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## **Difference or Discrimination?**

### **The challenges of a multicultural Europe**

Political and legal definitions of the citizen: the dynamics of inclusion and exclusion.

#### ***Bossi-Fini* law, trick or treat for the immigrant?**

##### Abstract:

The case, the *Bossi-Fini* law, initially drafted to limit illegal immigration and apply amendments to the previous Italian immigration law, represents a trick for the immigrants, rather than a means to improve integration. It poses unrealistic conditions to be followed by the immigrants who wish to move to Italy and settle legally. By increasing the difficulties related to the measures of integration, this law actually increases illegal immigration, rather than reduces it. Since the *Bossi-Fini* law was drafted based on the previous Italian immigration law *Turco-Napolitano*, the amendments made will be analysed, and the various reactions to the implementation of the law will be argued. In conclusion the various facets of the law will be pulled together to show that the problem of illegal immigration will not be eradicated with the *Bossi-Fini* law, and that further action and measures should be taken.

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## **1. Introduction and aims**

### **1.1 The Bossi-Fini law: a trick for the immigrant**

Law No. 189 of July 30, 2002, known as the *Bossi-Fini* law after the names of the politicians who proposed it, is the new legislation which regulates immigration into Italy. It came into force in August 2002, and a decree on procedures for regularising the situation of illegal immigrants already in the country was adopted in September. It was initially drafted to limit illegal immigration and apply amendments to the *Turco-Napolitano* law, the previous 1998 immigration law, also named after the ministers who proposed it.

The *Bossi-Fini* law introduces new clauses and therefore represents a trick for immigrants, rather than a means to improve integration. It poses unrealistic conditions to be followed by the immigrants who wish to move to Italy and settle legally and by increasing the difficulties related to the measures of integration, this law actually increases illegal immigration, rather than reduces it.

In my analysis of the *Bossi-Fini* law, I will first present a country profile, stating the reasons why Italy is seen as a land of inward migration, and providing some insight on its legal and illegal immigrants.

Next, I will outline the main features of the *Turco-Napolitano* law before turning to the amendments made and innovations brought through the *Bossi-Fini* law. Five different aspects of the *Bossi-Fini* law will be carefully analysed: the inward migration, employment, regularisation, family, and expulsions. Within those fields the most significant aspects of the law will be argued.

I will then argue the various reactions to the implementation of the law. In conclusion the various facets of the law will be pulled together to show that the problem of illegal immigration will not be eradicated with the *Bossi-Fini* law, and that further action and measures should be taken.

## 1.2 Agenda

Simply to give a brief overview of the aspects that will be dealt with, in speaking of the *Bossi-Fini* law, here are the main points that will be considered:

- a) Quotas, that is the number of non-EU workers who can be admitted into Italy in the following year, will be laid down yearly by the President of the Council;
- b) Residence permits issued for reasons of employment will last for a maximum of two years, even if the worker concerned has an open-ended contract of employment. In these cases, the immigrant workers must request a further temporary residence permit upon expiration of the old permit;
- c) Other non-EU immigrants will be allowed entry into Italy only if they have a 'residence contract', *contratto di soggiorno*, i.e. a contract of dependent employment signed by an employer (a firm or a family) and the immigrant worker. This contract must provide for accommodation and the payment of travel expenses for the workers to return to their country of origin. Italian embassies and consulates will issue entry visas only under these conditions. When the contract expires, the immigrant worker must return to the country of origin;
- d) A specific immigration office is being established in each province of Italy to oversee the entire recruitment procedure for immigrant workers on both open-ended and fixed-term contracts. Employers are able to recruit specific immigrant workers 'by name' or from lists of immigrant workers held by Italian embassies and consulates abroad;
- e) When their residence permit is issued, immigrant workers must provide fingerprints;
- f) After six years of regular residence in Italy, non-EU citizens possessing the necessary economic requisites to sustain themselves and their families will be able to receive a form of permanent permit instead of a temporary residence permit;
- g) For irregular immigrants already in Italy, the law provides amnesty, allowing the regularisation of the position of those who have worked and lived in Italy for at least three months;
- h) The new offices will also deal with applications for non-EU citizens to enter Italy for purposes of family reunification. Only non-EU immigrants with a regular residence permit will be entitled to present this kind of application with regard to their family members. Only 'first degree' relatives -- spouses, children and parents over 65 years of age with no other form of support -- will be admitted;

