy or State secrecy as per the relevant provisions of the Criminal Procedure Code. Besides, if necessary, the Commission may order accesses, inspections and verifications of premises and, if there is no cooperation

by the subject/s in question, have them carried out, based on an authorisation issued by the judge presiding over the geographically competent court, as related to the location of the premises to be investigated.

With regard to specific claims, the Commission can prepare a case for trial, at the end of which it can adopt measures intended to stop the behaviour claimed against.

The related procedure, in the respect of the principle of transparency, will put particular attention to the formalities that will assure the necessary guarantees for the protection of the victim. The procedure, that is carried out forward the Commission, will have justiciable nature but not jurisdictional one. Therefore, if crime hypotheses were to be found, these would be pertaining to judicial bodies.

The Commission has also the power to appoint its own staff members and adopt internal provisions regulating organization and functioning of the Office, financial matters, and the procedures to carry on its action.

Except cases of crimes provided for by the legal system, whenever from blamed cases the personal injury of the rights penally protected were found, the Commission would have the power to impose administrative fines to people who, if requested, refuse or fail to provide information and produce documents, on no reasonable grounds. Such fines are modulated by different pecuniary amounts, according to the circumstance that obliged subjects can refuse to give information and documents, or can give false information. Fines are also provided for the case of non-observance of provisions adopted by the Commission in order to stop the blamed behaviour.

The above-described is the text the Comitato presented to the Senate (Extraordinary Commission for Human Rights) in January 2003.

In the end it should be mentioned that there have been some bills in Italian Parliament for years to implement the Resolution 48/134 in Italy. The latest Bill on the subject, A.S. n.2666, was brought in, the 19 December 2003, by several middle right senators, first signatory Senator Pianetta, President of the Extraordinary Commission for Human Rights of the Senate.

This text, though coming also from some parliamentarian members of the Commission for H.R. and though assuming many parts of the *Comitato's* Bill, doesn't seem to satisfy the principles of the Resolution 48/134 *in primis* because of the lack of the fundamental requirement of independence. The Commission, in fact, as stated by article 1 of the Bill n.2666, "is established by the Prime Minister Presidency", which makes it an advisory body of the Government and not an independent Institution.

Besides, article 2 provides that two of its members are nominated by the Prime Minister. Commission's composition is not very understandable for what concerns the categories of people stated by the Paris Principles: among members appointed by Parliament, reference is made to three personalities "of international bodies of protection of H.R. and 3 others "of the most representative religious associations".

Q: Why has the Italian Government not yet considered to start fulfilling the obligations undertaken in 1993 with the UN General Assembly Resolution no. 48/134, by introducing a Bill?

Q: Why does the Italian Government, considering the current Bill no. 2666, first signatory Senator Enrico Pianetta, fail to commit itself to the prompt discussion and adoption of a Bill that is fully compliant with the requirements indicated by U.N. Assembly and the Paris Principles, particularly as regards the independence of the Institution?

R: The Comitato calls upon the Italian Government to pay due attention to and support the parliamentary progress of the Comitato's Bill on "Establishment of the Italian Commission for the promotion and protection of Human Rights".

3. ENFORCEMENT OF THE COVENANT IN THE DOMESTIC LEGAL ORDER AND RELEVANT CASE LAW (see list of issue n.3, E/C.12/Q/ITA/2, 18 December 2003)

The contextual ratification, by Law no. 881 25th October 1977, of the Covenant on economic, social and cultural rights and of the Covenant on civil and political rights, with its additional protocol, has created confusion among the law experts (for example, in a judgment issued by the Court of Lagonegro in 1984 the Covenant on civil and political rights is quoted incorrectly instead of the Covenant on economic, social and cultural rights).

Nevertheless in most cases the judges in the motivation of the judgments referred specifically to one of the two Covenants and not only generically to the Law ratifying them. Also in the remaining cases it is possible to establish which Covenant the Court referred to by examining the text of the decision.

Therefore the justification contained in the Report par. 28 (E/C.12/4/Add. 13) - that is impossible to identify which judgments effectively quoted the International Covenant on civil and political rights and which ones the Covenant on economic, social and cultural rights, since they refer only generically to the ratification Law - is totally inconsistent and groundless and reveals the total lack of a thorough analysis in the drafting of the Report by the Italian Government.

In fact we verified in which cases the jurisprudence effectively referred to the International Covenant on economic, social and cultural rights (the Covenant) or to the Covenant on civil and political rights; the latest, for example, it has been applied prevalently in Criminal cases, where are recalled the principles of protection of the defendant provided by article 14.

These considerations arise on the basis of an apposite research carried out on the judgments and the orders of the Suprema Corte di Cassazione (Italian Supreme Court) and of the Constitutional Court, and also on some particularly relevant judgments of first instance that have been transcribed in the main collections of Jurisprudence.

In the period under examination (1980-2003) only 16 judgments have been found referring expressly to the Covenant and invoking the respect of the rights there provided by articles 1-15, and 13 of these, applying article 7, are related to labour law area.

This marked prevalence is not fortuitous: in fact the university handbooks and those books finalized to form the judges and the lawyers enumerate the Covenant between the international sources of labor law, and this implies that the Covenant is well known and applied within the labour jurisprudence.

The judgments issued in labour law area, divided by issuing Authority are the following: Corte Cost n. 103/1989; Cass., sez. lav., 18-08-2003, n. 12076; Cass. civ., sez. Lavoro, 05-06-2001, n. 7617 - Pres. Santojanni Md - Rel. Amoroso G - P.M. Sepe Ea (diff.) - Lovaglio c. Ist. Poligrafico Zecca Stato; Cass. civ., sez. Lavoro, 08-07-1994, n. 6448 - Pres. De Rosa M - Rel. Vidiri G - P.M. Tondi C (Conf.) - Iodice ed altri c. S.I.P. - Società Italiana per l'esercizio Telefonico; Cass. civ., sez. Unite, 29-05-1993, n. 6031 - Pres. Brancaccio A - Rel. Genghini M - P.M.

Di Renzo M (Conf) - Cirio, Bertolli, De Rica S.p.A. c. Strino; Cass. civ., sez. Unite, 29-05-1993, n. 6030 - Pres. Brancaccio A - Rel. Genghini M - P.M. Di Renzo M (Conf) - Snam S.p.A. c. Ballali; Cass. civ., sez. Lavoro, 18-09-1991, n. 9695 - Pres. Ruperto C - Rel. Berni Canani U - P.M. Visalli I (Parz diff) - Agueni ed altri c. Banca Nazionale del Lavoro; Cass. civ., sez. Lavoro, 07-02-1991, n. 1245 - Pres. Ruperto C - Rel. Putaturo M - P.M. Cecere C (Conf) - S.p.A. RAI c. Scoti Patriarca; Cass., 18-11-1987, n. 8464; Cass. civ., sez. Lavoro, 25-03-1986, n. 2116 - Pres. Menichino G - Rel. Arena A - P.M. Di Rienzo M (Conf) – Enna c. C.I.S.; Tribunale Lagonegro, 17-07-1984 - Enel c. De Gennaro; Pretura Cosenza, 28-04-1983 - De Marco c. Cassa rurale artig. Cosenza; Pretura Portoferraio, 15-04-1980 – Grunzel. Certainly more relevant are the two judgements no. 404/1988 and No. 559/1989 issued by the Constitutional Court that, also on the basis of the principles provided by article 11 of the Covenant, have declared the constitutional illegitimacy the first one of some articles contained in law no. 392 27 July 1978 concerning the leasing of urban buildings in the part in which it was not provided that among the persons entitled to succeed in the leasing contract, in case of death of the tenant, must be numbered the common-law wife or husband, the separated consort or the former common-law wife or husband with natural children; and the second one of the article 18, first and second paragraph, of the Regional Law no. 64 10 December 1984, that regulates the assignment of the public buildings, in the part in which it was not provided the stable cohabiting as reason of succession in the assignment or as condition for the transfer of the assignment convention in favour of the cohabiting person having the custody of the children.

It must be underlined that the two judgments have in common the same supervisor judge, who normally is also the judge drafting the text of the judgment, fact that testifies that the Covenant is not generally known among the judges and that its application depends on the personal qualifications of every single judge.

Finally the judgement of the Constitutional Court, recalling the principles of protection and assistance to be granted to the family especially when it has the responsibility of the support and of the education of children provided by article 10 of the Covenant, has declared the constitutional illegitimacy of article 19 of the “Law concerning the regulation of immigration and the rules on the condition of the foreigners”, no. 286/98, in the part in which it did not extend the prohibition of expulsion to the husband living with his wife during the pregnancy or during the 6 months following the birth of the child.

Already in the concluding observations to the Third State Party report (E/C.12/1/Add.43, n.9) the Committee noted with concern that only very few Court rulings refer explicitly to the Covenant.

It is evident that 16 judgements over a period of almost 30 years are absolutely inadequate to assert that the Covenant is widely applied in the Italian Jurisprudence, that instead seems not to consider the Covenant in the same way of the other legal binding provisions into force in Italy.

This distressing results it is caused not only by the poor knowledge of the judges of this subject, but also by the misinformation of the lawyers about this issues: in fact even if in Italy the principle “*Jura novit Curia*” is still into force, it does not imply that who has an interest in claiming a right before the Courts is not expected to illustrate to the judicial authority also which are the legal basis of its claims.

This implies that the scarce application on the Covenant is due also to the fact that lawyers use it rarely to obtain the respect of the rights there provided, that they try to protect by means of other laws, or, in the worst cases, they renounce to file an action to obtain the respect of those rights thinking that they are not immediately justiciable.

In any case it is true that many principles contained in the Covenant have been already instilled in the national legislation, ordinary and constitutional, and therefore they are applied daily by our Courts. However it would be useful that the Report (par. 28, E/C.12/4/Add.13) would have indicated the resources of its research and it would have also illustrated which Italian laws protect the same rights provided by article 1-15 of the Covenant.

R: The Comitato recommends the arrangement of a free, easily available database through a public web site linked with the most important search engines to enable quick, detailed retrieval of International Law sources and instruments of ratification as well as to ascertain entry into force of International Agreements in the Human rights sector.

Another study about code collections (civil code, civil procedure code, criminal code, criminal procedure code) usually consulted by Italian judges, lawyers and jurists also demonstrates that the Covenant is quite unknown because it is seldom copied in full and in Italian language.

The study has been made on the most used codes of the publishers: Giuffrè, Simone, Cedam, La Tribuna, Zanichelli, Giappichelli, and Utet.

The Giuffrè code collection, in which is present an "International Acts" section, includes only the International Covenant for civil and political rights and its Protocol. The one of Simone publisher doesn't contain any International Acts; the one of La Tribuna includes only the European Convention for the Protection of Human Rights and Fundamental Freedoms as international agreement. Concerning specific codes on Human rights and International Law and Organisations only the publishers CEDAM and Simone contain the Covenant in Italian language.

R: The Comitato recommends greater attention in drawing up codes with particular regard to International sections, which should include the text of the Covenant in full and in Italian in addition to the fundamental International Human Rights instruments.

It seems moreover necessary that the Covenant would form a fundamental part of that tissue of basic rules which knowledge is absolutely necessary to the practice of legal profession and magistracy.

Their study, unlike what happens now, should be integral part of formative programs for university courses that give access to the above-mentioned professions and also of the officers and Public administration managers training, in primis of Ministry of Interior, Ministry of Foreign Affairs, that run "high training" schools.

Indeed, the Vienna Declaration and its Program of Action of 1993 encourage States to a greater engagement in the promotion of human rights and also through a wider education and a dissemination of public information in the sector.

Our research expressly carried out on curricula (syllabus) of 47 Italian Faculties of Law, points out that the teaching of human rights is present only in 17 Faculties. We analyzed the three-year university courses (Legal science, Legal Services,

Science for Legal Services Operators), the four-year university courses in Law (OLD SYSTEM) and the two-year university courses of specialization in Law.

The teaching of "International Defence of Human Rights"- International Protection of Human Rights - International Guarantee of Fundamental rights - exist in the curricula of 17 faculties of Law as optional subject (a student's choice) or as a specific part of International Law II or Advanced, International State Law II, or Civil law II or as annex in fundamental teaching of State Law and Constitutional Law. Only the university course of International Law and Organizations at the Faculty of Law in Siena and the two-year course of specialization in International and European Legal Studies at the Faculty of Law in Trieste envisage the teaching of "International Defence of Human Rights" and "International State Law II" with a specific part in Human Rights , as compulsory subject.

The study of post-degree schools of specialization for legal professions' programmes reveals a complete absence of Human Rights teaching.

Q: Why isn't Human Rights teaching compulsory, apart from only two Departments, in Italian Departments of the Law faculties?

R: The Comitato recommends the teaching of H.R. as a compulsory subject at least in all university courses and in the specialization schools for the legal profession as well as for the training of Public Administration officers and managers.

4. POSITION OF ITALY ON THE DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT (see list of issues, n.4, E/C.12/Q/ITA/2, 18 December 2003).

As strongly affirmed in the Vienna Declaration (A/CONF.157/23, 12 July 1993, par. 5, 32, 75, 98), the principles of universality, indivisibility and interdependence of all human rights and freedoms (civil, cultural, economic, political and social rights) to promote and protect the whole dignity of the human being, particularly in the on-going process of globalization, are deeply interrelated to the principle of non-selectivity of human rights.

On this ground the Vienna Programme of Action recommended the elaboration and adoption of an Optional Protocol to the Covenant on economic, social and cultural rights as well as to other Covenants.

However, as well known, the Optional Protocol has not been finalized yet, mainly because of the perplexities of some States concerning both the issue of justiciability of economic, social and cultural rights and the issue of interference with national sovereignty.

The General Comment n. 9 of the *Committee* (E/C.12/1998/24, CESCR, particularly par. 9, 10 and 11) proves the insubstantiality of the first objection regarding the justiciability of economic, social and cultural rights (please see also this report on p. 23)

As to the interference with the national sovereignty, we just remind here the principle of subsidiarity, referred to national jurisdictions, not only respects the national sovereignty of each single State but also encourages the development of a national jurisprudence concerning the protection of the rights set forth in the Covenant.

Besides, as known, the Optional nature of the Protocol, which, in any case would be exactly optional, doesn't establish any new obligations but produces a new monitoring mechanism on the obligations already binding for the Covenant State Parties.

The *Comitato* wishes for the adoption of an Optional Protocol to the Covenant, similar in its structure to the one, already existing since 30 years, for civil and political human rights, as essential, among the other UN Human Rights guarantee mechanisms, to assure full and equitable recognition to economic, social and culture rights. We cannot forget in fact that four out of seven United Nations fundamental Human Rights international instruments (core treaties) are provided with an Optional Protocol.

The *Comitato* wishes, therefore, for the adoption of an Optional Protocol by which both single persons and groups of individuals can report and complain to *Committee* any violations of the economic, social and culture rights.

The *Comitato* wishes the Protocol to provide for both the *communication procedure* and the *inquiry* one. The former would allow both single persons and groups of individuals to apply to the *Committee* in cases of serious violations of the Covenant's rights; the latter would enable the *Committee* to start an official inquiry for serious and systematic violations.

The *Comitato* besides wishes the *Committee* to be also allowed to take the necessary measures in order to protect the victims of the violations.

In the aim of the adoption of an Optional Protocol to the Covenant, and in such perspectives and views, in January 2004 the *Comitato* joined the International Coalition of NGOs for the adoption of an Optional Protocol to ICESCR.

During our lobbying and advocacy activities with the members of Italian Interministerial Committee for Human Rights (Ministry of Foreign Affairs) the Italian Government's representatives looked perplexed by the issue of justiciability, considered to interfere with the sovereignty of the State.

As nothing is possible to read about all this subject in the Report and the Written Reply is not taking in any considerations the General Comment n.9, we take advantage of this opportunity to ask a question and address a recommendation.

Q: Which is the Italian Government's really reasoned position on the adoption of an Optional Protocol to the Covenant? And especially on the issue of justiciability of economic, social and cultural rights?

R: The *Comitato* asks (calls upon) the Government to support adoption of an Optional Protocol to the Covenant and promote it within both the International Community and the European Union.

5. LEGAL RESPONSIBILITY OF ENTERPRISES IN THE FULFILMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Comitato has decided to call the attention on this crucial subject even though not in the list of issue, because strictly bound to the previous one.

Both NGOs and Associations for human rights defence have for a long time been stating that multinationals and other enterprises are subject to human rights international law: not only States but also other actors, in particular big enterprises with activities beyond the boundaries of their origin States are International Law subject. Actually, their activities can provoke serious and reiterated violations of Human Rights.

In their role of powerful economic subjects, these companies, in a positive but unfortunately in a negative sense as well, can have a strong influence on political decisions and therefore a relevant impact on human rights of millions of people. They can violate human rights in many ways: through the engaging of their employees and subordinates or through their production process' effect on the workers, the communities and the environment; the multinationals can even commit serious abuses often also in connivance with the Governments or repressive political authorities.

However, the multinationals pretend not to be subject to the International Law. But such principle cannot be claimed any longer: *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (Norms)* approved on 13 August 2003 by the United Nations Sub-Commission for the Promotion and Protection of Human Rights, state that the companies cannot claim to be exempted from international human rights law on the ground they are private subjects. On the contrary they are liable for their actions as well as any other international actor.

After such a decision of the Sub-Commission the Governments, convened on 20/04/04 by United Nations Commission for Human Rights in Geneva, confirmed the principle of Social Responsibility of Enterprises and the *Norms* as an evaluation method of their responsibility.

The meaningful importance of the *Norms* consists in the fact that they gather in a coherent and integrated instrument a large range of non-State economic actors obligations on human rights, contained at present, for small and big enterprises, in various instruments of International Law, in the voluntary standards and in the companies codes.

However, the Italian Government doesn't seem to have caught yet the importance of these *Norms*, in fact in the *Corporate Social Responsibility/ Social commitment* project (*CSR/SC*) proposed by Ministry of Welfare on 14 November 2003, they have been just mentioned on footnote claiming that at that date they were still in the process of being defined.

And it doesn't assure us the following answer, given by the Under Secretary for Foreign Affairs, Mrs M. Boniver, to an urgent question addressed by 37 senators about the same subject: "Italy - with the other European partners - shares the

purposes of the *Norms* approved by the Sub-Commission in Geneva, however, it wishes a further examination about them ..." We would not like that the request for this further examination were actually just to put aside, to forget the most advanced instrument regulating enterprises human rights violations.

Q: Which is the Italian Government position on the *Norms*?

R: The Comitato wishes Italy takes a clear-cut, definite position favourable to the Norms, provides for their wider dissemination and considers them the reference point for the evaluation of corporate responsibility performance.

R: The Comitato asks (calls upon) the Italian Government to become as well supporter of the Norms within the International Community in order that its contents are converted as soon as possible into a legally binding International Law instrument.

R: The Comitato besides asks the Italian Government to apply the Norms both to national or foreign enterprises with activities in our country and to the Italian enterprises with activities in foreign countries.

R: The *Comitato* recommends the Italian Government to require enterprises to produce, for every new activity, the assessment of its impact on human rights, and also specify the precautions taken to avoid any violation.

6. PARTECIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN THE PREPARATION OF THE REPORT (see list of issues, n.5, E/C.12/Q/ITA/2, 18 December 2003)

Unlike what the Italian Government stated in par. 1 of its Report, the Interministerial Committee for human rights, set up by the Ministry of Foreign Affairs in 1978 with the task to prepare Governmental Reports in relation to the application of obligations contained in International United Nation Covenants and Resolutions on human rights, doesn't seem to have provided for any formal procedure of periodical consultations with NGOs and Associations. Actually the Government has not yet an open and constructive relation with them which is necessary to produce the periodical reports due to the United Nations Treaty-bodies.

The Government doesn't equally seem to have sent any version of its report to the NGOs and Associations in order to receive their comments and remarks. Besides, no official version of the Report was on the Ministry of Foreign Affairs' website until the end of June 2004, while the Italian version, was available, on request, just on the 2nd of July.

The late submissions of the Written Replies to the list of issues and of the State Party Report updating (already regretted during the exam of the State Party Report, see Concluding observations E/C.12/1/Add.43, n.2 and 8) have made our task more difficult and postponed the opportunity to build constructive dialogue.

Another concern we want to submit refers to the Concluding Observations to the Third State Party Report. The Government should remind the recommendation of the Committee about their wide diffusion. That recommendation remained unfulfilled.

Q: According to which procedures did the Interministerial Committee for Human Rights consult with the NGOs and associations? And when did the Committee consult with them? Do the consultation records exist?

R: The Comitato asks the Government to adopt public procedures of periodical consultations with the NGOs and Associations in order to promote a constructive, permanent dialogue.

R: The Comitato recommends writing a record of all the meetings in order to give rise to a useful, fruitful dialogue.

PART II

THE ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (arts. 1-5)

1. RIGHT TO DEVELOPMENT AND INTERNATIONAL COOPERATION (see art. 2, par 1, 11, 15, 22 and 23 of the Covenant and list of issues, n.7, E/C.12/Q/ITA/2, 18 December 2003)

In September 2000, the United Nations, through the unanimous approval of the Millennium Declaration, have set forth a new global Commitment to eradicate poverty and malnutrition, to stop epidemics and virus, to guarantee education, good health and drinking water for all.

To achieve these aims, enshrined in articles 55 and 56 of UN Charter, both the poor or impoverished countries and the rich ones should work together.

A national and international commitment to gradually reach a quota of resources for cooperation to development was established and corresponds to 0,7% of GDP (gross domestic product).

Such commitment has achieved widespread success in European countries too. During the summit in Barcelona on March 2002, European Union has fixed an intermediate point to achieve the 0.39% quota of GDP before 2006. A number of European countries has already achieved the 0,7% quota, the others, after Monterrey Conference (March 2002), have fixed a data to attain the target. Regarding the Italian position, the Government is providing with only 0,11% of GDP for the Public Aid on Development (APS). If the present trend doesn't change the quota could even be reduced.

In order to remain within the European parameters of the budget, controlled by the ECOFIN, on July 2004, the Italian Government has established a retrenchment of expenses. If the decisions are confirmed, a lot of projects and agreements will be either blocked or cut. (Such decisions are confirmed particularly by the finance law 2005 which is on the way of being approved)

- the entire quota of the International Fund battling against Aids, tuberculosis and malaria (100 millions);
- the 2004 quota of the OMS Programme for the fight against the polio (4,5 millions);
- the rebuilding in Afghanistan (40 millions);
- the Italian participation in the Iraq rebuilding Fund (30 millions);
- all activities in favour of Sub-Saharan Africa;
- the retrenchment of expenses in Darfur (Sudan) Emergency;
- the reduction of 70% of the Fund assigned to ONGs (50 millions).

On the issue of international co-operation, there have not been legislative revisions after the approval of the law 49/87 about the co-operation on development, a law passed in, before the fall of Berlin wall, in 1987.

Any attempt of a structural reform at this regard is paralysed by a systemic crises of Italian co-operation for development, characterised by a growing management bureaucratisation: long terms for the approval of the projects, long terms for the examination and approval of the account reports and subsequent funds supplying, reduction of financial and human resources.

The numerous *patches* that have tried to stop the crisis, more than ten years long, have further made a picture which is needing an overall, coherent, integrated, structural reform even more difficult.

In such situation it is quite easy to understand why the Report passes this subject under silence as well as the point on application of the commitment taken on with the other States concerning the co-operation for development.

However, and notwithstanding that, Italy is having a remarkable richness of international relations, a vast and competent network of NGOs, of organized civil society subjects and of volunteers, who are operating in many parts of the world, using all those instruments and private and public resources collected particularly from self-financing campaigns and from the network of local authorities; emerging subjects, the latter ones, of a new form of the international co-operation activities decentralisation.

Q: What is the Government position on the recognition of the fundamental right to human and sustainable development and related legal duties and obligations for the States, in a legally binding International Law instrument?

Q: What is the Italian Government position on the urgent necessity for Italy of a development co-operation structural reform?

R: Expressing strong concern for the contradiction between the publicly taken commitments and the not corresponding economic supplies, the Comitato wishes the United Nations to call Italian Government back to the exact observance of the commitments publicly taken up, in particular in terms of devolving 0,7% of GDP to international co-operation programmes.

R: The *Comitato* besides wishes the Italian Government to recognize the right to human and sustainable development stated by the Declaration on the Right to Development (adopted by the General Assembly in its Resolution 41/128 of 4 December 1986), as a fundamental human right in conformity with the principles contained in the General Comment 3 (CESCR, 14/12/1990, par, 8) and to promote its recognition with International Community in a legally binding International Law instrument.

2. NON-DISCRIMINATION (ART. 2, PARA.2) extent to which migrant workers and refugees are enjoying their economic, social and cultural rights; how applicants for refugee status are afforded economic, social and cultural rights (see list of issues, n.9, E/C.12/Q/ITA/2, 18 December 2003).

Noticing a heavy silence on the subject of economic, social and cultural rights of migrants and asylum seekers in the Governmental Report, the Comitato has decided to devote a wider and deeper section to this issue.

Migrant phenomenon in Italy is characterized by a great organic legislative gap that has prevented the full application of the Geneva Convention of the 1951 and of other norms on human rights. Italy ratified the Geneva Convention of the 1951 with the Law n. 277 on 24 July of 1954 to which it appended a reserve, the so called "geographical reserve" in accordance to which the Italian Government recognized the refugees status only to people coming from European countries giving to the others the possibility to have a possible protection under the UNCHR mandate.

The legislative lack has been only partially filled with the promulgation of the Law n.39 of the 1990 the so-called Martelli Law.

This Law eliminated the geographical reserve and defined clearer dispositions in matter of asylum. Proceeding norms for the recognition of refugee status were introduced but without entering into details of its mechanism and without facing the juridical position of refugees after their recognition.

In 1998, the Testo Unico n.286 (Turco-Napolitano 40/98) in matter of migration, partially modifies Martelli Law but without interfering on the procedure concerning asylum right that is still regulated by the article 1 of Martelli Law.

Law n.189 of the 11 July 2002, the so-called Bossi-Fini Law, entered into effect on 10 of September 2002 modifies the Testo Unico of 1998 in different points. It doesn't contain an organic reform of asylum right but rather introduces some changes and restrictions to the dispositions in force of the article 1 of the Martelli Law; also in this case new dispositions aren't yet in force because of the lack of an application regulation.

1. New legislative provisions

Overall, the reform brought by Bossi-Fini Legislation (L. 30 July 2002, n. 189) is characterized by the worry of facing the phenomenon of immigration especially as a problem of public order, placing first the necessity to send irregular migrants away and hinder clandestine -trafficking. New legislation – besides embittering sanctions rules – cuts down the possibilities of legal entry for working, intensifying the precariousness of migrant workers, forced to illegal entry or to limited possibilities of entry for seasonal work.

It cannot pass under silence that the regulation provoked many critics and appeals near the Constitutional Court, that has already delivered judgment of

unconstitutionality on some of its dispositions (judgment n. 222/2004; n.223/2004: art. 13 comma 3 T U violates art 13 of Italian Constitution; art. 14 comma 5 quinquies violates art.3 and 13 of the Italian Constitution) and others it is in point of delivering.

The central aspect of the new regulation, entered into force in September 2002, is the new "resident contract", which concession is tied to the existence of a working contract, with the consequence that juridical status of migrant depends on the persistence of the work relationship, consequently, on the will of the employer.

The Comitato notes with concern that ties the possibility of a legal residence to the signature (and to the permanence) of a so strict work contract, that market evolution tends to overcome, means expose migrants to every kind of pressures, that can produce also blackmailed behaviors to the detriment of weaker subjects (such as women or old migrants).

The most obvious consequence is, also among regularly resident migrants, the further diffusion of different sorts of informal work, until to the illegal work.

The legislation n. 189/2002 decrees a dangerous precariousness of all migrants, even of those regularly resident from years in our country.

This last Legislation reduces the perspective of stabilization of long term resident permits (resident paper), halving the length of resident permit after the first renew (from four to two years) and extending the terms required for getting resident permit (from five to six years) with income requirements always more difficult to demonstrate.

In this situation the migrants matter is always more difficult and means, instruments and guarantee institutions for the protection of their rights do not exist.

2. Un-attended norms: growing racial discrimination and xenophobia.

The lack of a National Independent Institution in Italy and the consequent lack of an independent body in charge of data collection and of elaborating a national strategy, as the non-fulfilment of the Vienna and the more recent Durban Actions Programmes constitute major obstacles to the fulfilment of economic, social and cultural rights of migrants, refugee and asylum seekers.

There aren't even public institutions effectively operating on the field in combating racial discrimination or xenophobia, except the new governmental Committee, established near the Prime Minister's Office.

Even to local level there is not a better situation and a balance on the institutions appointed to face migrants' integration problems in our country appears definitely discouraging.

Many territorials Councils on immigration haven't been gathering for a long time, Commission for political integration (art. 46 T.U. 286/98) seems by now extinguished, new interdepartmental committees, as the one provided for by the art. 2 bis of T.U. modified by Bossi-Fini Law, take only decisions about expulsion measures and measures to combat clandestine immigration, but they neither take care about integration, nor make their works public.

Italy has not been ratified yet the UN Agreement of 1990 on the protection of migrant workers and their families.

The condition of irregular migrant workers (category specifically provided for by that Covenant) is therefore characterized by great precariousness.

In reality, the presence of clandestine workers into our territory is quite allowed, qualified authorities controls, as working inspectors, are very insufficient, and the lances-corporal is as permanently present in the squares of the rich Northern municipalities as in the southern suburbs of the agricultural centres.

Particularly disadvantaged is the asylum seekers' condition, during the waiting period, often very long (till' 2 years), for the decision of asylum request. Recently in Rome, in Tiburtino district, in Caserta and Palermo the uneasiness of asylum seekers forced to the whole precariousness has exploded because of the Central Commission's delays that has headed up over than 17.000 applications (about 18 months) in arrears, and because of the whole absence of public assistance.

Italian Legislation forbids the signature of a work contract and family rejoining for those asylum seekers that are still waiting for the decision of Central Commission, with the consequence that the most part of them, often isolated from the family context of origin, is completely deprived of any public contribution of assistance, and is forced to illegal work and to suffer any kind of blackmail to obtain primary goods such as food or accommodation.

With regard to this is exemplar the event of Sudanese refugees arrived in Lampedusa, from 2001, immediately destined to expulsion measures or forced to move in other parts of Italy, as in administrative detention structures in Crotone, and then abandoned to their own destiny in Caserta's territory, in Sicilian cities, or obliged to move to Rome, hoping in a faster evaluation of their asylum applications. Or also the event of refugees from Darfur: only in recent period Medias start talking about genocide in Darfur, but meanwhile the Central Commission has repealed several applications presented by those asylum seekers, without giving any importance to the events documented by big international humanitarian agencies and now completely evident.

