ADDENDUM 1 TO THE NOTE

from: General Secretariat of the Council

to: Migration Working Party (Expulsion)

No. prev. doc.: 8428/94 ASIM 141

Subject: Situation of persons who cannot be expelled

Delegations will find annexed Italian reply to the aforementioned questionnaire.
B. LEGAL PROVISIONS

1. **International law**

   Italy has ratified the Convention against torture and other cruel, inhuman or degrading treatment or punishment, signed in New York on 10 December 1984, and the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, signed in Strasbourg on 26 November 1987.

2. **National legal provisions**

   Under Article 7(6) of Italian Law No 39 of 28 February 1990, a foreigner expelled is deported to his state of origin or to the state of provenance where this is not possible, unless at the foreigner’s request or on justified grounds the authority responsible for public safety sees fit to send him elsewhere, if his life or personal freedom might be in danger for reasons of race, sex, language, nationality, religion, political opinions or personal or social conditions.

   In any case, as laid down by Article 7(10) of the same law, a foreigner may not be expelled to or escorted to the frontier of a state in which he might be the subject of persecution for reasons of race, sex, language, nationality, religion, political opinions or personal or social conditions, or might be in danger of deportation to another state in which he would not be protected from persecution.

   Furthermore, subparagraph 12a inserted in Article 7 of Italian Law No 1990/39 by Article 8 of Law No 296 of 12 August 1993 provides that where any foreigner held on remand for one or more crimes committed or attempted, or sentenced by a court to a penalty of no more than three years’ imprisonment even where this constitutes part of a heavier sentence, shall be immediately expelled to his state of origin or to the state of provenance, except where there are immutable requirements of legal process, serious personal health reasons or serious risks of danger or harm as a result of war or epidemics.

3. **Residence status**

   (a) **Legal residence status**

      Persons who for legal or political reasons cannot be expelled are given legal right of residence by the issue of a temporary residence permit.

      - Reuniting families

      NO
(b) Other rights
   - Work permit
     NO
   - State benefits such as welfare and unemployment benefit
     NO

4. Legal remedies

Yes. Article 5(3) of Law No 1990/39 allows for appeal against expulsion orders to the Regional Administrative Court of the foreigner's elected place of domicile.

If a preliminary application for suspension is made, enforcement of the expulsion order is suspended until a final decision is taken on the application for the foreigner to be remanded in custody.

C. VARIOUS CATEGORIES OF POLITICAL AND LEGAL OBSTACLES TO EXPULSION AND TEMPORARY WAIVER OF EXPULSION

1. Measures by the State

   (a) Death penalty

   A foreigner risking the death penalty in his own country or who has been condemned to death will not be expelled and deported to his state of origin, as provided by Article 7 of the abovementioned Law 1990/39, without distinction as to the manner of execution of the death penalty.

   Non-judicial execution is also an obstacle to expulsion.

   (b) Torture and (c) Inhuman or degrading treatment or punishment

   An expulsion order cannot be enforced in the case of a foreigner who would be at risk of torture or of punishment or treatment which is inhuman or insults human dignity.

   "Torture" is taken to mean any act by which pain or serious physical or mental suffering is intentionally inflicted on a person with the deliberate aim of obtaining information or confessions from that person or another, punishing him for an act which he or another has committed or is suspected of having committed, intimidating him or putting pressure on another person.
2. **Measures taken by third parties**

Yes. Article 7(6) of Law No 39/1990 provides that "a foreigner expelled is deported to his state of origin or to the state of provenance where this is not possible, unless at the foreigner's request or on justified grounds the authority responsible for public safety sees fit to send him elsewhere, if his life or personal freedom might be in danger for reasons of race, sex, language, nationality, religion, political opinions or personal or social conditions".

3. **Civil war as a special case**

In the case of armed conflict in a given country, such as in the former Yugoslavia, any expulsion orders concerning nationals of that State are suspended in view of the real danger to life which exists, in accordance with Article 7(6) of Law 1990/39.

4. **Political and economic conditions**

See reply to 2 above.

5. **Personal ban on expulsion**

Enforcement of an expulsion order may be suspended when a preliminary application for suspension is made until the final decision is taken on that request (Article 5(4) of Law 1990/39).

D. **LIMITATION OF A BAN ON EXPULSION FOR REASONS OF NATIONAL SECURITY**

Where the presence of the foreigner in the country represents a danger to national security or public order, enforcement of the expulsion order will not be suspended, in accordance with Article 32 of the Geneva Convention of 28 July 1951, ratified by Italian Law No 722 of 24 July 1954.