- i) Non-EU minors living in Italy will obtain a residence permit once they reach adult age, 18 years, provided that they have lived in Italy for at least three years and have attended a social and civil integration programme provided by a public or private organisation. This organisation must also guarantee that they have accommodation and attend school or work. The number of residence permits issued on these conditions will be subtracted from the pre-defined number of total annual permits;
- j) Irregular immigrants will be deported and accompanied to Italy's borders. Deportation will be immediate and will not be suspended even if the immigrant appeals to the courts;
- k) Suspected illegal immigrants stopped by the police will be taken to specific centres controlled by the police. The authorities will try to discover their identity during the following 60 days. If they are found to be illegal immigrants, they will be ordered to leave the country within five days, period they must spend in the centre. If they fail to do so, the illegal immigrants will be arrested and held in prison for six months to a year or will be accompanied to the borders and deported. If illegal immigrants return to Italy, they will be arrested and tried by the courts.<sup>1</sup>

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<sup>1</sup> Paparella D. and Rinolfi V., *New Legislation regulates immigration*, 26/09/2002

## **2. Country profile: Italy**

### **2.1 The Italian Immigration**

Italy has seen important inward migration during the past 20 years. Given its position in the centre of the Mediterranean, and with over 8,000 kilometres of coastline, Italy is considered by many migrants the most accessible entrance to Europe.

On 31 December 2000, the official figure for the number of non-EU citizens in Italy stood at over 1.2 million people (691,311 men and 545,044 women). Moroccans are the most numerous immigrants, followed by Albanians, Romanians, Tunisians, and Senegalese. The number of immigrants is highest in the Centre of Italy (4% of the population), followed by the North (3.1%), the South (1.2%) and the islands (1.2%)<sup>2</sup>.

The economic gap between the various areas of the country is reflected in the way in which migrants have entered the labour market. In the North, especially in the northern-eastern regions, where the unemployment rate is very low, immigrants work mainly in industrial activities and are employed in more or less regular positions. In the South, non-EU workers are employed -- the majority of cases in seasonal work and in the clandestine underground economy, particularly in the agriculture and building sectors. Many immigrant workers, especially women, are employed in domestic work or as home-helpers for old or disabled people.

Besides legal immigrants, who have regular residence permits, there are numerous illegal immigrants, whose number is hard to quantify. According to Caritas, the Catholic Church's agency assisting immigrants, the number of illegal immigrants in Italy varies between 500,000 and 800,000<sup>3</sup>. Their position as illegals means that they are perceived as potentially dangerous and as being engaged in criminal activities such as drug-pushing, prostitution, and petty crime. Some believe that this perception, which applies especially in large cities, has led a part of the population to have intolerant attitudes towards immigrants, fuelled and exploited by some political parties such as the Lega Nord.

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<sup>2</sup> Paparella D. and Rinolfi V., *New Legislation regulates immigration*, 26/09/2002

<sup>3</sup> Ludovico M., *Caritas, in Italia mezzo milione di stranieri illegali*, 28/06/2006

## 2.2 The *Turco-Napolitano* immigration law

The first attempt at regularising and integrating immigrants in Italy was launched at the beginning of the 1990s through Law 39/90, the so-called *Martelli* law. The objective of this law was to plan migratory flows into Italy in collaboration with the immigrants' countries of origin. In 1998, the centre-left government issued the *D. Lgs.*<sup>4</sup> 286/98, the *Turco-Napolitano* law, as an attempt to regularise the position of non-EU immigrants and improve their integration. The *Turco-Napolitano* immigration law, implemented March 27, 1998, places itself in the context of the fortification process of the European borders. In the European process that leads from the Schengen Agreement to the Amsterdam Treaty, this law is the result of the idea that the irregular and illegal immigration constitutes a threat to the public order and to the safety of the citizens.

The law's pivot is the regulation of the incoming migration flow, based on the job market's demand. The quotas of immigrants, who can apply to enter Italy, are established once a year, before November 30<sup>th</sup>, with a decree issued by the President of the Council. Furthermore, the *CPT*, *Centri di Permanenza Temporanei*, are set up. These are temporary holding centres, where the immigrants are kept, waiting to be deported.

