Introduction

1. “The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled”.

Art. 2 of the Constitution of the Italian Republic is in full accordance with the Universal Declaration of Human Rights, in particular with art. 1, which proclaims: “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and must act towards one another in a spirit of brotherhood”.

The principles of a “new”, human-centric international law were enshrined in the United Nations Charter and in the Universal Declaration of Human Rights, and have developed through numerous international instruments, starting – on a universal level – with the two International Covenants of 1966 regarding, respectively, civil and political rights, and economic, social and cultural rights; and – on a regional – European level – with the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms.

The Italian constitutional system is in perfect harmony with the main principles set forth in those legal sources. The principle of equality and the related principle of interdependence and indivisibility of all the human rights, according to which economic, social and cultural rights are just as fundamental as civil and political rights, finds substantial acknowledgement in art. 3 Const.: “all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, or personal and social condition. It is the task of the Republic to remove obstacles of an economic and social nature which, in limiting in fact freedom and equality among citizens, prevent the full development of the human being and the real participation of all workers in the political, economic and social organisation of the Country”.

The Preamble to the Universal Declaration reads: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Art. 11 of the Italian Constitution acknowledges the founding nature of this message and translates it into a solemn commitment for positive peace: “Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement

of international disputes. Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among nations. Italy promotes and encourages international organisations furthering such ends".

The fact that Italy has ratified most international human rights instruments, whether universal or European, attests to its commitment to carrying forward the rule of law and democratic principles in the name of universal ethics.

The obligations deriving from those legal instruments are numerous and complex. Within a dynamics tending toward the perennial improvement of norms and institutions, in fact, one must continually adapt this or that part of the internal legal system; one must continually update and enrich case-law, and further public policies which are consistent with the logic of "positive measures".

2. The aim of this *Yearbook* is to provide data updated till the end of 2010, in order to make known how the Italian State fulfils the obligations assumed with the formal ratification of conventions and protocols, and how it responds to comments, remarks, recommendations and sentencing by the pertinent international bodies.

The *Yearbook*'s report should therefore allow the reader to assess the real willingness of Italy to enter into constructive dialogue with those international authorities.

The rather sparse number of human rights yearbooks published in other Countries generally falls into one of two categories. First, there are publications of a more decidedly academic nature in which the institutional, political and normative developments in human rights issues are illustrated and assessed from a variety of viewpoints, using differing methodological and disciplinary perspectives. This is the case of the *European Yearbook on Human Rights*, edited by a pool of academic institutions such as the European Training and Research Centre for Human Rights and Democracy at the University of Graz, the Austrian Institute for Human Rights, the European Inter-University Centre for Human Rights and Democratisation, with headquarters in Venice, the Ludwig Boltzman Institute of Human Rights in Vienna. It contains a series of essays written in a multi-disciplinary perspective, dedicated to the European Union, the Council of Europe, OSCE and civil society organisations. There are also more descriptive yearbooks which systematically present data relative to the state of the art of human rights in a given Country or region without, however, neglecting synthetic assessments concerning specific aspects of the reality dealt with. This is the case, for example, of *Les droits de l'homme en France. Regards portés par les instances internationales*, a periodical publication edited by the French Human Rights Commission.

The *Italian Yearbook of Human Rights*, similar, in many respects, to the French one, is intended as a sort of "log" recording the implementation of international human rights law in Italy.

In the framework of Italy's human rights infrastructure, there is tardiness in some sectors, while others reflect an original, innovative character.

Today Italy is still devoid of "National Human Rights Institutions" in line with the so-called "Paris Principles", included in the resolution 48/134 adopted by the United Nations General Assembly on 20 December 1993[1]: such institutions would take form as a National Human Rights Commission and a National Ombudsman. Numerous human rights bodies of the United Nations have addressed Italy strongly recommending that it create such institutions; among others, the Committee on the Rights of the Child (2003), the Committee on Economic, Social and Cultural Rights (2004), the Human Rights Committee (civil and political rights) (2005), the Committee against Torture (2007), the Committee on Racial Discrimination (2008). The recommendation addressed to Italy by the Human Rights Council during the Universal Periodic Review (UPR), held in 2010, was particularly noteworthy. The Council of Europe, in particular its Commissioner for Human Rights, has repeatedly made similar recommendations.

Since 2002, this issue has been a priority for Italian non-governmental organisations, in particular those acting through the *Comitato per la promozione e protezione dei diritti umani*, a network of 83 non-governmental organisations and associations created with the purpose of promoting and supporting the legislative process aiming to endow Italy with an independent "national human rights institution" in line with the "Paris Principles". This civil society committee works with exemplary competence and passion. Recently it published the "First Monitoring Report of NGOs and associations of the Comitato per la promozione e protezione dei diritti umani: Italy a year after recommendations from the UN Human Rights Council" (*Primo Rapporto di monitoraggio delle organizzazioni non-governative e associazioni del Comitato per la protezione e promozione dei diritti umani. L'Italia a un anno dalle raccomandazioni del Consiglio ONU per i diritti umani*).

