



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

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Commissioner for Human Rights of the Council of Europe

Following his visit to Italy
on 13-15 January 2009

Executive Summary

Commissioner Thomas Hammarberg and his delegation visited Italy from 13 to 15 January 2009, as a follow-up to his visit which took place from 19 to 20 June 2008. In the course of this visit the Commissioner held discussions with national and local authorities and non-governmental, national and international organisations on a number of human rights issues including action against discrimination, protection of Roma and Sinti and migration. Among the state authorities that were contacted were the Secretary of State of the Ministry of Foreign Affairs Mr Alfredo Mantica and the Secretary of State of the Ministry of Interior Mr Alfredo Mantovano.

In the present Report the Commissioner focuses on the following issues:

I. Action against racism and xenophobia: The Commissioner notes with satisfaction certain positive measures adopted by Italy in order to fight racism and xenophobia, such as the 2008 Law shifting the burden of proof and the education programmes of the Ministry of Education marked by an intercultural approach. However, he remains particularly worried by consistent reports that continue to evidence a trend of racism and xenophobia in Italy, occasionally supported by actions of local authorities, which has led also to violent acts against migrants, Roma and Sinti or Italian citizens of migrant descent. The Commissioner reiterates his recommendation that the authorities ensure a prompt reaction to and strong condemnation of all racist or intolerant manifestations and to reinforce the anti-discrimination legislation. He also recommends that the authorities promote further systematic human rights education and awareness of the police and judicial authorities, establish promptly a national human rights institution and pay particular attention to combating racism in the fields of sports and on the internet.

II. The protection of human rights of Roma and Sinti: The Commissioner welcomes the Italian government's commitment to continuing to pay due attention to the issues and recommendations made in his Memorandum of July 2008, as well as a number of measures, such as the launching of the Council of Europe DOSTA! Roma awareness campaign and efforts at facilitating access to housing for Roma and children's education. Nonetheless, his visit last January to five Roma settlements in Rome and the discussions with Roma representatives that he had during this visit tied in with reports showing the continuation of an intolerant climate vis-à-vis Roma and Sinti, the lack of an institutionalized dialogue between the authorities and Roma and Sinti and the persistence of unacceptably low standards of living in a number of Roma settlements, especially those inhabited by migrants and their families. The Commissioner is also deeply concerned about the large-scale operation of the census in Roma and Sinti settlements, which were managed by the police and linked to a 'state of emergency' and a 'widespread public alarm'. Whilst noting with satisfaction the commitment showed to him by the Mayor of Rome to have consultations with Roma representatives and by the Interior Ministry Secretary of State to tackle the serious issue of stateless Roma children, the Commissioner urges the authorities to create consultative mechanisms at all levels with Roma and Sinti, avoid evictions without offering alternative housing and adopt and implement a coherent and adequately resourced national action plan in accordance with the Council of Europe recommendations.

III. The protection of human rights of immigrants and asylum seekers: While recognizing the serious challenges that migratory flows present to state mechanisms, the Commissioner continues to follow and to remain very concerned about new legislative measures on immigration and asylum which have been adopted or under consideration by Italy, such as those criminalizing the letting of accommodation to irregular migrants and the decision to lift the ban on doctors to report to the authorities irregular migrants who access the health system. The Interior Ministry's recent decision to process all asylum applications on and deport irregular migrants from the island of Lampedusa and the subsequent excessive overcrowding of the reception centre therein caused the Commissioner's serious concern. The Commissioner welcomes the determination shown to him by the authorities during his visit to uphold a high level

of protection to foreign nationals in need thereof and urges them to abide by and disseminate Council of Europe standards concerning forced returns and human rights protection. He urges the authorities to review draft or adopted migration-related pieces of legislation that raise serious issues of compatibility with human rights standards, to pay particular attention to the needs of minor migrants and to ratify promptly the Council of Europe Convention on Action against Trafficking in Human Beings.

IV. Foreign nationals' forced returns and compliance with the Rule 39 requests of the European Court of Human Rights: The Commissioner remains worried by a number of deportations that have taken place, especially from Italy to Tunisia, and by credible reports showing that on certain occasions the deportees had been subjected to torture in the latter country. Of special concern to the Commissioner have been two such cases where deportations to Tunisia took place in 2008 even though the European Court of Human Rights had indicated interim measures under its Rule 39, requesting Italy to stay deportations while the deportees' applications were pending before it. Even though the Commissioner is aware of the difficulties faced by member states in their efforts to protect their societies from terrorist violence, he remains deeply concerned by state practices that contravene fundamental European human rights standards such as the one prohibiting *in absolute terms* torture or inhuman or degrading treatment or punishment. The Commissioner strongly opposes forced returns, even if they occur under cover of diplomatic assurances, to countries with long-standing, proven records of torture. He calls on the Italian authorities to urgently review their policy in this field and effectively conform to the binding interim measures ordered by the European Court of Human Rights.

The Italian authorities' comments on the draft Report are appended.

Introduction

1. The present Report is based on a visit to Italy by the Commissioner for Human Rights (the Commissioner) from 13 to 15 January 2009¹ that followed up to his visit which took place from 19 to 20 June 2008.
2. The Commissioner held constructive consultations with a number of state authorities, including the Secretary of State of the Ministry of Foreign Affairs Mr Alfredo Mantica, the Secretary of State of the Ministry of Interior Mr Alfredo Mantovano, the Mayor of Rome Mr Gianni Alemanno, the President Mr Pietro Marcenaro and members of the Senate Human Rights Commission and the President of the Data Protection Authority Prof. Francesco Pizzetti. Meetings were also held with representatives of non-governmental, national and international organisations active in the fields of migrant and Roma protection.
3. The Commissioner sincerely wishes to thank the Italian authorities in Strasbourg and in Rome for the assistance which they provided in facilitating the independent and effective conduct of his visit. The Commissioner appreciated the authorities' readiness and openness to dialogue with him in the course of all the meetings which were held in Rome.
4. On 28 July 2008 the Commissioner, after having received the Italian government's comments on a draft, published a Memorandum (hereinafter 'Memorandum'), along with the government's comments, on the basis of his visit which had been carried out in June.² The Commissioner has been following closely the legislative and administrative developments in Italy related to the issues mentioned in his Memorandum and has been in contact with the Italian authorities through the Permanent Representation of Italy to the

¹ During his visit the Commissioner was accompanied by his Advisors Mr Nikolaos Sitaropoulos and Mr Stefano Montanari.

² CommDH(2008)18, 28 July 2008, available at: www.coe.int/commissioner.

Council of Europe that kindly provided him with information when requested. In particular, on 5 December 2008 the Italian authorities, in response to a request made on 4 November 2008, submitted to the Commissioner supplementary information relating to the issues raised in the Memorandum.

5. By the visit that was carried out from 13 to 15 January 2009 the Commissioner wished to continue the substantive and constructive dialogue with the Italian authorities, in the context of his mission as an independent and impartial institution promoting respect for human rights, as embodied in the human rights instruments of the Council of Europe.
6. The Commissioner wishes to reiterate that he regards as very important and is thus particularly interested in the protection afforded by Council of Europe member states to non-dominant social groups, such as migrants (asylum seekers, refugees and immigrants). The treatment afforded by member states to foreign nationals who wish to enter or who reside in Europe constitutes a litmus test for states' effective observance and respect of the fundamental human rights principles.
7. The same is true as well with regard to Roma and Sinti, minority populations severely and chronically discriminated against in most of the Council of Europe member states.
8. The present Report follows up to the Memorandum and concentrates on the following four major themes: Action against racism and xenophobia (section I); The protection of human rights of Roma and Sinti (section II); The protection of human rights of immigrants and asylum seekers (section III); Foreign nationals' forced returns and compliance with the Rule 39 requests of the European Court of Human Rights (section IV).

I. Action against racism and xenophobia

9. The Commissioner has noted with satisfaction the adoption of Law N° 101 of 6 June 2008 which provides now for an explicit shift of the burden of proof from the complainant to the respondent (in civil and administrative law), in cases of 'prima facie discrimination', as foreseen by the EC anti-discrimination Directives 2000/43 and 2000/78. The shift of the burden of proof now occurs if the complainant establishes factual elements that can precisely and consistently show the presumption of the existence of discriminatory acts, agreements or behaviours. Also, a new provision was introduced providing specific legal protection against complainants' 'victimisation', as foreseen by the above Directives. Finally, harassment on grounds of racial or ethnic origin may now be grounded in an environment which is created by an unwanted conduct and is 'humiliating or [instead of 'and'] offensive'.³
10. Nonetheless, the Commissioner remains concerned at the keeping in force of Law 85/2006 which mitigated the sentences regarding the offence of propaganda advocating racial or ethnic superiority or hatred and instigation to commit or the commission of discriminatory or violent acts on racial, ethnic, national or religious grounds.⁴ By letter of 5 December 2008 the Italian authorities informed the Commissioner that a new pertinent draft law has been tabled before the Parliament. The Commissioner would appreciate the provision of more information thereon.
11. In this context, the Commissioner has been informed of the case involving the Mayor of Verona and five others who in September 2001 invited the citizens of Verona to sign a

³ See *European Anti-Discrimination Law Review*, N° 6/7, October 2008, p. 103, available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/08lawrev6_7_en.pdf.

⁴ The initial maximum term of three years' imprisonment was reduced to either a fine of 6 000 Euros or 18 months' imprisonment.

- petition to the municipal authorities for the 'immediate clearing of all the illegal, temporary nomad encampments' and circulated posters worded as follows: 'No to the nomad encampments. You too sign up to send the gypsies away'. The Mayor of Verona had also been witnessed stating in a meeting that the city should be 'inhospitable to gypsies because wherever they arrived thefts took place'.
12. On 20 October 2008 it was reported that the Venice Court of Appeal confirmed its earlier sentence of two months' imprisonment (with suspension), on the ground that the defendants had propagandised theories of racial superiority or ethnic hatred. Pecuniary damages were also awarded to the Roma families who were living in the Boscomantico camp before it being dismantled following the defendants' action.⁵
 13. The Commissioner has noted that the case was remitted to the Court of Appeal by the Court of Cassation (judgment of 13 December 2007), which had found an 'incomplete and not logically convincing reasoning' in the first judgment rendered by the Court of Appeal. The Court of Cassation had found, *inter alia*, that the 'deep aversion' towards Roma that had been shown in particular by the defendant's above-mentioned statement was not 'motivated by the discriminated persons' status as gypsies, but by the fact that all gypsies were thieves. It was therefore founded not on a concept of racial superiority or hatred, but on a racial prejudice'.
 14. The Commissioner welcomes the information provided by the Italian authorities, according to which the fight against racism and racial discrimination at school level is carried out by the Ministry of Education in primary and secondary schools through educational programmes marked by an intercultural approach.
 15. Nonetheless, the Commissioner remains particularly worried by consistent reports that continue to evidence a trend of racism and xenophobia in Italy, occasionally extremely violent, targeting primarily migrants, Roma and Sinti or Italian citizens of migrant descent, even in the context of sports.⁶
 16. The Commissioner has noted with particular concern the case of a 22-year-old Ghanaian national who in September 2008 was arrested by the municipal police in Parma having been mistakenly considered to be a drug-dealer. On exit from the detention centre it was reported that he had a haematoma, a hand wounded and carried an envelope given to him by the municipal police, on which it had been marked 'Emmanuel Negro'.⁷ During his visit in January the Commissioner was informed that criminal proceedings were ongoing against the municipal police officers involved in this incident who were in the meantime under house arrest.
 17. Of equally grave concern has been a communication to the Commissioner from an Italian citizen in January, by which the latter protested at the operation in Italy of eighteen 'facebook' containing messages of racial hatred, especially against Roma, and instigation to racist violence, even though these 'facebook' had been reportedly denounced to their site managers. The above citizen stressed the need for 'a better control of such situations' that she characterized as an 'injustice and a shame'.
 18. The EU *Special Eurobarometer* in July 2008 reported that Italy scored some of the lowest results among the EU member states, as regards 'the level of comfort with person from

⁵ The case is reportedly now pending anew before the Court of Cassation upon application by the defendants.

⁶ See, e.g., a series of violent manifestations against members of such groups in September and October 2008 reported in *Le Monde*, 25/10/2008, p. 22, and in Ansa, News in English, press release of 03/10/2008, 17:01, available at: www.ansa.it.

⁷ Press release available at www.lepost.fr, 30/09/2008.

different ethnic origin as a neighbour' and especially as regards the 'comfort with Roma neighbour'.⁸ Another special country-based survey of the same EU institution reported a higher than the EU average (76% and 62% respectively) percentage of interviewees in Italy who thought that discrimination on the basis of ethnic origin was 'very or fairly widespread'.⁹

19. What, in the Commissioner's opinion, causes particular concern is the fact that this intolerant environment to non-dominant, vulnerable ethnic or social groups continues to be fostered occasionally by statements of certain political figures. The Commissioner has noted as especially worrying a statement that was made on 17 September 2008 by the Mayor of Treviso, which became publicly available through an Italian 'blog' and can be characterized as 'hate speech' notably against migrants, Roma and Sinti and Muslims.
20. The Italian authorities by their letter of 5 December 2008 informed the Commissioner that the translation of the Council of Europe *Factsheets on Roma History*¹⁰ is under way by the 'Cabinet of the Interior Minister', in response to the Commissioner's proposal which was made in June last year. The Commissioner expresses his satisfaction at the Interior Minister's readiness to translate and disseminate this particularly useful material that may well be used for the civic education and human rights sensitization of pupils, students and the general public.
21. Finally, the Commissioner notes that no real progress has so far been reported with regard to the creation of an independent national institution for the promotion and protection of human rights, in accordance with the Paris Principles. Such an institution would be likely to contribute to the authorities' efforts at reinforcing anti-discrimination policy. The Italian authorities have informed the Commissioner that a pertinent draft Law has been introduced anew to the Senate, following the non-conclusion of the legislative process of an earlier draft Law which had been adopted by the Parliament in April 2007.

Conclusions and Recommendations

22. The Commissioner reiterates his recommendation that the Italian authorities ensure a prompt reaction to and condemn strongly and publicly all statements, irrespective of their origin, that generalize and as a consequence stigmatise certain ethnic or social groups, such as migrants and Roma or Sinti. They should also see to it that their own legislative or administrative initiatives cannot be construed as facilitating or encouraging the objectionable stigmatization of the above groups.
23. The Commissioner recommends that the authorities urgently review Law 85/2006 and restore the more severe sentences earlier provided for racist activities. More information on the aforementioned new draft legislation that has been tabled at the Parliament would be appreciated.
24. The Commissioner reiterates his recommendation that the authorities reinforce promptly the independence and effectiveness of the national body specialized in the anti-racial discrimination field (UNAR), enabling it also to initiate and participate in judicial anti-discrimination proceedings.

⁸ See European Commission, Special Eurobarometer 296, July 2008 pp 7-8, available at: http://ec.europa.eu/public_opinion/archives/eb_special_en.htm.

⁹ See European Commission, Special Eurobarometer 296, Country Fiche – Italy, July 2008, available at: http://ec.europa.eu/public_opinion/archives/eb_special_en.htm.

