



Human Right Studies



ITALIAN YEARBOOK OF HUMAN RIGHTS 2013



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Italy and Human Rights in 2012

A Suffering Year Economic, Social and Cultural Rights

Unemployment in Italy stands at 10.7%. For men, it is 9.9%, for women 11.9%. Youth unemployment (in the 19-24 age range) is 35.3%. In 2011, 11.1% of families were living in conditions of relative poverty, corresponding to 8.2 million people, or 13.6% of the resident population. 5.2% of families were living in absolute poverty, impacting 3.4 million people. The threshold of relative poverty, for a two-member household, is 1,011.03 euros monthly expenditure (ISTAT data for December 2012).

These data alone are enough to paint a picture of a Country where many fundamental human rights, from the right to life to the right to work, from the right to health to the right to social security, are seriously undermined.

The persistence of the international economic crisis, with consequent widespread and reiterated violations of human rights in many parts of the world, led the Committee on Economic, Social and Cultural Rights, which is an independent body charged with monitoring the implementation of the 1966 International Covenant of the same name, ratified by Italy in 1977, to issue a formal letter (16 May 2012) to the States Parties to remind them of their duty to respect fundamental rights. After observing that embarking on austerity programmes in the face of rising public deficit induces many States to take decisions which often have painful effects, especially when austerity measures are taken during a recession, the Committee underlines that States “should at all times avoid taking decisions which might lead to the denial or infringement of economic, social and cultural rights”, which can open the door to “social insecurity and political instability”. The letter makes explicit mention of the principle by which all human rights – civil, political, economic, social and cultural – are indivisible, interdependent and interrelated, which in substance means that the infringement of one category of rights threatens all the others. The Committee underlines that at the heart of the aforementioned international Covenant is the obligation on States to “respect, protect and fulfil economic, social and cultural rights” through “national laws and policies” which use “their maximum available resources” to achieve “incremental improvements in universal access to basic goods and services such as health care, education, housing, social

security and cultural life”. The letter also gives guidance on how the provisions of the first paragraph of article 2 of the above international Covenant should be interpreted: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to progressively achieving the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

Specifically relative to the right to work, the Committee makes implicit reference to its General Comment (No. 18, 24 November 2005) on article 6 of the International Covenant, which recognises precisely the right to work, to clarify that there are specific legal obligations here and that the adverb “progressively” cannot be interpreted as a synonym for “in case”. States must adopt positive measures and policies which bear witness to their intention to fulfil specific obligations. For example, domestic legislation must recognise work as a fundamental human right and the objective of the relevant policies should be to achieve full employment “with a view to stimulating economic growth and development, raising standards of living, meeting manpower requirements and overcoming unemployment and underemployment... and to establish a compensation mechanism in the event of loss of employment”. After reiterating that the right to work is a human right and not a mere philosophical principle, the Committee stresses that this human right has two sides to it, the individual and the collective side, in the sense that it “contributes at the same time to the survival of the individual and to that of his/her family and, insofar as work is freely chosen or accepted, to his/her development and recognition within the community”.

In conformity with current international law, the State is therefore under obligation to protect economic and social rights in the same way as civil and political rights, specifically by adopting a “national strategy” based on human rights principles which, among other things, takes into consideration the “fundamental importance of collective bargaining as a tool for the formulation of employment policies”. The “appropriate measures” for States Parties are to include “ensuring that both the private and public sectors reflect an awareness of the right to work in their activities”. In terms of obligations, the Committee draws a distinction between the inability and the unwillingness of States to comply, between violations through direct actions (for example, at the legislative level, by repealing laws which recognise work as a fundamental right) and violations due to the failure to adopt adequate measures to promote employment, in short, between *acts of commission* and *acts of omission*. For her part, the United Nations High Commissioner for Human Rights,

Navanethem Pillay, recently stated that “the right to work is a fundamental human right which is inseparable from human dignity”. This is not rhetoric: unemployment prevents the full realisation of the person, takes away the sense of ethics of one’s vocation, closes off horizons of freedom and promotion of human dignity and undermines education and training processes at their roots. A certain type of legal doctrine, imbued with stale positivism, continues to distinguish between “obligatory” norms and “programmatic” norms, assigning civil and political rights to the former and relegating economic and social rights to the latter. International human rights law leaves no room for this illogical, arbitrary and inhuman discrimination which goes against the ontological truth of the integrity of the human person made of matter and spirit, of body, intellect and free will, a discrimination which, in substance, cleaves the human person apart.

