

ITALY

CCPR A/36/40 (1981)

104. The Committee considered the initial report of Italy (CCPR/C/6/Add.4) at its 257th, 258th, and 261st meetings held on 28 and 30 October 1980 (CCPR/C/SR.257, 258 and 261).

105. The report was introduced by the representative of the State party who supplemented the information contained in the report concerning the incorporation of the Covenant in the Italian legal system, and brought the report up to date by indicating the new developments which had occurred during the period since the report had been prepared.

106. The representative informed the Committee that the Covenants on Human Rights had been disseminated in 1980 on the initiative of the Presidency of the Council of Ministers by means of a publication entitled "The International Protection of Human Rights", the first chapter of which was devoted to the activities of the United Nations on this subject.

107. The representative stated that a number of referenda relating to civil rights had recently been proposed by political parties. The objectives were to abolish the penalty of life imprisonment, to repeal certain articles of the Penal Code regarded as restrictive of the freedom of opinion, to repeal a Government decree providing for urgent measures for the protection of the democratic order and public security, and to repeal a number of penal measures connected with certain cases of the voluntary interruption of pregnancy. He also stated that in view of the persistence of acts of terrorism, the Government had enacted law No. 15 of 16 February 1980 providing, *inter alia*, for increased penalties for crimes intended to subvert the democratic order and specific penalties for those who promoted or directed associations having that aim; that another preventive measure enabled officials and agents of public security, if duly authorized by the judicial authorities, to search houses and buildings when there was a well-founded suspicion that wanted persons or certain objects were hidden in them; that in connection with article 7 of the Covenant, the Government had made a unilateral declaration on the right not to be subjected to torture or to other cruel, inhuman and degrading treatment; and that a bill introducing supplementary regulations governing the status of aliens was under consideration in Parliament.

108. Members of the Committee expressed their appreciation for the comprehensive manner in which the report was prepared and for the additional information provided by the representative of the State party. They also commended the Italian initiative in setting up an Interministerial Committee on Human Rights which included not only Government representatives but also representatives of private organizations and scholars. They welcomed it as an admirable mechanism to carry out a systematic review of the legislative, administrative and other measures designed to fulfil Italy's international obligations in the field of human rights. They noted that it also took account of experience gained abroad and in this connection it was pointed out that the Human Rights Committee could provide a forum in which States parties could learn from each other's experience and they also suggested that the attention of States parties should be drawn to this institution, to its terms of reference and to its methods of work. Members also praised the wide publicity given to the

Covenant and the reference in the report to court decisions in some important cases involving human rights.

109. With reference to the general remarks made in Part 1 of the report, questions were asked as to who was entitled to bring a matter before the Constitutional Court which was responsible for pronouncing on the constitutionality of laws; what was meant by the expressions “economic pluralism”, “equal social dignity” and “equal social status”; what were “the economic and social obstacles which in practice hindered the full development of the human person by limiting the equality and freedom of citizens” and which the Constitution required the State to remove; and what particular measures the Italian authorities had undertaken in addition to legislative measures to ensure the enjoyment and protection of human rights. A question was also asked as to whether, in the view of the Government, the Covenant also imposed obligations on individuals or rather imposed the obligation on States to protect the individuals against the practices of other individuals.

110. Commenting on statements in the report, as complemented by the representative of the State party, concerning the position of the Covenant in the Italian legal system, members of the Committee noted that incorporation of the Covenant in domestic law was not enough to make it self-executing since other legislative measures were required, *inter alia*, to provide for remedies and to establish court competence; that incorporation of the Covenant into the law of the State did not remove its character as an international instrument which still required to be interpreted in conformity with the rules of the Vienna Convention on the Law of Treaties and that national courts and tribunals could derive assistance from the interpretation of provisions of the Covenant by the Committee since the latter had the advantage of bringing together the experience and interpretation emanating from States parties. They asked what the status of the Covenant was in the hierarchy of Italian legislation; which would prevail in case of conflict between a domestic law and the Covenant; what the actual effect was of the incorporation of the Covenant into Italian law and whether a person affected by such a law could, by invoking it, be secured the enjoyment of the rights provided for in the Covenant; whether there was a general ruling in Italy under which domestic legislation was to be interpreted in accordance with the international obligations contracted by Italy; whether the representative could give examples of the Covenant being invoked before the courts or before administrative authorities; what solution was adopted when a law proved to be in violation of the Covenant and whether the Constitutional Court was competent to declare it invalid and whether legal precedents existed.

111. In connection with article 1 of the Covenant, members expressed their appreciation for the inclusion in the report of specific statements reflecting the position of Italy regarding the implementation of the right of people to self-determination. Clarification was requested as to what Italy’s position was with respect to United Nations resolutions on relations with the racist régime of South Africa; what specific measures it had adopted to expedite, either within the United Nations or outside it, the democratization process in South Africa; whether the Government of Italy’s belief in peaceful transition from South Africa’s illegal occupation to Namibia’s independence meant that Italy was in favour of imposing sanctions against South Africa and of ending the illegal occupation of Namibia; whether Italy’s avowed commitment to work towards overcoming the South African policy of apartheid meant that Italy prohibited Italian companies from rendering economic, financial or any other assistance to the apartheid régime and prohibited private investments in, and loans to, South Africa. Questions were also asked as to whether Italy recognized the right of the Palestinian

people to self-determination and recognized the Palestine Liberation Organization as the legitimate representative of that people; what specific measures it had taken to support the legitimate aspirations of the Palestinian people to a free and independent homeland; and what Italy's position was with respect to the plans of UNDP to extend its aid to the Israeli-occupied territories.

112. In relation to article 2 of the Covenant, questions were asked as to whether, in the event that the administrative authority concerned failed to act, the author of a complaint would be entitled to apply to the courts or to a higher administrative authority to compel the authority concerned to take action; whether the Council of State exercised jurisdiction over administrative laws affecting the individual and whether there were regional, provincial or local administrative courts below it.

113. As regards article 3 of the Covenant, it was noted that, despite the considerable legislative progress that had been made in Italy in the past few years in promoting equality between men and women, a few professions such as the military and police forces were still barred to women and that women still played a modest role in the public life of the country. Regarding the statement in the report that some de facto discrimination existed against women, clarification was sought as to what specific problems Italy had encountered in that field, what measures were being envisaged to solve them and whether these included the setting up of any administrative or other body to assist women in overcoming the discriminatory treatment of which they were still victims in Italy.

114. With respect to statements in the report concerning article 4 of the Covenant, members referred to measures taken to combat kidnapping, terrorism, subversion and other political crimes as embodied in laws enacted in 1975, 1978 and 1980. They also noted that no derogation from the obligations under the Covenant was possible unless a public emergency threatened the life of the nation and was officially proclaimed and that the exceptions referred to in articles 12, 14, 18, 19, 21 and 22 of the Covenant were not derogations. They asked to what extent the laws adopted in 1975, 1978 and 1980 fell within those exceptions. It was also noted that the Constitution provided that, in the event of war or of the proclamation of public emergency, the exercise of the rights guaranteed in the Constitution apart from the right to life, could be temporarily suspended. The question was raised as to whether this provision was in keeping with article 4 of the Covenant which prohibited derogation from certain specific rights in all circumstances.

115. In relation to article 6 of the Covenant, it was asked what the Government had done to reduce infant mortality and to establish an effective public health system; whether there were any laws which prohibited the use of drugs for other than medical purposes; and whether the provisions governing the use of arms by public officials had been supplemented by instructions given to the police forces. Noting that capital punishment could still be applied to persons guilty of certain crimes under the military Code of War of 1941, members asked whether those crimes fell within the category of the "most serious crimes" for which article 6 of the Covenant authorized the possible imposition of the death penalty, and whether the Government was prepared to reconsider those exceptions, especially since they were provided for in a law enacted by the previous Fascist régime.

116. Commenting on articles 7 and 10 of the Covenant, members asked whether solitary confinement was authorized and, if so, in what circumstances, for how long and for what reasons; whether Italian penitentiary institutions had been improved recently; what procedures were available to investigate the case of a prisoner complaining of ill treatment in prison, who conducted the

investigation and what the practical results were; and whether a person independent of the prison authorities was authorized to inspect prisons, receive complaints and take action.

117. In connection with article 8 of the Covenant, it was pointed out that the Covenant did not allow persons to be subjected to forced labour because their “antisocial behaviour” was thought to be dangerous for the community, as mentioned in the report, the more so since “antisocial behaviour” could be widely interpreted. Information was requested on the circumstances under which persons could be assigned to a farm colony or a labour establishment, what the assignment entailed, how many persons there were in such colonies or establishments, and on the meaning of the “delinquent tendencies” of persons who could be assigned to such places.

118. With reference to article 9 of the Covenant, information was requested on the grounds, other than the criminal, which could lead to deprivation of liberty; on how the guarantees under this article were implemented by Italian law in areas such as those covered by the laws on mental health, border controls and vagrancy; on the extent to which the provisions of the special measures enacted in 1975 and 1980 could be applied not only to acts of terrorism but also to ordinary offences and on whether the guarantees afforded to a person deprived of his liberty had been reduced in a general way or solely in cases of terrorism. Noting the long periods of pre-trial detention mentioned in the report, members questioned the extent to which provisions regulating them were in conformity with article 14 of the Covenant which required that everyone charged with a criminal offence should have the right to be presumed innocent until proven guilty according to law and with article 9 which required that anyone arrested or detained on a criminal charge should be brought promptly before the judicial authorities and to be tried within a reasonable time; whether there were many cases of persons who had been released after a lengthy period in custody without there having been any trial, owing to lack of evidence, for example, whether the Italian authorities had taken measures and allocated the necessary funds to expedite the investigation in cases of terrorism; how the Italian Government could justify the non-recognition by law of the right to compensation for any unlawful arrest or detention as provided for in article 9 of the Covenant; and what progress had been made on the proposals for reform of the Penal Code and the code of Penal Procedure mentioned in the report.