¹⁰ See Council of Europe Directorate General of Education, Culture and Heritage, Youth and Sport (DG IV), www.coe.int/T/E/Cultural_Co-operation/education/Roma_children.

25. The Commissioner calls on the authorities to pay particular attention to the need of preventing racial discrimination in the administration and functioning of the criminal justice system, especially when it deals with non-dominant, particularly vulnerable social or ethnic groups, such as migrants and Roma or Sinti.
26. Recalling the guidelines contained in the relevant 2005 Recommendation of the UN Committee on the Elimination of Racial Discrimination (CERD), the Commissioner notes that it would be particularly useful to promote, in a systematic manner, dialogue and cooperation between the police and judicial authorities and representatives of such vulnerable social or ethnic groups in order to eradicate prejudice and create a relationship of trust. The promotion of proper representation of persons belonging to ethnic groups in the police and in the system of justice should also be one of the authorities' priorities, along with the facilitation of access to justice of victims of racism, in particular through the reinforcement of the state legal aid system, possibly in cooperation with competent non-governmental organisations.¹¹
27. The Commissioner welcomes the new legislative efforts that are made with a view to establishing an independent national human rights institution. Drawing the authorities' particular attention to the Council of Europe Committee of Ministers' Recommendation R(97)14 *on the establishment of independent national institutions for the promotion and protection of human rights*, the Commissioner urges them to proceed promptly to the establishment of an effective national human rights institution, such as a national human rights commission.
28. The Commissioner recommends also the establishment of a concrete and comprehensive national human right action plan¹² that would include sustained action aimed at eliminating racial discrimination. The establishment of an independent national human rights institution would well benefit such an effort. Anti-racism action plans should include, in particular, guidelines for prevention, recording, investigation and prosecution of racist or xenophobic incidents and assessment of the level of satisfaction among all communities concerning their relations with the police and the justice system.¹³
29. Particular attention should also be paid by the authorities to the urgent need to eliminate racism and intolerance through internet, in line with the General Policy Recommendation n° 6, *Combating the dissemination of racist, xenophobic and antisemitic material via the internet*, which was adopted by the European Commission against Racism and Intolerance (ECRI) on 15 December 2000.¹⁴
30. Finally, the Commissioner commends the authorities' efforts at promoting human rights, especially anti-racism, education in schools and their willingness to translate and disseminate the Council of Europe *Factsheets on Roma History*. The Commissioner would like to stress that particular attention should also be paid to the area of racist and intolerant manifestations in the fields of sports that attract large parts of the public, especially the youth. The Commissioner recalls and draws the Italian authorities'

¹¹ See UN CERD, General Recommendation XXXI *on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, 2005, available at: www.ohchr.org.

¹² See Commissioner's Viewpoint, 'Concrete and comprehensive action plans are needed to ensure implementation of human rights', 03/11/2008, available at: www.coe.int/t/commissioner/Viewpoints/081103_en.asp.

¹³ See UN CERD, General Recommendation XXXI *on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, 2005, paragraph 5(i), available at: www.ohchr.org.

¹⁴ Available at: www.coe.int/T/E/human_rights/Ecri.

attention to the relevant recommendations of ECRI,¹⁵ with a view to enhancing anti-racism awareness of the public and especially in sports federations and clubs.

II. The protection of human rights of Roma and Sinti

31. The Commissioner welcomes the Italian government's commitment, as expressed also to the Council of Europe Committee of Ministers, to continuing its good co-operation with him and to continuing to pay due attention to the issues raised and recommendations made in his Memorandum, especially with regard to the Roma and Sinti.¹⁶
32. The Commissioner welcomes and commends the positive action and measures that have been taken or envisaged by the Italian authorities to protect and promote human rights of Roma and Sinti, such as the launching of the Council of Europe DOSTA!, Roma awareness campaign,¹⁷ the financing of schools with high numbers of immigrants including Roma, the efforts at facilitating the access to housing for Roma and the UNAR projects that provide support to the Regions for promoting social cohesion.¹⁸
33. The Commissioner notes however with regret credible reports showing the continuation of an intolerant climate and of certain actions of public authorities that do not reflect or promote the government's efforts aimed at reinforcing the protection and enjoyment of human rights by Roma and Sinti. Of particular concern have been the case of a Romanian Roma child who was reportedly beaten up while begging in Pesaro on 20 August 2008 and the reportedly third eviction by the police of 45 Roma families from the 'Via Salamanka' camp in Rome on 6 October 2008.¹⁹ During the meetings which were held in Rome on 14 and 15 January, Roma and human rights NGO representatives repeatedly expressed to the Commissioner their fear towards a 'movement of anti-gypsism' in the country.
34. As regards the violent attacks of May 2008 against Roma in the Ponticelli district of Naples,²⁰ the Italian authorities informed the Commissioner in July 2008 that the police submitted a report to the competent judicial authorities and investigations along with criminal proceedings against unknown persons were under way, while the Milan state prosecutor was carrying out criminal proceedings for the fire set in some Roma settlements, between October and November 2007. The Commissioner is looking forward to receiving more information thereon.
35. On 14 January the Commissioner had the opportunity to visit again (after his visit last June) the semi-regular Roma camp of Casilino 900 in Rome which is composed of approximately 650 Roma (almost half of them children) from former Yugoslavia. He also visited four irregular Roma settlements around Rome in Cave di Pietralata (hosting approximately 60 persons), in Quintiliani (hosting approximately 66 persons including families and children), in Monte Tiburtini (hosting approximately 15 families with children)

¹⁵ See ECRI Declaration on the occasion of EURO 2008 – 'Unite against racism', 13/05/2008, available at: www.coe.int/T/E/human_rights/Ecri.

¹⁶ See Committee of Ministers' reply to written question N° 549, 19/11/2008, CM/Del/Dec(2008)1041 Vol. I, 21/11/2008, available at: www.coe.int/t/cm.

¹⁷ See www.dosta.org.

¹⁸ See Italy's Comments appended to the Commissioner's Memorandum of 28/07/2008, available at: www.coe.int/commissioner.

¹⁹ Information document submitted to European Parliament's LIBE delegation to Italy on 18-19/09/2008, Annexes I and II to Draft Report, November 2008, pp. 19-20.

²⁰ See EU Fundamental Rights Agency, *Incident Report – Violent Attacks against Roma in the Ponticelli district of Naples, Italy*, 05/08/2008, available at: <http://fra.europa.eu>.

- and in Palmiro Togliatti (hosting approximately 100 persons including families and children). The inhabitants of these four settlements were Romanian Roma.
36. The Commissioner's visit to these settlements had been preceded by days of rain that had made the sites of Casilino 900, Quiritiani and Palmiro Togliatti very muddy and difficult to access on foot. The Roma people in Cave di Pietralata and in Monte Tiburtini were housed in abandoned warehouses and a garage. In none of the five settlements there was regular access to electricity or water, nor sewage. While the camp of Casilino 900 exists in Rome for approximately 40 years and consists of caravans, shacks and chemical toilets, the other aforementioned settlements are much more recent, reportedly ranging from nine months to one year. The last camp visited was in place for approximately nine months, following an eviction from another settlement, consisted of shackles and tents while inhabitants reported the existence of rats. The conditions of living there were obviously very harsh, especially for the children living there who nonetheless tried to and attended Italian schools daily.
 37. The Commissioner noted with regret that the standards of the living conditions in all settlements that he visited this time were unacceptably low and raise very serious concerns about the health of their inhabitants, especially children.
 38. The Commissioner appreciated the discussions that he had the opportunity to hold with Roma people living in the above settlements and members of their families. Many of them expressed their deep disappointment for the lack of dialogue between the Roma communities and the municipal or national authorities. Roma representatives in the Casilino 900 camp informed the Commissioner of and expressed anxiety about local residents' intolerant stance towards their community and the reported local authorities' plan to close down their camp and move the Roma populations soon to three big new settlements in the periphery of Rome. Certain of them expressed their wish to remain in their camp, on condition that measures are taken for ameliorating the living conditions there, referring at the same time to certain good housing practices followed in other Italian cities like Turin and Padua. A forced removal of families to other areas of Rome would also affect seriously Roma children's life and their attendance in schools, a serious issue to be taken into consideration by the authorities.
 39. The Commissioner raised these issues during his meeting with the Mayor of Rome and noted with satisfaction the assurances given by the latter of looking seriously into these issues, despite the delays that have occurred so far. The Mayor of Rome stressed his plans to have ready by the end of the year regular settlements for all Roma living in his constituency. The construction of these settlements is hoped to provide Roma also with employment opportunities. The Mayor informed the Commissioner that he had planned to meet Roma representatives the week following the latter's visit, making thus a positive step towards the establishment of a direct contact and dialogue with the Roma communities in Rome. He also noted that in all new Roma settlements there would be representatives of the Roma inhabitants so that direct communication and consultations will be possible. The Commissioner appreciated the Mayor's and his Counsels' openness to dialogue with the Roma communities and their expressed determination to invest time and resources for the prompt amelioration of the living conditions, including health protection and schooling, of the Roma populations in the Italian capital.
 40. Roma in the Casilino 900 camp expressed anew to the Commissioner their special concern about the cases of de facto or de iure stateless Roma from former Yugoslavia, especially minors who, even though they may attend Italian schools until the age of sixteen and have in general access to health care, encounter various, serious administrative difficulties. On 15 January the Commissioner discussed this serious issue with Secretary of State Mantovano who showed understanding and informed the Commissioner that a pertinent Bill that aimed to cover minors between the ages of 13

and 18 had been tabled before the Senate for approval and subsequently transmitted to the Parliament for examination in the context of a draft law on citizenship. The Commissioner awaits more information thereon.

41. As regards the census of Roma that took place in 2008, the Commissioner has taken note of the very serious concerns expressed by the European Parliament in its resolution of 10 July 2008 'on the census of Roma on the basis of ethnicity in Italy'²¹, that followed the declaration by the Prime Minister on 21 May 2008 of a state of emergency in relation to 'nomad settlements in the regions of Campania [Naples], Lazio [Rome] and Lombardy [Milan]' and the promulgation of the Prime Minister Orders on 30 May 2008, that referred to a 'widespread public alarm' caused by the 'numerous illegal non-Community nomad settlements of an 'extremely precarious nature'.
42. The Commissioner noted with particular concern that even though the census of Roma populations in regular and irregular settlements in the regions of Campania (Naples), Lazio (Rome) and Lombardy (Milan) started in June, soon after the promulgation of the relevant three Prime Minister Orders of 30 May 2008, the Italian Data Protection Authority (DPA) by a press release of 14 July 2008²² made known that it had not, by that time, received information on the above census and that, as a consequence, it could not pronounce itself thereon. The DPA however, by decision of 17 July 2008, approved the draft Guidelines of the Interior Ministry concerning the implementation of the census in the above-mentioned regions, which were issued on the same date.
43. In these Guidelines it was noted that data collected before the publication of the Guidelines 'may no longer be used and/or kept if processed in violation of [the Guidelines]'. According to the Guidelines 'no database will be created' while 'the information gathered will eventually be archived and stored in the same way as data for all citizens, under the responsibility of the organizations authorized to keep this information (e.g. public records offices, police, social security, health authority, etc)'. It is also noted therein that the 'Commissioner will entrust the Italian Red Cross with the responsibility for processing the data gathered during their collaboration, which should ensure that sensitive data remains confidential and is used exclusively for the intended purpose in accordance with the legislation in force'.
44. On 21 July 2008, in their response to the Commissioner's Memorandum, the Italian authorities submitted that for this census 'various forms of recognition can be used: descriptive, photographic, anthropometric and fingerprint identification'. The last method could be used only if it would not be possible 'to obtain a valid identification through available documents and certain circumstances'. As regards in particular minors they would be fingerprinted only from the age of 14 onwards 'when other means are not implementable'. However, the authorities added that fingerprinting of minors between the age of 6 and 14 could also be carried out 'in order to grant stay permission...upon request by the individual exercising the legal authority over the child concerned...[or] upon agreement with the juvenile tribunal and through the judicial police'. It was also noted that fingerprinting of minors under the age of six would take place exceptionally in cases of abandoned children or of a suspicion that they could be victims of crime. According to the Guidelines such data once collected 'must not be kept in a separate register but will be kept in the archives already provided for by law, for example in the register of foreign nationals kept at police headquarters, or at the Prefecture, for persons applying for a residence permit, or the citizenship archive, for persons applying for citizenship'.

²¹Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0361+0+DOC+XML+V0//EN&language=EN>.

²² Press release available at: www.garanteprivacy.it.

45. The Commissioner has been informed that on 21 July 2008 an action was lodged with the Mantova (Lombardy region) civil court by a number of Italian Sinti and two non-governmental organizations against the aforementioned declaration and Orders of the Prime Minister relating to the 'state of emergency' and the census of the Roma and Sinti populations in their settlements, arguing that these acts targeted Roma and Sinti in the above region, thus being discriminatory on ethnic grounds. On 9 January 2009 the action was rejected by the above civil court indicating that it was not competent to adjudicate on the issue, indicating the administrative court of Rome as competent in this respect.
46. By letter of 5 December 2008 the Italian authorities informed the Commissioner that the census of Roma populations in settlements by the 'Governmental Commissioners' was concluded on 15 October 2008 and that it 'represents a preliminary, fundamental stage, to ensure the adoption by the Italian authorities of social, welfare and integration measures, aimed at improving the living conditions of Roma people'. This was confirmed by the Secretary of State Mantovano during his meeting with the Commissioner on 15 January. The Secretary of State also stressed that the urgent legislative and administrative measures taken with regard to the Roma settlements were considered necessary for the preservation of public order therein.
47. According to the above-mentioned letter, a total of 167 settlements have been counted of which 124 unauthorised and 43 authorised. Also, a total of 12 300 individuals have been registered, 5 400 of whom are children. During the Commissioner's visit, the President of the Italian Data Protection Authority noted that the majority of the Roma registered were Italian nationals. The authorities have also clarified that the census was carried out by state police forces in close cooperation with the Italian Red Cross and the municipal police forces, while the relevant 'data collection and filing procedure' will comply with the national law on personal data protection (N° 196/2003) and the DPA's directives.

Conclusions and Recommendations

48. The Commissioner wishes to underline that the vast majority of Roma and Sinti in most of the Council of Europe member states, including Italy, remain in urgent need of effective protection of their human rights, especially their social rights, such as the right to adequate housing and to education, by national, regional and local authorities.
49. The Commissioner urges anew the Italian authorities to adopt and implement promptly a coherent, comprehensive and adequately resourced national and regional strategy with short- and long-term action plans, targets and indicators for implementing policies that address legal and/or social discrimination against Roma and Sinti, in accordance with the Council of Europe Committee of Ministers Recommendation CM/Rec(2008)5 *on Policies for Roma and/or Travellers in Europe* (20/02/2008).²³ The authorities are urged in particular to effectively monitor and publish regular evaluation reports on the implementation and impact of the above action plans, in line with the above Recommendation.
50. The Commissioner recommends that priority be also given by the authorities to the establishment of a legal aid system, possibly in cooperation with competent non-governmental organizations, able to provide effective legal aid to Roma and Sinti in need of it, especially those who are de facto or de iure stateless.
51. At the same time, the authorities are urged to create a consultative mechanism, at national, regional and local levels, which would ensure an institutionalised, open, sincere and continuous dialogue with representatives of the Roma and Sinti in Italy on all major issues concerning their daily lives, especially those affecting housing and children's

²³ Available at: www.coe.int/t/cm.