Social and economic rights are just as fundamental as civil and political rights. Good governance includes the commitment to translate the respective obligations to protect these rights into as many items on the overall political agenda, bearing in mind that in order to fulfil economic and social rights, greater material resources are required than those needed to fulfil civil and political rights, and also that structural reforms and significant international cooperation are necessary.

The civilisation of law comes to fulfilment when, having granted universal recognition of the rights inherent to human dignity, it meets and joins forces with the civilisation of work, compelling Governments and economic players to navigate the challenges of “the market” with the compass of human rights.

The European Union system also provides stimuli to keep the fundamental issue of economic and social rights at the centre of policy-making. The Preamble to the Treaty of Lisbon confirms the contracting parties’ attachment to fundamental social rights as defined in the 1961 European Social Charter and the 1989 Community Charter of the Fundamental Social Rights of Workers. Significantly, the 2000 EU Charter of Fundamental Rights, made fully binding by the aforementioned Treaty, contains both civil and political rights and social and cultural rights, which the European Institutions consider interdependent and indivisible, as they have strongly affirmed in recent documents. The “Europe 2020 Strategy for smart, sustainable and inclusive growth” invites reflection on what the provisions of the Treaty of Lisbon mean, in terms of human development and social justice for achieving “a social market economy aiming at full employment and social progress”. These words make clear that “Social Europe” is a legal and political obligation, not an ideological optional extra.

The *Italian Yearbook of Human Rights 2013* should be read with full awareness of the fact that the whole human rights area is suffering because social and economic rights are undergoing great suffering. Important indicators of this in Italy, in addition to those already pointed out, are the substantial reduction in the National Fund for Social Policies – reduced from 929 million euros in 2008 to 435 million in 2010 and 300 million for 2013 – and the downsizing of the National Office against Racial Discrimination (UNAR). The public spending cuts explain, at least in part, the umpteenth delay to the law establishing the National Commission for Human Rights, despite Italy having undertaken to approve it at the time of putting itself forward as a candidate, for the second time, for the United Nations Human Rights Council. The lack of a Commission is compounded by the failure to establish the National Ombudsperson. Without these two top structures, the development of a coherent national human rights system is jeopardised, despite the existence of the sub-national network of regional and territorial ombudspersons and the human rights-peace-cooperation offices at Regional, Provincial and Municipal level.

Further bad news from 2012 includes: the failure to adopt a law which specifically introduces the crime of torture into the Italian criminal code; the failure to deposit the instruments of ratification of the two conventions on corruption of the Council of Europe, with the consequent paradoxical situation by which Italy, although not yet formally party to the aforementioned conventions, is subject to the close monitoring by the Group of States against Corruption (GRECO); the consistent refusal to accept article 25 of the European Social Charter (revised), or to allow Italian NGOs to lodge complaints with the European Committee of Social Rights (ECSR). Moreover, one cannot ignore the searing condemnation of Italy by the European Court of Human Rights for the “push-back operations” at sea towards Libya (the *Hirsi Jamaa* case).