Italy's delay in creating an independent national human rights institution cannot find justification in the fact that, in any event, it already

[1] On 12 July 2011, the Parliament approved law No. 112, establishing the National Commissioner for the Rights of Children and Adolescents. On 19 July 2011, the Senate had approved the law No. 2720, instituting the National Commission for the Promotion and Protection of Human Rights, but this instrument is still a draft, pending at the House of Representatives.

has specific bodies dealing with human rights, both in the Parliament and the Executive spheres. But none of these bodies has the structural and functional traits of a human rights institution in conformity with the fore-mentioned "Paris Principles".

Since 1978, the Inter-Ministerial Committee for Human Rights (CIDU) is functioning at the Ministry of Foreign Affairs. Its main task is to prepare the periodical reports which the Italian State is obliged to submit to the pertinent international monitoring bodies. The CIDU underwent restructuring in 2007, the same year when a Committee of Ministers for Strategic Orientation in Human Rights Protection was created. Since 2008, the Chairman of this body has been the Minister for Equal Opportunities, but up to now, the Committee has never met.

It should also be reminded that in 1984, by decree of the President of the Council of Ministers issued on 31 January, a Human Rights Commission was created at the Presidency of the Council of Ministers; it functioned until 2002. Formed by a small number of members appointed *intuitu personae*, it had an *ad personam* consultative role in advising the President of the Council of Ministers. Its tasks were to "acquire most extensive information regarding facts which may endanger the fundamental, universally recognised human rights, anywhere in the world", and to "assist the President of the Council of Ministers in such informative activity in order to foster proper initiatives by the Italian Government". The Commission's attention was therefore directed entirely toward other Countries, running the risk of interfering in competencies of the Ministry of Foreign Affairs. Its endeavours for developing an institutional system specifically dedicated to promoting and protecting human rights in Italy were inconsequential. Its last membership included Virginio Rognoni (Chairman, former Minister of Interior), Giovanni Conso (former President of the Constitutional Court), Carlo Russo (former member of the European Court of Human Rights), Mario Alessi (former President of CIDU) and Antonio Papisca (Director of the Human Rights Centre of the University of Padua). Its last act in 2001 was to address a "note" to the President of the Council of Ministers urging the creation of national human rights institutions as insistently requested by the United Nations and the Council of Europe. The attempts made in this direction by Mr Rognoni obtained no results. Therefore, the Commission decided in 2002 to self-dissolve.

The list of Parliamentary bodies includes the following: the Senate's Extraordinary Commission for the Protection and Promotion of Human Rights; the Permanent Committee on Human Rights, created in 2008 by the Foreign Affairs Commission of the House of Representatives; the Parliamentary Commission for Childhood and Adolescence. On 7 July 2009 a consultancy began functioning, named Parliament-Government

Observatory Monitoring the Promotion and Protection of Fundamental Rights.

As documented in the pages of this *Yearbook*, in 2010, Parliament witnessed the presentation of 6 bills on Italy's adaptation to international human rights norms, plus 32 motions, 4 interpellations, 6 questions receiving oral response, 81 questions receiving written response, 18 questions before Commissions, 6 resolutions before Commissions, 9 agenda items before the Assembly and 3 agenda items before Commissions, on issues concerning the internationally recognised human rights.

Even though the year 2010 saw, among other negative events, a substantial abolition of the office of municipal Ombudsman, Italy's formal commitment toward creating national human rights institutions has not ceased. It was expressly reiterated in the letter of candidacy for membership in the United Nations Human Rights Council during the period 2007-2010 (see para. 29, referring to Universal Periodic Review). However, it should be pointed out that this commitment recently tends to be expressed in a much more generic manner compared to the 2007 letter of candidacy which had led Italy to the Human Rights Council for the period 2007-2010. Fortunately, this change in tone did not prevent the United Nations General Assembly from appointing Italy to the Human Rights Council for the second time, in May 2011.