119. In connection with article 12 which deals with the right to liberty of movement and freedom to choose one’s residence, reference was made to “persons prohibited from residing in one or more communes or compelled to reside in a determined commune”, mentioned in the report, and it was asked what legal criteria formed the basis of a decision of that kind and whether such measures could be challenged and before which body. It was also asked whether, in the event that a person was refused a passport, forbidden to leave the country or deprived of his nationality, there was a remedy and, if so, what organ would adjudicate.

120. As regards article 13 of the Covenant, questions were asked on the nature of the “offence against the personality of the State” which could justify the expulsion of aliens; whether the decision of the Minister of the Interior to expel an alien on grounds of public security could be challenged before an administrative court or before the Council of State; how Italian law defined a political offence and whether, if Italy refused to extradite a person charged with murder for political reasons, that person would be tried in Italy; how did Italian authorities deal with foreigners who worked in the country without a permit; and whether the draft bill approved by the Council of Ministers which introduced supplementary regulations to govern the status of aliens was in conformity with article

13 of the Covenant.

121. In relation to article 14 of the Covenant, it was asked how the independence of judges was guaranteed in the context of a system of appointments which, at all levels, depended almost entirely on the Executive; and whether the statement in the report concerning the participation of lay persons directly in the administration of justice referred to some system of juries, arbitrators, lay magistrates or assessors.

122. In connection with article 16 of the Covenant, it was asked whether, in the light of article 22 of the Constitution, there were non-political reasons for which a person could be deprived of his legal status, his citizenship or his name and, if so, what these reasons were and whether there were any cases where loss of nationality was prescribed as a penalty.

123. With reference to article 17 of the Covenant, questions were raised on the nature of the exceptions that could be made to the inviolability of the home and of correspondence, the circumstances in which telephone interception might be authorized and the extent to which provision, which required individuals who had a foreigner as a guest in their homes (which apparently applied even if the visit was for only one night) was in keeping with article 17 of the Covenant.

124. Commenting on article 18 of the Covenant, members asked for clarification of article 8 of the Constitution which, while laying down the fundamental principle that all religious faiths were equally free before the law, provided that “religions other than the Catholic religion have the right to organize according to their own statutes, in so far as they are not in contrast with Italian law”; whether proselytism was allowed; and whether propaganda in favour of atheism was permitted. Noting also that the law provided for a general tax to subsidize the Italian clergy, members wondered whether this tax benefited the clergy of all religions or only the Catholic clergy; and whether it was possible for a person professing no religion to be compelled to pay that tax. It was also asked how the law solved any difference that arose between parents regarding their freedom to ensure the religious and moral education of their children.

125. As regards article 19 of the Covenant, questions were asked on the extent to which freedom of expression with regard to slander of the Republic, the flag or other State emblems could be justified in the light of the provisions of this article and how such slander was defined by Italian jurisprudence; what were the cases of absolute urgency in which the press could be seized and in what circumstances; and whether there were any specific limitations on the freedom of opinion of foreigners.

126. In relation to article 20 of the Covenant, it was noted that repudiation of war by Italy, as declared in the Constitution, was not the same as the prohibition of war propaganda specifically required by article 20 of the Covenant which provided that propaganda for war, as well as any advocacy of national, racial or religious hatred, should be prohibited by law.

127. In connection with articles 21 and 22 of the Covenant, it was asked what limitations on the right to peaceful assembly were authorized by Italian legislation and to what extent they were compatible with the Covenant; what associations were prohibited by law; whether trade unions

played any part in the settlement of disputes that arose between management and labour, and whether there were any legal provisions to that effect; and whether aliens enjoyed the right of peaceful assembly and freedom of association under Italian legislation and, if so, on what conditions.

128. With regard to articles 23 and 24, reference was made to the statement in the report that “marriage is based on the moral and legal equality of husband and wife, within the limits laid down by the laws for ensuring family unity”. Information was requested on these laws; on whether, on marriage, a couple could choose to take the surname of either the husband or the wife; or whether there was any difference in treatment with regard to nationality as between an Italian man or an Italian woman who married a foreigner and on whether any distinction was made as to the nationality of their children; on the measures adopted in Italy to help working mothers raise their children; on the position of children born out of wedlock who were not recognized by their parents, and in particular by their father; on the employment of children under 15; on whether the exploitation of child labour had been abolished and on whether the situation was identical in different parts of Italy.

129. Regarding article 25 of the Covenant, it was asked what “electoral offences” entailed loss of the right to participate in public affairs; why there was a difference between the voting age and the age of eligibility for election to either the Chamber of Deputies and the Senate; and why Molise had two senators and the Valle d’Aosta one only, whereas, according to the Constitution, no region could have less than seven senators.

130. In respect to article 27 of the Covenant, it was asked whether there were any laws, administrative practices or customs which ensured that the minorities were represented in Parliament; how many Albanians there were in Italy; whether they had schools where teaching was conducted in their own language, and whether their language was accepted as an official language.

131. Replying to the questions raised by members of the Committee regarding Part 1 of the report, the representative of the State party stated that the question of the constitutionality of a law could be raised only within the framework of a civil, criminal or administrative trial and that it was for the judge to decide the issue of the justification of, or the manifest lack of grounds for, a plea of repugnance to the constitution and, if he felt that the plea was justified, to submit the instruments in question to the Constitutional Court for a judgement as to their constitutionality. With regard to the question whether the Covenant also applied to relationships between individuals rather than imposed an obligation on States to protect individuals against others, the representative replied that the matter had not been settled by jurisprudence so far but that there was nothing in the Italian legal system which prevented, in principle, some of the provisions of the Covenant from applying to relations between individuals.

132. The representative agreed that the incorporation of the Covenant in the Italian legal system did not change its nature as an international treaty and pointed out that such incorporation had established national provisions having the same contents as the Covenant which were directly applicable, could be invoked before any competent court by any person who thought that the provision concerned him and that an individual could request implementation of the corresponding provision of domestic law, either when there was no other applicable national provision or when the provision of the Covenant seemed more favourable to the applicant. He also stated that the Italian

legal system accorded no primacy to international law; that the judge was free to avail himself of all relevant factors in forming his own conclusions and that, where it was a question of interpreting a provision of an international treaty, he was free to find out how the provision in question was interpreted internationally, and that was what he often did in practice. He pointed out, however, that the major problem of interpretation arose when there was a possible conflict of laws; that since the Covenant had been ratified by ordinary law, the conflict could arise only with other ordinary laws which were at the same level in the hierarchy of the Italian legal system; that this system contained no specific provisions for solving such conflicts between laws; that it was always left to the judiciary to decide which law applied in a particular case and that case law and legal literature had elaborated principles which could be applied in such cases. In this connection, he stated that the Constitutional Court had no competence to pronounce upon the compatibility of the national law with the Covenant but only the constitutionality of the national law which derogated from the Covenant.

133. Commenting on questions raised under article 1 of the Covenant, the representative stated that the Italian Government wished to see a peaceful end to the illegal occupation of Namibia by South Africa; that it was persuaded that a policy facilitating a peaceful transformation was the best way to help the South African people to overcome the obstacles which prevented it from creating a free, democratic and multiracial society, that it did not favour, therefore, breaking off all relations with South Africa any more than it favoured the application of economic sanctions, although it observed the arms embargo imposed by the Security Council; and that it adopted a code of conduct for enterprises with branches in South Africa with a view to eliminating racial discrimination. The representative also pointed out that Italy recognized the legitimate rights of the Palestinian people; that the Palestinian people should enjoy fully its right to self-determination in accordance with an appropriate procedure which should be defined within the framework of a global peace settlement; that it supported the national liberation movements recognized by the regional organizations; and that it made sizeable contributions to United Nations agencies' programmes in favour of the developing countries, regardless of any political consideration.

134. As regards article 2 of the Covenant, he stated that in cases where a public authority failed to perform an administrative act which it was required to do or if it refrained from giving a verdict on an administrative appeal, the individual concerned could turn to the courts to protect his rights; that the administrative organs of jurisdiction were the Council of State, which judged in the second instance, and the regional administrative courts, which judged in the first instance.

135. In connection with article 3 of the Covenant, the representative stressed that the Constitution established the principle of equality before the law without any distinction based on sex; that the law established the principle of equality of opportunity and career advancement for both sexes; that nevertheless, the law in question was relatively recent, which explained why most women still occupied unimportant posts in some careers; that the Ministry of Defence was studying the possibility of extending military service to women in appropriate forms; and that complete equality between men and women was sometimes frustrated by the survival of certain local traditions and personal habits. In the event of discrimination against them, women could avail themselves of the ordinary judicial means and where necessary, obtain the assistance of a trade union if the discriminatory treatment constituted a violation of the legislation in force or of an employment contract. If, on the other hand, the violation derived from the rules of the laws themselves, the only recourse for the victim was to appeal to the Constitutional Court. He also informed the Committee

that there were some private associations which concerned themselves with the protection and defence of the rights of women at all levels.

136. Commenting on the remarks made by members of the Committee under article 4 of the Covenant, the representative stated that the decree-laws such as those of 1978 and 1979 had been published in application of the provisions of the Constitution which provided for such a possibility in exceptional cases of necessity and emergency and explained that, on the very day of their publication, decrees in that category must be submitted to Parliament, for conversion into laws and that those texts did not fall within the category of cases of declaration of a public emergency or a state of siege. As to the derogations from the application of the Covenant in the event of a state of war or emergency, referred to in the report, he pointed out that this was provided for in order to face an extreme threat facing the internal safety of the country, but that his Government had never resorted to those extreme means and that it had always preferred to resort to the provisions of the laws which (even in the case of special laws) had been adopted in accordance with normal legislative procedures.

137. Replying to a question raised under article 6 of the Covenant, he stated that the only texts regulating the use of arms by the national security forces were those contained in the Penal Code and that initiation into the handling of firearms was part of the normal training of the members of the police force and was subject to the rules governing the use of firearms.