This law established intricate procedures for the deportation of illegal immigrants who, once arrested by the police, could eventually be deported only after their case was judged by a magistrate. After the magistrate issued an order of deportation, the illegal immigrant had two weeks to appeal against the decision. In many cases, immigrants used this time to go underground.

The centre-right coalition made the perceived failings of the immigration legislation an issue during its successful campaign for the May 2001 general election. Since it has been in power, the centre-right government has made the immigration issue a priority and has issued a law which regulates immigration and a decree on the 'regularisation' of immigrants already living in Italy, the *Bossi-Fini* law. This new law holds the structure of the *Turco-Napolitano* law, though passing amendments and restrictions.

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<sup>4</sup> *D. Lgs.* : *Decreto legislativo*, Legislative Decree. The Parliament delegates the government to issue a decree. This decree has to respect a series of limitations set by the Parliament, but once issued, it is not voted in a second motion by the Parliament.

### 3. The Innovations of the *Bossi-Fini* law

#### 3.1 Entering the country

##### 3.1.1 Quotas and incoming migration flow

As previously mentioned, the government is meant to issue yearly, before November 30<sup>th</sup>, the incoming quotas of immigrants who seek work permits. The yearly term is meant to define the maximum quotas of immigrants to admit on the national territory for work. The power lies in the hands of the President of the Council, who is free to decide whether to issue the decree or not. In doing so, chances are that the quotas could be blocked for an entire year, with the obvious consequence of the increase in illegal immigration and criminality linked to it.

On one hand, the law provides the possibility of reserving a number of quotas for the so called 'recommended', those non-EC immigrants who come from countries which have stipulated a collaboration agreement with Italy in matters of repression of illegal immigration. On the other hand, restrictions of entrance to workers are applied to immigrants coming from countries which do not properly cooperate in contrasting illegal immigration.

This leads to the conclusion that, irrespective of one's merits or personal faults, an immigrant can be denied the possibility to enter Italy only because he is guilty of belonging to a country that does not cooperate with the Italian government on illegal immigration issues.

##### 3.1.2 Residence Permit

Within eight days of arrival in Italy, the immigrant is supposed to request his residence permit in the offices responsible for police force, public order and relative administrative services. The duration of the stay varies according to the reasons for which the permit has been issued. The residence permits for matters of visit, business or tourism last three months, those for seasonal work last nine months. Longer residence permits are issued for one year if it is meant for a fixed-term contract for studying or for professional training; two years for a fixed-term contract for self-employment or for family reunification.

The residence permit can only be renewed in specific cases and in abidance of determined conditions. Depending on the different types of residence permit, there is differentiation in the terms of renewal. The request must be issued three months before the expiration of the biennial residence permit, two months before for the annual permit, and 30 days earlier for all other types of residence permits. This procedure notably reduces the effective duration of the permits.

The residence permit issued for a fixed-term contract can be renewed only while the employment contract is still in force. In case of loss of employment, the period granted to the immigrant to find another job is reduced from a year's time to only six months. This increases the chances of accepting any kind of job, just to be able to renew the contract, and gives place to exploitation.

## **3.2 Employment**

### **3.2.1 *Bossi-Fini* law: a legislative fiction**

The position of the immigrant who wishes to enter the Country legally and find a job allowing him to stay is a hard one. The trick of the *Bossi-Fini* law is the following: to obtain a residence permit it is necessary to be employed. The innovations of this law, though, seem to be based on the distant encounter between demand and supply. The principles of the so called 'nominative call' are the following: the Italian employer must ask to employ a foreign citizen, committing to issue a residence contract, and therefore demanding the entrance in the country of a specific foreign citizen, without actually knowing the person or having had any previous encounter with him, as he is still be abroad. Herein lies the legislative fiction.

What actually happens is that the immigrant, who has already come to Italy as an illegal alien or on a tourist visa which doesn't allow him to work, is employed in an 'under the table job'. The employer, after having him work illegally for some time, then decides to begin the paperwork necessary to employ the immigrant legally, pretending he is still abroad and that he's being called specially to work. The reasons for this fiction are obvious: it is irrational to ask an employer to take so much responsibility upon himself, without even knowing who he is employing!