3. In the various international contexts in which it participates, Italy does not abstain from making its position known. In 2010, its participation in the 65th session of the United Nations General Assembly was marked by the presentation of a draft resolution on strengthening the United Nations Crime Prevention and Criminal Justice Programme, and by the sponsoring of 29 out of 52 resolutions regarding human rights issues adopted by the Assembly. As for the Human Rights Council, Italy participated as full member in two regular sessions and in the special session concerning Haiti. Nor, all told, has Italy failed in its financial commitments supporting various United Nations bodies and specialised agencies active on the human rights front. Italy allocated approximately 11.5 million dollars for UNHCR, 16 million for UNESCO (plus 9.5 million more in voluntary contributions), and 19.7 million for the International Labour Organisation (ILO). Both as regards the ILO and the UN, Italy's contribution amounts to roughly 5% of their budgets. However, for the first time, contrary to its long-standing practice, Italy did not allot any funds for the United Nations Office of the High Commissioner for Human Rights.

Participation in UPR proceedings will later be addressed in a more detailed way.

Italy is currently subject to monitoring, in particular, by seven out of nine United Nations Committees created under international Conven-

tions, the so-called "Treaty Bodies": Human Rights Committee; Committee on Economic, Social and Cultural Rights; Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Discrimination against Women; Committee against Torture; Committee on the Rights of the Child; Committee on the Rights of Persons with Disabilities.

The Committee on Enforced Disappearances and the Committee on Migrant Workers still remain cut off from the monitoring machinery, since Italy has not ratified their respective Conventions. Moreover, while awaiting ratification of the Protocol to the Convention against Torture, Italy is not subject to monitoring by the Sub-Committee on Prevention of Torture.

Punctuality in submitting reports, which are edited by the Inter-Ministerial Committee for Human Rights, is still a sore point for Italy. Indeed, if attention is set to the latest reports submitted to the different Committees, it results that the delay accumulated by Italy with respect to the deadline ranges from a minimum of three months (joint report III-IV on children's rights) to a maximum of five years (joint report XIV-XV on eliminating racial discrimination); in other cases, the delay generally lasts for around two years.

As before mentioned, in 2010 Italy was subjected to the UPR proceeding. At the end of the review, the Human Rights Council addressed the Italian Government with 92 recommendations on measures to adopt in order to improve the national system for promoting and protecting human rights. Italy *fully accepted* 78 recommendations (44 of which considered as already implemented or in the phase of implementation); it *partially accepted* 2 recommendations, and *rejected* 12. Approximately 13% of the recommendations were not accepted: a lower number compared to other European States, including the United Kingdom (30%), the Netherlands (25%), Germany and Norway (20%).

Considering the number of international legal instruments and related monitoring bodies, the reporting system is undoubtedly demanding for States. However, periodic accounting is proving highly effective, also due to the fact that in cases of non-compliance by the States involved, the critical assessments and recommendations recur time after time, inexorably, in a context marked by publicity and by attentive participation on the part of national and international non-governmental organisations. Needless to point out that the reiteration of critical points helps to delineate weak points in the national human rights systems. Limiting the discussion to the fore-mentioned United Nations Committees, the most frequent recommendations addressed to Italy concern, e.g., the need to create a national independent human rights institution; inclusion of the crime of "torture" in the criminal code; the launching of

rapid, impartial, effective inquiries when police are accused of excessive use of force; the prevention of any form of racial discrimination, and punishment for those who incite ethnic or racial hate; the reinforcement of human rights protection for specific categories of persons: migrants, asylum-seekers, Roma and Sinti, persons in a state of detention.

4. Aside from assessment linked to periodic reporting, that also include bodies operating in the sphere of the Council of Europe such as the European Committee of Social Rights, the Committee of the Convention on the Exercise of Children's Rights, the Committee for the Prevention of Torture, Italy is subject to the judicial machinery driven by the European Court of Human Rights.

Italian citizens have gradually become more and more familiar with this last instrument, so that Italy now figures among the most assiduous suppliers of cases to the European Court. At the end of 2010, there were 10,208 claims pending against Italy, or 7.3% of the Court's overall judicial burden. In case number, Italy was preceded by Russia (over 40,000 cases pending), Turkey (over 15,000), Romania (nearly 12,000) and Ukraine (10,434).

Several cases involving Italy – given the widespread notoriety of the events and the importance of the controversy they inspire – attract the attention of the public and the media, and help keeping attention alive toward the fundamental role of the European Court of Human Rights. However, most of the case-load is made up of scattershot appeals regarding issues already dealt with by the Court, in which the Italian institutions intervened late or in an insufficient manner. Indeed, Italy continues to be the object of numerous claims touching, for example, on the excessive duration of judicial proceedings, trials by default in particular; and on protection of property rights in cases of expropriation. A particularly worrying tendency which occasionally emerged during 2010 is the failure to satisfy requests for provisional measures issued by the Strasbourg Court, in particular, suspension of the repatriation order against appellants. The European Council's Committee of Ministers has urged Italy to show greater respect for such orders; non-compliance with them might imply violation of the European Convention on Human Rights itself.