138. As regards article 8 of the Covenant, the representative explained the security measures mentioned in the report under this article and stressed the fact that the measures were explicitly prescribed by the law, that they could be invoked only by a judge, and only when individuals dangerous to society were involved; and that the judge had to assess the social danger presented by the individual concerned, on the basis of criteria established by law. The measures were usually invoked against an individual who had already been sentenced for certain offences, and where there was reason to believe that he would commit others. In such a case, the measure took the form of a penalty additional to detention. He stressed that the decision of the judge could always be appealed from and the security measure could be terminated at the request of the party concerned, if it was established that the danger to society no longer existed. The assignment to a farm colony or a labour establishment was a matter simply of executing a security measure which left all the guarantees he had already mentioned. He explained the cases in which such sentences could be pronounced as explicitly provided for in the Penal Code and pointed out that the individual concerned received the remuneration provided by law.

139. Commenting on questions raised under article 9 of the Covenant, the representative conceded that the measures contained in the laws and decrees referred to by members of the Committee, were not without risk, particularly with respect to the length of proceedings that, nevertheless, the peculiar seriousness of offences which justified their introduction must be borne in mind; and that the duration of proceedings could not be properly judged without taking into account the complexity of the case and the behaviour of the party concerned who himself often prolonged the proceeding through delaying tactics. He informed the Committee that as part of the current reform of the Code of Penal Procedure, efforts were being made to have simpler and more rapid penal proceedings which would eliminate the risk of excessively protracted proceedings. He further stated that, since the ratification of the Covenant, any person concerned was entitled to request compensation for

unlawful detention by directly invoking the relevant provision of the Covenant. This perfectly fitted into the Italian legal system which itself recognized the general principle of compensation for damages.

140. Regarding article 10 of the Covenant, the representative stated that, according to the law of 1975 and the Rules of Application of 1976 relating to the new penitentiary system, a supervisory judge had been placed in each court and a supervisory section was established in certain courts of appeal with authority to check at any time the living conditions of detainees and the proper implementation of the law; that social welfare services had been attached to each penal establishment and showed particular concern for the re-education of detainees; and that each detainee could file an oral or written appeal to the director of the institute concerned, to the supervisory judge or to other competent authorities.

141. Replying to questions raised under article 13 of the Covenant, he pointed out that, whenever an alien was in the process of being expelled, he could appeal to the Ministry of the Interior or the regional administrative court, depending on the administrative organ taking the decision; that the Italian Penal Code made it possible to prosecute in Italy the perpetrator of a political offence, even if that offence had been committed abroad; and that the draft bill introducing supplementary regulations to govern the status of aliens was designed to reduce the bureaucratic complexity of certain administrative practices concerning the expulsion of aliens, but in no way infringed the guarantees granted to aliens.

142. In relation to article 14 of the Covenant, the representative stressed that the independence of judges was fully guaranteed by the Constitution; that they were appointed after public competition; that, although measures concerning the careers of judges were adopted by decrees of the President of the Republic, it was none the less true that the adoption of those measures was discussed within the Upper Council of the Bench; and that the careers of the judges proceeded in accordance with strict rules which the Executive had no power to change. As for the participation of citizens in the administration of justice, he explained that this was manifest in the fact that some of the judges of the Constitutional Court were elected by Parliament as well as in the fact that the assize courts were composed of citizens who were assigned the role of judges for a given period after a drawing of lots among the persons enjoying full legal capacity.

143. Replying to questions under article 18 of the Covenant, he stated that when ecclesiastical institutions had been suppressed, their property had been assigned to a special fund which was used to subsidize the churches and the clergy; that the subsidies financed "from tax revenue obtained from all citizens" were supplementary and exceptional in nature; and that it was possible for a church such as the Waldesian Church, if it so desired to negotiate the conclusion of an agreement with the Italian Government.

144. In connection with questions raised under articles 19, 21 and 22 of the Covenant, the representative could only confirm that, in practice, no sharp distinction was drawn between citizens and aliens where the enjoyment of civil rights was concerned; that the Constitution contained a provision which stipulated that, provided there was reciprocity, aliens enjoyed on Italian territory all of the civil rights recognized in the Constitution; that the right to freedoms of expression, of peaceful assembly and of association were guaranteed to everyone, citizen or alien, by the Italian

Constitution; but that the exercise of certain political rights set forth in the Constitution was reserved for citizens.

145. Commenting on questions raised under articles 23 and 24 of the Covenant, the representative pointed out that equality between husband and wife was limited only by the need to preserve family unity, that the law was designed to ensure the full application of that basic rule by proclaiming the essential principles of equal authority and of parental authority over the children, paternal authority having been abolished; that the woman was to take her husband's surname but that she could, at the same time, keep her own surname; that a foreign woman who married an Italian citizen acquired Italian nationality; that a foreigner who married an Italian woman did not ipso facto acquire Italian nationality but that he could obtain nationality after two years of residence in Italy; and that Italian nationality was acquired as of right by a child born to an Italian father or an Italian mother. He also stated that the law provided for maternity leave for salaried women; that the child acquired the nationality of the father, even if recognition by the father or the legal declaration of paternity took place after the recognition of the child by the mother, and that a minor who had been adopted acquired the father's nationality.

146. As to article 25 of the Covenant, he explained that electoral offences meant offences perpetrated during elections with a view to disturbing the normal course of elections but that such offences did not immediately involve the loss of the right to vote. This required a decision by a judge and hence a prior conviction; that the difference between the voting age and the age of eligibility for election to either the Chamber of Deputies and the Senate was simply a choice of legislative policy; that the fact that some seats in the Senate were reserved for certain small regions should be considered a privilege accorded to regions so small that, under the system of proportional representation which governed elections to the Senate, they might never be represented by a senator.

147. Replying to questions raised under article 27 of the Covenant, the representative stated that the Albanian minority was not the subject of any particular legal provisions, but that the Government made every effort, as it did in the case of all other minorities, to safeguard its cultural traditions and customs.

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541. The Committee considered the second periodic report of Italy (CCPR/C/37/Add.9) at its 908th to 912th meetings on 19, 20 and 21 July 1989 (CCPR/C/SR.908-912).

542. The report was introduced by the representative of the State party, who emphasized the importance that the Government of Italy attached to the protection of human rights and reminded the Committee that his country had ratified all the main international human rights instruments. He added that such an undertaking placed an increasing burden on the Interministerial Committee on Human Rights. That burden, indeed, had caused a delay in the submission of the report and made it necessary to improve arrangements for the implementation of obligations under those international instruments.

543. Referring to developments since the preparation of the report, he stressed the considerable efforts that had been made to improve the legislation relating to civil and penal procedures. The major development in the field of penal procedure was the forthcoming entry in force, in October 1989, of the new Code of Penal Procedure. The Code was designed in particular to ensure complete equality of treatment between defence and prosecution, to guarantee persons suspected of criminal offences direct and immediate access to the judge, and to reduce the length of the penal procedure by introducing the principle of cross-examination. To supplement the efforts made to reduce the length of judicial procedures, a bill aimed at establishing the institution of a justice of the peace to deal with minor civil cases had been submitted to Parliament on 17 January 1989.

544. Regarding freedom of religion, the Constitutional Court in a recent ruling had confirmed that religious instruction in secondary schools was purely optional. Furthermore, a bill considered by Parliament was aimed at recognizing the total and unconditional right of conscientious objectors to perform civilian service instead of military service, and at making them subject to the civil rather than military courts.

545. Lastly, with reference to article 19 of the Covenant, he stated that an act of February 1987 sought to ensure transparency in the transfer of ownership of newspapers, to monitor any activities that might result in the concentration of information, and to sanction, by annulment, any transaction that was liable to give certain groups or companies a dominant position. In addition, since the field of radio and television was not governed by any general law, the Government had submitted a bill to Parliament with a view to creating a legal framework for the fair allocation of radio and television broadcasting channels.

Constitutional and legal framework within which the Covenant is implemented

546. In this regard, members of the Committee expressed a desire for more information concerning the status of the Covenant in Italian law and concerning arrangements to resolve any conflict between the Covenant and the provisions of domestic law. On that subject, they asked whether there had been further developments in case law since 1980 strengthening the de facto primacy of treaty provisions, in particular those of the Covenant, over the provisions of domestic law; whether the Covenant was frequently invoked before the courts and often referred to in judgements; whether its

provisions were directly applicable; and what was its status in relation to the Italian Constitution and domestic law.

547. In addition, they asked whether the Interministerial Committee on Human Rights had made any specific recommendations or proposals for legislation or executive action designed to fulfil Italy's obligations under the Covenant or other relevant international human rights treaties; and whether any factors or difficulties were being encountered in the implementation of the Covenant, notably in the context of efforts to combat terrorism, because of economic problems or problems in the field of immigration. They also requested additional information on activities to promote greater public awareness, and particularly awareness among magistrates and members of the police and armed forces, of the provisions of the Covenant and the Optional Protocol.

548. Referring to the institution of citizens' advocate, they ask what was the current status of the bill concerning that institution; in what manner the competence of nationally appointed citizens' advocates differed from that of those appointed by regional authorities; and whether the former were empowered to deal with problems involving the regional authorities where there were no regional citizens' advocates. It was also asked what the reasons were for establishing the institution of citizens' advocates; whether positive results had already been obtained at the regional level; whether, contrary to the intended purpose, that institution might not have contributed to further prolonging procedures; what the field of competence of citizens' advocates was; what powers they were given to protect the rights of individuals, in particular when no remedy was available for administrative acts prejudicial to the citizen; and whether they were able to institute proceedings before the courts on behalf of private individuals. Lastly, concerning the numerous reservations made by Italy upon ratification of the Covenant, it was asked whether the Government intended to maintain them or whether it felt that some of them could be reconsidered, in particular the reservation concerning restrictions on the right of entry and sojourn in Italy of some members of the Savoy family and the reservation concerning article 19 of the Covenant.