However there is also some good news to report. As concerns the rights of children, with the introduction of law 172/2012, Italy ratified the Council of Europe (CoE) Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and it also adopted law 219/2012 which put an end to the differences in recognising “natural” children born outside wedlock. In addition, Italy adopted the law concerning cooperation with the International Criminal Court (ICC) and the law authorising the ratification of the Optional Protocol to the International Convention against Torture (OPCAT). Also worthy of mention is the signature of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Of particular ethical and political significance, as well as legal, is the formal abandon of the policy of “push-back operations” announced

by the Italian Government at the Committee of Ministers of the Council of Europe. The Special Commission for the Protection and Promotion of Human Rights of the Italian Senate, chaired by Senator Piero Marcenaro, was very active in 2012 and, in the framework of the survey on the levels and mechanisms for defending human rights currently operative in Italy and on the international stage, conducted 41 hearings of representatives of associations, organisations, institutions and individuals active in this area. It also published the book *Diritti umani e politiche estere tra principi e realpolitik* (Human rights and foreign policy between principles and realpolitik) and the *Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia* (Report on the status of human rights in prisons and in reception and detention centres for migrants in Italy). The Commission also played a decisive role in the signature and ratification of the aforementioned conventions. The brief summary of its actions outlined above will certainly have practical consequences too.

Indeed, in 2014, Italy will undergo its second Universal Periodic Review (UPR) by the United Nations Human Rights Council. There is not much time left for washing the dirty laundry in private before it is done in public on the world stage.

In view of this important date for Italy, it is to be hoped that this *Yearbook*, in addition to supplying detailed and updated information to all its readers, may also be useful to spur on the appropriate Government institutions to promptly fulfil the obligations undertaken at the international level, especially by giving the Country a comprehensive system for guaranteeing and promoting human rights.

The warm reception afforded at the international level to the English version of the *Yearbook* gives grounds for optimism in this area. The following pages contain more specific information and assessments on issues that the *Yearbook* research and editorial committee consider particularly significant for the enhancement of Italy's position on the domestic and international front, and which collectively come together to make up the new Italian Agenda of Human Rights.

I. Legislative Progress and Institutional Weaknesses: the Regulatory and Infrastructural Level of Human Rights in Italy

Ratification Processes Completed or Underway

In the year 2012, the Italian Parliament adopted four laws of ratification and implementation on the same number of legal instruments concerning human rights: the United Nations Optional Protocol to the

Convention against Torture (OPCAT, l. 9 November 2012, No. 195), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, l. 1 October 2012, No. 172), the Council of Europe Criminal Law Convention and Civil Law Convention on Corruption (l. 28 June 2012, No. 110 and l. 28 June 2012, No. 112). The instrument of ratification of the OPCAT was deposited, as mentioned above, on 4 April 2013; that of the Lanzarote Convention on 3 January 2013: hence there are no references to these developments in the four Parts of the *Yearbook*. On the contrary, as concerns the two legal instruments on corruption, there is no news concerning the deposit of the respective instruments of ratification with the Secretary-General of the Council of Europe. Hence, the provisions therein are not yet binding for Italy at the international level. The same is still true as concerns the deposit of the act of ratification of the Oviedo Convention on Human Rights and Biomedicine and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin (ratification law: l. 145/2001, see *2012 Yearbook*, p. 39).

In 2012, the Italian authorities also signed the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (neither of which entered into force), but have not yet proceeded to adopting the relative respective laws of ratification and implementation.

In January 2013, the European Committee on Social Rights adopted the *2012 Conclusions* on Italy, concerning the group of provisions relative to the theme of “employment, training and equal opportunities”, drawing up 13 conclusions of conformity, 4 of non-conformity and 2 requests for further information, with reference to 19 of the 20 provisions included in this group of articles. Indeed, this group also includes article 25 ESC-R, the only provision of the European Social Charter (revised) not yet accepted by Italy, under which the right of all workers to protection of their claims in the event of the insolvency of their employer is recognised. And so, although on the one hand, the Committee has not had the possibility to examine the Italian situation in relation to the article in point (the next opportunity will be in four years’ time, according to the ECSR monitoring schedule by thematic groups), on the other, the Italian authorities have not even submitted their first report on the provisions of the revised European Social Charter which they have not accepted, which was to be prepared within five years from the ratification of the Charter, as requested by the Committee of Ministers of the Council of Europe. Moreover, in order to strengthen the active participation of social partners and NGOs in the enhancement of the actual implementation of social rights in Italy, the Government should

adopt measures to also extend the right to lodge a collective complaint to the ECSR to domestic civil society organisations, as per article 2 of the 1995 Protocol to the European Social Charter providing for a System of Collective Complaints (ratified by Italy in 1997).