Furthermore the *Bossi-Fini* law introduces a procedure of “*national or communitarian preference*”<sup>5</sup>. Once the employer issues the job application, it must be verified that no other Italian or communitarian worker is available. The request for the job post, which is initially aimed at the employment of one specific foreign worker, is sent to the employment agencies throughout the country and publicly published for twenty days. During this period, any Italian and communitarian worker can apply for the job, occupying the position which was originally meant for the immigrant. The implications of this process are furthermore complicated by the clauses of the law, which imply more duties for the employer to fulfil. Next, I will go into further detail in dealing with the resident contract.

### **3.2.2 The resident contract**

One of the pivotal issues that must be taken into account while dealing with the *Bossi-Fini* law is the ‘resident contract’, *contratto di soggiorno*. It is fundamental to obtain the desired residence permit for matters of employment. The issue previously dealt with, regarding the demand-supply distant encounter, is further worsened by the responsibilities the employer is burdened with in matters of accommodation and return expenses. When signing the residence contract, the employer guarantees an accommodation for the worker. This accommodation has to “*respect the minimum parameters provided by law for the lodgings of public residential housing*”<sup>6</sup>.

The law then states that the employer, who has guaranteed the accommodation, can then withhold up to one third of the monthly total salary for the duration of the contract. But it must be remembered that the employer only gives a guarantee for the accommodation, and does not actually pay for the rent. This means that, since up to a third of the monthly salary can be withheld, after having recovered the expenses for a hypothetical estate agency, the employer would then actually earn money off of the immigrant for the duration of his employment contract. The employees rights in this respect must be safeguarded.

Furthermore, the employer is responsible for the expenses of the return trip of the worker to his home country. Besides acting as a disincentive for the employment of immigrants, this last consideration entails a discriminatory attitude. When considering the expenses for the repatriation, the employer naturally tends to consider those immigrants who come from a closer country and are therefore easier and cheaper to repatriate.

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<sup>5</sup> Art. 18, law 189/2002

<sup>6</sup> Art. 6, law 189/2002

### 3.2.3 The ‘sponsor’

The notion of ‘sponsor’ refers to the idea of having an individual, usually a family member or friend, who requests the entrance of an immigrant into the country. He provides the immigrant with an accommodation allowing him to look for a job. This was actually one of the main channels of legal immigration during the previous *Turco-Napolitano* law, and it made the encounter between demand and supply possible. Already being in the country legally, the immigrant could directly be employed, avoiding the process previously described, in which the employer requests an unknown foreign worker.

A number of ‘sponsor quotas’ were then established through the *Turco-Napolitano* law in addition to the incoming flow quotas. If at the end of the allowed year, the foreigner had still not found employment, he had to return to his home country. This figure of the sponsor has since been abolished.

According to the new *Bossi-Fini* law, a ‘pre-emption title’ is established. The immigrants will obtain these titles after attending training courses in their home countries<sup>7</sup>. They will then be registered in specific waiting lists and the employers who want to employ a foreigner can choose from the list and request his immigration to Italy. This process is still long and complicated and implies the absence of an encounter between the employer and the employee, a problem which has been previously mentioned and which seems to be the biggest ‘trick’ applied in the *Bossi-Fini* law.

### 3.2.4 Fingerprints

A deeply discriminatory innovation is the one regarding fingerprints. Up until the *Bossi-Fini* law came into force, the non-EC immigrants would have their fingerprints taken only if considered illegal immigrants, stopped by the police force or arrested for having committed a crime. One other case would have been the impossibility of determining precisely their personal identity, because they were lacking valid identification papers. With the *Bossi-Fini* law, each and every immigrant who wishes to obtain a resident permit, both the first and the renewal, is subject to fingerprinting.

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<sup>7</sup> “The national organizations of entrepreneurs, employers or workers, the organizations which have operated for at least three years in the immigration field, and specific international organizations, can, within the framework of programmes approved by the Minister of Employment and the Minister for Education, preview training and professional formation activities in the home Countries.” (Ballerini A. and Benna A., 2002:45)

*“In regards to the effectiveness of the fingerprints being taken, one can notice that the research carried out so far on the crime rate within the immigrants confirm that the predominant percentage, and that reaches for the serious crimes that cause the highest social alarm the 80-90% of the total, concerns illegal immigrants, for whom the recalled controls [fingerprints] were already expected”.*<sup>8</sup>

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<sup>8</sup> *Guida al Diritto*, Il Sole 24 ore, n. 34/2002

### 3.3 Regularisation

A decree-law issued by the cabinet on September 6, 2002, provides for the regularisation of the position of two types of irregular immigrant workers: those employed as domestic workers and home-helpers, and dependent workers involved in other kinds of subordinate employment. Immigrants, whose residence permits have expired, will also be able to regularise their situation, provided that they have not received a deportation order. All regularised immigrant workers will receive a residence permit with a duration equal to the duration of their employment contract, but in no case longer than two years.