The importance assigned to European Court case-law has grown considerably within the Italian judicial system: the year 2010 has already provided signs of this tendency not only in Constitutional Court verdicts, but also in Cassation case-law and in the jurisprudence of single judges involved.

The impact of the European Human Rights Court case-law may soon grow in importance, parallel to the process of encompassing human rights in the law and in the judicial machinery of the European Union. In

fact, with the full equalisation of the EU Charter of Fundamental Rights with the binding value of the Lisbon Treaty provisions, and with the prospect of the EU's adhesion to the European Convention on Human Rights, the way is open to a melding of the two systems – the supra-national with the inter-governmental – as regards controlling States' behaviours in the specific human rights field. This enlargement of the European human rights space has direct consequences for the administration of justice in Italy; it implies the increasingly direct, immediate impact of international human rights standards, not only as "norms interposed" when judging the constitutional legitimacy of a law, but also as provisions destined to prevail systematically over incompatible internal norms.

Then, the monitoring of Italy by supra-national jurisdictional and non-jurisdictional authorities reveals both light and dark areas. Some of the critical situations have already been mentioned: the condition of Roma, Sinti and irregular immigrants; the trauma of pushing back migrants at sea; the situation of prisons; intolerance and xenophobia. Such issues were focused on during special visits made to Italy in 2009 by Thomas Hammarberg, the Council of Europe Human Rights Commissioner, and in 2010, by the United Nations High Commissioner for Human Rights, Navanethem Pillay. Other critical issues include pluralism in the media, television in particular; and the correlative freedom of information and political participation. The consultancies and monitoring bodies of the Council of Europe, and of the OSCE as well, have dedicated close attention to this problem in referring to specific laws of recent years.

5. Despite its formal commitment toward the prompt ratification of international human rights conventions and protocols, and the progress made toward recognising the peculiar strength of international legal sources in relation to internal law, the Italian legal system still reveals serious shortcomings in making normative and institutional infrastructures capable of full compliance with international standards, starting once again with the lack of an overall blueprint for creating national human rights institutions. Italy is also amiss in promoting – through laws or other normative acts, and suitable policies – a real adaptation of the system and its institutional apparatus to the provisions of important international conventions, even when it has ratified them and issued their execution. One instance of a duly ratified international convention to which Italy has, nonetheless, not yet completely adapted, concerns the Statute of the International Criminal Court. Perhaps, the most glaring case – given, too, the fact that for over twenty years it has remained unsolved – is that of the Convention against Torture (CAT).

As is well known, the Convention against Torture and Other Cruel, Inhuman or Degrading Punishments or Treatments, adopted in 1984, came into force in Italy in 1989. In art. 4 it requires each Member State to "ensure that all acts of torture are offences under its criminal law" and to punish them adequately. In its first report on the implementation of the Convention submitted to the Committee against Torture (1991), the Italian government declared that it was not obliged to make any change in its criminal system, since the crime as defined by the Convention substantially corresponded to such crimes as battery, injury, private violence, threats and kidnapping, not to mention a series of incriminations aimed at protecting citizens against abuse by the authorities (art. 606-609, penal code); and the common aggravating circumstance of abuse of power applies as well (art. 61, No. 9, penal code). Besides automatically recognising the applicability of the international customary law (*ius cogens*) against torture, the Italian Constitution establishes principles regarding personal freedom, fundamental rights and freedoms, the provision of punishment, etc., which are clearly incompatible with torture. However, the fact remains that the specific crime of torture in line with the definition provided by art. 1 of the 1984 Convention is not defined in the Italian legislation (art. 185-*bis* of the wartime military criminal code, introduced in 2002, foresees an autonomous crime of torture, but the various laws authorising ratification and containing the order of execution of the international instruments against torture do not appear suitable to introducing a directly applicable incriminating norm).

In the course of various legislatures, there has been no shortage of draft laws aiming to include – among crimes against the person, or against moral freedom – a criminal norm in line with the 1984 Convention. In fact, in 2006, the House of Representatives had approved a bill introducing an art. 613-*bis* into the criminal code, aiming to punish by imprisonment from three to twelve years "anyone who, with violence or grave threats, inflicts serious physical or mental harm or cruel, inhuman or degrading treatment on another person, with the purpose of obtaining from that person or a third person information or confession concerning an act which that person or a third person has committed or is suspected of having committed; or with the purpose of punishing a person for an act which he himself or a third person has committed or is suspected of having committed; or for reasons of racial, political, religious or sexual discrimination".