Shortcomings in Legislation: Torture, Defamation and Integration of the Immigrant Population

Several international bodies asked Italy to introduce legislation concerning the crime of torture, a type of criminal offence which is not yet contemplated in Italian law and hence it is difficult to bring a case, which can only be done through prosecution on a combination of other, lesser offences. Moreover, the Italian authorities have not yet taken any action to encourage the publication of the report on the second-last visit to Italy by the Council of Europe Committee for the Prevention of Torture, which took place in 2010 (the publication of the report on the latest visit, which took place in May 2012, is also awaited). Considering the fact that the Committee's task is of a preventive nature, aimed principally at supporting States in their efforts to improve the conditions of persons deprived of their liberty, it would seem extremely important to the state of health of human rights in Italy that these reports be made public and widely circulated.

Among the various issues which attracted international attention in 2012 and which would require action at the legislative level, there is particular interest in Italian legislation on the offence of defamation and specifically the provisions of the criminal code which contemplate imprisonment for up to three years for journalists or publishers found guilty of the offence of aggravated libel. Indeed, in the opinion of the OSCE Representative on Freedom of the Media, legislation which contemplates a prison sentence for crimes committed through the press is not only contrary to the standards of democracy applied in the OSCE region, but also has a negative impact on the whole media community and on freedom of the press (see Part III, Organisation for Security and Cooperation in Europe, III). On this matter it is to be noted that on 26 November 2012 the Senate voted on an amendment to a draft law on defamation and this should exclude prison sentences for the crime of aggravated libel.

Finally, on the question of legal measures aiming to favour the integration of foreign residents, Italy is still holding valid the declaration which excludes Chapter C of the European Convention on the Participation of Foreigners in Public Life at the Local Level, thereby choosing not to introduce any form of political participation for non-EU immigrants who have been resident in Italy for a number of years. Equally, there has been no tangible development on the reform of citizenship

laws to favour the granting of Italian citizenship to the children of immigrants who were born or educated in Italy.

Regional Legislation

As concerns the laws adopted at the regional level or by the Autonomous Provinces, it seems particularly important, in the light of the impact of the economic crisis, to highlight the substantial number of regulatory instruments approved on questions of solidarity, social promotion and support to families (22), more than double the number compared to the previous year (10). However the trend is reversed as concerns regional laws on Ombudspersons and Ombudspersons for Children and Adolescents (2, against 6 in 2011). Among other important issues relating to human rights, 10 laws were adopted on equal opportunities and gender equality (10 in 2011), 12 on the rights of persons with disabilities (7 in 2011), 11 on the rights of workers (6 in 2011). Regarding “peace, human rights, co-operation and fair trade” issues, the same number of laws was approved as in the previous year (6). On migrants, on the other hand, no regulatory instruments were adopted (one was adopted in 2011), whereas in 2012 the Autonomous Provinces and Regions adopted 3 laws relative to linguistic minorities (none were recorded for 2011).

Major Infrastructural Shortcomings: the National Commission and the National Ombudsperson

None of the national institutions for human rights indicated as priority items in the *2012 Italian Agenda of Human Rights* was established during the reference time frame.

The priority for Italy in this area is the National Commission for human rights, which will be called upon to take on the function of the national mechanism for the prevention of torture, as per the provisions of article 3 para. 3 of l. 195/2012 (Ratification and implementation of the United Nations Optional Protocol to the Convention against Torture). The bill on the institution of a “National Commission for the promotion and protection of human rights”, approved by the Senate in first reading on 20 July 2011, after a lengthy procedure in the Chamber of Deputies, was not approved by the I Constitutional Affairs Commission and so has remained at the draft stage. Concerning ombudspersons, although there has been no action on the legislative front to establish an Ombudsperson at the national level, the Ombudspersons of Regions and Autonomous Provinces (14 appointees), the Ombudspersons at provincial level (also numbering 14) and territorial level (8), have continued to fulfil their duties to defend the rights and interests of individuals in their dealings with the public administration, and to promote and spread the

culture of the institution of ombudspersons in Italy, with the support of the National Coordinating Body of Ombudspersons and the Italian Ombudsman Institute.