549. In reply to the questions asked concerning the status of the Covenant in Italian domestic law, the representative of the State party reminded the Committee that the very structure of the Italian constitutional system was designed to guarantee the application of international instruments such as the Covenant in internal law, bearing in mind also article 11 of the Constitution, which provided the possibility of limiting State sovereignty in the interests of the maintenance of peace. The Constitutional Court had stated in 1983, in a case concerning the relationship between European Community legislation and the Italian Constitution, that the latter contained two types of provisions: essentially procedural provisions, from which derogations could be made in favour of a supranational rule, and provisions concerning the protection of human rights and fundamental freedoms, which were not subject to derogation. Thus the provisions of the Covenant, although incorporated in the Italian legal system by an ordinary law, were particularly well protected since they were linked to the clauses of the Constitution, whose primacy was upheld even in relation to international treaties. Concerning possible conflicts between the Covenant and a subsequent law, he drew attention to two recent rulings handed down by the Court of Cassation stipulating that, in the event of conflict, the judge must not recognize the supremacy of the subsequent law unless the legislative provisions demonstrated a clear and obvious intention on the part of the legislature to abrogate the international rule. The pacta sunt servanda principle recognized in international law was thus strengthened. The provisions of the Covenant, particularly those of article 14, were frequently

invoked before the courts. Thus, for example, the Court of Cassation had recently refused to extradite a person because the safeguards provided by the legislation of the requesting State for young persons below the age of majority in terms of penal law were not as extensive as those of article 14, paragraph 4. Nevertheless, if the provisions of the European Convention on Human Rights were more frequently cited by the courts, that was because of the publicity given to legislative reforms that were based largely on that Convention.

550. Replying to other questions, he drew attention to the fact that his Government had established the Interministerial Committee on Human Rights with a view to co-ordinating the preparation of all reports to be presented under the various international instruments relating to human rights. Although, under its mandate, the Committee was not required to make specific recommendations or proposals for legislation, it had recently taken the initiative of studying the system of presentation of reports under those instruments in order to make its contribution to rationalization of the system. The implementation of the Covenant had not posed any particular problems in Italy because most of the fundamental principles in the Covenant were already written in the Constitution. Nevertheless, a number of difficulties might well arise, mainly in the sphere of penal procedure.

551. Turning to questions concerning activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, he stressed that very many activities had been undertaken, and mentioned in particular the recent publication of a compilation of all the international instruments and the Italian legislative provisions on women's rights. Special efforts were being made to make law enforcement officials more familiar with the text of the Covenant and its consequent implications for their daily work. A similar effort was being made in police training colleges, where instruction was given in human rights.

552. Referring to the many questions on the institution of citizens' advocate, he explained that thus far it had been introduced only at the regional level. Several legislative initiatives had been taken to regulate the institution at the national level in terms of greater dynamism and enhanced efficiency but, owing to the premature ending of the parliamentary term, they had lapsed automatically. However, during the current term Parliament had before it a large number of proposals that restated the earlier initiatives. The proposed competence of the citizens' advocate was restricted to the machinery of the State and of the institutions coming directly within its competence, consequently, it was not anticipated that he might intervene in those regions where there was no regional citizens' advocate. The citizens' advocate, viewed as a means of bringing the public and the authorities closer, was a centralizing organ to which all citizens could apply in order to report an actual or alleged abuse committed by the public authorities. He also played a very important role in accelerating administrative procedures and, intervening before an administrative act was adopted, he was complementary to the courts, which, for their part, could be seized only after a certain act had been performed. However, as the regional citizens' advocate had only limited competence vis-à-vis the national authorities and public services, his effectiveness was impeded, as most complaints by citizens concerned alleged abuses committed by the latter.

553. In reply to other questions, he explained that the Italian authorities considered at regular intervals the necessity for maintaining the reservations made upon ratification of international human rights instruments. With respect to the reservation on article 12, paragraph 4, he pointed out that the constitutional provision that had given rise to it was still in force and that, consequently, in

order to enable the male descendants of the King of Italy to be admitted to Italian territory, it would be necessary to amend the Constitution, which neither the Council of State nor the Constitutional Court had deemed appropriate. However, the prohibition of the entry into and sojourn in the territory of other members of the House of Savoy had been relaxed by judicial precedent. He assured the Committee that the reservation made in article 19, paragraph 3, concerning radio and television broadcasting had not prevented Italy from discharging the obligations stemming from it and said that the reservation was likely to be withdrawn.

State of emergency

554. Members of the Committee sought clarification concerning the constitutional or legal provisions guaranteeing article 4, paragraph 2, of the Covenant.

555. In his reply, the representative of the State party stressed that his country had never had recourse, since the founding of the Republic, to emergency measures. For instance, the problems stemming from the intensive terrorist activities in the 1970s and early 1980s had been solved by ordinary procedures and methods. The Constitution contained only provisions relating to the state of war, which had never been implemented. In the final analysis, the best guarantee of implementation of article 4, paragraph 2, of the Covenant lay in the hierarchy of the sources of law.

Non-discrimination and equality of the sexes

556. Members of the Committee asked whether the conditions for the acquisition of Italian nationality described in article 1 of Act No. 123 of 21 April 1983 also applied to a foreign or stateless woman; whether the European Economic Community Council directives of 10 February 1975 and 9 February 1976 had been included in Act No. 903 of 9 December 1979; and whether the directive of 11 December 1986 had the force of law in Italy. With regard to the equality of men and women, members requested relevant national and regional statistical data on the proportion of women to men in leading political and governmental positions, in public employment and in managerial posts. With regard to aliens, members inquired in what respects their rights were restricted as compared with those of nationals and, in that regard, they wished to have more detailed information in the light of the Committee's general comment No. 15 (27).

557. In addition, further information was sought concerning Act No. 123 of 21 April 1983, in particular, how a woman who had under the old system lost her nationality through marriage could recover it. With reference to the transmission of nationality through birth, it was asked what the grounds were for the Constitutional Court's judgement of 9 February 1983, and whether the current national law on the nationality of children was based on jus sanguinis or on jus domicili. It was also asked whether an alien under age adopted by an Italian family acquired the latter's nationality; what facilities the natural mother had with respect to entering Italy and contacting the child; whether men and women were on an equal footing as far as service in the police was concerned; and what the precise functions were of the National Commission for Equality between Men and Women. Lastly, with regard to the need for positive action in the field of non-discrimination, one member wondered whether the alleged current resurgence of neo-fascism in Italy was a problem of any considerable extent.

558. The representative of the State party emphasized that Act No. 123 of 21 April 1983 provided for total equality in matters of nationality. Any person, male or female, who married an Italian national was free to choose whether or not to acquire the spouse's nationality. A special provision had been made to enable women married under the old system to renounce Italian nationality if they so wished. He added that the relevant European Economic Community Council directives had been incorporated into the appropriate Italian legislation. Article 5 of Act No. 123 provided that adopted minors could maintain dual nationality until attaining majority, at which time they would have to opt for one of the two nationalities. Referring to the specific problem of a natural mother who had given her child up for adoption in Italy, he stated that while she retained the same rights as any foreigners with respect to entering Italy, emphasis had to be placed on the protection of the child's interests. It was therefore left to the judge to decide whether or not a meeting with the natural mother would be advantageous for the child.

559. Replying to other questions on the equality of men and women, he stated that women accounted for 6.5 per cent of senators and 16.2 per cent of those elected to the Chamber of Deputies, and that they had two portfolios in the outgoing Cabinet. Further, the proportion of women in public employment was increasing steadily following a decision by the Constitutional Court that abolished the restrictions on access by women to certain sectors previously reserved for men. By way of example, he said that there were 2.3 per cent of women in the police, 4 per cent in training establishments for engineers, 79 per cent in the Higher Teachers' Training College and that 14 per cent of members of the professions or company directors were women. He also confirmed that men and women were on an equal footing as far as the police were concerned and stated that the only reason there were relatively few women police chiefs was that women had only recently been accepted into the police force. He added that normal military service was not yet open to women. With regard to the question raised in connection with the National Commission for Equality between Men and Women, he noted that its role was primarily consultative. The Commission advised the Prime Minister on questions relating to the status of women in Italy and had taken a number of useful initiatives, such as publishing a compilation of relevant legal instruments.

560. With regard to the treatment of aliens, he explained that the same fundamental rights and liberties enjoyed by Italian citizens had been extended to all aliens. There was nevertheless some doubt in respect of the right of association in that aliens were entitled to participate in associations but not to initiate them. There were also de facto differences between nationals and aliens, and gradations in the enjoyment of certain rights relating to the status civitatis in respect to public service. The Government was, however, systematically eliminating all such inequalities in the social and economic sectors. As regards political rights, he added that aliens were not totally excluded from their enjoyment since nationals of European Community countries were eligible to stand as candidates for election to the European Parliament. Moreover, a bill was under consideration that would enable all nationals of Community countries who had been resident in Italy for a certain period of time to vote in national elections. Regarding the treatment of workers from outside the Community, he explained that an advisory committee had been set up to overcome practical obstacles encountered by immigrant workers; that, in addition to educational access, which they already enjoyed, such workers were also being given improved access to housing and certain other social services; and that the regulation whereby foreign students who failed to pass their examination lost their right of residence had been relaxed.

561. Responding to other questions, he stated that the resurgence of extreme-right tendencies presented little threat to the democratic way of life in Italy since democratic values were deeply rooted in the conscience of the Italian people. While the possibility of the emergence of a major racial problem could not be excluded in any country, the situation in Italy, which harboured no racial minorities, was far from conducive to such an outcome. There had been sporadic episodes of racially motivated ill-treatment, but such behaviour had been strongly condemned by the public and the press, and the police forces as well as the judiciary had many ways of intervening in such cases.

