

Distr.
GENERAL

CCPR/CO/85/ITA (FUTURE)
28 October 2005

Original: ENGLISH

CCPR/CO/85/ITA
page 2

5. The Committee notes with appreciation that, in 2005, the State party amended its legislation to ensure that, in cases of judgments by default, the convicted person has the possibility of reopening the matter to challenge the decision, except when he/she was dully and promptly informed about the proceedings.

HUMAN RIGHTS COMMITTEE
Eighty-fifth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

ITALY

ADVANCED UNEDITED VERSION

1. The Human Rights Committee considered the fifth periodic report of Italy (CCPR/C/ITA/2004/5) at its 2318th and 2319th meetings (CCPR/C/SR.2318-2319), on 20 and 21 October 2005, and adopted the following concluding observations at its 2335th meeting (CCPR/C/SR.2335), on 2 November 2005.

A. Introduction

2. The Committee welcomes the submission of Italy's fifth periodic report, which was elaborated in conformity with the reporting guidelines, as well as the written responses to the Committee's list of issues. It further appreciates the attendance of a delegation composed of numerous experts in various fields relevant to the Covenant and acknowledges their efforts to answer the Committee's oral questions.

B. Positive aspects

3. The Committee welcomes the State party's position that the guarantees of the Covenant apply to the acts of Italian troops or police officers who are stationed abroad, whether in a context of peace or armed conflict.

4. The Committee welcomes the amendments to article 51 of the Constitution, allowing for the adoption of special measures to ensure equal rights for men and women.

C. Principal subjects of concern and recommendations

6. The Committee, while welcoming the delegation's announcement that the State party is now in a position to withdraw some of its reservations to the Covenant, regrets that the withdrawal of reservations to articles 14(3), 15(1) and 19(3) is not part of this process.

The State party is encouraged to pursue the in-depth review process it started in May 2005 to assess the status of its reservations to the Covenant, with a view to withdrawing them all. The Committee would appreciate receiving more detailed information on the reasons why the withdrawal of the State party's reservations to articles 14(3), 15(1) and 19(3) is thus far not envisaged.

7. The Committee notes that the State party has not yet established a national human rights institution. It notes however the State party's statement that a draft Bill will be introduced in Parliament over the following months, with a view to establishing such an institution that would comply with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex) (article 2)

The State party should establish an independent national human rights institution, in accordance with the Paris Principles. Consultations with civil society should be organized to this end.

8. The Committee regrets that it has not received precise information from the State party in relation to the results obtained by the equality counsellors mandated to request that plans be put in place to eliminate gender discrimination and to refer cases of gender discrimination to the courts. (articles 3 and 26)

The State party should increase its efforts to eliminate gender based discrimination, and provide the Committee with the above-mentioned information, including statistical data on complaints, prosecutions and sentences in matters of gender-based discrimination.

9. While appreciating the adoption of Act 149/2001, allowing in particular the judicial authorities to order expulsion of the perpetrator of domestic violence from the family home, the Committee regrets that the State party did not provide information on the practical implementation of such legislation, as well as statistical data on complaints, prosecutions and sentences in matters of domestic violence. (articles 6 and 7)

The State party should increase its efforts towards the elimination of domestic violence, and provide the Committee with the above-mentioned information. The State party should ensure that prompt action on the part of the authorities is taken in cases of domestic violence.

10. The Committee, while welcoming the fact that criminal proceedings were brought against officers of the State Police in relation, in particular, to demonstrations in Naples and Genoa in 2001, is concerned about the reported persistence of ill-treatment by police forces in Italy. (article 7)

The State party should increase its efforts to ensure that prompt and impartial investigations are carried out wherever there is reasonable ground to believe that an act of ill-treatment has been committed by one of its agents. The State party should also keep the Committee informed about the trials of State officials in relation to the events in Naples and Genoa in 2001.

11. The Committee is concerned about reports of abuses committed by members of law enforcement agencies against vulnerable groups, in particular Roma, foreigners and Italians of foreign origin. The Committee notes with particular concern information that Roma camps are regularly subjected to abusive police raids. (articles 2, 7, 17 and 26)

The State party should take immediate action in order to put an end to these abuses, and to monitor, investigate and, when appropriate, prosecute police who ill-treat vulnerable groups.

12. The Committee, while noting the initiatives adopted by the State party to combat racial discrimination and intolerance, remains concerned about reported instances of hate speech, including statements attributed to certain politicians, targeting foreign nationals, Arabs and Muslims, as well as the Roma. (article 20)

The State party should recall regularly and publicly that hate speech is prohibited under the law, and take prompt action to bring those responsible to justice. More detailed information on this issue, including statistical data on complaints, prosecutions and sentences, as well as examples, should be provided to the Committee.

13. The Committee reiterates its concern, despite contradictory information provided by the delegation, that in exceptional circumstances, albeit apparently applied mainly to persons suspected of involvement in organised crime, an accused person may be held in detention for five days under a motivated decree adopted by an investigating judge before being allowed to contact an attorney. (articles 9 and 14)

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

14. The Committee reiterates its concern that the maximum period for preventive detention is set by reference to the penalty for the offence of which the person stands accused, and can last up to six years. In the view of the Committee, this may constitute an infringement of the presumption of innocence and of the right to a fair trial within a reasonable time or to release. (articles 9 and 14)

The State party should not maintain the linkage between the offence with which a person has been charged and the length of detention from the time of arrest up to final

sentence. It should restrict the grounds for preventive detention to those cases in which such detention is essential to protect legitimate interests, such as the appearance of the accused at the trial.