In some Commission's interviews, lasting few minutes, has been given greater relief to the political activity carried out by asylum seekers arrived in Italy, and to their connections with the associations that received and helped them in our country. In those cases, the percentage of denials is very high, also concerning asylum seekers to whom lower limbs have been amputated.

National regulation against racial discrimination actions had a very limited application and after the accomplishment of European directives, before with proxy acts and then with decrees with force of law n. 215 and 216 of 2003, perspectives seem even worst, from the moment that it has not been realized the burden of proof inversion, that is still hung over victim of discriminatory actions. As we said there are not independent agencies that can declare discrimination cases, avoiding the victims the risk of a subsequent reprisal, and Regional observatories against racial discrimination, provided for by law 40 of 1998 have not been established yet.

But the most serious aspect that the transposition of European directives against discrimination and xenophobia in our country reveals is the "omnibus" clause included in accomplishment decrees.

According to this internal accomplishment body of legislation “*The current decree doesn’t concern neither differences of treatments based on nationality and doesn’t compromise national provisions and conditions concerning the entry, the residence, the work access, the assistance and the social security of third States citizens or stateless on national territory, nor any kind of treatment, adopted in accordance with Law, deriving by juridical condition of above-mentioned subject.*

In observance of proportionality and reasonableness principles, in the context of work relationship or of the exercise of business activities, differences of treatment due to characteristics connected to race or ethnic origin of a person doesn’t represent discrimination acts, according to the art. 2, if, for the nature of working activity or for the context in which it has been carried out, those characteristics can constitute an essential and determining requirement necessary for the realization of the activity itself.

Therefore, do not constitute discrimination acts, according to the art. 2, those differences of treatment that, even if result indirectly discriminating, are objectively justified by legitimate aims followed through appropriate and necessary instruments.

While the UN Convention on migrant workers rights and the Durban Conference Plan of Action stimulate different signatory countries in modifying internal legislation that result in opposition with the prohibition of racial discrimination, the clause just called to mind transgresses international standards and asserts the intangibility of internal legislation in point of migrants juridical condition, even when it appears directly or indirectly discriminating.

In this way the possibility of pursuing either the so called institutional racism, often expressed in form of acts or behaviours, realized by public officers, bringing back to the concept of indirect discrimination, or a more and more diffused discriminations found in work relationships, is quite completely closed.

Forms of racial discriminations are very different, and in many cases they have been endorsed by judicial authority that has taken part in legitimacy control of public administration acts.

For example, law doesn’t clearly express (even if doesn’t forbid it) that a resident permit must be however granted or renewed to foreign prisoner. In last years, a practice has been spreading (Ministry of Interior Message to the Vercelli police headquarter of 4 September 2001) according to which the application renew can’t be approved because it has become needless by the judicial Authority measure in accordance with which foreigner is detained. Recently, however, a Supreme Criminal Court of Appeal conviction (Sez. I, n. 30130/2003) decreed that the access to the assurance on trial to social services and to the other alternative extra-building measures is precluded to the foreigner without resident permit, from the moment that it could mean the illegal permanence of a foreigner in the State territory.

The preservation of the mentioned practice risks, in the light of that conviction, to make the routes of social recovery of foreign prisoner impracticable.

Q: With what kind of financial resources (mark which ones) the Government turns its attention to the question concerning racial discrimination and xenophobia?

Q: Which are the reasons why the Government keeps on in opposing an EU decision in the matter of racism?

Q: The administrative detention system, that shows aspects that deeply damage irregular migrant's economic, social and cultural rights and that has been created to arrange the identification for the repatriation of migrants addressee of expulsion measures, has acquired an evident punitive valence. How does the Government mean that this system could still satisfy the aim according to which it has been established?

And the Comitato also asks for:

R: Ratifying UN Agreement of 1990 on the rights of migrant workers and their families.

R: Avoiding modification to the Constitution (threatened after Constitutional Court sentences that declared unconstitutional several regulations of Bossi-Fini Law), that can harm the equality of treatment principle asserted not only in the Italian Constitution, but also in international Agreements, including the Geneva Agreement of 1951 on refugees and the UN Convention of 1990 on the rights of migrant workers and their families.

R: Ascribing to Law, without using any regulations of application that are often in opposition with the Law and the Italian Constitution, all the norms on juridical condition of migrant in Italy.

R: Revising current regulations on sea dispute of clandestine immigration, regulations that are responsible of hundreds of deaths and of the criminalization of the NGOs that helps refugees.

R: Establishing in each region, with decentralized centers to a district level, discrimination-monitoring centers already provided for by Turco-Napolitano Law in 1998 to a regional level and never brought into action.

R: Converting the current governmental agency against racial discrimination depending on the Ministry of Welfare into an effective independent central agency exclusively composed by parliamentary and humanitarian NGOs representatives.

3. Discrimination in Working Market

a) Doubts about the time of delivery and the resident permit renew.

Even if the Law decrees, for the delivery or the resident permit renew, a term of 20 days from the request, the corresponding provision (art. 5, co.9 T.U. of dispositions concerning migrant discipline and norms on foreigner condition, passed with a legislative decree 25.7.1998, n. 286 and following modifications) has a merely ordering characteristic, because it is not completed by any sanction or by a principle of silence-assent. In practice, the migrant worker, coming from extra-communitarian countries, already forced to long, expensive and humiliating queues to present the application for the resident permit renew to the Police Stations and Headquarters, lives for many months without an indispensable document-besides for freely circulate and for the enjoyment of the rights connected to the resident permit ownership (for example, the possibility of asking for the rejoining with who live abroad or for the admission to a study course or to a vocational training).

b) Impossibility cases of access to lawful means of maintenance

In several cases, Law provides for that foreigners could legally live in Italy for reasons connected to the protection of rights constitutionally granted or connected to the respect of international obligations. In this context are included the residence for asylum request (art. 1 L.39/1990), the residence for the right of defence assertion (art. 17 T.U.), the one who follows the situations of not expulsion of pregnant woman or that has given birth recently (art.19, co.2 T.U.) and the residence of a parent authorized by Minor Court for the protection of the minor development resident in Italy (art.31, co.3).

For all these cases, it is excluded, or it is not clearly established, that foreigners admitted to legal residence could engage any working activities, without peremptory provision of measures that assure consistent means of maintenance.

c) Discrimination in working access

Current regulation, concerning legal entry in Italy for working reasons, commands the demonstration of a preventive promise of engagement from an employer (art.22 T.U.). The impossibility of the determination of direct meeting between working demand and offer obliges, in facts, foreign workers aiming at migrate in Italy to avail themselves of an illegal resident period that allow them to constitute a work relationship, otherwise unattainable. This situation has been extending for years the illegal immigration, periodically cleared out by emendation measures. It is not at all marginal phenomenon: in the period 1988-2002 working resident permits (not seasonal) granted following an entry formally subsequent to the engagement promise have been about 285.000 (on the average, about 19.000 per year); the ones granted following emendation measures, have been about 1.360.000 (on the average, about 90.000 per year). Condition of forced illegality is then a structural element of working immigration in Italy, with direct consequences in terms of compression of migrants' rights.

Migrants work relationships subject shows several aspects of racial discrimination.

d) Just nominal equality with national workers

Requirements provided for the resident permit renew of dependent foreign worker (and, in accordance with the art.30, co.3 T.U., of his/her own parents) are very strict. In particular, it is necessary, in order to receive the renew, the existence of a working contract (art.5, co.5 T.U.). A certain resilience is provided for cases of working loss due to dismissal or resignation: in this case, where the resident permit expires before six months passes from the loss of the working place, the worker obtains a limited renew aimed to give him a period of research for a new employment with a overall duration not lower than six months (art.22, co.11, T.U.). With the exception of this limited kind of protection, then, the loss of the employment can easily mean for the foreign worker (and, consequently, for his/her family) the loss of the right to live in Italy.

The condition has further made worse for workers that have signed a temporary contract (instead of a no time limit contract). Italian Law does not allow dismissal and resignation for this kind of contract but in exceptional cases (art.2119 c.c.). So protection provisions provided for art.22, co 11, T.U. are not applied. Moreover the necessity of producing the request of renew at least sixty days before the expiry of

the permit bars the possibility that a new temporary contract with the same employer is produced in support of the request (forbidden by art.5 D.Lgs.368/2001). Because of the difficulty of finding, in a current work relationship, a possibility of employment with a different employer, the only possibility for the worker is to obtain the conversion of a temporary work relationship in a permanent one.

So it is clear that in spite of the principle of equality rights between a foreign worker legally resident and an Italian worker, provided for by the ILO Convention n.143/1975 and for the art.2, co.3, T.U., the strictness of resident permit renewal provisions ends up by enchainning the worker to his working place. The free choice of employment, provided for the citizen by the art.4 Cost., is seriously sacrificed for migrant worker, who loses also a great extent of his contracting force by comparison with his employer.

Changes brought to the T.U. by the L.189/2002 (Bossi-Fini Law) has then weighted down the employer position that would sign a working contract with a foreign worker: it is expected that the employer should guarantee the availability of an accommodation, for the worker who fulfils requirement provided for by the regional laws on public residential building, and that should cover the eventually charges for the repatriation of the same worker.

These requirements represent a deterrent for the employer, and, consequently, an element of exclusion of the foreign worker who had lost his job from the possibility of going back to working market.

This kind of discrimination makes paradoxically impossible, in facts, the admittance of migrant worker to flexible forms of working contract recently introduced or strengthened by L. 30/2003 and by D.Lgs. 276/2003 (in particular the job administration and the intermittent job), aimed to relieve the responsibilities of the employer and so reducing in this way the existing unbalance in working market, between the condition of insiders and the one of the outsiders.

e) Obstacles to a profession execution

In spite of the principle of equality rights between a foreign worker legally resident and an Italian worker (ILO Convention n.143/1975 and for the art.2, co.3, T.U.), the carrying out of an occupation by a foreign worker legally resident and with all the qualifications required for that profession is allowed by Law just within numerical limits annually fixed by Government connected to the entry of new migrants in Italy for autonomous working reasons (art. 37, co.3 T.U.). Such limits – inclusive all autonomous activities- have been, in these years, extremely low (about three thousands per year), and without establishing a priority criteria for workers already legally resident in Italy.

f) Discrimination in social services

The art.41, co.1 T.U. formally decrees the equality of rights, in order to the enjoyment of social services measures, between an Italian citizen and a foreigner legally resident with a permit to stay of a one year minimum duration. The art.80, co.19 L. 388/2000 (financial law for the 2001) has drastically limited the range of this provision, establishing, for the great part of the economic providences provided for by the legislation in social services point of law, that the equality is only connected to the owner of a resident paper. Such a limitation has created, in

particular, a serious vicious circle to the detriment of the foreign worker to whom turns up, while he is still owner of a simply resident permit for working, a condition of civil disability (for example, following to a car accident). Such a condition, precluding him the prosecution of working activity, makes him impossible the renew of the resident permit (art.5, co.5 T.U.). The lack of any income for himself and for his family, then, even in the case in which the worker has already mellowed six years of legally residence in Italy, prevents him/her to obtain a resident paper (art.9, co.1 T.U.). Poverty condition should be overtaken, if only the foreigner could obtain the disability pension, for which he surely has got subjective requirements. But such a pension is also given, among foreigners, to the owners of the resident paper. The acquisition of disability condition becomes the reason of the loss of the right of being resident in Italy.

Q: In matter of working discrimination, how does the Government think to conciliate the flexibility introduced by the Law 30/2003 (“Biagi Law”) with the strictness, provided for by Bossi-Fini Law, of resident permit and working contracts, from which foreign workers actually depend on?

To easy the working access the Comitato recommends the Modification of fluxes, visas and permits subject, in order to allow the entry for a job search and a longer permanence in case of dismissal, to reduce the hateful forms of blackmail to the detriment of migrants.

4. Discrimination to the detriment of foreign prisoners.

One third of the detained people are of foreign nationality, according to the terms of the end of 2003: 17.467 equal to the 32,2%.

A resort to a protect custody proportionally wider for foreigners than to Italian is recorded. About the 60% (59,7%) of foreign prisoners is waiting for trial, while the Italian one is about 40% (39,5%).

Among foreign prisoners the resort to a confidential defending counsel is limited and difficult because of economical reasons.

But linguistic and communication difficulties that, while reducing the resort to counsels for the defence appointed by the court, are weakening defence guarantees in inquiry and trial office. For a foreign prisoner, because of the lack of an effective legal support, some possibilities remain unknown.

The permanence in prison of foreign prisoners is on average longer than the Italian one under the same condition of indictment and sentence, both in the phase of protect custody or after the sentence. This difference is ascribed to the difficulty of access to alternative measures to custody or to domiciliary detention because of the absence of a declared residence.

But it is also different the line of the surveillance magistracy, that is closer as regards to the concession of alternative criminal course to prison for foreign prisoners, even when temporary accommodations are offered by civil society.

The “Execution Regulation” on 2000 turns the attention to the problem of criminal execution and of the treatment of detained foreigners in prison, forcing detention institutions to hold linguistic difficulties and cultural differences in consideration.

The promotion of contacts with consular authorities of countries of origin is expected and the intervention of cultural mediation characters is solicited (art 35 of the regulation), that allow a juridical protection and a communication outside his/her own condition: not simply linguistic mediator, but multifunctional and complex points of reference.

If the presence of mediators is still very insufficient, the situations in which prisoners are isolated, without the possibility of having family conversations, phone calls to the countries of origin because of bureaucratic difficulties, as the availability of the interpreter or the difficulties of verifying effective blood ties with the owner of the phone users indicated, are still very diffused.

In many institutes it has been verified that ASL (Italian public health system (in the absence of undoubted rules of application of the regulation on the health in prison) do not distribute methadone therapy to foreigners drug addict imprisoned, if they were not still in charge to the SERT (Drug addict territorial services).

It is important to remember that the most part of events of self-destruction, which happened in prison, concerns foreign prisoners. That testifies the unbearable discomfort in which most of them live.

Q: How does the Government think to assure the equality of treatment for migrants in prison and in temporary detention centers concerning the access to the legal aid and to alternative measures to penalty?

R: The *Comitato* wishes the speeding-up of the Execution Regulation on 2000 application, in particular for the articles connected to “foreign prisoners and internees”. In particular it asks for knowing if there is a specific training of health workers regarding the prisoners’ exigencies.

5. Asylum seekers discrimination

An organic law on the asylum doesn’t exist in Italy.

The connected Bill is actually in a settlement phase, while the applied Regulation of the above-mentioned law 189/2002 (so called Bossi-Fini) contains two articles that regulate the asylum procedure. The reference Law is still the Law 39/1990 (Martelli Law) with the related applied regulation, DPR of the 15 may 1990.

It arouses great worry the full of gaps application of Communitarian Directives in the matter of asylum seekers rights: the application of the European Directive n.9 of 2003 imposes the arrangement of new regulations that make European standards uniform in matter of asylum seekers procedures, granting in particular the effectiveness of the right of appeal recognized to the asylum seeker after the refusal of his petition.

This European Directive includes expectations totally opposed to what the Bossi-Fini Law provides for, and much more with its applied regulation, that allows the immediate accompaniment to the border even in presence of an appeal not yet examined by judge.

Moreover a first superficial difference between “economical migrants” and “political migrants” implies a different procedure to the access to Italian territory, that ignores all the intermediate situations, extremely diffused, persuading many people victims of political oppression, to present themselves as economic migrants in order to avoid serious consequences as the unjustified indictment of relatives still living in

native land: it is the case of many Moroccans arrived in Italy during the king Hassan II regency and the Driss Basri's Ministry of Interior direction.

So, if the statistics included lowest rates of asylum seekers of Moroccans nationality during 90thies, that does not mean that they were only "economic migrants".

Other elements that prevented political indicted or indictable people to define himself as asylum seekers are also the long waits and the impossibility of working during this period.

a) Asylum seekers' requests and the Italian answer

Asylum seekers requests for the recognition of the political refugee's status presented in Italy follow the ordinary procedure provided for by the President of Republic's decree 15 May 1990, n. 136 and by the Dublin Convention on 15 June 1990.

Who presents the asylum request, in Italy, should not wait too long for its examination. This is the reason why norms do not provide that the resident permit delivered for "asylum request" allows starting, for example, a working activity. For the maintenance of the asylum seekers without any means of maintenance Prefectures should pay a share of about 17 euros per day until a maximum of 45 days (3 trances of 15 days). But reality is very different: the asylum seeker usually waits more than one year for the examination of his application, except the case of quick procedures, as the last event of the "Cap Anamur" boat. Consequently, during this period, he is not allowed to work or have freely access to sanitary assistance. Moreover, actually, because of the lack of funds, the share is often un-paid.

Norms provide that the asylum seeker receives a three-month renewable resident permit until the end of the procedure that finishes with the hearing in front of the Central Commission for the asylum status admission.

The Commission must deliver during "15 days from the receipt of the request" (Article 3, comma 3 of the D.Pr. 15.5.1990, n.136). At the end of the individual hearing, to which the asylum seeker has the right to, the Commission can:

- Recognize the asylum status (if it believes that the case is referable to what is provided for by the Geneva Convention art.1);
- Grant humanitarian protection (if it believes that exists a danger of generalized characteristic in the foreigners' country of origin and that prevents him to come back in);
- Deny all kind of protection (denial); in this case an expulsion order is notified to the foreigners (invitation to leave Italy in 15 days); a possible appeal against the denial does not stop the execution of expulsion measure, except if the asylum seeker makes an "urgent request" to the Tribunal.

During the 2002 asylum requests in Italy were 9.608, while during the 2001 were 17.600 and in 2000 more than 18.000. If we consider that Central Commission annually repeals the 90% of asylum requests, it is easy to arrive at the conclusion that Italy doesn't respect the fundamental right of human being to the asylum, forcing ten thousand of asylum seekers to clandestinity, determining problems also to other European countries where always more considerable flows of potential asylum seekers rejected, expelled or made clandestine from Italy go.

Italy repatriates people that haven't had the possibility to present the asylum request, even expressing the will of asking asylum in Italy.

Measures adopted in September 2002, and in March and May 2003, after a Prime Minister's decree, allowed the Central Commission, qualified to decide about asylum requests, to work also without the joint character provided for law, and to move in detention centers where many asylum seekers are detained.

These people end up by being interned in prison or killed, as we think it has already happened to the Syrian family, or to a group of Curd sent back directly to Turkey in 2001, and as it has happened also for many Singhalese and Tamil deserters, recognizing by cingalese consul and sent back with a charter flight directly to the country they escaped from. In 2002 Italy carried out 5 charter flights towards Sri Lanka to send people back, the most part of which, closed in pugliese prison centres, expressed the wish of asking for asylum, without succeeding in putting the request into legal form, in the absence of interpreters or because of a rough trial by police authorities about the instrumentality of the request. Other charter flights were carried out during the 2003 and 2004.

The most recent case relates the repatriation of Cap Anamur's asylum seekers, carried by the Ministry of Interior for many of them although the Commission for the recognition of the refugee status "recommended" the non-expulsion from Italian territory.

b) Reception and assistance to asylum seekers

Situation of reception is rather dramatic in Italy: the ANP (Asylum National Program), a decentralized system for reception and integration, managed by ANCI (National Italian Municipalities Association) currently covers 10% of requests of reception.

This means that the highest percentage of asylum seekers sleeps in streets and lives in absolutely precariousness and social exclusion conditions.

National asylum program (ANP) should have given an answer to the most serious problems deriving from the length of procedure and from the almost whole absence of public assistance interventions addressed to asylum seekers.

However, recent choices of Italian Government and of the mixed Commission, expressly established, and that have been determined the funding of about 30 projects in whole Italy, do not seem to correspond to expectations.

First of all the whole allocation is ridiculous, also whereas the number of asylum seekers that still wait for a definition of their case: the number of places annually offered (about 1500) doesn't reach not even a tenth of suitable subjects.

The program is furthermore concentrated on some regions, greatly excluding others, such as Sicily, that are also an important joint for the entry of migrant asylum seekers in Italy.

After the decisions of the National Commission qualified to decide about advanced request from local authorities and associations, it has been funded only one project in Sicily, maybe in the province of Ragusa, which, among the other things receives a number of asylum seekers greatly inferior than other western sicilian provinces, such as Palermo, Trapani and Agrigento. Those Commission's administrative choices that decided on financing requests of the ANP and the little political and

financial commitment about the asylum seekers' reception and about humanitarian protection are directly responsible of the failure of humanitarian associations' great efforts, as well as the great decline of the asylum seekers' life conditions and the lack of humanitarian protection of their families, often obliged to bag for, accept dangerous jobs and live in ruinous structures, with a big risk also for health and life, of weaker people, elderly and children.

A symbolic case, among many others, of the conditions of asylum seekers is the one, in Rome, of the so called "Africa Hotel" a cluster of buildings squatted from 2001 (of FS property) near Tiburtina Station, where lived about 600 asylum seekers of Sudanese, Eritrean, Somali, Libyan, Iraqi, Palestinian nationality: with dignity they must have been adapted to live in a place without heating, with insufficient lighting (fact that obliged them to use candles, that caused a terrible fire the 28/01/2004, 11.00 p.m.), insufficient water ducts, improper garbage collection. Rome municipality has given them reception structures only in August 2004.

c) Temporary Detention Centers

The most serious violations of economic, social and cultural rights stated in the Covenant are noticed in Temporary Detention Centre (TDC).

In very many cases potential asylum seekers have been held for weeks in temporary detention centers, or in transit centers, however structures closed and inaccessible to NGOs operators, without having the possibility to present the asylum request, or, also after the presentation of the asylum request, before their identification. The system of TDCs has been set up in 1998 by law n.40 and confirmed by the new law on immigration n.189 in 2002. The system, as thought in 1998, has been mainly confirmed except for the detention period, which has been extended from 30 to a maximum of 60 days.

The temporary detention system has been set up in order to allow Italian authorities to repatriate those foreign citizens (extra EU) caught by police forces in the state-territory because not legally present in Italy. Foreign citizens detained in such centers can spend up to 60 days in detention; such period is needed by Italian authorities to identify the person through his/her diplomatic authorities in Italy and issuing the necessary documents in order to proceed to the repatriation.

The extension of the detention period is not the only modification introduced by law n.189. In fact, under the provisions of law n.40 foreign citizens in temporary detention centers were mainly issued an invitation to leave the country within 15 days; instead, an order to leave the country was issued to a limited number of cases related to public order and state security reasons. On the other hand, under the provisions of law 189, the order to leave the country has become the main option.

MSF-Mission Italy is the first independent organisation that was authorised, by Ministry of Interior, to enter all TDCs and undertake a comprehensively evaluation study on the system. MSF-Mission Italy has been monitoring the condition of assistance, reception and respect of rights in the centers in Puglia and Sicily. After almost three years of monitoring structural conditions, health assistance, respect of rights and procedures, garments, food, interpretation, social and psychological

counselling supply, respect of asylum procedures, management, MSF expresses deep concern on the conditions in the TDCs.

TDC system is in fact now working as an informal extension of penal detention since, on average, 60/70% of the population is actually coming from state prisons; in particular asylum procedures are breached on a regular basis; police forces hold an excessive power and non competent role in the running of the centres; cultural intermediation is supplied with very low quality in terms of staff and time availability (often such service is supplied only for hearings with the judge); chart of rights and duties is provided to the detainees, in an understandable language, just in some centres.

MSF will ask the closing of 3 centres: Lametia Terme, Trapani and Turin because of their very bad conditions.

Q: Tens of thousand asylum seekers do not enjoy economic, social and cultural rights (during the wait for the identification of the refugee status that lasts more than one year they are not enabled to work access, to a proper accommodation and to an adequate cultural opportunities) and live in absolutely poverty conditions: what does the Italian Government suggest to do concerning this situation that shows a serious un-fulfilment of the legislation in that matter?

Q: Which are the initiatives that the Italian Government thinks to assume, even in EU and International field in order to definitely recognize to asylum seekers a status of dignity that reward them of all the pains felt.

Norms that Europe is going to discuss in order to avoid that an asylum seeker request could be presented in more than one EU country, also after the 9/11, compare asylum seekers to migrants, creating a kind of preventive criminalization of the first.

For example it is foreseen that data contained in the EURODAC database (that contains fingerprints both of the asylum seekers or people stopped for the illegal entry in one of the European countries) are available both for the offices responsible to verify asylum seekers' identity for the admission to the procedure of recognition provided for by the Dublin Convention, or to police forces of different countries responsible to fight "terrorism and related crimes" as well as to prevent those crimes.

Q: How the Italian Government would assure that, besides security exigencies, fundamental human rights are adequately granted?

The Comitato also asks the Government for:

R: Assuring asylum seekers a fair and dignified examination procedure, granting them and their relatives the possibility to work, study, to have access to health cares even during the proceeding.

R: Realizing reception centres network, not a detention one, for asylum seekers waiting for an answer about the procedure and assure them a psychological intermediation, the right to a linguistic comprehension, legal defence and the possibility of external communication.

R: Bringing into action information services for asylum seekers in border place. Services already provided for the current law, but never effectively realized.

PART III

ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT (arts. 6-15)

1. Protection of the family, mothers and children (art. 10) See list of issues, n.18, E/C.12/Q/ITA/2, 18 December 2003: On what grounds divorce is permitted in Italy.

We give here the law sources which regard this issue and their main contents which reply to its question.

Divorce was introduced in Italy in 1970 through Law n. 898/1970 modified by Law n. 74/1987. The Italian legal system admits only the end of the civil effects of marriage.

Regarding divorce causes Law n. 74/1987 affirms that the judge is able to pronounce the dissolution of the marriage when the spiritual and material community of the couple is no longer possible because of one of the following reasons (art.3):

1. after the marriage: a) the partner is condemned to more than 15 years of imprisonment or to life imprisonment; b) the partner is condemned because of the offence of incest (art.564 penal code), rape (art.519 penal code), indecent assault (art.521 penal code), abduction (art.523 penal code), abduction of a minor of 14 years old or ill(art.524 penal code), exploitation of prostitution, c) murder of its own child or partner; d) when the partner is condemned to imprisonment for committing personal injuries (art.582 penal code), violation of the obligation of family assistance (art.570 penal code), cruelty to a member of the family (art.572 penal code), circumvention of an incapable member of the family (art.643 penal code);
2. besides: a) When the partner has been acquitted from the offences provided at number 1 b) & c) because he/she is mentally insane and the judge has established that the person is not able to maintain the living together; b) when the judge has pronounced the final sentence of legal separation of the couple or when the separation for mutual consent has been homologated or when the separation de facto has begun at least two years before the 18th of December 1970. In any case the separation of the couple must have persisted for more than three years unceasingly; c) when the criminal trial foreseen after the offences at number 1 b)& c) has ended with a non suit sentence because of the extinction of the offence, if the judge affirms that the terms of punishment do exist; d) when the criminal trial for the offence of incest has ended with an absolutory sentence because the fact has not caused a public scandal; e) when the partner, foreign citizen, has obtained abroad the annulment or the dissolution of the marriage or if he got married again abroad; f) when the marriage has not been consumed; g) when the

judge has pronounced a final sentence, which rectifies the sex attribution of the partner.

The Italian Civil Code provides for the legal separation of husband and wife or for the separation for mutual consent (art.150 civil code). According to art.151 civil code, the couple can request a separation when living together becomes unsustainable or when it becomes detrimental to the children's education.

As to the negative effects that divorce and separation have on children and young people, the *Comitato* considers the *Committee on the Rights of the Child's* complaints about law n.77/2003, which ratifies the European Convention on the exercise of children's rights (Strasbourg, 25.1.1996), because it excludes divorce and separation proceedings from the application of the European Convention (see Enclosure A "List of proceedings interested by the enforcement of the European Convention", published in the "Gazzetta ufficiale" n.210, September 10th, 2003).

The *Committee* also exhorts Italy to promote the resort of mediation or others processes of alternative dispute resolution to avoid proceedings before a judicial authority affecting children, as foreseen by article 13 of the European Convention on the exercise of children's rights (Strasbourg, 25.1.1996).

The *Committee on the Rights of the Child* in its last concluding observations (XXXII Session, points 25&26) complains about the fact that in this case the right of the child to be heard, confirmed in the Convention on the Rights of the Child and in the European Convention on the exercise of children's rights, is not implemented in Italy.

In its concluding observations the *Committee* has exhorted Italy to guarantee the right of children to be heard in each proceeding which has a direct impact on them, especially in separation, divorce and adoption proceedings.

R: Regarding children and young people's rights violations, as any other violation, the *Comitato* recommends Italy the quickest passing of a Bill establishing an independent National Children and young people Authority. (See p. 28)

Q: Why has the Italian Government limited the implementation of the European Convention on the exercise of children's rights just to the proceedings included in law n.77/2003, instead of extending it to more significant proceedings as divorce, separation and adoption cases?

Q: Why doesn't Italy promote the provision of mediation or of other means of alternative dispute resolution to resolve disputes or avoid them, especially when they affect children, as foreseen by article 13 of the European Convention on the exercise of children's rights?

R: The *Comitato* recommends the complete enforcement of the European Convention on the exercise of children's rights and the guarantee for children to be heard in civil, penal and administrative proceedings, in particular in divorce, separation and adoption cases.

R: The *Comitato* also exhorts Italy to put into effect article 13 of the European Convention, which affirms "in order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, parties shall encourage the

provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by parties”.

2. Protection of the family, mothers and children (art. 10). See list of issues, n.19, E/C.12/Q/ITA/2, 18 December 2003: forms of discrimination against children born out of wedlock.

Article 30 of the Italian Constitution states that “Parents have the duty and the right to maintain, instruct, educate their children, even if they were born out of wedlock. If parents are incapable, the law provides for someone to act for them. The law assures that all children born out of wedlock receive every form of legal and social protection, in respect of the legitimate family members’ rights.

The law dictates the terms for the paternity test.”

In spite of the art.30, comma 1, that recognizes equality between legitimate children and children born out of wedlock, the art.30, comma 3 tempers that principle with the “legitimate family members’ rights”, depriving it of its meaning.

There is still a form of discrimination towards children born out of wedlock: while the status of legitimate children depends on a system of presumptions, until proved on the contrary of course, the status of a natural child legally recognized depends on a formal public document of acknowledgement, as the record of birth or an act of will.

Something has changed with the law n.151/1975 entitled “Family law Reform” which has introduced innovations in the Civil Code.