- education. Consultative bodies should have a clear legal status and be inclusive and representative in order to promote the effective participation of Roma and Sinti in cultural, social and economic life and in public affairs, in accordance with the Council of Europe standards.²⁴
52. As regards the issue of evictions of Roma and Sinti the Commissioner stresses that these should never take place if the authorities are not in a position to make available alternative, adequate accommodation for which the persons affected should be consulted with. If such evictions are deemed justified they should be carried out in a manner that fully respects the safety and dignity of the persons concerned. Effective legal remedies should also be available to those affected by eviction orders. The authorities' attention is drawn to the pertinent case law of the European Committee of Social Rights²⁵ and to the specific guidelines on forced evictions provided by the United Nations Committee on Economic, Social and Cultural Rights in 1997²⁶ and by the United Nations Special Rapporteur on Adequate Housing in 2007.²⁷
53. Special attention should be given to the effective protection of the human rights of Roma and Sinti children, as enshrined notably in the UN Convention of the Rights of the Child. In cases of evictions or agreed removals, authorities are urged to pay special attention to the issue of Roma and Sinti children's schooling that is unavoidably disrupted in such circumstances.
54. With regard to the completed census of Roma and Sinti populations in their settlements, the Commissioner appreciates the authorities' declared intention to adopt, through this census, 'social, welfare and integration measures aimed at improving the living conditions of Roma people'. However, he remains deeply concerned about the appropriateness of initiating such a large scale operation that was basically managed by the police and linked to a 'state of emergency relating to nomad settlements' and a relevant 'widespread public alarm'.
55. It is to be noted that the personal data collected and processed in this case are by definition 'sensitive' since they concern exclusively persons of a specific ethnic or racial origin. Processing of such data is in principle prohibited under European law and allowed under very strict conditions (see below).
56. The Commissioner notes that the collection and processing of such sensitive data, in combination with the extremely polarized political context that had been created by the 'state of emergency' and certain authorities' public statements had a serious negative effect upon the Roma and Sinti populations that were targeted and on their image to the public at large.
57. The Commissioner recalls that the collection and storage (processing) of sensitive personal data of Roma should have responded to the fundamental principle of necessity which has been established in European personal data protection law.²⁸ In other words,

²⁴ See Advisory Committee of the Framework Convention for the Protection of National Minorities, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008, available at: www.coe.int/t/dghl/monitorings/minorities/3_FCNMdocs/PDF_CommentaryParticipation_en.pdf.

²⁵ See Case Law Digest of the European Committee of Social Rights, available at: www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestIndex_en.asp.

²⁶ UN CESCR, *The right to adequate housing: forced evictions*, General Comment 7, 20/05/1997, available at: www2.ohchr.org/english/bodies/cescr/index.htm.

²⁷ UN Special Rapporteur on Adequate Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, 05/02/2007, www2.ohchr.org/english/issues/housing/index.htm.

²⁸ See inter alia paragraph 2 of Explanatory Report to the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Article 7 of Directive

the collection and storage of sensitive personal data of Roma that took place should have been absolutely necessary for the accomplishment of the authorities' aim of ensuring 'the adoption of social, welfare and integration measures, aimed at improving the living conditions of Roma people'. In view also of the fact that most of these people that were finally registered were Italian citizens, it is well arguable that the above aim could have been achieved without such a large-scale emergency census and processing of sensitive personal data.

58. The Commissioner recalls also the Council of Europe standards concerning the collection and processing of personal data, especially the ones relating to one's ethnic origin ('special' or 'sensitive' data). Relevant guidelines are found notably in the case law of the European Court of Human Rights, the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the later European Community Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
59. On the basis of these legal sources, the following principles may be usefully recalled: a) All processing of personal data must be based on a domestic law that satisfies the quality criteria provided for by the European Convention on Human Rights, that is, it should be characterized by precision, accessible and foreseeable and afford a degree of effective legal protection against arbitrary interference by the authorities;²⁹ b) The collection of sensitive data on individuals, such as those relating to their ethnic origin is prohibited, as a matter of principle. Exceptions may be provided for by law that conforms to the aforementioned quality criteria and strictly in the cases provided for by Article 8, paragraph 2, of Directive 95/46/EC; c) There must be limits to the length of time for which once collected information can be retained; d) All personal data processing operations should be subject to close and effective supervision by independent and impartial data protection authorities.
60. The Commissioner remains seriously concerned about the compatibility of the Roma and Sinti census operation that occurred with the above-mentioned principles. He reiterates the need for public authorities to show their commitment to the enhancement of the human rights of Roma and Sinti by adopting and implementing urgently a national strategy, in accordance with the aforementioned Committee of Ministers' Recommendation CM/Rec(2008)5 on *Policies for Roma and/or Travellers in Europe*, in close cooperation and consultation with the Roma and Sinti populations concerned.

III. The protection of human rights of immigrants and asylum seekers

61. The Commissioner recalls that in the year 2008 the following major migration-related pieces of legislation were adopted or drafted in Italy:
62. Law Decree N° 92 of 23 May 2008 (converted into Law N° 125 of 24 July 2008) entitled 'Urgent measures concerning public security'³⁰ which included the following provisions:
- a) Aliens are deported and EU nationals are removed from the territory by court decision if sentenced to more than two years' imprisonment;

95/46/EC and *Heinz Huber v Bundesrepublik Deutschland*, judgment of 16/12/2008 by the European Court of Justice (Grand Chamber).

²⁹ See *Segerstedt-Wiberg and others v Sweden*, judgment of 06/06/2006, paragraphs 74-80, *S. and Marper v United Kingdom*, 04/12/2008 (Grand Chamber), paragraphs 95-104.

³⁰ This type of legislation is adopted in circumstances where the adoption of urgent measures is considered necessary by the government. It is always subject to approval by Parliament within 60 days and to possible review by the Constitutional Court.

- b) The irregular status of aliens who commit a criminal offence is added to the list of aggravating circumstances of the Criminal Code;
 - c) The letting of accommodation to irregular migrants is subject to a sentence ranging from 6 months to three years' imprisonment. As soon as the relevant judgment is final, the building is seized, unless it belongs to a person not related to this offence. The revenues originating from the sale of seized property may be used by the state for the reinforcement of activities aimed at the prevention and repression of the offences related to irregular migration;
 - d) The 'Temporary Residential and Assistance Centres' (CPTAs), where there have been detained immigrants subject to expulsion or asylum seekers during examination of their applications, are renamed 'Identification and Expulsion Centres';
 - e) Mayors have the power to adopt, inter alia, urgent measures for coping with 'threats to public and urban security'.
63. The Commissioner has taken note of the EU Commission's declaration of 23 September 2008 according to which the above Law Decree 'poses problems of compatibility with Community Law, in particular concerning the rules on the automatic expulsion of EU citizens'.³¹
64. In addition, a draft Law 'on public security' was presented to the Parliament on 3 June 2008. After his visit to Italy the Commissioner was informed that this draft legislation was approved by the Senate on 5 February and transmitted to the Chamber of Deputies. Major alien-related provisions of this draft Law are the following:
- a) The initial draft provided that irregular entry would be subject to a sentence of imprisonment ranging from six months to four years. In these cases, the court, following proceedings that should be the swiftest possible, should also order the aliens' expulsion. The draft Law that was subsequently approved by the Senate provides not for a sentence of imprisonment but for a pecuniary penalty ranging from 5 000 to 10 000 Euros (the offence remaining of a criminal nature);
 - b) Aliens may be detained in the 'Identification and Expulsion Centres' for 60 days in order to be identified. The initial proposal to extend the detention up to 18 months has been rejected by the Senate;
 - c) The Head of Police, even before the deadline of the sixty days of detention may carry out an alien's expulsion, informing immediately also the competent court;
 - d) The acquisition of Italian citizenship by marriage would be possible after two years' residence in Italy or three years' residence abroad;
 - e) The first request or the renewal of the residence permit is charged with a financial contribution ranging from 80 to 200 Euros. Exceptions are made for permits granted for asylum, subsidiary protection and humanitarian reasons;
 - f) A foreign national who, upon request of law enforcement officials, does not show his or her passport or other identification document and the residence permit may be sanctioned with imprisonment (of up to one year) and a fine of 2 000 Euros;
 - g) Medical personnel is allowed to report to the authorities the irregular residence of a foreign national who accesses health structures (modifying thus Law 286/1998 that expressly guaranteed the principle of medical confidentiality);
 - h) In case of non abidance by an expulsion order, foreign nationals may be sanctioned with an imprisonment ranging from six months to five years;
 - i) In cases of requests of money transfer abroad, non-EU nationals should provide their residence permit; in cases where such a permit does not exist, the local police should be informed within twelve hours. If the money-transfer agency does not comply with this provision, its license shall be withdrawn.

³¹ Declaration by EU Commission Vice-President Barrot on the 'Italian Security Package', 23/09/2008, available at: http://ec.europa.eu/commission_barroso/barrot/news/archives_2008_en.htm.

65. Finally, three Legislative Decrees were prepared by the authorities with a view to modifying existing legislation that has transposed three EC Directives relating to immigration and asylum (2004/38 on EU citizens' freedom of movement and residence, 2003/86/EC on family reunification and 2005/85/EC on refugee status recognition procedures). Only the last two Legislative Decrees have been approved by Parliament to date. The first draft Legislative Decree has been pending following the declaration by the EU Commission that it 'poses problems of compatibility with Community law'.³² Major provisions included in these Decrees are the following:
- a) As regards EU citizens' freedom of movement and residence, EU citizens wishing to reside in Italy for more than three months will have to prove that they have sufficient means, from legal sources, to sustain themselves and their families. They should also have a medical insurance or voluntarily registered in the National Medical Service.

EU citizens may be removed from the territory on grounds of 'public security' which include, inter alia, the fact that they have not registered with the competent authorities within 10 days after the three month period or if they may be considered as a concrete, real and serious threat to fundamental human rights or to 'public security' or public morals. Their removal will be urgent if their stay seems to be incompatible with a 'civil and safe cohabitation'. Previous domestic or foreign convictions of the persons concerned will also be taken into account in this context.
 - b) As regards family reunification (of third country nationals (non-EU citizens)),³³ DNA tests may be requested to take place at the applicants' expenses in cases where the conditions for reunification may not be verified with certainty through documents submitted by the authorities of the applicants' country of origin, either due to the absence of a recognised authority or if there are doubts about the authenticity of the documents procured.
 - c) As regards in particular asylum seekers,³⁴ if they are issued with an expulsion or rejection order prior to filing their asylum application, they will no longer be hosted in open reception centres but they will be held in the 'Identification and Expulsion Centres'. Their detention period there may be extended up to 60 days. The suspensive effect of appeals against first instance negative decisions stands as a general rule. However, appeals now do not have a suspensive effect in a large number of cases.³⁵
66. In this context, and as regards the Commissioner's earlier recommendation that Italy proceed to the ratification of the 1997 European Convention on Nationality, the Italian authorities by their letter of 5 December 2008 pointed out that Article 6, paragraph 4 f (according to which states parties shall facilitate in their internal law the acquisition of its nationality by 'persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned') contravenes the principle of *ius sanguinis* established in

³² Declaration by EU Commission Vice-President Barrot on the 'Italian Security Package', 23/09/2008, available at: http://ec.europa.eu/commission_barroso/barrot/news/archives_2008_en.htm.

³³ Legislative Decree N° 160 of 03/10/2008, in force as from 05/11/2008.

³⁴ Legislative Decree N° 159 of 03/10/2008, in force as from 05/11/2008.

³⁵ These cases are: a) the asylum seeker was hosted in open reception centres after being arrested for avoiding or trying to avoid border controls or immediately after, or after being arrested in conditions of irregular stay; b) asylum seekers are held in 'Identification and Expulsion Centres'; c) the asylum application is inadmissible; d) the asylum seeker left the reception or detention centre without justification; e) the asylum application is manifestly unfounded. In all these cases, suspensive effect may be granted by the Court when there are serious and well-founded reasons. Exceptionally stay may also be allowed by the Prefect for serious, personal or health, reasons.

- Italian law. It is to be noted that according to the Explanatory Report to this major Council of Europe treaty, the above specific provision intends to cover 'applications mainly from second- and third-generation migrants [who are] more apt to integrate into the society of the host State, as they will have spent part or all of their childhood in the territory of that State, and should therefore be granted facilitated acquisition of nationality.'³⁶
67. During his meeting with Secretary of State Mantovano on 15 January the Commissioner raised the issue of de facto or de iure stateless Roma from former Yugoslavia especially minors who, even though they may attend Italian schools until the age of sixteen and have in general access to health care, encounter various, serious administrative difficulties. Secretary of State Mantovano showed understanding and informed the Commissioner that a pertinent Bill covering minors between the ages of 13 and 18 had been tabled before the Senate for approval and subsequently transmitted to the Parliament for examination in the context of a draft law on citizenship. The Commissioner commends this flexible approach, despite the principle of *ius sanguinis*, and looks forward to receiving further information thereon.
68. By the letter of 5 December 2008 the Italian authorities also informed the Commissioner that the national 'state of emergency' (as from 5 August 2008, extended until end of 2009) was declared by the Ministry of Interior on 29 July 2008 with the aim of 'better managing the extraordinary immigration flows at the national level, and thus facilitating also the implementation of those administrative procedures related to the emergency' (concerning migrants' reception). It is understood that such 'states of emergency' had been declared in the past in certain regions in order for the Ministry of Interior to use funds allocated for the 'civil protection' in emergency cases like earthquakes or floods. As a consequence of the latest national state of emergency it was reported that 3 000 soldiers were deployed in the country to monitor stations, embassies and foreign nationals' detention centres.
69. The Italian authorities have submitted to the Commissioner that the state of emergency did not entail any limitations to human rights and fundamental freedoms of either citizens or foreign nationals and that it was caused by the 'continuous flows of immigrants reaching the Southern Italian coasts, since February/March 2008' and the need for aid to be provided by other regions to the southern regions of Sicily, Apulia and Calabria.
70. The Commissioner has been informed that the irregular migrants who entered irregularly Italy by sea in the year 2008 reached the number of 36 952 of whom 30 657 arrived on the island of Lampedusa. The respective numbers in 2007 were 20 455 and 11 749. The top eight countries of origin in 2008 were Tunisia, Nigeria, Somalia, Eritrea, Egypt, Algeria, Ghana and Morocco.³⁷ UNHCR has stressed that the vast majority of these irregular migrants, who usually transit Libya, apply for asylum and more than half of them are found to be in need of international protection.³⁸ Secretary of State Mantica during the meeting with the Commissioner on 15 January expressed his concern about the volume of these migratory inflows and stressed the need for better interstate coordination, in particular in the context of the European Union, and action in support of states, like Italy, which are the first recipients of migratory flows.
71. Following the arrival of more than 2 000 irregular migrants on Lampedusa in the last week of last December, the Minister of Interior was reported declaring his intention to proceed to 'direct returns' of these irregular migrants.³⁹ During his visit in January the Commissioner also noted on the streets of Rome a number of posters placed by the

³⁶ See text at: <http://conventions.coe.int/Treaty/en/Reports/Html/166.htm>.