The requirements that immigrant workers in dependent employment must meet in order to qualify for regularisation are as follows:

- a) The worker must have been employed by a company for at least three months;
- b) The employer must commit itself to hiring the worker on an open-ended contract, or on a fixed-term contract lasting at least one year;
- c) The employer must pay the workers at least EUR 700 per month, plus EUR 100 in expenses;
- d) Within ten days of the submission of the application for regularisation, and of the relevant documentation, to the prefecture or the police headquarters, the employer and the worker will be called by the local prefecture for a meeting to sign the relevant papers.

For domestic workers and home-helpers, the requirements are as follows:

- a) One home-helper may be regularised per family, but it is necessary to certify the presence of old or disabled people who need assistance;
- b) Domestic workers and home-helpers must be paid at least EUR 439 per month;
- c) The employer must pay a social security contribution to the National Institute for Social Insurance, *Inps, Istituto nazionale di previdenza sociale*, of EUR 290 per month, plus EUR 40 in expenses;
- d) The prefecture will check all the documentation and will call the parties to a meeting for the signature of the regularisation agreement and of the residence permit.<sup>9</sup>

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<sup>9</sup> Paparella D. and Rinolfi V., *New Legislation regulates immigration*, 26/09/2002

## 3.4 Family

### 3.4.1 Family reunification

Family reunification is limited in the new law. The foreigner is allowed to reunite only with his 'first degree' relatives and parents, only if he can demonstrate that the parents are older than sixty-five years of age and the other children are not able to look after them because of documented health reasons. This amendment is hard to respect because the mortality rate in the home countries of the dependent parents is usually very high for those over sixty-five years of age and it is extremely hard to find an elderly man, who has documented invalid children, who is able to sustain all the bureaucratic process and the travel to Italy.

With these limitations, the constitutional principle of family unity is deeply re-discussed. It also contrasts with art. 8 of the European Convention on Human Rights<sup>10</sup>, which recognizes the right to respect one's private and family life. Moreover, art. 2 of the Italian Constitution ratifies the respect of the inviolable rights of man, and art. 10 ratifies that the condition of the foreigner is regulated in compliance with the international norms and treaties<sup>11</sup>.

Following the amendments of the Amsterdam Treaty in 1997, the provisions of the European Convention of Human Rights have been incorporated in the fundamental principles of the European Union, art. 6.<sup>12</sup> The *Bossi-Fini* law then, with its amendments, not only infringes upon the principles of the Italian Constitution, but also upon the European Union regulations.

### 3.4.2 Family and minors

New regulations have been introduced for minors who reach adult age, 18 years, regarding the possibility to obtain student or work permits. To be able to access to these dispositions, the foreign minors will have to prove to own a number of prerequisites:

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<sup>10</sup> Art. 8, ECHR, "Right to respect for private and family life.

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

<sup>11</sup> Costituzione della Repubblica Italiana

<sup>12</sup> Art. 6, Charter of Fundamental Rights of the European Union, "Right to liberty and security. Everyone has the right to liberty and security of person."

- a) They must have been in Italy for a period not inferior to three years;
- b) They must have attended, for at least two years, a social and civil integration project, run by a public or private corporation, which has national representation and is registered in the apposite record held by the Presidency of the Council;
- c) They must have available accommodations;
- d) They must attend a study course, work or have an employment contract.

The permits issued according to these dispositions, which involve minors who have been reunited to their families or have actually been born in Italy, will be detracted by the incoming flow quotas. This is a contradiction because the incoming quotas are established for those aliens who have yet to enter the country, and it should not involve those foreigners who live already in Italy and have lived there for years.