Right to life

562. With regard to that issue, members of the Committee wished to receive further information on article 6 of the Covenant in the light of the Committee's general comments No. 6 (16) and 14 (23). Additionally, it was inquired what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what action had been taken against security officers who were found to have used excessive force; whether Act. No. 152 of 22 May 1975 complied with the United Nations Code of Conduct for Law Enforcement Officials; and whether there had been any deaths in Italian prisons and, if so, whether investigation had been carried out to determine the causes of death and the persons responsible. Further information was sought on the status in law and in fact of abortion. It was asked in that regard whether the foetus was considered as a human being with an inherent right to life; and if so, at what age in the pregnancy it acquired that status; and up to what state of development of the foetus an abortion could be performed on the ground that there was a danger that the infant might suffer from abnormality or malformation. Lastly, clarification was requested of the measures that had been taken to prevent the dumping of toxic wastes.

563. In his reply, the representative of the State party explained that Italy had signed and ratified a number of non-proliferation treaties, had no stockpile of nuclear weapons, had no nuclear bases and that those countries which had weapons on Italian soil could not use them without the permission of the Government of Italy. With regard to the dumping of toxic wastes he stated that the problem had arisen because of the reprehensible behaviour of individuals or private companies, both in falsifying documents and paying or receiving bribes. Italy would however steadfastly oppose any efforts to attribute to the Italian State any criminal responsibility of the dumping of waste. He added that a number of measures, including the adoption of a law, had been taken and that prison sentences had been imposed on any known offenders on Italian territory.

564. Responding to other questions raised by members of the Committee, he stated that whenever there was an abuse of firearms by the police there was a public protest, attention was drawn to the incident in the mass media, a thorough investigation was carried out and the relevant military and penal measures were applied. While there had been one or two deaths in prison in recent years allegedly resulting from mistreatment, none had occurred through the use of weapons. With regard to alleged acts of violence by police officers against arrested persons, the representative of the State party, referring to certain specific cases, explained that the police had generally shown great respect for democratic principles and the rights of the individual, and had behaved correctly towards Italian nationals and foreigners when making arrests or taking other police action. Allegations of mistreatment of foreigners were thoroughly investigated and if the investigation produced evidence of wrong-doing, the police officers concerned were subject to criminal prosecution or disciplinary

action.

565. Regarding abortion, he said that a pregnant woman had the right freely to decide to have an abortion during the first 90 days of pregnancy, although she was required to consult a physician and to inform him of the reason for her decision. Abortion after the first 90 days could only be performed if the life of the pregnant woman was seriously endangered or if an examination of the factors showed that there were serious pathological abnormalities. Since a considerable section of the population was opposed to abortion, it had been decided that any physician who did not wish to do so could refuse to give assistance for the purpose. Lastly, with regard to the moment at which a foetus became a human being, he stated that the law took no stand on that moral and religious problem. He noted that the status of an embryo resulting from fertilization in vitro did not arise in Italy since the use and preservation of embryos were prohibited by law.

Treatment of prisoners and other detainees

566. With reference to that issue, members of the Committee wished to receive clarification of the circumstances under which persons who had served their sentences could nevertheless be obliged to serve in a farm colony or a labour establishment, and inquired how many establishments of that kind existed in Italy and how many persons were being detained in them. They also requested further information concerning the application in practice of article 19 of Act No. 56 of 28 February 1987 and the new special surveillance régime mentioned in paragraph 108 of the report. In the latter connection, they inquired whether solitary confinement could be imposed under the special régime and, if so, for what maximum period.

567. Additionally, it was asked what measures had been taken to prevent violence against accused persons. In particular, with reference to the scourge of terrorism that Italy had been obliged to face up to, questions were asked with regard to alleged ill-treatment of prisoners held in police stations and to the establishment of a Parliamentary Commission of Inquiry into police brutality against detainees in prisons. Further information was also sought on the suspension of some forms of disciplinary measures as a means of counteracting overcrowding in prisons, and on labour in penitentiary institutions. As regards the special surveillance régime, it was inquired whether it included sensory isolation or the deprivation of all social contact; and whether the restrictions imposed thereunder were in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners. It was also inquired to what extent prisons were overcrowded in Italy; whether periods spent in a labour establishment or a farm colony formed part of a sentence imposed by a court; and how the obligation to work in a farm colony or a labour establishment could be reconciled with the requirements of article 8 and of paragraphs 1 and 3 of article 9; which categories of detainees were eligible for periods of leave for the purpose of satisfying their emotional, cultural and professional requirements; whether prisoners serving sentences at home were obliged to wear electronic tags to facilitate their location; and what inducements were offered to prisoners to join in their own reintegration into society as provided for under Act No. 663 of 10 October 1986. Lastly, with reference to organ transplants from dead bodies, which were only permissible with the prior consent of the donor or his relatives, it was asked whether the regulation covered the shipment of organs outside Italy; why transplants of brain tissue and genital organs had been excluded; and whether legal provision had been made to ensure that such organs were donated and not sold.

568. Responding to questions raised by members of the Committee, the representative of the State party explained that farm colonies and labour establishments had been set up as an essential administrative security measure and were only used for dangerous prisoners whom it was deemed necessary to isolate from society. According to the most recent statistics, 117 habitual offenders and recidivists were serving sentences in six labour establishments and three farm colonies. Inmates of those establishments who behave well could enjoy a measure of freedom, working outside and returning to the establishment at night. Act No. 56 of 28 February 1987 provided for all detainees in those establishments to be placed on the unemployment roll, thus enabling them to obtain outside work and preparing the way for their reintegration into society after release. With regard to compulsory work by prisoners, he pointed out that only convicted persons were required to work. They were in fact keen to work as the pay was rather good.

569. Referring to the new special surveillance régime mentioned in paragraph 108 of the report, he stated that it was intended to apply to prisoners considered to be a danger to society and liable to have a disruptive influence in prison or achieve an undesirable dominance over their fellow-prisoners. Although no such specific provision on the subject was contained in the Act, solitary confinement could be imposed where necessary. The more common practice, however, was to keep the prisoners under close observation. An order placing a person under special surveillance could only be made by a judge at the time of conviction of a person found by the court to be socially dangerous and not simply presumed to be such. Sensory deprivation was not practised in Italy.

570. In reply to other questions, he said that a bill for the establishment of the parliamentary commission to investigate conditions of imprisonment had been laid before Parliament. He added in that connection that deputies were able to visit prisons at any time and could talk to prisoners. If they found any irregularities, they could call for a debate in Parliament and bring the problem to the attention of the authorities and public opinion. With regard to violence against prisoners and accused persons, he drew attention to a case in which police officers guilty of brutality against members of the Red Brigades had been convicted and later suspended from their duties. He also pointed out that an Act of 1986 substantially restricted the powers of the Ministry of Justice to order the complete or partial suspension of the application of the disciplinary rules, which could now only be suspended in the case of mutiny. With regard to prison overcrowding, he said that overcrowding was a problem in major cities such as Naples and Palermo. Nevertheless, the authorities were trying to remedy overcrowding by opening new detention centres and limiting the number of precautionary detentions, with the result that the number of prisoners had fallen from 42,738 in 1985 to 31,077 in December 1988. In addition, steps had been taken to ensure that the public were better informed of the facts about prison administration. With regard to measures to assist the return of prisoners to ordinary life, he explained that provision was made for prisoners serving a sentence of under three years' duration to be placed in the care of a social service, subject to a favourable recommendation by the disciplinary council. In consequence, a prisoner could benefit from a régime of semi-freedom and in some circumstances be returned to his home. In the latter case, the prisoner was not subject to electronic supervision, but the police made regular checks.

571. With regard to medical experiments on human beings, he indicated that the removal of brain tissue and genital glands had been prohibited to prevent genetic manipulation. While the use of organ transplants for therapeutic purposes was permitted, commercial traffic in organs was not. In any case Italian law prohibited the sale of organs.

Liberty and security of the person

572. In this connection, members of the Committee asked whether there had been any further developments since the submission of the report relating to the application of recent legislation, particularly Act No. 398/84 and No. 743/86; whether the maximum period of house arrest or detention in places other than prisons was the same as the maximum period of detention awaiting trial; and whether the Government of Italy had taken steps to reduce the allowable period of precautionary detention. They asked for further information on the role, functions, organization and independence of the Freedom Court established by Act No. 532 of 12 August 1982; how soon after arrest an arrested person could contact his lawyer or family; and detention in institutions other than prisons and for reasons other than crimes.

573. Members also expressed concern regarding the allowable period of detention awaiting trial. They noted that, not only did pre-trial detention seem too long, but judicial procedures also appeared to be too slow. In that connection, members questioned whether the duration of precautionary detention, notwithstanding the positive steps taken by the Italian authorities in the matter, was consistent with the provisions of the Covenant. With regard to the conditions of precautionary detention, they asked what the actual maximum allowable period was for such detention, whether persons detained on improper grounds were released and whether such detention was an exceptional measure or a regular practice. Explanations were requested regarding the conditions in which the time-limits could be suspended if defence counsel was not available. It was also asked whether the same principle was applied if the plaintiff were not present. It was further asked whether, if the accused was found not guilty, compensation was provided for. In that connection, it was asked what was the purpose of the reservation made by Italy with regard to article 9, paragraph 5, of the Covenant. Noting that the maximum allowable period of precautionary detention varied with the gravity of the penalty to which the offender was liable, members asked whether such provisions were not contrary to the principle of the presumption of innocence, as defined in article 14 of the Covenant and reaffirmed in the Committee's general comment No. 13 (21).

574. Members also asked for supplementary information concerning conditions governing the detention of persons in psychiatric institutions, notably with regard to the scrutiny of medical decisions by the authorities.

