

ANNEX No. 1

Relevant constitutional provisions

(Excerpt from the Italian Constitution)

Art. 3

All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature, which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.

Art. 10

The Italian legal system conforms to the generally recognised principles of international law. The law regulates the legal status of foreigners, in conformity with international provisions and treaties. A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian Constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence.

Art. 13

Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void. Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished. The law shall establish the maximum duration of preventive detention.

Art. 24

Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law. Defence is an inviolable right at every stage and instance of legal proceedings. The poor are entitled by law to proper means for action or defence in all courts. The law shall define the conditions and forms of reparation in case of judicial errors.

Art. 25

No case may be removed from the court seized with it as established by law. No punishment may be inflicted except by virtue of a law in force at the time when the offence was committed. No restriction may be placed on a person's liberty save for as provided by law.

Art. 26

Extradition of a citizen may be granted only if it is expressly envisaged by international conventions. In any case, extradition may not be permitted for political offences.

Art. 27

Criminal responsibility is personal. A defendant shall be considered not guilty until a final sentence has been passed. Punishments may not be inhuman and shall aim at re-educating the convicted. Death penalty is prohibited.

Art. 111

Jurisdiction is implemented through due process regulated by law. All court trials are conducted with adversary proceedings and the parties are entitled to equal conditions before an impartial judge in third party position. The law provides for the reasonable duration of trials. In criminal law trials, the law provides that the alleged offender shall be promptly informed confidentially of the nature and reasons for the charges that are brought and shall have adequate time and conditions to prepare a defence. The defendant shall have the right to cross-examine or to have cross-examined before a judge the persons making accusations and to summon and examine persons for the defence in the same conditions as the prosecution, as well as the right to produce all other evidence in favour of the defense. The defendant is entitled to the assistance of an interpreter in the case that he or she does not speak or understand the language in which the court proceedings are conducted. In criminal law proceedings, the formation of evidence is based on the principle of adversary hearings. The guilt of the defendant cannot be established on the basis of statements by persons who, out of their own free choice, have always voluntarily avoided undergoing cross-examination by the defendant or the defence counsel. The law

regulates the cases in which the formation of evidence does not occur in an adversary proceeding with the consent of the defendant or owing to reasons of ascertained objective impossibility or proven illicit conduct. All judicial decisions shall include a statement of reasons. Appeals to the Court of Cassation in cases of violations of the law are always allowed against sentences and against measures affecting personal freedom pronounced by ordinary and special courts. This rule can only be waived in cases of sentences by military tribunals in time of war. Appeals to the Court of Cassation against decisions of the Council of State and the Court of Accounts are permitted only for reasons of jurisdiction.

Art. 112

The public prosecutor has the obligation to institute criminal proceedings.

Art. 113

The judicial safeguarding of rights and legitimate interests before the bodies of ordinary or administrative justice is always permitted against acts of the public administration. Such judicial protection may not be excluded or limited to particular kinds of appeal or for particular categories of acts. The law determines which judicial bodies are empowered to annul acts of public administration in the cases and with the consequences provided for by the law itself.