Art.250 of the Civil Code says that a natural child can be legally recognized by both his parents, together or separately and that the acknowledgement cannot be refused when it is made in the interest of the child (art.250 civil code); this decision is then irrevocable and retroactive (art.256 civil code).

After the legal acknowledgement of a natural child, parents have towards him the same responsibilities, duties and rights they have towards legitimate children (art.261 civil code).

In its last concluding observations, the *Committee on the Rights of the Child* exhorts Italy to ratify the European Convention on the Legal Status of Children born out of Wedlock (Strasbourg, 1975), signed by Italy in 1981. According to this Convention every child must be guaranteed a family tie at least with the mother, while the right of the child to have a father should be guaranteed through a public act of acknowledgement or by a judgment.

Art.258 of the Civil Code says that the legal acknowledgement is binding only for the person who made it; this means that there is no legal relationship between the natural child and the relatives of the person who legally recognized him.

The situation is different if we talk about a legitimized child, who acquires family and legal ties with his parents’ relatives as well as if his parents had got married after he was born (art.280 civil code).

In the Italian legal system there are still some areas where the “favor legitimitatis” is predominant: for example art.252 of the Civil Code says that the

placement of a recognized natural child inside the lawful family of the person who did the acknowledgement takes place only if it is in the interest of the child, after the judge has given authority, and also if the partner of the person who legally recognized the child and their legitimate children (who must be at least 16 years old) are agreeable.

The law n.328/2000 entitled “ Frame Law for the fulfilment of the interventions and integrated social services’ system “ is considered discriminatory because it establishes that the Municipality is the institution responsible for the welfare services towards all citizens, legitimate children included, but gives other local institutions the task of dealing with children born out of wedlock.

Inheritance matters represent the field in which one finds the major differences between legitimate children and those born out of wedlock.

Despite the fact that the Family Law Reform (Law n.151/1975) had introduced innovations in the civil code, such as:

- Art.566 civil code “ Legitimate children and those born out of wedlock inherit from their parents in equal parts”;
- Art.542 civil code “ The inheritance division among all the children, legitimate and born out of wedlock, is realized in equal parts”:
- Art.565 civil code, which affirms that in the legal succession the inheritance is devolved, in the following order to: the partner, legitimate and natural descendants, legitimate ascendants, collateral relatives, other relatives and to the state;
- Art.536 of the civil code identifies first the partner and legitimate children as the people who have inheritance rights, and then the children born out of wedlock,

art.573 of the civil code affirms that “ inheritance dispositions relating to children born out of wedlock will be applied only after a legal acknowledgement by the judge or by the parents; art.537 of the civil code says that the share of inheritance due to someone’s own children, both legitimate and born out of wedlock, is the same, but legitimate children have the right to transform the inheritance share of children born out of wedlock into money or inheritable real estate, if the children born out of wedlock are agreeable; and if they are not, then to have the judge decide.

Innovations to Title V of Italian Constitution and the transfer of powers from the central Government to Italian Regions create a problem: regional laws could insert discriminatory norms from region to region and between legitimate children and those born out of wedlock.

For example, in the Italian region of Lazio, law n.32/2001 defines the family as “ a natural society based on marriage and as the privileged institution for children to live in and be educated (art.1)”;

while the local resolution n.862/2002, which gives grants to poor families, helps just those couples that got married or that have intention of getting married in a short time (Resolution 862/2002, Enclosure A “Guide lines for the payment of cheques *una tantum* to devolve to Lazio families”).

Q: How is the Italian Government going to avoid the risk that the transfer of powers from the central government to the regions will insert in the legal system discriminating norms towards children born out of wedlock (as in the example of the region of Lazio)?

R: The Comitato exhorts Italy to ratify the European Convention on the legal status of children born out of wedlock (Strasbourg, 1975), signed by Italy in 1981.

R: The Comitato recommends the removal of each residual form of discrimination between legitimate children and children born out of wedlock especially in the inheritance subject and among the regional norms for childhood.

R: Regarding children and young people's rights violations, as any other violation, the *Comitato* recommends Italy the quickest passing of a Bill establishing an independent National Children and young people Authority. (See p. 28)

3. Protection of the family, mothers and children (art. 10). See list of issues, n.20, E/C.12/Q/ITA/2, 18 December 2003: Family violence.

There isn't a precise and universal accepted domestic violence concept: it usually consists in a wide concept which includes physical abuses, sexual, psychological and economic illtreatments perpetrated against women and children by a member of family group, both inside and outside home walls.

a) Women

Family violence against women is an absolutely relevant phenomenon not only in Italy, but anywhere in the world. Currently, this is an issue rarely tackled and surely underestimated but it begins to be known not only on the quantitative level but, above all, on the quality one, and not only on the international context but also on the national one. That is why it is not possible to keep the silence about it any longer.

In 2000, the "Domestic violence against women and children", published by Innocenti Digest n.6 of Unicef Innocenti Research Centre in Florence, valued that between 20 and 50% of women all around the world have suffered violence by a family member (The data are from: OMS, *Rapport Mondiale sur la violence et la santé*, Geneve 2002). The information was possible to be declared, in spite of the lack of statistical data, because of the psychological and social obstacles tied with the claim of such abuses.

In Italy (1998) a research organized by ISTAT (Italian Institute of Statistic), "Sexual harassments and violences in the Istat research: methodology, organization, main results", maintained that "legal data about criminal claims on violence or abuses in family are certainly not representative enough to emphasise the real considerable effect of the issue".

A more detailed knowledge, which took the start twenty years ago, comes from the experiences of the Non-Violence Centres, operating over all the National territory, promoted by the "Unione Donne in Italia", and other Associations. The

activities of these centres are various. The quality of their services, relationship with women, relationship with local authorities, the origin of the Centres are different in the different cities. However, all centres provide information, analysis and projects: a particular and unique source of knowledge, even though regarding only women who have applied to these offices.

Analysing the number rate of assistance request it is remarkable both the inadequacy of public services to guarantee women protection, and the presence of the persistence of unbalanced behaviours in the relationship between the two sexes. The violences reported to the Centres are ordinary and consecutive, against women who aren't "particular" or "pathological"; it is a violence which gets into the society texture, in the families, in the relationships, that is a normal violence, namely accepted. And the violent men are defined normal men. In most cases, they don't belong to the social or behavioural vulnerable sphere. It is denying then another cultural common place which considered violent men in a marginalization zone, in a material or cultural poverty or with a psychopathology diagnosis.

The latest remarkable researches in Italy have been carried out, within "Urban Italian Program", which has started the "Non-violence Net among the Urban cities" to contrast the violence phenomenon against women. The net was promoted for by the Ministry of Equal Opportunities in 1997, and, in its first experience, it has involved 8 cities: Venezia (leader), Catania, Foggia, Lecce, Napoli, Palermo, Reggio Calabria, and Roma. With the multidisciplinary participation of Universities, research institutes, experts, health and social workers, local and national Administrations, a process - reproducible - of understanding and knowledge was planned and concluded in three years period. The aim of this research-action isn't the data but, on the one hand, the verification of basis stereotypes of the male violence unavoidability and, on the other hand, its justifications from the female part.

Single local research reports and a national report have been produced and published in a first volume: Urban Project: "Within the violence: culture, bias, stereotypes", National Report "Urban Non-Violence System". Franco Angeli, Milan 2002. The second phase of the research is finished and it is going to be published.

The Comitato hopes that this same route be continued by Italian institutions, not allowing that silence falls on such not yet recognized serious violation, which would deserve further specific initiatives beyond the new latest Law 154/01: "Measures against violence in family relationships", correctly mentioned by the Government in its Written Reply.

United Nations, as above-mentioned, consider violence against women the most spread crime around the world. At present, there is therefore a patrimony of knowledge and data which couldn't be more alarming.

However, the "awareness burst" is incomplete, only a singular, not a common awareness. The Report itself is a demonstration of this for what regards Urban cities. Underestimating and justifying culture is still very strong and constitutes the other face of the emergency. And the unawareness of the seriousness of the phenomenon doesn't induce the institutions to produce contrast, permanent and coherent politics.

R: The Comitato wishes an awareness-building campaign about family violence against women. It should involve different subjects from National institutions and local authorities, from health workers, schools, public opinion, in a multidisciplinary way, to launch the aim of contents research and alternative solutions, concrete actions to face the phenomenon.

b) Children

Relating to prevention and protection of children victims of domestic violence, the Italian Government has established a National Commission to co-ordinate the actions to fight maltreatments and sexual exploitation of children and it has approved the law n.66/1966 on sexual violence and the law n.154/2001 entitled "Measures against violence within the family".

The law n.154/2001 introduces:

- in the Italian Criminal Procedure Code, the measure of estrangement from home of the accused person and the measure prohibiting him/her of being close to the places where the victim person usually goes;
- in the Civil Code and in the Civil Procedure Code, the "protection orders against domestic violence" (Art.342 -bis,-ter civil code; art. 736-bis civil procedure code).

The law n.154/2001 extends its measures, if compatible, to the detrimental behaviour of a member of the family, other than the spouse or partner.

The *Committee on the Rights of the Child* in its last concluding observations to Italy (XXXII Session – January 2003) showed concern about the lack of exhaustive data on children's maltreatments and about the fact that Italian laws in this subject do not assure the same protection to 14 and to 16 years old children: it depends on the relationship existing between the child and the accused; so the *Committee on the Rights of the Child* exhorts Italy to launch awareness-building campaigns on this subject, involving children, and recommends Italy to change law n.154/2001 to assure each child the same protection in case of maltreatment.

Q: Why does the Italian law on family violence not assure the same protection to 14 and to 16 years old children, giving a different protection according to the relationship existing between the child and the person accused of the offence?

R: The Comitato exhorts Italy to remove each form of discrimination in the Italian law on family violence, to assure the same protection to every child victim of violence in the country;

R: The Comitato also exhorts Italy to launch awareness-building campaigns against domestic violence, involving the children themselves and a more exhaustive data collecting on maltreatments to children.

R: Regarding children and young people's rights violations, as any other violation, the Comitato recommends Italy the quickest passing of a Bill establishing an independent National Children and young people Authority (see p. 28).

4. Protection of the family, mothers and children (art. 10). See list of issues, n.21, E/C.12/Q/ITA/2, 18 December 2003: trafficking in women and children, child prostitution, child pornography.

Trafficking in women and children

The recent Law 228 /8 August 2003 “Measures against trafficking in human beings” introduced new instruments to fight against trafficking in human beings. This law provides for:

- Penalties for perpetrators (reclusion from 8 up to 20 years for perpetrators in general, and longer reclusion if the victims are minors or if perpetrators are involved in criminal networks. All the penalties are increased (of 1/3 or 1/2) when the victims are younger than 18;
- Specific legal definition of enslavement and of trafficking in human beings;
- Victims rehabilitation through the creation of a new fund to finance specific programmes. Specific attention will be given to the victims’ first assistance (housing, health care, etc);
- Prevention: this law gives to the Ministry of Foreign Affairs the power to define co-operation policies on this issue and to organize international meetings and information campaigns in the same countries of origin.

Law n.40/1998 (article 18) provides for a specific permission to the victims to stay for reasons of protection. Article 18 doesn’t ask for previous cooperation with judicial system, but many Questure/Police Headquarters (Police Departments in charge of issuing permit of stay for humanitarian aims) do. The victims who get the permit of stay take part to an assistance and social re-integration programme. These measures are reinforced by Law 228/03, including first assistance and long term reintegration.

According to the data collected by Central Head Office of Immigration and Border Police of the Ministry of Home Affairs, 3757 residence permits for social protection were issued before 31 October 2003 as provided for by Article 18.

In 2003, 848 residence permits for social protection were issued to Nigerian (222), Romanian (180), Moldavian (939), Ukrainian (65) and Albanian (64) women. (Source: Ministero dell’Interno, Dipartimento Pubblica Sicurezza, Direzione Centrale della Polizia Criminale).

The *Comitato* regrets that the effective instrument of article 18 procedure has been used just in favor of women, victims of trafficking for sexual exploitation

In fact, it has been used for children in a very few cases and never used for male children nor for victims of trade for purposes different from sexual exploitation (i.e. child labour, begging, exploitation in illegal activities).

In Italy it’s not enough increasing the penalties for the traffickers, but it’s necessary to establish specific laws in favor of the young victims of the trafficking for sexual exploitation and other purposes.

R: As strongly recommended by the *Committee on the Rights of Children* in its Concluding Observation in Italy (CRC/C/15/Add.198, 31/01/2003), the *Comitato* asks the Government to establish specific measures in favor of young victims of trafficking, even for different purposes from sexual exploitation.

In order to defeat such a trafficking, the Government should protect victims and prevent crimes at the same time. And it should act both in the countries of origin and of destination.

R: The *Comitato* recommends the Government to create specific measures to help the victims of the trafficking for sexual exploitation.

R: The *Comitato* recommends Italy to ratify and implement the Optional Protocol to Prevent, Suppress and Punish People Trafficking, Especially Women and Children, as soon as possible, supplementing the United Nations Convention against Transnational Organized Crime, come internationally into force on 25th December 2003, in accordance with its article 17.

R: The *Comitato* wishes, as already recommended by the *Committee* in the Concluding Observations (E/C.12/1/Add.43, n.28), Italy to devise a comprehensive, coordinated and concerted national strategy to fight trafficking in women and children, sexual abuse of minors and children pornography.

In Italy, young victims of trafficking are often confused with separated children (unaccompanied migrant children). The consequences are very significant because the two different identifications are directly related with two different measures of protection. A young victim of trafficking is protected by article 18, *Permit of stay for reasons of social protection* (Law 286/98), while separated children fall under the provisions of the "Bossi-Fini" Law (Law 189/02). The difficulties for family reunification created by the "Bossi-Fini" Law increase the risk of a high number of irregular adolescent migrants.

The "Bossi-Fini" Law also provides for that children could obtain a residence permit for studying or working at 18 years old only if they have been on the Italian territory for the last three years and they have been part of a social integration project. This increases the risk of the irregular migration of children of younger age.

Q: How will the Italian Government combine the protection offered by the provisions of article 18, confirmed by the recent Law 11 August 2003 "Measures against trafficking in persons" n° 286 article 13 (*Establishment of a special programme of assistance towards victims of crimes under article 600 and 601 of the criminal code*), and the restrictions created by Law 189/2002 "Bossi-Fini" on the issuing of residence permits, especially when the child is very close to 18 years old?

R: Regarding children and young people's rights violations, as any other violation, the *Comitato* recommends Italy the quickest passing of a Bill establishing an independent National Children and young people Authority. (See p. 28)

Child prostitution

The phenomenon of child prostitution intersects with both the complex world of prostitution in general and with child trafficking.

In Italy, Nigerian girls started arriving at the end of the 1980s, followed by large numbers of Albanian girls in the early 1990s. More recently, girls began to arrive from Eastern European (from the former U.S.S.R., Moldavia, Romania, Poland and Hungary). The different cultural backgrounds of the girls involved required different approaches for each individual ethnic group. The child prostitution in Italy is publicly perceived through the presence of girls walking the streets of almost all the towns.

In addition, there are even more problems related to male child prostitution and to girls working in clubs, night clubs or private apartments, although people are generally unaware of them.

The *Comitato* has already noted with concern that art.18 has never been applied to male children, maybe because male child prostitution still remains a hidden phenomenon and probably a taboo in Italian culture.

(Source: " The rights of children in Italy. Perspective in the Third Sector. Supplementary Report to United Nations" of the Working Group for the CRS)

Q: Which are the Government plans to promote inquiries and actions to fight child prostitution?

R: The *Comitato* recommends to promote information campaigns on the criminal offence of having sexual intercourse with subjects under 18 years of age, on the existence of child trafficking for sexual purposes and on the slave-like conditions in which victims are kept.

R: The *Comitato* recommends to stimulate inquiries and actions on hidden children prostitution and exploitation in apartments, night clubs and private clubs.

Child pornography

It's very hard analysing numerically the extent of child pornography problem because of the lack of updated data and detailed studies. Evaluating such a phenomenon, two aspects must be considered:

- The number of children and adults who have been abused during the production of pornographic material
- The gamut of child pornography itself.

Sexual abuse, in all its forms, is a hugely complex social problem that requires a high level of professional expertise, especially regarding pornography on Internet, where it is extremely difficult to provide a detailed answer as to the size of the problem as because it is not subject of statistical analysis.

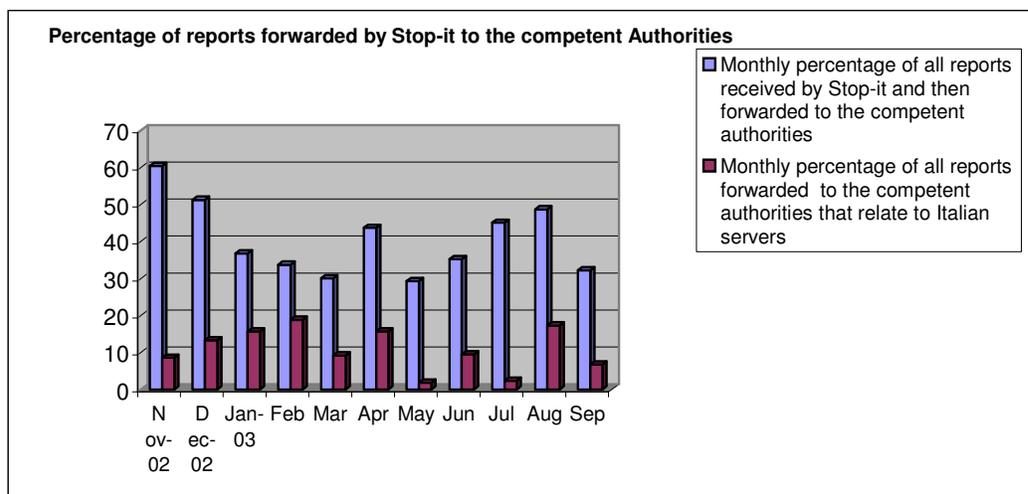
The most indicative figures regarding the child pornography phenomenon in Italy are gathered by Italian Public Prosecutor's Office, by criminal institutions and by Police.

The data, regarding article 600, 3, of the Criminal Code, show that it is the most prosecuted crime with a total of 255 cases under investigation. This article punishes those who exploit children in order to produce child pornographic material, those who trade in it, those who distribute, publish or advertise it telematically or those who pass it on free of charge.

The Department of Penitentiary Administration of the Ministry of Justice provides other useful data showing how many people have been found guilty of crimes under article 600 ,3 and 4 of the Italian Criminal Code. Even so, we know that the data are subject to many variables, such as the fact that crimes under article 600,4 may simply be punishable by a fine and not necessarily by imprisonment.

Results of operations carried out by the Telematic Police since the coming into force of Law 269/98 as of 30 September 2003	
Searches	1,625
Number of people currently released	1,683
Investigated people subject to restrictive measures	101
Total number of web sites monitored	85,699
Total number of web sites discarded	24,242

Through the data gathered directly by Stop-it, the project of Save the Children Italy against child pornography and by the Public Authorities, it is possible to deduce the percentage of child pornographic sites registered on Italian servers. During Stop-it's first 10 months of activity, about 9.9% of those on Italian servers contained child pornographic materials (see the diagram below).



Even if it is very difficult to gather precise and reliable figures regarding the extent of the children pornography problem in Italy, it is however easy to deduce how this phenomenon is likely to increase with the use of Internet.

Q: Which are the activities and programmes carried out by the public institutions and the police services to identify the victims of child pornography so that it could be possible to stop the abuse and provide the victims with rehabilitation programmes?

R: The *Comitato* recommends to intensify controls on the telematic network in order to challenge the spread and the exchange of child pornographic materials.

R: Regarding children and young people's rights violations, as any other violation, the *Comitato* recommends Italy the quickest passing of a Bill establishing an independent National Children and young people Authority. (See p. 28)

5. Protection of the family, mothers and children (art. 10). See list of issues, n.22, E/C.12/Q/ITA/2, 18 December 2003: Asylum-seekers and entitlement to family reunification.

a) Migrants and family reunification: strictness of the housing requirement suitable for obtaining family reunification

In order to obtain the family reunification, foreign worker must demonstrate, among other things, the availability of an house, respecting minimum parameters provided for by Regional laws for the public residential building houses (art. 29, co. 3 T.U.). At the same time, however, the access to the public residential building houses, is provided, on the same conditions as Italian citizen, only for the holder of an at least biennial resident permit and with legal subordinate or autonomous working activities in progress (art. 40, co. 6 T.U.). In this way foreign workers who have got their resident permit subsequently to a temporary working contract are excluded; for them, in fact, the resident permit term cannot be above one year (art. 5, co. 3-bis T.U.). Nevertheless, these workers, as long as holders of a one-year minimum term contract, can ask for family reunification (art. 28, co. 1 T.U.). For them, therefore, and in spite of the art. 31 of the Constitution, parameters established by Regional laws for the family well-being protection paradoxically play the opposite role of obstacles to the enjoyment of the fundamental right to family unity.

b) Political- Asylum seekers and family reunification.

Both the political-Asylum seekers and all the people with status of humanitarian aims aren't entitle to get the family reunification.

The delay in the passage of the fulfilling rules of the Bossi- Fini Law, regarding the new asylum procedures, is blocking the administrative activities concerning political-asylum seekers.

Italy doesn't bring yet the Community directives regarding the achievement of political refugees status and the family reunification, even if these directives attach importance to refugees and not to political-asylum seekers.

The lack of precise information on data about political asylum-seekers, both in Italy and in European countries, grants to Questure and Ministero degli Interni a discretionary power regard to them. When their families arrive in Italy, they are forced to live clandestinely, for difficulties to document the family ties in case of following arrival

Applicants for refugee status within the scope of 1951 Geneva Convention are admitted to reunification with their family members for the time their application is handled, as provided by 1990 Dublin Convention and the following EU regulation no. 343/2003, February 18th, 2003.

Italian legal system does not provide different or more specific norms in order to enable asylum seekers to trace or to factually reach their family members. The practice shows that reunification is very difficult to apply when family members are in other EU Member States, due to lack of coordination among offices of different States and difficulties for the police to perform the necessary activities to grant entry clearance in another State. Procedures seem not be set and organised in

order to make the right to family an effective right when an applicant's family members live outside Italy.

Subsidiary protection is granted by the law only in case of emergencies (art.20, Statute no. 286, July 28th, 1998, UE directive 2001/55/CE, July 20th, 2001 and implementation decree April 7th, 2003 no. 85). Extraordinary statutes may be adopted in connection with war events and the following mass movements (e.g. 1999 war in Kosovo/Yugoslavia). Emergency decrees signed by Italy's Prime Minister allowed the entry of thousands of asylum seekers, partly claiming to have family members residing in Italy (P.M.decreed March 26th, 1999 and Ministry of Internal Affairs order no. 2967 of March 26th). Provisional residence permit allows asylum seekers and their family members to access limited health care treatments and welfare benefits. After emergency ceases, asylum seekers and their family members are granted a long-term residence permit, if they can prove to dispose of adequate housing and sufficient income.

R: The *Comitato* once more asks the Italian Government to take on coherent engagements and adequate quick initiatives in order to assure full and complete implementation of existing norms, avoiding discriminating situations, serious abuses and violations of fundamental rights.

Q: How does the Government think to balance family unity protection of asylum seekers with the norm provided for by "Bossi-Fini" Law (art.1 bis Law 02/28/90 n.39 as modified by law 189 of 07/30/2002) which establishes the forced permanence in centres unable to grant family unity because not equipped to receive families (single fellows are divided according to the sex) and regards most cases (i.e.foreigner without visa, or passport, or in lack of requirements for the asylum request)?

R: The *Comitato* urges the adoption of an organic legislation on asylum, which is at present been discussed in Parliament, and adequate procedures to assure family unity right for the asylum seekers.

6. Right to physical and mental health (art. 12) See list of issues, n.28, E/C.12/Q/ITA/2, 18 December 2003: There is very little information in the State party's report on the right to health. How medical security and health care are being provided to all sectors of the Italian society, including the most vulnerable groups of people, in accordance with the *Committee's* General Comment No. 14 (2000) on the right to the highest attainable standard of health.

As it is not possible to find any mention on the right to health in the Government Report, the Comitato has decided to devote itself to this subject with an extended and deepened contribution, both on health right violations in our country and on the difficulties of the national sanitary system to face.

1. Basic principles: the right to health

The right to health has been defined by the international community as not only the mere absence of disease or infirmity, or more, as prevention and cure of the diseases, but also as the need of each individual of living in a healthy environment, in the respect of his psycho-physical equilibrium, operating directly or indirectly as a prerequisite to all other human rights recognized in all treaties¹. These purposes and principles are in complete accordance with the article 32 of the Italian Constitution (1948)². Moreover, it is to be highlighted that the Article 32 clearly mentions the "*individual*", referring not only to Italian citizens, but encompassing anyone who is physically present within the boundaries of the Italian Republic, acting in accordance with a logic of collective protection and prevention. Therefore, in line with the above analysis, the right to health must be included within the category of unalienable rights, in accordance with art.2 of the Universal Declaration of Human Rights (adopted and proclaimed by the General Assembly Resolution 217 A (III) of 10 December 1948)³, that proclaims *the right to health* as the most important social right since it allows the enjoyment of freedom rights. To deny someone health care is to deny or damage all of the individual's rights, because without health, individuals are denied their right to be active members of the community and to provide for their families.

"*Health*", as a consequence, represents not just only a primary right of the individual, but also a pre-eminent interest of the collectivity, that has the sovereign responsibility, to contribute to the full enjoyment of health and in order to its protection arrange appropriate interventions and actions of preventive type.

In this perspective, the concept of "*right to health*" is not limited exclusively to the right to therapeutic sanitary treatment, but it extends to the right to a healthy and not polluted environment, to the use of consumer goods and food that are not unhealthy or dangerous, to job conditions that respect safety requirements and hygienic measures as sanctioned by law.

The progressive change and widening of the concept of health has modified and is still requiring further alterations to the Italian National Health Service (NHS), which is always more becoming similar to and integrating with the services offered by the so-called *Welfare State*.

The extension of universal health care coverage to the whole population is a key characteristic of the NHS. Since 1978 (Law 883/1978 "*Institution of the National Health Service*")⁴, Italy has its own NHS based on the principle of "*universal entitlement*", with the State providing free and equal access to preventive medical care and rehabilitation services to all residents. The NHS within its competences should pursue (Art. 2- objective 8):

- a. "overcoming the territorial imbalances in the social-health conditions of the country;
- b. safety in labour, with the participation of workers and their organizations, in order to prevent and eliminate bad health conditions and to guarantee necessary means and services in factories and in other working settings;
- c. responsible and aware choices of procreation and protection of maternity and childhood, in order to ensure the reduction of risk factors connected with pregnancy and delivery, the best health conditions for mothers and the reduction of child and perinatal morbidity and mortality rates;
- d. health promotion among young people, with particular attention to adolescence, guaranteeing the realization of targeted health services for schools within public and private educational structures, of every order and degree, beginning from maternal school, and promoting by all means the integration of disabled;
- e. medical protection of sport activities;
- f. health protection of elderly, also to prevent and remove the conditions that can contribute to their marginalization;
- g. protection of mental health, favouring prevention and integrating psychiatric services in health care services in order to eliminate any form of discrimination and segregation within the specific therapeutic measures needed, and to facilitate recovery and social reintegration of mentally disturbed patients;
- h. identification and elimination of the causes of pollution of the atmosphere, waters and ground".

Therefore, the attention of the National Health Plans (NHP) is always more focusing on the need to promote primary prevention interventions, identifying life styles and social conditions that can determine high risk situations for the establishment of pathological conditions⁵. In this view, it is necessary to pay attention to all those social dynamics that create unbalanced situations and, therefore, with a greater probability of impacting and damaging health. Issues regarding the family, access to working opportunities and job conditions, the state of disability, social marginalization, poverty, immigration, juvenile uneasiness and many other social topics are of vital strategic importance for the interventions of a public health planning which aims at prevention as a priority in respect to only cure and medical treatment⁶.

Italy's NHS is a regionally based national health service that provides universal coverage free of charge at service level. It is structured through three different levels: national (Ministry of Health-HM); regional (Regional Governments and Health Departments); local (Local Health Care Agencies-LHAs [Agenzie Sanitarie Locali]).

The general functioning model adopted by the NHS is that of a system in which the function of producing health services is subordinated to the function of commissioning, carried out by the LHAs through distributing private or public suppliers, confirmed in conformity with the same, uniform criteria, in execution of the fundamental mandate of protection of the population health⁷⁻⁸.

All regions define a regional plan in accordance with the central government's guidelines. Regional activities must be covered by regional laws approved by the Parliament, although these laws may vary from one region to another. The regions have significant autonomy on the revenue side of the regional health budget, and are required to fund any deficit that might occur from their own resources; organize services that are designed to meet the needs of their specific population; define ways to allocate financial resources to all LHAs that are present within their territories; monitor LHAs' health care services and activities, and assess their performances. The LHAs are the basic elements of the NHS. Each LHA is financed from its region under a global budget with a weighted capitation system.

In addition, there are the "Hospital Agencies", public hospitals qualified as "Hospital trusts". Hospital trusts work as independent providers of health services and have the same level of administrative responsibility as the LHAs. LHAs and hospitals dispense the right to health with business criteria.

The management of the current NHS is based on the following important features:

Forecast of Assistance Levels: (Essential Assistance Levels [LEA] and Essential Social Assistance Levels [LIVEAS]).

Basic Health District (Distretto Sanitario di base-Dsb): through the districts, the LHAs provide primary care, ambulatory care, home care, occupational health services, health education, disease prevention, pharmacies, family planning, child health and information services⁷⁻⁸.

Accreditation and "tariff remuneration": from 01/01/95 a new system of tariff remuneration has been introduced for the distribution of subjects of services: the DRG/ROD (Diagnosis Related Groups/Diagnosis Homogenous Groups-Raggruppamenti Omogenei di Diagnosi)^{9 10 11}.