575. In his reply, the representative of the State party explained that the maximum allowable period of precautionary detention depended not only on the gravity of the offence, but also on the stage which the trial had reached. In fact, the maximum period of six years covered the entire proceedings, including appeal to a higher court or the court of cassation. If any phase of the proceedings exceeded the allowable time, the accused must be released. There were, however, reasons for the suspension of periods of precautionary detention during the trial phase, such as the unjustified absence of the defence lawyer or a request for adjournment by the defendant. He stressed that it was, of course, in the defendant's interest, and not that of the prosecutor, to prolong the period of pre-trial detention and that the new Act had endeavoured to close that loophole. Changes in the conditions in which precautionary detention could be ordered had been made by an Act of 25 August 1988, under which the examining magistrate, even in the case of very serious offences, was not required to order arrest but simply obliged to give reasons in writing for his decision not to do so. In addition, the grounds for precautionary detention had been made more restrictive. There must

be prima facie evidence of guilt, the need to protect society must be specifically established and the risk of escape, as well as the need to protect evidence from destruction, must be specifically established. Finally, the prosecutors had lost the power to order an arrest. In addition, new legislative provisions provided for the replacement of precautionary detention by house arrest or confinement in a hospital, and in practice had led to a substantial reduction in the number of persons detained since August 1988. He added that the new Code of Penal Procedure provided for a maximum period of precautionary detention of four years and that the maximum period of house arrest was the same as that for precautionary detention.

576. Referring to a number of concerns expressed concerning the lengthy duration of Italian judicial procedures, the representative recalled that the figures that had been given were maximum and not average. A further factor affected the duration of legal procedures was the growing complexity of offences. Drug trafficking trials might have international as well as national ramifications and involve time-consuming investigations outside the country. Nevertheless, where a court decision was found to be flawed, compensation might be paid to the injured party and the new Code of Penal Procedure made specific reference to equitable compensation. Furthermore, it was also possible that a judge might be held personally liable.

577. With reference to the Freedom Court, he said that the court had been established to enable a person arrested on the order of the examining magistrate to apply to a chamber of the higher court in the nearest provincial centre to review the validity of the arrest warrant. In addition, the Freedom Court was a court of appeal. The prosecutor could appeal to the court against orders by a judge releasing an accused person. When an arrest warrant was re-examined, the defending lawyer could participate in the proceedings and the court's order had to be given within three days, failing which the accused was automatically released. The members of the Freedom Court were not the judges who would try the case.

578. In reply to other questions, the representative of the State party explained that the family of an arrested person had to be notified without delay and that the defence lawyer could be present from the beginning of the proceedings when the prisoner was interrogated. The new Code of Penal Procedure added in that connection that the police should inform the arrested person of his right to appoint a defence lawyer and immediately get in touch with the latter.

579. In the case of detention in establishments other than prisons, he drew attention to the provisions of Act No. 180 of 13 May 1978 regarding the treatment of mentally ill persons. In particular, the Act provided that a mentally ill patient could not be required to undergo treatment against his will, except on the proposal of a medical practitioner, followed by an order by the municipal authorities, which had been communicated to the judge and against which the patient could appeal. The Act also provided for the abolition of psychiatric hospitals. In addition, many patients were released in order to apply the principle of respect for their civil and political rights, as provided for in article 1 of the Act - a step that has given rise to some problems.

Right to a fair trial

580. With regard to that issue, members of the Committee wished to receive necessary additional information on article 14 in the light of the Committee's general comment No. 13 (21) and, in

particular, on the current status of the work on the New Code of Penal Procedure. They also wished to know whether the New Code of Civil Procedure had entered into effect and, if so, to what extent the principles described in paragraphs 126 to 136 of the report were reflected in the code as finally adopted.

581. Additionally, clarification was sought of the principle that trials should have a “substantially accusatorial structure”; of the reference in the report of “para-jurisdictional activities”; and of the Italian Government’s declaration in respect of paragraph 3 of article 14 of the Covenant. Lastly, further information was sought with regard to the implementation in practice of article 15 of the Covenant.

582. Replying to questions raised by members of the Committee, the representative of the State party explained that the independence of judges was ensured by their competitive recruitment as public servants and by the existence of a supervisory body, the Higher Judicial Council, which had sole competence for the appointment, promotion and posting of judges. All court hearings were public, except for those relating to sexual crimes, and all decisions had to be rendered in public. A new act, promulgated on 23 January 1989, gave minorities the right to express themselves and present documents to the court in their own language. The act of 16 January 1989 provided that charges against members of the Government were to be heard in the normal courts.

583. The New Code of Civil Procedure involved a wide range of civil procedures heard by judges of different divisions and its wide scope had delayed the Code’s promulgation. A new Bill, which sought to bring into force certain urgent provisions of the Code, had been presented in the new legislative term with a view to reorganizing the structure of civil courts of first instance and accelerating the disposal of civil cases. Another Bill had also been presented to Parliament, providing for the appointment of Justices of the Peace who would be more qualified and hold wider powers than the existing “conciliators”.

584. Referring to the New Code of Penal Procedure, the representatives of the State party noted that the Code would enter into force on 24 October 1989 and that transitional provisions had already been placed before Parliament for approval. He added that the New Code would institute the practice of cross-examination of witnesses by defence counsel and the public prosecutor.

585. The term “para-jurisdictional activities” referred to the public prosecutor’s former power over the personal liberty of the accused and other wide powers relating to the interrogation and the collection of evidence. Regarding the declaration made by his Government on article 14, the representative explained that when Italy had ratified the Covenant there had been some discrepancy between Italian practice and article 14. After the hearing of a case before the European Court of Human Rights, the system had been changed and was now clearly compatible with the Covenant.

Freedom of movement and expulsion of aliens

586. With reference to that issue, members of the Committee wished to receive further information on the legal provisions governing the expulsion of aliens and inquired whether an appeal against an expulsion order had suspensive effect. They also wished to know how effective the procedures established under Act No. 943 of 30 December 1986 had been in overcoming obstacles to the

effective exercise of the rights of workers from outside the European community residing in Italy. In addition, it was inquired what measures were being taken to discourage illegal immigration.

587. In his reply, the representative emphasized that there were two types of expulsions, judicial and administrative. An alien might be expelled as a security measure, following a trial in which he had been found guilty of certain specific offences or had been given a term of imprisonment exceeding 10 years. The Ministry of the Interior or the Prefect could also issue, under some circumstances, an expulsion order on security grounds. While some of the reasons invoked by the authorities automatically involved expulsion, in other cases expulsion was left to their discretion in accordance with their evaluation of the situation. Aliens could appeal against an expulsion order either to higher authorities or before the administrative courts. Although an appeal did not necessarily have a suspensive effect, a stay of execution could always be granted by a judge if serious reasons could be adduced. As regards illegal immigration, he stated that the Government intended to reinforce the frontier police and to introduce visas for nationals of countries from which illegal entry was most likely.

Right to privacy

588. In that connection, members of the Committee wished to receive additional information on article 17 in accordance with the Committee's general comment No. 16 (32) and on the legal régime governing lawful interference with correspondence, telephone and telegraphic communications. They also wished to know whether the draft bill regulating the establishment and activities of data-processing services had been resubmitted to Parliament and, if so, what its current prospects of being enacted were. In addition, it was also asked whether provisions similar to those prohibiting audio-visual surveillance of workers existed in other areas and whether the use of hidden microphones was authorized.

589. In his reply, the representative of the State party explained that the freedom and inviolability of all forms of communications could only be restricted by virtue of a judicial order. Moreover, the individual had been provided with improved guarantees by new provisions introduced into the Penal Code according to which confiscation of correspondence, telephone-tapping and interception of telegraphic communications could only be authorized by a judge in exceptional situations related to drug trafficking, contraband or threats proffered by telephone.

590. Referring to questions raised in connection with data processing, he explained that a bill relating to the establishment and functioning of data banks and data processing had been submitted to the ninth legislature and was to be resubmitted to Parliament after an examination by an ad hoc working group under the Ministry of Justice. The bill was based on the guidelines of the Council of Europe's Convention of January 1981 and endeavoured to reconcile the need to retain freedom of expression and encourage economic initiative with the need to protect the privacy of the individual. Among the main features of the Bill was the setting up of a supervisory body with which all organizers or holders of data bank were obliged to register. It was the duty of the supervisory body to verify the particulars given on the registration form, to check that the data bank was being used in conformity with the law, to receive complaints and, if necessary, to order the bank to cease operations. The bill also granted the person concerned the right of access to data banks containing information pertaining to himself.

591. Responding to other questions, the representative stated that the violation of individual privacy through the use of microphones or audio-visual equipment in homes was prohibited under penal law. Although the question of such surveillance in department stores and other public places was not covered by law, in practice a warning was generally posted, when relevant, to alert the public to the existence of remote monitoring.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

592. With reference to that issue, members of the Committee wished to know whether the agreements with religious groups mentioned in paragraph 162 of the report had given rise to any implementation difficulties; whether non-Catholics were also liable to the payment of taxes to finance the Catholic Church; what the size of the nomad population in Italy was; and whether any measures had been taken to resolve the problem of nomads (gypsies) since the establishment of the interministerial commission mentioned in paragraph 175 of the report. They also wished to receive necessary additional information on articles 19 and 20, in accordance with the Committee's general comments Nos. 10 (19) and 11 (19).

593. Additionally, further information was sought concerning the amendment of the 1929 Lateran Treaty and the bill on the new matrimonial régime. It was also inquired what differences there were in the status of denominations that had concluded an agreement with the State as compared with those which had not done so; what the status of gypsies was under Italian law and whether they were considered to be an ethnic minority; and under what circumstances publications could be seized.