II. Fulfilment of International Obligations and Commitments: Concurrence and Resistance

Implementation of EU Legislation and International Treaties

The implementation of international commitments deriving from international and European Union law is a crucial component of the State's actions to guarantee universally recognised human rights.

Italian law 24 December 2012, No. 234 introduced a comprehensive reform of the rules governing Italy's participation in the drafting and implementation of European Union laws and policies. This law is a step forward, although it still needs to be put to the test, which can enhance Italy's capacity to implement EU directives in a timely fashion, including those concerning human rights, as well as executing judgments of the Court of Justice of the EU promptly (see Part I, International Human Rights Law, IV, B).

Among the international commitments to be fulfilled, completion of the legislative process for the implementation of the Statute of the International Criminal Court remains a priority. Although by l. 20 December 2012 No. 237 the Italian Parliament regulated the procedural side of Italy's co-operation with the ICC, the issue of adapting domestic legislation as concerns the substance of criminal law has yet to be addressed.

Implementation of the European Court of Human Rights Case-law and Execution of its Judgments

A significant indicator of the level of a Country's fulfilment of international obligations on human rights is the Country's capacity to conform to international standards as these are understood and applied by international courts including, first and foremost for Italy, the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (ECJ). The perception of this gap is felt ever more keenly by legal professionals and sometimes it becomes the object of legal actions which are explicitly directed at facing Italian courts with the case-law of the Strasbourg Court, bringing test cases destined to mark the evolution of national case-law. The dialogue thus initiated – on medically assisted procreation, same-sex marriage, immigrants' rights, the prohibition of torture and in other areas – constitutes a valuable contribution to the development of law in line with a pluralistic view which is sensitive to

the international context. While recognising that, because of the continuous evolution of ECtHR case-law, complete conformity with European standards can never be a fully-attainable objective, the differences between the Strasbourg Court practice and the Italian legal order as a whole in relation to certain specific issues continue to be a cause for concern. Particularly worrying, as they are linked to the violation of imperative norms of international law such as the prohibition of torture and other inhuman or degrading treatment, are the cases in which the Italian authorities have not complied with the temporary measures decided by the Strasbourg Court relative to expulsions of foreigners towards Countries where such practices are widely documented. As of 2009, these actions were compounded by the notorious practice of intercepting irregular immigrants at sea and pushing them back towards North Africa (the so-called “push-back operations”), in violation of international human rights standards. An example of this type of case is that highlighted by the aforementioned *Hirsi Jamaa* ruling; but this practice was criticised in a number of recommendations submitted by Council of Europe monitoring bodies in 2011.

A significant sign of a break with this practice came in 2012 in the form of a formal communication to the CoE Committee of Ministers, in which the Italian Government declared that collective push-backs at sea are not part of Italian policy towards irregular migrants.

This step forward notwithstanding, the United Nations High Commission for Refugees (UNHCR) has pointed out that, even in 2012, cases have been reported of potential asylum-seekers who entered Italy by sea or through border crossings in an irregular fashion but who, as a consequence the immediate application of “readmission” procedures, were prevented from submitting a request for international protection.

Another area in which Italy has not fully conformed to European standards concerns use of lethal force by law enforcement officials. Contrary to ECtHR guidelines in the *Alinakaj* case concerning the obligation deriving from article 2 ECHR, to strictly regulate the use of weapons by law enforcement officials in line with the UN Basic Rules on the Use of Force and Firearms by Law Enforcement Officials, Italian legislation on this matter is inadequate.

A different approach can also be seen between ECtHR practice and Italian legislation on the regime of parliamentary immunity, as highlighted by the De Jorio case and ensuing cases. No new legislation was introduced in 2012 to re-examine the balance between the effects of the application of article 68 of the Italian Constitution in terms of parliamentary immunity and the right of access to a court of a citizen who considers himself harmed by the expressions of a member of Parliament.