The most innovative element that emerges from reading the institutional scene is the strong reference to the need for interdisciplinary approach both in planning interventions for health and in the organization of the NHS structure. This need can be traced along the following four levels:

1. formulation of an overall health policy based on the realization of a health care service resting on coherent and consistent interventions as well as effective measures to contrast its wider determinants. This system in future must be based on very extensive programs, that overshoot the field of participation of the NHS and emphasize, therefore, the problem of the connection between health and territorial planning, with an appropriate attention to environmental planning;

2. integration of social and sanitary policies, in particular with regard to the "marginalized" segments of the population (children and adolescents, elderly, especially people who are not self-sufficient, disabled, immigrants, etc.), which on one side is linked to the definition of connecting means between competences of the Regional Health System (RHS) and those of the Local Authorities, and on the

other side recalls the *"horizontal subsidiarity"*, with an increasing and more organized collaboration of various different actors, such as no-profit organizations, volunteer networks, social partners, etc.;

3. organization of the NHS in accordance with the concept of integrated networks based necessarily on the principle of collaboration between the services and the LHAs, which play a very important role in the planning and implementation of the integrated system of social and health services and actions^{5 13};

4. the user's perception of quality may be considered as an indicator of how well a NHS operates. The topic of the quality level in the services offered to users must be one of the main aspects of a modern welfare system, concerned about its strategies and searching for new managerial and operational instruments to realize participation and good performance, capable to answer in an effective way to the needs of the health and social well-being of the population. This topic must assume a strategic value while reforming the NHS, supported, on one hand by the need to ensure adequate levels of care, to contain expenditures through de-hospitalization of care and on the other by the need to conjugate the effectiveness of care with the NHS's competence, as often the quality in the NHS is turned into mere application of already existing organizational and/or managerial models. However, the complexity of the NHS cannot be solved only through the organizational-formal dimension.

2. The Right to health in the international legislative context

The right to health represents a legal international obligation of the States to promote and protect the health of their population.

WHO has recognized the right to health in several occasions, starting from 1977, when the World Health Assembly invited the Member States to pursue the policy contained in *"Health for All"* (HFA)^{14 15}.

WHO proved to be clairvoyant in supervising that health be recognized as a fundamental human right in the text of the Deed of the WHO which says *"the enjoyment of the better health status attainable constitutes one of the fundamental rights of every human without distinction of race, religion, political opinion, economic or social condition"*. With reference to health, the Universal Declaration of Human Rights¹⁶ is more indefinite compared to the Deed of the WHO (art.25)¹⁶. The Universal Declaration of the Human rights, therefore, does not guarantee a right to health *"as such"*, but a right to health connected to the right to a suitable life standard. Today, the only international instrument on human rights, the Protocol of Saint Salvador, 1988, adopted during the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights proclaims really a *"right to the health"*, as long as this expression is interpreted in a pertaining way so as to mean *"the possession of the highest degree of physical and mental health and of social well-being"* (art.10).

Currently, numerous international instruments relating to human rights exist that refer to health and its problems. The most important among them are:

- ⇒ the Charter of the United Nations (UN), signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and in force on 24 October 1945¹⁷;
 - ⇒ the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (art. 5- e-4);
 - ⇒ the International Covenant on Economic, Social and Cultural Rights of 1966 (Art. 10-11-12)¹⁸;
 - ⇒ the Convention on the Elimination of All Forms of Discrimination against Women, 1979, effective 3 September 1981, (Part III, Art. 10-h; art.11co.2-f; 14 co2-b)¹⁹;
 - ⇒ the Declaration of Alma Ata (International Conference on Primary Health Care, 1978)²⁰.
 - ⇒ the Ottawa Charter for Health Promotion, 1986 (1th International Conference for the Promotion of the Health, in Ottawa)²¹.
 - ⇒ the Convention on the Rights of the Child, approved by The 20th General Assemble of the United Nations, November 1989, ratified by the Italy with law n. 176/1991, lodged near the United Nations, 5 September 1991. (Part I, Art. 6-23-24-25-26-31-33-39)²²;
 - ⇒ the Declaration of Copenhagen (European Conference on the Sanitary Policy: Opportunity for the future, in Copenhagen, Denmark, December 1994)²³;
 - ⇒ the Ljubljana Charter on Reforming Health Care (European Conference of the WHO, July 1996)²⁴;
 - ⇒ the Jakarta Declaration on leading health promotion into the 21st century (4th International Conference on the Promotion of the Health-*New Players for a New Era: Leading Health Promotion into the 21st Century*, in Jakarta 1997)²⁵;
 - ⇒ the right to the highest attainable standard of health:11/08/2000. *E/C.12/2000/4.(General Comments)*²⁶;
 - ⇒ several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised (art. 11), the African Charter on Human and Peoples' Rights of 1981 (art. 16).
- Similarly, the right to health has been proclaimed by the Commission on Human Rights²⁷, as well as in the Vienna Declaration and Programme of Action of 1993 and other international instruments^{28 29}.

3. complex transition.

3. A Demographic transition.

The demographic changes of the western countries, described as *second demographic transition*^{30 31}, have contributed to develop a new demographic scenario characterized by a stable fertility under the level of substitution, a substantial aging of the population and, in long-term, a decline of the total demographic dimension. It is a common opinion that these demographic changes are mostly the result of social changes, deriving mainly from the progressive change of values and norms towards a more individualistic model, of which the individual rights and the "*self-fulfilment*" are key elements³⁰⁻³⁴.

The composition of the Italian population in terms of age groups is undergoing significant changes. A reduction in fertility and an increase in life expectancy are at the root of this well-known process of gradual ageing of the population. Based on

current trends, it is estimated that (excluding immigration) the population will decrease 3% by 2020, and 20% by 2050³²⁻³⁹. Recent research has confirmed that the speed and intensity of the aging trend in Italy is the highest in the world. As the natality rate decreases, the relation between the number of adults and the number of children increases, and the most common health problems become those of the adults, rather than those of children³²⁻³⁹. The persistence of decreased fertility, due substantially to the trend of delaying the marriage (increased age at marriage) and/or not to marry at all (*laicization of the society*: increase of the civil weddings and the life in common more uxorio) characterize the new demographic transition. The decrease in population deriving from such situation, is counterbalanced by the increase of the survival in advanced age (*aging of the population*) and the increase of fertility outside the marriage. Therefore, in the new demographic transition, the determining role for the natural balance of the population is played by the extramarital fertility and, in many countries including Italy, by the migratory flows that maintaining substantially unchanged the fertility rates of the countries of origin, strongly contribute to the birth rates of the host Country.

Italy, in 2003, recorded an increase of 8.4 per thousand due to the increase of 8.9 per thousand of the migratory flow and a natural balance of -0,5 per thousand. Comparison with other countries of the EU emphasizes how Italy is second only to Germany with regard to the negative natural dynamics and how our country stands above the European average for its migratory increase rates, due to its capacity of attracting the international flows of the Center-North. This has underlined an impact of the net migratory flows on the population (6.4 per thousand) among the highest of the EU³⁰⁻³⁹.

On the opposite side of a natural dynamics that, on the long run should appear strongly negative, the migratory dynamics foreseen is positive. The balance between new incomes and escapes foreseen grows from 111 thousand to 124 thousand units. As a direct consequence of the foreseen migratory flows, composed by approximately 80% of non Italian citizens, the number of foreign residents in Italy will increase little more than 1 million units between 2001 and 2010, with a annual mean increment of 6%.

The Italian population, in 31 December 1996 numbered 57,5 million persons, with nearly 17% of them, for a total of approximately 9,5 million, over 65 years of age. The dynamics of the growth of the elder population in Italy is, for intensity and speed, one of the most significant in the world. In 31 December 2002 the total population numbered 57.321.070 units, while at same date of 2001 it totalled 56.993.742 residents³⁶⁻³⁹. The Italian population is destined to increase gradually from 57,8 million residents in 2001 to 58,6 million in 2011, with an annual increase rate of 1,3‰. The increase will reach a plateau in 2012, but after this year it will begin a slow and progressive decline and the population will decrease to 56,9 million in 2031, at a rate of -1,4‰ every year. For the future the number of births is destined to decrease 500 thousand units in 2011 and 400 thousand in 2040, while in time it will go under the 356 thousand. In ISTAT^{38 39}, the Italian Statistical Institute, forecasts the annual number of the deaths will increase until it will exceed 600 thousand units in 2010 to then go beyond 660 thousand in 2030. The increase in deaths is closely influenced by the age structure of the population that already today is strongly aged, and is justified moreover by the future presence of

increasing quotas of population in old age, in spite of the fact that the population is in the complex subject to survival conditions more favourable.

In fact, based on the data provided by ISTAT, while the proportion of young people decreases continuously, the incidence of the age classes over 65 years increases considerably and, inside of this great class of age, the weight of the great old (>80 years) increases. A partial analysis of these figures may lead to the conclusion that if, in the 2010, 1 in 5 Italians will have more than 65 years, in the 2030 the ratio will be exceeded 1 in 4. The quota of old people over 80 years, will endure an equally quick increment: from approximately 6% in 2010 to over 9% in 2030, namely about 1 in 10 Italians. Viceversa, the quota of young people (upto 14 years of age) will drop to 14.1% in 2010, and at 11.6% in 2030.

In this context, *the elderly dependency index* (the elderly with respect to the working-age population), which has already more than doubled in the last fifty years, is set to increase at an even greater rate in the next fifty years, and according to the forecasts could reach proportions close to two-thirds by 2051.³⁶⁻³⁹

3.B Epidemiological transition.

One must consider the fact that, if life expectancy has increased and some of the mortality causes have decreased, others are appearing together with new types of diseases which are showing up with worrisome outlines, while the globalization of information raises fear and anxiety, some time also unjustified. This set of phenomena are interacting and changing critically the demographic trend in all the world and, moreover, they are having a heavy impact on morbidity within each age group, corresponding to what is called the "*epidemiological transition*". The improvement in survival rates (among the highest of the world), together with fertility rates well below the generational substitution rate brought to increase the ratio between the number of adults and the number of children, of course net of the correctives deriving from immigration. Hence, the more common health problems become those of the adults, rather than those of the children.

In developed countries there are indications of a return of those diseases, considered signals of the epidemiological transition typical of the reality encountered today in the developing countries. This set of phenomena are interacting and provoking deep changes in the demographic patterns around the world with a quick aging of the world population and an increasing mobility between undeveloped and developed areas. In such situation scenarios of possible reduction of premature mortality. And the need of reducing disability, related to the expansion of the chronic-degenerative diseases and the psychological disorders, without under estimating the increasing importance of violence especially among adolescents and youth.

This interaction between epidemiological transition and demographic transition will cause in most parts of the world serious problems to the health systems and will require very difficult decisions regarding the most appropriate allocation of available resources. The number of citizens over age 60 could rise from 24.2% in 2000 to 46.2% in 2050, which would have an enormous impact on health care resources, as well as on the entire health system. An increased number of elderly would dramatically raise the prevalence of chronic diseases and subsequently the need

for appropriate health services. Considering that the national public health system is financed by general taxation, a reduction of the active labor force could have a major effect on the availability of funds and resources³⁸⁻⁴².

It must also be said that it is impossible, therefore, to guarantee all to everyone. In this respect, the trends show constant and continuous reduction in the resources available, before regarded as an independent variable. Today, this must be reconsidered and they must be contained within dimensions sustainable by the national economies.

In order to guarantee the constitutional principle of the right to health, it is not enough, now, to extend health care to all the population, limiting itself to supply the same possibility of access to care to everyone;inalienable but not adequate to the new health needs, such policy linked mostly to the therapeutic intervention, at the onset of the disease, does not allow, in fact, to exceed social inequalities in mortality and morbidity, neither to improve the total conditions of health of the collectivity. The contribution of the NHS to the increase of the hope of life encountered in the Western countries in the last few decades equals only 15%. Today, biological factors can explain only a small percentage of the pathologies, less than 5%, the greater part of which is linked one way or another to social and behavioural factors^{5 13 40 41 42}.

R: The Comitato urges an health Government policy aimed to prevent not only premature mortality but also to improve conditions for the elderly and increase their quality of life, without, however, forgetting a common approach in the field of public health.

Quality of life for all, citizens and not citizens, as well as quality of health service for all patients must become the priority of health care policies in a modern State of the Third Millennium⁴³⁻⁴⁴.

3.C Legislative and institutional transition⁴⁵

The Italian NHS follows a model that provides universal health care coverage throughout the Italian State as a single payer. The NHS is more decentralized, because of a recent strong policy of *devolution*, which shifts power to the regions. In fact, the recent national legislation has transferred several important administrative and organizational responsibilities and authority from the central government to the Regions. The Italian NHS has experienced profound transformation during the 1980s and 1990s. National legislation from 1992 to 1993 (Legislative Decrees 502/92 and 517/93) and subsequent reforms in 1997 and 2000 have radically transformed the NHS, giving the Regions political, administrative, and financial responsibility regarding the provision of health care. Of particular interest are: the Legislative Decree 229/1999 ("*reform ter*"), that points out the completion and a partial redefinition of the interventions for reorganization, started from 1992, and the Legislative Decree 56/2000. The Law 328/2000 reforms the Italian social care system according to the universally recognized principles and confirms the central position of the territory for the realization, through area plans ("piani di zona"), of the network of social services and their coordination and integration with the health care interventions. (See annex 4).

The reorganization has reviewed the criteria for determining "*the eligible*" contents of the right to health: the concept of "*assistance levels*" born in this phase, like

protection within which the NHS is engaged to distribute in a homogeneous way to all citizens on the territory, in conformity with all human rights and fundamental freedoms. In the same context an important role is played by the Law 3/2001, which is promoting further power from Central Government to Regions, on health, policy and education, modifying the second part of the 5th Title of the Constitution.

Recent national legislation has transferred several important administrative and organizational responsibilities and authority from the central government to the regions. These measures, the results of which are still unclear, aim to make the regions more sensitive to the need for controlling expenditures and promoting efficiency, quality, and citizen's satisfaction. In order to ensure, in an effective way, health care services to the citizens, the more possible circumscribed, at district level for example, so as to answer to the needs after a multidimensional appraisal of the need itself⁵,

R: The Comitato recommends the Government to pursue the integration of the social and health services, adopting a common planning strategy for the promotion of health in the territorial context.

4. Social and geographic inequalities

Although in Italy the health conditions of the population, in the last decades, undoubtedly have improved, however, a remarkable gap between richer and poor groups of the population still persists, together with gross inequities in health and wellbeing in all regions. Serious risks of loss of equity are present with regard to health, for the possible less opportunities of free admittance to services without discrimination, such as age, sex, educational level, income, working condition, ethnic group, culture etc., or also for the need of containing and rationalize the offer of health care services, namely to contain the offer of new and to exclude a part of what was previously guaranteed. Such situation raised a set of political ethical problems connected to the selection criteria; hence, particularly important becomes the issue whether the exclusion must concern groups of population, with the serious risk of excluding, perhaps, the "*well-off people*", but surely the marginalized population, or groups of services. The daily access to services remains difficult and this due to insufficient information related to the offered services, insufficient knowledge about the structures offering the services, the waiting lists, cost of services and routings. The development of the activities aiming at realizing a collective health care and a network for the district and territorial care are still insufficient.

All these circumstances imply that there are substantial differences between LHAs and inter/intra-regional geographic areas, in terms of accessibility, level of service use, final outcomes and tariffs of the same function, due partially to the peculiarity and complexity of the offer and to the rooted local traditions and partially to the care strategies and the professional behaviours of the health workers, resulting in the creation of substantial dis-economies of the health system. The inequalities in health encountered in the Italian context look very much alike those observed in other Western developed countries⁴⁶⁻⁶⁰: connected to social comparative inequalities; regular (to each level of the social order, a health standard will correspond lower to the previous higher social one notwithstanding the indicator

utilized for the assessment); stable or increasing in time; correlated with differences in life styles detrimental for health and with differences in the use of health care⁶⁰⁻⁶⁴.

With regard to the role of the NHS, social inequalities both in admittance to primary prevention and/or to early diagnosis services, and in accessing prompt and appropriate health care have been encountered. In particular for the primary health prevention the following inequalities can be highlighted: in the prevention of dental caries⁶⁵ and in the practice of the obligatory vaccinations to children aged 12 to 24 months of life, such unbalance will decrease when moving from North to South of Italy⁶⁶; for the secondary prevention a minor use of systematic screening for female tumours among women less educated⁶⁷⁻⁶⁹ can be noticed.

With regard to access to care, it is worth underlining the unbalance existing of survival of tumor patients, in particular for those tumours that are effectively treated⁶⁹⁻⁷¹ in facilities appropriately equipped. Other indications of discrimination can be derived from analysing the accesses to kidney transplantation⁷² or the coronary by-pass⁷³, or AIDS treatment, or a practice of inappropriate hospitalization often to the advantage of patients from a higher social status as derived from studies carried out on a geographic basis for the city of Rome⁷⁴⁻⁷⁷.

The main conditions endangering equity in the right to access deriving from the organization of the new national, regional and local health services, regard three important areas:

- possible discriminations introduced with the new norms of managerial experimentation of indirect care, or public-private mixed care;
- present geographic inequalities in availability of services for elderly people and mentally ill patients as many of these services with the transfer of the health care to the local institutions have become object of discretionary choices of these administrations;
- finally, past and new inequalities can emerge in the use of specialistic health services; while access to basic health services is widely egalitarian, the frequency in the use of specialistic services and, above all, of qualified specialistic health services is not proportional to the health needs and, unfortunately, it changes with the social position.

For many years it has been believed that the unity of the Country and the affirmation of equal rights for all were absolute values, then, it became clear that also diversity and its acknowledgment are values that, in a context like Italy, would be a mistake not to recognize. This belief is the only foundation possible to federalism, even if, above all, a discussion on how to make federalism compatible with the national health system is lacking. It is beyond any doubt that an authentic regionalism must foresee for the regions not only the responsibility of the expenditure, and therefore the duty to cover the eventual over expenditures incurred, but also the possibility to raise its own resources, sources of utility indispensable essential also to finance those specific services considered by the regions needed for its population.

The Comitato recommends the Italian Government to:

R: base the regional planning and the activity of health promotion on the possibility and ability, at the central level, to assess its effectiveness.

In other words, starting from the study of the health needs and from the identification of the interventions as the current literature indicates with proven effectiveness; from the definition of criteria, standards and indicators, that will allow the evaluation of the outcomes of the interventions realization; from the development of a new type of care based on a multidisciplinary approach, with the purpose of promoting mechanisms of integration between social and health services, ensure by the professional competences today present and by the new to be created in the next few years.

R: Promote actions for reducing inequalities, as health depends from multiple social determinants, through a broad spectrum of social policies of which only a part are directly connected to the sphere of health.

R: allow the RHS, which is the direct responsible for the protection of the health of its population, to fulfil its duty and promote the development of policies of other sectors that can impact on determinants unrelated to health but important for the health status and to estimate their impact.

The reference is to the social policies concerning the family, children and the support to maternity, critical periods of the life cycle, when the accumulated risk is particularly harmful even if it will be shown only later, the third and quarter age, the social integration of the most underprivileged groups.

5. Health status of some Social Groups

Some individuals develop social needs which, if not satisfied, create situations of social exclusion. These include particularly disadvantaged categories who suffer the greatest discrimination by the market, such as immigrants, prisoners, drug addicts, non-self-sufficient elderly, disabled and mentally ill.

Foreign Population⁷⁸⁻⁸⁰.

The right to health, although a principle constitutionally guaranteed to all people, has difficulty to assert itself as to the immigrant citizens, also because the complex national and regional set of rules shows a heterogeneity of application on the whole national territory. This migratory phenomenon has given rise to a series of political, economic, social, sanitary and health problems that concern Italy at different levels. At 20 years from the beginning of the migratory movement, the unresolved issues are many. With regard to health care, despite the fact that in Italy a gradual administrative decentralization is taking place in this field, assigning a greater responsibility to the regional and local governments, immigration is going to remain under the State control, according to the provisions of art. 1, paragraph 3, of Law 59/1997⁸¹⁻⁸³. At present, despite the fact that Law 40/1998 regulates health care for foreigners residing in Italy, whether legally or illegally, it often happens that foreigners, especially the illegal residents, do not make use of the services of the NHS. Fear of contact with public structures and lack of correct information about diseases mean that this group of the population is reluctant to undergo the clinical

examinations aimed at timely diagnosis and adequate, well-monitored pharmacological treatments, with the result of late diagnosis.

However, official data for evaluating the health of the immigrant population are not available since Italy does not yet have a national epidemiological observatory. Available data⁸⁴ show that, generally speaking, immigrants are in good health at the time they leave their own countries but their health deteriorates during both the journey and their stay in Italy. In fact, the diseases most frequently suffered by immigrants in our country are the non infectious ones developed in the host country, typical of the hardship in which most immigrants are forced to live⁸⁵⁻⁸⁶.

The first phase of reception, structured in various ways on the Italian territory, must be accompanied today the possibility of effectively taking responsibility for the needs of the immigrated population, namely not only as possibility of access to health services, but also and above all as the capability to interpret in cultural terms the psycho-social uneasiness often suffered by the immigrant, for the identification of initiatives and legislative measures against every form of social exclusion⁸⁷⁻⁹⁷.

The general objective of the public health system recognizable in the provisions of law in force^{81-83 98-99} is that of free admittance to the public health services, therefore, their organization for a real access for all patients, including foreigners. In this context, in order to guarantee access the following critical areas for health have emerged:

- pathological conditions with particular reference to infectious diseases and mental disorders¹⁰⁰⁻¹⁰⁵, important not so much for the numerical consistency or for imported pathologies from the countries of origin, as for the insufficient preparation and familiarity of the sanitary operator in managing social and relational diseases, states of mind, uncommon conditions¹⁰⁶⁻¹⁰⁷;
- physiological conditions like pregnancy and, however, all the child and mother care sector with, for example, perinatal mortality rates meaningfully higher among babies born to immigrated mothers¹⁰⁸⁻¹¹⁹⁷
- social conditions like prostitution, that involves as main actors often obliged, foreign women and men, or also custody.

Moreover, all over the national territory many cases have been found of expulsion and refusal of the release of residence permit to foreign citizens seriously ill and under therapeutic treatment in Italian health services, in a total lack of respect of the art. 35, co.3 of the Consolidated Act on Immigration (Legislative Decree no. 286 of 25 July 1998)¹¹⁸⁻¹¹⁹.

An adequate, concrete response to the health needs of foreigners must necessarily entail a examination of their needs and an analysis of demand, plus a reorganization of services based on the specific requirements of the target group, planning new strategies and approaches characterized by flexible services, technical and relational training of personnel, a multidisciplinary approach (teamwork) and an integrated collaboration between public services, NGOs and voluntary associations (network activities)¹²⁰⁻¹²². It is worthwhile remembering that the rules and regulations contained in articles 34 and 35 of the Legislative Decree no. 286 of 1998, in its rules for the enforcement (Decree no. 394 issued by the President of the Republic in 1999)¹²³ and the Memorandum no. 5, dated 24 March 2000, of the Ministry of Health¹²⁴, are still in force and therefore everyone holding a

long-term residence permit must be registered with the NHS, while illicit and clandestine immigrants are guaranteed essential, emergency, preventive and permanent care and it is forbidden to report them to the police if hospitalised or cared for¹²⁰⁻¹²².

R: The Comitato recommends the Italian Government to: adequately explicit the sense of the art. 35, paragraph III and that to this purpose changes are made to the law 189/2002 during the legislative decree of realization. Foreigners suffering from serious pathologies not diagnosed, or not diagnosticable or that cannot be treated adequately and effectively in their country of origin:

- must be consider as non-expellable category (as currently are pregnant wome);
- must be able to obtain a residence permit allowing them to immediately demonstrate their particular status in the event of provisional arrest or control, considered moreover that the law today in force foresees the immediate accompanying to the border for all cases of expulsion;
- will be able to have also the possibility to work in order to contribute to the public expense and therefore to pay for all health care received.

The right to health¹²⁵ ***inside Italian prisons.***

*The health organization for supplying health services to the citizen has been designed fully with the law 833/78 that has established the SSN. With regard to the penitentiary system, a similar phenomenon has not happened*¹²⁵⁻¹³⁴.

The Ottawa Charter for Health Promotion (1986) characterizes five strategic Health Promotion Action Means²¹. If attributed to the jail population these definitions lead to assert that the state of custody, depriving the individual of his freedom, prevents the full attainment of "health". The protection of health is, therefore also, a right of the prisoner who does not stop being a citizen once shut up in a penitentiary institute, even if, inside the jail, this right shows numerous limits.

The overcrowding (at 31 December 2003 the jail population was 54,237 in comparison with the availability of infrastructures that is 41943) and consequent precarious hygienic-sanitary conditions, lack of movement, inadequate state of many prison structures are the consequences of the impossibility to bring about a reform that, instead, assures to the prisoners levels of services similar to those offered to free citizens. The health care in prison is incomplete for the absence of sufficient staff and modern equipment. Doctors but principally nurses cannot ensure the night shifts in many institutes. In less of the half of the institutes a Medical Guard is available for 24 hours. The drugs supply is insufficient as specialist's examinations are lacking also for more seriously ill patients, admission to hospitals and emergency surgery are difficult out of the prison structures. With regard to approximately 17.000 drug-addicted prisoners, it is reported that on July 1, 2003 the necessary funds for the perfect running of the health aids for the drug-addicted have shifted from the Ministry of Justice to the National Health Fund. In reality, a number of drug-addicted prisoners have been taken charge of by the Territorial Drug-addiction Services (SerT), but are only one smaller percentage of drug-addicted prisoners who are in prison, in fact the prisoners granted custody to the SerT are almost exclusively those who have acute problems in progress

(abstinence) and who take methadone¹³⁵⁻¹³⁸. In comparison to the prisoners HIV/AIDS affected, it is important to highlight that the cut of funds makes very difficult the purchase of retroviral drugs; moreover the bureaucratic delays to obtain the postponement of the sentence are excessively prolonged with regard to the aggravation of the physical conditions of ill patients. It should be noted that in 60% of the prisons there are no initiatives for prevention of the virus HIV, neither any informative material of sanitary character is distributed¹³⁹. Only in 27.7% of the institutes health education pamphlets are made available to the prisoners. A recent study revealed that a dramatic percentage of all inmates in Italy's prisons today are mentally ill. Approximately 10.000 prisoners suffer some form of mental disorder, connected to drug addiction and alcoholism; many seriously mentally ill persons each year are booked into local jails, alone. In Italy, nearly 1 in 5 prisoners needs psychiatric services or special accommodation. Far too many of our Nation's mentally ill persons have ended up in our prisons and jails. In fact, on any given day, the prisons are home to more mentally ill inmates than the largest mental health care institution in our country. What happens is that all too often, the mentally ill act out their symptoms on the streets. They are arrested for minor offences and wind up in jail. They serve their sentences or are paroled, but find themselves right back in the system only a short time later after committing additional, often more serious, crimes. Throughout this destructive cycle, law enforcement and corrections spend time and money trying to cope with the unique problems posed by these individuals. Certainly, many mentally ill offenders must be incarcerated because of the severity of their crimes. However, those who commit very minor non-violent offences don't necessarily need to be incarcerated; instead, if given appropriate care early, their illnesses could be addressed, helping the offenders, while reducing recidivism and decreasing the burdens on our police and corrections officials. Research into the mental health of prisoners held in solitary confinement indicates that for most prisoners, there is a negative effect on their mental well being and that in some cases the effects can be serious. The greater problems in the field of competence and organization of the Mental Judiciary Hospital (MJH)¹⁴⁰ to conciliate health care and detention, to form a staff of specialists staff and the relation with the NHS, are topics that recurs frequently, arousing, daily, worries and interfering with the activity of the persons operating on a large scale at MJH. There are still 6 MJH in Italy, at 12 March 2001, a survey indicated that about 1,282 patients are admitted to MJHs. These mental hospitals are the only structures of this type, Law 180/1978 and depend on the Department of Justice (DJ) and not on the HM¹⁴⁰⁻¹⁴¹.

Approximately 10.000 prisoners have been diagnosed infectious diseases, above all viral hepatitis; but also scabies, syphilis, tuberculosis, which seemed to be diseases of the past. Since 1995 to today a constant increase of deaths in prisons, particularly among young prisoners, has been recorded: approximately half of the 500 dead persons were under 40 years. Only in 2003 the number of suicides in prison were 67, of which two were minors.

The DJ has progressively reduced funds for the health service in prisons: 16 million Euro less in 2003, corresponding to 30% of the funds for 2002, which were reduced of 20% in comparison to the allocation for the year 2001. In concrete this implies the missed activation of important structures as the "Presidio nuovi giunti", that would

ensure a first support to the persons at their first arrest, when they are often more vulnerable and exposed to self-destructive gestures or to high risk of suicide; as for example the Sections for "reduced detention" for drug-addicted prisoners¹³⁵⁻¹³⁸.

The Comitato recommends the Italian Government to:

R: create a collaborative space between the Health Institutions (Regions, municipalities, ASL and medical services) and the forces of voluntary and not profit services that operate in this context; starting from the assumption that, the activity of the Penitentiary Medicine, just for the peculiarities of the place and the security requirements, show and can continue to manifest a structural difficulty to guarantee a global and a unitarian system of preventive, curative and rehabilitative assistance to citizens in prison;

R: respect of the art. 5 of the Law 419/98 "reorder of the Penitentiary Medicine", fundamental stage in the procedure of reforms started by the Government, for the construction of a penitentiary system that knows how to conjugate security, rights, both of the individual and the community within the prison, and social rehabilitation of the prisoners and the ex convicts;

R: study, as the prisoner is generally not fully aware of his state of disorder, , strategies of intervention that exceed the limitation of the classic operativeness and aim at encouraging and amplifying in particular way the human valences of the medical action that must foresee besides empathy, also knowledge of problems connected with the detention of users which generally exacerbate and increase the disease.

The health of the poor.

Health status is an important determinant of socio-economic development. But socio-economic status is also an important determinant of health status. Rates of mortality, morbidity and disablement are highest among the lowest socio-economic groups. The same pattern applies to socio-economic differences in risk factors for morbidity and mortality. Socio-economic status refers to the position of each person in society. This is stratified according to many criteria. The criteria frequently utilised in the health literature are macroeconomic determinants, level of education, family patterns, other social networks, income and employment¹⁴²⁻¹⁴⁴.

The scientific evidences demonstrate that the state of health of the poor, little educated or socially excluded persons, is worse than the health of socio-economically advantaged people⁹¹⁻⁹⁷. The deprivation is associated to insufficient availability of essential resources for health like a comfortable house and adequate nutrition. The deprivation, moreover, decreases the social participation and the civic confidence and more frequently is associated to unfavourable life styles for health, as the use of tobacco, alcohol and inadequate diet. As the scientific literature underlines, poor and illiterate people have more difficulties for free admittance to high-quality health services and produce worse outcomes of care. The unfavourable effect on the health of the low social position of the person would seem to be much more intense in the Southern regions. Since itself the Southern regions show worse health indicators as to rest of the country, essentially on all dimensions of health considered, the subjective of perceived health, the objective of morbidity, the functional of disability, the behavioural of life styles (with the exception of smoke among women). But no one could think that this unfavourable

profile of Southern Italy could derive from the fact that the population is more often unemployed, less educated, poor. Unfavourable social conditions of individuals, the socio-economic environment and the cultural context of the South itself in conjunction with the individual deprivation can influence health unfavourably¹⁴⁵⁻¹⁶⁹.