³⁷ Ministry of Interior data reproduced in *Corriere della Serra*, 15/01/2009, p. 11.

³⁸ UNHCR, press release of 09/01/2009, available at: www.unhcr.org.

³⁹ *Le Monde*, 31/12/2008, 14:45, www.lemonde.fr.

- political party coalition 'Popolo della Libertà' advertising the Rome Mayor's 'numbers: 6 216 expulsions in 2008'.
72. In this context, the Commissioner notes that by its Decision of 11 May 2006 the European Court of Human Rights has declared admissible the complaints of a number of irregular migrants who had arrived on the Italian isle of Lampedusa and were subject to expulsion to Libya. The applicants' complaints concerned notably alleged violations of Article 3 of the Convention and Article 4 of Protocol N°4 to the Convention.⁴⁰
73. During his visit the Commissioner was also informed of the decision taken by the Minister of Interior to deploy two commissions as from 16 January 2009 on Lampedusa in order to process asylum applications in situ, while the transfers that used to take place from that island to Sicily and other regions were suspended. UNHCR representatives in Rome expressed to the Commissioner serious concerns about this practice, given the non-existence of proper infrastructures on Lampedusa that could guarantee proper accommodation for the potential asylum seekers and examination of their claims. A few days after the Commissioner's visit to Italy it was reported that the number of irregular migrants (including asylum seekers) obliged to stay on Lampedusa approached 2 000 while the capacity of the reception centre there was 850.⁴¹
74. On 15 January the Commissioner expressed his serious concern about this situation to the Secretary of State Mantovano. The Secretary of State assured the Commissioner that Italy would not fail to ensure the proper application of international and European standards on Lampedusa and effective access to the asylum procedures, including effective remedies, for all asylum seekers, while the reception centre on the island, established to temporarily accommodate people rescued at sea, would remain a model for responsible management of mixed migratory flows.
75. Last but not at all least, the Commissioner has taken note of the significant number of unaccompanied migrant children who enter the country in an irregular manner and reside in Italy, mostly in Rome. By the end of 2006 there were recorded 6 551 such children, coming mostly from Romania (36%), Morocco (22%) and Albania (15%). Most of them (73%) were between 15 and 17 years old and male (85%).⁴² Many of these children are reportedly involved in irregular employment as well as in begging, theft and sex work.⁴³ Thus the authorities' special attention and the provision of protection to these minors are required.
76. Even though Italy has ratified all major international human rights treaties, including the UN Convention on the Rights of the Child, and despite the commendable efforts made by Italy in this domain, recent expert reports have highlighted a series of major shortcomings, such as delays in identifying the presence of unaccompanied migrant children in the country, long detention of non-EU unaccompanied migrant children in administrative detention centres, lack of adequate law and policy regarding guardianship⁴⁴ and serious lack of homogeneity in the application of the law concerning

⁴⁰ *Ahmed Hussun and 4 others*, Appl. N° 10171/05, *Yasser Mohammed and another*, Appl. N° 10601/05, *Mohamed Salem and 78 others*, Appl. N° 11593/05, *Kamal Midawi* Appl. N° 17165/05.

⁴¹ UNHCR press release of 23/01/2009, available at: www.unhcr.org, ANSA press release of 21/01/2009, 15:02, available at www.ansa.it.

⁴² See E. Rozzi, *The Situation of EU and non-EU Separated Children in Italy*, *E-migrinter* n° 2 2008, pp. 13-26 at 14, available at: www.mshs.univ-poitiers.fr/migrinter.

⁴³ See Save the Children-Italy, *Opportunities and Challenges for Social Intervention Aimed at Migrant Minors*, Rome, 2008, p. 8, available at: www.savethechildren.it

⁴⁴ See E. Rozzi, *The Situation of EU and non-EU Separated Children in Italy*, *E-migrinter* n° 2 2008, pp. 13-26 at pp.15-17, available at: www.mshs.univ-poitiers.fr/migrinter.

unaccompanied migrant minors.⁴⁵ These shortcomings compound the vulnerability of these children and make them easy prey to many kinds of exploitation and criminality.

Conclusions and Recommendations

77. While recognizing the serious challenges that large migratory flows present to state mechanisms, the Commissioner wishes to reiterate that legislative and other measures adopted by Council of Europe member states in order to effectively deal with such pressures should fully abide by international and European human rights law and standards. In this regard, the Commissioner wishes to reiterate his disapproval of bilateral or multilateral agreements for the forced returns of irregular migrants with countries with long-standing, proven records of torture.
78. The Commissioner on the date of his arrival in Rome noted with interest the special meeting that took place on that date in Rome between the Ministers of Interior of the 'Quadro Group' (Cyprus, Greece, Italy and Malta) that reportedly aims at ensuring that the particular issues relating to irregular migration into southern European states are analysed and coped with in the context of the European Union. The Commissioner considers that other Council of Europe member states and European intergovernmental organizations, especially the European Union, have an important role to play in the elaboration and implementation of an efficient immigration and asylum system in member states of southern Europe.⁴⁶
79. The Commissioner wishes to underline that what requires states' particular attention is the fact that among irregular migrants there are usually a substantial number of people who flee persecution or violence that necessitate the provision of international protection to them by European states. As at 1 September 2008 Italy ranked eighth, with a percentage of 4.4%, among the 44 'industrialised countries' that received asylum claims following the US, Canada, France, the UK, Sweden, Germany and Greece.⁴⁷
80. The Commissioner recalls that about 75% of the irregular migrants who reached Italy by sea in 2008 applied for asylum and around 50% of them were granted refugee or subsidiary refugee status.⁴⁸ As a consequence, any legislative or administrative measures adopted with a view to tackling the phenomenon of irregular migration and entry into the country should not fail to take into proper consideration the particular needs of people who arrive in Europe and are in need of international protection.
81. The Commissioner commends the determination that was shown to him by the competent authorities to uphold a high level of provision of international protection to all foreign nationals in need thereof. He also commends the humanitarian spirit and efforts made every year by the Italian Coast Guard or other agencies as well as fishermen who collect and rescue hundreds of irregular migrants at sea, while trying to reach Italy.
82. In this regard, the Commissioner draws the authorities' attention to the Council of Europe Committee of Ministers' *Twenty Guidelines on Forced Return* (2005),⁴⁹ especially to Guideline 20 that regards monitoring and remedies of forced returns. Translation into

⁴⁵ See Save the Children-Italy, *Opportunities and Challenges for Social Intervention Aimed at Migrant Minors*, Rome, 2008, pp. 20-24, available at: www.savethechildren.it.

⁴⁶ See also Council of Europe Parliamentary Assembly, Resolution 1637 (2008), *Europe's 'boat people': mixed migration flows by sea into southern Europe*, available at: <http://assembly.coe.int>.

⁴⁷ UNHCR, *Asylum Levels and Trends in Industrialized Countries, First Half 2008*, 17/10/2008, p. 4, available at: www.unhcr.org.

⁴⁸ UNHCR, press release of 09/01/2009, available at: www.unhcr.org.

⁴⁹ Available at: www.coe.int/t/cm.

- Italian and dissemination of these Guidelines to all competent administrative and judicial authorities, especially in border areas, would be highly advisable.
83. The Commissioner remains very concerned at the new draconian legislative measures on immigration and asylum which have been adopted or are under consideration by Italy. Of special concern are still the provision of Law N° 125 of 24 July 2008 that added to the list of aggravating circumstances of the Criminal Code the irregular status of aliens who commit a criminal offence, as well the one that criminalises the letting of accommodation to irregular migrants.
84. Criminalization is a disproportionate measure which exceeds a state's legitimate interest in controlling its borders and corrodes established international law standards that run counter to this kind of measures. To criminalize irregular migrants, in effect, equates them with the smugglers or employers who, in many cases, have exploited them. Such a policy would cause further stigmatization and marginalization, even though the majority of migrants contribute to the development of European states and their societies. Immigration offences should remain administrative in nature.⁵⁰ The Commissioner firmly opposes measures criminalizing irregular migration since they may result only in a further rise of anti-immigration and xenophobic climate in the country, despite the authorities' declared intentions. The authorities are urged to review the above provisions immediately.
85. The Commissioner is seriously concerned about the negative effect that the draft law on 'public security', adopted by the Senate on 5 February 2009, may have on human rights standards. He is particularly worried about the decision to lift the ban on doctors and medical administrative personnel to report to the authorities irregular migrants who access the health system. By modifying Law Decree 286/1998 (*Testo Unico sull'immigrazione*), the draft law (subject to discussion by the Chamber of Deputies at the time of the drafting of the present report) would allow doctors and medical administrative personnel to disclose information gathered in the course of their duties, in contravention of the principle of medical confidentiality.
86. In this context, the Commissioner recalls that the European Court of Human Rights has made clear that personal information gathered by medical professionals in performing their duties is to be considered as belonging to the individual's private life. In particular, the Court affirmed that 'the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. [...] It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general'.⁵¹
87. Furthermore, the Commissioner is worried that the above draft law, if adopted, would have as an effect a further marginalisation and stigmatisation of irregular migrants and make them even more vulnerable and reluctant to access the health system. The draft law raises serious issues of compatibility notably with Article 12 of the International Covenant on Economic, Social and Cultural Rights and with General Comment No 14 (2000) on *the right to the highest attainable standard of health*, of the UN Committee on Economic, Social and Cultural Rights.⁵²

⁵⁰ See also Commissioner's Viewpoint, 'It is wrong to criminalise migration', 29/09/2008, available at: www.coe.int/t/commissioner/Viewpoints/080929_en.asp

⁵¹ See *Z v. Finland*, judgment of 25/2/1997, paragraph 95. This principle was confirmed in *L.L. v. France* judgment of 10/10/2006 and reiterated in *I v. Finland*, judgment of 17/07/2008.

⁵² See in particular para 34: '...States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from

88. In view of the above, the Commissioner, taking also into consideration positions publicly expressed by doctors' associations and political and civil society representatives in Italy, recommends that the authorities review the draft law on 'public security' with a view to fully aligning it with international human rights standards.
89. As regards in particular the Romanian Roma migrants, some of whom the Commissioner met in irregular, substandard settlements in Rome (see previous section), the authorities are urged to adopt immediately measures in order to ensure the effective exercise by these migrants of their right to housing and the other fundamental social rights enshrined in the European Social Charter (revised), as well as in the European Convention on the Legal Status of Migrant Workers,⁵³ both of which have been ratified by Italy.
90. In this context, the Commissioner urges anew the authorities to withdraw Italy's declaration made upon ratification on 26 May 1994 and extend the application of the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (1992) to Chapter C of this treaty concerning the right to vote in local authority elections. Ratification of the 1997 European Convention on Nationality, signed on 6 November 1997, would also be a very positive step in this context.
91. Finally, as regards unaccompanied migrant children, the Commissioner recalls and draws the authorities' attention to the Council of Europe Committee of Ministers' Recommendation CMRec(2007)9 *on life projects for unaccompanied migrant minors*.⁵⁴ By this Recommendation Council of Europe member states have been encouraged to develop 'life projects' aimed at developing the capacities of minors, allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. In order to achieve this, national life projects, fully in accordance with the best interests of the child should pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment.
92. Moreover, the Commissioner urges the Italian authorities to proceed, as soon as possible, to the ratification of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (in force as from 1 February 2008), which was signed by Italy on 8 June 2005. This treaty contains significant provisions for the promotion and protection of the rights of victims of trafficking, including children, such as those regarding age disputes, protection of private life, trafficked children's access to education and their special protection in court proceedings.
93. The Commissioner notes, in particular, Article 10, paragraph 4, of the above Convention which prescribes that, as soon as an unaccompanied child is identified as a victim of trafficking, states parties should: a) provide for representation of the child by a legal guardian, organization or authority which shall act in the best interests of that child; b) take the necessary steps to establish the child's identity and nationality; c) make every effort to locate the child's family when this is in the best interests of the child.

enforcing discriminatory practices as a State policy...', available at:
<http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁵³ Available at: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>.

⁵⁴ Adopted on 12/07/2007, available at: www.coe.int/t/cm.

IV. Foreign nationals' forced returns and compliance with the Rule 39 requests of the European Court of Human Rights

94. The Commissioner has been informed of and concerned by the case of a Tunisian national, Mr Loubiri Habib, who was reportedly subjected to torture in Tunisia after his deportation from Italy in August 2006, following his acquittal of terrorism-related charges. According to a memorandum submitted to the Commissioner by his lawyer, the rapidity of that deportation did not allow him to submit an application and a request for a stay of deportation under Rule 39 (interim measures) of the European Court of Human Rights.
95. In his Memorandum the Commissioner noted with grave concern another deportation case (that of Cherif Foued Ben Fitouri) from Italy to Tunisia in January 2007 under the 'Pisanu Law' on 'emergency measures to combat international terrorism'. Credible reports have shown that the deportee was subjected to torture and other forms of ill-treatment while he was in detention in Tunisia.⁵⁵
96. In June 2008 the Commissioner was informed of a new deportation to Tunisia under the same Law (case of Essid Sami Ben Khemais), this time even though the deportee had earlier lodged an application with the European Court of Human Rights and the latter had requested Italy, under its Rule 39, to suspend the deportation until it had time to examine the applicant's claim that he would face the real risk of torture or serious ill-treatment if returned to Tunisia.
97. On 9 June 2008 the Commissioner addressed a letter to the Italian authorities conveying his concerns and requesting explanations about the policy course which was illustrated by the above deportation to Tunisia.⁵⁶
98. During his visit to Italy last June, the Commissioner expressed to the Minister of Interior his particular concern at this deportation which happened in contravention of Article 34 of the European Convention on Human Rights (individual right to submit an application to the Court) and the Court's established case law under which Rule 39 requests by the Court are legally binding upon respondent states. The Commissioner also requested the Minister to take the appropriate measures so that the authorities effectively monitor the above deportee's reception and protect his safety and dignity while in Tunisia.
99. The Commissioner has noted that by judgment of 24 February 2009 the European Court of Human Rights found that Italy in this case violated Article 3 (prohibition of torture) of the European Convention on Human Rights by having exposed the applicant to a serious risk of treatment in Tunisia contrary to Article 3. The Court took into account, inter alia, the fact that neither the applicant's Italian lawyer nor the Italian Ambassador to Tunis had the possibility to visit the applicant in prison and examine whether his physical integrity and human dignity were effectively respected.⁵⁷
100. The Court found also a violation by Italy in this case of Article 34 (individual applications) of the Convention given Italy's non-abidance by the Court's interim measure that had been indicated under Court Rule 39. The Court noted, inter alia, that the government, before the deportation, had not requested the removal of the interim measure that had

⁵⁵ See Amnesty International, *Report 2008*, London, 2008, entry on Italy p. 170, Amnesty International, *In the Name of Security: Routine Abuses in Tunisia*, London, 23/06/2008, pp. 30-31, available at: www.amnesty.org.