It should also be noted that, on the subject of retroactive laws which interfere with the expected outcome of a procedure which has already been initiated, in 2012 the Constitutional Court again confirmed the constitutional legitimacy of certain legal interventions which were less favourable than the “law in action”, in a way which does not appear fully compatible with article 6 ECHR, in the light of *Agrati and Others* and *Maggio and Others* case-law. Again in connection with the Strasbourg Court standards on fair trial, the adoption of a comprehensive plan for justice remains a priority for Italy, with the aim of resolving the issue of the excessive duration of judicial proceedings, a structural deficit which over the years has cost a series of censures at the European level. The Council of Europe Commissioner for Human Rights’ recent visit to Italy, in May 2012, focused on this topic and his recommendations included, among other things, a complete re-thinking of the Italian judicial and procedural system. According to the Commissioner, this will be possible only by changing the legal culture through the concerted efforts of all stakeholders (the Ministry of Justice, the judiciary and lawyers). Disalignment continues to be evident between the tendencies promoted by the ECtHR and Italian courts also on the subject of redress for unreasonable duration of proceedings, both as concerns the excessive duration of these same proceedings and over establishing the period and the measure of compensation to be awarded. On this last point, the amendments introduced to the Pinto law in 2012 aiming to speed up this special procedure seem not only to have failed to resolve the previously mentioned inconsistencies, but on the contrary present further characteristics of incompatibility with ECtHR case-law.

III. Adoption and Implementation of Human Rights Policies: Old Problems and Scarce Resources

Gender Equality and Violence against Women

In addition to legislating and setting up institutional structures for the protection and promotion of human rights, States must also design and implement effective policies to make the rights they recognise both substantial and enforceable. Among the several urgent policies in this area, that of achieving actual equality between women and men in all aspects of public and private life stands out above the others. An important aspect to take into consideration is increasing the representation of women in the highest decision-making roles of political bodies, including Parliament and Regional Councils, and in the public administration, including the diplomatic service, as well as in the private sector. Despite the many provisions existing in law (the most recent is law 215/2012, containing measures to promote re-balancing of gender

representation on the executive committees of councils and on Regional councils), the gender gap in terms of representation remains very large in all sectors in Italy. According to European Commission data for 2011, the percentage of women in the highest decision-making roles at the ministerial level is 25%; 12% in Regional Councils and 21% in Parliament; in the private sector, the percentage of women on the boards of directors of the largest companies listed on the stock exchange is barely 6%, and among company directors only 35% are women. Another aspect to consider, which is also essential to the development of the Country, is the promotion of actual gender equality in employment. Although Italy has fully implemented the principle of equal treatment for men and women in employment and working conditions, the Italian labour market is slanted against women in many ways. First of all, data on the employment gap between men and women in Italy (only 49.9% of women work as compared to 72.8% of men, despite women having a higher average level of education) show that the conditions of access to employment are generally less favourable for women. Another factor which constitutes an obstacle to the full participation of women in the labour market derives from the fact that in Italy tasks related to family care are almost exclusively left to women (where they have children, the employment rate of women is on average 8% lower whereas that of men is 12% higher). The measures to reconcile time devoted to the family and time devoted to work are often inadequate: 18% of women in Italy have to leave their job or fall back on a part-time job because of the absence of support services for children or for taking care of people who are not self-sufficient. The concept of productivity and the relative opportunities for advancement are still strongly tied to the number of hours worked rather than to the worker's real contribution: almost 30% of women work part-time, against 5.5% of men, and the minimal esteem afforded part-time workers contributes to reducing the percentage of women who occupy positions of responsibility. Although the estimates of the percentage gap in salary between men and women for work of equal value changes substantially according to the source of information (EUROSTAT data show a gap of 5.5%, whereas the National Economy and Labour Council shows a difference oscillating between 10 and 18%), the phenomenon of gender inequality with respect to salary attracts a certain amount of attention.