15. The Committee, while taking note of the denials by the State party, is concerned by numerous allegations that foreigners held in the temporary stay and assistance centre for foreigners (CPTA) of Lampedusa are not properly informed of their rights, do not have access to a lawyer and face collective expulsion. Notwithstanding the difficulties encountered by the Italian authorities due to the high numbers of migrants arriving in Lampedusa, the Committee is concerned that some asylum-seekers may have been denied the right to apply for asylum. It is further concerned about information that detention conditions in this centre are unsatisfactory in terms of overcrowding, hygiene, food and medical care, that some migrants have undergone ill-treatment, and about the fact that regular independent inspections do not seem to be carried out in CPTAs. (articles 7, 10 and 13)

The State party should keep the Committee closely informed about the ongoing administrative and judicial inquiries into these matters, and take all necessary action to ensure the respect of its obligations under article 7, 10 and 13 of the Covenant. The Committee recalls the absolute nature of the right of each person not to be expelled to a country where he/she may face torture or ill-treatment, and the obligation of the State party, consequently and in all circumstances, to ensure that the situation of each migrant is processed individually. The State party should provide the Committee with detailed information on the readmission agreements concluded with other countries, in particular Libya, and the guarantees, if any, that such agreements contain regarding the rights of deported persons.

16. While welcoming the development of alternative measures to detention, as well as the plan to build new correction centres, the Committee remains concerned about overcrowding in Italian prisons. (article 10)

The State party should increase its efforts to reduce significantly overcrowding in prisons, and consider this matter as a high priority. Detailed statistical data showing progress over recent years, including on concrete implementation of alternative measures to detention, should be submitted to the Committee.

17. The Committee notes that magistrates in Italy are concerned that their independence is being threatened. While acknowledging the decision of the President of the Republic to refer back to Parliament a Bill relating to the reform of the judiciary, which had been much criticized by civil society, the Committee regrets that the State party provided insufficient information on the extent to which comments and recommendations made by domestic stakeholders as well as by the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers have been taken into consideration in the adoption the new Bill in 2005. (article 14)

The State party should ensure that the judiciary remains independent of the executive power, and ensure that the ongoing reform does not jeopardize this independence. The State party should provide the Committee with more detailed information on this issue.

18. The Committee regrets that insufficient information was provided on the extent to which the right to privacy and family life is taken into consideration by the judiciary when the criminal conviction of an alien is accompanied by an expulsion order from Italian territory. (article 17)

The State party should ensure that any restrictions on the right to privacy and family life are in accordance with the Covenant. It should provide more detailed information on restrictions to expulsion existing under Italian law, as well as on the way they are implemented by law enforcement officials as well as the judiciary.

19. The Committee, bearing in mind the nature of the rights guaranteed under article 19 of the Covenant and the limited conditions and grounds under which these rights may lawfully be restricted, and noting that a draft Bill under consideration by the Senate envisages that imprisonment will no longer be authorized in case of defamation, is concerned that defamation currently remains punishable by imprisonment.

The State party should ensure that defamation is no longer punishable by imprisonment.

20. The Committee, while noting Laws N° 112 of 3 May 2004 on television broadcasting and Law N° 215 of 20 July 2004 on conflict of interest, expresses concern about information that these steps may remain insufficient to address the issues of political influence over public television channels, of conflict of interests and high level of concentration of the audio-visual market. This situation is conducive to undermining freedom of expression, in a manner incompatible with article 19 of the Covenant.

The State party should provide detailed information on the concrete results achieved through the implementation of the above-mentioned laws, and pay particular attention to the recommendations of the Special Rapporteur of the Commission of Human Rights on freedom of opinion and expression, following his mission to Italy in October 2004

21. The Committee is concerned by the State party's policy to consider Roma as "nomads" as well as its camp-based policy towards them. It expresses concern about widespread reports that the Roma population is living in poor, unhygienic housing conditions on the margins of Italian society. (articles 12 and 26)

The State party, in consultation with the Roma, should reconsider its policy towards this community, put an end to their residential segregation, and develop programmes to ensure their full participation in mainstream society at all levels.

22. The Committee notes with concern that the Roma are not protected as a minority in Italy, on the basis that they do not have a connection with a specific territory. The Committee, while acknowledging the recognition by the delegation of the need to adopt a national law relating to the Roma, recalls that the absence of connection with a specific territory does not bar a community for qualifying as a minority under article 27 of the Covenant.

The State party, bearing in mind the Committee's General Comment 23 (1994) on article 27, should re-examine the situation of the Roma people in Italy, and, in consultation with them, adopt a national law and elaborate an action plan with a view to ensuring that their rights under article 27 are fully implemented.

23. The Committee sets 31 October 2009 as the date for the submission of Italy's sixth periodic report. It requests that the State party's fifth periodic report and the present concluding observations be published and widely disseminated in Italy, to the general public as well as to the judicial, legislative and administrative authorities, and that the sixth periodic report be circulated for the attention of the non-governmental organizations operating in the country.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 10, 11, 15, 17 and 20 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole. The State party is encouraged to increase its efforts to provide the Committee with more detailed information on how the law and institutions work in practice and on concrete results achieved.