### **3.5 Expulsions**

#### **3.5.1 The *Turco-Napolitano* measures**

Art. 13 of law 286/98, the *Turco-Napolitano* law, divided expulsion of immigrants into three different categories:

- a) Administrative expulsion for illegal immigration, illegal stay, or for being a potentially dangerous individual;
- b) Expulsion as a means of security, disposed by the judge in addition to a penal sentence when the foreigner was considered socially dangerous. In these cases the expulsion was physically carried out only after the execution of the penalty;
- c) Expulsion as a substitute sanction to detention, disposed by the judge.

An authorization to carry out a foreigner's expulsion had to be released by the judicial authority. Regarding the procedures for the expulsion, the issued decrees established that the country had to be left within fifteen days of initial notice. In extreme cases, if the immigrant was thought to be dangerous and could potentially avoid voluntary expulsion, forced accompaniment was to be carried out. When accompaniment to the borders was not possible, the foreigner was kept in custody in the temporary holding and assistance centres. For the following five years after the expulsion, the foreigner was not allowed to return to Italy.

### 3.5.2 The *Bossi-Fini* amendments

The most important innovation of the *Bossi-Fini* law consists in the accompaniment to the border as the only means of expulsion. The only exception is given if the foreigner has passed the deadline to renew the resident permit. In this case he is ordered to leave the Country within fifteen days, since he has committed no actual dangerous crime.

The period in which the foreigner is not allowed to return to Italy is doubled from five to ten years. Moreover, in case of illegal return to Italy, the alien is sentenced to a six to twelve month reclusion.

There is a further clause to the amendment which is the so called 'silent-acquiescence'<sup>13</sup>. This establishes that if the judge does not release an expulsion authorization within fifteen days after it has been required by the officer in charge of the police force, this is taken for granted, and the immigrant will be expelled anyway. Furthermore, the foreigner can be kept in custody in the temporary holding and assistance centres, although no authorization has yet been issued by the judge. This measure is a clear restriction to one's personal freedom, and the detention without authorisation risks unconstitutionality.

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<sup>13</sup> Ballerini A. and Benna A., *Il muro invisibile, Immigrazione e Legge Bossi-Fini*, 2002

## **4. Reactions**

A very harsh debate accompanied the adoption of the *Bossi-Fini* law and the decree, with criticisms voiced both by trade unions and employers' associations.

Employers, in particular in the north-eastern Veneto region, where the use of foreign labour makes up for local shortfalls made many criticisms of the restrictions imposed by the new legislation. Many employers pointed out the fact that it is now impossible to regularise the situation of immigrant workers who have received a deportation order but remain in Italy. Many firms employ immigrant workers in this category, and the impossibility of regularising their situation risks leaving many companies with an insufficient number of workers.

Luigi Rossi Luciani, president of the Federation of Industrialists of the Veneto Region, *Federazione Industriali Veneti*, said that: “*companies are affected by the amnesty [for irregular immigrants] in only a very marginal way but, on the contrary, have urgent need of personnel in order to grow*”. According to Mr Rossi Luciani, “*it would be less difficult and more productive to leave at work all the irregular immigrants who, according to this law, should be immediately deported*”.

Trade unions have strongly criticised the new immigration legislation, especially because entrance into Italy is now exclusively subordinated to possession of an employment contract. Oberdan Ciucci, the president of *Anolf-Cisl* – the association of immigrant workers affiliated to the Italian Confederation of Workers' Unions, *Cisl, Confederazione Italiana Sindacati Lavoratori* – stated that: “*the law is not the result of preliminary negotiations with the trade union and with immigrants' associations. The law was developed to comply with the intolerance of some people against immigrant people [...] the policies carried out by the Berlusconi government do not tackle the problem and will result in an abnormal increase in irregular and illegal immigrants*”. Giorgio Roversi, the official responsible for social policy at *Cgil Lombardia*, the Lombardy regional organisation of the General Confederation of Italian workers, *Cgil, Confederazione Generale Italiana del Lavoro*, said that the new law contributed a great deal to creating “*a climate which denies foreign women and men rights and which considers foreign workers just as a workforce to be exploited*”.<sup>14</sup>

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<sup>14</sup> Paparella D. and Rinolfi V., *New Legislation regulates immigration*, 26/09/2002

Other points of view argue that, even if the *Bossi-Fini* law brought criticisms and divisions among the political parties and the social partners, it follows the path laid down by the previous centre-left majority, and it completes and improves many aspects the previous law.