Closely linked with the subject of gender equality is the issue of violence against women, particularly domestic violence. According to various international bodies, in order to address this phenomenon, Italy should adopt institutional, political and administrative initiatives which will serve not only to combat the criminal aspects of violence, but also to fight the root causes and strengthen the support services for victims of violence. The effective protection of victims, achieved also by using the

recent legislation on the subject, is a crucial dimension of anti-violence policies, as is the growth of shelters for victims and the boosting of multi-agency work also as a preventive tool (see Part III, United Nations, II, C). One positive step worth highlighting in this area for 2012 is the first meeting setting up the Committee for Monitoring the National Action Plan against Gender Violence and Stalking (27 November 2012).

Overcrowding of Prisons

As in 2011, again in 2012 a significant part of the Italian Parliament's action pertaining to directing, monitoring and investigating human rights issues centred around the critical issues surrounding the conditions of persons deprived of their freedom, with particular reference to the (by now structural) issue of overcrowding. According to data supplied by the Prisons Administration Department, on 31 December 2012 there were 65,701 detainees in Italy (of whom 2,804 women, representing 4.3% of all prisoners), whereas the official capacity of the 206 prison institutions is 47,040. The rate of overcrowding is therefore 139.7% (approximately 140 people for every 100 places). Of the 27 Member States of the EU, only Greece has a higher rate of overcrowding (152 detainees per 100 places).

Overcrowding becomes a central issue when one considers the rights of people within places of detention, because it can objectively be the cause of situations of inhuman or degrading treatment. According to the standards of the Council of Europe Committee for the Prevention of Torture, every detainee should have 4 square metres at his or her disposal in a shared cell and 7 square metres in a single cell, whereas being in a space of less than 3 square metres constitutes a situation which is incompatible with the obligation to prevent torture and inhuman treatment. The European Court of Human Rights has also ruled that the minimum space should be calculated based on a series of factors such as, among others, the opportunities for access to open air and the mental and physical conditions of the detainee (there were 56 suicides in prison last year in Italy). Italy has already been found guilty of breach of article 3 of the European Convention on Human Rights in 2009 (*Sulejmanovic* case) and in 2013 (the *Torreggiani* case, which will be discussed in the next *Yearbook*), because of the overcrowding in prisons.

The Condition of Roma and Sinti

As concerns the situation of the Roma community in Italy, the adoption in February 2012 of the National Strategy for the Inclusion of Roma, Sinti and Travellers, requested by the European Commission, has already been highlighted and constitutes an answer to the many recommendations from various monitoring bodies at the international level.

The strategy was drawn up according to an inclusive and participatory approach, as recommended at the international level, and as highlighted by the Council of Europe Commissioner for Human Rights during his visit in May 2012 (see Part III, Council of Europe, VI). The current concern is the actual implementation of the programme and the subsequent monitoring of the same. Indeed, the generalised cuts in public spending imposed by the spending review have also led to a significant decrease in the manpower of the National Office against Racial Discrimination (UNAR), which has been assigned the role of being the contact point for implementing and monitoring the relevant intervention strategies on the issue. This downsizing is a serious threat to the good functioning and autonomy of the Office. In this connection, it is well to recall that, since its establishment in 2003, the UNAR has always been one of the most widely-appreciated structures at the international level, thanks to the efficacy of its actions and its approach to the fight against racism and xenophobia (see, as an example, the *2011 Yearbook*, pp. 224-225). Indeed, already the observations made in 2011 by several monitoring organisms, particularly at the Council of Europe level, had affirmed the need to increase the human and financial resources of this Office, in order to ensure sufficient functionality in consideration of the many activities that are entrusted it (see *2012 Yearbook*, pp. 256-257 and pp. 210-211, 219-220).

Still concerning policies on Roma and Sinti, there is a thorny issue to which the Parliamentary Assembly of the Council of Europe made specific reference in one of its resolutions in 2012 (recommendation 2003/2012). This issue affects about 15,000 Roma who find themselves in a situation of “de facto statelessness”, since they were born in Italy to parents who fled the former Yugoslavia before it broke up and never returned to their land of origin to acquire a new citizenship. The recent intention to set up a working group comprising Italian authorities, independent international bodies and representatives of the communities involved has been welcomed by the pertinent monitoring bodies. However, as for all other measures envisaged in the inclusion strategy, it is essential for sufficient resources to be allocated to it.