This text, actually expanded the concept of "torture" as it appears in the 1984 Convention, since it viewed the crime as an ordinary offence. Instead, the Convention presents the offence as a specific crime for which only a public official can be punished: the act of torture must have been committed, ordered, instigated or tolerated or not repressed,

by that official. In the conception that was shared in the Italian House of Representatives, instead, the culprit's being a public official was an aggravating circumstance. The crime of torture was therefore identified by the particular malice associated with it, implying the intent to capture information, force confession, or illegitimately discriminate against or punish the victim. Again in line with the 1984 Convention, the proposed law excluded any form of immunity, including diplomatic immunity; and – in the perspective of universal jurisdiction – established punishment even for offences taking place outside Italy.

Early closure of the legislature has prevented the Senate from giving final approval to the proposed law. In the current period of office of the legislature, No. XVI, the bill which Parliament failed to pass in 2006, as well as other similar bills, was again proposed in 2009 and at the beginning of 2010 by various members of Parliament in both the House of Representatives and Senate, in the wake of dramatic news events arousing public attention to the dangers of mistreatment and even actual torture threatening persons stopped or detained by the police (among the most emblematic, the case of Stefano Cucchi); and in light of Italy's possible involvement in the illegal practice of "extraordinary rendition" (the cases of Abu Omar and Abou Elkassim Britel, mentioned in the European Parliament's resolution of 14 February 2007 concerning the presumed involvement of European Countries in CIA illegal transfer and detention of prisoners, had still not been clarified by the of 2010). Unfortunately, however, as months have passed, such initiatives seem to have disappeared into thin air.

Few now nourish any doubt about the need, both political and juridical, to introduce a specific crime of torture in the criminal code.

Most Countries do define such a crime, grouped among offences subject to the machinery of the European arrest warrant. EC regulation 1236/2005, duly transposed by Italy, punishes the production of and commerce in instruments usable for torture or and for capital punishment. From 2004 until 2008 the Italian State contributed approximately 120,000 euros per year to the United Nations Fund for the Victims of Torture.

The European Human Rights Court has remained adamantly contrary to any form of torture, affirming the responsibility of States Party to the European Convention on Human Rights and Fundamental Freedoms even when the probability of torture of an individual in their custody was attributable to the behaviour of Third States. Italy has aligned itself with this firm stance. In declarations made prior to its appointment as member of the United Nations Human Rights Council, and during the UPR proceedings, the Italian Government has often mentioned its intention to ratify as soon as possible the Optional Protocol to CAT.

Furthermore, it seems clear, though the connection is not strictly necessary, that the prevention of torture can be more easily achieved if national norms clearly define this crime. However, as above mentioned, at the end of 2010 the State had not yet ratified the Protocol, though in 2007 it had promised to do so.

Important reasons of principle and of practice, then, argue in favour of defining explicit punishment for the crime of torture in the Italian criminal code. Urgent requests in this sense have been addressed by the Council of Europe's Committee for the Prevention of Torture (CPT).

Therefore it is surprising to see that in the *Addendum* to the final document of the Universal Periodic Review (which took place the meeting of 9 June 2010), the recommendations made by the Netherlands, the Czech Republic, and New Zealand to define the crime of torture in legislation were rejected by the Italian Government, ostensibly for the reason that "even though it is not typified as one specific offence under the Italian criminal code, both the constitutional and legal framework already punish acts of physical and moral violence against persons subject to restrictions of their personal liberty. Both provide sanction for all criminal conducts covered by the definition of torture, as set forth in art. 1 [of the 1984 Convention]". These are the same arguments already used in 1991 (first report on the implementation of the CAT submitted to the Committee)**;** apparently the Government sees no need for further action.

6. Different remarks can be made in regard of the struggle against human trafficking and grave forms of exploitation affecting workers, and of protection measures favouring the victims of such odious crimes. Undoubtedly, Italy has distinguished itself in these areas since the 1990s, showing strong commitment on the operative level. Even on the international level, it has proven the value of its approach in protecting the fundamental rights of human trafficking victims, looking well beyond the victims' role as witnesses in judicial proceedings.

It is necessary both to guarantee the rights of victims, and meet needs linked to activities of crime prevention and, above all, repression, in a "multi-agency" key (institutionalised cooperation among police, judiciary and social actors). Reconciling these two demands has proven not only operatively possible, but fully in line with indications contained in the most significant instruments adopted in this sphere by the United Nations, the Council of Europe, OSCE and the European Union. Since March 1998, in a wider scope of intervention affecting immigration law, Italy presented a legislative instrument which has proven useful on many fronts: art. 16 of law 6 March 1998, No. 40, which later became art. 18 of the Consolidated act on immigration (legislative decree No. 286, 25 July 1998**)**. This law has allowed to approach the goals