594. Responding to questions raised by members of the Committee, the representative of the State party said that the agreements that the Government had recently signed with the churches and religious communities in Italy had not given rise to any implementation difficulties. Financing of the Catholic Church was provided for mainly through the income tax payments of both Catholics and non-Catholics. Those funds were allocated to the Catholic Church in compensation for State confiscation of its property. The Catholic Church was also financed through individual voluntary contributions and a similar system existed with respect to other denominations. The opportunity to enter into agreements with the State was open to all churches and religious denominations. The only benefits of such agreements related to the teaching of the doctrine of the denomination concerned and to fiscal or financial aspects. On the question of the recognition of marriages celebrated under canon law and decisions nullifying such marriages, he said that the situation in that respect had developed in the light of the changes in relations between the Catholic Church and the Italian State. Under article 8 of the agreement for the reform of the Concordat, the civil effects of a marriage entered into in accordance with canon law continued to be recognized provided that the marriage was recorded in the State registrar's office and that the conditions in which it had been entered into were in conformity with the conditions provided for by civil law. Similarly, canonical decisions nullifying a marriage continued to be recognized by the law only if they were consistent with the conditions laid down by law.

595. Referring to questions raised in connection with the nomad population in Italy, he stated that it amounted to approximately 70,000 to 80,000 people. Since the establishment of the interministerial commission, initiatives regarding the authorization of communal loans to finance

the setting up of areas specifically equipped for nomadic populations had been taken. Moreover, a bill aimed at the preservation of the language and culture of those populations was under discussion by the Chamber of Deputies and a census was under way in various provinces. He added that nomads were not considered to be a minority; they were made up of different groups speaking different languages. Because of their lack of a fixed abode, special arrangements had been made to facilitate school attendance by their children.

596. Referring to article 19 of the Covenant, he explained that while legislation already existed with regard to the press, efforts were being made to draft a bill to guarantee freedom of expression with respect to radio and television and, in particular, to ensure a fair distribution of radio and television broadcasting channels. As regards article 20 of the Covenant, he drew attention to the 1982 attack on a synagogue in Rome, regarding which a judge had handed down a decision condemning the perpetrators by virtue of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

597. Replying to a question on the seizure of publications, he said that any form of prior censorship and any seizure were forbidden, except in cases of pornography, which constituted an offence per se, and cases of publications in which there were grounds for believing that they constituted an offence provided for by law. By way of example, he referred to a publication reproducing communiqués by the Red Brigades, which had been seized on the grounds that it constituted the offences of vindication of crime and of incitement to crime.

Freedom of assembly and association

598. With regard to that issue, members of the Committee wished to know whether legislation governing the registration of trade unions and the right to strike had been enacted and, if so, whether information concerning its main provisions could be provided. In addition, it was asked whether an act had been passed to give effect to the constitutional guarantees of the freedom of association and what legal regulations governed the right to strike.

599. In his reply, the representative of the State party stated that 40 trade unions had been set up since the birth of the Republic. Trade unions were highly active in negotiating collective agreements in a tripartite framework and operated according to established practical criteria with regard to structure, personnel and methods. However, the right to strike - which article 40 of the Constitution guaranteed without establishing limits and which was widely exercised - needed to be enshrined in legislation. The question, however, had considerable political implications and in view of the political differences of opinion on the scope of the legislation needed, it had hitherto proved impossible to agree on the terms of a bill for submission to Parliament. The Government was nevertheless eager to establish legislation covering essential services and a bill relating to the content of both the tripartite negotiations and to certain forms of self-discipline already adopted by trade unions in order to regulate strike conditions had been submitted to Parliament.

Protection of family and children

600. With regard to that issue, members of the Committee wished to receive necessary additional information on article 24, in accordance with the Committee's general comment No. 17 (35) and

concerning the activities of the Permanent National Council on the Problems of Minors and of the Committee on the Labour of Minors. They also wished to know how extensive the problem of the illegal employment of minors was; under what circumstances work permits could be issued by the Labour Inspectorate to minors in such illegal situations; whether legislation to reform the secondary school system and to raise the mandatory school age to 16 had been enacted; and what differences, if any, existed in the status and rights of children born within and out of wedlock. In addition, one member asked whether any special conditions were laid down by law for the adoption of foreign children; whether there existed in Italy a body responsible for examining the applications for the adoption of foreign children; what action was taken to ensure that prospective adoptive parents met the requisite moral and material criteria; and for what reason the age limit for adoptable children had been raised from 8 to 18 years.

601. In his response, the representative of the State party, underscoring the importance attached to the protection of the child in Italian legislation, explained that the Permanent National Council on the Problems of Minors, which had started its work in 1986, had been given a number of responsibilities including study and research activities. Its activities were centred on research aimed to developing a general policy to encourage the harmonious development of minors as an essential stage in the development of society as a whole. Specific studies had been carried out and had served to provide methodological guidelines for projects on adolescents. In June 1988, the Chamber of Deputies had considered the establishment of a parliamentary commission of inquiry on the status of minors with the aim of investigating the causes of social and cultural problems affecting them and of proposing to Parliament the most appropriate action to ensure their protection. Although the employment of minors was a major concern of the Government, he admitted that the legislative framework was not perfect. Minors were not allowed to be employed before the age of 16, but they could be engaged for seasonal and holiday work, light work and work authorized by the Special Labour Commission. The issue of the exploitation of minors, however, remained a sensitive one. A bill submitted to Parliament some years earlier with a view to raising the minimum school-leaving age to 16 had recently been brought before it again, but there was no indication that it would be approved in the near future. Lastly, he emphasized that children born out of wedlock enjoyed substantially the same rights as those born in wedlock.

602. Referring to the questions asked about adoption in Italy, he said that the material and moral conditions to be fulfilled by the prospective parents were ascertained by the juvenile court, which exercised general competence, regardless of whether the adoptive child was Italian or foreign. Particular attention had recently been devoted to international adoption because of the abuses to which it might give rise; in that connection, mention should be made of a juvenile court decision annulling the adoption of a Philippine child effected without a full investigation of the circumstances of the adoptive parents. Although the age limit for an adoptive child had been raised from 8 to 18 years, the law also established a compulsory minimum difference in age between the adoptive parent and the adopted child.

Right to participate in the conduct of public affairs

603. With regard to that issue, members of the Committee wished to know how equitable access of members of ethnic, religious or linguistic minorities to public service was ensured. It was also asked what the grounds were for limitation of the right to vote covered by transitional provisions XII

and XIII of the Constitution, and whether the withdrawal of the right to vote that they entailed was permanent or revocable.

604. In reply, the representative of the State party said that the minority groups resident in Italy were not represented as such at the national, provincial, regional or municipal levels, but special arrangements had been made to encourage representatives of various language groups to stand for office in the recent elections to the European Parliament. Furthermore, representatives of such groups were eligible for priority consideration for certain public-service posts. On the question of limitations on the right to vote, he said that they concerned (a) male descendants of the House of Savoy who, not being authorized to enter Italian territory, obviously did not have the right to vote, and (b) persons who had committed particularly serious crimes. However, a judicial order forbidding a person to vote was never permanent.

Rights of minorities

605. In this connection, members of the Committee asked whether there were any particular obstacles preventing minorities from fully exercising their rights as recognized by the Covenant, and expressed a desire for details of languages and cultures other than those of the linguistic minorities living in the Val d'Aosta, Trentino-Alto Adige and Friuli-Venezia Giulia.

606. Replying to questions asked by members, the representative of the State party observed that the minorities enjoyed all the rights granted to Italian citizens and were not encountered any particular difficulties. In the case of minorities other than those living in the above-mentioned regions, a bill had been submitted to Parliament aimed at granting a minimum number of guarantees to all minorities. A distinction should, however, be drawn between linguistic minorities that already had a special status and other groups that wished to preserve their linguistic and cultural traditions. In that connection, in the regions where those cultural groups lived, the wording on road signs was already in both Italian and the local language.

General observations

607. Members of the Committee welcomed the constructive dialogue that had taken place between the Italian delegation, whose size and quality had been impressive, and the Committee. Members nevertheless considered that their concerns had not been fully allayed, especially with regard to the duration of precautionary detention and the slowness of the administration of justice, which were likely to affect presumption of innocence. Reference had also been made in that connection to work done in the farm colonies or labour establishments, which raised problems vis-à-vis articles 8 and 10 of the Covenant; the supervision exercised over police and prison personnel; child labour; the adoption of foreign children, and the status of women in certain parts of the country. Apart from those concerns, members had expressed satisfaction at the increasingly dynamic support for human rights that was becoming apparent in Italy, and which had, in particular, led to the forthcoming entry into force of the new Code of Penal Procedure and to the development of legislation relating to family law. They noted further that Italy's democratic tradition had enabled it not only to confront the serious problems created by terrorism and organized crime, but also further to strengthen the protection of human rights.

608. The representative of the State thanked the members of the Committee for their keen interest and assured them that the Committee's comments would be transmitted to the competent authorities.

609. Concluding consideration of the second period report of Italy, the Chairman thanked the delegation for its spirit of co-operation. He expressed his satisfaction at the fact that the report had been prepared by an interministerial Committee and that such a large and competent delegation had been sent to appear before the Committee.

CCPR A/49/40 (1994)

271. The Committee considered the third periodic report of Italy (CCPR/C/64/Add.8) at its 1330th to 1332nd meetings, held on 11 and 12 July 1994 (see CCPR/C/SR.1330 to 1332), and adopted 29/ the following comments:

1. Introduction

272. The Committee expresses its appreciation to the State party for its elaborate and thorough report, which has been prepared in accordance with the Committee's guidelines, and for engaging, through a highly qualified delegation, in a very constructive dialogue with the Committee. It notes with satisfaction that the information provided in the report, and submitted orally by the delegation in reply to questions posed by members enabled the Committee to obtain a comprehensive view of Italy's actual compliance with the obligations undertaken under the Covenant.

2. Factors and difficulties affecting the implementation of the Covenant

273. The Committee notes the emergence in certain parts of the population of Italy of a trend towards racism and intolerance against foreigners, particularly asylum-seekers and migrant workers, and the resurgence of certain elements militating in favour of political movements reminiscent of a past when human rights were seriously violated. The Committee also notes that there are difficulties in implementing the necessary struggle against organized crime and corruption, especially in the highest spheres of power, in a manner that is compatible with the provisions of the Covenant.