IV. Structure of the 2013 Yearbook

The objective of the *Italian Yearbook of Human Rights 2013* is to provide a snapshot of the human rights situation in Italy both from the legislative and the “infrastructural” point of view, and from that of the practical implementation of policies and initiatives to promote and protect them. The reference time frame of the book is calendar year 2012. The level of detail and further background supplied in the various sections allow for cross-cutting and targeted reading, which can also be developed by con-

sulting the analytical indices. The information presented in the first three Parts of the *Yearbook* come from documents in the public domain, normally consultable via the official web pages of each body examined. For Part IV the databases of the courts mentioned were used (for Italian case-law, the Giuffrè “De Iure” database was that used the most). All the documents referenced in this and the previous editions of the *Yearbook* (2011 *Yearbook* and 2012 *Yearbook*) may in any case be consulted on the online database hosted on the site of the regional “Peace Human Rights” Archive (“Pace Diritti Umani”: www.italianhumanrightsyarbook.eu) managed by the Human Rights Centre of the University of Padua pursuant to article 2 of the Region of Veneto law 55/1999 (Regional measures for the promotion of human rights, a culture of peace, development cooperation and solidarity).

Part I of the *Yearbook* illustrates the degree to which international and regional laws have been incorporated into the domestic legal order. The overview starts from the universal level (United Nations, UNESCO, ILO, multilateral instruments of humanitarian law) and proceeds to the regional level, constituted by the legislation drawn up at the Council of Europe and European Union level, finally coming to examine the domestic legislation which has implemented international obligations through internal legislation adopted at national, regional and local level. Part II illustrates the human rights infrastructure in Italy and is divided into three chapters. The first presents the structure, functions and activities of State bodies: Parliament, Government, the Judiciary, independent authorities; it also covers the activities of civil society organisations and academic institutions which operate at the national level. The second chapter refers to the sub-national level of the Italian order and illustrates the variegated local and regional human rights infrastructure and the relative co-ordinating bodies at the national level. The third chapter is devoted to the peace and human rights infrastructure and the local and international initiatives in this area developed by the Region of Veneto. The specific focus on this Region is explained by the pioneering commitment shown by Veneto, dating back to the regional law 18/1988, in promoting a culture of human rights, peace and international solidarity. Part III examines Italy’s position with reference to the regional and international bodies monitoring the implementation of human rights. Ample space is given to the evaluations and recommendations that these bodies have made on Italy following specific visits to the Country and periodic monitoring activities. Italy’s role within these organisations and the contribution of its representatives for the promotion of human rights at regional and global level are highlighted. This Part is divided into five chapters. The first focuses on the United Nations system and considers the activities of the General Assembly, the Human Rights Council, the Committees of independent experts created by the international conven-

tions on human rights, and on the action of specialised Agencies, Programmes and Funds. The second chapter turns to the Council of Europe. The third chapter examines the European Union, both in its domestic policies and in those towards third Countries. These two chapters complement the information presented in part I (concerning legislation) and Part IV (concerning case-law), relative to EU and Council of Europe activities in 2012. The fourth chapter is on the Organisation for Security and Cooperation in Europe (OSCE) and its bodies for the promotion of the human dimension of security. The fifth and last chapter is on international humanitarian and criminal law. In addition to providing updates on the level of implementation of their provisions by Italy, it lists the international peace missions which saw the participation of Italian troops in 2012.

Finally, Part IV presents a selection of domestic and international case-law concerning Italy over the reference period. In the three chapters into which it is divided, the cases are subdivided according to the issues to which the various judgments refer. The chapters address domestic case-law (mainly the Constitutional Court, the Supreme Court and the Council of State), case-law of the European Court of Human Rights and case-law of the Court of Justice of the European Union respectively, the latter with reference to cases directly involving Italy. A targeted reading of the case-law can also be made by using the index of referenced case-law at the end of the book.