established by various international directives, in particular reinforcing the repression of human trafficking, while considering the protection instrument not only as machinery compatible with the fight against criminal organisations, but also as an incentive favouring repressive action. Art. 18 sets forth the possibility, for the *Questore* (Head of the Police in each Province), to issue a special residence permit to foreigners who are victim to violence or severe exploitation, when they are in danger because of their attempt to free themselves of conditioning by a criminal association, or because of declarations they have made during criminal proceedings. On request or by prior approval by the *Procuratore della Repubblica* (Prosecutor), the permit allows such victims to participate in programmes of assistance and social integration. Conditions of violence or exploitation may be ascertained during police operations, inquiries or proceedings referring to crimes connected to prostitution or other grave offences; or during intervention by social services. This residence permit lasts six months and can be renewed for one year (or longer), for the same reasons, or for reasons of employment; or it may be converted into a residence permit for students.

As years have passed, the application of this legislation has made possible not only to assist and reintegrate thousands of persons who were victim to situations of severe subjection and exploitation, but also to foster the development of important investigative activities leading to numerous arrests and condemnations.

Law 228/2003 (Measures against human trafficking) emended the criminal code as regards art. 600 (Reduction to or holding in slavery or servitude), 601 (Human trafficking) and 602 (Buying and selling of slaves). This emending law, along with law 146/2006 ratifying the Convention of Palermo of 2000 (on transnational organised crime) and its additional Protocols, are the most significant norms concerning this complex area.

As regards the year 2010, with law 2 July 2010, No. 108 (authorising ratification and ordering the execution of the Council of Europe Convention on Action against Trafficking in Human Beings, signed in Warsaw on 16 May 2005, plus norms adapting internal legislation), other changes have been made in the fore-mentioned penal code articles; and a series of aggravating circumstances have been added. However, the ratifying law does not actually appear to give "full and total implementation" to the Warsaw Convention. In particular, while art. 13 of the Convention establishes a period of recovery and reflection of at least thirty days during which the presumed human trafficking victim cannot be expelled from the Country, no such provision appears in the Consolidated act on immigration; nor is this situation hypothesised by the

European Union's "repatriation directive", which establishes different times and terms.

Moreover, art. 26 of the Convention allows the Parties to "provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so". Like other elements, this provision has not been fully transposed into the adapting norms; it is not encompassed by the hypothesis of "physical coercion" nor "state of need".

It should be stressed that – as this *Yearbook* makes abundantly clear – the treatment of immigrants, asylum-seekers, refugees and foreigners illegally present on Italian territory still remains a sore point in the Italian human rights scenario. In fact, no international or European authority monitoring human rights in Italy fails to note shortcomings and problems afflicting this sphere. The condition of irregular migrants is a constant source of worry as regards protection of their rights. To the demand for such protection, Italy is still slow to provide structured response, rather than mere emergency measures: response in full respect of international standards. The numerous possible facets of the foreigner's condition (regular or irregular, migrant or refugee, adult or minor, etc.) are discussed in several sections of this *Yearbook*, confirming the absolute centrality of this issue in the sphere of human rights.

7. In a situation showing the persistent inadequacy of Italy's relationship with international human rights law and its machinery, the existence of structures and processes dealing with human rights at subnational level proves the Country's commitment in fostering the establishment of an appropriate national infrastructure. The preceding pages do provide some reference to such virtuous reality. This includes, for example, the reinforcement of legislation aiming to repress human trafficking and exploitation, as well as recent norms opposing violence against women, specifically in the form of "stalking". It should be focused, in particular, on two virtuous developments which are currently burgeoning in Italy: the growth of an active, conscientious role on the part of local and regional government institutions as regards policies and positive measure in the very field of human rights, and consolidation of human rights teaching and education in the school system.

One fact pertaining to commitment by local governments is, in many ways, unique in the world: unique as to content, unique in its strong territorial bonds. Since 1991, a number of Municipalities, Provinces and Regions have endowed themselves with statutes and bills containing a provision which explicitly refers both to the Italian Constitution and to international law of human rights. The standard text of the so-called "peace human rights norm" included in those instruments reads: "The Municipality (the Province, the Region) recognises peace as a funda-

mental right of the person and of peoples, according to the principles of the Italian Constitution and the international law enshrining the promotion and the protection of human rights".

This norm exists today in the statutes of 2,086 Italian Municipalities with over 5,000 inhabitants, 97 Provinces and 13 Regions. The statutes of 842 Municipalities, 56 Provinces and 8 Regions mention at least one international and/or European human rights instrument (United Nations Charter, Universal Declaration of Human Rights, the two International Covenants of 1966, the European Union Charter of Fundamental Rights, the Convention on Children Rights, etc.). 14 out of 20 Regions have adopted specific laws concerning human rights promotion, international cooperation and international solidarity.