Considering the main message, that geographic and social differences in health send to redistributive policies, this means that if one analyses the health level as a prerequisite for the well-being of people and the development of groups and communities, then, it will be necessary to invest in order to reduce those social difference in health that are born from the disadvantages connected with the distribution of material, cultural and relational resources which interest the entire Italian population.

It should be in this respect and since the fight against poverty and social exclusion is considered as one of the key elements for economic progress and the development of employment and inclusion policies start from the assumption that the conditions of social exclusion include forms of material deprivation and social fragility

The Comitato recommends the Italian Government to:

R: put into effect all those measures aiming at obtaining a complete social integration of citizens and, with regard to health, to guarantee their concrete access and use of services and treatments and to guarantee to all people who for several reasons are living to the margins of the system, in conditions of social, economic and cultural fragility, routes of protection;

R: speed up, in accordance with the Law 328/2000, that foresees, explicitly, the existence, the full functionality of the Governmental Commission on the social exclusion, named by law by the Ministry¹⁷⁰.

Unfortunately, the Commission, that has worked until 2001, year of the change of Government, has resigned for incompatibility with the Government and for the impossibility to operate. It was re-elected with other experts in the same year; but from then on, it has not produced anything with regard to the serious problems of marginality, that concern particularly the adult population, these matters have disappeared from its agenda (in reality the Commission is not operating in any field of social exclusion).

inform people who live in our region in order to be able to make conscious choices regarding their health and the services offered. It is also requested to think about an adapted organization, an efficient communicative ability, cultural compatibility, and the specific training of the staff.

Elderly people.

People today live longer and remain active further into old age than ever before. Elderly persons living alone are poorer than the rest of the population, although their condition seems to be improving according to recent data. On the other hand, contrasting data is obtained concerning the poverty rate for couples where at least one person is an old-age pensioner, depending on whether an income-based or consumption-based survey is used. An ageing population poses research

challenges in terms of promoting healthy ageing and improving the management of age-related illnesses. As people age, their susceptibility to chronic and life-threatening diseases as well as acute infections increases, exacerbated by compromised immune systems. Cancer, cardiovascular diseases, diabetes, infections and poor oral health, most notably tooth loss and severe periodontal conditions, are more prevalent in this age group. The consequences of these diseases and conditions are significant, leading to disabilities and reduced quality of life¹⁷¹. After ten years from its emanation at national level, it is possible to take look at the “*Goal: planning elderly people*” (“*Obiettivo anziani*”)¹⁷²⁻¹⁷⁴ that foresaw domicile integrated care (Assistenza Domiciliare Integrata-ADI) as part of a wider network of services targeted to elderly people. The ADI represents one of the instruments better answering to the requirement of social-sanitary integration of actions in favour of elderly and disabled people and, in a solidarity context, of the social policies to support individuals who are “*alone*”. The integration between health and social components, peculiar feature of the ADI¹⁷⁵⁻¹⁷⁷, has revealed, over the last few years, as one of the most difficult issues: in addition to the organizational and institutional difficulties, linked to the relationship between the LHAs and the local administrations, also problems connected to the financing mode have emerged. Moreover, the typology of users changes within time, so that those who originally needed only a simple support later need treatment for complicated pathologies. One of the priority instruments characterized by the D.Lgs.229 consists in the Program of the territorial activities, the area health plan containing the analysis of the health needs of the territory and the map of the services, together with the assessment of the correspondence between supply and demand. The ADI and more generally the integrated network of the services for the non self-sufficient people, is placed, therefore, with every right, in this context of the medicine of the territory. The art.3 Septies of the D.Lgs.229/99¹⁷⁸⁻¹⁷⁹ provides a definition of social-health services, sending back to the act of policy and coordinating the description of the specific services and the criteria of financing of the same ones, in relation to the competences of the ASL and the municipality. The Italians in need of care are today 2,7 million, 5% of the population, of which 73.2% elderly people. The OCSE states that in Italy 2.8% of over-65 year old non self-sufficient are assisted at home, compared to 5.5% in UK, to 6.1% in France and of 9.6% in Germany¹⁷¹.

The sanitary consumption of elderly people in our Country absorbs beyond 30% of public resources, but for the elderly non self-sufficient people Italy invests only 1.6% of the PIL, against European average of 2,3%. From these data it emerges the need to develop care services capable of ensuring the attainment and maintenance of good quality of life. In particular, the hope for an increase of those services aimed at the maintenance or recovery of the self-sufficiency, the domicile integrated care both health and social-charitable, including hospitalization at home, the interventions for backing families (acknowledging the health care supplied by family members as a job, above all from an economic point of view; the use of parental leaves, particularly with regard to the conditions for granting parental leave and exercise of the right to parental leave; medical relief services).

Considering the definition of ADI,**The Comitato recommends the Italian Government to:**

R: put into effect the necessary measures for the realization of the ADI as not just a mere simple service, but as a system that foresees the integration of resources finalized to the realization of the concept of “domiciliarity” (domiciliarità);

R: clear if domicile assistance must be shaped as an additional health service or rather as an alternative health service in comparison with other actions;

R: clear the specific meaning of the ADI in comparison with the previous forms of domicile care.

Disability

Definitions and criteria for determining disability laid down in the national legislation and in social policies differ widely¹⁸⁰⁻¹⁸⁴. This can constitute a major obstacle to the mutual recognition of national decisions on disability issues, and in particular on the eligibility to access to specific services and facilities. Thus, disabled people can face particular disadvantages in the field of social security and other rights as citizens. Public authorities have an important role to play in shaping society in a fully socially-inclusive way, not least by formulating open inclusive definitions of disability. In the last 30 years, WHO has taken a leading role in promoting the collection of comparable cross-national data through the development of conceptual frameworks relating to disability. The International Classification of Impairment, Disability and Handicap (ICIDH) was developed in the 1970s and published by WHO in 1980¹⁸⁰⁻¹⁸¹. WHO's revision of ICIDH, now called the International Classification of Functioning, Disability and Health (ICF)¹⁸³⁻¹⁸⁴, was finalised in 2001. The ICF scheme does not provide thresholds for defining who is disabled and who is not; instead, it recognises aspects and degrees of disability across the whole population. This approach recognises that the entire population is "at risk" for the concomitants of chronic illness and disability¹⁸³⁻¹⁸⁶. In Italy, INPS has developed its “technical discretionary power” through the preparation of protocols. A body of technical knowledge is developed (and written up, and used in training) which links medical data on diagnosis and impairment to specific limitations in work or daily life. INPS has established a number of guidelines related to specific conditions, along with a standard form for the legal medical report¹⁸⁷⁻¹⁹¹. A most precious source of data in order to estimate the number of disabled persons in Italy could be created from the certification of the handicap like sanctioned by art. 4 of the law n. 104/92. In every LHAs appropriate Commissions are established that give several typology of certification finalized to the assessment of the invalidity and the state of handicap, to the certification of the diagnosis in handicapped situation, to the definition of all care interventions for the old person non self-sufficient, to the determination of the residual abilities of the person with disability and its working potentialities. Unfortunately for the elaboration of such certifications no criteria have still been still adopted neither uniform instruments for recording have been set up; moreover, they are not systematically computerized into a data bank nor a survey on statistics at national level has ever been foreseen.. Therefore, at this

moment, this information is not available. Orthopaedic supports, prosthesis and aids (walking, prosthetic aids) continue to be, most of the times, inadequate, both in the quality and in the amount, with complex bureaucratic procedures for its release¹⁹².

Legislation links the realization of an effective safeguard of the social policy, in particular, the identification of the LEPs, within which it is necessary to identify those aimed at the safeguard of the non self-sufficient persons (LIVEAS art.22 L. n°328/2000). Till today, the full and effective realization of the safeguard of the non self-sufficient persons appears seriously compromised. The Law n° 328/2000, with the aim of providing support policies for the non self-sufficient persons, has identified methods and means to achieve this goal, within a framework for the realization of an integrated system of social interventions and services¹⁹³.

The Comitato recommends the Italian Government to:

R: put in practice the method identified for the realization of such objectives based on the consultation between LHAs and central bodies of the State, also through the use of corporate bodies, as the Unified Conference in accordance with ex-article 8 of the legislative decree n. 281 of 28 August 1997;

Since the Ministry of Education and Ministry of Labour and Social Policies observatories and/or technical groups have been created and have, among their purposes, also the revision of the certification systems,

R: create a coordination effort in order to allow the different certification typologies to interact and obtain a co-ordinated system for the assessment of the disability that will also provide useful data.

Mental health¹⁹⁴⁻¹⁹⁷

The closure of mental hospitals (MH), already foreseen by the law 180/78, but never concretely implemented has been "reasserted" by the financial laws of the last years (law 724/94, law 662/96, law 449/97). In particular the Law 724/94 ratified their definitive closure by 31.12.1996. The right decision to proceed to the complete closing of the MH must not absolutely involve the constant neglect of psychiatric patients among the new users, particularly of the "*new chronic patients*", who need a continuous and protracted care in time, and have the same rights to care and to civil and human attendance, in the full respect of national and regional laws in matter. The dramatic situation of mental health in Italy is evidenced by the following critical areas:

- Public territorial mental health services just provide outpatient care services which have not been integrated with day centres of rehabilitation and residential structures, above all for the psychiatric patients more seriously ill, despite as explicitly foreseen by national and regional laws on the matter; and together with the survival of MHs, a new and more dramatic reality has become evidenced encompassing thousands of psychiatric patients in prison, the majority of which young people, forced to live from year to year in equally terrible and dramatic situations.

- A consistent number of psychiatric patients live at home with the unique support of their own family, who because of the serious inadequacies of the public services of mental health must take responsibility for the intolerable sufferings and functions that do not fall within their competence. When the disease of the relative or more relatives is prolonged in the years the family will be involved with negative consequences on life conditions and work, and on the psychological balance of all family members.
- Unfortunately, in open contrast with this new and complex dimension of the psychological suffering, nearly all regions are proceeding, also on the basis of a not proper application of the Financial Law 1997, to close the MHs as a separated issue from a general planning to be implemented within mental health, which must, instead, concern all involved services and intermediate structures (dat services of rehabilitation and residential structures) to be created on the territory for old and new patients, as foreseen also in the Health Plan Objective "*Safeguard of Mental Health 1994-96*"¹⁹⁸⁻²⁰⁷.

The experience of these years has confirmed, instead, that with the persistence of the MHs there has been an increase of the private sector, out of any regulation and control, for the absence of precise and coherent choices by the competent institutions to several levels, choices that should activate a Department for Mental Health (DMS) endowed of services and intermediate structures necessary and capable to take responsibility for the psychiatric patients, particularly for those seriously ill, as well as to regulate through the law the activities concerning mental health of the private sector. In fact, these years a sort of negative duopoly has been created in the field of mental health with precise areas of competence: public services have been reduced to just merely provide in prevalence only outpatient care services and to manage emergency situations, even if not exclusively, in the S.P.D.C.; the activity of the long and middle stay in hospital only entrusted to the private sector both operating within the national health service and openly unauthorized.

The reform of the Welfare State, the new Financial Law and the Health Plan's objective "*Safeguard of Mental Health 1997-99 and 1998-2000*" can represent fundamental moments of shift in the field of mental health, above all on behalf of the National Government and the Parliament.

The Comitato recommends the Italian Government to :

R: Prepare and implement a complete plan, that has been set up and is coherent with the various institutional levels (national, regional, and local), for patients of the ex-MHs, and for the "new chronic patients", with precise choices regarding the identification of services and intermediate structures to established, the necessary staff, both from the private and public social field, with the problems connected to its training, the amount of needed funding, the means for control, financial penalizations and substitute powers.

R: Promote a survey on behalf of the Parliamentarian Committees for Social Affairs of the Chamber of Deputies and for Health of the Senate on the private structures, both operating within the national health service and unauthorized, operating on the national territory and to define, then, the national parameters for accreditation for mental health structures.

R: Equip, in order to satisfy the different psychiatric needs and at the same time to guarantee the necessary therapeutic continuity, the DSM with organizational and managerial autonomy, comprised the definition of its own budget and a multidisciplinary team with the task to program and coordinate the activities of the services and structures in which it is articulated: institutes of mental health for prevention, outpatient and domicile assistance, residential structures, day centres of rehabilitation, services of diagnosis and care. Within such activities relatives of the psychiatric patients must be actively involved and associated to personalize the therapeutic plan.

R: Promote the performance of what is foreseen by the art. 1 co.24 of Law for the Financial Institution of 1997: "The Regions within 31 January 1997 supply the adoption of suitable instruments of planning as to the protection of mental health, in performance with what foreseen by the Health Plan Objective "Safeguard of the Mental Health 1994-96".

Problems in the realization of the NHS

Access to Health Services.

The issue of access to health services shows twofold reality: on one hand there are a series of structures and procedures consolidated by now, present in the nearly totality of the observed health units, on the other it emerges, with always greater presence, the "knotty problem" of the waiting lists:

- the diffuse persistence of the phenomenon of the "blocked reservations" for one or more diagnostic examinations in approximately the half of the hospitals (equal percentage in 2002) and in little less of the half of the outpatients clinics (was 60% in 2002);
- the existence of unacceptable waiting times above all for diagnosis services through scanning:: ultrasound scanning in the first three months of pregnancy, mammary echographies and mammographies outside of programs of screening, abdominal-echo, Endoscopic procedures, Computed tomography scan (CT or CAT scan), Magnetic resonance imaging (MRI), uro-dynamic, etc., often patients wait up to three months or more also for therapeutic services, as radiotherapy, for which nearly half the resident citizens in the Southern regions does not find facilities equipped in the place of residence²⁰⁷;
- The waiting times always more critical close to outpatients clinics (the group of outpatients clinics observed in 2003 has waiting lists that exceed more than 5 times those found for the same diagnostic procedures in the group of outpatients clinics in 2002)²⁰⁸.

The Comitato recommends the Italian Government to :

R: mote the application of the DPCM 16 April 2002 (GU n. 122 of 27-5-2002) Guidelines on criteria for priority admittance to the diagnostic and therapeutic services and on the maximum waiting times;

R: racterize and experience various effective and feasible solutions with regard to the different problems that cause the creation and increase of waiting lists, in order to guarantee to all citizens defined times for admittance to health services and, above all, times coherent with their health and clinical problems;

R: ivate incentive systems for MMG and other medical specialists to improve access to health care services;

R: rease the presence and effectiveness of the Unique Reservation Centers (CUPs), as an instrument for standardization and rationalization of the representation of the offered services, which answers to the principle of transparency and accessibility and facilitates the freedom of choice of the citizen.

LEA/LIVEAS

In the last years a parallel legislation in health and social field has placed the basis for the definition of a system of essential and uniform levels of social and health care²⁰⁹⁻²¹⁰. In 2001, the Italian Government defined LEA, which can be considered as an important step forward in the health care system. The NHS would provide payment of essential and uniform aid services in order to safeguard many values such as human dignity, personal health, equal assistance and good health practices. The LEA defining finally the essential levels of health and social-health assistance²¹¹ would have identified all those treatments to be recognized within a set of various typologies, defining precise financing criteria.

Delays and contrasts have been registered for the implementation of the Law 328/2000 on care within the context of the new institutional order. In particular, restrictive interpretations of the law on behalf of some Regions have been recorded. Both the ordinary norm (in particular the current law on assistance) and constitutional one (art.117) guarantee levels of essential social services, and not simply minimum. This distinction must not be understood in a nominalistic sense, but substantial. The essential levels, in fact, constitute a more advanced point of protection and defence than minimum levels, as their objective is to ensure a standard of services, both quantitative and qualitative, perfectly capable to guarantee the enjoyment of rights constitutionally protected. Beside the identification of the LEPs (essential levels of social-health services), it is essential to determine in the more precise possible way the categories of the beneficiaries.

The LIVEAS, in theory, have a fundamental role in the reform of the Italian welfare, but as they have not been still at the level of the central government defined and specified clearly, there are numerous problems today both in terms of homogeneity/uniformity, and in terms of their concrete application. And this because of the lack of precision and haziness of the same law.

Hence with regard to LIVEAS it seems necessary and preliminary to any other consideration:

1) to have an analytical picture of the distribution of services and treatments correlated with indicators of expenditure; it is agreed, moreover, on the necessity to face the reality of LIVEAS, considering LEA, in particular social-health, for the obvious interconnections and relations between welfare and social-health performances and therefore acquiring adequate information on the modality of application of LIVEAS across the territory and on the eventual difficulties, found.

2) To give a univocal definition of LIVEAS. In fact, the same national law makes reference to the levels using different terminologies, appearing itself little explicative¹¹². With the L. 328/00, it has been made an effort to give an answer and a clear and exhaustive definition of the essential levels of social services, however, the haziness persists. There has been also a tentative to go back to National Social Plan, but even this has proven to be itself very vague.

The Comitato recommends the Italian Government to :

R: into effect a careful and constant action of monitoring of the Decree regarding LEA in the health domain, and subsequently, widen the action of monitoring beyond the indications contained in the agreement State/Regions of November 2001, comprising not only aspects correlated with the health expenditure and maintenance of the lists of services excluded from the LEA, but above all, promote actions of social monitoring on outcomes of the health level obtained;

R: create stable places of consultation, deepening and analysis of the social needs of the country; a coherent approach with the spirit and sense of the same Law 328/00 and the provisions put into effect up to now ratified (in first place, the National Social Plan).

Hospital care

The hospital beds in public health facilities are not evenly distributed among the Italian regions. Southern regions have fewer than 4.3 beds per 1,000 inhabitants, whereas the Northern regions have more than 5.6²¹²⁻²¹³

It is necessary to explicitly say that the preponderance of the hospital care proposal, that exceeds the standard of 5 bed in 1,000 inhabitants in the greater part of the towns²¹⁴, has involved the persisting of a culture that, placing the hospital to the center of the health system, as well as to give rise to a phenomenon of improper use of the resource to the admission to hospital, has generated a delay in the development of alternative forms of care, more appropriated as to the needs of the users and more suitable as to the economic profile. Instead, the development of the activities of collective health care and of the network for the district and territorial health care, is still insufficient.²¹² "the general context that can be derived from the available data underlines:

- the costs of hospital care (about 48.07% of the total costs) are higher than it would be desirable;
- the total beds (5,05 in 1000 inhabitants) is slightly higher than foreseen, an excess of beds for acute was found, instead the beds for the rehabilitation are not enough and for both the typologies there is a lack of beds for day hospital care. As to the rehabilitation, with the exception of 2 Regions (Piemonte and Lazio), who have over 1 bed in 1000 inhabitants., in all the others the number is inferior to one. The availability of beds of day hospital care for acute cases in 9 regions is equal to approximately 10% of the beds for acute, in the other regions the availability is inferior.²¹²
- the rate of admission to hospitals (217,04 in 1000 inhabitants) is higher than foreseen by the norm in force, even if the data could feel the effects, like already said, of the modalities of collection and elaboration of the data on the admissions to hospitals²¹³;

- the middle weight of the admissions to hospital of the elderly people is approximately double than that of children²¹⁴.

The economic problems, the waiting lists, the underutilization and the improper use of resources in the health system, impose a new reinterpretation of the relationship territory-hospital. Today, it is necessary to address clearly a new and functional offer of health services on the territory, so that the hospital care as extra-territorial care is more and more reserved to acute pathologies. It is a line that inverts the traditional system of health offer principally founded on hospital, for a line that identifies the territory as working subject that intercepts the health needs and take responsibility for the health and social-charitable necessities of the citizens, in unitary way.

The approval of the citizens towards the basis care, advises to recover completely this resource bringing back it to the central of the health answer. That in connection with the other presences in the territory. The priority objective is the realization of a process of reorganization that guarantees an elevated level of integration between the various health and social services, realized with the support of the doctor in charge of the general health care. The lack of timeliness represents, often, a critical factor for which aggravations of the state of health and contributions of medical treatment avoidable. Representative to this purpose it is the ability to implement that typology of hospital resignations, said “protetta”²¹⁵, since opportunely programmed and that previews close integration between hospital and territory. The resignations protected are undoubtedly a decisive element for the corrected charitable management of the patient, like very good evidenced from the phenomenon of the repeated hospital admissions.

On the base of the proved necessity to make of the inter-institutional integration an unavoidable instrument for affect the determining factors of the health; of the undeniable role of the environmental, the work, the transports the territory, the education policies in the control of the factors of risk for the health on the one hand, and of the District, as unique field in which the question of health of the reference population finds the most opportune possibilities of realization, in particular in the optical of continuity and integration of the assistance on the other:

R: Comitato recommends the Italian Government to promote the development for the District, particularly meant under the profile of the improvement of its organization (in accordance with Program of the territorial activities shared with the Committee of the Mayors and the social parts) and of the putting to disposition of effective managerial instruments it represents, and complementary to the realization of the continuity and integration.

Drugs.

In 2003, the net pharmaceutical expenditures diminished of 2.3% as to 2002. Pharmaceutical expenditures represented 13.8% of the total health care costs²¹⁶⁻²¹⁹. Among the cost-containment measures, control of pharmaceutical spending has been an important tool in the recent Italian health care policy. However, the results of the impact of these measures on health expenditures have been even more controversial. The 1994 reform hinged upon the introduction of a new patient co-payment of drugs and a new classification system for drugs. According to this

policy, regulatory power was concentrated on a national technical body, the *Nation Drug Evaluation Board* [Comitato Unico per il Farmaco, CUF], which is made of clinicians and pharmacologists nominated by the regions and the HM. The CUF radically redefined the positive list (national therapeutic formulary-NPF [*prontuario terapeutico*]), regrouping drugs into three co-payment classes (A, B and C)²²⁰. The main adopted cost-containment measures at regional level regard: the confirmation of the ticket from part of the regions that had it applied in the course of 2002. However in 2003, differing from 2002, the co-sharing on behalf of the citizens regarded exclusively the fixed quota for medicine or prescription and the maximum number of prescribable medicines per prescription. The first year of experimentation of the new NPF ends with the identification of a reference price for homogenous therapeutic categories (cut-off), according to the L. 178/2002. The medicinal products entirely paid by the users are sold, instead, at a free price but "under the control" of CIPE and the HM. Some drugs reclassified in class C, for which there is, already outstanding or announced, a review of the repayability by the NHS as a result of the strong pressures exercised from the organizations for the protection²²¹⁻²²² of the consumer, as have created many problems to the family budgets. The Entente of Consumers, already in February 2003, denounced that the reform of the NPF, passed by the MH, as to D.M. 27.9.2002, charged citizens with numerous drugs, reclassified in class C to payment, with heavy increases of price, from 10 to 100%, with peaks even of 200%. The effect of the decree on the price of drugs has caused an increase of 16.4% on the expenditure for drugs purchased by families. The data of the National Drugs Utilisation Monitoring Centre (OSMED)²²³ published on the web side of the HM²²⁴, do not coincide with the reassuring surveys of ISTAT that recognizes to health services and public health care expenditures a modest increment of 0.1% on a monthly, and of 0.6% on annual basis. In spite of universal coverage, it appears now that citizens rely more on their own financial resources for health care, especially for pharmaceuticals, dental care, specialist consultations, diagnostic examinations, and elective surgery. This might be an indicator of inadequate quality and quantity of public health services. Despite the fact that general practitioners have been encouraged to prescribe generics, they account for only 3% of all prescribed drugs sold in 2003. That notwithstanding, it is interesting to note that consumers cannot choose a generic when a branded drug has been prescribed; only physicians can decide whether to substitute the branded drug prescribed with an equivalent generic at a lower price. Moreover, unlike most European countries, Italy stands last in the list of users of drugs for the pain therapy²¹⁷⁻²¹⁹.

The cancer-related pain, Palliative Care Units and Hospices

As was the case in the era before us, in the new millennium we will continue to see an abundance of patients experiencing cancer-related pain for different reasons. The treatment of cancer pain represents a serious problem of public health in the world. About one-third of patients being treated for cancer have pain, and each patient's pain is unique. Therefore, each patient's pain management plan must be carefully designed. It is estimated that every year there are 10 million new cases of cancer and 6 million die for this disease. With the analgesic drugs available

today, and the relatively simple and effective guidelines to treat cancer pain published and disseminated by WHO, the majority of people with cancer pain could be relieved. In spite of the indications provided by WHO, the patients affected with strong pain not always are treated with the appropriate pharmacotherapy and that constitutes a denial of the right of the individual to alleviate his own suffering. The struggle against cancer-related pain is not still a priority in our Country. It is evident that the sensibility around the problem is growing. To facilitate the prescription and the employment of opioid drugs and to support health workers the law n.12/2001²²⁵ has been emanated, integrated with various enforcing decrees²²⁶⁻²²⁷, but the road is still long and progress rather slow²²⁹. In three years from the approval of the new norms, the opioid drug prescriptions have grown little, and still today family doctors, often, do not withdraw either the special books of prescription, indispensable for prescribing. However the prescribed amounts of opioid analgesics have increased (+33.2% compared to 2002). Although, the increment of prescription recorded in 2003 is attributable for the greater part to trans-dermic fentanyl (+50.3%) and in percentage still limited to morphine (+11,1%)²³⁰⁻²³¹. A look to the European panorama offers a vision rather pessimistic of Italy, which is placed in the penultimate place, like user of opioid drugs, between the European countries analysed, with a market equal to 0.3% of the total net pharmaceutical expenditures of year 2002²³².

Palliative care, by definition, is an interdisciplinary team event. It should be noted that there are, based on the latest data, 206 palliative care units and 67 hospices (for total 658 beds), today, the great part of which concentrate in the regions of the Centre-North, little less of 10% to the South. Secondly, palliative care can be conceptualized as hospice, much further upstream. Indeed, hospice and palliative care are not mutually exclusive. As far as the hospitals, the supported effort to activate the network of "hospital without pain" has not been, since now, supported with investments of indispensable financial resources.

As to the therapy of pain, between the many hypotheses of work feasible in the immediate future,

The Comitato recommends the Italian Government to contemplate the following three proposals, considered of absolute priority:

R: to guarantee the assistance to pain, both cancer pain and severe chronic pain, inside of the essential assistance levels;

R: to render the survey and the measurement of the pain obligatory, and therefore also assure its treatment, inside of the medical record of every assisted patient;

R: to render the formation on the therapy of pain obligatory for the general practitioners, the specialists more directly interested and the nurses in the field of the ECM programs.

Rehabilitation and Unipolar Spinal Cord Units.

Rehabilitation is a process of finding solutions to problems and also of education, in the course of which a person is helped to achieve the best possible level of life in its physical, functional, social and emotional dimensions, with the least possible limitation to their operative choices. The rehabilitation process also involves the

individual's family and those surrounding them. Consequently, the rehabilitation process concerns not only strictly clinical aspects but encompasses also psychological and social dimensions. A growing part of the population, as has emerged from recent epidemiological data²³³, is affected by severe disabilities originating from the consequences of severe brain damage caused by traumatic brain and head injury, coma states, vascular malformations, complete brainstem lesions, ischemic heart disease, heart failure, respiratory insufficiency. People who have experienced catastrophic events resulting in paraplegia, quadriplegia, are completely non-self sufficient or with minimal competence. In the South the situation is dramatic: in these regions people still die of paraplegia. In our Country, despite²³⁴ in the recent HNP it is spoken explicitly about specific institutes, Unipolar Spinal Cord Units, for the cure and rehabilitation of the people who have experienced catastrophic events, there is still a rehabilitative culture widely devoid and inadequate and the positive initiatives are characterized by strong contradictions. Till today in our country, it is not possible to find one spinal unit in each region²³⁵ As defined in the Act of Intent between the State and the Regions for the approval of the guidelines (n. 1/96. GU 17/3/96)²³⁶ for the medical emergency network in application of DPR 27/3/1992, the Unipolar Spinal Cord Unit (USU) is designated to provide care for patients with spinal cord injuries resulting from trauma or other causes, starting from the time of injury; its purpose is to allow these patients to achieve the best state of health possible and the highest level of functional capability compatible with the injury.

In general, rehabilitation services are delivered through a network of hospitals and extrahospital services with defined working capacities.

This integrated model of social and medical care implies that medical intervention programs designed to develop all the potential resources of the individual be closely coordinated with social interventions oriented towards developing and making accessible resources and environmental potential, widen and strengthen rehabilitation interventions, allowing the entry or reentry of the disabled person into various phases of social life and to enhance their quality of life and survival.

Since, in this moment, it cannot be counted in our country, neither one spinal cord unit per region and only in the recent NHP for first time it is spoken explicitly about specific institutes, Unipolar Spinal Units, deputies to the cure and the rehabilitation of people suffering from myelo-lesions there, there is still a lack of adequate rehabilitative culture. In addition some positive initiatives, *already undertaken* and that characterize the activity of some health care services at national level across the Regions, are characterized by strong contradictions.

R: The Comitato recommends the Italian Government to actively put to the point and to finance, on all the national territory, a plan for the realization of at least one spinal unit per region.

Orthopaedic supports, prosthesis and aids (walking, prosthetic aids)

Continue to be, most times, inadequate, both in the quality and in the amount, with bureaucratic procedures for its release complex. In relation to the strong question of health services of rehabilitation, the admission in the structure happens with the insertion of the customer in a specific waiting list that has a chronological sliding

system with call from the service. The service provided by the structures public or credited in outpatient regimen is free for the ticket-exempt patients, while for the others the general norm is applied on the participation to the expense, its modernization must be verified near the LHA of residence. The cost of health assistance of rehabilitation supplied from credited structures or totally private in regimen of day-hospital depends on the type of treatment and on the demand for particular hotel service. The cost of the service provided by the private structures varies depending on the typology of the required rehabilitative service. The greater part of the physical medicine treatments and rehabilitation are included in the LEA when the clinical conditions for which the same treatments have demonstrated their own effectiveness are present and when they are distributed on the base of validated protocols; some treatments, as the analgesic laser-therapy, the analgesic electro-therapy, the ultrasound-therapy and the meso-therapy, can be included in the LEA regional disposition. All rehabilitative assistances distributed in regimen of admission to hospital, or near structures of residential or semi-residential, outpatient and to domicile extra-hospital rehabilitation are at the NHS' expenditure, within a total program of rehabilitation of serious cases of disability. The prosthesis concession directed to the functional recovery of subjects affected from physical, mental and/or sensory handicap is disciplined by the Regulations emanated with DM. n 33276 of 27 August 1999

7. Right to education (arts. 13 and 14). See list of issues, n.30, E/C.12/Q/ITA/2, 18 December 2003: Children of immigrants, refugees and asylum-seekers equal access to free and compulsory education.