⁵⁶ The deportee reportedly was subject to a trial before a military court in Tunis in July 2008, Amnesty International, *In the Name of Security: Routine Abuses in Tunisia*, London, 23/06/2008, p.29, available at: www.amnesty.org.

⁵⁷ *Ben Khemais c Italie*, arrêt du 24/02/2009, paragraph 64.

- been adopted under Court Rule 39 and was still valid, as well as that it proceeded to the forced return even before receiving diplomatic assurances from Tunisia.⁵⁸
101. The Commissioner was also informed that on 13 December 2008 another Tunisian national, Mr Mourad Trabelsi, was deported to Tunisia, having served a terrorism-related sentence in Italy, even though the European Court of Human Rights in November 2008 had requested the Italian authorities, under Court Rule 39, not to proceed to his deportation while his application before the Court was still pending.
102. The Commissioner has noted in particular that in this case the Italian Territorial Commission for the recognition of refugee status, even though it had rejected the refugee status application, had asked the competent authorities in Milan in November 2008 to issue Mr Trabelsi with a residence permit for humanitarian grounds on the basis, *inter alia*, of Article 3 of the European Convention on Human Rights (prohibition of torture). By the end of December it had been reported that neither the deportee's family nor his lawyer had any information about his whereabouts after his forced return to Tunisia.
103. On 15 January, during the meetings with Secretaries of State Mantica and Mantovano, the Commissioner raised the issue and was informed that the Tunisian Embassy had assured the Italian authorities that Mr Trabelsi has been in detention and visited by his sister and a lawyer. Secretary of State Mantovano assured the Commissioner that forced returns on the basis of diplomatic assurances are monitored by Italy, and noted that in the vast majority of cases Italy abides by the Rule 39 requests made by the European Court of Human Rights.
104. The Commissioner in his Memorandum had noted a third, earlier case of non-respect by Italy of Rule 39 request by the European Court of Human Rights which had taken place in 2005.⁵⁹ In this case, the applicant, a Roma mother of three children, was reportedly deported to Bosnia and Herzegovina in September 2005, even though the Court had earlier applied its Rule 39 and requested a stay of deportation. The Italian authorities, in their reply to the Memorandum, submitted that they subsequently found the applicant in Bosnia and Herzegovina and granted her visa that allowed her to re-enter and live in Italy.
105. Even though these are exceptions to Italy's abidance by Rule 39 requests made by the European Court of Human Rights, the Commissioner remains gravely concerned at these cases which are regrettable and put at a very serious risk the effectiveness of the European system of human rights protection. The Commissioner expressed his serious concern to Secretaries of State Mantica and Mantovano.

Conclusions and Recommendations

106. The Commissioner remains worried by the above situation and feels compelled to stress the following conclusions and recommendations to the Italian authorities:
107. The Commissioner is well aware of the grave difficulties faced by Council of Europe member states in their efforts to protect their societies from terrorist violence. However, European human rights standards prohibit *in absolute terms* torture or inhuman or degrading treatment or punishment of every person, irrespective of their undesirable or dangerous conduct. This prohibition includes facilitating torture or inhuman or degrading treatment or punishment by deporting someone to a country where he faces a real risk of such treatment. As the European Court of Human Rights has stressed, freedom from

⁵⁸ Ibid. paragraphs 86 and 88.

⁵⁹ See case of *Hamidovic v Italy*, Appl. N° 31956/05, pending before the Court.

- torture and ill-treatment corresponds to one of the fundamental values of European democratic societies.
108. The Commissioner strongly opposes the forced return of foreign nationals on the basis of diplomatic assurances which are usually sought from countries with long-standing, proven records of torture.
 109. As regards in particular Tunisia where Italy has forcibly returned a number of persons, the Commissioner has noted credible reports that attest to the existence of a pattern of torture and ill-treatment of detainees in Tunisia especially those arrested in connection with security related offences, including those forcibly returned from abroad.
 110. The Commissioner is particularly concerned by twelve such cases⁶⁰ that have not been resolved domestically and have resulted into applications against Italy, before the European Court of Human Rights, thus burdening and straining even further its docket.
 111. As regards diplomatic assurances in the context of forced returns, the Commissioner wishes to reiterate and stress that the weakness inherent in this practice that is followed by certain member states lies in the fact that where there is a need for such assurances, there is clearly an acknowledged, real risk of torture and ill-treatment. Such assurances should never be relied on, where torture or ill-treatment is condoned by the governments and is widely practised.⁶¹
 112. The inherent weakness of diplomatic assurances has been demonstrated in two major judgments of the Grand Chamber of the European Court of Human Rights, in the cases of *Chahal v the United Kingdom* (15/11/1996) and the aforementioned judgment in the case of *Saadi v Italy* (28/02/2008).⁶² In both cases the Court found that the enforcement of deportation, to India and to Tunisia respectively, of the aliens concerned would constitute violations of Article 3 of the Convention, despite the diplomatic assurances that had been requested (obtained in the former case) by the respondent states.
 113. In such circumstances, the accession of a state to international human rights treaties may not be considered to be in itself, or in combination with diplomatic assurances, a sufficient, reliable guarantee against the real risk of torture or other forms of ill-treatment which are proscribed by Article 3 of the European Convention on Human Rights.⁶³ In such cases, member states are urged to use existing measures alternative to forced return, such as, under Italian law, compulsory residence and special police supervision.
 114. The Commissioner draws the authorities' attention to the Council of Europe Committee of Ministers' *Twenty Guidelines on Forced Return* (2005),⁶⁴ especially to Guideline 20 that regards monitoring and remedies of forced returns. According to paragraph 3 of this Guideline, forced return operations should be fully documented, particularly with respect to any significant incidents that occur or any means of restraint used in the course of the removal operation.

⁶⁰ The Application numbers and names of these cases are: 246/07 (Ben Khemais), 37336/06 (Soltana), 11549/05 (Darraji), 46792/06 (Bouyahia), 2638/07 (Abdelhedi), 37257/06 (O.), 38128/06 (Ben Salah), 44006/06 (C.B.Z.), 16201/07 (Hamraoui), 12584/07 (Sellem), 44448/08 (Drissi), 50163/08 (Trabelsi). In all these cases Rule 39 requests were reportedly made by the Court and Italy has abided by all of them except for those in the cases of Ben Khemais and Trabelsi.

⁶¹ See also Council of Europe Commissioner for Human Rights, *Report on his visit to Sweden (21-23 April 2003)*, CommDH(2004)13, paragraph 19, and *Report on his visit to the United Kingdom (4-12 November 2004)*, CommDH(2005)6, paragraphs 28-30, available at: www.coe.int/t/commissioner.

⁶² Affirmed by the Court in its judgment in the case of *Ryabikin v Russia*, 19/06/2008.

⁶³ See also Grand Chamber of the European Court of Human Rights, judgment in the case of *Saadi v Italy* 28/02/2008, paragraph 147.

⁶⁴ Available at: www.coe.int/t/cm.

115. The Commissioner wishes to underline that in cases of enforced return the deporting State has a duty to effectively monitor the reception of the returnee and ensure full protection of his or her safety and dignity.⁶⁵ In this regard the authorities' attention is usefully drawn also to the Council of Europe Committee of Ministers' *Guidelines on Human Rights and the Fight against Terrorism* (2002), especially Guidelines XII (on asylum, return ("refoulement") and expulsion) and XIII (on extradition).⁶⁶
116. Particularly useful would be the translation into Italian and dissemination to all competent administrative and judicial organs of the *Twenty Guidelines on Forced Return* as well as of the *Guidelines on Human Rights and the Fight against Terrorism*. These Guidelines could be usefully included also in the initial and ongoing training courses of these organs.
117. As regards interim measures ordered by the European Court of Human Rights under its Rule 39, prescribing the halt of an alien's forced removal while it examines his or her individual application, the Commissioner wishes to stress that they are binding and should always be strictly abided by member states, in accordance with the Court's established case law.⁶⁷ Contrary practices occasionally demonstrated are not acceptable and seriously jeopardize the effectiveness of the European system of human rights protection.
118. The authorities are urged to adopt promptly all necessary measures in order to put an end to and prevent these practices, and guarantee Italy's consistent, full and effective compliance with Article 34 of the European Convention on Human Rights.
119. The Commissioner wishes to conclude by noting that he will continue to follow closely relevant developments and intends to take all necessary measures, in accordance with his mandate as an independent and impartial institution of the Council of Europe, in order to promote the effective implementation of the Council of Europe standards. The Commissioner stands ready to continue a sincere, constructive dialogue with and assist the Italian authorities in their efforts to remedy the shortcomings that were outlined in the present Report.

⁶⁵ See, inter alia, European Court of Human Rights, judgment in the case of *Ryabikin v Russia*, cited above, paragraph 119, and Committee of Ministers, *Twenty Guidelines on Forced Return*, cited above, Guideline 20 and its commentary.

⁶⁶ Available at: www.coe.int/t/cm.

⁶⁷ See *Mamatkulov and Askarov v Turkey*, Grand Chamber judgment of 04/02/2005; *Olaechea Cahuas v Spain*, judgment of 10/08/2006.

Appendix

ITALY



MINISTRY OF FOREIGN AFFAIRS

INTER-MINISTERIAL COMMITTEE ON HUMAN RIGHTS
Comitato Interministeriale dei Diritti Umani

**ITALY'S COMMENTS ON THE REPORT
BY MR. T. HAMMARBERG,
COMMISSIONER FOR HUMAN RIGHTS
OF THE COUNCIL OF EUROPE,**

**FOLLOWING HIS VISIT TO ITALY (JANUARY 13-15,
2009)**

Rome, March 2009

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COMM DH (2009)

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I. Introduction

General Remarks

1. The Italian Government reiterates its full commitment to the substantial and constructive dialogue that the Commissioner for Human Rights (hereinafter, the Commissioner) has been developing with the Italian Authorities in the context of his mission, as an independent and impartial institution promoting respect for human rights.
2. The Italian Government has thoroughly examined the draft Report dated February 16, 2009, which was issued following the visit of the Commissioner to Italy on January 13-15, 2009, by paying specific attention to both the factual sections and the relating conclusions and recommendations therein.
3. Once again, the Government reiterates that the promotion and protection of human rights is enshrined in the Italian Constitution. This envisages the protection of all rights and fundamental freedoms as included in relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights.
4. In this context, when developing new national legislation, the Government fully complies with the Italian Basic Law, as well as with the EU's legislation and the relevant international obligations.
5. It should be noted that in its Document of 21 July 2008, the Government commented on the Commissioner's Memorandum, dated 9 July 2008, following his visit to Italy on 19 and 20 June 2008 and that on 5 December 2008 provided additional information at the Commissioner's request. In those Documents the Government has already extensively addressed most of the issues raised by the last Commissioner's Report.
6. The Italian Government suggests that the following comments be taken into account by the Commissioner, when drafting his final Report.

II. Action against racism and xenophobia

7. The Government is pleased that the Commissioner appreciates the initiatives taken to reinforce the anti-discrimination legal framework. In this context, it is worth recalling that the principle of non-discrimination is one of the main pillars of our constitutional code, upon which the domestic legislative system is based and enforced, particularly by the domestic Courts.
8. As far as individual cases are concerned (para. 16 of the Report), the Italian Authorities would like to share with the Commissioner the following information. With regard to the case involving the alleged beating of a 22-year Ghanaian student, Emmanuel Bonsu Foster, by officials of the Municipal Police of Parma, it is to be noted that the National Office Against Racial Discrimination (acronym in Italian, UNAR), initiated an investigation to clarify the circumstances of the aggression and detention.
UNAR asked the mayor of Parma detailed information about the incident, particularly about the beating and racist insults; at the same time it was learned that the Parma Prosecutor's Office initiated a criminal proceeding against suspected perpetrators (eight officials, a Chief Inspector and a Chief Commissioner of the Municipal Police) with the following charges: kidnapping, aggravated battery, slander, insult, ideological and material forgery, breach of official

duties, crimes committed in complicity and with the aggravating circumstance of discrimination and racial hatred, covered by the Mancino Law.

On 14 January 2009, at the request of the prosecutor, the judge for the preliminary investigations (acronym in Italian, GIP) of Parma ordered the precautionary measure of the house arrest for four of the ten suspects. On 5 February 2009, the Bologna Oversight Court confirmed this measure. After the arrest, the mayor of Parma immediately ordered the suspension of service for all staff involved in the investigations.

9. In relation to the messages instigating racial hatred and xenophobia, reported in Facebooks (para. 17 of the Report), it is to be noted that UNAR has taken the following steps. By cooperating with the Postal and Communications Police, UNAR drafted an ad hoc Report for Police (Prot.No. 13/UNAR, dated 08.01.2009), to facilitate the adoption of the most adequate initiatives in the exercise of control and supervision of the Network of competence.

UNAR proceeds likewise in all cases of racial discrimination found on the web. Concerning the speech made during a gathering of representatives of the Lega Nord political party, UNAR started a specific inquiry, aimed at clarifying the circumstances relating to racist phrases.

In all the above and other similar cases UNAR has duly informed the competent Judicial Authority.

10. It should be noted that the participation of UNAR in civil proceedings to ascertain the existence of direct or indirect discrimination on the ground of racial or ethnic origin [para. 26 of the Report], is currently precluded by the decree establishing UNAR, which does not confer it the right to take legal action on behalf of the victims of discrimination. However, this power has been granted to recognized organizations and local institutions (Article 5, of Legislative Decree No. 215 of 9 July 2003). They can act “on behalf of, for or in support” of the victim of racial or ethnic discrimination. It is important to remind that these organisations are also entitled to take legal action, as foreseen in the last paragraph of Article 5, in cases of collective discrimination, when it is not immediately possible to identify the specific victim. It should also be noted that UNAR promoted the establishment of Agreement Protocols with lawyers’ associations available to offer pro-bono juridical assistance to alleged victims of racial or ethnic discrimination.

11. On a more general note, as for procedural safeguards, the Italian legal system considers the right of being assisted by a defence counsel as an inalienable right, since the technical defence is mandatory (Art. 97 and 98 of the code of criminal procedure).

According to Art.24 of the Constitution and Art.98 of the code of criminal procedure, which provides for the defence of the indigents, Presidential Decree No. 115/2002 provides for legal aid in criminal action (Art. 74 et seq.). For being admitted to legal aid, no particular conditions or formalities are required (a mere self-certification is sufficient, pursuant to Art. 79, para.1, letter c). More importantly, for foreigners and linguistic minorities located in Italy, there is the obligation to provide appropriate interpreters, pursuant to Art. 111 of the Constitution, devoted to the principle of the right to a fair trial [para. 25 of the Report].

12. With regard to the independence and effectiveness of UNAR, the Government recalls the comments already submitted in its document of 21 July 2008 in reply to the Memorandum by the Commissioner following his visit to Italy [para. 24 of the Report]. The Government would also like to reaffirm that compliance of UNAR with the provisions of the Directive 2000/43/CE was recognized by the European Commission, in June 2007.