On a sub-national level, then, local authorities have crafted exceptional formal acknowledgment of international norms. In so doing, they have confirmed the idea that the Universal Declaration of Human Rights is the fundamental norm for any legal system, at any level. In addition, local and regional authorities often play a substantial role in monitoring and reporting. More and more often, local authorities tend to become a precious source of information and best practices. They also tend to become partners in international cooperation, helping the State institutions in their commitment to international human rights obligations. This is a good example of a dynamics of healthy subsidiarity, leading human rights promotion from below to become an organically structured, multi-level system in Italy.

The positive aspects of this process make the national leadership gaps all the more visible and unacceptable, lacking adequate institutions and measures capable of shedding light, in the international context, on the civil society heritage which so enriches Italy.

On the positive side, it should be pointed out that in the United Nations context, Italy recently contributed to the substantive effectiveness of international law in the specific field of human rights education and training. Needless to stress that education is the primary safeguard for human rights, first of all, because it works to prevent their violation. The Universal Declaration highlights this concept by proclaiming itself "as a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms". From 2008 to 2011 Italy actively participated in an initiative by the United Nations Human Rights Council aiming to set out a "United Nations Declaration on Human Rights Education and Training". Together with France, Costa Rica, the Philippines, Morocco, Senegal, Slovenia and Switzerland, it took part in a special orientation and support "platform". The final

Declaration draft was adopted by the Human Rights Council with resolution 16/1 of 23 March 2011, and forwarded for approval to the United Nations General Assembly. This new legal (soft law) instrument is motivated by the wish to send a strong message to the international community in order to increment every effort in the field of human rights education and training through the shared commitment of all interested subjects. The strategic relevance is clearly reflected by Declaration art. 1: "Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training". Human rights education and training, then, are themselves recognised as a specific fundamental right within the overall framework of the human right to education pursuant to art. 26 of the Universal Declaration and to art. 13 of the International Covenant on Economic, Social and Cultural Rights.

It should be noted that in the Council of Europe sphere as well, the topic of human rights education is assuming more and more importance, as reflected in the Committee of Ministers' Recommendation of 11 May 2010, including the "European Charter on Education for Democratic Citizenship and Human Rights Education". In virtue of this instrument, that foresees a monitoring follow-up system, the Member States of the Council of Europe are asked to collaborate with one another also in setting out specific national programmes.

Italy's participation in the current international norm-making process significantly coincides with a renewed commitment in the very field of education, especially thanks to the introduction in the school system – beginning in the year 2008-2009 – of a specific teaching entitled "Citizenship and Constitution", pursuant to law 169/2008 and to recent rules enacted with school reform.

On 27 October 2010 a circular letter by the Ministry of Education, University and Research launched a call in schools at all levels for planning and experimenting innovative organisational and teaching itineraries focusing precisely on this new teaching. In response, the Ministry received 3,202 projects, of which 104 were selected, with the involvement of 4,366 schools, 367 of which were awarded prizes. As a matter of empirical evidence, the Italian schools show a high level of interest toward this undertaking. The heading "human dignity" and "fundamental rights" have now become central to training programmes for teachers.

The current grass roots educational mobilisation is preceded and now accompanied by a burgeoning of human rights curricula in universities, which began in 1982, when the Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua started functioning. As in 2010, the Italian university system is endowed with 125

teaching courses relating to human rights, distinguished in 60 Faculties of political science, 30 Faculties of law, and with 5 human rights centres, 13 doctoral programmes and 7 Master degree programmes.

There are good premises in Italy for eventually succeeding in developing a human rights-based civic education with a strong international-universalist dimension as defined in the pioneering Recommendation by UNESCO of 19 November 1974 "concerning education for international understanding, cooperation and peace, and education relating to human rights and fundamental freedoms", recently improved by the fore mentioned new instruments of the United Nations and the Council of Europe. Hopefully it could also be envisaged the development of a fruitful educational and training pact between schools at various levels, – beginning with primary schools – and university institutions, in shared awareness that a human rights educational strategy will unite them all in pursuing the best interest of pupils and of the whole society.

8. The *Italian Yearbook of Human Rights* is divided into four main Parts, sub-divided into chapters dedicated to the adaptation of internal law to international human rights norms, to the national human rights infrastructure, to Italy's relationship with the international human rights machinery, to Italian human rights case-law and to international human rights case-law directly involving Italy. Their consecutive reading should yield a comprehensive picture of the human rights situation in Italy, both in a normative, "infrastructural" light and as regards the real enactment of policies and initiatives fostering human rights promotion and protection. The degree of detail and in-depth discussion pursued in each Part of the *Yearbook* may hopefully allow to make transversal, targeted readings, which can be developed by consulting the Index.