Italian Constitution, article 34, declares "Italian schools are open to everybody, citizens or foreigners". According to that norm and the latest International provisions, Law 40/1998 on immigration and the condition of foreigners in Italy, states that "children of Italians and foreigners enjoy equal access to free and compulsory education and equal school treatment".

a) Minors Migrants Children

There is an increasingly high number of foreign students in Italian schools today. In the school year 2002/2003, 232.766 students of foreign nationality attended Italian schools, which means a percentage of 2,96% on the total number of students (7.590.891). They were just 30.000 in school year 1992/93, but also compared with previous year 2001/2002 there was a significant growth of 50.000 students. (Source: Ministry of Public Education, University and Research- MIUR).

Foreign children come from very different experiences; some are "second generation children", born in Italy, but from immigrated parents, others arrived only recently, either alone (unaccompanied) or with their families, and others have come to join their family here.

The percentage of foreign students is higher in the North of the country (66,6%), while is lower in the South (7%) and in the Islands (3,1%).

Analysing the data it is interesting to note that even if obviously the highest number of foreign students are in the city, such as Milan (24.498) or Rome (12.990) or Turin (10.710), but the highest percentage is in the medium towns, for example in Prato it is 7,85%, in Mantova 7,65%, Reggio Emilia 7,15%, Modena 7,01.

In most regions there is a higher percentage in the municipal districts than in the capital of the district.

In Italian schools there are now represented 189 nationalities. For example in Bergamo there are 110 nationalities, 109 in Padua, and 106 in Perugia.

Most foreign students come from Albania (40.482), Marocco (33.774), Former Yugoslavia (21.762), Romania (15.509), China (13.447), Ecuador (7.273) (Elaboration from MIUR: "Alunni con cittadinanza non italiana - Scuole statali e non statali - a.s. 2002/2003" by Caritas/Migrantes, XIII Rapporto sull'immigrazione 2003).

The quick development has created, and is still creating, a number of problems, partly due to the very recent nature of intensive immigration, and partly due to uneven distribution of migration across the country.

As to access to public education system, law 40 of 1998, Turco-Napolitano Law, and its applying disposition (DPR 394/1999), allows minors migrants children to access at the same conditions as Italian minors, even in situations of illegal residence.

In reality, however, this right is strongly reduced by the social context where foreign minors are forced to live and by some administrative practices. For example, in Municipal nursery schools, in cities like Rome or Milan, parents have to produce, among other documents, their residence permit, differently from what the art.45 DPR 394/1999 provides. This is in violation of the above-mentioned article, which proclaims the respect of the right to education for everybody.

As the integration, from the following data we can point out that the percentage of foreign students in the different school levels in the year 2002/2003 is higher in primary and comprehensive school:

Nursery school	Primary school	Middle school	Secondary school
20,77%	42,2%	24,3%	13,2%

In this situation the adequate key for the success of the integration and the learning process is the quality of the foreign minors' first reception in Italian schools. This is the sector in which the didactic and administrative management care of the school must be addressed to.

It would be quite useful that information as the ones obtained by a MIUR research in 2001 on specific policies in Italian schools for the setting and the integration of foreign pupils (through the related funds provided for this aim) were updated and followed up. Unfortunately, the Written Reply, regarding this issue, informs us about their interruption.

Q: What does the Government do to ease the reception and the integration of foreigners in schools?

Q: How does the Government currently use funds provided for this activity?

R: The Comitato recommends to ensure that the educational system actively promotes integration of foreign children by providing special resources and implementing appropriate programs.

b) Asylum seekers minors children

Asylum seekers children live in a particularly disadvantaged condition, and not only regarding their setting in school institutions. The complete precariousness condition of their parents creates, in fact, also for them, a great mobility and even a more difficult integration. It is quite impossible to follow the integration process of asylum seekers and their families group, maybe except in Rome, because they change cities many times during the asylum proceeding.

The Comitato recommends the Government to plan special support to help settling and integrating asylum seekers children.

c) *Illegal migrants minors children*

The right to attend schools is positively granted to a foreign minor, apart from the legality of his residence, by the art.45 DPR 394/1999.

If the foreign minor attending school is illegal migrants children he is in a very precarious position: although the minors' expulsion is forbidden, except for serious reasons of public order or State security, it is obviously stated, the right of the minor to follow his parent or the tutor rejected (art. 19, co.2).

A form of protection is stated in the disposition of the art.31, co.3 T.U., according to which the Minor Tribunal can authorize, as a dispensation to other legislative dispositions, the residence of the foreigner when that is necessary to the psycho-physic development of the minor living in Italy.

In the latest years, however, Tribunals guideline has been very inhomogeneous, giving uncertain or little importance to the registration of the minor to schools when deciding about the acceptance of the parents' petition related to their residence.

Paradoxically, therefore, the registration to school, involving a higher visibility, can create a greater risk of expulsion from Italian territory.

d) *Unaccompanied migrant children*

The unaccompanied migrant children, as any other foreign minor, can be rejected only in presence of serious public order or State security reasons (art.19, co.2 T.U.). When his presence on the State territory is signalled, however, a procedure, aimed to know if his repatriation is applicable or not in safety condition, starts (art.33, co.2-bis T.U.). In decision delays related to the rejection, a special resident permit "per minore età" is issued to the minor for whom tutorship has not been provided for (art.28, co.1 DPR 394/1999).

A circular from Ministero dell'Interno (13 November 2000) stated that such a permit is not useable for the carrying out of a working activity. This disposition, discriminating the foreign minor in the conditions above-described in comparison with the national same age minors (but also in comparison with the foreign same age minor holder of a resident permit for family reasons or tutorship) seems in opposition to the principle of non-discrimination stated by the UN Convention on children's rights of N.Y. of 1989 (ratified with the Law 176/1991).

Because of the extremely long procedures of assessment, it is frequent the case of a holder of resident permit for "minore età" that reaches his "maggiore età" while he is still waiting for the decision about his assisted repatriation. The circular of the Ministero dell'Interno of the 13 November 2000 excludes the possibility to convert the resident permit for minore età into a permit for studying or working.

Even in this situation there is a discrimination to the detriment of the holder of a resident permit for minore età, from the moment that this possibility is provided for the holder of a resident permit for family reasons or for tutorship (art.30, co.5 and art.32, co.1 T.U.).

8. Right to education (arts. 13 and 14): Disabled children

One of the most qualifying aspects of the respect of the right to study is the integration of pupils with handicaps, that has attained in Italy remarkable results since the Seventies'.

A drastic reduction of this intervention in this area is expected for the next school year 2004-2005, because of heavy staff cuts due to strictly budgetary reasons. In particular:

- A maximum limit of students is no more established for classes where there is a handicapped student. (The number was previously limited to a maximum of 20 students).
- In the same class there may be more than one student bearing a certified handicap.
- The support teacher jobs indicated in the relevant decree for the school personnel in the year 2004-2005 will be diminished by 800 units. And yet, there is a need of increasing these jobs particularly in secondary schools, where students with handicaps can have a support teacher only for 4 hours a week.
- Certification for the most severe handicaps has been made particularly restrictive.

(Source: " From the analysis, a coherent answer". Monitoring from Regional Secretariat- C.G.I.L. Scuola. Emilia Romagna - www.cgilscuola.it news regioni aprile; news agosto; news settembre)

R: The Comitato outlines the necessity to increase the number of support teachers in all the classes with disabled children, in particularly in secondary school where at present a disabled pupil can have a support teacher only for 4 hours par week.

9. **Right to education (arts. 13 and 14). See list of issues, n.31, E/C.12/Q/ITA/2, 18 December 2003: Why, despite the considerable budgetary allocations to education, there is a decrease in the number of school population, especially at pre-primary, primary and lower secondary schools. Is the drop in the birth rate the sole reason for this decrease? Please indicate whether school attendance by children of immigrants has reversed this trend. See list of issues, n.32, E/C.12/Q/ITA/2, 18 December 2003: How serious is the problem of dropouts in the State party, especially at the secondary level of education, and what effective measures have been taken to combat it**

a) Decrease

Instead of a decrease of school population, we would rather point out a gradual long-lasting decrease of financial resources allocated to public Italian schools. The Government Report clearly shows such gradual reduction of the public spending for education: 16% during the Seventies to today's 4%.

The data exhibited by the Ministry for Education, University, and Research (MIUR) on a clear-cut drop in students numbers have been shown to be unreliable by a "Comparison between the actual number of teachers in the primary schools and in the I and II level of secondary schools in 2003/2004, the MIUR survey on the registrations for next years, and the Decree nr. 59 on employee numbers 2004/2005". This research, accompanied by the full tables for the regions of Lazio, Toscana, Puglia, Emilia-Romagna, and Sicilia has been carried out by the Regional Secretariat of the CGIL School of Emilia-Romagna in April 2004.

(Source: " From the analysis, a coherent answer". Monitoring from Regional Secretariat- C.G.I.L. Scuola. Emilia Romagna - www.cgilscuola.it/news/regioni/aprile; [news agosto](http://www.cgilscuola.it/news/agosto); [news settembre](http://www.cgilscuola.it/news/settembre). Law 9/99- Law 144/99, art.68 - Law 30/2000 – Law 53/2003).

From this same source the research has shown that in the regions of Emilia-Romagna, Friuli-Venezia Giulia, Liguria, Lombardia, Piemonte, and Veneto the requests for full-time enrolment in primary schools have increased by 40.403 pupils, while the total increase is of 48.000 pupils against cuts of 3.241 personnel units.

In Emilia-Romagna the number of registered students given by the Ministry had to be corrected by the Regional Direction.

The data for the last enrollements (March 2004) have shown an increase of 10.000 students, of which 5.717 in the secondary schools where there have been reductions of 326 teaching personnel units.

Once again the MIUR had recently (September 2004) to admit that in the present school year the number of students have increased of 50.000 unities!!

It is clear that in such conditions of a reduced ratio teachers/students, the quality of public school cannot be generally guaranteed; the increased requests of full time and extended time in the northern and central Regions will not be satisfied; also the requirements of the Ministerial Decree nr. 331/98 that set a maximum number of students per class will not be guaranteed; as a consequence even the security

requirements will not be respected (Ministerial Decree of Public Works 18/12/75, Laws nrs. 23/96 and 626/94).

This situation leaves it to the Regions to activate networks of business companies who should offer young people job experiences as alternatives to regular school curricula. In this manner, a violated right produces an incentive for replacing an educational system with a sort of job apprenticeship supported by new technologies.

However there is another way of looking at the same thing by another member of the Comitato: "Recent school reforms have introduced mandatory training until 18 years of age. If this provision were enforced effectively, it would help children plan for their future professional and personal life. The reforms should be accompanied by the appointment of a tutor from the Employment Centre to support children who do not intend to continue their studies and help them to obtain a professional qualification which will enhance their career opportunities in the labour market".

R: The *Comitato* recommends to reinforce and coordinate the tasks and action to be carried out by the Labour Inspection Agencies and the sanctioning system, as well as School Inspection Services and to promote measures designed to ensure access to free and high-quality education for all children.

b) Dropouts

Within the field of the right to education the data of the Government document (paragraphs 252, 278) reveal a picture the Government tries to improve, but with measures that obey to a pre-constitutional logic, even though they are made slightly more palatable by the new technologies they introduce.

School drop-out is not a new phenomenon, especially in the secondary schools. The last Governments adopted basically similar policies for contrasting school drop-out from the secondary schools: school until 18 years for those who are going to reach higher levels in the social hierarchy vs. a more structured vocational training system for everybody else.

The former center-left Government raised the obligatory number of school years to 15 years in the perspective of a common biennium introduced by the Law 9/99. The school reform, approved with the Law 30/2000, followed by three years of "obbligo scolastico" (obligatory school) on the one hand, and of "obbligo formativo" (obligatory formation) on the other hand. This latter one was based upon Law nr. 144/99 that established different vocational trainings, job apprenticeship, etc., also for a term shorter than three years.

The present Government has again limited the common curriculum back to the end of intermediate school, and changed obligatory education into a vague right-duty.

In this manner, everybody's right to study is not an aim anymore. Making a school process until 18 years old desirable and feasible for everybody, in order to create for all the conditions provided for by the International Standards and by art. 3 of the Italian Constitution, has been merely attempted in the Seventies', but today it has been definitely erased by Minister Letizia Moratti's Law 53/2003, that comes back to the double track in the educational system of Italy.

This reform violates the right to study, because it makes students just 13-years old responsible for choosing their educational career at an age when different

conditioning factors make it difficult for them to reach decisions that will influence their own critical formation, and may damage them forever.

Serious concerns for the high-rate of dropouts in upper secondary education were expressed also by the Committee on the Rights of the Child, in its Concluding Observation on Italy (CRC/C/15/Add.198, 31/01/2003): "educational outcomes for children depend on their cultural and socio-economic background, and on other factors such as gender (more girls than boys do obtain a degree in secondary education), disability, and ethnic origin."

R: The Comitato joins the Committee on the Rights of the Child to recommend that: "Italy strengthen its efforts to curb the rate of dropout in upper secondary education and take all necessary measures to eliminate the inequalities in educational achievement between girls and boys and between children from different social, economic or cultural groups and to guarantee to all children quality education".

As to the specific causes of the drop-out, the following table shows possible causes and differences in their relative weight between Italian and foreign students:

Causes of drop-out by Italian and foreign students (2001)

Causes	Italian pupils %	Foreign pupils %
School's results not reached	57,6	47,9
Lack of student commitment	54,6	24,4
Lack of interest of the family	32,3	23,0
Frequency Inconstant	24,4	24,9
Inadequate Teaching methodology	9,7	24,0
Lack of integration	4,3	18,2

SOURCE: Immigration, Statistic Dossier 2002, Rome, pag.184

"One of the greatest problems for foreign students lies in their poor educational background, as a result of social disadvantage. According to some sources, the rate of educational backwardness among immigrant children is about 30% in the elementary school and 56% in the scuola media [middle school: age group 11-14]. Mother-tongue cultural intermediaries to help children learn Italian are not yet widely available and their existence depends on the resources available and commitment of the local authority".

(Source: idem)

R: The Comitato recommends the presence of a sufficient number of cultural mediators aimed to help foreign children and young people to learn Italian in order to have a quick integration in Italian schools and society.

Gypsy children in Italian Schools.

The number of children and adolescents from the gypsy community in the compulsory school age is around 30,000, 19,000 of whom should be attending

primary school, while 11,000 should be attending the "scuola media". However, although Roma and Sinti children are Italian citizens in all respects, only about 5,100 of them attend primary school and about 1,700 attend middle schools. The data provided by the Ministry of Public Education confirm that the rate of school truancy or non-attendance is very high, 73.2% for elementary schools and 84.6% for middle schools. The decision to introduce gypsy children into mainstream classes (implemented during the school year 1965-66) has not resolved the problems, as it has been evidenced by their sporadic attendance rate and low school performance. Life in nomadic camps cannot be easily fitted around schooling. Children are reluctant to go to school partly because they fear they may lose their cultural identity and partly because they do not recognise the usefulness of school, as theirs is essentially an oral culture. In consequence, the Italian school system is not currently capable of providing an effective education for these children who are often defined as "too lively" and sometimes do not speak good Italian. Supportive initiatives are still limited, in spite of the C.M. no. 207 of 1986 that introduced mandatory education for gypsy children. Furthermore, given the hostility of the school environment, their poor results and the fear of failing, these children develop an attitude of mistrust of both teachers and other children in schools.

(Source: "The rights of children in Italy. Perspective in the Third Sector". "Supplementary Report to United Nations" of the Working Group of the CRS).

Q: Is there any plan of action at National or local level to ensure that gypsy children have the opportunity to fully and effectively participate in school?

Q: Is there any data on the dropouts desegregated by nationality, and specifically by gipsy children?

R: The *Comitato* recommends to ensure gypsy children have the opportunity to fully and effectively participate in school by developing support and action plans which take account of their culture.

10. Cultural rights (art. 15). See list of issues, n.34, E/C.12/Q/ITA/2, 18 December 2003: The State party's report states that the rights of linguistic and religious minority groups are respected in education. How these minority rights are actually being implemented.

a) Rights of religious minority groups

Regarding the defence of minorities' rights, the Government Report lists a series of measures in the intercultural field, but it does not consider at all how to protect the right of the minorities' freedom of conscience. By minorities we mean not only the groups that have different cultures and religions, but also those citizens in our country who do not conform to the religion practised by the majority.

As to the reply to issue 34, the Government explains in a very clear way the new agreement between Italian State and the Vatican on the teaching of Catholic religion in schools. However it does not care at all to monitor and evaluate the implementation.

The new Concordat (Law 121/85) introduced the principle of the optional choice of the courses of Catholic religion into public schools (State or Local Authorities schools). This agreement marked a shift from compulsory teaching of the Catholic religion (Mussolini Concordat in 1929) to a free choice in accordance to the Italian Constitution of 1948 that does not recognise any State religion. This could have been an affirmation of freedom, a step forward towards implementing the constitutional principles. Yet it has not been so and nowadays the situation has not changed.

The following are the main violations of the right of freedom of conscience (Art. 8,19 of the Italian Constitution):

- The teaching of the Catholic religion (TCR), in contrast with the principle of optionality, has undergone a perverse mechanism whereby those who do not choose the TCR must declare that they don't choose it.
- The TCR has been introduced for the first time, for two hours, in the kindergartens, regardless of the respect for all religions and all cultural positions, and of the fact that even the Catholic Church does not admit children younger than 6 years old to its catechism courses.
- Placing the TCR within the compulsory school time has caused a number of problems that have not been solved yet. Even though the Constitutional Court has produced 3 verdicts that sanction the right of the full respect of the choices made by students who do not avail themselves of the TCR, the actual facts show an absolute disrespect of this right.

The alternative subjects, if requested, are not activated for many reasons: as there are not enough rooms and/or funds, students who do not avail themselves of the TCR are not allowed to leave their school, even though they enjoy such right; nor there are proper places where they could spend the TCR hour in dignity. In other words in most cases students wander about the custodians' desks and the toilets, just as they did before the new Concordat Law. Especially in primary and middle

school they are often sent to other classes, where they feel outsiders and have to attend other lessons; sometimes they are even asked to remain in their classroom to attend a teaching they have refused, but that, according to headmasters, “does not certainly harm them”. The assessment they receive from the teachers is almost always a negative one: they are “negligent”, “different” with undesirable inclinations. Parents, who are often migrants from countries not belonging to the European Union, come to our organizations to complain about these discriminations against their children, only guilty of not following the majority religion in this country. Ample evidence of such discriminations can easily be produced especially in primary and secondary schools.

Protests and denunciations against this violation of a constitutionally granted right are very frequent even though in many cases people choose to comply with the situation and let their children attend TCR.

Only if the TCR is placed outside the compulsory school hours, that is to say not introduced in the curriculum, this negative situation will be solved.

(Source: monitoring made by the National Committee “Scuola e Costituzione” from 1986. www.iperbole.bologna.it/iperbole/scuocos)

R: Comitato wishes the course of Catholic religion be placed out of the compulsory school time.

With regard to this subject the UN Committee for children's rights, at the end of the examination procedure of the latest Government Report on the application of the Convention on children's rights, has expressed its concern for the fact that parents, particularly the foreign origin ones, are not always aware that religious teaching is not obligatory.

R: before in the light of articles 2, 14 and 29 of CRC, the UN Committee, in its concluding Observations, recommends the State Party to watch over the fact that parents, particularly foreign origin parents, while enrolling their children, be aware that attending Catholic religion teaching is not compulsory. We join the Committee's recommendation.

b) Rights of linguistic minority groups

Positive interventions to grant Rom migrants the assertion of economic, social and cultural rights have been realized by local administrations, in particular by Municipal districts, and some Regions. On the contrary, we can note a complete lack of definite politics for Roma of National Government, who never established an authority with coordination role and point of reference for local, regional, national public administration, associations and private bodies which try to guarantee a complete Rom community's insertion into the Italian social and economic background.

We must add that, during the drafting of the Protection of Linguistic Minorities Law (see Law n.482/99), according to Regional or Minority Languages European Charter, written by European Council during the Strasbourg Conference on 11/05/1992, the Rom and Sinti Communities, included in the first draft of the legislative text, have been excluded in the latter one.

As results from the Government Report data, some local administrations, Municipal district of Rome in particular, have invested considerable resources to fund

education projects addressed to Rom/Sinti minors and adolescents. However, after the attainment of Italian middle school certificate, the effective real opportunity to continue the studies is possible only for few people. It is important here to specify that most Rom boys, belonging to immigrant families at the beginning of the seventies, and that nowadays would like to attend professional training courses, are born and grown up in Italy and have lost any relation with their parents place of origin, but they aren't in a position to become Italians because of the "jus sanguinis" principle, still in force in our country.

In the Rome territory, the Rom communities are settled in "camps", some of which equipped by the Municipal District, the others have spontaneously grown up in the outskirts. In the beginning the solution of the "camps" appeared to be a good answer to the Rom population way of life but, 30 years later, a lot of Rom arrived at Italy, have become permanent and have modified their needs. Also in this case, the National Government has not been able to adopt suitable measures to assure respectable building standards and has delegated local authorities, the Municipal Districts in particular, the solution of the urgent housing need: they shelter these communities in their territory but are largely unable to tackle the problem.

Briefly, in Italy we have been witnessing Rom population migrations, with a large number of people who are born and grown up in the National territory for a long time, but, being unable to legitimize their position, we have refused them fundamental rights such as education, work and house.

Q: the Italian Government means to resolve the Rom population problem, excluding them from the linguistic minorities protections adopted in conformity with the European Charter of the Minority or Regional languages drawn up by European Council in 1992?

R: Comitato exhorts the Italian Government to bring in the Parliament a Bill which amends Law 482/99 in force integrating, as the first bill has provided, the reference to Rom and Sinti Communities and their languages.

Q: the Italian Government would resolve the problem about Rom young people, born and grown up in Italy, but whose parents are immigrants without regular residence permit and to whom the opportunity to attend a professional training course is refused?

R: Comitato exhorts the Italian Authorities to adopt dispositions to permit foreign minors, son of irregular parents, to attend professional training courses.

ANNEXES

ANNEX 1

NATIONAL HUMAN RIGHTS INSTITUTION IN CONFORMITY WITH THE PARIS PRINCIPLES, GENERAL ASSEMBLY RESOLUTION 48/134 (list of issues n.2, E/C.12/Q/ITA/2, 18 December 2003): Draft Bill: “ *Human Rights Safeguarding Commission* ”.

Explanatory Report

A Bill to Implement the UN General Assembly's Resolution No. 48/134 of 20 December 1993

In Italy there has long been increased attention paid by civil society to human rights issues, which have also become, once again, the focus of political interest. Nevertheless, there remain large shadowy areas in which the State is actually free to act in the absence of effective control, whilst public opinion is tossed about on stormy waves of highly emotional information and continues being deprived of permanent means to reflect and take action. Needless to say, the events featuring in the current national and international situation make the picture increasingly worrisome.

In the attempt at preventing this situation from becoming permanent - despite the proliferation of commendable, though sector-related and/or locally relevant political initiatives, which are often ineffective or partial in scope -, the conviction has been developing in several quarters that it is necessary to provide for a national institution in charge of fostering and protecting human rights.

This Bill envisages an authoritative, independent, and effective institution entrusted with the task of providing training and information as well as co-ordinating, supervising and encouraging the enactment of legislation in the complex area of human rights; the latter rights are, first and foremost, universal, indivisible, and mutually related rights involving ever new sectors - from civil and political rights to economic, social, cultural and environmental rights.

Pluralism and representativity are the guiding principles in setting up and selecting the members of this institution, which is competent over both domestic and foreign policy matters; indeed, the Italian State, just like any other State, is liable for human rights violations occurring either in its own territory or abroad in respect of both its nationals and non-nationals.

Following the Vienna World Conference for Human Rights, the United Nations adopted Resolution 48/134 of 20 December 1993 requiring Member States to set up national authoritative, independent organisations in order to foster and protect human rights and fundamental freedoms. As of 1993, several States set up such organisations whereas work is in progress in others. Italy is one of the few European countries that have not yet implemented the UN Resolution. On the one hand, there is no national Institution of the kind described and supported in the aforementioned resolution, nor is there, on the other hand, any national organisation capable to act at least as a reference point to counteract any conduct by public administrative bodies that is in breach of the provisions in force concerning human rights - as might be done by a national Ombudsman. From this viewpoint, our country should also align itself with the principles set out in the Charter of Fundamental Rights of the European Union in order to actually implement the democracy and transparency provisions enshrined therein.

Undoubtedly the UN resolution is not addressed exclusively to countries where human rights are systematically and severely violated, as if based on the assumption that countries such as Italy - where there is a sound democratic system, public opinion and the civil society are keenly aware of their rights, and freedom and tolerance prevail - might abstain from fulfilling the obligation they undertook within the UNO, and therefore do without a national authoritative, independent Institution to foster and protect human rights and fundamental freedoms.

Italy, just like any other State, is not safe from the risks related to human rights violations. Furthermore, setting up this Institution can be regarded as even more necessary if one takes account of its external implications and the role Italy can and must play to foster and protect human rights worldwide. Italy's increased international commitments, its participation in several humanitarian missions, its leading role in fighting against death penalty and setting up the

permanent International Criminal Court make the establishment of such an Institution both indispensable and urgent. Indeed, only an independent national Institution can contribute to monitoring the status of human rights worldwide in a consistent, continuous, and objective manner without a piecemeal approach liable to the effects produced by contingencies and opportunities.

In Italy there are currently three bodies that, though carrying out valuable activities in the human rights sector at national level, do not fulfil the above requirements.

Even motion 1-00020 of 2 August 2001, to set up the Senate's Extraordinary Committee for protecting and fostering human rights, stressed the need for taking steps in future with a view to creating an entity with permanent, non-extraordinary powers, tasks and competence so as to ensure that Italy would also be equipped with a national institution in line with the features laid down in the UN Resolution. Therefore, the aim should be to set up and regulate tasks, composition, powers and competence committed to the Italian Commission for fostering and protecting human rights - hereinafter referred to as "Human Rights Safeguarding Commission".

DRAFT BILL

Implementing UN General Assembly's Resolution No. 48/134 of 20 December 1993

Section 1 Setting up

1. The Italian Commission for Protecting and Fostering Human Rights, hereinafter referred to as "Human Rights Safeguarding Commission", shall be hereby set up with a view to fostering and protecting fundamental human rights, in particular those referred to in the Constitutional Charter and those mentioned and recognised in the international conventions to which Italy is a party.

2. The Commission's activity shall be carried out in full autonomy as also related to financial and management matters, and according to independent judgments and evaluations.

3. The Commission shall be a collegiate body including eleven members, who shall be appointed by the President of the Republic after being shortlisted as individuals meeting the highest standards of moral qualification and recognised independence in the possession of the required skills and knowledge, in particular on account of their having carried out activities aimed at the protection of human rights.

4. With a view to ensuring the pluralistic and representational functions that must be fulfilled by the Commission, its members shall be shortlisted within the following categories:

a) two members from the Chamber of Deputies and the Senate of the Republic, to be shortlisted by the respective Chairpersons;

b) three members from the most representative non-governmental and civil society organisations that carry out national and international activities in defence of human rights and against discrimination;

c) two members from the most representative trade union organisations;

d) two members from the institutions and bodies representing the following professions: judges and prosecutors, attorneys-at-law, physicians, and journalists;

e) two members to be shortlisted among University professors and experts of undisputed renown, with particular regard to sectors related to studies on human rights, philosophy, and religions.

5. The specific mechanisms and criteria applying to the shortlisting by professional associations, boards and councils shall be set out in ad-hoc regulations to be adopted via a Prime Minister's

decree within sixty days of entry into force of this law after hearing the relevant associations and professions.

6. The members of the Commission shall hold office for five years; their office may only be renewed once. At all events they shall continue in their office until the new members are appointed.

7. A member shall cease from office exclusively if he or she resigns or if it is subsequently established that he or she does not meet the requirements and qualifications provided for in connection with his or her appointment as well as if the relevant term of office expires or he or she deceases.

8. The members of the Commission shall elect, by two-third majority, a President and a Vice-President. As a rule, the President shall be one of the members shortlisted by Parliament. The President's and Vice-President's term of office shall be four years; it may be extended by one year and renewed once only.

9. Throughout their terms of office, neither the President nor the members may discharge, under penalty of disqualification, any professional and/or advisory activities, manage or be employed by public or private entities, or else hold elective offices. Upon accepting their appointment, President and members shall be struck off the respective lists of staff, if they are employed as either civil servants or judges/prosecutors; they shall be put on leave of absence without wages if they are permanent University professors.

10. The President shall be entitled to an allowance not exceeding, at the most, the salary paid to the Presidents of the other independent authorities. The members of the Commission shall be entitled to an allowance not exceeding the one paid to the members of independent authorities.

11. If the issues to be addressed feature specific criticalities, the Commission may request attendance at its meetings – for advisory purposes and without any voting rights – of representatives from public administrative bodies as well as of the Italian Government's representatives in the international organisations in charge of supervising compliance by Italy with the obligations undertaken following ratification of the international conventions on human rights.

12. The Commission may avail itself of officials employed by public administrative bodies as well as of experts in these matters with a view to obtaining advice and expert opinions. The fees to be paid in these cases shall be determined by the Commission via a resolution.

