

Italian Agenda of Human Rights 2012

In its second year, the *Italian Yearbook of Human Rights 2012*, edited by the Human Rights Centre of the University of Padua¹, aims to confirm its function as a tool which, in the mark of factual truths and with the strength of universal values, conveys a message of lawfulness, civic cohesion, solidarity and democratic inclusiveness. Politicians and civil servants at all levels can draw inspiration from the overall picture of the current human rights situation in order to fill legislative gaps and to correct shortcomings of infrastructure and policies, in the spirit of *de lege semper perficienda* – laws must perennially be perfected – and of good governance. All those who care about the increase in knowledge and culture of human rights in the world of academia, in schools and in all other walks of society can fruitfully use the *Yearbook* as a substantial instrument for their advocacy. This is a special reference to the «human rights defenders» as they are acknowledged by the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (9 December 1998) and who, as such, are legally entitled to take action both at the national and the international level.

The structure for the 2012 *Yearbook* was traced out in the 2011 edition, which was the first in the *Human Rights Studies* series. This has naturally simplified the preparatory work for the current edition and also allowed the research and editorial committee to enhance its practical use and sustainability.

The *Yearbook* has been welcome in Italy and at the international level. On 30 November 2011, the first *Yearbook* was presented to the President of the Republic, Giorgio Napolitano, during a private audience at the Quirinale Palace. The President, who had himself addressed the United Nations Human Rights Council on 4 March 2011, expressed his appreciation for the undertaking of the Human Rights Centre of the University of Padua and encouraged the wide circulation of the book.

At the international level, thanks to the wholehearted support of Ambassador Sergio Busetto and Ambassador Laura Mirachian, the *Yearbook* has been presented to the Council of Europe (14 June 2012) and to the United Nations High Commissioner for Human Rights (26 June 2012).

The 2011 *Yearbook* gave a general overview of Italy's standing at that

¹ Brussels, Peter Lang International Academic Publishers, 2013, pp. 1-382.

time, also using data relating to previous years.

The timespan covered by the *2012 Yearbook* is necessarily limited to one calendar year, with the consequent limits to a significant analysis of the data. However, the research and editorial committee took on the challenge of making comparisons, with the aim of highlighting any useful indication of progress in Italy's position with respect to the obligations undertaken within the worldwide human rights system and within the European regional system.

A number of special-focus sections illustrate the results of this study, with the purpose of drawing attention to particularly important aspects for the evaluation both of progress made and of the continuing critical points and shortcomings: complete and define the human rights infrastructure at the national level, combat violence against women and extreme forms of exploitation, respect international commitments, eliminate discrimination against Roma and Sinti, guarantee the respect of human rights in the handling of «mixed» migrant flows from North Africa, foster the implementation of international principles and norms on bioethics and bio-law, implement the Rome Statute establishing the International Criminal Court, develop a dialogue between Italian courts and international courts for greater guarantees of the respect of human rights.

The recommendations Italy has received internationally, some of which either shared by several monitoring bodies or reiterated in the course of time, taken together with the analysis of the more critical aspects identified in this *Yearbook*, allow formulating a possible, tentatively organic *Italian Agenda of Human Rights*. The wish is that the *Agenda*, which is summarised here after, could provide policy-makers with a useful orientation tool with regards to the main initiatives that are to be realised in Italy at the normative, infrastructural and policy levels.

Normative Level

1. Ratify the following legal instruments (United Nations and Council of Europe):
 - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
 - International Convention for the Protection of All Persons from Enforced Disappearance,
 - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,
 - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
 - Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure,
 - Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms,

- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,
 - Civil Law Convention on Corruption,
 - Criminal Law Convention on Corruption and Additional Protocol,
 - European Convention on Nationality.
2. Accept Article 25 of the European Social Charter (revised), which recognises the right of workers to the protection of their claims in the event of the insolvency of their employer.
 3. Withdraw the declaration which excludes the application, for Italy, of Chapter C of the European Convention on the Participation of Foreigners in Public Life at Local Level and, accordingly, to provide for the introduction of active and passive voting rights in local elections for foreigners residing in the country for a certain number of years.
 4. Incorporate the aggravating circumstances for hate motivation in Article 61 of the criminal code.
 5. Incorporate the crime of torture into domestic legislation.

Infrastructural Level

6. Plug the structural macro-gap regarding the lack of independent national human rights institutions, consistent with the Paris Principles adopted by the United Nations.
7. Establish a national, independent and adequately funded preventive mechanism against torture.
8. Clarify the division of labour among the Inter-Ministerial Committee for Human Rights, the National Ombudsperson for Children and Adolescents and the (future) National Commission for the Promotion and Protection of Human Rights.
9. Give top expression to the Network of Regional Ombudsperson by establishing the National Ombudsperson.
10. Foster coordination among the Independent Authorities dealing with fundamental rights issues within the national human rights system.
11. Provide all Ministries with an ad hoc human rights office.
12. Increase the number of staff with specific skills in human rights within the Ministry of Foreign Affairs and update diplomats' training on the European Union guidelines on human rights.