One of the major innovations in the new legislation is that employers now have an important social responsibility for defining a welcoming policy for immigrants. Employers, in fact, will have to guarantee a decent life to immigrant employees, with the offer of an employment contract bound to the offer of accommodation. The new stricter policy on issuing entry visas could contribute to selecting new immigrants in relation to the needs of the Italian productive system, and will allow professional training actions to be carried out in favour of non-EU immigrants seeking to stay in Italy.<sup>15</sup>

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<sup>15</sup> Nascimbene B., *Nuove norme in materia di immigrazione. La legge Bossi - Fini: perplessità e critiche*, 2003

## **5. Conclusions and innovations**

Law 189/2002, the *Bossi-Fini* law, along with its implementing regulations, radically revised earlier regulations and practices on admission into the country, renewal of residence permits, and ‘legalisation’ of status. It uses expulsion or placement in temporary holding centres to deal with illegals. The law as it stands makes the grant of a residence permit strictly conditional on signature of a ‘contract of residence for work’, which is authorised when there is a shortage of national or EU labour and up to the maximum of quotas set each year by decree. Employers send the Ministry of Interior an ‘application for recruitment’ of a named individual, consisting on a draft contract of residence/work signed by the migrant worker, who is still supposed to be outside the country at this stage. The contract of residence/work also includes the employer’s guarantee that he will provide living accommodation for the migrant, which must meet the minimum criteria for public housing, and will pay the cost of return travel to the country of departure. These contracts may not be for longer than 9 months (seasonal work), 12 months (short-term contract work) or 24 months (permanent work)<sup>16</sup>.

Most studies show that this admission procedure, with its quotas that are invariably lower than the numbers seeking to get into the country, makes it effectively impossible for any migrants to enter legally. Moreover, the type of jobs occupied by most new migrants, temporary or insecure jobs and sometimes jobs in the black economy, make it very hard for workers to get their residence permits renewed: these workers are asked to prove the stability of their status in a way which, subsequent to the new laws on labour market ‘flexibility’, is no longer demanded of indigenous citizens, especially for a first job. These migrants systematically swell the numbers of ‘illegals’: over half the migrants who enter Italy legally swiftly become illegal<sup>17</sup> and almost two thirds of all migrants who are legally resident in the country have at some point been illegal. Legalisation of their status, which the government is obliged to grant under pressure from certain employers who need a more stable workforce, thus becomes the key mechanism in migration policy.

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<sup>16</sup> Olivieri F., *What makes migrant workers different? A study of the mismatch between rules and realities in the fight against discrimination*, Trends in social cohesion, No. 18, October 2006

<sup>17</sup> According to the Ministry of the Interior’s 2005 “Report on Security”, of all persons legalised in 2002 and 2003 “75% were foreign nationals who had entered the Schengen Area legally and remained after their permits had expired (over-stayers), 15% had entered Italy illegally and 10% had landed on the country’s south coast. Of all those recorded in Italy in 2004 as having no residence permit, it is thought that 67% were over-stayers, whilst 29% had entered illegally across a land border and just 4% had entered by sea” (Ministry of the Interior, 2005: 45)

It is reasonable to conclude that the typical experience of migrants in Italy is that they serve a 'trial period'<sup>18</sup>, during which they are expected to behave impeccably, under constant threat of expulsion. This period then continues in an atmosphere of widespread 'suspicion' which may persist for years. The Bossi-Fini law is what makes all of this possible.

As a very last consideration, it is important to underline that the *Bossi-Fini* law does not eradicate the problem of illegal immigrants. Italy's southern coasts and islands are a favourite landing area for thousands of desperate people, transported by criminals to Italy and then through Italy to elsewhere in Europe. More deportations could perhaps, reduce the numbers, but without the signature of joint agreements with the countries from whose coasts these immigrants embark, forced returns will hardly be effective. Many illegal immigrants return to Italy several times after deportation. Agreements with the other countries can be successful only if these countries receive support for development, in exchange for the surveillance of illegal people trafficking, but this is not just a problem for Italy. The situation is so complex, that only a specific European policy on immigration can help western European societies to tackle realistically the problems created by these movements.

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<sup>18</sup> Santoro E., *La fine della biopolitica e il controllo delle migrazioni: il carcere strumento della dittatura democratica della classe soddisfatta*, 2006

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