Section 2

Tasks

1. The Commission's tasks shall be

a) To foster the culture of human rights and ensure public awareness of the provisions applying to this subject matter as well as the respective purposes. To that end, the Commission shall undertake suitable initiatives to set up a permanent public confrontation forum by also taking advantage of the opportunities afforded by its pluralistic, widely representative structure;

b) To set up an observatory to monitor respect for human rights in Italy and abroad;

c) To put forward, also of its own initiative and on the basis of the information made available by the observatory referred to above, opinions, recommendations and proposals to Government and Parliament as regards all the issues related to respect for human rights at both national and international level. As regards the issues falling under its scope of competence, the Commission may, in particular, put forward proposals for the Government to introduce legislation and regulations/administrative instruments, and encourage signature and/or ratification of international agreements concerning human rights. To that end, Government shall submit, to the Commission, the draft legislation and regulations that are likely to produce direct and/or indirect effects on said rights;

- d) To issue opinions and put forward proposals to Government with a view to determining Italy's stance in the course of multilateral negotiations as well as in connection with bilateral agreements concerning, in whole or in part, issues that fall under the Commission's scope of competence or else are likely to impact, also indirectly, on the level of protection afforded by the human rights instruments in force, the aim being to ensure that the need to foster and safeguard human rights is adequately taken into account in adopting foreign policy measures. The opinions rendered by the Commission shall have to be referred to in the relevant decision-making process;
- e) To verify implementation of the international conventions and agreements on human rights already ratified by Italy, and contribute to drafting the regular reports Italy is required to submit, in pursuance of specific obligations arising from the above instruments, to the competent international organisations. The considerations made by the Commission shall be an integral part of the official reports submitted by Italy, and the Commission shall be informed of the outcome of the relevant discussions;
- f) To foster appropriate contacts with the public authorities, institutions and bodies – such as ombudsmen – that have been entrusted under Italian law with specific competences related to the protection of human rights at either central or local level;
- g) To co-operate with both international organisations and the institutions working to foster and protect human rights in other European and non-European countries, by respecting the competence entrusted under the law to other institutions;
- h) To receive reports concerning specific violations of and/or limitations on the rights recognised in the international instruments in force as lodged by either the individuals concerned or the associations representing them, and to take steps in this regard by availing itself of the investigation, supervision and reporting powers referred to in Section 3;
- i) To set termination deadlines as regards the conduct referred to in letter h) above, where this is allowed for by the type of violation concerned;
- j) To take the measures provided for by laws and regulations;
- k) To prefer information on facts and/or circumstances amounting to criminal offences it has come to know either in discharging or on account of its duties and, if appropriate, provide assistance to the individuals concerned in any disputes related to the violations alleged under letter h) above;
- l) To encourage, within the framework of the categories concerned and in conformity with the principle of representation, the drawing up of codes of conduct and professional practice for specific sectors, verify their compliance with laws and regulations by also taking account of the considerations made by the entities concerned, and contribute to adoption of and compliance with such codes;
- m) To draw up an annual report on the activity performed and the situation concerning implementation of and respect for human rights in Italy and abroad, which shall be submitted to Parliament and the Government by the 30th March of the year following that to which the report refers and shall be the subject of a public discussion.

Section 3

Investigation, Supervision and Reporting Powers

1. In discharging the tasks referred to in Section 2, letters h) and i), the Commission may request public and private entities to provide information and produce documents.
2. If necessary in order to investigate the reports referred to in Section 2, letter h), the Commission may order that the premises where the violation is alleged to have occurred be accessed, inspected and verified in order to carry out assessment activities for the purpose of said investigations; the Commission may avail itself, if necessary, of the co-operation of other State bodies.
3. The entities concerned by investigation activities shall be bound to allow for the latter to be carried out.

4. The investigations referred to in paragraph 2 shall be ordered, if necessary, further to an authorisation issued by the judge presiding over the geographically competent court as related to the location of the premises to be investigated; said judge shall decide on the request lodged by the Commission without delay by issuing a reasoned decree. The arrangements for performing the investigations shall be set out by the Commission via ad-hoc regulations.

5. The provisions set out in Section 220 of the implementing, consolidation and transitional provisions of the Criminal Procedure Code as adopted by legislative decree no. 271 of 28th July 1989 shall be left unprejudiced.

6. At all events, the Commission may prefer information to judicial authorities, also on behalf of individual entities, concerning events and conduct it considers to be liable to criminal prosecution irrespective of the manner in which they have come to its knowledge.

7. Where the Commission starts investigating in connection with a report and/or petition filed by whomsoever alleging a violation of the rights recognised by the legislation in force as per Section 2, letter h), the Commission shall be obliged to notify institution of the relevant proceeding to the parties concerned unless this communication may be effected at a later stage because of either the sensitivity of the case at stake or the need for urgent measures.

8. In the proceeding instituted before the Commission, the parties concerned shall be entitled to be heard whether in person or by the agency of a special attorney as well as to submit pleadings and/or documents.

9. Having gathered the necessary information, the Commission shall set a deadline for the offender to terminate the conduct referred to in the report and/or petition, if the latter is found to be grounded; the Commission shall also specify the remedies to enforce the claimant's rights and set a term for their implementation. The provision shall be notified without delay to the parties concerned under the office's responsibility.

10. The provision issued by the Commission may be challenged before the competent judicial authority.

11. Stages and mechanisms of the aforementioned proceeding shall be set out in ad-hoc regulations.

Section 4

Staff and Operation

1. With a view to discharging its tasks, the Commission shall employ an Office including permanent staff numbering initially 100 individuals; the latter number may be changed subsequently via the regulations referred to under point 5 below. To facilitate starting of its activities, the Commission may avail itself of civil servants struck off the respective lists of staff in accordance with the relevant arrangements; their service shall be regarded as equal for all purposes to the one they discharged at the respective administrative bodies. The relevant quota shall be set out in a Prime Minister's decree in agreement with the Minister for Economics and Finance, further to the proposal put forward by the Commission.

2. Enrolment in the Commission's permanent staff shall be based on a public competition; the relevant mechanisms shall be set out in the regulations as per paragraph 5 below by taking account of the Commission's competence and features.

3. The Commission may additionally avail itself of a quota of State and public employees whether seconded or struck off the respective lists of staff as well as of specialised staff and experts in this subject matter.

4. The staff salary shall be determined by having regard to the one paid to the staff covering the corresponding positions in independent Authorities.

5. The provisions concerning organisation and functioning of the Office, and those regulating the Commission's expenditure shall be adopted by the Commission via regulations within six months of its establishment. The Commission shall draw up an ad-hoc statement of accounts, which shall be submitted for evaluation to the Court of Auditors.

Section 5

Punishments

1. Whoever is requested to provide information and produce documents pursuant to Section 3(1) and refuses or fails to do so, on no reasonable grounds, shall be punished by a fine consisting in payment of a sum ranging from four thousand to twenty-four thousand Euro. This fine may be increased up to twice its maximum amount if untrue documents are produced and/or untrue information is provided. Where statements and/or circumstances are falsely reported and/or attested to, or else forged instruments and/or documents are produced, the punishment shall consist in imprisonment for between six months and three years unless the offence committed is more serious.

2. Whoever is required to abide by the provision adopted by the Commission pursuant to Section 3(9) and fails to do so, shall be punished by a fine consisting in payment of a sum ranging from thirty thousand to three hundred thousand Euro, without prejudice to the additional punishments laid down by the law in connection with the conduct that is referred to in said provision.

Section 6

Financial Provisions

1. With a view to implementing this Act, 10 million Euro of expenditure in 2004 and 12 million Euro of annual expenditure as of the following year shall be hereby authorised. These costs shall be borne by accordingly reducing the apportionment made in the 2004-2006 three-year budget to the basic provisional unit referred to as "Special Fund" in the budget of the Ministry of Economics and Finance in 2004. To that end, part of the apportionment relating to the Ministry for Foreign Affairs shall be used.

2. The Minister of Economics and Finance shall be authorised hereby to amend the budget as required via decrees.

Section 7

Entry into Force

1. This Act shall enter into force one hundred and twenty days after its publication in the *Official Journal*.

ANNEX 2

Right to Health (list of issues, n.28, E/C.12/Q/ITA/2, 18 December): Notes, bibliography and deepenings.

1. The human right to health is recognized in numerous international instruments. Article 25.1 of the Universal Declaration of Human Rights; The International Covenant on Economic, Social and Cultural Rights provides the most comprehensive article on the right to health in international human rights law; Additionally, the right to health is recognized, *inter alia*, in article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, in articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and in article 24 of the Convention on the Rights of the Child of 1989. Several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised (art. 11), the African Charter on Human and Peoples' Rights of 1981 (art. 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art.10). Similarly, the right to health has been proclaimed by the Commission on Human Rights, as well as in the Vienna Declaration and Programme of Action of 1993 and other international instruments.
2. The Italian Constitution of 1948, Article 32. *"The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent. No one may be obliged to undergo particular health treatment except under the provisions of the law. The law cannot under any circumstances violate the limits imposed by respect for the human person."*
3. Universal Declaration of Human Rights (adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948 *Article 2*. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".
4. Law No. 833 of 23 December 1978 (published in the Ordinary Supplement to Official Gazette No. 360 of 28 December 1978) *"Foundation of the National Health Service"*, TITLE - the National Health Service - Head I the Principles and objective - Art.1- The principles *"[...] complex of the functions, structures, services and activities assigns to the promotion, the maintenance and the recovery of the physical and psychological health of all population without distinction of individual or social conditions and in accordance with modalities that assure the equality of the citizens as of the service. The implementation of the National Health Service competes to the State, to the regions and territorial local agencies, guaranteeing the participation of the citizens. In the National Health Service is assured the connection and the coordination with the activities and the participations of all the other organs, centers, institutions and services, that carry out in the social field activities however incidents on the state of health of the individuals and the collectivity "*.
5. The Health Care Ministry National Health Plan 2003-2005. Available at: http://www.ministerosalute.it/resources/static/psn/documenti/psn_2003-2005.PDF
6. Essential health services are provided free of charge, or at a minimal charge, and include general medical and pediatric services; essential drugs and those for chronic diseases; treatments administered during hospitalization; rehabilitation and long-term postacute inpatient care; instrument and laboratory diagnostics, as well as other specialized services for early diagnosis and prevention. Primary health care is provided mainly by general practitioners (GPs) and paediatricians, and on-call physicians (Guard Medical) for after-hours medical care and services. All of these professionals work within the LHA districts, which also include home care and pharmacies.
7. Ministry of the Health, World Health Organization, European Center for Environment and Health. Health in Italy in the 21st century. Rome: WHO European Center for Environment and Health, 1999. Available at: <http://www.who.it/docs/itahfa21/omsindice.htm> Accessed September, 2004.
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10. The Health Care Ministry Decree 15/04/1994: Determinazione dei criteri generali per la fissazione delle tariffe delle prestazioni di assistenza specialistica, riabilitativa ed ospedaliera. Official Gazette of 10/05/1994 n. 107. Rome, Italy.
11. The Health Care Ministry Decree of 14/12/1994: Tariffe delle prestazioni di assistenza ospedaliera. Official Gazette of 24/12/1994 n. 300. Rome, Italy.
12. Diagnosis-related groups (DRGs) are a classification of hospital case types into groups expected to have similar hospital resource use. The groupings are based on diagnoses (*using ICD*), procedures, age, sex, and the presence of complications or comorbidities (definition from the Agency for Healthcare Research and Quality). They are a system for classifying patient care by relating common characteristics such as diagnosis, treatment and age, to an expected consumption of hospital resources and length of stay. They form the cornerstone of the prospective payment system
13. European Commission. The health status of the European Union Narrowing the health gap Luxembourg: Office for Official Publications of the European Communities, 2003
14. THIRTIETH WORLD HEALTH ASSEMBLY GENEVA, 2-19 MAY 1977 WHA30.44 Health legislation
15. articulate in 38 specific objects and a set of appraisal index for a continuous monitoring of the progresses completed towards the attainment of objects fixed. The aspect more original and innovative of strategy HFA consisted in an

- approach to the health problems less oriented to the therapies and the admission to hospital and mainly bent on primary care, on prevention of the diseases and promotion of the health. Are 6 the fundamental principles of HFA:
16. Equity, that is guarantee the same level of health between various countries and in same nation.
 17. Promotion of the health and prevention of the diseases for help the populations to achieve a complete physical, mental and social well-being.
 18. Promotion of a Inter-sector and Inter-institutional Policy
 19. Active Participation of the collectivity.
 20. Accessibility to the health basis services in the place where people alive and works, through a efficient health system.
 21. International Cooperation, for give an answer to the health problems that exceed the national borders.
 22. The Universal Declaration Of Human Rights *Article 25*. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
 23. The Charter of the United Nations (UN), that was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945 (ratified by the Italy con Law no. 848 of 17 august 1957, published in the Ordinary Supplement to Official Gazette No. 238 of 25 september 1957). PREAMBLE WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and [...] to promote social progress and better standards of life in larger freedom, [...] HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS [...] CHAPTER I PURPOSES AND PRINCIPLES, Article 1 co. 1 To maintain international peace and security [...]; co. 3 To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and [...]. Obviously, it does not constitute a specific instrument that direct its action towards achieving the protection of the human rights neither contains clear expectations for the health, however, it introduces in the system, in addition the organizational principles that concur with the UN to work, as well as some theological assumptions, particularly, identifying in the Peace and in the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women the scope of the pact.
 24. The International Covenant on Economic, Social and Cultural rights of the 1966 (Art. 10-11-12)
 25. The Convention on the Elimination of All Forms of Discrimination against Women, 1979, become effective 3 september 1981, (Part III, Art. 10-h; art.11co.2-f; 14 co2-b);
 26. Declaration of Alma-Ata International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978.
 27. Ottawa Charter for Health Promotion First International Conference on Health Promotion Ottawa, 21 November 1986 - WHO/HPR/HEP/95.1 WHO, Geneva, 1986 Health Promotion Action Means:
 Build healthy public policy
 Create supportive environments
 Strengthen community action
 Develop personal skills
 Reorient health services
 Moving into the future
 28. The Convention on the Rights of the Child, approved by The 20th General Assemble of the United Nations, november 1989, ratified by the Italy with law n. 176/1991, lodged near the United Nations, 5 september 1991. (Part I, Art. 6-23-24-25-26-31-33-39).
 29. Copenhagen Declaration and Programme of Action. World Summit for Social Development 6– 12 March 1995. New York, United Nations, 1995.
 30. *The Ljubljana Charter on Reforming Health Care*. Copenhagen, WHO Regional Office for Europe, 1996 (document EUR/ICP/CARE 9401/CN01). The purpose of this Charter was to articulate a set of principles which was an integral part of health care systems in all the Member States of the WHO in the European Region. Furthermore, this Charter made reference to the management of the waiting lists.
 31. The Jakarta Declaration on leading health promotion into the 21st century. Geneva, World Health Organization, 1997 (document WHO/HPR/HEP/41CHP/BR/97.4).
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 33. In its resolution 1989/11.
 34. *Health for all in the 21st century*. Geneva, World Health Organization, 1998 (document WHA 51/5).
 35. The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by the United Nations General Assembly in 1991 (resolution 46/119) and the Committee's General Comment No. 5 on persons with disabilities apply to persons with mental illness; the Programme of Action of the International Conference on Population and Development held at Cairo in 1994, as well as the Declaration and Programme for Action of the Fourth World Conference on Women held in Beijing in 1995 contain definitions of reproductive health and women's health, respectively.
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49. The WHO, Office of European Region, OBJECTIVE 16, from the "21 Objects of Health for the 21 SECOLO": INTRODUCTION TO THE STRATEGY OF THE HEALTH FOR ALL IN REGION EUROPEA
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87. Law 189 of 30 July 2002, enacting "Amendments to immigration and asylum law"
88. Published in suppl. 139/L to the Official Journal 191 on 18/8/1998, law no. 286, 25/7/1998.
89. On the subject of immigration, the political criteria set by the legislature in force have been characterized by the firm intention to stress legality within the democratic system. Since 1990 a number of laws have been passed, including a framework law in 1998 to which major changes were made in 2002. The most significant innovations introduced in the Legislative Decree no. 286 of 25 July 1998 by the aforementioned Law 189/2002 can be summed up as follows: November 30th of the preceding year was fixed as the deadline for setting the maximum quotas of foreign immigrants to be accepted in Italy; entry visas may be refused for reasons of security without giving the reasons; criminal punishment may be inflicted if an application for an emigration visa made to the diplomatic delegation or consulate in the country of origin is accompanied by false statements; photographs and fingerprints are to be taken of foreigners applying for residence permits; residence permits for work are only to be issued if a contract of residence for dependent job has already been signed; the duration of the residence permit is to be limited to the duration of the employment contract; severe penalties are to be inflicted on persons that falsify entry visas or other deeds or documents regarding residence in the country; the employer must guarantee lodging; the employer must make a formal commitment to pay the immigrant's repatriation costs; the period of residence required for obtaining a residence card is increased from five to six years. The measures against clandestine immigration contain more severe administrative and criminal penalties than previously. Specifically, adequate measures are contemplated for expulsion, escort to the border by the police; in addition, expulsion orders are to be adopted as an alternative punishment to imprisonment.
90. The sources of information on the types and characteristics of diseases suffered by foreigners are therefore the case histories of public and voluntary structures that provide psychosocial health assistance to immigrants throughout the country
91. Italian NFP Working Group AIDS & Mobility Project: activity report 2001-2002 of the Italian National Focal Point *Rapporti ISTISAN 03/47*
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103. Chiara Mellina e Patrizia D'Arrigo RILEVAMENTO DEI SERVIZI DI ASSISTENZA SANITARIA AGLI IMMIGRATI NEL TERRITORIO DEL COMUNE DI ROMA Progetto "Rilevamento dei fattori di esclusione sociale ed identificazione di interventi mirati alla integrazione socioculturale sanitaria degli immigrati"
104. Law 189/2002, passed on 30/7/2002, published in Official Journal 199 on 26/8/2002
105. For "continuative cures" can mean those health performances necessary for not frustrate the treatments started with the initial performance and any interruption could cause serious prejudice for the health and the life of the patient. All the same, the praxis demonstrates that the alien "who isn't legal with the norms relative to the income and the residence permit" not enjoy of some "immunity" from eventual controls only inside of the hospital (T.U. art. 35, V co.), while outside of the health structure can be controlled, translate in Police headquarters, since irregularly present on the territory, and expelled.
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121. A. Spinelli, M. Grandolfo, S. Donati, S. Andreozzi, C. Longhi, M. Bucciarelli, G. Baglio: "Gravidanza e parto tra le donne immigrate a Roma"; Rapporto ISTISAN 03/6;
122. A. Spinelli, M. Grandolfo, S. Donati, S. Andreozzi, C. Longhi, M. Bucciarelli, G. Baglio "Assistenza alla nascita tra le donne immigrate"; Rapporto ISTISAN 03/4 Immigrati e zingari: salute e disuguaglianze (a cura di A. Morrone, A. Spinelli, S. Geraci, L. Toma e S. Andreozzi) pp.11-22.
123. Donati S., Spinelli A., Grandolfo M.E., Baglio G., Andreozzi S., Pediconi M., Salinetti S. (1999) *L'assistenza in gravidanza, al parto e durante il puerperio in Italia*. *Annali dell'Istituto Superiore di Sanità*; 35(2): 289-296.
124. The health policies delineated from dispositions in force, in point of view of total protection of the public health aim to guarantee the verification and the eventual restoration of the health of all immigrants present and, in order to realize such scope, it has eliminated barriers of legal nature and tried to contrast eventual barriers of economic nature.

125. Single Text on provisions concerning immigration regulation and the norms on the conditions of foreign people (Legislative Decree 286/1998), Published in suppl. 139/L to the Official Journal 191 on 18/8/1998 TITLE V Dispositions in health matter, as well as of Instruction, Lodging, Participation to Public Life and Social Integration. HEAD I The DISPOSITIONS in health matter Art. 35 (Health Assistance for the aliens not enrolled to the National Health Service) co.3 To the foreign citizens presents on the national territory, not in rule with the norms relative to income and to residence permit, are insured, in the public institutes and those credited, the outpatient and urgent or however essential, hospital cures worker, even though continuative, for disease and accident and are extended the preventive medicine programs to safeguard the health of the individual and the community. Are, in particular, guaranteed: a) the social protection of the pregnancy and maternity, conditions of treatment being equal with the Italian citizens, according to the Laws n. 405 of 29 July 1975, and n. 194, of 22 May 1978 and of the decree of the Health Care Minister of the 6 March 1995, published in the Official Gazette n. 87 of the 13 April 1995, conditions of treatment being treatment with the Italian citizens; b) the protection of the health of the people under eighteen in accordance with the Convention on the Rights of the Child of 20 November 1989, ratified and rendered executive according to the Law n. 176 of the 27 May 1991; c) the vaccinations in accordance with the norm and in the field of participations of campaigns of collective prevention authorized from the regions; d) the participations of international prophylaxis; e) the prophylaxis, the diagnosis and the cure of the infectious diseases and eventual reclamation of correlated centres of infection.
126. Presidential Decree 394/1999 (Implementation rules of the Consolidation Act regulations concerning immigration discipline and rules on conditions for foreigners).
127. Health Care Ministry circular 5 (24/3/2000: *Regulations on health care assistance*)
128. Geraci S (Ed.). *Approcci transculturali per la promozione della salute. Argomenti di medicina delle migrazioni*. Roma: Anterem; 2000.
129. Geraci S, Martinelli B. *Il diritto alla salute degli immigrati. Scenario nazionale e politiche locali*. Roma: Anterem; 2002.
130. World Health Organization. *The World Health Report. Health systems: improving performance*. WHO: Geneva; 2000.
131. Enclose document: *Safeguard of the Health in the Italian prisons*
132. LEGISLATIVE DECREE No. 230 OF 22 JUNE 1999 (*published in the Ordinary Supplement to Official Gazette No. 165 of 16 July 1999*) *Reform of penitentiary medicine, in accordance with Art 5 of Law No. 419 of 30 November 1998*.
133. Risulta evidente come l'attuale servizio si costituisce nell'attesa, senza sviluppare e promuovere direttamente un'azione per agire sui rischi e prevenire il danno oggettivo, la patologia, propria di una "struttura totale" qual è il carcere e che l'utente detenuto è doppiamente svantaggiato rispetto all'utente libero, poiché è portatore di disagi più strutturali che rendono l'intervento sanitario ancora più difficoltoso e complesso: dalla mancanza di esperienze familiari e sociali ad uno scarso bagaglio culturale, assenza di formazione lavorativa e gravi carenze sul piano dell'identità, dell'autonomia e cura di sé.
134. *Il vaso di Pandora, carcere e pena dopo le riforme*, Atti del convegno promosso dall'associazione Antigone e dall'istituto della Enciclopedia Italiana, 1997
135. G. Rusche, O. Kirchheimer, *Pena e struttura sociale*, Il Mulino, 1978
136. D. Melossi, M. Pavarini, *Carcere e fabbrica. Alle origini del sistema penitenziario*, Il Mulino, 1977
137. A. Cogliano (a cura di), *Diritti in carcere*, Quaderni di Antigone, n.1
138. Mario Gozzini, *Carcere perché, carcere come: Italia 1975-1987*, Edizioni cultura della pace, 1988
139. M. Pavarini, *Il sistema della giustizia penale fra riduzionismo ed abolizionismo in Il diritto penale minimo*, a cura di A. Baratta, Edizioni Scientifiche Italiane, 1985
140. M. Pavarini, *Cent'anni di carcerazione in Italia*, in L. Violante (a cura di), *La criminalità punita*, Annali Einaudi, 1997
141. Associazione Antigone, *Il carcere trasparente. Primo rapporto nazionale sulle condizioni di detenzione*, Castelvecchi 2000
142. S. Anastasia, P. Gonnella (a cura di), *Inchiesta sulle carceri italiane*, Carocci 2002.
143. E. Campelli, V. Giordano, T. Pitch, *Donne in carcere. Ricerca sulla detenzione femminile in Italia*, Feltrinelli 1992
144. *Inchiesta sulle carceri in Italia. Il secondo rapporto di Antigone sulle carceri* Editore da Carocci
145. F. Faccioli, V. Giordano, C. Sarzotti (a cura di), *L'Aids nel carcere e nella società*, Carocci editore, Associazione Antigone 2001
146. MJH Barcellona Pozzo di Gotto
- MJH Reggio Emilia
 - MJH Montelupo Fiorentino
 - MJH Castiglione delle Stiviere
 - MJH. Napoli
 - MJH Aversa Available at: <http://www.ristretti.it/index.htm>. Accessed September 2004
147. Andreoli V. (a cura di), *Anatomia degli ospedali psichiatrici giudiziari italiani*, Dipartimento dell'Amministrazione Penitenziaria, Roma, 2002.
148. *Suicidio al Minorile - Il Manifesto 19 Novembre 2003*. disponibile at: <http://www.associazioneantigone.it/>
149. Economic poverty is typically analysed with reference either to the income or to the consumption of individual persons, taking into account — by using equivalence scales — their household type. Both measures are given here, in accordance with the EU practice, that identifies income as the relevant variable, and with the Italian national approach, which officially defines the poverty rate on the basis of consumption. The "risk of poverty", defined as the percentage of individuals whose consumption or, alternatively, net income is lower than a predetermined threshold — is calculated according to different scales depending on the measure and methodology used: the EU indicator, based on income, highlights a poverty rate between 18 and 19%, while Italian national rate, which is consumption-based, falls between 12 and 14%.

150. To confirm what was seen regarding the elderly as a whole, when consumption is considered these couples are relatively poorer with respect to the rest of the population. Conversely, when assessed on the basis of income, they present a risk of poverty that is significantly lower than that for the rest of the population.
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170. The Law 328/2000 has defined, for the first time in Italy, what are the responsibilities of the Public Institutions in the field of the serious and multidimensional nature of the forms of marginalization experienced by the adult people and the homeless. The State for guarantee free medical care and assistance to the indigent has instituted the National Social Fund, to all social and welfare actions, in accordance with annual Financial Law of the State, instead, that depend on the liquid assets of the Minister of the Treasury. To day, the responsibility is for that of the Welfare Ministry. Within Ministry there isn't any Department or Office (neither before nor now) that is interested in social exclusion and serious marginalization. This task is delegated at the Government Committee on social exclusion.
171. Ministero della Sanità, "Lo stato di salute in Italia", anno 2001
172. PROGETTO OBIETTIVO TUTELA DELLA SALUTE DEGLI ANZIANI SANITAS DOMI, vol. 3, n. 5, 1992, pag. 39-56
173. LINEE GUIDA PER LA REALIZZAZIONE DEL PROGETTO OBIETTIVO TUTELA DELLA SALUTE DEGLI ANZIANI GERON, vol. 3, n. 5, 1993, pag. 47-61
174. Il documento, approvato da Camera e Senato con risoluzioni in data 30 gennaio 1992, si sviluppa sui seguenti capitoli:
- introduzione;
 - caratteristiche del Progetto Obiettivo;
 - assetto organizzativo dell'assistenza geriatrica;
 - sperimentazione degli interventi;
 - riqualificazione dei reparti di geriatria;
 - attivazione dei servizi di assistenza domiciliare integrata (ADI)
 - spedalizzazione domiciliare (SD);
 - residenza sanitaria assistenziale (RSA);
 - unita' valutativa geriatrica (UVG);
 - la formazione del personale;
 - le risoluzioni 1 e 3/1992 del Consiglio Sanitario Nazionale
175. Put in social-health area of the integration, domicile integrated assistance, with the semiresidential and residential attendances, is present in numerous normatives: in the enclosure 1c at Dpcm of 29/11/2001, that within the macro-

- level relative to outpatient territorial and domicile assistance, it considers three microlevels - Adi and Adp, social-rehabilitative performances in favor of disabled, social-health performance in favor of terminal sick and sick of AIDS - that preview performances to the domicile of the person; Dpcm of 14 February 2001 "Atto di indirizzo e coordinamento in materia di social-health performances, that characterizes in the ADI a performance destined to elderly people and to who are suffering from chronic-degenerative pathologies; l'art. 22 of law n. 328 of 8/11/2000, that places the domicile assistance between the essential levels of the social performances. That demands to face the interpretative problems interpreted presented from several legal judgements, fores. as far as the criteria of applications in the single regions, as well as to introduce the concept of "essenzial assistenza", connoted in terms of it turns out you of quality. National legislation of reference D. Lgs. 502/92 and D. Lgs. n. 229/99 Norms for the rationalization of the National Health Service.
176. The ADI, in fact, can be defined as coordinated network of health performances (medical, nursing and rehabilitative) integrated with participations of social-charitable nature (pulizia, disbrigo practical administrative, psychological support etc), distributed word.word and turned to satisfy the requirements of old disabili and patients suffering from chronic-degenerate diseases, partially, totally, temporary or permanently not self-sufficient, having necessity of a continuative attendance. The ADI is not, therefore a simple service, but a system that previews integration of resources finalized to the realization of the concept of "domiciliarità"
177. Foglietta Fosco L'assistenza domiciliare nei livelli essenziali socio-sanitari e sociale Studi Zancan. Politiche e servizi alle persone, vol. 5, n. 1, 2004, pag. 66-80
178. D. Lgs. n. 229/99 Norms for the rationalization of the National Health Service.
179. DPCM 14 febbraio 2001 Atto di indirizzo e coordinamento relativo all'integrazione socio-sanitaria
- DPCM 29 novembre 2001 I LEA Nella classificazione dei livelli, al punto 2 Assistenza distrettuale, la lettera G prevede tra i macro-livelli l'Assistenza territoriale ambulatoriale e domiciliare, la quale a sua volta contempla tra i micro-livelli, al primo punto, l'assistenza programmata a domicilio (ADI, assistenza programmata domiciliare, comprese le varie forme di assistenza infermieristica territoriale). Le prestazioni sanitarie e quelle sanitarie di rilevanza sociale per le quali la componente sanitaria e quella sociale non risultano distinguibili e per le quali si è convenuta una percentuale di costo non attribuibile alle risorse finanziarie destinate al SSN, sono le seguenti:
 - prestazioni a domicilio di medicina generale, pediatria di libera scelta
 - domicile specialist's medicine performances
 - domicile nursing
 - domicile rehabilitation performances
 - prestazioni di aiuto infermieristico e assistenza tutelare alla persona (50% a carico dell'utente o del Comune)
 - prestazioni di assistenza farmaceutica, protesica e integrativa.
 - The classification defined three terms: impairment (functional/structural abnormality of the body), disability (activity or behavioural problems at the level of the person as a result of impairment) and handicap (social disadvantages arising from disability). ICIDH was a framework which encouraged doctors and other users to think about health in a wider context than pathology and treatment.
180. It retains and even increases the openness of the original framework. In particular, the term 'disability' is no longer defined within the scheme; instead, the whole picture relating to the wide concept of disability is captured by looking at three dimensions: impairments of body structures and body functions, activities and participation. An important feature of the approach which has been adopted in the ICF is the 'universalisation' of the understanding of disability.
181. Ustun TB, Chatterji S, Kostansjek N, Bickenbach J. WHO's ICF and functional status information in health records. *Health Care Financ Rev.* 2003 Spring;24(3):77-88.
182. The definitions used in anti-discrimination legislation are usually very broad, potentially including people with minor disabilities. These laws focus on the act of discrimination rather than the health status of the person. The definitions used in social policy are more restrictive, as they are used within processes which allocate scarce resources to those whose needs have been recognised. Impairment-based definitions, often using tables which determine percentages of disability corresponding to specific medical conditions and injuries, define disability for some work incapacity benefits and pensions, and for many employment quota schemes. Analysis of a person's problems in the work environment (which may be the person's previous work environment or may refer to labour market requirements more generally) are also found in work incapacity schemes, while many provisions for care and assistance (e.g. care insurance) focus on a person's capacity to perform activities of daily life. Employment policies for disabled people, with the exception of quota schemes, generally demonstrate a high level of flexibility in the definition of disability, whereby health status is considered alongside other factors influencing employment prospects such as skills and education.
183. Ustun TB, Chatterji S, Bickenbach J, Kostanjsek N, Schneider M. The International Classification of Functioning, Disability and Health: a new tool for understanding disability and health. *Disabil Rehabil.* 2003 Jun 3-17;25(11-12):565-71.
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186. Bickenbach JE, Chatterji S, Badley EM, Ustun TB. Models of disablement, universalism and the international classification of impairments, disabilities and handicaps. *Soc Sci Med.* 1999 May;48(9):1173-87.
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190. Decreto Presidente Repubblica 13 aprile 1994, n. 336 Regolamento recante le nuove tabelle delle malattie professionali nell'industria e nell'agricoltura (*G.U. 7 giugno 1994, n. 131*).
191. Lia De Zorzi Danno biologico. Applicabilità del concetto in ambito previdenziale INPS RASSEGNA DI MEDICINA LEGALE PREVIDENZIALE - XIV - 4.2001
192. In relation to the strong question of health services of rehabilitation, the admission in the structure happens with the insertion of the customer in a specific waiting list that has a chronological sliding with call from the service. The service provided from the structures public or credited in outpatient regimen is free for the ticket-exempt people, while for the others the general norm is applied on the participation to the expense, its modernization must be verified near the LHA of residence. The cost of the health assistance of rehabilitation supplied from credited structures or totally private in regimen of day-hospital depends on the type of treatment and on the demand for particular a hotel service. The cost of the service distributed from the private structures varied to second of the typology of the demanded rehabilitative performances. The greater part of the physical medicine performances and rehabilitation are included in the LEA when are present clinical conditions for which the same performances have demonstrated the own effectiveness and when they are distributed on the base of validated protocols; some performances, as the analgesic laser-therapy, the analgesic electro-therapy, the ultrasound-therapy and the meso-therapy, can be included in the LEA regional disposition. All rehabilitative assistances distributed in regimen of admission to hospital, or near structures of residential or semi-residential, outpatient and to domicile extra-hospital rehabilitation are at the NHS' expenditure, within a total program of rehabilitation of serious cases of disability. The prosthesis concession directed to the functional recovery of subject affected from physical, mental and/or sensory handicap is disciplined from the Regulations emanated with DM. n. 33276 of 27 August 1999.
193. In tale prospettiva, il Capo III della legge, dettante "Disposizioni per la realizzazione di particolari interventi di integrazione e sostegno sociale", individua, come obiettivi, i seguenti:
- Progetto individuale a favore delle persone disabili (art.14);
 - Sostegno domiciliare per le persone anziane non autosufficienti (art.15);
 - Valorizzazione e sostegno delle responsabilità familiari (art.16)
- 194.
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- 208.