13. The stigmatisation of certain ethnic or social groups remains a matter of serious concern for the Government, state and local authorities. All political forces have firmly condemned all

recent attacks against particular groups and will continue to exercise the responsibility to protect all persons present on the Italian territory, as clearly emphasized on several occasions also by the President of the Republic Hon. Giorgio Napolitano, the most recent of which took place on December 31, 2008 for the new year's eve, and on January 27, on the occasion of the Holocaust Remembrance Day [para.22 of the Report]. The draft law mentioned in the Report [para. 23 of the Report] on the fight against racism is currently under examination in the Senate. In January 2009 the debate has started within the competent Parliamentary Committee.

14. With regard to the Recommendation, concerning the urgent necessity to fight against all manifestations of racism and intolerance through the internet, the Government is well aware of the necessity to employ all adequate means to counteract this phenomenon. A specific section has been created in UNAR's webpage (www.pariopportunita.gov.it) in order to allow internet users to report any on-line material they may find surfing therein, whose content may be discriminatory, racist or instigating racial hatred. These episodes can be reported by sending an email to UNAR. Whereas the contents are grounded and criminally punishable, UNAR forwards them to the Police in order to initiate a criminal proceeding; in the all the remaining cases UNAR intervenes by contacting the Postal and Communication Police in charge of controlling and monitoring the system.

With specific regard to the competent Unit of the Police forces, they carry out an extensive monitoring exercise of the Internet websites created in Italy, in order to detect those which might be potentially relevant at the criminal level. The Police forces pay due attention and regard to all those web-sites relating to organisations characterized by subversive and/or racial, xenophobic grounds. Needless to say, the Judicial Authorities are promptly informed. If these allegations are grounded, the Public Prosecutor's Office initiates relevant criminal proceedings under the condition that such web-sites have been created in Italy or the authors of those servers are located within the domestic borders.

15. It should be noted that since long time, several courses on human rights have been addressed to the Italian Police forces. In particular, the Ministry of the Interior has included human rights law in the training curricula for police staff at all ranks. The courses deal with a wide range of topics including vulnerable groups and minorities, namely the social segments of the most exposed to discrimination and to exploitation by criminal groups.

Training is carried out with the support of university professors and experts, as recommended by relevant NGOs, including the Centre for Human Evolution (Italian acronym, CEU). The latter organized an ad hoc HR course, in cooperation with "Tor Vergata" University in Rome. Ad hoc training courses, including master courses, for trainers are organized on an annual basis. Police officers with training responsibilities attend relevant post-graduate courses at the Rome Second University. The Police Academy in Piacenza organizes a course on human rights and international humanitarian law at the Catholic University in Milan, in collaboration with the Italian Red Cross.

Since 2001 human rights law has been included into the continuous training programs for Police personnel. This training focuses on those aspects that relate to the identification of the "mission" of the Police service in a democratic society, from the fight against all forms of discrimination to specific Guidelines concerning the protection of the right to life, the prohibition of torture, and the use of force.

16. The protection of human rights is a central issue in many publications of the Public Security Department, such as the monthly magazine "Polizia Moderna", which contains many articles on the topic. More specifically, the Public Security Department introduced appropriate teaching material in all its 28 Schools and training Centres, including the translation into Italian

and the distribution of the following material, issued by the Council of Europe: 1. Policing in a democratic society – Is your Police service a human rights champion?; 2. A pamphlet for Police On Human Rights and its protection under international law; 3. Discussion materials including On The Police and Human Rights training; 4. The Human Rights Challenge in Police Practice.

Additional documentation includes and refers to:

- The Italian translation and the dissemination among Police officers as individual endowment, of the text of the Recommendation Rec. 10 (2001), adopted on September, 19th 2001 by the Committee of Ministers of the Council of Europe (“Code of Ethics for a democratic cleansing”);
- The Handbook for Police officers on “The Police service in a multicultural society”, as drafted, in partnership with the non profit organization COSPE and with representatives of the Chinese, Roma, Nigerian, Jewish and Islamic communities;
- The Handbook for the training of trainers on “Human rights and Police” as printed by the Department of Public Security.

17. As far as the relationship between Police and vulnerable groups is concerned, it should be noted that the Department of Public Security coordinated an EU project (Building A Police Service Within a Multi-ethnic Community) involving the Italian Roma community and inviting Mr. Demir Mustafa – an outstanding representative of the relevant community - among the stakeholders, representing ethnic groups at risk of discrimination. Mr. Mustafa, among others, outlined the problems of his community, besides providing information on the Roma culture, the perception of the Police action and the quality of the relationship with Police officers. In this context, study-cases concerning relevant positive and negative actions of Police officers were discussed, and specific indications on how law enforcement officers should build their relationship with Roma community were also put forward. In particular, it was carried out a research on how Police officers should behave vis-à-vis Roma community.

18. In this context it should be noted that also the Carabinieri Corps attaches the utmost importance to the study of Human Rights and Humanitarian Law in the academic and training curricula. The attention to victims is also testified by the recent introduction of the study of *victimology* in training institutes, which modifies the approach towards the phenomenon of criminality, no longer considered exclusively from the viewpoint of the offender, but assessed bearing in mind the needs of the offended.

Advanced ad hoc training has been introduced for all the staff personnel participating in peace support missions.

19. With specific regard, to the penitentiary Police, the subject of human rights is always included in the curricula of the basic training courses for the newly recruited staff of penitentiary police of any rank.

The subject of the “international protection of human rights and of the rights of detainees” is structured in the following contents: the civil rights and freedoms, the sources of the EU Law and International Conventions, including the United Nations Convention against Torture, the relation between European Union and Italian Legislation, as well as the Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules adopted by Council of Europe. Those subjects are taught by magistrates experts in the relevant fields. The presentation and the analysis of the penitentiary norms are focused on the principle of the respect for human dignity in order to strengthen ‘a culture of legality’ centered on human rights. In particular, a training course for Penitentiary policemen recently held, the “system of inter-professional relations and of treatment” aiming at promoting deontological and professional values and it includes subjects as criminology,

penitentiary psychology, the treatment of prisoners detained in penitentiary circuits. With particular reference to Roma and vulnerable groups, the following issues are dealt in the training courses: intercultural education for mediation and conflicts management, legislation on migration, migration routes.

The courses also include training for an efficient self-defence, limiting to the minimum extent the use of offensive actions which can harm a person; the techniques of the Global Method of Self-defence are taught, which tend to infuse the sense of operational self-confidence and which make use of communication and persuasion skills, as well as of verbal assurance skills.

20. To conclude, on a more general note, law enforcement personnel is routinely trained in order to deal with a changing reality under which there is the acknowledgement of better prepare the domestic forces to, inter alia, deal with vulnerable groups [paras. 25-26 of the Report].

21. It should be noted that the Ministry of Education is willing to disseminate the Factsheets on Roma History at the educational level throughout the country in the course of the next academic year [para. 30 of the Report].

22. Concerning Roma children's schooling as well as the establishment of specific Agreement Protocols, the Ministry of Education is currently implementing policies aimed at the integration of Roma in the Italian school context, in strict cooperation with several local institutions. The Agreement Protocol already established in the seventies, with the Association "Opera Nomadi" for the 'protection of Roma, Sinti and Travellers' has been renewed since 2005. Furthermore, specific Agreement Protocols are being implemented by the interested local institutions and relevant organizations representing Roma, Sinti and Travellers'.

The activity of cultural mediators in schools proves to play a key role in several areas such as schooling, information, orienteering, linguistic translation and cooperation with social services.

23. Concerning the recommendations by the European Commission against Racism and Intolerance (ECRI), to combat racism and xenophobia among youngsters, the Ministry of Education is taking the appropriate measures to ensure that the educational activity in schools is aimed at achieving such objective.

The fight against racism and racial discrimination, at the educational level, is thus carried on by the Ministry on Education, from the primary through the secondary school, by means of specific educational programmes, marked by an intercultural approach. All children living in Italy enjoy the right to education, even if their parents have no residence permit. As a consequence, the Italian school system is committed to providing knowledge of different cultures.

24. Last but not least, as far as the establishment of an independent national human rights institution is concerned [para.27 of the Report], it should be noted that the Government announced in December 2008 that it is preparing its own Bill on this issue. The drafting process is already under way within the concerned Administrations. Meanwhile a group of MP's has introduced a specific draft law to the Senate (A.S. 373).

III. The protection of human rights of Roma and Sinti

25. As already reported in the Government comments, dated 21 July 2008, the Italian Authorities are committed to adopting specific measures, to enhance security for all citizens and to better address integration and/or immigration-related issues. Most of the measures concerned, consistent with the Italian Constitution and with EU provisions, are currently under discussion.

26. Once again, it should be underlined that the most recent measures – such as those included in the “security package” - are meant to curb criminal behaviours of individuals. No provision is envisaged against any community, group or class, nor is linked to any form of discrimination and xenophobia.

Re-affirming the rule of law, the Italian Government re-assures that adequate living conditions are in the interest of everybody, including Roma people and groups potentially more exposed to the risk of abuses and exploitation. Restoring good living conditions within the law is in the interest of the Italian society, including the communities concerned.

27. As to the events occurred in Ponticelli (Naples)[para. 34 of the Report], as already reported in the Government comments dated 21 July 2008, in order to identify the people involved the Police submitted a report to the competent Judicial Authorities. The Office of the State Prosecutor at the Court of Naples promptly initiated a criminal proceeding against unknown persons. At present, two alleged offenders have been identified. They have been put under the precautionary measure of the house arrest on the ground of arson and devastation.

28. As far as the Roma camps are concerned, in terms of preliminary remarks, an unauthorized camp for its same nature cannot ensure appropriate living conditions. As a matter of fact, the forced evictions carried out in these camps by the Police forces often have the final purpose to provide a more appropriate accommodation for those families with women and children.

As pointed out by the OSCE High Commissioner on National Minorities in his Report following his visit to Italy in 2008, some best practices on the matter have emerged in Italy, such as those developed at the municipal level in Bologna that has transferred Roma people from illegal camps to authorized camps and from authorized camps to regular housing.

29. In this perspective, the Municipality for social policies and health promotion of Rome has increased the number of places for the temporary reception of women and children, in addition to the enhancement of the cooperation between its “Sala Operativa Sociale” and the Police forces [paras. 36-37 of the Report].

30. Concerning the health situation in the Roma camp of Casilino 900 in Rome, the Municipality of Rome has prolonged up to the end of 2009 a Protocol with the territorial health agency (acronym in Italian, ASL), to which all the activities of health control and assistance to the people of the camp are thereby delegated. In this regard, a vaccination campaign for the children living in this camp has been initiated at the end of February 2009. In the course of the initial round of this campaign 251 children were vaccinated except four children, due to either the choice of their parents or the specific health conditions. Moreover, an ad hoc protocol for a special plan of vaccination was signed with the Italian Red Cross and started on 28 February.

31. As anticipated to the Commissioner by the Mayor of Rome [para 39 of the Report] on 29 January 2009 a meeting took place among the Mayor, the local Authorities for social policies and health promotion of Rome and a representative of the camp of Casilino 900. This was concluded with the adoption of a Memorandum of Understanding, whereby the Municipality of Rome committed itself to implement renovation works aimed at improving the living conditions in the camp, while the camps’ representatives committed themselves to collaborate with the Administration either during the works and, later, for the relocation of the camp. As scheduled, these works started on 23 February 2009.

32. As to the Mayor of Rome's intention to have ready, by the end of 2009, regular settlements for all Roma people in Rome, at the beginning of February, the Municipality of Rome issued a "Plan for Nomads".

By following the timetable contained in such a Plan, a relocation of many camps – characterized by a high level of social criticality, including Casilino 900, will be realized by settling the people concerned into "authorized villages", some of which will be of new conception.

The aforementioned Plan, whose purpose is to uphold the process of integration with nomads' communities, has been scrutinized by the Minister of Interior, Hon. Maroni, who also offered funds to complete the program.

33. In line with these efforts, it is to be stressed the action of the Prefect of Rome, who has been appointed by the Prime Minister Order of 30 May 2008.

On 18 February 2008, the domestic Commissioner issued "Regulations for the managing of the equipped villages for nomads communities located in the Latium Region", which was subscribed by the Region, the Province and the Municipality, resulting into both a useful handbook of operative nature and a pattern for "best practices".

The Guidelines provide for:

- A temporary authorization of settlement (two years renewable only once);
- The outline of general rules of behaviour, under which every single Municipality is given the task to draw up its own code of conduct;
- Activities of control on entrance flows;
- A Centre for social and educational activities oriented to the integration;
- Institution of a Representatives' Committee of the village, with a designated speaker;
- Institution of an Advisory Committee, composed of all stakeholders involved in the managing of the village, including Representatives' Committee;
- Definition of the causes entailing the revocation of the temporary authorization.

The Municipality of Rome will issue, on the basis of the mentioned Regulations and by a proper act, its own "Regulations on the temporary settlement in the authorized villages for the nomads communities in the Municipality of Rome".

34. Within this framework, it is worthy of mention the National Strategic Plan for Structural Funds 2007-2013, under which the Equal Opportunity Department within the relevant Ministry elaborated several Plans of Action providing structural interventions for Roma communities through the European Social Fund and the European Regional Development Fund.

In particular, with a view to promoting a higher participation of Roma, Sinti and Travellers in the economic and social fields, UNAR has funded specific projects aimed at providing legal, administrative and managerial support to Regions for the identification, planning and monitoring of regional policies for the elimination of local obstacles to the social inclusion of the concerned communities. To this end, there will be a mapping exercise of the institutions and services available, including local social projects on education, training, labour, health care, etc.

35. While evaluating additional measures, in order to promote the integration of minorities and to improve their living conditions, the Italian Authorities have adopted various initiatives.

As already reported in the Government comments dated 21 July 2008, the Minister of Interior, Hon. Maroni appointed the Prefects of Rome, Milan, and Naples as "ad hoc Commissioners", according to EU Regulation No. 230/2008 (which allows the recording and featuring of some biometrics records - fingerprints and photos - in stay permissions for non-EU

citizens over the age of 6) and to the “emergency (which does not correspond to the public state of emergency to be communicated to the United Nations)” declared on the basis of the national legislation on civil protection. These Commissioners were tasked with the duty of adopting measure to solve the emergency relating to the nomads settlements, in their respective Regions [paras. 41-42 of the Report]

36. As a matter of fact, the Government decided to take this urgent action subsequently to the serious and degrading socio-environmental conditions in some parts of Italy, in particular, nearby the metropolitan areas in Rome, Naples and Milan, characterized by several settlements both authorized and unauthorized [para. 46 of the Report].

These settlements hosted communities presenting several differences in terms of ethnic belonging, nationality and individual juridical status. In such settlements there were Non-EU citizens, EU citizens, Italian citizens and individuals who could not be identified since they were undocumented.

37. As to the identification procedure, once again the Government takes this opportunity to reiterate that information was collected without the creation of a data-base and in accordance with national and international laws and regulations concerning the protection of privacy, through records that are used for all citizens, under the responsibility of authorized entities.

