

ITALY

Italy is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. An estimated 16,000 asylum applications were filed during 2000, and by the end of the year, 12,000 asylum seekers were awaiting first instance decisions.¹ In 2001, an estimated 10,000 to 12,000 asylum seekers filed claims.²

The 2001 Immigration and Asylum Bill was approved by the Italian parliament on July 10, 2002.³ The Bill contains two articles governing the right to asylum, which replace the asylum provisions of the 1990 Aliens Act.⁴ NGOs and other organizations, such as the Jesuit Refugee Service and Fondazione Centro Astalli, have heavily criticized the new law, which introduces measures such as mandatory detention and restrictive appeal procedures, and limits financial assistance to asylum seekers.⁵ This new legislation is expected to come into force at the end of September 2002.⁶

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 236, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

² U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 191, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

³ Jesuit Refugee Service, *New Law On Immigration and Asylum Approved In Italy: Strongly Criticised By JRS* (July 15, 2002), *available at* <http://www.jesref.org/dispatch/en02/de207a.htm> (last accessed Sept. 8, 2002) [hereinafter *New Law on Immigration and Asylum*].

⁴ E-mail from Germana Monaldi, Italian Jesuit Service, to Min Jung Lee, Debevoise & Plimpton (June 3, 2002) [hereinafter Italian Jesuit Service Correspondence (June 3, 2002)].

⁵ *New Law on Immigration and Asylum*, *supra* note 3 (“The law makes access to the right to asylum seeker difficult and introduces measures such as mandatory detention as well as making it virtually impossible to appeal a negative decision on an asylum application”); Jesuit Refugee Service, *Italy Alert* 04-03-02, *available at* <http://www.jesref.org/alerts/itlatest.htm> (“In practice [the new law] will make the right to asylum virtually impossible to exercise”) (last accessed May 20, 2002); *Press Release*, Fondazione Centro Astalli (May 15, 2002) (criticism of new law by Fr. Vittoria Liberti SJ, Superior of the Italian Jesuits) (on file with Debevoise & Plimpton); Italian Jesuit Service Correspondence (June 3, 2002), *supra* note 4 (explaining that another reason NGOs have criticized the proposed bill is because the asylum portion of the bill is not comprehensive as only two articles deal with asylum procedure); E-mail from Germana Monaldi, Italian Jesuit Service, to Min Jung Lee,

Under the 1998 Aliens Act, any foreign national entering Italy illegally whose identity is not established may be detained at a temporary holding center.⁷ The 2001 Immigration and Asylum Bill provides for the mandatory detention of these immigrants. At these centers asylum seekers who are apprehended at border entry points are held for hours, or possibly days. Those who arrive by air are detained in the transit zone of the airport until the Border Police decides on their admissibility. Once admitted, asylum seekers are released, referred to the normal asylum procedure and issued three-month renewable residence cards.⁸

There was no formal pre-screening stage for manifestly unfounded claims under the 1998 Aliens Act. Prior to the new legislation, only the Central Commission for the Recognition of Refugee Status was authorized to decide upon asylum claims and its decision was final.⁹ The 2001 Immigration and Asylum Bill restricts the movements for up to two days of asylum applicants whose claims are “manifestly unfounded” in the pre-screening stage, regardless of manner of entry or place of application.¹⁰

Accommodation in reception centers is available, but not compulsory. Many of these centers are run by charitable organizations (*i.e.*, Italian Caritas, Centro Astalli), NGOs (*i.e.*, Casa dei Diritti Sociali in Rome) and social cooperatives.¹¹ A smaller number are run directly by the local government. There are also limits on lengths of stays. In 2001, for the first time, a National Asylum Program, known as *Piano Nazionale Asilo* (PNA),

Debevoise & Plimpton (Nov. 15, 2001) (on file with Debevoise & Plimpton) [hereinafter Italian Jesuit Service Correspondence (Nov. 15, 2001)].

⁶ *New Law on Immigration and Asylum*, *supra* note 3.

⁷ EUROPEAN COUNCIL ON REFUGEES AND EXILES, STUDY ON THE AVAILABILITY OF FREE AND LOW-COST LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EUROPEAN STATES at 180, *available at* <http://www.ecre.org/research/legalassistance/index.shtml> (November 2001) [hereinafter ECRE EUR. STUDY 2001]. These centers are mostly run by NGOs such as the Italian Red Cross or churches in contract with the Ministry of the Interior. *Id.*; *also* UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, RECEPTION STANDARDS FOR ASYLUM SEEKERS IN THE EUROPEAN UNION at 11, 114 (July 2000) [hereinafter UNHCR EU REPORT 2000].