209. Legge 833/78, art. 2 e 4 (obiettivo della garanzia di Livelli di assistenza e di condizioni di salute uniformi su tutto il territorio nazionale);
 Legge 23 ottobre 1992, n. 421 Delega al Governo per la razionalizzazione e la revisione delle discipline in materia di sanità, di pubblico impiego, di previdenza e di finanza territoriale (in Suppl. ordinario alla Gazz. Uff., 31 ottobre, n. 257).
 D.Lgs. 30 dicembre 1992, n. 502 Riordino della disciplina in materia sanitaria, a norma dell'articolo 1 della L. 23 ottobre 1992, n. 421 Pubblicato nella Gazz. Uff. 30 dicembre 1992, n. 305, S.O. più volte modificato in particolare con il Decreto Legislativo 299/99 (i livelli sono definiti "uniformi ed essenziali" e sono individuati in base dei principi di dignità della persona, bisogno di salute, equità nell'accesso all'assistenza, qualità delle cure, appropriatezza, economicità);
 D.Lgs. 229/99, "Norme per la razionalizzazione del SSN, in attuazione dell'art.1 della legge n. 419/98", pubblicato nella *Gazzetta Ufficiale* n. 165 del 16 luglio 1999 - Supplemento Ordinario n. 132;
 Decreto Presidente Consiglio Ministri 14 febbraio 2001 (determina analiticamente e classifica le tipologie di prestazioni socio-sanitarie e detta norme sull'integrazione tra sistemi sociale e sanitario);
 Decreto Presidente Consiglio Ministri 29 novembre 2001 (classifica tutti i LEA sanitari, inclusi quelli socio sanitari, per i quali determina anche la quota della spesa a carico del Fondo Sanitario Nazionale e quella a carico dell'utente o del Comune).
 L'art. 54 della Legge finanziaria 2003 conferma i LEA del DPCM e pertanto conferisce forza di legge alle norme ivi contenute. Dato che vi sono incongruenze tra il DPCM di novembre e quello di febbraio, la finanziaria 2003 dirime quindi i contrasti normativi, facendo prevalere il DPCM di novembre.
210. Nell'ambito dei LIVEAS e cioè i livelli essenziali per i servizi sociali, la catena giuridica è più recente: L. 328/00, art. 9 (allo Stato spetta l'individuazione dei livelli essenziali ed uniformi delle prestazioni) e art. 22 (elencazione degli interventi che costituiscono il livello essenziale delle prestazioni: segretariato sociale, primo intervento sociale, assistenza sociale, strutture residenziali e semiresidenziali per soggetti fragili, centri di accoglienza); LR 2/03, art. 5 comma 4 (elenca i servizi e gli interventi del sistema locale) art. 5 comma 5 (prevede risposte di pronto intervento), art. 6 comma 1 (definisce come Livelli essenziali delle prestazioni sociali i servizi e gli interventi di cui all'art. 5 più quelli richiamati nell'art. 22 della legge 328.) art 10 definisce l'integrazione sociosanitaria e fa riferimento al DPCM 14.2.01
211. La normativa vigente prevede una dotazione di posti letto non superiore a 5 per 1000 abitanti, di cui almeno 1 di riabilitazione e lungodegenza post-acuzie, indicando una riserva di almeno il 10% dei p.l. per le attività di day hospital. Nel gruppo di Regioni considerate il complessivo numero di posti letto, ottenuto sommando il numero di posti letto per acuti e di riabilitazione/lungodegenza, è pari a 5,05 per 1000 abitanti, quindi leggermente superiore al valore previsto dalla normativa, con un minimo di 3,97 p.l. (Umbria) ed un massimo di 5,66 p.l. (Abruzzo). Per quanto riguarda la riabilitazione, con l'eccezione di 2 Regioni (Piemonte e Lazio) che dispongono di oltre 1 p.l. per 1000 ab., in tutte le altre il numero è inferiore all'unità.
212. RELAZIONE PER LA PRESENTAZIONE DEI DATI RILEVATI NELL'ANNO 2001 (presentata il 24 luglio 2003)
213. Il tasso di ospedalizzazione varia da un minimo pari a 185,6 (Friuli Venezia Giulia) ad un massimo di 247,4 (Liguria) ricoveri per 1000 ab.. Con riferimento ai ricoveri con durata di degenza di una giornata, si osserva un tasso di ospedalizzazione compreso tra 11,5 (Piemonte) e 32,1 (Campania).
214. Il peso medio per i bambini è pari a 0,64 (minimo 0,52 in Valle d'Aosta e massimo 0,83 in Emilia Romagna). Il peso medio per gli anziani è pari a 1,22, minimo 1,08 (Friuli Venezia Giulia) e massimo 1,40 (Umbria). Confrontando i valori per le 13 regioni in cui il dato è disponibile, si osserva che il peso medio dei ricoveri degli anziani è pari a circa il doppio di quello dei bambini.
215. S'intendono con questo termine le riammissioni in ospedale non programmate, effettuate a breve distanza di tempo da un precedente episodio di ricovero, che possono essere legittimamente interpretati come "eventi sentinella" di carenze organizzativo-gestionali
216. Article 9 of Law No. 178 of 8 August 2002 provides for the restructuring of the list of medicinal products reimbursed by the National Health Service (NHS), based on the cost-efficacy criterion, in order not to exceed the expense levels planned in the public finance documents in force, as well as the expense levels defined in the agreement between the Government, the Regions and the autonomous provinces of Trento and Bolzano on 8 August 2001, published on the *Gazzetta Ufficiale* (Official Journal of the Italian Republic) No. 207, 6 September 2001.
217. "Rapporto 2003 - L'Uso dei farmaci in Italia" dell'Osservatorio Nazionale sull'impiego dei Medicinali (OsMed)
218. Il consumo di farmaci oppiacei in Italia. BIF 5-6/2003: 231-6.
219. I provvedimenti di contenimento della spesa adottati a livello nazionale nel corso del 2003 sono stati: la diminuzione del prezzo dei medicinali dovuta a due manovre: la riduzione del 2% del prezzo dei farmaci (dal 16 gennaio 2003), che è andata ad aggiungersi a quella del 5% effettuata nell'aprile del 2002; la revisione del Prontuario Farmaceutico Nazionale che, attraverso l'individuazione di un prezzo di riferimento per categorie terapeutiche omogenee (cut-off), ha ridefinito i criteri di rimborsabilità dei farmaci; intensa politica di sviluppo del generico.
220. Class C includes all other drugs that: (1) have no clinical documentation supporting their efficacy; (2) are more costly than class A drugs; (3) are used to treat minor or inexpensive illnesses; and (4) do not require a prescription. Consumers are responsible for the total cost of class C drugs.
221. antistaminici, farmaci per la prevenzione delle microfratture per chi soffre di osteoporosi, corticosteroidi per allergici e asmatici, adrenalina autoiniezione, farmaci per il morbo di Parkinson, farmaci e presidi di uso comune dei quali i malati cronici fanno un uso particolarmente intenso
222. In the last national relationship on the employment of medicinal published in October 2003, in the chapter " Analysis of the druggist prescription in the first semester of 2003" it can read exactly: "In the first semester of 2003 the gross pharmaceutical expenditure has recorded a decrement of 5.1% and the net expenditure of 9.3% as to the same period of 2002. Considering the increment of 16.4% of the private expenditure, the pharmaceutical expenditure in total is increased of 1,1%. The increment regards drugs of class C, those for self-treatment and those distributable by the NHS but it acquired privately. The increase of the expenditure of drugs of class C is mainly for the movement in class C of some drugs ex-class B1 and B2 happened 7 November 2002"

223. La legge finanziaria n. 448 del 23 dicembre 1998 ha previsto la costituzione di un Osservatorio nazionale sull'impiego dei medicinali (OsMed) avente come principali finalità quelle di:
224. www.ministerosalute.it/medicinali/resources/documenti/osmed
225. Law n. 12 of 8 febbraio 2001, Norme per agevolare l'impiego dei farmaci analgesici oppiacei nella terapia del dolore. (published in the Official Gazette No. 41 of 19 february 2001).
226. DIRETTIVA DEL PRESIDENTE DEL CONSIGLIO DEI MINISTRI 24 maggio 2001 Indizione della "Giornata nazionale del sollievo" Gazzetta Ufficiale n. 163 del 16-07-2001
227. D.M. of 4 April 2003
228. Changes introduced with the DM of 4 April 2003
229. New book of prescriptions in triple self-copy copy printed also in the versions Italian-French and Italian-German right for the prescription of opioid analgesic drugs comprised in the attached III-bis of the law n.12 of 8 February 2001, employed in the therapy of the cancer-related pain or correlated with degenerative pathology;
230. Prescription without obligation of must use "all letters" in order to write the dose, way of intake and time of administration of a medicine and the number of confections. In order to describe the dosage of the prescribed medicinal, the directions and number of confections it can be used numerical characters and the normal contractions; Elimination of the obligation to indicate the address of residence of patient; Elimination of the obligation, by who prescribes, to conserve for six months the copy of the prescription at himself destined; Prescription of medicinal containing buprenorfina in all druggist forms.
231. Palliative care: Depending on available resources, most palliative care teams have a nurse practitioner as the hub of the team to assure continuity of care. The nurse practitioner is backed up by an attending physician and, in some centres, a geriatric medicine or oncology fellow.
232. Hospice is ultimate palliative care, but is defined by a time limit and regulations surrounding a Medicare benefit. Palliative care, by contrast, can begin at the time of diagnosis, or any point thereafter, when patients and families may have already begun to suffer secondary to physical symptoms, anxiety and uncertainty, and have needs outside of the traditional biomedical model of care. The clinical events that lead people into the hospital have no predetermined outcome.
233. In Italy the incidence of post-traumatic spinal cord lesions, estimated in studies to regional valence, is of approximately 20/25 new annual cases in million inhabitants. The amount of function lost tends to correspond to the level in the spinal cord where the damage takes place. There are many degrees of injury and function loss, which don't always correspond to the level of the injury on the spine. In a 2000 survey of the health, managerial epidemiological data has confirmed substantial deficiency of systematical data in Italy on the myelo-injuries⁷⁷. The MH currency in 60/70mila the number of persons striked with lesions in Italy. The age of the persons with any of various functional disturbances or pathological changes in the spinal cord, over 80%, in a range that goes from the 10 to the 40 years. From a study executed from the GISEM (Italian Group Study Epidemiologist on the Mielolesioni), can be extrapolated some interesting data that photograph the "problem" of spinal cord lesion⁷⁸.
234. CONFERENZA STATO-REGIONI SEDUTA DEL 29 APRILE 2004 Oggetto:Accordo tra il Ministro della salute, le Regioni e le Province Autonome di Trento e di Bolzano sul documento recante : "Linee guida per le unità spinali unipolari".
235. Unipolar Spinal Cord Unit Niguarda (Milano)
 Unipolar Spinal Cord Unit Firenze (Firenze)
 Unipolar Spinal Cord Unit Cagliari (Cagliari)
 Unipolar Spinal Cord Unit Perugia S. Andrea delle Fratte (Perugia)
 Unipolar Spinal Cord Unit Pietra Ligure (Savona)
 Unipolar Spinal Cord Unit (Roma)
 Unipolar Spinal Cord Unit (Sondrio)
 Unipolar Spinal Cord Unit (Vicenza)
236. As defined in the Act of Intent between the state and the regions for the approval of guidelines (n. 1/96. GU 17/3/96) for the medical emergency network in application of DPR 27/3/1992, the Unipolar Spinal Cord Unit (USU) is designated to provide care for subjects with spinal cord injuries resulting from trauma or other causes, starting from the time of injury; its purpose it to allow these patients to achieve the best state of health possible and the highest level of functional capability compatible with the injury.

ANNEX 3

Right to Health (list of issues, n.28, E/C.12/Q/ITA/2, 18 December 2003): Health and Environment. *The case of solid garbage.*

Ecomafia and environmental criminality

The following contribution has been drawn out of "Ecomafia Report 2004", the tenth one elaborated by association Legambiente, l'Arma dei Carabinieri e l'Istituto Eurispes on environmental criminality. Which is very far from being defeated.

Actually year 2003 has been characterized by a clean increment of all the main parameters considered in the Report: the environmental crimes ascertained by the police have been 25.798, approximately 32.6% more than those ascertained in 2002. The number of the judicial seizures, a judicial provision which underlines the particular gravity of the crimes under inquire, has nearly doubled in one year: the judicial seizures have been 8.650, a great number compared to the 4.479 of the previous year 2002. It has also increased the number of charged persons, 19,665: 18.1% more than in 2002. Nearly doubled the number of the executed arrests: 160, against 87 of 2002. Datum that, in particular way, depends on the after-effects of the effective activities implemented by the Operating Unit of the environmental safeguard Command of the Carabinieri Arm, for what concerns traffics of garbage; on the inquiries and activities conducted by the State Forestry Corps, in matter of garbage again, illicit excavations and poaching, and by the Finance Police. Ecomafia business is growing in all directions: according to the estimates of Legambiente it exceeds, in 2003, 18,9 billions euro, with an increment of 14.2% in respect to 2002 estimates. Also the number of the clans increases: there are 11 more than the ones ascertained in the previous Ecomafia Report, for a total of 169 clans.

Unlike what asserted in the governmental Report at paragraph 11, the major environmental fields of pollution are more and more affecting many persons' health, living in Italy. Let us take as example a very "hot" sector of ecomafia activity (and not only of ecomafia): the garbage cycle. The news collected about it is particularly serious. Events and facts are under everybody's eyes, because they have burst out.

Many criminal acts around waste disposal came into light with the introduction of article 53 bis in the Legislative Decree 22/1997, popularly known as "Ronchi Decree". (Edo Ronchi was at the time the Italian Minister for Environment). The Ronchi Decree is a "framework law" on the general issue of waste, incorporating three EU Directives (94/62/EEC on packaging and packaging waste, 91/689/EEC on hazardous waste, 91/156/EEC on waste). It regulates soil and groundwater contamination and penal consequences of organizing illicit waste traffic. Within only two years, colossal traffics of dangerous garbage were discovered and 133 decrees of caution custody emitted and 463 persons charged. Besides, 150 companies were involved and 16 Regional Administrations also involved in these traffics for various reasons.

Sensational is the phenomenon of the disappeared "mountainous chain" of "special" waste. In fact, three mountains of garbage, 1.150 meters high in 1988, 1.120 in 1999, 1.382 in 2000, respectively vanished in the nothing. Already denounced in the previous Reports, a new "summit", 1.314 meters high (if it may console, 68 meters less than previous year) with a basis of three hectares, which equals 13,1 million tons of "special" waste, particularly dangerous, is missing: its production is estimated, but its effective disposal is not known. Particularly alarming was the difficulty in defining a more certain quantity of the managed amount of garbage in the "Garbage Report 2003", cared of "Agenzia per la Protezione dell'Ambiente e per i Servizi Tecnici", and "Osservatorio Nazionale sui Rifiuti": knowing the differences between produced and managed garbage, would help to better understand the dimension of traffics and illicit waste disposal in our Country.

The dimension of the high "specialization" and dangerousness reached by the criminality in the field of waste disposal is offered by two exemplary cases.

The first one has regarded the territories of Aversa Agro (Caserta) and various villages of the area to the north of Naples (in particular in the triangle Qualgiano, Giugliano, Villaricca), which have

been renamed "the earth of fires", for the huge amounts of garbage that every night are still being burned with more and more refined techniques. From these fires relevant amounts of dioxin are released and it is very likely that it is this kind of "thermo-burning" which causes the serious contamination, that little by little has led to the seizure before and the killing afterwards of some thousands cattle, as well as the prohibition, in some of these areas, of pasture, collecting forage and breeding poultry.

The second case has regarded a new system of illicit waste disposal. The surveys have discovered the use of electrical cables pounded and mixed with sand in order "to prepare" areas for training horses in numerous riding grounds in the province of Florence (but the traffic has interested also Lombardia, Emilia-Romagna and Marche). The material, as revealed an official press released by the Tuscan Arpat itself, "offers a good bottom elasticity and does not imply the formation of dust". A pity that such electric cables are listed in the category of dangerous waste (!).

The outlined disconcerting scenario in the only field of solid garbage, outlined by Ecomafia Report 2004, leads to the urgent necessity of making all possible legislative and administrative provisions to contrast the "thieves of our future", in the most adequate ways.

R. First of all we recommend an overall Plan to promote and protect the Human Right to an healthy environment.

R - We recommend also the introduction of environmental crimes in Criminal Law, with a reform in line with what previewed by Council of Europe and European Commission in matter of environmental violations of Human Rights.

R – We recommend at last an activity of prevention on "ecomafia" activity through extensive and intensive education programs.

Rapporto rifiuti 2003 available at:

<http://www.sinanet.apat.it/documentazione/rifiuti/2003/Rapporto%20Rifiuti%202003.pdf>

ANNEX 4. Right to Health (list of issues, n.28, E/C.12/Q/ITA/2, 18 December 2003): National Health Service: a difficult legislative and institutional transition.

A new awareness and knowledge in theme of health safeguard is progressively matured, also in Italy. Since early years '90, National Social-Health Care Service has been characterized from deep changes and important innovations, with a trend which is common to the rest of Europe.

Italian National Health Service (NHS) was following a model according to which it was provided universal health care coverage throughout Italian State as a single payer. At present however the system is more and more decentralizing, because of a recent strong policy of *devolution*, which is shifting power from the Center to the Regions.

Italy's NHS had already experienced deep transformation during the 1980s and 1990s. National legislation from 1992 to 1993 (Legislative Decrees 502/92 and 517/93), and subsequent reforms in 1997 and 2000, have radically transformed the NHS, giving the Regions political, administrative, and financial responsibility, regarding the provision of health care. Of particular interest are: the Legislative Decree 229/1999 ("*reform ter*"), that sets up the completion and a partial redefinition of the reorganization interventions started from 1992, and the Legislative Decree 56/2000. Moreover, in the same year, the Law 328/2000 reforms Italy's social care system, according to universal principles, and confirms the central position of the territory to implement, through area plans ("piani di zona") of social services network and their coordination and integration with health activities.

The reorganization has reviewed the criteria for determining "*the eligible*" contents of the right to health: the concept of "*assistance levels*" born in this phase, with the meaning of protection that the NHS is engaged to distribute in a uniform way to all citizens on the territory, in conformity with the respect of all human rights and fundamental freedoms. In the same context an important role is played by the Law 3/2001.

The year 1999 and the first months of the 2000 represent two fundamental stages in the process of transformation of NHS, with the already mentioned provisions: the Legislative Decree 229/1999 ("*reform ter*", see above) and the Legislative Decree 56/2000 (in implementation of art. 10 of the law 133/1999), which contains important innovations regarding the decentralization process, especially the decentralization of the responsibilities of financing public health, by recognizing the role of regional planning, with the contemporaneous activation, from the part of State, of monitoring procedures regarding the essential and uniform levels of health assistance. In order to face such institutional innovations, particular importance is to be given, to the introduction of new government mechanisms of the sanitary field, above all in the present phase of transition to a sanitary federalism system.

It was in 1978 that the Law n. 883/1978 "*Institution of National Health Service*", established the NHS. with the extension of universal health care coverage to the whole population as a key characteristic of the NHS. which means that Italy has its own NHS based on the principle of "*universal entitlement*", with the State providing free and equal access also to preventive medical care and rehabilitation services to all residents.

Law n.883/1978 defined "*the safeguard of health as a fundamental right of the individual and also interest of the collectivity, through the National Health Service. The safeguard of the physical and mental health must happen in the respect of all human rights and fundamental freedoms of the person*".

Such definition subsequently has been modified in: "*health as fundamental right of the individual and interest of the collectivity is guaranteed, in the respect of the dignity and the fundamental freedoms of the person, through the National Health Service, as complex of the functions and the welfare activities of the Regional Health Services and the other functions and activities carried out by local health agencies and institutions of national relief, relative to the appointments provided for by the legislative decree n. 112 of 31 March 1998, as well as to the functions kept to the State in observance of the same decree*".

The law institutes the NHS defining it as the "*complex of the functions, structures, services and activities assigned to the promotion, to maintenance and recovery of the physical and psychological*

health of the whole population, without distinction of individual and social conditions and with modalities that assure the equality of citizens in relation to the service. The implementation of the National Health Service competes to the State, to Regions, to territorial local agencies, guaranteeing the participation of citizens. In the National Health Service it is assured the connection and coordination with the activities and the participations of all other organs, centres, institutions and services, which carry out social sector activities, which anyway affect the health state of individuals and collectivity " (TITLE I – the National Health Service- I Principles and objectives - Art. 1 The Principles).

The Law reminds the constitutional principle of safeguard of health, asserting a very wide health concept: psycho-physical well-being of the citizen, which comprises not only the negative aspect of "absence of disease" but also the positive one, the one much wider of "active promotion of a state of total health of the person".

The successive reforms reaffirm the fundamental values of the NHS, particularly, equity, for which the citizen's right to the safeguard of health, without any consideration of income, age, sex, religion or geography area, and must be substantial through overcoming territory unbalances. These principles have then been reconfirmed in the sanitary service reorder of years '90, by the D.Lgs. n.502/92 and n.517/93 (the latter issued according to the Law 421/92).

Legislative Decrees 502/92 and 517/93 launched a reform that instituted measures to establish an internal market and a process of devolving health care powers and financial accountability to Regions. The two decrees also supply the first indications on the District, after the reform of the NHS, based on the principles of regionalization and business administration.

The District is shaped to be an organizational articulation of the Local Health Agency (LHA, ASL), "as a rule" in the province territory. It is managed by a manager, with the same typical functions of the directors of an agency of the private sector. The decree makes reference to the District in Art 3-quater: "the Regional law disciplines the division in districts of the Local Health Agencies. The District is characterized, on the basis of criteria regulated at article 2, paragraph 2-sexies, letter c), [...]. The district assures the primary services relative to health and social-health activities, of which at the art. 3-quinquies, as well as the coordination of its own activities with those ones of the departments and the business services, including hospital agencies, organically inserting them in the Planning of the territorial activities. Resources are attributed to the District, defined in connection with the health objects of the relative population. In the limited field of the assigned resources, the District is equipped with technical-managerial and economic-financial autonomy, with separate accounting in the budget of the Local Health Agency ". The law n. 883/1978 had already previewed at art. 10 the possibility to shape the LHAs in technical-functional districts as structures for allocation of the services of first level and first aid.

The demographic, social and cultural changes happened in Italy in the last few decades have caused a needs increase of the population weakest groups; the nature of these needs is often composite and demands sanitary care and welfare nature performances. The areas at risk, considered for the social-health plans are: maternal-infantile area, elderly people, the disabled, mental ill patients, drug addicts, terminally ill patients, persons HIV/AIDS suffering from. In order to assure the needy persons suitable performances, beyond economic resources, the collaboration among services have become necessary and integration between organizational and managerial levels of the involved institutions.

From the normative viewpoint the cited law 833/78 had already touched this theme asserting the principle of functional integration for health and social base interventions, which must be executed in the LHAs. The successive normative production in matter of social-health assistance has maintained the integration as objective and has defined, already since years '80, the organization of the services on territory (LHAs and Districts), the managerial competences of several institutional levels (Regions, Provinces, towns, single and associates, LHAs) and the assignments of Regions planning contained in the regional health plans. The welfare component of the social-health activities has not been regulated at central level and has followed differentiated courses at local level, being regulated by national sectorial norms, regional legislation and health plans. The organization and distribution of the managerial competences between towns and LHAs, in matter of social-health integration, has been already regulated since first '80s by law 730/83 and successive DPCM/85.

The successive normative production in matter of social-health care maintains the integration like fundamental objective. Not unsurprisingly, the 1992–1993 reforms did not fully achieve some of the expected results and created new, unforeseen problems. Within the context of a general transition towards a federal state, two packages of reforms aiming to establishing fiscal federalism were launched in 1997 and 2000. To prevent each region from providing drastically different levels of health care, the National Health Plan for 1998–2000 set up basic guidelines and the first step towards defining a core benefit package to be guaranteed by all regions. The National Health Plan for 1998–2000 identified five main objectives:

- promoting healthy behaviour and lifestyles;
- combating principal diseases;
- enhancing the quality of environment;
- improving health of the worst-off people and reinforcing social protection;
- promoting initiatives to get the NHS to comply with EU standards.

Law 419 of 30 November 1998 delegates *“the Government for the rationalization of the National Health Service and for the adoption of a Unified Body of Laws in matter of organization and operation of the National Health Service”*, on the base of a series of principles emphasizing, in particular way, that the district must assume a role key for the realization of an effective integration between operating ASL level activities and family doctor action. Moreover, the law delegates the Government to the emanation of one or more decrees for the rationalization of the NHS on the basis of series of principles: a) to pursue the full realization of the right to health and the principles and objects in accordance with articles 1 and 2 of the law n. 833/1978; b) to complete the process of regionalization and to verify and complete the company-oriented process of the structures of the NHS; [...] (Art.1 paragraph 1-2). The norm emphasizes the opportunity of the integration between health and social services as strategy in order to favour the opening of health care system towards a wider and effective system of services offer, able to supply citizens integrated products under social and health profile.

It is the National Sanitary Plan (NSP, - 1994-96) that arranges the realization of the District together with the priority initiative of the three years.

In the Plan the District is defined as *“an organizational-functional component of the LHA oriented to realize a high level of integration among the various services that provide for health care performances and between these and welfare services, so as to allow a coordinate and continuative answer to population health needs*. The Kind of the needs that constitute the great part of the health question (geriatric age; relation mother-child; disability which, because of the social context, risks to transform itself in handicap; mental disease; drug addiction) evidences the necessity that health safeguard is organized in such way to guarantee the following characteristics: presence at the same time of three specific moments of the initiative (health care, social-health integrated, welfare); strong improvement of the preventive and rehabilitative moment; interdisciplinary approaches; permanence in the time of support initiatives to the chronic conditions. The health basic District (Dsb) is the context where social-health care becomes true; it is a “system area” where integration can guarantee effectiveness and efficiency in order to meet health, social and assistance population needs.

Two further Laws are of particular interest: Legislative Decree 229/1999 (*“reform ter”*), that points out the completion and a partial redefinition of the reorganization interventions, started from 1992, and Legislative Decree 56/2000, that contains important innovations regarding the decentralization process, especially the responsibilities of financing public health, by recognizing the role of the regional planning, with the contemporaneous activation, from the part of State, of procedures for monitoring Essential and uniform Assistance Levels (LEA). In front of such institutional innovations, the introduction of new mechanisms of health govern assumes a particular importance during the present transition phase towards a system of “health federalism”.

Law 328/2000 (*“Framework Law for the realization of the integrated system of social actions and services”*) reforms Italy’s social care system according to universal principles and confirms the central position of the territory for the realization, through plans of zone, of the net of social services and their coordination and integration with the health interventions. The reform provides new benefits for people with difficulties (as defined by article 38 of Italy’s Constitution), such as: subsidizing the integrated home care system and the service sector (not-for-profit associations,

private structures etc.), more financial help for low-income families, more opportunities for disabled people or the institutionalization of the minimum income and of social services charts. The concept of integrated services acquires a further specification in the National Plan for Social Actions and Services 2001-2003.

Each 3 years, the government, together with local authorities, defines the National Social Plan (according to Law 328/2000, the first National Social Plan was to be issued in November 2001). The National Social Plan sets the main objectives of social policy and activities to be undertaken on behalf of non-self-sufficient elderly people, disabled people, children and their families and immigrants.