38. Against this background, it was considered necessary to get detailed information about the number of the people living in the settlements, in order to guarantee them a greater level of security and to improve their living conditions. As a consequence, a census was made to identify all the people, not only Roma and Sinti.

“Civil Protection Orders” (*ordinanze di protezione civile*) were adopted in order to speed up the administrative procedures, including agreements to build new camps as well as to identify the due additional economic resources from within the State’s Budget, in order to grant ad hoc reception measures, build new structures and improve those already existing.

The “Orders” also entail specific support measures to promote the integration of people in the settlements through comprehensive projects having an integrated nature aimed at facilitating the school enrolment and the search for employment.

39. In the following phases, adequate facilities, called ‘solidarity villages’, will be set up. These villages will be provided with basic services, to be transparently managed in cooperation with the communities’ representatives, in order to guarantee the security both inside and outside the settlements themselves (on the basis of the ‘best practices’ already experimented in some local administrations).

Along these lines, mention has to be made of the newly established Office within the Interior Minister’s Cabinet, namely a Technical Working Group, tasked with overseeing the implementation of the provisions contained in the mentioned “Civil Protection Orders” dated 30 May 2008. The Working Group includes the Prefects/Commissioners and the Administrations involved in the initiatives concerning the social inclusion of the communities, namely the Ministry of Interior, the Ministry of Labour, Health and Social Policies, the Ministry of Education and UNICEF. The mandate of the above WG is to draft an Action Plan on a number of social, welfare and integration measures.

40. In this context, it might be recalled that the OSCE High Commissioner on National Minorities in his report following his visit to Italy in 2008, noted the positive measures applied in the Via Candoni camp, in Rome, where 80 per cent of Romanian Roma people are working.

41. In November 2008, it was signed a Memorandum of Understanding between the Ministry of Interior and UNICEF, to ensure the adoption of a set of childhood protection-oriented

initiatives. Similar projects are being currently drafted by other Ministries competent for social policy matters, including the Ministry of Labour, Health and Social Policies and the Ministry of Education.

As to a national strategy for social inclusion of Roma and Sinti communities [para. 49 of the Report], it is worthy of mention that in the Planning document for the years 2009-2011 (which is currently under drafting) on actions and interventions which the Government intends to enact in the field of immigration and integration, a specific section is devoted to a Program of intervention for Roma and Sinti communities.

42. Under the National Strategic Framework of the 2007-2013 Structural Funds, the Department for Equal Opportunities drew up a Plan providing integrated support to the Roma community through the ESF and ERDF funds, as agreed with the relevant Management Authority. In particular, the following actions are devoted to this end:

- Promotion of policies and instruments for social inclusion and combat discrimination against the Roma, Sinti and Travellers. The objective is to remove all discrimination and promote greater participation in economic and social development of Roma, Sinti and Travellers. The action will, inter alia, support the regions in the regulatory, administrative and management in identifying, planning and monitoring of policies for guidance and support in overcoming local barriers the inclusion of these communities.
- Identification, analysis and transfer of best practices on non-discrimination in terms of benchmarking.

This activity is intended to launch a system to collect and to network among all relevant actors, at different institutional levels, namely at the European, national and regional levels. The purpose is to share practices, improve the skills on specific issues and to compare experiences within the European region. The DOSTA program is currently put in place in Italy and will be concluded at the end of 2009, since it has already successfully carried out in five countries of Eastern Europe. [para 32 of the Report].

43. In addition, UNAR participate, on behalf of Italy, in EUROMA (standing for the European Network for Social Inclusion of the ROMA). The EUROMA Network, funded by the European Commission, aims at preparing social inclusion projects for Roma people.

Concerning the initiatives to raise awareness among Roma people of rights and remedies, UNAR has funded a project on protection means against racial discrimination, made by the Lawyers' Association for the Human Rights Protection (acronym in Italian, UFTDU). The main objective of the project was to disseminate best practices as developed at the national, European and international levels to combat discrimination based on racial or ethnic grounds. To achieve this goal, a whole training-day on "Racial Discrimination and Access to Justice: The new role of associations" took place in Rome and was addressed to all the NGOs working in this field.

As already mentioned under section II concerning legal assistance to Roma and Sinti [para. 50 of the Report], it might be important to recall both the Registry of Association at UNAR and the free legal aid, ensured by Italy, in accordance with Art.111 of the Italian Constitution. With specific regard to legal assistance activities carried out in collaboration with industrial associations, UNAR has conducted awareness and capacity-building campaigns through regular contacts with representatives of associations engaged in the protection of this minority. It is to be noted that the Register of associations and institutions working the field of the fight against discrimination under Article 6 of Legislative Decree No. 215 of 9 July 2003 includes Opera Nomadi, Associazione Italiana Zingari Oggi (AIZO), the National Union and the International Roma and Sinti in Italy (JOIN), observation, Nevo Drom Roma and Sinti Policy Abruzzo @ Opera Nomadi.

44. With regard to the unaccompanied children [para 53 of the Report], the “Central Committee for the coordination of the protection of unaccompanied minors” is operational since 18 October 2008. Its has a two-fold mission towards guaranteeing the rights of those unaccompanied children who are in Italy, and evaluating reception and assisted return projects. The Committee issued, on 20 January 2009, a Directive on managing *inter alia* unaccompanied Romanian children.

45. Children exploitation, specifically those forced to begging, is widespread in the urban areas. The Government considered necessary to adopt harsher repressive measures against the exploiters. Besides being extremely vulnerable, it is difficult for the social services to detect these children since they are unaware of the situation of exploitation they are subjected to.

Draft Law No. 1280 foresees (article 6) the extension of the responsibility of adults participating in the crimes committed by minors (modification of Article 112 of the criminal code), while article 8 envisages the abrogation of article 671 of the penal code since the latter punishes only with a fine this form of exploitation. The above draft Law recognizes the employment of minors in begging as a crime (article 600-octies of the penal code); it punishes, with the detention up to three years, those exploiting for begging purpose a child under the age of 14.

46. With regard to children's schooling, as noted by the OSCE High Commissioner on National Minorities in his report following his visit to Italy in 2008, it has to be recalled that some settlements include pre-school facilities, while others offer some form of transportation to and from schools.

47. To conclude on the census, it has to be reiterated that in conformity with the Ministry of Interior’s Guidelines adopted on 17 July 2008 and the Data Protection Authority’s directives, the census has been carried out in close cooperation with the Italian Red Cross. The data collected are not utilised to set up a database or a separate archive. They are used for administrative purposes, in conformity with the law on the protection of personal data. The use of the collected personal records is limited to humanitarian and social assistance's purposes and the collection of data related to ethnic origin or religion is forbidden.

The European Commission (Commissioner Mr. Barrot) acknowledged that the Italian Government has abided by the European legislation and that these measures are not discriminatory. A positive signal towards the above Guidelines was also given by the OSCE High Commissioner on National Minorities in his report following his visit to Italy in 2008.

48. Within this framework, it should be noted that the Prefects/Commissioners have been provided with the funding of a total 500.000 in 2008, while they will receive between ten and thirty million euros for the year 2009, in order to implement relevant initiatives. More specifically, it has been established, by article 61, para.18, of Act No.133/2008, an ad hoc Fund amounting to 100 million euros, within the Ministry of Interior. Such Fund will be devoted to various initiatives, aimed at enhancing public order, improving the camps, and launching both specific projects for children living in these camps and social integration measures. The Minister of Interior has decided by ministerial decree dated February 3, 2009, to devote 30% of the above Fund to initiatives to be undertaken at the municipal level, by means of agreements between the interested Municipalities and the relating Prefectures [paras. 43-44-47-54-59-60 of the Report].

IV. The protection of human rights of immigrants and asylum seekers

49. The right to free movement is an inalienable fundamental freedom recognized to EU citizens by the EU Treaties. Nevertheless, the respect for the laws of every Member State remains

crucial. This is the *conditio sine qua non* for the coexistence and social inclusion within the EU. Accordingly, Directive 2004/38/EC of 29 April 2004 expressly provides that EU citizens, or members of their families may be expelled from the host Member State for public security or public health reasons.

50. The Commissioner deals, in his Report, with the new draft legislation on immigration issues which is currently under debate in the Parliament. He states that the measures under consideration would be “draconian”. The Commissioner stresses in particular that the possible criminalization of illegal immigrants would be a disproportionate measure equating the migrants with the smugglers. The Italian Government does not agree with these remarks [para.83 of the Report]. The Government firmly reiterates, as already noted in its Document of 21 July 2008, that the new proposed legislative measures on immigration have no relation with any kind of xenophobic attitude but, on the contrary, have the objective to address more effectively the phenomenon of irregular immigration (as well as its connection with both ordinary and organized crime) and its negative impact on the society as a whole.

51. On a more specific note, in his Report the Commissioner reiterates his disapproval of bilateral or multilateral agreements for the forced return of irregular migrants, with countries with long-standing, proven records of torture. The Italian Government observes that the management of large migratory flows presents very serious challenges to the state and that in this context agreements for the forced return of the illegal migrants not entitled to international protection are a useful tool to fight human trafficking and promote regular migration [para.77 of the Report].

Therefore, at present the Government stresses that several projects concerning the cooperation on migration and asylum-related fields are ongoing, with origin and transit countries. These projects are financed by EU funds.

52. As far as the legislative framework is concerned, it has to be noted that Law Decree (A.C. 2232), dated 23 February 2009, has been just introduced to the Chamber of Deputies for its enactment. It foresees the possibility to extend, beyond the initial term of sixty days, the period of holding of Non EU nationals in the Identification and Expulsion Centres. In case of non cooperation by the concerned individual to his/her repatriation or in case of a delay in getting the necessary documentation from the country of origin, the term for the holding can be extended up to two additional sixty-days periods, after confirmation by the peace justice. In any case, the stay cannot exceed 180 days, in line with European Directive 2008/155 CE [paras.64-83 of the Report].

53. Article 39 of the Government Text on “public security”, as adopted by the Senate on 5 February 2009, is currently under examination by the Chamber of Deputies that is also evaluating the impact of the provisions concerning the possibility for doctors and nurses to denounce irregular immigrants, “No obligation of denouncing has been introduced but the elimination of the prohibition to denounce”, as emphasized by the Minister of the Interior early February 2009 [Para. 85-86-87-88].

Regrettably, the Commissioner refers, under letter b) of para.65 of the Report that, as regards the facilitation of family reunification 33 DNA tests may be requested to this end. The Government would like to point out that Law Decree No. 160 of 3 October 2008 does not fix at all the number of tests.

54. With regard to the European Convention on Citizenship, signed by Italy on 6 November 1997 but not yet ratified, it is worth of mention that this is a work in progress, currently carried out by the Ministries concerned, by means of an impact assessment exercise. The Ministry of Interior has confirmed to the Ministry of Foreign Affairs its support for the approval without any

reservation, on 14 January 2009. In doing so, the Ministry of Interior has changed its previous position aimed at putting forward a reservation to Article 6, para. 4, lett. f, Chapter III of the Convention, relating to facilities for the naturalization of foreign minors [para.66 of the Report].

55. In relation to children from the former Yugoslavia, it is confirmed the orientation of the Government to support the recognition of the Italian citizenship to those children being born in Italy from parents both deprived of the citizenship following the war in the former Yugoslavia. Such position is guaranteed if it is proved that at least one of the parents was in Italy prior to 1st January 1996 [para.67 of the Report].

For that purpose, a Government amendment to the above draft Law was presented during the parliamentary works. The Senate decided, at that case, to postpone the examination of the above amendment, also affecting the legislation on Citizenship. The relevant debate is underway at the Chamber of Deputies.

56. On a general note, the Government would like to recall, once again, that Italy has never declared “the public state of emergency [para.68]”. The need to resort to ad hoc – and not to extraordinary - measures is the result of the careful balance between opposite stances, between public order and liberty. Therefore the Government, recalling its Letter dated December 5, 2008, reiterates that the decision taken at that time was due to mobilise specific financial and human resources.

57. As to the cases mentioned under para.72 of the Report it has to be noted, at the proceeding level, that the European Court has declared so far the admissibility of a limited number of complaints, and has also requested an expertise to control the authenticity of the signatures therein. Such evaluation is still ongoing.

58. With regard to complaints concerning UNHCR information about the difficulty in assessing, on the island of Lampedusa [para.74 of the Report], the requests for asylum seekers, it has to be noted that, on the island, the work of the special Committees was needed from 16 through 22 January 2009, in order to ensure continuity in the applications’ treatment.

In that period, 75 applications were presented and processed. The status or subsidiary protection was granted to approx. half cases. After that week, all asylum-seekers in Lampedusa were transferred into CARA, placed on national territory. Since that time, by January 23rd, at the end of those massive disembarkations there was no-longer need for the Committees to operate on-site.

59. The situation of unaccompanied minors warrants specific measures [paras. 76-91 of the Report]. The Government thus reaffirms that the utmost attention is paid by the Ministry of the Interior to this vulnerable group. To this end, it is worth mentioning the Ministerial Memo, dated 13 February 2009, both denying the holding into administrative detention Centers for minors and the delays in identifying problems around their age. As to these cases, it is applied a flexible and open approach when healthcare controls on age reveal doubts.

With this instrument, the Minister of the Interior, drew the Prefects’ attention to the need to implement all the necessary strategies in this area. By resorting to the Local Councils for immigration as a sort of forum for discussion and exchange of views between all relevant institutions, the Minister has called on Prefects to give further impetus to all activities. Such actions have been designed to promote the involvement of all resources currently operating in the territory, in order to ensure the highest standards of protection of minors, promoting their recognition and more complete implementation of the rights which they are entitled to [paras.75-76 of the Report].

60. The Italian Ministry of Labour, Health and Social Policies reports the following updated data on foreign unaccompanied minors who are present in the Italian territory.

At the end of December 2008, 7.797 unaccompanied foreign minors are estimated to be in the Italian territory. In the last few years the presence of unaccompanied foreign minors, although not so different in numerical terms, has undergone significant changes with regard to minors' countries of origin as well as to the transportation employed to reach Italy.

In general, only 23% of unaccompanied foreign minors in the Italian territory is identified as a consequence of possessing valid identity card or documents; on the other hand it is not possible to record the identity of the remaining 77% as they are not in possess of valid documents and the family in the country of origin is not found.

National data are contained in the database of the Committee on unaccompanied foreign minors which is tasked with the gathering and the analysis of information, among other activities.