The diachronic arc considered is the year 2010. However, since this is the first issue of a publication aiming to become periodical, the research and editing team in agreement with the Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua (Human Rights Centre), decided to report succinctly data pertaining to previous years in order to contextualise activities of 2010 within the larger, evolutionary framework in which they were performed. This methodological choice is particularly clear in Part III, dedicated to "dialogue" between Italy and regional or international organisations; here, in the absence of specific activities performed in 2010, the *Yearbook* recalls other recent reports, visits, recommendations and initiatives.

Another methodological choice lies in the fact that the information provided in the first three Parts are taken from documents of public dominion, mostly traceable to the official websites of the various organisations considered. It is partly for this reason that all the documents mentioned in the *Yearbook* can be consulted on an *ad hoc* online data-

base at the website of the Regional Archive "Pace Diritti Umani-Peace Human Rights", managed by the Human Rights Centre of the University of Padua. The database was created thanks to the assistance of Luca Gazzola and the four volunteers from the National Civil Service at the Human Rights Centre: Stefano Iachella, Federica Napolitano, Claudia Turetta and Letizia Virgis.

Part I of the *Yearbook* illustrates the degree to which international and European norms have been included in the internal law system. The review progresses systematically, starting from the universal level (norms and machinery of the United Nations, UNESCO, ILO, international humanitarian law instruments) and finally reaching the regional level, constituted by norms and machinery of the Council of Europe, European Union, OSCE. The same progressive criterion is used in presenting the internal legislation which acknowledges principles and obligations contained in international legal instruments, starting from the Italian Constitution and ending with a survey of the sub-national (municipal, provincial and regional) legislation.

Part II is dedicated to Italy's human rights infrastructure, and is divided into three chapters. The first presents the structure, functions and activities of Parliamentary and Government bodies, independent authorities (guarantors), civil society organisations and academic institutions. The second chapter refers to the sub-national level, and surveys the unique, variegated local and regional human rights infrastructure, and the related national coordinating structures. The third chapter concentrates on the activities of the Region of Veneto in the field of human rights, peace and international solidarity. The particular emphasis on this exemplary sub-national reality is inspired by the pioneering commitment of the Region of Veneto, beginning with regional law 18/1988, in promoting a universal culture of human rights.

Part III surveys Italy's position in relation to the international and European monitoring machinery: Committees, Commissions, Special Rapporteurs and Representatives, etc. Ample space is given to the assessments and recommendations addressed to the Italian Government by those bodies, as the result of specific missions and activities of periodic reporting. Further focus is on Italy's role within those organisations, and on contribution given by its representatives in promoting human rights both at regional and global level. This Part is divided into five chapters. The first focuses on the United Nations system: General Assembly, Human Rights Council, particularly on the Universal Periodic Review process, Treaty Bodies. The second chapter is dedicated to the Council of Europe: it offers an overview of activities and initiatives focusing on the European Convention of Human Rights, European Convention against Torture, the European Committee on Social Rights,

which in 2010 issued a "decision" over a class action brought against Italy, the Human Rights Commissioner and the European Commission against Racism and Intolerance (ECRI). The third chapter, specifically dedicated to the European Union, presents the innovations introduced with the coming into force of the Lisbon Treaty on 1st December 2009, concerning the responsibilities and functions of EU institutions and organs in human rights matters, both within the EU and in the relationship with third Countries. This chapter completes material presented in Part I as regards the Council of Europe and the European Union norms and case-law during 2010. The fourth chapter refers to the Organisation for Security and Cooperation in Europe (OSCE), and its bodies committed to promoting the human dimension of security: particularly those concerned with freedom in the media and the protection of national minorities. The fifth and final chapter of Part III examines international humanitarian and criminal law, highlighting the degree of Italy's adaptation to it, and listing international peace missions that took place in 2010 involving participation by Italian security forces.

Finally, Part IV provides a selection from national and international case-law regarding Italy during 2010. In both its chapters, cases are subdivided according to the topics addressed by the various sentences. The two chapters deal respectively with internal case-law – of the Constitutional Court, the Court of Cassation, and individual lower courts –, and case-law of the European Court of Human Rights as regards claims brought against Italy. A targeted reading of case-law can also be made by looking up single cases appearing in the Index at the end of this volume, which extensively lists the key details of the decisions cited.

With this layout, the *Yearbook* calls upon the attention primarily of those who are serving in public institutions at all levels, so that they may gain ideas from the overview presented in order to fill normative and operational gaps, of course accordingly with the sound principle "*de lege semper perficienda*": the law must be perennially perfected. It also calls upon the attention of those working within the academia, schools, and all other civil society environments, which take to heart the growth of a true axio-practical culture of human rights and fundamental freedoms.