3. Positive aspects

274. The Committee notes with particular satisfaction the high level of achievement in the respect of human rights in Italy and the strong commitment of the State party to the promotion and protection of human rights at both the national and the international levels. In this regard, it welcomes, in particular, the intention of the State party to accede to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

275. The Committee welcomes the efforts taken by the State party to promote equal opportunities for women, particularly through the work of the Commission for Parity and Equality of Opportunities for Men and Women, and the progress achieved in improving women's participation in public affairs, professions and the private economic sector. It also welcomes the adoption, on 26 April 1993, of a law aiming at strengthening the prevention, elimination and punishment of racist acts. The Committee takes note of agreements recently concluded between the State party and certain religious denominations, as well as the proposed establishment of a special office on religious freedom. The improvements in the free legal aid scheme and the establishment of an advisory national bioethics committee are also welcomed. Moreover, the Committee appreciates the various measures taken by the State party to protect and promote the rights of persons belonging to linguistic —

29/ At the 1353rd meeting (fifty-first session), held on 27 July, 1994. minorities, which constitutes a positive approach to the full implementation of article 27 of the Covenant.

4. Principal subjects of concern

276. The Committee continues to regret the extent of State party's reservations to the Covenant and that it has yet not envisaged withdrawing some of them.

277. The Committee regrets that the office of the citizens' advocate has not yet been established at the national level and that similar offices do not exist in all regions of the State party. Furthermore, there do not appear to be any guidelines regarding cooperation and coordination between those different offices. These facts combined with distinctions in the powers and functions of the regional and local citizens' advocates, may cause unequal protection for individuals depending on the place where they live.

278. The Committee is concerned about cases brought to its attention of ill-treatment of persons by police and security forces in public places and police stations. The Committee is also concerned by the increasing number of cases of ill-treatment in prisons. It notes with concern that the Government does not always investigate thoroughly those cases, that torture as such is not punishable in domestic law and that, consequently, appropriate sanctions are not always imposed on those found guilty.

279. The Committee is concerned about the duration of preventive detention as provided for under the law which does not appear to be compatible with the requirements of articles 9 and 14 of the Covenant. Delays in judicial proceedings remain worrisome despite attempts at reducing them. The Committee is also concerned at the various problems faced in the administration of prisons and other detention centres, particularly overcrowding.

280. The Committee is concerned about the excessive concentration of control of the mass media in a small group of people. Furthermore, it notes that such concentration may affect the enjoyment of the right to freedom of expression and information under article 19 of the Covenant.

281. The Committee is concerned that the State party's definition of minorities is confined to linguistic minorities within its territory and that, consequently, members of other minorities may not enjoy equal protection of their rights under article 27.

5. Suggestions and recommendations

282. The Committee recommends that the State party review its reservations to the Covenant with a view to withdrawing them.

283. In view of the fact that criminal legislation does not provide for the death penalty, the Committee wishes to encourage the State party to take the necessary steps to accede to the Second Optional Protocol to the Covenant.

284. The Committee expresses the hope that the Government will undertake the necessary measures

to establish a citizens' advocate office at the national level. It also recommends that, at the regional level, where this has not yet been done, citizens' advocate offices be established and that functions and powers of regional citizens' advocates be harmonized.

285. The Committee urges the State party to consider making torture a specific criminal offence. In addition, it suggests that the State party further strengthen measures to protect the rights of detainees by promptly investigating allegations of ill-treatment and ensuring that appropriate penalties are applied whenever such offences are committed; preventing the commission of such acts through efforts to ensure the stricter observance of regulations relating to the treatment of detainees and offenders; and reducing the length of preventive detention, taking into account the principle of presumption of innocence and the complexity of the investigation. The Committee also suggests that more effective and thorough human rights training be provided to law enforcement officials and prison officers.

286. The Committee recommends that the State party re-examine the possibility of civil liability of judges in the light of the Basic Principles on the Independence of the Judiciary.

287. In order to avoid the inherent risks in the excessive concentration of control of the mass information media in a small group of people, the Committee emphasizes the importance of implementing measures to ensure impartial allocation of resources, as well as equitable access to such media, and of adopting anti-trust legislation regulating mass media.

288. The Committee recommends that the State party continue to strengthen its education and training programmes on multi-culturalism with a view to eliminating racial discrimination and advancing tolerance and understanding among peoples and races.

289. Further efforts are required to ensure the equal participation by women in public life and more effective protection of women against all forms of violence.

290. The Committee would appreciate receiving in the next periodic report information on those matters which, owing to time constraints, remained unanswered, including the legal measures taken by the State party to allow the implementation of the views of the Committee under the Optional Protocol.

CCPR A/53/40

329. The Committee considered the fourth periodic report of Italy (CCPR/C/103/Add.4) at its 1679th and 1680th meetings, on 17 July 1998, and at its 1693rd meeting on 28 July 1998, adopted the following observations.

A. Introduction

330. The Committee expresses its appreciation to the State party for its report and for the provision, by its delegation, of further information about developments of the human rights situation in Italy up to the time of the examination. It notes that the dialogue between the Committee and the delegation proceeded in a satisfactory manner in the course of the examination itself. The answers and explanations given by the delegation have enabled the Committee to grasp not only the legal norms and enactments governing the obligations set out in the Covenant, but also the extent to which these rights may actually be enjoyed by the people of the country.

B. Positive aspects

331. The Committee is pleased to note that Italy has ratified the Second Optional Protocol to the Covenant and that in 1996 the Constitutional Court reinforced the right to life by declaring unconstitutional the law ratifying a treaty of extradition on the grounds that there was no absolute guarantee in law that the person concerned would not be executed.

332. The Committee commends the action taken to reduce the length of a nominal life sentence to a maximum finite sentence.

333. It is noted with appreciation that the judiciary has begun to treat offences concerning trafficking of women and others for the purpose of prostitution as acts which can be assimilated to slavery and contrary to international and national law.

334. The Committee welcomes the institution of the Ministry of Equal Opportunities and the 1997 plan to implement the results of the Fourth World Conference on Women.

335. The Committee appreciates the recent changes in legislation concerning controls applied to illegal immigrants, which improve their rights while awaiting a decision on admission and the possibility of family reunion in the case of admission and which bring more into line with article 13 the guarantees for such persons before they may be deported.

336. Legislation has been passed to regulate the collection and use of personal computerized data along with another measure subjecting wire-tapping to strict control, both of which, in the Committee's opinion, assist in the implementation of article 17 of the Covenant.

337. The Committee welcomes the establishment of the National Observatory on Religious Freedom and the fact that its activities include dealing with complaints about constraints on religious freedom.

338. The Committee notes with satisfaction that with regard to its concerns, expressed on concluding its examination of Italy's third periodic report, about the excessive concentration of control of the mass information media in the hands of a small group of people, new laws regulating the extent of control of such media have been passed to overcome this situation.

C. Principal subjects of concern and recommendations

339. The Committee reiterates its regret that Italy has still not withdrawn any of its reservations to the Covenant; it recommends that all the reservations should be reconsidered with the objective of determining whether their continuance is really necessary.

340. The Committee regrets that there remain structural and cultural problems preventing the full enjoyment by women of equal opportunities in public and political life and in employment and that equal pay is often not given for work of equal value. It recommends that urgent steps be taken, by way of education, encouragement and legal means, to reduce or eliminate these inequalities. The Committee would like to receive information on the de facto situation of women, including statistics, in the next report.

341. The Committee remains concerned at the inadequacy of sanctions against police and prison officers who abuse their powers. It recommends that due vigilance be maintained over the outcome of complaints made against members of the carabinieri and against prison officers.

342. The Committee recommends that the maximum period during which a person may be held in custody following arrest on a criminal charge be reduced, even in exceptional circumstances, to less than the present five days and that the arrested person be entitled to access to legal advice as soon as he or she is arrested.

343. The Committee has again paid close attention to the Italian system of holding offenders, before and after trial, in "preventive detention" until the final stages of any possible appeal have been exhausted and the sentence has been finalized. It notes that the maximum period for such detention is set by reference to the penalty for the offence of which the person stands accused, and can last up to six years; this could constitute an infringement of the presumption of innocence (art. 14, para. 2) and the right to the principle of a fair trial within a reasonable time or to release (art. 9, para. 3). The Committee therefore recommends that (i) the linkage between the offence with which a person has been charged and the length of detention from the time of arrest up to final sentence should not be maintained; and (ii) that the grounds for preventive detention be restricted to those cases in which such detention is essential to protect legitimate interests, such as the appearance of the accused at the trial.

344. The Committee notes that changes in the Code of Criminal Procedure have resulted in some reduction in the numbers of persons held in "preventive detention". It is concerned, however, that prison overcrowding remains a serious problem and recommends that urgent attention be paid to the rectification of this situation (art. 10).

345. The Committee's attention has been drawn to steps taken to speed up both criminal and civil trials, but it is concerned that, so far, no result has become apparent. It therefore recommends that

further measures be taken to increase the efficiency and promptness of the entire system of justice (art. 14, para. 3 (c)).

346. The Committee is concerned at the increase in incidents of racial intolerance. It recommends that all measures by way, for example, of legal constraint and education be continued to eradicate this phenomenon (arts. 3 and 26).

347. It is noted that delays continue to occur with respect to passing legislation concerning the following: the introduction into the Criminal Code of the offence of torture as defined in international law (art. 7); the provision of both criminal and civil sanctions against those who perpetrate domestic violence (arts. 3, 23 and 24); the introduction of measures giving effect to further improvement of the rights of persons belonging to ethnic, religious and linguistic minorities and for the protection of the rights of the Slovenian minority (art. 27).

348. The Committee requests the State party to ensure the wide dissemination in Italy of the State party's report and the Committee's concluding observations, and to inform the Committee of steps taken to implement the observations in its fifth periodic report, due in June 2002.