61. The Committee on unaccompanied foreign minors is currently developing, together with the National Association of Italian Municipalities (*Associazione Nazionale Comuni Italiani*) a National Program on unaccompanied foreign minors dealing with the following issues:

1. Reception and identification. The Committee can intervene efficiently in the case of identified minors, however is not in a position to offer the same guarantees to unidentified minors who are just registered in a specific database. As a consequence the process of identification is fundamental in order for the Committee to perform its mandate. In particular, all the persons who were in contact with unaccompanied foreign minors have to refer, as soon as possible, all information useful to his/her identification to the Committee.
2. Information about minors' identity and situation can be obtained in several ways, in particular, through a comprehensive interview with the minor. Such dialogue takes place as soon as possible and, in particular, is conducted in a sensitive way. This information is particularly crucial since it increases the chances for family re-unification. The identification of the minor is under the competence of the Police, in cooperation with the diplomatic and consular Missions in the countries of origin. The swift and clear identification of the minors is one of the pre-conditions to guarantee the best interest of the child. For this very reason, there has been an intensification of the efforts to identify minors nearby those places where boats full of immigrants use to arrive. Additionally, it is worth mentioning that psychologists, translators as well as cultural mediators are employed in order to facilitate the identification of foreign minors, and to piece together the reasons behind their migratory projects, besides providing a first indication of their status.
3. Bilateral agreements: The bilateral cooperation with the Countries of origin constitutes an essential tool to prevent the phenomenon and to guarantee the success of assisted return programs and the subsequent familiar and social re-insertion of the minors in the country of origin. These programs are run by specific international organizations, whose activity is monitored and assessed by the Committee on foreign minors.
4. The Database: The census and the monitoring of the minors constitutes a valuable tool to increase the knowledge and to enhance the management of the phenomenon. The Committee receives information about the foreign minors through a series of sources, such as the social services of local Authorities, by Police HQs. (*Questure*) and by Juvenile Courts. The Committee performs the task of networking and connecting with the above-mentioned institutions in the field of reception, assisted return, and family re-unification. Once the information on minors has been obtained, the Committee includes the minors' name in a specific database which is updated with several communications on the minor concerned. Besides, for every single minor, it is prepared a case file, containing all the related documentation. Subsequently, through the analysis of the communications provided by the local institutions, by the Police and by the Juvenile Courts, it is possible to know if the minor concerned is being identified. This system is gradually improving, also through a stricter

cooperation with the local institutions, in order to guarantee the traceability of the minor's presence in the Italian territory from his/her arrival to the conclusion of his/her process of integration or his/her eventual assisted return.

5. Familiar investigation procedures: The identification of the parents as well as the knowledge of the family's social and economic context allow to proceed, if possible, with the minors' assisted return. The Committee is attempting to enhance the quality of this intervention, on the basis of the experience gained in these years, through the projects run by local entities and funded by the Committee itself.
6. Protection of Roma, Sinti and Travellers: As to the protection of Roma and Sinti, it is worth mentioning the draft National Action Plan, prepared by the National Observatory for Childhood and adolescence that has identified, among the priorities, measures for Roma, Sinti and Travellers children.

62. The programming and policy document – including the widening of the context and the indications to give full effect to the rights of Roma, Sinti and Travellers children – has provided, among others, the following recommendations:

- To implement a policy to promote the rights of Roma, Sinti and Travellers children, boys and girls, with a holistic, systematic and integrated approach, which does not artificially separate the issues of housing, schooling, of the cultural specificities, health, leisure and inclusion;
- To implement policies to support access to the labour market and training courses;
- To facilitate the recognition of the Italian citizenship to those foreign children being born in Italy when they turn to the adulthood;
- To facilitate housing solutions;
- To continue the implementations of projects, pursuant to Act No. 285/97, specifically aimed at Roma, Sinti and Travellers' communities children;
- To identify and disseminate best practices from the 285 projects implemented in the territory;
- To promote participatory processes;
- To promote educational, leisure and training initiatives;
- To promote activities to raise awareness of the culture of Roma, Sinti and Travellers;
- To support the role of women in these communities;
- To facilitate the access to the work labour;
- To use to the above ends the EU ad hoc Funds.

63. Along the above lines, the Department of Juvenile Justice, Ministry of Justice, emphasizes that in many cases foreign minors - immigrated to Italy, often with an irregular status - live in precarious personal, family and social conditions.

As already mentioned the unaccompanied minors are often "recruited" by criminal groups composed of adults, very often of the same nationality, who exploit them in illicit activities, by threatening them. This is particularly true in the case of foreign girls, many of them belonging to the Roma community, who live in conditions of vulnerability and dependence amounting very often to real exploitation.

This situation is demonstrated by the number of foreign minors reported to the Public Prosecutor's Office at the Juvenile Court that, in 2006, was about one-fourth of the total number of minors reported; in proportion it is far greater than the relation between the whole number of foreign minors as to Italians.

64. Considering foreign minors' living conditions, the Ministry of Justice notices that the criminal proceedings against these young people may be also an opportunity to exercise a form of protection.

In the framework of these proceedings foreign minors can be involved in projects of social inclusion. Besides, the efforts made by the Italian Juvenile Justice System, including the work by the Judicial Authorities, allowed to record the following trend in the last years:

- A progressive and significant decrease of foreign minors' imprisonment (-28% from 2004 to 2007);
- A constant and significant increase of alternative non custodial measures such as the placement in community for the social reintegration of the minor (with regard to foreign minors, + 28% from 2003 to 2007);
- The doubling of the number of foreign minors making use of the application of 'testing procedure' (from 274 to 530, from 2003 through 2007).

On the other hand, the Department of Juvenile Justice is aware of the necessity to implement the mechanism aimed at granting benefits, as enshrined in the Italian Juvenile legislation on foreign minors.

65. The knowledge of the critical situations experienced by numerous foreign minors immigrated to Italy, has led the Italian Departmental System of the Juvenile Justice to develop a comprehensive and wide network of social cooperation initiatives on the one hand; and to favour the realization of projects, institutional agreements and any other kinds of initiatives aimed at establishing mechanisms of social and labour inclusion for foreign minors on the other hand.

In the whole territory there are 27 projects of intercultural mediation, that guarantee the presence of the 'cultural mediator' in the Juvenile Justice Services as well as 44 literacy courses; most of them are carried out in the Penal Institutes for Minors and are directed to detained foreign minors in order to start projects of social, educational and labour integration.

Concerning the Inter-Institutional Agreements, both at national and international levels, it is crucial to notice, once again:

- The "Agreement between the Italian and the Romanian Government on cooperation for the protection of Romanian minors who are unaccompanied or in difficult situations, living in the territory of the Italian State", signed in Rome, on 9 June 2008. This Agreement established the following institutions:
 - a) The *Organismo Centrale di Raccordo* (acronym in Italian, O.C.R.), whose mandate consists in connecting all the institutions dealing with the issues related to the protection of unaccompanied EU minors present in the national territory. This Institution is aimed at the implementation of the bilateral Agreement and has the following tasks: to guarantee the protection of unaccompanied EU minors, who are present in the national territory; to implement the Italian-Romanian Agreement; to assess the projects of reception and return of minors in their countries of origin.
 - b) The "Directive concerning the management of Romanian minors in the Italian territory who are unaccompanied or find themselves in vulnerable or difficult situations" has the objective to protect EU minors, following the entrance of Romania and Bulgaria into the European Union, on 1 January 2007;
 - c) The "verification of the age of unaccompanied minors": a document is being drafted within the Superior Health Council in strict cooperation with other institutional stakeholders having competence in the sector of the protection of minors. This document aims at easing the process of unaccompanied minors' age verification that is crucial to determine both the responsibility of the individual and consequently, the competence of the Judicial Authority to protect and to promote vulnerable and disadvantaged segments of the population;

- d) The “Committee on Foreign Minors”: established within the Ministry of Labour, Health and Social Policies competent on minors coming from non EU countries. It carries out tasks related to the verification of the status of unaccompanied minor, to the activity of research aimed at the finding of minors’ relatives; in addition it is further competent to deal with the census of unaccompanied minors present in the Italian territory.
- e) The “National Observatory on childhood and adolescence”: established by law 451/97, is tasked with the function of direction and general promotion of the policies concerning childhood and adolescence; every five years it prepares the Government Report to the United Nations on the implementation of the disposals contained in the Convention on the Rights of the Child of 1989.

The Department of Juvenile Justice will further cooperate to the initiatives and collaborations, already started or that are going to begin, regarding the protection of the rights of minors and of those individuals at risk of greatest social exclusion. Such initiatives are inspired by the principles contained in the Convention on the Rights of the Child, about the protection and the care as is necessary for his/her well-being, from which derive all the national and international legislation on the topic.

It is also relevant to remark that the policies concerning the protection of minors’ rights, adopted by the Government, are implemented without any distinction as to ethnicity, nationality or gender. It is necessary to recall that the actions aimed at the social and labour inclusion of the minor involved in criminal proceeding are tailored for the individuals’ needs.

66. Along these lines, recalling the recommendation of the Council of Europe on projects dealing with unaccompanied minors [para.91 of the Report], UNAR recalls that there are initiatives (ACTIONS) that will be financed by the European Fund for Refugees, under the annual Program for 2008, amounting to approx. 2 million euros, and are related to specific areas of intervention such as:

- Strengthening of reception and support measures to more vulnerable applicants and holders of international protection (unaccompanied minors, victims of torture, women, etc);
- Supporting courses of socio-economic inclusion to the holders of international protection, in general, and unaccompanied minors in particular;
- Monitoring the implementation of the national translation of EU legislation on asylum.

In particular with respect to Action 3.1.d aimed at the “Realization of personal interventions to support courses of socio-economic inclusion to the holders of international protection, with particular attention to unaccompanied minors”, it is considered that the proposals may be submitted from local authorities, public bodies, international organizations operating in the sector, NGOs qualified in the field of intervention, sector associations (ONLUS and Cooperatives), private entities, non-for-profit organizations with proven experience in the area, universities, research institutes.

Interested subjects may participate individually or in partnership with each other. In case of partnership project it must be identified a "leader", responding to the Responsible Authority for the realization of the project, namely local Authorities, agencies or industry associations, etc.. Interventions will need to provide personalized support through pathways socio-economic relation to five different areas: work, home, school, health, culture and use of leisure time education. For example, with regard to housing, it must be provided for all those interventions whose end result is covered by housing recipients (housing subsidies to cover the costs of deposit or first month of rent, purchase of essential furniture, partnerships with real estate agencies or industry associations). However, with regard to the employment, it may be provided assistance (training, baby sitting service for working mothers, facilities for access to day nurseries or play) that create the conditions for the concrete job in an autonomous or subordinate of the holder international protection. With regard to schooling, all projects favouring the school inclusion at all levels, including the recognition of diplomas or other educational qualifications, have been

presented. With regard to health, it can be presented proposals concerning extra-ordinary interventions necessary for the treatment and the rehabilitation of the beneficiaries that comprise costs not covered by the National Sanitary Service. With regard to the activities connected to leisure, it is possible to present projects specifically targeted to unaccompanied foreign minors and asylum seekers that aim at their integration through sport as well as recreational activities.

67. The Government is implementing the "EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings", as adopted by the Justice and Home Affairs Council in December 2005, to strengthen the commitment of EU and Member States in preventing and combating trafficking in human beings, and in the protection, support and reintegration of victims, involving NGOs and International Organizations.

It should be noted that among the initiatives adopted in this context, there is the implementation of certain provisions of the "Council of Europe Convention on combating trafficking in human beings", adopted in Warsaw on 16 May 2005. In fact, Law No. 228 of 11 August 2003, on measures against trafficking in persons, has already adopted those measures which are envisaged by the Convention even if the latter has not been ratified yet. There are few remaining provisions that have to be transposed, in particular those for the establishment of specialized bodies in combating trafficking, for the resolution of any conflicts of jurisdiction, and for the procedures of international criminal cooperation. In any case, the Government intends to establish an inter-ministerial working group to proceed with the ratification of the Convention.

68. With regard to the fight against the smuggling of migrants, it should be noted that the draft law on 'public security', currently under discussion at the Chamber of Deputies, foresees, at article 42, the whole revision of article 12 of the Immigration Text regarding the crime of abetment of smuggling of migrants. Concerning the investigation proceedings, it will entail the release of a stay permit for social protection, granted to the victim of exploitation by criminal organizations since the victim can contribute to acquiring useful elements of investigation in order to identify the exploiters. It also deemed necessary to grant the victim the possibility of familiar re-union, in order to avoid the risk of blackmail and indirect blackmails to the victims' relatives in the countries of origin.

V. Foreign nationals' forced returns and compliance with the Rule 39 requests of the European Court of Human Rights

69. The Government recalls that the domestic legal framework ensures an effective system of legal safeguards and guarantees to fully and extensively protect the fundamental rights of the individual. Before affecting such rights, the Italian legal system provides individuals with a wide range of protection means. No arbitrary conduct against fundamental freedoms is allowed by the domestic legal system. Nevertheless, the toughest task remains balancing between opposite stances, between the abidance by international obligations and the guarantee of the public order, between public order and national security on one hand, and liberty, on the other hand (to prevent criminal offences, affecting also those fundamental rights that are enlisted in the relevant European Convention, including the right to life, freedom from torture).

70. The Government also recalls its Document dated 21 July 2008, by which it was already given extensive information about the principle of non refoulement, the counter-terrorism measures and the relevant general framework, the legal safeguards, the application of the interim measures decided by the European Court, the loyal cooperation by the Italian Authorities vis-à-vis the European Court, specific individual cases as these were requested by the Commissioner, and the overall evaluation of constitutional principles underpinning the Italian action

71. As to the case under para. 96, namely E.S.B.K. Vs. Italy (Application No. 246/07), the European Court has acknowledged by verdict dated February 24, 2009 the assurances requested by Italy to the Tunisian Government, by also stressing: “*La Cour relève que les autorités tunisiennes ont fait savoir que le requérant avait reçu de nombreuses visites des membres de sa famille et de son avocat tunisien. Ce dernier a précisé que son client n'avait pas allégué avoir subi de mauvais traitements ce qui semble confirmé par le rapport médical annexé aux assurances diplomatiques*”.

72. As to the case under paras. 102-103 of the Report it should be noted that in the last years (2005-2008) there have been over 29 provisional measures by the Court asking Italy not to expel applicants. The Government, has, except in 3 cases, always complied with the Court prescription. In one case (Hamidovic n. 31956/05) the plaintiff, expelled by mistake, has been readmitted.

73. Concerning para. 108 of the Report, the Government underlines that the pending cases have not yet found an indication of a responsibility of the State. Italy does not intend to put at risk the effectiveness of the European system for the protection of human rights.

74. As to the case mentioned in para. 110 of the Report, the Government wishes to recall the issue of the diplomatic assurances. The European Court itself (see Saadi judgment) does not reject the diplomatic assurances *tout court*, but those that are set in a formal and generic way. Specifically, the Court reserves itself the right to assess their suitability, on a case-by-case rule (See (Saadi vs. Italy, application 37201/06, judgment 28/02/2008, § 130 - “in order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances”).

75. Concerning the case under para. 109 of the Report, the Government notes that the European Court has asked the defending state to provide diplomatic assurances. The European Court jurisprudence states that in case of treatments contrary to Art. 3 of the Convention, the general situation must be assessed together with the applicant’s own particular situation.

76. In conclusion, well-aware of the case-law of the European Court, the Italian Government reiterates its firm position not to endanger at all the effectiveness of the European system of human rights protection. The Italian Government also reiterates its strong commitment to cooperating fully and loyally with the Court, within the European Convention framework, towards the most effective protection framework of fundamental rights.