Implementation of International Obligations and Commitments

13. Comply with specific voluntary pledges and commitments, at the national level, undertaken by Italy upon the presentation of the two candidatures at the United Nations Human Rights Council, and in particular:
 - complete the normative process for the implementation of the Statute of the International Criminal Court,

- update the National Action Plan against Racism,
- implement, in a timely manner, all accepted recommendations in connection with the Universal Periodic Review.

14. Start up a monitoring process concerning the stage of implementation of the Universal Periodic Review recommendations with the aim of realising a mid-term report, to be drafted with the full participation of civil society organisations.

15. Submit overdue reports to United Nations treaty bodies, in particular:

- V Report to the Committee on Economic, Social and Cultural Rights (overdue since June 2009),

- VI Report to the Committee on Civil and Political Rights (overdue since October 2009),

- VI Report to the Committee against Torture (overdue since July 2011),

- I Report to the Committee on the Rights of Persons with Disabilities (overdue since June 2011).

16. Fully comply with interim measures issued by the European Court of Human Rights and improve the capacity to adapt the domestic system to human rights standards defined by the Court, in areas such as:

- use of lethal force by law enforcement officials and effectiveness of related investigations,

- prohibition of torture and other cruel or inhuman treatments in connection to expulsions or push back of aliens toward states where such practices exist,

- parliamentary immunity,

- protection of the rights of detainees,

- recourse to retroactive laws which impinge over the legitimate expectations concerning an existing legal dispute,

- scrupulous compliance with the principle of the best interest of the child in proceedings concerning minors and, in particular, in cases of international child abduction.

17. Find a definitive solution to the excessive length of judicial proceedings, including those set up to remedy to excessively long ones.

18. Implement, with no delay, European Union directives on human rights-related issues and comply with European Court of Justice rulings.

Adoption of Policies

19. Hold an annual parliamentary debate on human rights.

20. Adopt the following national plans of actions, providing them with adequate monitoring and assessing tools:

- National Plan of Action against Trafficking in Human Beings,

- National Plan of Action to Combat Violence against Women,

- National Plan of Action to Improve the Human Rights Conditions of Persons Deprived of Their Liberty,

- National Roma Integration Strategy (under the Communication from the European Commission 173/2011),

- National Plan of Action for the Human Rights Promotion of Persons with Disabilities,
 - National Programme on Education for Democratic Citizenship and on Human Rights Education and Training.
21. Ensure that due attention is paid to the human rights dimension in the framework of economic, fiscal and budgetary policies, as well as in labour and job-related policies.

Initiatives in Specific Fields

Rights of Women

22. Strengthen women's representation in the highest decision-making positions of institutional bodies, including the Parliament and Regional Councils, public administration, including the diplomatic service, and the private sector.
23. Adopt coordinated policies to promote the effective equality between men and women in relation to job conditions.

Rights of Children

24. Introduce a comprehensive legal provision establishing the right of the child to be heard that would be applicable to all courts, administrative bodies, institutions, schools, child-care institutions and families in matters affecting children, and provide adequate safeguards and mechanisms for ensuring that such participation can be carried out effectively.
25. Effectively implement the National Plan of Action and Intervention for the Protection of Rights and Development of Subjects in Developmental Age (2010-2011) through the allocation of adequate funds and the setting-up of a specific monitoring and evaluation system.
26. Amend the criminal code to expressly prohibit and criminalise the recruitment and use in hostilities of persons under the age of 18 by the armed forces and armed groups.
27. Prohibit and criminalise in domestic legislation the sale of small arms and light weapons to countries where children are involved in armed conflict.
28. Review domestic law and ensure that it prohibits the expulsion of persons under the age of 18, even for reasons of public order and state security, where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.

Rights of Migrants, Refugees and Asylum Seekers

29. Fully respect the *jus cogens* principle of *non-refoulement*.
30. Respect the right of asylum seekers to an individual examination of

their asylum claim, as well as to immediate access to asylum procedures and other national and international forms of protection.

31. Deal with migrations as a structural phenomenon through ordinary tools, discontinuing the emergency and securitarian approach.

32. Adopt broad policies aiming at integrating the resident foreign population and provide for the widening of political participation, also in order to reconsider the citizenship law under the principle of *ius humanae dignitatis*.

33. Resolve the *de facto* statelessness of more than 15,000 Roma who were born in Italy from parents coming from former Yugoslavia territories.