⁸ DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES at 166-167, *available at* <http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000].

⁹ Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 5.

¹⁰ ECRE EUR. STUDY 2001, *supra* note 7, at 180; UNHCR EU REPORT 2000, *supra* note 7, at 116.

¹¹ Italian Jesuit Service Correspondence (June 3, 2002), *supra* note 4.

was set up by the Ministry of Interior, the UNHCR and the Association of National Town Councils (“Associazione Nazionale Comuni Italiani”), to accommodate 2000 asylum seekers in a network of 60 town councils. The future of PNA is uncertain given the passage of the 2001 Immigration and Asylum Bill.¹²

Indigent asylum seekers who are not housed in a reception center are provided with some state-funded financial assistance, about 34,000 Lire per day, for up to 45 days.¹³

Is there independent review of the detention decision? Yes.

There is judicial review of the decision to detain within 48 hours of detention, which may then be appealed to the Supreme Court of Appeal.¹⁴

Are there limits on the period of detention? Yes; 20-30 days.

There is a twenty-day maximum for the detention of asylum seekers whose identity cannot be established. In addition, there is a thirty-day maximum for detention of undocumented asylum seekers awaiting deportation.¹⁵

Is there periodic review of detention? No.

Is there access to government-funded legal aid? Limited.

Under the 2001 Immigration and Asylum Bill, asylum seekers are entitled to free legal aid when appealing the Commission’s decision and can request this aid from the Commission for Free Legal Aid.¹⁶ Asylum seekers who appeal the Commission’s

¹² *Id.*; see also EUROPEAN COUNCIL ON REFUGEES AND EXILES, COUNTRY REPORTS 2001 at 132, available at <http://www.ecre.org/publications/countryrpt01.shtml> [hereinafter ECRE REPORT 2001].

¹³ ECRE EUR. STUDY 2001, *supra* note 7, at 180; DRC W. EUR. REPORT 2000, *supra* note 8, at 172.

¹⁴ ECRE EUR. STUDY 2001, *supra* note 7, at 180; DRC W. EUR. REPORT 2000, *supra* note 8, at 169.

¹⁵ ECRE EUR. STUDY 2001, *supra* note 7, at 180; DRC W. EUR. REPORT 2000, *supra* note 8, at 169.

¹⁶ ECRE EUR. STUDY 2001, *supra* note 7, at 180; DRC W. EUR. REPORT 2000, *supra* note 8, at 168. This appeal may last for years, and appealing asylum seekers, who are not provided with residence permits, are simply tolerated. Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 5.

decision, however, can be forced to repatriate by the local representative of the national government (“*Prefetto*”) before a final decision is rendered.¹⁷

Other than these measures, there is no right to legal aid for asylum seekers, nor is there a right to have an attorney present before the Central Commission for the Recognition of Refugee Status. Free legal aid may be provided by NGOs, which are given access at border points and transit zones to provide information to asylum seekers held there.¹⁸ In practice, however, NGO presence is scarce and only some asylum seekers have access to free legal assistance by NGOs before appeals.¹⁹

Vulnerable groups: Section 1(5) of the 1990 Aliens Act requires police authorities to immediately inform the Juvenile Court about any unaccompanied minor under the age of 18 so that the child may be appointed a guardian (“*Giudice Tutelare*”) by the Civil Court.²⁰ Unaccompanied minors cannot be expelled or detained and are often accommodated in reception centers for minors, or, depending on their age, assigned a foster family.²¹ However, when they reach the age of 18, their residence permit is no longer renewable and they are treated as illegal migrants.²² Unaccompanied minors may be appointed a legal guardian and must be assisted by their guardian when applying for asylum and when before the Central Commission for their final interview.²³ In practice, because there are no specific provisions governing asylum applications lodged by minors, the same procedures used for adults are applied.²⁴ Legal and social assistance, health care and education are provided to unaccompanied minors on a priority basis.²⁵

¹⁷ Italian Jesuit Service Correspondence (June 3, 2002), *supra* note 4.

¹⁸ DRC W. EUR. REPORT 2000, *supra* note 8, at 168.

¹⁹ ECRE EUR. STUDY 2001, *supra* note 7, at 180.

²⁰ *Id.*

²¹ *Id.*

²² Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 5.

²³ DRC W. EUR. REPORT 2000, *supra* note 8, at 169; *also* Italian Jesuit Service Correspondence (Nov. 15, 2001), *supra* note 5.

²⁴ ECRE EUR. STUDY 2001, *supra* note 7, at 180.

²⁵ *Id.*